

**NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
LAW MASTER'S PROGRAM**

MASTER'S THESIS

**AN EXPANSION OF INTERNATIONAL
CRIMINAL LAW TO INCLUDE THE CRIME OF
TERRORISM**

Balen Yaseen IBRAHIM

**NICOSIA
2016**

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Thesis Title: An expansion of international criminal law to include international terrorism

We certify the thesis is satisfactory for the award of degree of Master of Law

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ABSTRACT

Our aim in this thesis is to perceive the pattern in which International Humanitarian Law has evolved in the recent development in regard to new form of threat to humanity and human dignity. In pursuing such objective we analyze the core concept of terrorism, in its value, sense and its effects on human being. By the way we assess the pattern in which International Humanitarian Law deploys its juridical arsenal to control deregulation of war against humanity; but also to prevent any breach of international norm concerning acts of terrorism. In due respect, we focus on international terrorism as new threat at the heart of concern of international arena. Our main objective here is to show in which extent international criminal law cope actively with terrorism despite the lack of a clearly definition of it, therefore we posit international humanitarian law as the fundamental norm that govern any acts that threat the core principle of respect of humanity in whatever situations. Even though terrorism is an international phenomenon that is not quite defined it does not exclude that its effect fall under the scope of international criminal law or international humanitarian law.

Keywords: Terrorism, International Law, ISIL, Boko Haram, Humanitarian Law

DECLARATION

I hereby declare that this master's thesis titled as "*An expansion of international criminal law to include international terrorism*" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

...../...../2016

Balen Yaseen IBRAHIM

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TABLE OF CONTENTS

ABSTRACT	iii
DECLARATION	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vi
LIST OF ABBREVIATIONS.....	vii
CHAPTER ONE: INTRODUCTION	1
CHAPTER TWO: HISTORICAL DEVELOPMENT	9
2.1 The origin of International Humanitarian Law	9
2.2 Historical abridgements on the concept of terror and terrorism.....	10
CHAPTER THREE: CONCEPT OF TERROR, TERRORISM AND ITS SIGNIFICANCES	17
3.1 The definitional problem of terrorism	17
3.2 Conception of terrorism in International Humanitarian Law	20
3.3 What is an international crime?	22
CHAPTER FOUR: THE POSITION OF INTERNATIONAL HUMANITARIAN LAW ON TERRORISM AND ITS APPLICABILITY	24
4.1 scope of application of direct prohibition of terrorism.....	24
4.2 Conventions on prohibitions of terrorism	25
4.3 The forbiddance of terrorism by International Humanitarian Law	27
4.3.1 In international armed conflict.....	27
4.3.2 In non-international armed conflict	31
CHAPTER FIVE: ANALYSIS, INTERNATIONAL CRIMINAL LAW AND THE NEW DEVELOPMENT OF INTERNATIONAL TERRORISM: ISIS, DAESH, AND BOKO HARAM.....	33
5.1 The terminology and facts of Islamic State in Syria	33
5.2 International terrorism and International humanitarian law implementation...	39
CONCLUSION	42
REFERENCES.....	44

LIST OF ABBREVIATIONS

IHL: International Humanitarian Law

ICRC: International Committee of Red Cross and Red Crescent

ANC: African National Congress

PLO: Palestinian Liberation Organization

WWII: World War II

PFLP: Popular Front for Liberation of Palestine

JRA: Japanese Red Army

IRA: Ireland Red Army

WTC: World Trade Center

D.C: District of Columbia, Washington

ICL: International Criminal Law

ILC: International Law Commission

IMT: International Military Tribunal

ISIS: Islamic State in Iraq and Syria

ICTY: International Criminal Tribunal for former-Yugoslavia

POW: Prisoner Of War

BCE: Before Christians Era

CE: Christians Era

CHAPTER ONE: INTRODUCTION

The subject of terrorism is both unpredictable and emotive. It is mind boggling on the grounds that it joins such a variety of various parts of human experience, including subjects, for example, legislative issues, brain research, theory, military system, and history, to give some examples. Terrorism is additionally emotive both on the grounds that encounters of terrorist acts stimulate gigantic sentiments, and on the grounds that the individuals who consider terrorists to be legitimized regularly have solid emotions concerning the rightness of the utilization of savagery (USIP, 2001). Without a doubt, terrorism summons solid sentiments at whatever point it is examined. A key test of comprehension terrorism is both recognizing the ethical shock at terrorist acts, while in the meantime attempting to comprehend the method of reasoning behind terrorism. Terrorism is not another wonder in human experience. Roughness have been utilized all through mankind's history by the individuals who restricted states, rulers, and rulers. This kind of brutality can be separated from what is termed as terrorism. Roughness contrary to an administration is frequently focused against fighters and the individuals who represent. Terrorism, in any case, is described by the utilization of savagery against regular folks, with the communicated craving of bringing on dread or frenzy in the populace. Terrorism is not exceptional to the twentieth and 21st centuries. Terrorism existed in eighteenth century progressive France amid the rule of fear, and additionally among the Zealots of Palestine, contrary to Roman run approximately 2000 years prior. Today, terrorist movement can be found in Israel, Indonesia, United Kingdom, Sri Lanka, Colombia, and the United States, to give some examples. Of specific worry here are the September 11 suicide assaults against the World Trade Center and the Pentagon and the endeavoured assault that brought about the plane accident in Pennsylvania (USIP, 2001).

Terrorism is characterized as planned political brutality against regular folks with the goal of augmenting media presentation to the demonstration and, eventually, to the dread gathering and/or to its cause (Krueger and Maleckova, 2003). Since it targets non-military workforce (that is, on account of the centre of terrorist exercises are "regular citizens" or "non-soldiers"), terrorist acts on a very basic level contrast from

common wars, guerrilla fighting and mobs. Since the point is to raise the profile of the "cause," one principle goal of terrorism is to boost media presentations in order to encourage the environment of trepidation. As the relative significance of presentation opposite the dread demonstration itself expands (the purposeful publicity overshadowing the deed), the specialized and arranging angles turn out to be generally more imperative. In spite of the fact that the occasions of 9/11 produced a surge of scholastic exploration on the reasons for terrorism, the primary lessons from this examination stay tricky. There is most likely we have taken in a great deal as of late about the total conduct of terrorism after some time, about its monetary and political expenses and about its microeconomic thought processes, however extensive contradiction stays about its main drivers (Llussa and Tavares, 2008). Normally, if these overflow impacts are significant, they will be bigger on residential than on worldwide terrorism. One explanation behind this is thoughtful wars and guerrilla fighting might (despite the fact that not as a matter of course do) include demonstrations of residential terrorism. In the event that this is right, the impacts we evaluate for, say common wars, the danger being generously bigger for local than for worldwide terrorism (Abadie, 2006). Henceforth, concentrating on universal terrorism gives moderate evaluations of the parts of various types of residential political unsteadiness. The primary adapted certainty is that in spite of the fact that there have been by and large a diminishing number of dread assaults every year, the normal number of passings they have brought on has methodically expanded in the course of the most recent 40 years or something like that (Campus and Gassebner, 2009). In addition, there are imperative provincial contrasts: e.g., lethality expanded over all locales since no less than 2000, with the exception of SubSaharan Africa. Regarding the aggregate numbers, our information demonstrates that most assaults occurred in the Middle East and Europe, while the most deadly assaults were in Africa, Asia and the Middle East.

Be that as it may, a globological point of view is not by any means the only hypothetical viewpoint that can be taken, and before swinging to the specifics of our thoughts we start by looking into different levels of examination at which one may develop an illustrative hypothesis of terrorist occasions, utilizing the September 11 assault as a case.

Hypotheses can be developed, or if officially existing, can be connected, to the individual terrorist—to attempt to comprehend Osama bin Laden or Ayman al-Zawahiri or to theorize on what is happening in the brain of suicide aircraft. One additionally can speculate the intrigues, intentions, and identities of an assortment of performing artists, from George W. Bush to Tony Blair to Osama bin Laden. At this level of investigation, there is an unlimited writing on the brain research of terrorists (Hudson, 1999).

Informative hypotheses additionally can be climbed an indent to tons of people, for example, terrorist associations, cells, or fundamentalist religious-based social developments. The hypothesis here reaches from attempting to see how culprits outline their issues, grievances, strategies, enrolment, and preparing practices to authoritative examinations of system and different types of terrorist association (Arguilla and Ronfeldt 2001). Terrorist associations additionally can be concentrated on in a style like social development associations (SMOs) utilizing hypotheses about asset preparation, outline investigation, political activity opportunity structures, and cycles of roughness (McAdam 1982; Snow and Benford 1992; McAdam et al., 2001).

Not all terrorism is global, obviously, but rather from a chronicled viewpoint both household and worldwide terrorism appear to be endemic to sort out social life, showing up and returning all through history. Floods of terrorism have been recorded in the principal century CE with the Zealots-Sicarii, a Jewish bunch included in deaths and poisonings of Romans involving Palestine, and with the Assassins, who worked in the eleventh to thirteenth century Persia and Syria, killing political and religious pioneers (Lacqueur 1999; Stern 1999:15). The cutting edge significance of the term terrorism is connected with the Reign of Terror amid the French Revolution of the eighteenth century, and Rapoport (2001) discusses current terrorist waves subsequent to the 1870s, with the first being the one connected with the rebels and social progressives in the late nineteenth century.

At present, the brunt of the social-development and political-viciousness writing tends to merge terrorist acts in with different types of aggregate brutality. Gurr (1990), for case, codes sporadic terrorism, political banditry, and unsuccessful overthrows in one class and effective upsets and battles of terrorism in another.

Terrorism episodes are not coded independently. Similarly Tilly (2002) thoughtfully blends terrorist occurrences in with different types of “rough claim making,” considering them to be a type of “composed obliteration” alongside different structures, for example, “deadly challenges” and “battles of demolition,” while White (1993:576) codes terrorist episodes in Northern Ireland as “political viciousness,” and Koopmans (1993:640), in what appears to be obviously to be terrorist occasions, talks about demonstrations of “serious and curiously conspiratorial roughness coordinated against property (illegal conflagration, bombings, damage) or individuals (political killings, hijacking)” as “overwhelming savagery.” Terrorism is positively a type of political brutality, facilitated annihilation, and substantial brutality, yet so are other aggregate occasions, for example, race revolts, some dissent occasions, or fierce experiences in the middle of administration and work. In any case, they are seen as their own particular type of aggregate roughness, with their own causal rationales and hypothetical linkages to their more extensive social environment. Terrorist occasions have yet to achieve this status, as we have seen, being gave way into a broader classification of group or political brutality. Terrorist occasions are quality loaded, and their importance regularly lies subjective depending on each person's preferences (the adage that one individual's terrorist is the other's flexibility contender), yet the same was valid for the race revolt, the workers strike, the challenge occasion, the horde, and the group. Be that as it may, every now is viewed as its own particular nonexclusive type of group, or political, brutality, and with expanded examination endeavours terrorism undoubtedly some time or another will be viewed as the same way.

A third level would be to move the focal point of examination up to the general public, country, or state, in, in case, attempting to comprehend state arrangements and money related backing that go to terrorist bunches, or on the other side, asking into the strategies of states that may make them focuses on terrorism. For instance, Friedman (2001) contends the accompanying about the conflicting strategies of numerous Arab-Islamic states: The administering deal is that the administrations get the chance to stay in force perpetually and the mullahs get an imposing business model on religious practice and training until the end of time. . . . This deal endured every one of these years since oil cash, or U.S. on the other hand Soviet help, empowered numerous Arab-Muslim nations to make due without opening their

economies or modernizing their training frameworks. Be that as it may, as oil incomes have declined and the number of inhabitants in youngsters looking for employments has blasted, this deal can't hold any longer. These nations can't make due without opening up to worldwide speculation, the Internet, advanced instruction and liberation of their ladies. . . In any case, the more they do that, the more debilitated the religious feel. Friedman (2001:A23) goes ahead to say this inexorably untenable disjuncture between the state and culture/religious establishments has driven some great gatherings to attempt to break this minimized by toppling their common administrations (e.g., the death of Egyptian president Anwar el-Sadat in 1981 by Islamic fundamentalists). Be that as it may, all things considered the terrorists' gatherings were stifled locally, and a few, similar to al-Qaeda, moved to another country to be focused in more cordial areas, for example, Afghanistan. The locus of assaults likewise moved toward nations such as the United States, one of the foremost supporters of absolutist administrations, for example, Saudi Arabia and Egypt.

On the off chance that people are settled inside gatherings/social developments, and they inside social orders/states, then it likewise is genuine that states constitute a portion of specific authentic time frames. Some have proposed that in today's chronicled circumstance the Islamic world needs something identical to the Protestant Reformation. Friedman (2002) contends that the Reformation welded Christianity and innovation and what made this stick was the point at which the "well off sovereigns" returned to the reformers; this is not the situation in the Muslim world today, where "the wealthiest rulers, as Arabia Saudi, are subsidizing antimodern schools from Pakistan to Bosnia, while the despots pay off the antimodern mullahs . . ." (Fredman, 2001:A23).

As one gets closer and more like a particularly globological examination when past occurrences can be recognized that appear to be like those of the present period, recommending something repeating, consequently deliberate, and since worldwide, something of the efficient rationale of the universal framework. A prior occurrence of Islamic fundamentalism and assault against the authoritative dominion can be found in the correlation of receptacle Laden, Islamic fundamentalism, and indignation against the United States with the fundamentalist Islamic rebel against

British guideline in the Sudan in the 1890s. Here Mohammed Ahmed broadcasted himself as the second awesome prophet of Islam, the Mahdi and, in a fascinating similarity with canister Laden's craving to drive the Americans out of Saudi Arabia, asserted he was going to drive the British out of the Sudan. General Charles Gordon was sent to Khartoum to empty British constraints however, was encompassed by strengths of the Mahdi, and the British were all murdered. Later the reconquest of the Sudan was started, and the similarity with the American quest for al-Qaeda in Central Asia has not been lost on analysts. "Similarly, as with Afghanistan today, there was incredible worry that the Sudan excessively restricted and remote for a fruitful military crusade, and there were numerous open stresses that the British were setting out toward yet another calamity in the desert" (Hayward 2001). The hypothetical import of examinations, for example, these expansions when the occasions as well as the encompassing global circumstance appears to be comparable, and in such manner, there give off an impression of being a likeness between the universal circumstance today and the one at the season of the revolutionary terrorist wave of 1880–1914. Taking after occurrences, for example, the bombarding of the WTC in 1993, U.S. government offices in Africa in 1998, and the assaults on the Pentagon and WTC in 2001, the tried and true way of thinking of specialists and reporters on terrorism was that the world had entered another stage subsequent to the 1990s that left significantly from what had gone some time recently. It differently was known as the "new terrorism" (Lesser et al. 1999; Jenkins 2001); or talked about as including "new sorts of post-icy war, terrorists" (Hudson, 1999:5); or "another type of terrorist" (Stern 1999:8); or "new era of terrorists" (Hoffman 1999); or "dread in the brain of God" (Jurgensmeyer 2000); or a "conflict of fundamentalisms" (Ali 2002); or essentially another "wave" of terrorism (Rapoport, 2001).

International arena is facing constantly news crisis. Those crises are concerned with hijacking in the civilian aircraft, hostages, war among states or between one state and an armed groups and so forth. All these issues are affecting civilian populations in the war area or in the place where the situation is occurring. But we should notify that terrorism amongst all the cited situations became more and more preoccupying due to its non-conventional manifestation. Terrorism has not been formally considered and defined in International Law for the reason of its polysemy which

differs from one State to another. In that sense, what it's considered such as terrorism can just be considered such as movement of freedom or of liberation by one given actors involved in conflict. The most important thing here it's not to seize terrorism itself such as a particular concept in International Humanitarian Law (IHL) rather our aim is to see in which extent IHL can cope with terrorism as a humanitarian necessity.

By the end of the Second World War and the finishing 20th century there has been development of new international phenomenon which appears to some as acts of terror but to others as mean to claim their rights. This international phenomenon is terrorism; as above cited we realize that terrorism is not defined with unanimity by the all the actors (Shaw, 2001). That's why for a long time the struggle for the end of apartheid in South Africa by ANC (African National Congress) of Nelson Mandela has made him and his political organization a terrorist movement for the government of South Africa and even by the United States (Frost, 2004) and most of Western countries for a long time. This case in South Africa is similar to that of the late PLO (Palestinian Liberation Organization) leader Yasser Arafat in Palestine in his fight for the independence of Palestine. For Israel, the PLO and others political entities which are involved in the fight for the independence of Palestine, they are terrorist organizations. But PLO and Hamas, they do not look themselves as terrorist rather as the movement of liberation of Palestine (Ganor, 2002). These cases just help to show how it is difficult to reach consensus in the acceptance of terrorism by all the actors involved in one given conflict.

Terrorism itself as a social phenomenon is not considered as grievances necessitates humanitarian intervention, but it is the effect of acts of terror against the civilian population that call upon application of the scope of international criminal law or international humanitarian law (ICRC, 1997). For the matters of this thesis, it is noteworthy to say that the scope of international criminal law is enacted when there is a case of international armed conflict and non-international armed conflict. These two categories of international criminal law or international humanitarian law have been identified theoretically and pragmatically meanwhile the category of terror and terrorism in international humanitarian law remains flaw (Ganor, 2002). In other

considerations, in which case terrorism can fall under the scope of application of IHL in regard with either international armed conflict or non-international armed conflict?

In this thesis our aim is to clarify the concept of terror and terrorism within the scope of international law, particularly in that of IHL. For that reasons, we are going to scrutinize the historical development of the concept of terrorism and terror in international humanitarian law. (Chapter II) Then we need to conceptualized terror and terrorism for a better understanding. (Chapter III) In order to cope with the scheme within which international humanitarian law should be applied we are going to discuss in a relevant part II of our thesis of international humanitarian law position in regard with terror and terrorism. (Chapter IV) A prospective analysis (Chapter V) is going to take place thereafter in order to scrutinize adaptability of international humanitarian law within the changing world. The last part will be consecrated to bibliography and sources (part III).

CHAPTER TWO: HISTORICAL DEVELOPMENT

The necessity to seize intrinsically international humanitarian law (IHL) implied that we should scrutinize its origin, its scope and even the pattern in which the discipline has been developed. For that reason, our framework is going to be enrooted in the perspective of contextual analysis of the emergence of IHL. Since the core question remains how can we reduce and stop negative effects of any conflict against civilian populations? In that respect we should posit humanity (Antonie, 2007) as the focal point of IHL application in any armed conflict or not. That's why for the purpose of this thesis and in some extent terrorism and terror become important part of the scope of application of IHL. So our work hereinafter will be focused on:

2.1 The origin of International Humanitarian Law

The birth of international humanitarian law is intrinsically stuck to the battle of Solferino that held in northern Italy which led the founding father of humanitarian action: Henry Dunant to write his book "*A Memory of Solferino*" (Frits and Liesbeth, 2001; pp. 26). In fact, in 1859 we are in the middle of 19th century, it held at Solferino a battle during which 40 000 soldiers were wounded. For have experienced this disastrous situation of war where many wounded soldiers were abandoned on the field of battle, Henry Dunant estimated that there should be a care organization that will help to save and heal those people who have been affected by the conflict (Frits and Liesbeth, 2001). International Humanitarian Law is born. In his way to the establishment of such organization, the first Convention of 1864 held in Geneva with the objective to establish a corpus of rules for the amelioration of the Wounded in armies in the field of battle. By the way, this convention establishes also the International Committee of Red Cross (ICRC). A few years later, in 1929 in Geneva again it was adopted a convention on the amelioration of the condition of the Wounded and Sick in armed forces in the field and on prisoners care. For the first time after the Second World War the convention took in consideration the civilian populations as victims of war (Theodor, 2000). We should mention also that the four convention of Geneva were completed after the Second World War. All these treaties

are named the “*law of Geneva*”, in regard with the location where the conventions were deliberated and adopted.

At the same time, the US president Abraham Lincoln, instructed Francis Lieber to write a text on the limitations of methods and means of land warfare for the combatants of the American civil war. This written text although valuable for US combatants influenced later the 1899 convention in respect to the Law and Customs of Wars and Land (Laura, 1994). Later on, in 1907 convention it focused on the restrictions and the prohibitions on the means and methods of warfare (Frits and Liesbeth, 2001). Prior to these both conventions, in St Petersburg in 1868 (Bugnion, 1999) it held a first International Humanitarian Law instrument that was the Declaration on the Renouncing of the Use of Explosive projectiles under 400 grammes Weight. By the way, it was also adopted a noteworthy text in 1925 (Frits and Liesbeth, 2001) on the prohibition of a specific type of weapons, it is the so-called Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Many treaties relative to the forbiddance of specific weapons were adopted and they are still today a usual and recognized approach to law of war. The case here is the 1995 protocol on Blinding Laser weapons (Protocol IV) relative to the conventions on conventional weapons and the convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Bugnion, 1999).

Due to the fact that 1899 and 1907 conventions held at Hague focused on the conduct of hostilities, it has become usual to name them the “Hague Law” to refer those set of rules relating to the conduct of hostilities (Bugnion, 1999). In its decision relative to the Legality of the threat or use of nuclear weapons, the international court of justice held that the both set of rules: the law of Geneva and the Law of Hague are included in the 1977 additional protocols to the 1949 convention on International Humanitarian Law (ICJ, 1996).

2.2 Historical abridgements on the concept of terror and terrorism

Terrorism or demonstration of fear is not something new in humankind history. Records of terrorism existed before the word itself was created. This was affirmed by

particular antiques found fifty miles south of Mosul in Iraq. Assurnasirpal's, the winner and ruler of Assyria (884–860 BCE), upheld his tenet on vanquished domains by raising stone landmarks. Composed on them, in cuneiform, is the accompanying: I constructed a column over against his city entryway and I excoriated every one of the boss who had revolted, and I secured the column with their skin. Some I walled up inside of the column, some I pierced upon the column on stakes... Many prisoners from among them I blazed with flame, and numerous I took as living hostages. From some I remove their noses, their ears and their fingers, of numerous I put out the eyes. I made one mainstay of the living and another of heads. Assurnasirpal's activity of fear is especially self-evident (Roux, 1996). A few old scholars in ancient times pushed tyrannicide (the killing of dictators) as an approach to have a perfect society and to satisfy the divine beings. Regicide (the murdering of lords) happened much of the time amid the Roman age. The best-known political disaster in antiquated Rome was maybe the death of Julius Caesar in 44 BCE. Other Roman rulers additionally had a vicious demise: Caligula and Galba. In 9 CE, Germanic tribes led guerrilla assaults against passing Roman detachments. In that year, Hermann the Cheruscan ("Arminius"), a Germanic "flexibility contender," abandoned the Roman armed force and sorted out "the immense rebellion of Germania" (Gundarsson). In an uncommon display of Barbarian imperviousness to the Roman occupiers, Arminius' powers assaulted Roman legionnaires as they went through the profoundly lush district of Teutoburger Wald. Three Roman armies were completely wiped out in the Battle of Teutoburger Wald; the Romans were promptly booted out of Germania and back past the Rhine. Roughly 15,000 Roman warriors were executed and hundreds more killed in the wake of being taken detainee. For the Romans, such Barbarian resistance would have been considered terrorism (Gibbon, 1974).

The most punctual known association that showed parts of a present day terrorist association was the Zealots of Judea. Referred to the Romans as sicarii, or blade men, they carried on an underground battle of death of Roman occupation powers, and in addition any Jews they felt, had worked together with the Romans. Their intention was an uncompromising conviction that they couldn't stay dedicated to the manages of Judaism while living as Roman subjects. In the long run, the Zealot revolt got to be open, and they were at last blockaded and conferred mass suicide at the fortress of Masada.

The Assassins were the following gathering to indicate conspicuous attributes of terrorism, as we probably are aware of today. A breakaway group of Shia Islam called the Nizari Ismailis received the strategy of death of foe pioneers in light of the fact that the clique's constrained labor forestalled open battle. Their pioneer, Hassam-I Sabbah, based the clique in the mountains of Northern Iran. Their strategy of sending a solitary professional killer to effectively slaughter a key adversary pioneer at the specific penance of his own life (the executioners held up alongside their casualties to be murdered or caught) roused dreadful stunningness in their foes.

Despite the fact that both the Zealots and the Assassins worked in times long past, they are pertinent today: First as harbingers of cutting edge terrorists in parts of inspiration, association, focusing on, and objectives. Besides, albeit both were extreme disappointments, the way that they are recalled many years after the fact, exhibits the profound mental effect they brought about. From the season of the Assassins (late thirteenth century) to the 1700s, dread and boorishness were generally utilized as a part of warfare and strife, however key elements for terrorism were inadequate. Until the ascent of the cutting edge country state after the Treaty of Westphalia in 1648, the kind of focal power and durable society that terrorism endeavors to impact scarcely existed. Correspondences were deficient and controlled, and the causes that may motivate terrorism (religious split, insurgency, ethnic strife) normally prompted open warfare. When kingdoms and realms got to be countries, they had adequate intends to authorize their power and smother exercises, for example, terrorism. Amid the late nineteenth century, radical political speculations and upgrades in weapons innovation prodded the arrangement of little gatherings of progressives who adequately assaulted country states. Agitators upholding faith in the "purposeful publicity of the deed" delivered some striking triumphs, killing heads of state from Russia, France, Spain, Italy, and the United States. Nonetheless, their sloppiness and refusal to coordinate with other social developments in political endeavors rendered rebels inadequate as a political development. Interestingly, Communism's part as an ideological premise for political terrorism was simply starting, and would turn out to be considerably more huge in the twentieth century.

Another pattern in the late nineteenth century was the expanding tide of patriotism all through the world, in which the country (the personality of an individual) and the

political state were consolidated. As states accentuated national characters, people groups that had been vanquished or colonized could, similar to the Jews at the seasons of the Zealots, pick osmosis or battle. The best-known patriot strife from this time is still uncertain - the multi-century battle of Irish patriotism. Patriotism, similar to socialism, turned into a much more prominent ideological power in the twentieth century.

The terrorist bunch from this period that serves as a model from multiple points of view for what was to come was the Russian Narodnya Volya (Peoples Will). They contrasted in a few courses from cutting edge terrorists, particularly in that they would infrequently cancel assaults that may imperil people other than their planned target. Other than this characteristic, we see a large number of the qualities of terrorism here interestingly; surreptitious, cell association; fretfulness and powerlessness for the errand of sorting out the constituents they claim to speak to; and a propensity to build the level of roughness as weights on the gathering mount. For centuries terrorism have been in presence, the French upheaval times of 1790s gave us satisfactory case of circumstance in which State acclimatized any demonstrations of contestation to demonstration of dread (Burke, 1790). The principal portion of the twentieth century saw two occasions that affected the way of contention to the present day. The impacts of two World Wars aggravated interests and any expectations of patriots all through the world, and seriously harmed the authenticity of the worldwide request and governments.

Patriotism heightened amid the mid twentieth century all through the world. It turned into a particularly intense power in the subject people groups of different pilgrim realms. In spite of the fact that dispute and resistance were normal in numerous frontier belonging, and now and then brought about open warfare, patriot characters turned into a point of convergence for these activities. Bit by bit, as countries turned out to be firmly attached to ideas of race and ethnicity, universal political advancements started to backing such ideas. Individuals from ethnic gatherings, whose states had been consumed by others or had stopped to exist as isolated country saw chances to acknowledge patriot aspirations. A few of these gatherings picked dread as a technique to direct their battle and make their circumstance known not controls they trusted would be thoughtful. In Europe, both the Irish (Rapoport, 1994)

and the Macedonians had existing terrorist battles as a major aspect of their continuous battle for autonomy, yet needed to start grisly uprisings to facilitate their cause. The Irish were mostly effective, the Macedonians fizzled.

The "total war" practices of all warriors of WWII gave further defense to the "everyone does it" perspective of the utilization of fear and infringement of the law of war. The desensitization of individuals and groups to brutality that began in World War I quickened amid World War II. The force of the contention between starkly restricted belief systems prompted abundances with respect to all members. New weapons and techniques that focused on the adversaries' regular citizen populace to demolish their financial limit for strife uncovered for all intents and purposes each non military personnel to the risks of soldiers. The significant forces' backing of factional and resistance associations utilizing terrorist strategies was seen as an acknowledgment of their authenticity. It appeared that regular folks had ended up true blue focuses, regardless of any principles precluding it.

The bi-polar universe of the Cold War changed impression of contentions the world over. Generally minor encounters tackled importance as stadiums where the superpowers could contend without gambling heightening to full atomic war. Warfare between the East and the West occurred on the peripheries, and was constrained in degree to anticipate heightening. Amid the quick postwar period, terrorism was all the more a strategic decision by pioneers of patriot insurrections and insurgencies. Effective battles for freedom from provincial guideline happened all through the world, and numerous utilized terrorism as a supporting strategy. At the point when terrorism was utilized, it was utilized inside of the system of bigger developments, and composed with political, social, and military activity. Notwithstanding when terrorism came to command alternate parts of a patriot battle, for example, the Palestinian crusade against Israel, it was (and is) joined with different exercises.

All through the Cold War, the Soviet Union gave immediate and circuitous help to progressive developments around the globe. Numerous hostile to pioneer developments found the progressive fanaticism of socialism appealing. Pioneers of these "wars of national freedom" saw the upside of free weapons and preparing. They likewise understood that the help and support of the Eastern Bloc implied expanded

universal authenticity. A considerable lot of these associations and people used terrorism in backing of their political and military targets. The approach of the Soviet Union to bolster progressive battles all over, and to fare transformation to non-comrade nations, if fanatics willing to utilize savagery and fear as the way to understand their desire.

The time of cutting edge terrorism may be said to have started in 1968 when the Popular Front for the Liberation of Palestine (PFLP) captured an El Al carrier on the way from Tel Aviv to Rome. While hijackings of aircrafts had happened some time recently, this was the first occasion when that the nationality of the bearer (Israeli) and its typical quality was a particular operational point. Additionally a first was the purposeful utilization of the travelers as prisoners for requests made freely against the Israeli government. The mix of these interesting occasions, added to the worldwide extent of the operation, increased noteworthy media consideration. The author of PFLP, Dr. George Habash watched that the level of scope was immensely more noteworthy than fights with Israeli officers in their past range of operations. So he expressed: "In any event the world is discussing us now."

Another part of this internationalization is the collaboration between fanatic associations in leading terrorist operations. Helpful preparing between Palestinian gatherings and European radicals began as ahead of schedule as 1970, and joint operations between the PFLP and the Japanese Red Army (JRA) started in 1974. From that point forward worldwide terrorist participation in preparing, operations, and backing has kept on developing, and proceeds right up 'til the present time. Thought processes range from the ideological, for example, the 1980s collusion of the Western European Marxist-arranged gatherings, to money related, as when the IRA sent out its skill in bomb making as far away from home as Colombia.

The biggest demonstration of global terrorism happened on September 11, 2001 in an arrangement of composed assaults on the United States of America, where Islamic terrorists commandeered regular citizen carriers and utilized them to assault the World Trade Center (WTC) towers in New York City and the Pentagon in Washington, DC. The impacts of 9/11 significantly affected the American mind and prompted worldwide resonations. Other significant terrorist assaults have additionally happened in New Delhi (Indian Parliament assaulted); Bali auto bomb

assault; London metro bombings; Madrid train station bombings; assaults in Mumbai (lodgings, train station and a Jewish outreach focus), Nigeria, Pakistan, Paris, and that's only the tip of the iceberg. The operational and key epicenter of Islamic terrorism is for the most part focused in Pakistan, Afghanistan and parts of Syria.

As seen above, terror and terrorism is not a new social phenomenon. The regain of terror since the 9/11 event on the twin towers of New York in US has blown away the relative peaceful of international arena. Terror and terrorism has become a matter of concern for all states, powerful or powerless one. For that reason we are talking about globalized terrorism. Islamic State in Syria (ISIS) or in short Islamic State organization in present days raise concern on the civilian population displaced and many others collateral damage due to intensification of combats. The fact that terror and terrorism is well known, used in international relations does not mean the concept itself is defined universally and accepted uniquely. On the contrary, we attend to the phenomenon of antinomy approach in the definition. So what is terror? How can we define terrorism?

CHAPTER THREE: CONCEPT OF TERROR, TERRORISM AND ITS SIGNIFICANCES

The concept of terror and that of terrorism is constantly used in political discourse nowadays. But it does not imply that there is a reasonable appreciation of its meaning. Instead we realize that there is a kind of polysemy of what is called terror and terrorism in international political discourse. In doing so there would be a problematique, a debate on the definitional framework of terrorism. For that reason, we are going to perceive this concept of terrorism in one hand. In another hand we will analyze in which extent terrorism though not explicitly within the scope of international criminal law or international humanitarian law, can be and shall be seen itself applied the principles of international humanitarian law.

3.1 The definitional problem of terrorism

Since his memorable expression in UN General Assembly session, Yasser Arafat the leader of Palestinian Liberation Organization (PLO) lays down the issue on the meaning of terrorism. In fact he said “*one person’s terrorist is another person’s freedom fighter*”, even if we can contextualize these words but they enrich us in the matter concerning with the difficulty to reach an accepted definition of terrorism. Some scholars perceive terrorism just as deliberated violence against civilian populations without or with limited goals. For International Organizations such as United Nations there is not a universally accepted definition due to divergence over Member State in regard with terrorism. The confusions generated by the definition debate are nicely captured in remarks by Christopher Joyner. He writes:

“Politically, academically, and legally, the phenomenon of terrorism eludes clear and precise definition. In a real sense, terrorism is like pornography: You know it when you see it, but it is impossible to come up with a universally agreed-upon definition. The hackneyed bromide “One man’s terrorist is another man’s freedom fighter” still remains a truism in international political perceptions. “Terrorism” lies in the eye of the beholder.” (Kegley, 1990: pp. 11-12).

According to Simon (1994) there exist 212 definitions of terrorism. 90 of them are usually found in the political discourses. This study reflect the specificity of each definition even though we should realize with Simon that despite this polysemy of terrorism there exist a common elements to all those definitions such as violence which appears (83.5%), political goal (65%), fear and terror (51%), arbitrariness and indiscriminate targeting (21%), and the victimization of civilian populations, non-combatants, neutrals or outsiders (17.5%). This above statistical analysis of the components of the definitions of terrorism expressed by scholars, governments and others institutions is the result of work of two researchers of the university of Leiden (Netherland): Schmid and Jongman (1988). Their analysis of terrorism is based upon the method of social science namely content analysis. The content analysis is the systemic analysis and the interpretation of text (or image) in order to perceive patterns, themes and meaning (Berg, 2009). In the same vein, but in the limited area Merari (1993) focused its study of terrorism definitions on three States: Germany, Britain and US; and found the existence of three common elements to theirs definitions that are: the use of violence, political objectives and the goal of propagating fear a target population. Those common elements prove a share value in the identification of terrorism. Those share value demonstrate that terrorism is embedded in cycle of violence coupled with political or religious ideology. Even though we are not encouraging or favoring terror and terrorism itself it should be recognized that most of time terrorism is crystallization of stigmatization of some populations that are seeing their claim to the legal authority of their country not taken into consideration. Sometime the motivation of terrorism is concerned with ideological beliefs and convictions; in that case terrorism is account for contestation of western world influences in Muslim world. This aspect is the case of Al Qaeda, Al Nusra, ISIL or ISIS, Al Shabaab, Daesh and so forth.

In its relevant article: '*A Semiotic approach to a legal definition of terrorism*'; Susan Tiefenbrun considered that there are five elements that should be taken into consideration in the identification of terrorism. Tiefenbrun determines semiotic method as "*the science of signs, a method designs to disclose the basic elements of meaning of a term and each element act as a sign of identification of terrorist acts*" (Tiefenbrun, 2003; pp. 359-360). According to her there exist two mains obstacles to reach a universally accepted definition. The first obstacle is relative to establishment

of distinctive line between three forms of terrorism. Primarily she figures out terrorism itself as a crime, secondary terrorism as a mean to perpetrate others crimes, and thirdly, the last one Tiefenbrun points out terrorism as an act of war (Tiefenbrun, 2003). For that reason, she establishes a prospective meaning for each category of terrorism. Terrorism as a crime is studied from the point of view that its elements and defenses can be analyzed and identified. Further, when terrorism is considered as mean to perpetrate others crimes it should be assimilated to crime against humanity, genocide and so forth. Lastly terrorism as act of war, the law of war is applied to (Tiefenbrun, 2003). The second obstacle lies on the necessity to resolve its inherent paradoxes. Since terrorism swims in diverse ideological conceptions and political beliefs, it is not easy to operate a distinction between acts that can be considered as belonging to self-determination and those belonging to act of self –defense when a blast or something violent occurs. This difficulty raise concerned about the determination of elements according to an act can be called “*terrorist act*”.

Tiefenbrun figures out five elements that according to her coins with intrinsic characteristic of terrorism:

1 - The perpetration of violence by whatever mean;

2 - The targeting of innocent civilians;

3- With the intent to cause violence or with the wanton disregard of its consequences;

4- For the purpose of causing fear, coercing or intimidating enemy;

5- In order to reach political, military, ideological, religious or ethnic goal (Tiefenbrun, 2003).

In its approach Tiefenbrun perceive violence as unlawful and unjust exercise of force on some people or somebody with the intent to harm or injure. In addition, some court hold that violence is not limited to physical affliction rather is any unwarranted act that affected psychologically the person whose is targeted. Let us have an overlook on the notion of innocent civilians. An innocent civilians in some extent can be a person member of government or an official representative, though mostly the innocent civilians refers to any individuals that are not forcedly combatants, they

can be neutrals, non-combatants that was located in the lieu of the blast for instance. Further in our attempt to give a possible significance to each element characteristics of terrorism, let us examine “*intent*”. Intent shall be accepted in accordance with the court conception as the mental state that precedes anybody who wants to act unlawfully (Tiefenbrun, 2003). Finally in examining the goal of such act of terrorism we realize that the diversity of causes of terrorism conduct to diversity of the goals pursuit. Therefore the goals vary from religious, ideological, military to political one. However it should be mention that the use of terrorist acts to accomplish the purpose of war is prohibited and exposed anyone who have done or exercised it on whatever prisoners of war or not to the sanctions and condemnations recognized in the law of war and International Humanitarian Law.

In the light of this clarification we can admit for now on that there exists a little room to determine the definitional framework of terrorism since there are elements that permit to identify its characteristics. What about the conception of terrorism in International Humanitarian Law?

3.2 Conception of terrorism in International Humanitarian Law

Fundamentally, terrorism is not seized explicitly in International Humanitarian Law. Terrorism considered as within the scope of IHL is just result of interpretation of text. Here the main difficulty resides as anywhere else on the field of international law generally and IHL particularly the lack of universally accepted definition. In fact the four conventions of Geneva have not given a clear definition of terrorism. However terrorism is seized in the prospective way; this approach gives an intensive identification of manifestation of acts of terror and terrorism. It means rather to concise, to define terrorism, IHL through its general principles mankind protection limited itself to define circumstances in which its scope is applied. In turn it means terrorism itself is not a part of the scope of International Humanitarian Law rather it is the effects of terrorism on civilian populations that confer ability for International Criminal Law to be applied. Since we know, maybe it is relevant to remind that the scope of International criminal Law is constituted of International Armed Conflict and Non-International Armed Conflict, (Vite, 2009) for that reason it is hard to

perceive a direct implication of terrorism as an international crime. However, terrorist acts can be deemed as war crime, crime against humanity, genocide and fall under the scope of International Criminal Law. Therefore it is important to say that it is the collect of relevant facts with the appropriated qualifications of facts that confer juridical character to effects of terrorism on civilian populations and required consequently application of International Humanitarian Law.

The other problem is concerned with the juridical base upon which the responsibility of state or individual is called. In effect, domestic law applies the principle that criminal responsibility is called upon individual who has committed any criminal act. Criminal responsibility as acknowledged in criminal law (Domestic law) lies on individuals. State responsibility is somehow problematic due to the fact that it meaning differ to one another person. Indeed, State responsibility is understood mostly in the sense of civic responsibility. That's means responsibility of State is currently understood such a kind of non-respect of State duties vis-à-vis another State (Lysen, 1997). For that reason, State responsibility is rejected, because it's apparent confusion and misperception. Theory of State criminal responsibility is somehow controversial since it is difficult to determine exactly whether or not a State can or could be responsible for any international criminal act committed under its auspices. However it is noteworthy to recognize the suggestion made by International Law Commission (ILC) on the matter (Berg, 1994). If we put aside some suggestions of scholars we realize that there are no sources of International Law that would point out the existence of criminal responsibility of State.

In that respect the denial of criminal responsibility of State hindered the subject who commit or posit an act of crime. In fact as we know the crime is committed by a human being not by abstracts entities like States. Therefore the general principle of individual responsibility as general principle of criminal law is applied extensively in international criminal law. This principle of Individual responsibility applied to the international level, was originally enunciated for the first time by International Military Tribunal (IMT) who admitted that the ideal way to enforce international criminal law was to punish individuals. As we observe it today this principle is the mistress key international criminal law prosecution (Bassiouni, 1999). The IMT also recognizes international criminal responsibility of groups or organizations; however

it admitted that the criminal act shall be committed by individual member or that the membership shall be deemed to know that the organization was used for commission of crime.

3.3 What is an international crime?

Bassiouni points out in his relevant work entitled “*The sources and content of international criminal law: theoretical framework*” (Bassiouni, 1999; pp. 27-31) that the purpose of every definition of criminal behavior is to establish exactly a prohibited conduct and provide a sanction in case of violation of such conduct prohibited. From this statement about criminal behavior we should resume as for establishment of criminal character of an act committed against one given person, it would exist a “*conduct prohibited*” and a “*sanction*” for the said crime defined. When regarding international crime, in addition to those both fundamental elements of criminal law it should be mentioned international character of the act committed. The international character is determined accordingly the seriousness (Bassiouni, 1999) or the gravity of act committed affecting the world. In some extent the international character should be considered such as when the act is affecting more than one State. The contention in accordance which there should not be only a prohibited act violate or threaten an international interest preserved by international law, but also an intent to commit such as act to violate that interest with the knowledge of law; implies that intent is as well as important to identify that international character. Intent in some extent proves the will of the person who commits the act even though it is not sufficient.

For the purpose of resume we should bear in mind that for a conduct to be accepted as “*international crime*” there should exist:

1-a clear established

2-Proscribed conduct,

3-committed with the intent,

4-affecting either international or transnational interest

5-with a sanction to be applied

Those five characteristics of international crime are a description of the principle of the legality as recognized in criminal law (domestic law); the same principle is admitted as such in international criminal law. Therefore for some scholars the crime of international terrorism is not one since there is not “*a clear established*”, “*proscribed conduct*” for all acts deemed as acts of international terrorism. This is happening due to the lack of definition of terrorism as seen above. Notwithstanding the definitional problem of terrorism it is clear that the others characteristics give the full powers to seize international terrorism as an international crime.

What it should be said is that, the concept of terrorism is suffering of definitional problem surely, but this argument is not sufficient to exclude absolutely terrorism from the field of application International Criminal Law or International Humanitarian Law. In effect, international terrorism by the fact that it affects civilian populations, briefly it affects the world community. For that reason, the scope of IHL should encompass international terrorism in regard with the degree of gravity of the acts committed such as crime against humanity, genocide and so forth.

CHAPTER FOUR: THE POSITION OF INTERNATIONAL HUMANITARIAN LAW ON TERRORISM AND ITS APPLICABILITY

Terrorism itself is not within a scope of International Humanitarian Law (IHL). However the four Geneva conventions of 1949 included the additional Protocol 1 and 2 provide a general scope which proscribed indistinctively diverse rules that cover any attempt to humanity. This general scope is the main body of rules that govern and enforce the responsibility to protect. The responsibility to protect is the core principle of IHL or International Criminal Law that implies an absolute protection and respect of human being in whatever situations he is found himself. The human beings become for that reason and aim at the heart of concern in International Criminal Law. Even though, there is no universally definition accepted and implemented, it remains however that there are rules which supply IHL with the ability to cope with terrorism. Those rules are that of direct prohibitions of terrorism in International Humanitarian Law.

4.1 scope of application of direct prohibition of terrorism

The International Criminal Tribunal for ex-Yugoslavia termed ICTY, in the case “*Prosecutor v. Galic*” held that the proscription on acts or threat of terror is enshrined in article 51(2) of Additional Protocol I and 13(2) of Additional Protocol II, in that respect constitute “*a specific prohibition within general prohibition of attack on civilians*” (Coady, 2008; pp. 37-40). However, the ICTY reserved judgment as to whether article 51(2) of AP I have fallen under Customary Law as applied over the offences for the others reasons (Galic, 2003).

The Appeal Chamber in its judgment in the same case: “*Prosecutor v. Galic*” estimated that the prohibition against acts of terror within these two articles constituted part of customary international law from the moment of their adoption. For the way these articles affirm relevant principles of international humanitarian law such as principle of distinction and protection, the prohibition of attack against civilians, then prohibition on terrorism in International Law (Galic, 2003), but also

the prohibition of terrorism as a method of warfare; the Appeals Chamber supported its conclusion by referring to the means by which these articles were incorporated to Additional Protocols. The Appeals Chamber further held in accordance with the dissenting opinion of judge Schomburg that any breach of these provision calls upon individual criminal responsibility under customary international law. Taking into account former Yugoslavia as relevant case and as precedent in international criminal law, the Appeals Chamber supported its position by recognizing the criminalization of terror against civilian populations as method of warfare. Judge Meron held also in its separate opinion that criminalization followed from the prohibition of declaration that there is no way to not to apply indistinctively the Four Hague Convention in regard with terrorism as method of warfare (Galic, 2003). Even if we agree with the position of the majority of Appeals Chamber, we should admit that the recognition of acts of terror as penalized under customary international law remains questionable.

So if we admit that provisions above mentioned are part of customary international law, this means it widens significantly their applicability to many recent acts of terror as those occurred in USA, Israel, Iraq and Pakistan all States that are signatories neither to First nor to the Second Additional Protocol. For that reason it is noteworthy to question whether or not these prohibition are considered as customary in nature since there are State that have not signed the two Additional Protocols. Beside their application remains tied with their fundamental conventional scope of application. In that perspective, the only thing that can justify application of additional protocol I and II, could be according to us, the concern about humanity and human value as above all others considerations. Therefore it is important to recognize additional protocol I and II as extensively included in the corpus of customary international law. Since Humanity and the responsibility to protect are the frontrunner of international humanitarian law.

4.2 Conventions on prohibitions of terrorism

The Geneva Conventions of 1949 have laid down a corpus of rules aiming at coping directly and indirectly with terrorism in short and international terrorism. Officially international humanitarian law recognizes two possible situations in which there are

a clearly prohibited use of terror and terrorism to achieve the purpose to. Here it is the prohibition of terrorism in international armed conflict and in non-international armed conflict. In addition, there are two Additional Protocols ratified in 1977 which greatly contributing to establish and clarify the proscription of terrorism even in the use of means and methods of warfare. Let us examine those conventions in the light of relevant case of actuality such as Islamic State, Daesh and Boko Haram and so on. Before, it would be noteworthy to present here the attempts to seize terrorism by international law prior to the Geneva Conventions of 1949.

In fact the League of Nations elaborated a convention aiming at preventing and punishing terrorism in 1937 it is the so-called Convention for the Prevention and Punishment of Terrorism drafted in 1937. However this convention has never entered into force due to occurrence of World War II. The successor of League of Nations, namely United Nations has tried to cope with some aspects of terrorism in diverse conventions. Among these international instruments some of them are more relevant. They are:

- *Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963*
- *Convention for the Suppression of Unlawful Seizure of Aircraft, 1970*
- *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971*
- *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973*
- *Convention against the Taking of Hostages, 1979*
- *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988*
- *International Convention for the Suppression of Terrorist Bombings, 1997*
- *International Convention for the Suppression of the Financing of Terrorism, 1999*

The four Geneva Conventions for the Protection of War Victims of 12 August 1949 remain among all the above conventions, the conventions that deal clearly with terrorism in international humanitarian law. Added to the main Geneva Conventions there are two supplements Additional Protocols established in 1977. We should

mention also the others treaties that deal with specific aspects of terrorism such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).

4.3 The forbiddance of terrorism by International Humanitarian Law

1949 Geneva Conventions mainly deal with acts of terrorism in armed conflicts insofar as they occur in time of war (Armed Conflicts). As we known, violence against property and persons are intrinsically bound to warfare. However it is important to know that the use of deadly force against civilians and objects is contrary to International Humanitarian Law in the measure where the violence used is proportionally to the limit established by it. Nevertheless, what is the boundary between legitimate violence and illicit one termed terrorism?

4.3.1 In international armed conflict

International Humanitarian Law seizes this issue in two ways, firstly IHL recognizes the right to use and commit acts of violence restrictively to each party of an armed conflict. That means it is only the soldiers who belong to the two side of armed force parties to the conflict that have ability and right to use violence in its restrictive proportion admitted by international humanitarian law. Besides it is noteworthy to mention that the mean and methods of war used by armed forces should comply with exigencies of proportionality and rationality. In the other hand, members of armed forces and military objectives only should be the main target of acts of violence. Secondly, by the existence of civilian population and infrastructure, armed forces should comply with the obligation to avoid them as target of military attacks. International Humanitarian Law has forbidden indistinctively any use of unconceivable form of violence against civilian property and civilian population or against the others party to an armed conflict. Ongoing, IHL has established a clear distinction between legitimate and illegitimate means and methods of warfare. For instance the use chemical weapons or the assassination of civilians not involved in conflict can be regarded as illegitimate. This situation is relevant for us since it is the

situation that occur actually Syria and even Iraq where Islamic State and Daesh are spreading terror by mass assassination of Christians, and other members of different religious confessions. For that reasons International Criminal Law can be applied the authors of disproportionate acts of violence could be, in case of establishment of their guilty, prosecuted for crime in domestic law or as war crime. Subsequently members of armed forces though entitled to use violence could be prosecuted if they bypass their obligation to acts in the limit of the boundary established by International Humanitarian Law. That's why they could be deemed as responsible for the violation of rules protecting civilians and their property.

The 1949 Geneva Conventions and their 1977 Additional Protocols point out especially acts of terrorism in: article 33 of the four Geneva conventions of 1949 and article 51 paragraph 1 of Protocol I. In effect, article 51 of Protocol I, lays down the basic rule of civilian protection in any military operations. This rule is completed by the ban of civilian infrastructure destruction. Beside the obligation to protect civilian populations from military activities that incumbent to armed forces, there is a clear and fundamental statement recognized and admitted by customary law enounced in article 51, para.2 as follows:

“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

Further in the same provision, in paragraph 4 proscribes an indiscriminate attack in warfare. That mean any military operations or any acts of violence should:

1. *Be directed at a specific military objectives*
2. *employ a method or means of combat which can be directed at a specific military objectives, or*
3. *Employ a method or means of combat the effects of which can be limited as required by the law.*

To sum up, it could be say that any act of violence that have the primary goal of targeting military objective, that on the contrary kill, wound civilian or destroys civilian infrastructures in disproportionate ways is firmly proscribed by International Humanitarian Law. Insofar as they are directed against civilians, terrorist activities

are forbidden by the corpus of rules relative to terrorism. Corroborating, article 51 para.2 enounced that terrorist acts are acts which “*The primary purpose [...] is to spread terror among civilian population*”. Since, we know that terrorism is most of time an indiscriminate attack against civilian and their property. Even though we should acknowledge that terrorism is not limited to such acts, beside the simple fact to threaten of violence is sufficient to fall under the scope of general prohibition of Geneva Conventions of 1949. It should be relevant to note accurately that the threat of violence expresses here the will, the intention of the authors to spread fear among civilian populations. As such the intention to spread terror or to act in such a way that the fear becomes a constant state of mind of civilian populations is prohibited absolutely by Geneva Conventions of 1949.

To make a partial resume, we should recognize that through article 51 and 52 of 1977 Additional Protocol I to the Geneva Conventions established a firm proscription of terrorist acts that can be harmful to civilians or destroys the civilian property. This prohibition is absolute and even the claim of reprisals cannot be admitted as excuse to not to respect it. Any terrorist acts causing a death or grave injury to civilians are considered as **war crime** and for that reason they constitute a grave and flagrant violation of the fourth Geneva Conventions 1949. In that respect the authors of such acts shall be prosecuted by domestic law and if guilty punished in accordance with relevant domestic legislation on the matters. In the continuum of such analysis, it is relevant to note that the statute of Rome establishing the International Criminal Court (ICC), in article 8 stated that acts of terrorist committed in war period must be prosecuted and deemed as War Crime, meanwhile in different situations, stated article 7 of the same text, these terrorists acts will be admitted as Crime against Humanity. Besides, it is not possible to ignore the relevant provisions of international humanitarian law that protect mainly cultural property from any hostile acts. Anyway it is with regrets that we should recognize that Islamic State in Syria has bypassed that obligation to destroy several historical site of great importance in Syria such as the antique Nineveh city. Further International Humanitarian Law established corpuses of rules that aim at protect installations subsuming dangerous forces such as dykes, dams or power plants and so forth. However, for members of armed forces any attack against them by the other side is just act of war, on the contrary if these attacks are directed against civilians it is

called upon their criminal responsibility. Besides, para.1 of article 35 imposes the rule according to which there are limits on methods and means of warfare for the members of armed forces. That means there is some level of attacks which cannot be perpetrated freely in non-respect of basic human value by members of armed forces to their counterparts and vice-versa. Therefore the second paragraph of article 35 states: *“it is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”*. For instance perfidy is considered as illegal behavior in article 37, protocol I which perceives perfidy as the fact that members of armed forces could feign to be civilian in order to harm incidentally the other side. Such an act can be assimilated to acts of terrorism since it betrays the trust of other side. By this example we come to conclude that even members of armed forces can be deemed to have committed acts of terrorism against the other side, then be responsible in the sense of international criminal law and be prosecuted for **war crime**.

The other part of International Humanitarian Law deals with those persons that are wounded or sick, such as detainees or inhabitants of occupied territory. The first and second Geneva Conventions of 1949 have established a customary rule which states that wounded and sick persons who are taking part to the hostility anymore should be *“respected and protected in all circumstances”*. That means clearly that *“they shall not be murdered and exterminated”*. Since the *“willful killing”* of protected persons constitute a grave violation of the both above mentioned Geneva Conventions.

By Third Convention of Geneva 1949, the Prisoner of war (POW) should be dealt with in admiration with the tenets relative to law of war. In such a way any terrible treatment or type of viciousness to their individual is taboo in total. The tenet sets that they might be dealt with sympathetically. Likewise the law guarantees the great treatment of POW while confined, the tenet characterizes conditions under which they will be addressed or investigated as follows: "No physical or mental torment, nor some other type of pressure might be exacted on detainees of war to secure from them data of any sort whatever. Detainees of war who decline to answer may not be debilitated, offended, or presented to any obnoxious or disadvantageous treatment of any sort." *"No ensured individual might be rebuffed for an offense he or she has not actually dedicated. Aggregate punishments and similarly all measures of*

intimidation or of terrorism are precluded" expressed article 33 of the fourth Geneva Convention 1949 that explicitly discuss terrorism by prohibiting any demonstration of terrorism carried out by regular folks kept or living all alone involved domain against individuals from military as illicit and in this way such a demonstration can be considered as War Crime. Consequently, tenacious executing, torment brutal treatment, prisoners taken or "broad pulverization" [...] of property constitute a grave rupture of the fourth Geneva Convention of 1949. Each one of those referred to acts by temperance of the fourth Geneva Convention of 1949 constitute War Crimes (Fourth Convention, Article 147, 1949).

To resume we ought to concede that in a global furnished clash terrorists acts are totally disallowed with no reservation. In the same way retaliations can't be endure as a response to terrorism or terrorist acts, then backlashes against regular citizens are in any structures prohibited completely (Protocol I, Article 51, 1931).

4.3.2 In non-international armed conflict

Through article 3 basic to the four Geneva Conventions 1949 and Additional Protocol II of 1977, worldwide compassionate law has set out the tenets administering struggle in which no less than one on-screen character is not government. Those two principal writings set the point of confinement of viciousness and sufferance in non-universal equipped clash. Fundamentally the guidelines material to non-worldwide equipped clash are the same with those connected to global furnished clash. Article 3 normal to the four Geneva Conventions 1949 manages terrorism by implication. Actually, it is composed:

"Persons taking no dynamic part in the threats, including individuals from military who have set out their arms and those set hors de battle by infection, wounds, confinement, or some other cause, might in all circumstances be dealt with sympathetically, with no unfavorable qualification established on race, shading, religion or confidence, sex, conception or riches, or some other comparable criteria. To this end the accompanying demonstrations are and should stay restricted whenever and in wherever at all regarding the aforementioned persons:

(a) Violence to life and individual, specifically the murder of different types, mutilation, unfeeling treatment and torment;

(b) Taking of prisoners;

(c) Outrages upon individual respect, specifically embarrassing and debasing treatment; (...)"

Moreover Protocol II affirms these principles. Passage 2(d) of article 4 of that Protocol denounces explicitly demonstrations of terrorism as in spite of law. In addition Protocol II set down measures meaning to control military operations in inward furnished clash. Fundamentally these procurements build up an entirely refinement between those persons who are included in struggle from the individuals who are not, for example, regular citizens, injured and debilitated. Especially, article 13 disallows assault on non military personnel populace and even individual regular people. Continuous passage 2 expresses that "demonstrations or dangers of roughness the basic role of which is to spread fear among the non military personnel populace are disallowed". Be that as it may, the fourth prelude section of Protocol II restates the message of the Martens Clause for non-worldwide equipped clash. The Martens Clause says that, without a particular preclusion, a guideline must be discovered which is good with "the standards of mankind and the manages of people in general soul."

As uncovers in the International Criminal Tribunal for previous Yugoslavia, wrongdoings carried out in non-universal outfitted clash are global violations, in this manner worldwide standard should be connected in such a trial to arraign individual that have perpetrated wrongdoing in non-global furnished clash (ICTY, 1996).

In continuing, it ought to be recognize that the disallowance of utilizing terrorist acts is tied with the law in force in non-worldwide equipped clash and also it is the law material to universal outfitted clash (ILCDC, 1996). Certainly, demonstrations of terrorism are banned completely with no condition or reservatio

CHAPTER FIVE: ANALYSIS, INTERNATIONAL CRIMINAL LAW AND THE NEW DEVELOPMENT OF INTERNATIONAL TERRORISM: ISIS, DAESH, AND BOKO HARAM

Samuel Huntington, in “clash of civilizations” (Huntington, 1996) has shown in a prospective manner that the present period that we are living in today will be that of global confrontation between Western World and Muslim World through the paradigm of international terrorism. In fact Huntington said: “*Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics. The fault lines between civilizations will be the battle lines of the future.*” (Huntington, 1996) Today it can be said that Huntington has envisioned in some extent the reality of international politics as it occurs presently. Justly, rather than talk about international terrorism we should talk about global terrorism as threatening international peace and security in one hand; in other hand we should consider global terrorism as a grave breach to international law and international humanitarian law (Shaw, 2001). In effect, International Humanitarian Law, in its extended scope copes strictly with any acts of terrorism in such circumstances the Islamic State in Iraq and Syria (ISIS), Daesh and Boko Haram are the forerunners of actual global terrorism. Notwithstanding its relative weakening, Al-Qaeda and its ramifications in North-Africa, in Near East and Middle East constitute the main organization of global terrorism. What we call global terrorism is to describe the fact that terrorism uses nowadays world mass media of global communication to achieve their goal. For that reason some authors such as, Lesser, Hoffman and Walter Laqueur talk about “*new terrorism*” to describe the fact that terrorism is using actually all means of technological development to conceive, proceed and achieve their main objectives (Laqueur, 1999).

5.1 The terminology and facts of Islamic State in Syria

Islamic State this appellation reveals a real will to implement an organization similar to that of secular State as known around the world. But a close insight to the so-

called Islamic State remains ambiguous to two extents: the first one is relative to the procedure of recognition of State in the sense of international law; the second ambiguity is concerned with the norms according to which international and constitutional law organized political, economic and social life within one given State. Islamic State is the creation of Abu Bakr Al-Baghdadi, founding father of terrorism in Iraq and Syria. What it could be said is that the organization is not a spontaneous one, rather it is an organization created originally by Al- Zarqawi. This terrorist organization was in its early days were an independent organization with no relation with Al-Qaeda until 2003 when this organization officially declared its affiliation to Al-Qaeda. The Islamic State association is the successor to Al Qaeda in Iraq (AQI). Set up in 2004, AQI swore dependability to Al Qaeda and focused on U.S. also, coalition strengths in Iraq. In 2006, AQI changed its name to the Islamic State of Iraq (ISI). Taking after the flare-up of agitation in Syria in 2011, ISI pioneer Abu Bakr al Baghdadi tasked Muhammad al Jawlani with setting up Al Nusra Front (ANF) in Syria to battle the Asad government. ISI gave Jawlani subsidizing, labour, and direction, despite the fact that ANF did not openly recognize it binds to Al Qaeda. In April 2013, Baghdadi singularly reported a merger of ISI and ANF, under the name Islamic State in Iraq and the Levant (ISIL or ISIS). ANF and Al Qaeda administration, both rejected the merger, and Al Qaeda pioneer Ayman al Zawahiri requested Baghdadi to limit his operations to Iraq. Baghdadi can't, and ISI started battling in Syria under the name ISIL, in the long run coming into direct showdown with ANF and other Syrian resistance powers. In February 2014, Zawahiri freely disjoined ties with ISIL, referring to the gathering's severe strategies, infighting with other Sunni gatherings, and refusal to surrender Syria operations to ANF. On June 2014 Baghdadi pronounced the foundation of an Islamic caliphate and changed ISIL's name to the Islamic State.

As seen above, the so-called Islamic State can lead to confusion, since the constituencies of Islamic State are something that rises spontaneously. What it could be notified it is the fact that Islamic State does not rise up from a popular will. The will of population living within a determined territory represent one of essential element that characterize constituencies of State. In that perspective we cannot accept the terminology of State to that group of individuals who try to impose their vision of world through a wrong perception of world. In that order there are no

misperceptions that can lead to recognize application of jus ad bellum and jus bellum to the case of “*Islamic State*”

Besides, what is an Islamic state? There are fifty seven states members in the Organization of Islamic Conference (“OIC”). Yet that cannot be the true measure of how an Islamic state is defined because some OIC members do not even have majority Islamic populations. Measured by the yardstick of religious adherence of a population to Islam, there are in fact forty-seven predominantly Islamic states plus Palestine.

Diversity within the Muslim world also comes by way of political organization. Not all Islamic states are Islamic republics, monarchies, theocracies, or secular (US department of bureau, 2003) states. For instance, Libya is a secular dictatorship (US department of bureau, 2007), Morocco is a constitutional monarchy, Brunei is a religious sultanate ((US department of bureau, 2007), Turkey is a secular republic (US department of bureau, 2007) and Saudi Arabia is a religious monarchy (US department of bureau, 2005). The political systems adopted vary widely in the Muslim world, which directly impacts the character of criminal law domestically and therefore can affect the approach taken to international criminal law.

In the light of recent development in Near East, with the relevant case of Iraq, Syria and Yemen it could be said that ISIS and Daesh is threatening regional stability and peace since it seems those terrorists organizations have a will to destabilize and deconstruct existing States in order to establish an Islamic State alongside the whole Near East. For the case of Iraq, when we come to envision its structure we suggest that it is mere a “*failed State*” rather than a State which exerts legal legitimacy rational in the meaning of Max Weber. This statement expresses in truth, flees of civilian populations, the destruction of civilian property and historical sites registered in human and world patrimonies. In the case of ISIS we cannot bypass the grave exactions committed by this terrorist organization over civilians and individual civilians. In addition, the destruction of civilian properties and historical sites included in world patrimonies constitute countless hypotheses that could and should lead to the prosecution of members of ISIS in Iraq and Syria. Terrorism as asymmetrical war is sometime on balance with one side attempting to be proportional with its action or trying to cope with the shared value of just war (legal

government armed forces) and another side (terrorist organization) for which it only count the goal to achieve no matters the means by which it could be achieved.

In the case of terrorism in Africa, the means al-Shabaab chooses for achieving its goals include guerrilla war-fare against the government and AMISOM, terror as a political and military instrument, and a media strategy of international recruitment and legitimation. The prospect of personal glory is dangled before every mujahedeen, whether in the here and now or the hereafter. Al-Shabaab follows the specifically jihadist doctrine that distinguishes not only between Muslims and non-Muslims but also declares all those not following the only true belief to be apostates (murtadd) and as such legitimate targets of jihadist destruction (ICG, 2010).

The spectacular violence this brings forth can be interpreted as referencing both the Saudi-Arabian practice of corporal punishments and teachings from the time of the Prophet. The aspect of cleansing violence, as found for example in the writings of al-Qaeda propagandist Abu Bakr Naji (Naji, 2006), can also be read into the acts of al-Shabaab. In fact, al-Shabaab's culture of violence appears closer to the rituals of ancient cults of violence than to the industrialized mass killing practiced by terror regimes of modernity such as the Nazis.

In their tactics al-Shabaab are not entirely dissimilar to totalitarian terror regimes like the Cambodian Khmer Rouge. The glorification of the in-group and the derivative legitimation to destroy others, be they close or distant enemies, however, extends beyond the nationally bounded rule of terror embodied by such regimes. Self-aggrandizement and the promise of exercising practically unrestricted power, indeed the obligation of true religion to do so, are particularly attractive to young men. It allows them to overcome the restrictions of clan and generation, to compensate a subjective emasculation (for example from seeing more successful sisters or independent mothers), but also to reduce the weakness of the fathers that is experienced in many diaspora and war families. The opportunities for ideological identification offered by jihadism integrate historical and experienced personal traumas such as colonialism, occupation, repression and displacement and permit the fighting mujahedeen to become a hero, or at least to feel like one (Maleeha, 2012).

Their new roles turn the male jihadists from breadwinners into judges. Their destructive operations, their brutalization through public executions, beheadings, corporal punishments, the destruction of whole villages and the kidnapping of children alienate the fighters from the base they originate from. In that sense, they also challenge the authority of the traditional leaders, the Sufi sheikhs, the clan elders, the patriarchs, who can do nothing to oppose their terror.

There is little in the way of theology to be found in the recruitment videos on the al-Shabaab website “*al-Kataib*” (The Battalion) or in its social media (Nasheed, 2010). Instead they present a male-bonded action group where images of military drill alternate with portraits of individual mujahedeen (Al-Amriiki, 2012). Al-Shabaab’s videos intersperse depictions of spectacular violence, such as the beheading of prisoners, with reassuring images of the group and the community of brothers in arms, conveyed via the shared flag and uniform (Weisburd, 2009).

The establishment of networks to send Libyan fighters and weapons to Syria began soon after the demise of the Gaddafi regime (UN security Council, 2013). As well as LIFG veterans, this also involved revolutionaries hoping to continue their fight against the region’s dictators in Syria. Recruitment was initially completely open and drew in a spectrum far beyond the jihadists. For example, Mahdi al-Harati’s al-Umma brigade, in which numerous Libyans fought alongside the Free Syrian Army (FSA), could hardly be called extremist (Reuters, 2012). But this changed as jihadists gained the upper hand in the Syrian civil war. Idealistic volunteers returned disillusioned, and recruitment increasingly became the preserve of networks within the jihadist spectrum (Misrata, 2013). Nonetheless, the Libyan contingent in Syria – as in Iraq – remained one of the strongest of foreign fighters, especially in relation to the size of Libya’s population (Weisburd, 2013).

At the end of 2012, Libyan jihadists formed the al-Battar brigade, whose founding declaration thanked the “people of Derna” and a foundation from Misrata for their support. Shortly afterwards, the brigade joined the Islamic State in Iraq and Syria (ISIS), and participated in its operations against the al-Nusra-Front, the Islamic Front and the FSA. The recruitment of Libyan jihadists into the ranks of al-Battar and ISIS is likely to have contributed significantly to further radicalization of the milieu they originated from. Al-Battar obviously possessed close connections to Ansar al-Sharia

in Benghazi and the Shura Council in Derna. When the fighting with Haftar's forces broke out in summer 2014, parts of al-Battar returned to Benghazi. Al-Battar subsequently published death notices for jihadists killed fighting with Ansar al-Sharia, as well as an obituary for a prominent Ansar-al-Sharia member it called its "military commander", who had been killed near Derna in clashes with the Martyrs of Abu Salim brigade (Al-Wasat, 2014).

These connections ultimately led to parts of Ansar al-Sharia and jihadist splinter groups mutating into IS offshoots, while other parts of Ansar al-Sharia struggled to maintain their independence from IS. By relying on backing from the Shura Councils in Benghazi and Derna, Ansar al-Sharia factions were able to withstand the intense pressure from IS affiliates to pledge allegiance to al-Baghdadi. In Sirt and al-Naufiliya, IS acquired clear dominance, making it impossible for Ansar al-Sharia to continue operating as a separate organization (Misrata, 2012). As a Sirt notable observed in March 2015, the local IS affiliate was Sirt's Ansar al-Sharia branch under a new name (Marzuq, 2015). But the advent of IS also brought larger contingents of foreign fighters particularly from Libya's North African neighbors and several prominent figures dispatched by the IS leadership (Derna, 2015). The significance of the Libyan-Syrian networks was not restricted to their role in ensuring the arrival of the ISIS brand of jihadism in Libya. They also connected the Libyan jihadist strongholds with the Maghreb states and Egypt, with recruits arriving to train before travelling on to Syria, via Turkey. Ansar al-Sharia appears to have been central to these networks (Aaron, 2014). There was also some evidence for ties with al-Qaeda in the Islamic Maghreb (AQIM). These networks have generated a steadily growing flow of foreign fighters, especially from Tunisia, Algeria and Egypt, joining Ansar al-Sharia and later the IS offshoots in Benghazi, Derna and Sirt.

Sabratha, from where several prominent former LIFG figures hailed, has emerged as an important node in networks between local extremists and Tunisian jihadists. The city is said to have hosted training camps for Tunisian jihadists before their dispatch to Syria. Tunisian media have repeatedly placed the leader of the Tunisian Ansar al-Sharia, Abu Ayadh (originally Saif Allah bin Hussain), and one of his most important aides, Ahmad ar-Ruissi, in Sabratha. At the same time, no open Ansar al-Sharia or IS presence has emerged in Sabratha. Political opponents like to label

leading figures in Sabratha “al-Qaeda” or “Ansar al-Sharia” – without citing any evidence. That the city hosts an emerging jihadist presence and serves as a conduit for Tunisian jihadists is, however, confirmed by a range of concordant sources, as well incidents in Sabratha itself (Al-Ruissi, 2015).

5.2 International terrorism and International humanitarian law implementation

In the above situation governmental armed forces action fall automatically under the scope of application of “*jus in bellum*”. *Jus in bellum* supposes and imposes limitation on methods and means of conducting warfare. Here armed forces are not allowed to act without operate distinction between combatants and non-combatants. In other side they are requested to act within the proportion required by law. The law applied here is International Humanitarian Law as such when focusing on ISIS case we realized that in some extent the above exigencies are not respected; according to some views neither by the governmental armed forces nor by ISIS fighters in the case of Syria. For that reasons, for many authors ISIS as terrorist organization should be prosecuted for grave violation of International Humanitarian Law. Secondary, the fact that ISIS is destructing historical sites that is significant of violation of convention of 1954 (Hague, 1954) concerning the prohibition to destroy cultural property. In fact recently ISIS has destroyed many historical sites as the ancient city of Nineveh and the old city of Nimrud in Iraq that is absolutely contrary to International Humanitarian Law. Besides the increasing numbers of displaced and refugees is becoming more and more important so that we are asking ourselves if in the case of Syria particularly we are not facing an humanitarian tragedy. In 2012 and 2013 in Nigeria particularly in the city of Chibok, Boko Haram raised concern continentally and internationally by kidnapping of 200 girls. These school girls whose were kidnapped constituted flagrant mass violation of human rights. Since most of them were reportedly supposed to be married by force or use as housewives by Boko Haram members. For all those reasons it should be taken measures that aim to counter terrorism and preserve civilian populations from exactions and outrages of ISIS members. In that sense international humanitarian law has provided a corpus of rules that should be applied. In regard with terrorism in International Humanitarian Law, Sebastien Jodoin stated:

“War crimes are serious violations of customary or conventional rules which form part of the corpus of the law of armed conflict.” (Jodoin, 2007; pp. 107)

This statement implies that any breach of law in regard with international humanitarian law by any terrorists’ organization should be prosecuted opportunely. ISIS in its exactions in Syria and Iraq is committing war crimes for all the relevant facts we have mentioned above. In that sense ISIS members according to us should be prosecuted by International criminal Court (ICC). Boko Haram as ISIS are in the same wave, Boko Haram has abducted more than 200 girls in the northern part of Nigeria in 2014, has committed many acts of terrorism in Nigeria, Cameroon, Chad and Niger since the beginning of this year 2015. According to Yonah Alexander in its relevant article: “Terrorism in North Africa and the Sahel in 2014” described extensively selected groups of terrorism in North Africa and even in Near East to draw attention on the necessity to take into account the threat to global peace and security that constitutes international terrorism. In that respect, notwithstanding diverse particularities the main regimes and modus operandi of international terrorism remains success of Goal the look for to achieve no matters how many civilians or not they kill.

Under article 4(2)d of Protocol II 1977, the scope of international humanitarian law provides an extensive approach to the question by stating: *“all persons who do not take a direct part or who have ceased to take part in hostilities.”* (Protocol II, 1997) This broadening approach extended the scope of its application indirectly to any acts of terrorism committed by whomever. In that respect, exactions of members of ISIS and Boko Haram fall under this broadening scope of international humanitarian law. In that perspective, ISIS and Boko Haram members should be prosecuted for violation of article 4 (2) d, besides for destructing the cultural property of States such as in Iraq and Syria they are also criminally responsible under Convention of 1954 for the protection of cultural property in armed conflict. However, it should be known that normally this convention is applied to international armed conflict; in this case particularly since terrorism “*war*” is not an international armed conflict because in one hand you have governmental armed forces of Syria and Iraq (ISIS); of Nigeria, Cameroon and Chad (Boko Haram) and the other side you have ISIS and Boko Haram members. For that reason the 1954 convention seems not applicable to

the acts of violence perpetrated against cultural property, but as known norms of international humanitarian law are embodied in the norm of “*Jus Cogen*”. Insofar as *Jus Cogen* constitutes peremptory norm of international law, convention on the protection of cultural property should be applied such as to acts of terrorism. That’s why even terrorist should comply with exigencies of not attacks as well to cultural property as to civilian populations. Since they act in violation of fundamental law governing international armed conflict and non-international armed conflict, ISIS, Boko Haram and Daesh are criminally responsible individually under international criminal law.

Moreover, as admitted in international humanitarian law a lawful attack on a legitimate armed forces does not constitute an act of terrorism, on the contrary unlawful act of terrorism is defined under article 51(2) of Protocol I and 13 (2) of Protocol II as acts or threats of violence directed against civilian populations. This point of view is shared by authors like Kalshoven (Kalshoven, 1983) and Stefan Oeter (Oeter, 1999), which is besides confirmed by International Criminal Tribunal for former Yugoslavia trial chamber in the Galic case (Galic Case, 2003). This means even the threats of use of violence is also condemned in international criminal law or international humanitarian law.

In fact, it should be said that international criminal law or international humanitarian law in their expansive and general norm has laid down indirectly rules that are intended to cope with terrorism presently and the forthcoming acts that should be included in the register of acts of terrorism. However, international criminal law or international humanitarian law remains incomplete and flawed when concern definition and delimitation of epistemic field terrorism. This incompleteness in the identification of terrorism is, as aforementioned, due to flexibility and difference of interpretation of eventually reprehensible acts. International community should comply with the issue relative to the definition of terrorism in order to implement promptly and justly international law.

CONCLUSION

Terrorism as global phenomenon remains problematic. The difficulty to seize can be resumed in three main bodies of interrogations:

- 1. the first problem is related to identification of acts of terrorism due to diversity of manifestation of international terrorism, brief terrorism in short*
- 2. the second is concerned with definitional framework of concept of terror and terrorism*
- 3. the last difficulty is based upon the lack on international convention specifically focus direct to terrorism provided by United Nations*

To cope with that inherent difficulty in our topic we have scrutinized the historical parameter of international humanitarian law and that of terrorism. Then this historical abridgement has led us to question the definitional issue of terrorism and to reach the conclusion that even if there is no universally accepted definition there exist some criteria by which acts of terrorism can be identified. This statement has led us to conceptualize terrorism in the scope of international humanitarian law in which we have analyzed terrorism as indirectly included to international humanitarian law or international criminal law scope. In the light of further analysis, we focused our studies on the pattern in which international humanitarian law has implemented its norms to cope with international terrorism and terrorism in short. Our main statement should be that enforcement of international criminal law or international humanitarian law to terrorism remains generally instead of precise. The problem here remains in the difficulty to assess clearly terrorism as concept of international humanitarian law such as international armed conflict, non-international armed conflict and so forth. However it should be acknowledge that the lack of precision in the concept of terrorism does not means there is approximate implementation of International Humanitarian Law. On the contrary, there is vigorous implementation of international humanitarian law since human values is the heart of concern in the extent that civilian populations are primarily affected by hostilities or effects terrorists acts. As stated by Tiefenbrun (2003) acts of terrorism is mostly perpetrated to gain interest in public opinion or draw attention is some

claims by the authors of such acts. Even though those acts of violence constitute a grave breach of international law generally and international humanitarian law particularly. Since, the use of violence is embedded in the corpus of rule established in the charter of United Nations in chapter 7. That means any use of violence which is not following universal accepted path of UN charter is outlawed. In that perspective terrorism as acts of violence or threats of use acts of violence is unauthorized by international law and consequently firmly condemned. Taking from this point of view there is no way out to find a little legality to acts of terrorism. In the era of global terrorism, there is need at least to rendering effective control on terrorism manifestation since it is becoming a global threat to peace and stability of world community.

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