



NEAR EAST UNIVERSITY  
GRADUATE SCHOOL OF SOCIAL SCIENCES  
INTERNATIONAL LAWPROGRAM

# **THE TERRORISM IN INTERNATIONAL CRIMINAL LAW UNDER THE OPINION OF JURISTS AND INTERNATIONAL CONVENTIONS**

KEFEE SAMI ALI

MASTER THESIS

NICOSIA  
2018

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MASTER THESIS

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NICOSIA  
2018

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## DECLARATION

I am a master student at the international law department, hereby declare that this dissertation entitled 'The Terrorism In International Criminal Law Under The Opinion Of Jurists And International Conventions' has been prepared myself under the guidance and supervision of 'Assist.Prof.Dr. Timuçin KÖPRÜLÜ' in partial fulfilment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach and Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

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Kefee Samil Ali



## **DEDICATION**

Every challenge work needs self-effort as well as guidance of elders especially who were very close to our heart, so this dissertation work is dedicated to my family and all my friends. A special feeling of gratitude to my loving parents, Saadiyah and Sami Ali whose words of affection, love, encouragement and support is always in my ears. And with out them I couldn't be able to get such a success and honor along with all hard working and respected professors, especially I dedicate this to my great and best supervisor Assist.Prof. Dr. (Timuçin Köprülü ), and all the other lecturers.

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## **ABSTRACT**

### **THE TERRORISM IN INTERNATIONAL CRIMINAL LAW UNDER THE OPINION OF JURISTS AND INTERNATIONAL CONVENTIONS**

The danger of terrorism has been increased during the twentieth century and the beginning of twenty first century. The hazard of terrorism is being in, through its aggression on the lives of individuals and their property. The world's challenge front of the catastrophic and quick evolution of terrorist attacks lends substantial support to the argument that the legal understanding of terrorism and the criminalizing many manifestations of terrorist conducts is still limited. The aim of this thesis is to seek a notion and definition of terrorism in order to help States to collaborate among themselves for combating this severe scourge. Terrorism has a unique status as one of the most problematic notions in the contemporary public international law. The international community faced many obstacles in defining terrorism, either by the jurists or the efforts of States through the conclusion of many conventions or the enactment of special legislation to combat terrorist crimes. Hence, the thesis tried to investigate terrorism in light of international conventions and the jurisprudence, through exploring terrorism in the view of Security Council, the International Criminal Court, in addition to this, tried to understand the notion of the terrorism based on Jurists' view and National Legislation in Iraq. The study concluded to that the definition of terrorism in International conventions and through the view of jurists, as well as Iraqi National legislation is still incomplete. Therefore, the concept of terrorism should not remain indefinite, but standards must be specified for this concept until to reach a definition accepted by all States to combat this scourge that is everywhere. Also the study tried to suggest several recommendation and alert that if this not happened, the international efforts and strategy will remain in a vicious circle through which Counter terrorism with terrorism and so forth, thereby violating rights, penetrating international sovereignties and instability in the world.

**Keywords:** Terrorism, International Criminal Law, Jurists, Legal Attempts, International Conventions, National Conventions.



## ÖZ

# HUKUKÇULAR VE ULUSLARARASI ANLAŞIMLARININ DÜZENLENMESİNİN ALTINDA ULUSLARARASI CEZA HUKUKUNDA TERÖRİZM

Terör tehlikesi yirminci yüzyılda ve yirmi birinci yüzyılın başlarında artmıştır. Terörizm tehlikesi, bireylerin yaşamları ve mülkleri üzerindeki saldırganlıkla devam ediyor. Terörist saldırıların feci ve hızlı bir şekilde evrimleşmesiyle dünyanın önündeki meydan okuma, terörizmle ilgili yasal anlayışın ve terörist davranışlarının birçok tezahürünün suç haline getirilmesinin hala sınırlı olduğu savına büyük ölçüde destek vermektedir. Bu tezin amacı, Devletlerin bu iddetli belalarla mücadelede kendi aralarında işbirliği yapmasına yardımcı olmak için terörizm kavramını ve tanımını araştırmaktır. Terörizm, çağdaş kamu uluslararası hukukunda en sorunlu kavramlardan biri olarak eşsiz bir statüye sahiptir. Uluslararası toplum, terörizmin tanımlanmasında, hukukçular veya devletlerin çabalarıyla, birçok sözleşme menin ya da terörist suçlarla mücadeleye yönelik özel mevzuatın yürürlüğe girmesiyle pek çok engelle karşılamıştır. Bu nedenle, terörizmi uluslararası sözleşmeler ve içtihatları içinde araştırmaya çalışarak, Güvenlik Konseyi'nin görüşüne göre terörizmi araştırmak, Uluslararası Ceza Mahkemesi, buna ek olarak, hukukçuların bakış açısına dayanarak terör kavramını anlamaya çalışmıştır. ve Irak'ta Ulusal Mevzuat. Çalışma, uluslararası sözleşmelerde ve hukukçuların yanı sıra hukukçuların bakış açısıyla terör tanımının hâlâ eksik olduğu sonucuna varmıştır. Bu nedenle, terörizm kavramı belirsiz kalmamalı, ancak tüm devletlerin her yerde bu bela ile mücadele etmek için kabul ettiği bir tanıma kadar, bu kavram için standartlar belirlenmelidir. Ayrıca, bu çalışma birkaç tavsiyede bulunmaya çalışır ve bu gerçeklemedi takdirde uluslararası çabaların ve stratejinin terörle mücadele gibi terörizmle mücadele edecek ve böylece hakları ihlal ederek, dünyadaki uluslararası egemenlik ve istikrarsızlığa nüfuz edecek bir kısır döngü içinde kalacağını belirtmiştir.

**Anahtar Kelimeler:** Terörizm, Uluslararası Ceza Hukuku, Hukukçular Yasal Girişimleri, Uluslararası Sözleşmeler, Ulusal Sözleşmeler

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## ABBREVIATIONS

<b>CTC</b> .....	Counter-Terrorism Committee
<b>ICC</b> .....	International Criminal Court
<b>UN</b> .....	United Nations



## **CHAPTER ONE**

### **THE TERRORISM (DEFINITIONS, CAUSES, SHAPES, AND FORMS)**

#### **1.1 Introduction**

During the twentieth century and the beginning of the twenty-first century, the international community has witnessed many incidents of terrorism that have become a serious threat to international peace and security, friendly relations among nations and a violation of the collective international security regime. This danger has been aggravated by the fact that these crimes have been automatically transformed into organized crime aimed at achieving specific results in accordance with the interim priorities and the interaction between the ideology of extremism and violence. This made terrorism in its different forms and shapes of value as a basis within the framework of a strategy prepared in advance. The danger of terrorism is also increased because it does not care about the lives of individuals or their property. It is always important for terrorists to achieve their goals without regard to any moral, religious or humanitarian rules, and without considering any borders among states. The significant increase in acts of terrorism and its extension to different countries of the world regardless of their political orientation or ideological affiliations confirms the corruption of the belief that prevailed for a period of time, which considered that terrorist acts are limited to some countries that suffer from political problems or ethnic or religious tensions and refutes any claim aimed at stigmatizing a particular religion or a particular culture that they are encouraged to commit acts of terrorism. The issue of terrorism is one of the problems that have long plagued communities for various and interrelated reasons. This issue is being

renewed at certain times with sharpness and violence, which may cause the destruction of the structures of societies and the foundations of their stability. The present era may be one of the most epochs in which societies have suffered new types of terrorism, had been never known in the extremist periods of history, leaving very serious effects not only in the destruction of social and economic structures, but also in the creation of a violent civilization shock that extended to self, identity and origins. In addition, we find that the destructive force of terrorism is increasing day by day in our modern world. This is due to the rapid development of forms and methods of its practice and the exploitation of its perpetrators for media through its various means to promote their criminal operations. As well as, the recruitment of youth and promote rumors of intimidation among them to achieve their extremist goals and objectives. Those behind them have helped make many countries and societies more vulnerable and less immune to their grave risks. And because of the spread of the crime of terrorism in the world and its activity in more than one country, which required the action of the international community to identify the points of criminalization in international criminal law, which is defined as a set of legal rules that find their source of international custom and international treaties and conventions, which shows what international crimes and general principles governed by In order to deter and punish its perpetrators and to maintain international security and stability. In many of its provisions, the international criminal law makes use of national criminal law and includes a set of criminal problems at the international level<sup>1</sup>. The establishment of a specific definition of (terrorism) is one of the most important problems facing the world in its various forms and varied motives, as well as the practices of States that use or encourage it, the differences of interests of States and the attempts of each group to impose its views on historical or political grounds. What has considered terrorism in some people is a legitimate defense of the self, and so the data disappeared and the different concepts and increased violence and increased insurgency and tyranny, especially after the events September 11, 2001. In view of the lack of international agreement on the definition of terrorism and its clear definition so far, this study attempted to follow the concept of terrorism in accordance with international conventions and definitions of

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<sup>1</sup> Edward M. Wise, International Crimes and Domestic Criminal Law, (1989), 38 DePaul L. Rev. 923, Available at: <http://via.library.depaul.edu/law-review/vol38/iss4/5> > accessed 03 March 2018

jurisprudence and then the view of the international criminal judiciary to this crime and why this crime was excluded from the jurisdiction of the International Criminal Court. The issue of terrorism is one of the problems that have long plagued communities for various and interrelated reasons. This issue is being renewed at certain times with sharpness and violence, which may cause the destruction of the structures of societies and the foundations of their stability. The present era may be one of the most epochs in which societies have suffered new types of terrorism. The delineation of terrorism concept had become needful, and therefore, the international community tries to find a concept under international criminal law. The definition of terrorism as stipulated in international and regional conventions and treaties is of increasing importance because it reflects an understanding of this phenomenon which has become a real threat. However, there is no unified framework to confront this phenomenon, despite the numerous attempts to define it through the rules of international law and the decisions of international organizations that can define the concept of terrorism. Thus, the ability to reach a comprehensive understanding of this phenomenon and fight it does not exist. The problem of defining it at the international and regional level is the same as it has been at the national level, since its concept is related to criminal acts stipulated in international law, as well as differences in the views of States on its concept. The importance of this study is to seek a definition of terrorism so that States can strengthen cooperation among themselves in order to combat this serious scourge, instead of resorting to aggressive wars after some States have failed to establish a true and just definition of terrorism. The problem of research is to address a subject that has aroused the attention of world public opinion and has become a problem faced by innocent people from terrorism. Therefore, it is necessary to look for ways in which victims of terrorism can bring proceedings before the international tribunal of the Permanent International Criminal Court in The Hague, the Netherlands. This is done if the national judiciary refuses to carry out its legal obligations to investigate and prosecute suspects in the commission of terrorist crimes. Hence, it is crucial for states within the framework of the United Nations to agree on a definition of terrorism that should not compromise human rights and should be defined in accordance with the provisions of international law. Accordance with the foregoing, this study will try to investigate terrorism in light of the jurisprudence and international conventions, and then try to explore terrorism and the view of Security Council, the International



Criminal Court, as well as Jurists' view and National Legislation in Iraq. In this thesis author tries to address several questions, such as; how has international criminal Court dealt with the phenomenon of terrorism, since no nation has been free from terrorism? And, whether International resolutions protected and promoted human rights in the war on terrorism? Also, whether international terrorism is an international crime or not? Or why the crime of terrorism was not included in the jurisdiction of the International Criminal Court? And to what extent the United Nations has succeeded to pass its resolutions against terrorism and the legal value of these resolutions? In addition to that, what are the international efforts to combat and suppress the terrorist crime? And what is the national legislation efforts in Iraq against terrorism?

## **1.2 The Concept of Terrorism**

The phenomenon of terrorism has deep roots in history, but nowadays it has become the subject of the age. This is due to the increase in the number of terrorist operations as well as the variety of methods of their implementation. This has led the international community to face many obstacles in defining terrorism and terrorism, either by the jurists or the efforts of States through the conclusion of many conventions or the enactment of special legislation to combat terrorist crimes. Although States agreed that terrorism posed a threat to international peace and security and affected the stability of the international community, views differed when attempting to define terrorism and terrorist crime. This could be found through discussions in the committees established by the United Nations<sup>2</sup>. The United States of America proposed to include acts of armed struggle, liberation movements and self-determination within terrorist acts. This was opposed by the former Soviet Union, which defined terrorism as acts outside the scope of international legitimacy practiced by States against another State. This is called State terrorism. The controversial views were not the only reason why it is difficult to provide a definition of international terrorism, but also because of the development of the phenomenon of terrorism itself and its overlap with other crimes, and the multiplicity of its methods was the reason why a completed and comprehensive definition of terrorism was not

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<sup>2</sup>The Security Council has established several anti-terrorist committees such as the Counter-Terrorism Committee established by resolution 1373 in 2001

developed<sup>3</sup>. In its common understanding, the term 'terrorism' tends to indicate to an illegitimate, evil, illegal, and a criminal work. The expression became to be used to characterize a wide extent of violent or not-so violent some time, (as per the media since 11 September 2001). The activities that characterized as the terrorist in nature can take place both in conflict time and peace-time. The absence of a unified definition agreed upon by all States has made different conventions and legislation in this regard have different definitions because of the different reasons and motives, as well as the mixing of terrorist crimes with other crimes, and they have been mixed them with the actions of liberation movements and self-determination that many states and organizations have declared their legitimacy. All these factors were the reason why the definition of terrorism was not defined.

### **1.2.1 Defining Terrorism and Its motivations**

The concept of terrorism has caused controversy among countries because of the difficulty of unifying the concept of terrorism. The comprehensive definition of terrorism does not exist, and the concept of terrorism raises a debate about whether or not to define it. Arab countries and some countries supported clarify the meaning of terrorism. But, the US administration is the greatest opposition to those who ask for the definition of international terrorism. The reason is to preserve ambiguity on the term for the realization of its personal interests<sup>4</sup>. However, All that did not prevent jurisprudence and international law from making efforts to define international terrorism, without ignoring the efforts of various national conventions and legislation, with determining the definition of terrorism we can understand its motives since the crime of terrorism was not created from a void, but it has many causes.

#### **1.2.1.1 Different definitions of terrorism**

Terrorism has a linguistic and conceptual definition, is different from state to state in terms of different languages. Jurisprudence has also played an important role in

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<sup>3</sup>Haytham F. Shehab, جريمة الإرهاب وطرق مكافحته (في التشريعات الجزائية المقارنة), translated from Arabic-[The crime of terrorism and ways of combating it :in comparative penal legislation], (Dar al-Thaqafa for publishing and distribution, Jordan, 2010). P.27

<sup>4</sup>Jamal Zaid Hilal Abu Ain, القانون الدولي وأحكام الإرهاب, translated from Arabic [Terrorism and the Provisions of International Law]', The World of Modern Writers for Publishing and Distribution, Jordan, 2009, p.196- 195

developing a set of definitions of international terrorism, without neglecting the efforts of the international community in international and regional conventions that have played a prominent role in removing the ambiguity of the term terrorism. The definition of terrorism has been attempted since before the establishment of the United Nations<sup>5</sup>.

#### **1.2.1.1.1 The linguistic definition of terrorism**

In English, the word "terrorism" has been lost in the Oxford Dictionary, as; "*use of violence for political purposes*"<sup>6</sup>. In the French language, the word "terrorism" was used in the "*La Rosse*" dictionary in the sense of a series of acts of violence which are derived from "TERRORISME" in order to achieve political objectives. The word TERRORISME is derived from the word TERREUR, a Latin word that makes it terrifying and trembling. It means every doctrine or approach that believes in using force and terror to reach a certain goal. TERRORISTE means terrorist<sup>7</sup>.

#### **1.2.1.1.2 The conventional definition of terrorism;**

The crime of terrorism is an international crime committing by or not doing an act contrary to the rules of customary international law or convention. The international community punishes it for its gravity and imposes it as a cornerstone of the security and stability of the international community. The majority of definitions do not go beyond the definition of a terrorist offense as a form of violence which aims to pressure countries by targeting society by using physical and moral means of violence to achieve direct or indirect harm<sup>8</sup>. According to some researchers, terrorism is a reliable doctrine to reach certain goals through panic and intimidation. This doctrine is twofold. first is a social aimed at eliminating the system of classes that exist in its entirety, and under its various forms, the social system as a whole is a direct target, second is political, aims at change the situation of governance upside down, and does not hesitate to hit the representative of the state to strike the state

<sup>5</sup> Golder, Ben, and Williams, George. 2004. What is 'Terrorism'? Problems of Legal Definition. [2004] 27, University of New South Wales Law Journal, 270.

<sup>6</sup> Oxford dictionary, learner's pocket, first published, 2008, p.459.

<sup>7</sup> Larousse, dictionnaire de français, première, translated from French, [The 'Rousse' French dictionary], 2005, p.420.

<sup>8</sup> Omar Lizardo, 'Defining and Theorizing Terrorism: A Global Actor-Centered Approach', [2008], Volume XIV, Journal of World-Systems Research, 91.

itself<sup>9</sup>. We note from what has been mentioned that all shares the fact that terrorism combines all acts of violence that threaten the safety of humanity and all acts that cause fear and panic in the soul.

#### 1.2.1.1.3 The Terrorism in the view of Various Institutions

Several attempts throughout the years have tried to define terrorism. But, the term is so laden with conceptual problems that make a totally accepted definition of it still difficult to reach. The cynicism is that the frequent subject of terrorism has become the part of the body of the political drama of recent times, which constantly can be seen when turning on the TV or social media. Below is a list of definitions of terrorism by some of the most distinguished institutions on the matter: According to League of Nations Convention Definition of Terrorism (1937), asserted that terrorist acts are *"all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public."*<sup>10</sup> U.S. Department of Defense Defined the Terrorism as, *"the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological."*<sup>11</sup>

Arab Convention for the Suppression of Terrorism, stated that terrorism is *"any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources."*<sup>12</sup> According to British legislation, the British legislature has enacted a special anti-terrorism law since 1976. Terrorism has defined by this law as *"the use of violence for political ends, including any use of violence to spread or*

<sup>9</sup> Mohammed Al-Sayed Arafa, تجفيف مصادر تمويل الإرهاب translated from Arabic [Drying the Sources of Terrorism Financing], Naif Arab University for Security Sciences, (King Fahad National Library For Publishing, Saudi Arabia 2009), p.38

<sup>10</sup>Article 1, paragraph 2, Convention for the Prevention and Punishment of Terrorism Convention (1937), < <https://www.wdl.org/en/item/11579/> > accessed in 13 March 2018

<sup>11</sup> Joint Chiefs of Staff DOD, *Department of Defense Dictionary of Military and Associated Terms*. Washington, D.C., DOD(2008).

<sup>12</sup>Arab Convention for the Suppression of Terrorism (1998). *Arab Convention on Terrorism*. Cairo: Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice.< [http://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](http://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf)> accessed 01 April 2018

*create fear in the public or in part.*" This definition was comprehensive and accommodated all acts of violence. In 1989, the British legislator passed the Prevention of Terrorism Act, retaining some of the existing rules of the 1976 Anti-Terrorism Act and introducing a new set of criminal terrorist acts. In 2000, the British legislator enacted the United Kingdom's Terrorism Act, *"To carry out or threaten to carry out an act that would influence the government, intimidate and intimidate the public or a particular group, for the purpose of serving a political or religious cause, and the act will be considered a terrorist act, if it is at a high level of violence, damage to property, public security or an electronic security system."*<sup>13</sup> What is noticeable in this new law is that the British legislator has expanded the concept of terrorism to the extent that it is possible to accuse persons who have nothing to do with terrorism, and this is what happened after the events of September 11, 2001. As it is obvious, there are controversial about the definition and it is difficult to attain a comprehensive definition.

### **1.3 The causes of terrorism**

The phenomenon of terrorism has not been created out of nowhere, but there are real reasons and motives behind the spread of this dangerous phenomenon, and knowing the real causes may lead to a reduction in the number of terrorist attacks, and among the reasons that lead to the commission of terrorist acts, are;

#### **1.3.1 The Political Causes of Terrorism**

Most terrorist acts are politically motivated to the extent that many confuse terrorist offenses with political crimes. Political causes include all the atmosphere and variables related to political organization in society; the rejection of certain principles by individuals and groups may drag if this rejection is violent by rioting, killing and targeting state symbols. This is to raise public opinion against the authorities and demonstrate the inability of the state to fight the rebels for power; it may also express the rejection of the colonial and political domination of some countries prompting to refusing to use violence for self-defense. And this is what prompted the spread of

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<sup>13</sup> Terrorism Act, 2000, Chapter 11, <https://www.legislation.gov.uk/ukpga/2000/11/introduction/enacted> (Accessed on March, 5th 2018).

tension in many countries of the world.<sup>14</sup> For example, Chechen 'Black Widows' are reported to revenge from Russians because of the Russian military that raped them or to retaliate for the deaths of their husbands and relatives. Thus, the 'Black Widows' turn to terrorism as a path to retrieve back their personal honor or the honor of their families<sup>15</sup>. In another level, the concept of 'Guilt by association' is another political factor for terrorists. For example, the 2004 Madrid train bombings were executed by an Al Qaeda-inspired terrorist cell. One of the impulses was the participation of Spain in the Iraq War of 2003, where it had troops on the ground. In the same context, since the western decolonization in many countries in Africa and South America, the West has been the goal of terrorist attacks. This is returning to, it has been accused of creating local minorities belong to them and these people become 'Comprador Ruling Elites'<sup>16</sup>.

### **1.3.2 The social and economic causes of terrorism or (deprivation)**

Each of the economic and social factors contributed to the spread and spread of the phenomenon of terrorism. A social reason is one of the significant factors to encourage individuals to carry out terrorist acts. It generally includes the spread of illiteracy, or the low level of education among the individual, the spread of famine and poverty, and the violation of human rights and the absence of justice. Several scholars asserted that there is strong relation between poverty and terrorism<sup>17</sup>. With regard to the economic causes of terrorist acts, they are generally manifested in the plundering of the wealth of peoples, where States, their wealth and economic resources are subject to hegemony by the major Powers, by means of fraud, military force or economic dependence. All this leads countries in which these acts are carried out by retaliation for the recovery of their economic wealth through acts of terrorism. These have led the individuals to attempt to feel that their rights have been robbed. Therefore, this condition is leading them to commit acts of terrorism in order

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<sup>14</sup> Jonathan Matusitz, *Terrorism and Communication: A critical Introduction*, (SAGE Publication Inc. 2013); Crenshaw, Martha, 'The Psychology of Political Terrorism. In Margaret G. Hermann' (Ed.), *Political Psychology* (1986), 379.

<sup>15</sup> McCauley, Clark, & Moskalenko, Sophia, 'Mechanisms of Political Radicalization: Pathways toward Terrorism', (2008), Vol. 30, Issue 3, *Terrorism and Political Violence*, 415–433.

<sup>16</sup> Lulat, Y.G.-M., *A History of African Higher Education from Antiquity to the Present: A Critical Synthesis*, (Santa Barbara: Praeger 2005)..

<sup>17</sup> Schmid, Alex *Political Terrorism: A Research Guide to the Concepts, Theories, Databases and Literature*, (Amsterdam: North Holland 1983).

to retrieve their rights. Thus, States that express hatred toward the global economic hegemony will be more probably producing terrorist groups, and that was one of the important environment that create Al Qaeda, namely Afghanistan and Pakistan, symbolizes this notion<sup>18</sup>. Furthermore, Terrorism can be used for financial gain. Usually, corporate hijacked individuals taking by the 'Abu Fayyad' group in the Philippines, or taking in Central and South America, take place to earn money more than achieving political goals. The events of Iran-Contra scandal in 1987 had been finished with an arms-for-hostage deal. Despite, the Reagan administration initially was refusing to negotiate with terrorists, but finally went in this way<sup>19</sup>.

### **1.3.3 Religious causes of terrorism**

Religion is important in many societies, especially the least conscious. It regulates the relations between individuals and the relationship of individuals to God. However, the misinterpretation of religious laws and ignorance of its principles is one of the most important factors that cause individuals to commit acts of terrorism because of ignorance to the reality of the purposes of the religion. This led the West to consider the Islamic religion for example, as a threat must be faced, so the Muslims have gotten bad reputation and became a target of the targeting of Western countries, the best example of this is, the invasion of Iraq. In contrast, the terrorist groups are hiding behind religion and Islamic law to implement their aims is adapting it to legitimate their criminal acts against innocent citizens. However, religious fanaticism has been proven that is an extreme sense of ideological enthusiasm complemented by the unrelenting set of activities that express the high loyalty of the individual or individuals to their own belief systems. Radical religious Islamism has been identified as a root cause of wide terrorist activities around the world. The Islamist assaults versus civilians from Jakarta to Glasgow confirm that many Islamists are ideologically articulated to engage in terrorism<sup>20</sup>.

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<sup>18</sup>Louw, P. Eric, 'The "War against Terrorism": A Public Relations Challenge for the Pentagon', (2003). Vol. 65, Gazette: the International Journal for Communication Studies, 211.

<sup>19</sup>Islam, Muhammad Q., & Shatin, Wassim N., 'Applying Economic Methodology to the War on Terrorism', (2001), Vol. 31, Forum for Social Economics, 7-26

<sup>20</sup> Robert Imre, T. Brian Mooney, & Benjamin Clarke, Responding to Terrorism. Political Philosophical, and Legal perspective, Routledge, (2008), 248.

## 1.4 Forms and Shapes of Terrorist Crimes

Terrorists have proved very quickly in the way they carry out their acts of crime. They have used modern science and technology to achieve their goals, and taking all forms of terrorism and shapes of terrorism is very difficult.

### 1.4.1 Terrorism Forms

There have been many classifications of terrorism and the study will address the forms of terrorism from two sides, in terms of perpetrators of the terrorism and the scope of terrorism. As follow;

#### 1.4.1.1 Terrorism in terms of its perpetrators

The engage in terrorist acts can be through; individuals, group or groups, and maybe states.

1. State Terrorism: States have differed in the definition of terrorism of States, there are those who recognize the idea of the existence of state terrorism, whereas, others rejecting this idea. Employ of violence by states in the furtherance of political ends, through State agencies, as secret societies or separatists groups. Where, these groups hand-up to commit terrorist acts in order to produce an environment that helps in maintaining political objectives<sup>21</sup>. State terrorism is defined as "*the use or threat of intentional violence by the authorities of a State, its organs or persons acting in its interest against its nationals or the property of another State to create a state of terror and terror in order to achieve specific objectives, or to provide assistance or assistance to terrorist groups aimed at carrying out acts of violence and vandalism against another State*"<sup>22</sup>. It is possible to distinguish between internal state terrorism and external state terrorism: the state's internal terrorism is the establishment of the state through its own human rights violations in order to impose its control over the people, especially those who oppose them, in order to preserve its powers. State external terrorism is an offense by States to the provisions of international law, including the provisions of international humanitarian law and human rights. This leads to the State becoming involved in a direct or

<sup>21</sup> Maxwell Taylor, The Terrorist. Brassey's Defence, 1988, 249.

<sup>22</sup> Haytham F. Shehab, جريمة الإرهاب وطرق مكافحته (في التشريعات الجزائية المقارنة), translated from Arabic-[The crime of terrorism and ways of combating it :in comparative penal legislation], (Dar al-Thaqafa for publishing and distribution, Jordan, 2010). P.27, 55.



indirect act of terrorism liable to international law and the consequent of that from compensation and punishment.

2. Terrorism of individuals and groups: It includes all actions by individuals and groups on their own initiative, without the support, encouragement or assistance of a State, which is called "terrorism of the weak," namely, individual terrorism and groups that do not belong to an authority and seek to end the authority or judiciary Or to modify them. Always behind these types of terrorist acts, there are political or personal motivators.

#### **1.4.1.2 Terrorism in terms of its scope**

The scope of terrorism acts could be divided to two scopes;

1. Domestic terrorism: It is terrorism practiced by a specific group in order to achieve limited goals, which are within the scope of a single State that does not exceed its borders, and is aimed at destroying a regime in order to achieve an internal interest not related to foreign interests<sup>23</sup>.

2. International terrorist: it is acts that affect international peace and security, and sends the international community tension and disturbance, and is assumed to be happening at a time of peace. It is located on public facilities or by carrying out mass murder or other acts of violence. The foregoing it is clear that international terrorism is one of the most serious international crimes, and it is characterized by violations of the rules of international law through its elements<sup>24</sup>.

#### **1.4.2 Terrorism Shapes**

With multiple motives, reasons, and means of terrorist crime, there are many shapes of terrorist crime. These crimes have been carried out on people, facilities and funds, and can be summarized in three basic shapes, namely;

<sup>23</sup>Judson Knight, 'Terrorism, Domestic (United States)', (2004), Encyclopedia of Espionage, Intelligence, and Security, The Gale Group Inc, para.1 <https://www.encyclopedia.com/social-sciences-and-law/law/crime-and-law-enforcement/domestic-terrorism>, (accessed on March, 7<sup>th</sup>, 2018).

<sup>24</sup>Conte A. 'The Nature and Definition of Terrorism. In: Human Rights in the Prevention and Punishment of Terrorism. Berlin, Heidelberg: (Springer, 2010), 7.

#### **1.4.2.1 Hijackings of planes**

The development of the methods and types of terrorist crimes, including the aircraft, in order to disturb the safety and security of passengers and damage such as blasting them, and can be punished according to the Penal Code of the State, such as theft and murder. These crimes do not fall within the scope of international terrorism, but when a person or group of persons unlawfully takes possession and control of the aircraft and uses or threatens violence, herein will be front of international terrorism type of crime, and this kind of crimes are considered as recent, with the extending and development of air transport. The starting date of modern plan hijacking terrorism was on 22 July 1968, when three gunmen from the Popular Front for the Liberation of Palestine (PFLP) hijacked a passenger airplane from airliner of the Israeli airline El Al on a flight between Rome and Tel Aviv. The demand or the hijackers was to exchange hostages with their colleagues who were imprisoned in Israel.<sup>25</sup> In addition to the previous agreements, other special agreements have been made in this regard, including: the strong seizure of aircraft while flying and diverting it to a destination other than the destination, and the Convention on the Illegal Abduction of Aircraft in the case of Air Force Use or Threat, or by Means of Duress. Subsequently, the Montreal Convention in 1971, which expanded the scope of the criminalization of aircraft terrorism, came out with comprehensive provisions to fill the gaps contained in the previous two Conventions, as explained in Appendix 4, Article '1' from the convention<sup>26</sup>.

#### **1.4.2.2 Kidnapping and Detention of Characters**

The kidnapping and taking of hostages have taken place during this era, in order to demand ransom or for certain purposes. Kidnapping and taking-hostage operations have been characterized as terrorist acts and agreements have been concluded in this area. 58 The issue of hostage-taking applies to all categories of the population Including diplomats, security personnel and security personnel. Taking hostages is considered one of the most serious crimes that are considered a serious violation of international law, in accordance with the part II, Articles '12 to 16' in Third Geneva

<sup>25</sup> Bruce Hoffman, Inside Terrorism. (Columbia University Press 2006), 456.

<sup>26</sup> See 'Special Sub-Committee on The Preparation of One or More Instruments Addressing New and Emerging Threats', Report, (International Civil Aviation Organization, 2007), [https://www.icao.int/secretariat/legal/LC34\\_Docs/LC\\_SC-NET\\_Report\\_en.pdf](https://www.icao.int/secretariat/legal/LC34_Docs/LC_SC-NET_Report_en.pdf) (accessed on March, 8<sup>th</sup> 2018).

Convention 1949, relative to the Protection of Prisoners of War<sup>27</sup>. Detention is practiced by individuals and by States, although the objective is different between States and individuals. The State does not normally detain persons for ransom but to practice aggressive policy and to impose colonialism.

#### 1.4.2.3 Political Assassinations

The Assassination is defines in Random House College Dictionary as; “1. *to murder premeditatedly and treacherously*. 2. *to destroy or denigrate treacherously and viciously*.”<sup>28</sup> Another definition is that “*assassination is killing a prominent person by use of treacherous violence either for money or a fanatical cause*.”<sup>29</sup> Commonly, the Political assassination is the use of violence and physical liquidation against a political person as a method of political aggression against opponents for political purpose. The difference between murder and assassination is the political element. Assassination is always for political reasons. In the old case, the assassination was for religious reasons. Political assassination has been on the agenda of the United Nations, which has worked to put an end to international terrorism through the enactment of special conventions for the protection of persons, such as the 1937 Geneva Convention on the Suppression of Terrorism. And the 1977 European Convention on the Suppression of Terrorism has been recognized, that political assassinations are the main shape of terrorist operations. Sixty three States have sought to place actions against diplomatic person assassination or persons with special protection, and consider that as international terrorism<sup>30</sup>.

### 1.5 The Elements of the Terrorist Crime and Its Distinction from Similar Crimes

The crime of terrorism is not like any other crime. It has its own elements. This is mainly due to the absence of a comprehensive and unified definition of international

<sup>27</sup> III GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF 12 AUGUST 1949, available online [http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf), accessed on March, 10<sup>th</sup> 2018.

<sup>28</sup> Jess Stein, ed., The Random House College Dictionary, Revised Edition (New York and Toronto: Random House, Inc., 1982), p. 81.

<sup>29</sup> Murray Clark Havens, Carl Leiden, Karl M. Schmitt, The Politics of Assassination, (Englewood Cliffs: Prentice-Hall, Inc., 1970), p. 2.

<sup>30</sup> ‘European Convention on the Suppression of Terrorism : Strasbourg, 27.I.1977’, European Treaty Series - No. 90, (Council of Europe, 1977)< <https://rm.coe.int/16800771b2>> accessed 27 March 2018

terrorism. The precise definition of its physical, moral and international elements has been difficult, which has mixed this crime with other crimes. All crimes despite their different nature have two main elements; the physical element and the moral element, and the same for terrorist crimes. The international element is not that all crimes have an international element, but the crime of international terrorism essentially distinguishes to hold its international element<sup>31</sup>.

### **1.5.1 The Physical Element of the Terrorist Crime**

The physical behavior is an organic movement that comes from the individual and is tangible. It is not mere intentions and beliefs, but acts of material intended to commit crimes. We do not assume that a crime is committed without material, tangible behavior. In addition to its importance in terms of facilitating the demonstration of the occurrence of the crime and identification of perpetrators<sup>66</sup>, the behavior is either positive or negative. The positivity is the physical movement of the offender. The negative behavior is to refrain from work. The criminal activity takes many forms, such as the establishment of an organized terrorist group, the establishment of a group, any activity that can be collective. The organization requires multiple positive activities, including planning the program, thinking and management, and then developing a comprehensive plan to achieve the goals set<sup>32</sup>. Accession to an organized criminal group is intended to involve the organization, which is the result of the acceptance between the offender and the criminal group. Communication with an organized criminal group is one of the ways of participation in organized crime. Participation is through incitement, agreement or assistance, directly or indirectly, Behavior and result must be linked to a causal link, and that is, criminal behavior was the cause of the harm.

### **1.5.2 Moral Element of the Terrorist Crime**

In the terrorist crime, the moral element is that psychological aspect<sup>33</sup>, which consists of internal or personal elements, which is linked to the criminal material fact.

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<sup>31</sup> Ben Saul, *Defining Terrorism in International Law*, Oxford University Press, (2008)

<sup>32</sup> Iryna Marchuk, *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis*, Springer Science & Business Media, (2013)

<sup>33</sup> Jerrold M. Post, *The Mind of the Terrorist: The Psychology of Terrorism from the IRA to al-Qaeda*, St. Martin's Press, (2008)

This is an illegitimate trend of awareness and free will towards the criminal incident. The moral element in the terrorist crime is the intent to spread terror and fear to certain persons, and the moral corner takes two forms: Criminal intent, which means that the offender is aware of all the facts constituting the crime, and the direction of his, will to achieve them. Criminal intent is based on two elements: knowledge and will, and criminal intent are divided into several types, such as general purpose and intent. The general criminal intent means that the offender is aware that the act he is committing is prohibited, and that the reasons for his commission are unlawful, either by explicit provision of the law or the nature of the act and even not explicitly stated by the law. The private criminal intent is based on knowledge and will, but it has another element, namely, the achievement of a result. Private criminal intent is broader than general criminal intent because the private intent is directed towards a specific result<sup>34</sup>. The second form of the moral corner is wrong, which means negligence or carelessness or lack of reserve. The crime sometimes falls without criminal intent but through mistakes. This picture is found in national law more than international law because international crimes are almost total deliberate crimes<sup>35</sup>.

### 1.5.3 International Element of the Terrorist Crime

The International crime will be present if the criminal conduct involves prejudice to the interests of the international community protected by the international legal order. The international element of the crime of State terrorism is realized if the terrorist acts have been carried out on the basis of a plan drawn up by a State against another State and the offender has committed the crime in the name of the State and for its interest. If the individual commits it individually, the international element is absent; however, the international element is also achieved in the case of indirect terrorism by States<sup>36</sup>. In summary, the international element exists in the crime of

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<sup>34</sup> Sol Azuelos-Atias, A Pragmatic Analysis of Legal Proofs of Criminal Intent, John Benjamin's Publishing, (2007)

<sup>35</sup> However, the absence of intentional international crimes in international criminal law does not mean, for example, when an officer bombarded a city with the aim of beating the military, but it strikes innocent civilians. See Abdulla Sulaiman Sulaiman, المقدمات الأساسية في القانون الدولي الجنائي, [Basic Concepts in International Criminal Law] (trns.), Algeria, University Publications House, (2001)

<sup>36</sup> Indirect international terrorism means if a State assists the offender in the commission of the terrorist crime. The assistance is to encourage, encourage, incite, conceal and harbor criminals, to assist them and to facilitate their presence on their territory or to condone their acts which seek to commit acts of violence or vandalism against another State. See; Marja Letho, 'Indirect Responsibility

State terrorism if it carries out, directly or indirectly, acts of violence and vandalism against another State.

## **CHAPTER TWO**

### **TERRORISM IN INTERNATIONAL LAW**

Despite the absence of a definition of this crime, this did not prevent States and organizations from calling for the conclusion of conventions and intensifying international efforts to combat and suppress the terrorist crime. International conventions against terrorism were established in the third decade of the twentieth century to deal with international terrorism, from 1937, where the first agreement that included legal provisions obligating States to combat terrorism, but it was not ratified<sup>37</sup>. After this attempt, a great deal of international and regional agreements concluded to combat terrorism targeting both individuals and States, or agreements aimed at the protection of maritime and air transport <sup>38</sup>. In this chapter we will deal with the legal framework of International terrorism and addressing some of the international efforts to combat international terrorism.

#### **2.1 The Concept of Terrorism in International Conferences and Agreements**

The study of terrorism at the level of international criminal law began at a relatively recent stage, from the end of the nineteenth century and the beginning of the twentieth century, following the escalation of chaotic attacks and the difficulties of extradition. After World War I, 1914, a panel of experts examined and counted

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<sup>37</sup> The League of Nations Convention for the Prevention and Punishment of Terrorism, League of Nations Doc. C.546M(I).M.383(I).1937.V (1937) [hereinafter LoN Convention of Terrorism].

<sup>38</sup> Christopher C. Harmon, *Terrorism Today*, Routledge (2000).

violations of the laws of war, including terrorism<sup>39</sup>. When the First International Conference on the Unification of Criminal Law was held in Persia in November 1927, the conference was not subjected to the term "terrorism crimes". However, its activities were exposed to what can be called terrorist activity, which is represented by means of their nature create a general danger, at that time after the multiplicity of acts of aggression on railway lines in Central Europe, especially in Czechoslovakia. The Third Conference, held in Brussels in 1930, was the first to speak out explicitly about terrorism by framing a text of five articles on terrorism, in which some (terrorist) acts relating to the intentional use of means with nature to create a general danger against physical integrity<sup>40</sup>. For example of that, the use of explosives, dumping, the use of toxic substances, the destruction of bridges, means of communication and the pollution of water ... Article 2 of this article states that the use of such means shall be considered as 'terrorism'.<sup>41</sup> In December 1931 in Paris, where the Fourth Congress was held, amendments were made to the articles proposed at the previous Conference. During the Fifth Conference in Madrid in 1935, a new approach was adopted calling for the subjugation of acts of terrorism to international justice and the principle of the effective extradition of such crimes. In September 1935, the Sixth Congress was held in Copenhagen, where specific provisions on terrorist crimes were approved, and the importance of confronting acts of public danger created a state of terror, with the intention of causing change or disruption of the function of public authorities or international relations. Attention was directed to specific acts, namely, offenses against life or physical integrity, or freedom of heads of diplomatic States or their families (affected by the consequences of the Marseille attack). It was emphasized that the perpetrators of the crimes would be prosecuted if they were not deported or not tried in the country in which the accused was located in a court of an international character and, more importantly, it was agreed that terrorism crimes would not be considered political offenses<sup>42</sup> However, the attack in Marseille on October 09, 1934, on the life of the

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<sup>39</sup> Alexander Orakhelashvili, *Research Handbook on the Theory and History of International Law*, Edward Elgar Publishing, (2011)

<sup>40</sup> Mikkel Thorup, *An Intellectual History of Terror: War, Violence and the State*, Routledge, (2010), p.123

<sup>41</sup> David Carlton, and Carlo Schaerf, *International Terrorism and World Security*, Routledge, (2015), p.73

<sup>42</sup> Ibid.



King of Yugoslavia, Alexander I<sup>43</sup>, was the turning point in international criminal law to counter terrorism. On the basis of a French initiative, the League of Nations studied a draft convention on the criminalization of terrorism, submitted by French foreign minister on 10 December 1934 to the General Secretariat of the League of Nations. The International Conference, held in Geneva from 1 to 16 November 1937, signed two agreements (under the auspices of the League of Nations), one on prevention and suppression of terrorism, consist of 29 articles, and the second on the establishment of an international criminal court. The two conventions have been separated, so as not to refrain from signing the first one who opposes the second<sup>44</sup>. Its commencement has been suspended between the two conventions until after their ratification. This has not yet been done, because the definition contained in the Convention on the Prevention and Suppression of Terrorism was not specific, and the escalating international tension and the Second World War had the greatest effect in preventing any ratification.

### 2.1.1 Convention for the Prevention and Punishment of Terrorism 1937

In accordance with Article 1 of the 1937 Geneva Convention on the Prevention and Punishment of Terrorism, the first governmental attempt to deal with the phenomenon of terrorism legally, which states in the second paragraph that; *"... 'act of terrorism' means criminal acts directed against a State, intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or a general public"*<sup>45</sup> In addition to that, Article 2 states that:

"Each of the High contracting Parties shall, if this has not already been done, make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article I:

- (1) Any willful act causing death or grievous bodily harm or loss of liberty to:
- (a) Heads of States, persons exercising the prerogative of the head of State, their hereditary or designated successors;

<sup>43</sup> On 06/01/1929 an attack was carried out in Marseilles by terrorists belonging to the separatist Macedonian 'Estada organization', where King Alexander I, King of Yugoslavia, and Louis Barto, the French First Minister and Minister of Foreign Affairs, were assassinated. This attack had an appalling effect on the conscience The international legal community; See Konrad Sebastian Morawski, 'The assassination of King Alexander I of Yugoslavia in the light of archival press articles', [2016], RCIN, DOI: <http://dx.doi.org/10.12775/SDR.2016.EN1.03>

<sup>44</sup> Bennett Kovrig, 'Mediation by Obfuscation: The Resolution of the Marseilles Crisis, October 1934 to May 1935,' (1976), vol. 19, no. 1, The Historical Journal

<sup>45</sup> See, Convention for the Prevention and Punishment of Terrorism 1937, <<https://dl.wdl.org/11579/service/11579.pdf>> accessed 20 April 2018

- (b) The wives or husbands of the above-mentioned persons;
- (c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.
- (2) Willful destruction of, or damage to, public properties or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.
- (3) Any willful act calculated to endanger the lives of members of public.
- (4) Any attempt to commit an offence falling within the foregoing provisions of the present article.
- (5) the manufacture, obtaining, possession, or supplying of arm, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.”<sup>46</sup>

The definition of articles 1 and 2 of the 1937 Convention shows that the definition of international terrorism is limited, since it defined the international criminalization of the terrorist act directed against a State which considers that the international element in the crime exists because the victim is a States.

### **2.1.2 European Convention on the Suppression of Terrorism**

The Convention was drawn up in 1976, which did not define terrorism, but merely referred to acts that it considered terrorist. The Convention provides that the crime of terrorism is one of the crimes set forth in the Convention for the Suppression of Crimes against the Safety of Civil Aviation signed in 1971, and serious crimes that constitute an attack on life, physical integrity or the freedom of persons with international protection, including envoys, and crimes involving the abduction, hostage-taking or unlawful detention of individuals, and crimes involving the use of missiles, grenades, missiles, and firearms. This Convention emphasized the principle of the importance of international cooperation in the fight against terrorism<sup>47</sup>.

### **2.1.3 The International Law Commission in Paris in 1984**

Conspiracy to commit, attempt to commit or to commit to commit or incite to commit crimes constitutes a crime (international terrorism). The International Law Commission, at its second conference in Paris in 1984, considered that, acts of violence constituting international terrorism are all acts containing an international

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<sup>46</sup> Ibid

<sup>47</sup> European Convention on the Suppression of Terrorism, ETS 90 – Suppression of Terrorism, Council of Europe, 27.01.1977, < <https://rm.coe.int/16800771b2>> accessed 21 April 2018

element which are directed against innocent civilians or who enjoy international protection and which may violate an international norm with a view to creating chaos and disorder in the structure of the international community, In peacetime or wartime, which is distinct from conventional crimes as crimes against peace and against humanity and whose suppression is international<sup>48</sup>.

#### **2.1.4 Arab agreements and the Islamic summit to combat international terrorism**

Front of the terrorism, which hit the atmosphere of the modern world, the Arab countries reached through their institutions and succeeded in signing the Arab Convention for the Suppression of Terrorism 1989 in Cairo<sup>49</sup>. The Fifth Islamic Summit Conference held in Kuwait in January 1987 discussed the subject of international terrorism and the difference between it and the struggle of the peoples for its liberation. The Arab League's emergency conference in Amman in November 1987 discussed the subject of international terrorism. Including international terrorism in all its forms, but supported the struggle of the peoples for liberation, standing against the brutal colonial powers, and supported the struggle of national liberation movements and the right to self-determination<sup>50</sup>. Thus, the Arab Convention for the Suppression of Terrorism, signed at the headquarters of the Arab League in 1998, decided to define the issue of terrorism and considered every act of violence or threat whatever its motivations and purposes. It aims to terrorize, terrorize, harm or endanger their lives Endanger or damage the environment, public or private facilities or property, occupy or seize them, or endanger a national resource. The terrorist offense is also considered that to be committing for the purpose of a terrorist purpose in any Contracting State, its nationals, property or interests, and shall be punished in its domestic law. Terrorist offenses are also defined as those crimes under international conventions except those that have not

<sup>48</sup> Dr. Hassanein Mohammedi Bawadi, الإرهاب الدولي بين التجريم والمكافحة [International Terrorism between Criminalization and Control] (trn.), Alexandria, University Thought House ( 2005 ).

<sup>49</sup> Essam Mufleh, المنظمات إرهاب و الدولة إرهاب ، الدولي الموقف و الإرهاب مفهوم [The Concept of Terrorism and the International Situation, State Terrorism and Organizations Terror] (trn.), [2002], Vol. 17, Political Thought Magazine.

<sup>50</sup> Article 1 of the Arab Convention for the Suppression of Terrorism signed at the headquarters of the League of Arab States considered that: "Not considers as a crime of Terrorist, the situations of struggle through various means, including armed struggle against foreign occupation and aggression, for liberation and self-determination ".

been ratified. The Convention also distinguished between terrorism, which had been criminalized in its various forms and between the struggle by various means for liberation and self-determination in accordance with the principles of international law and was not considered a crime, and restricted it by considering any action affecting the territorial integrity to be outside such a framework<sup>51</sup>. In 2001, the Conference of Foreign Ministers of the Islamic World held in Doha in 2001 concluded that terrorism is "a random and indiscriminate act of violence without a legitimate objective or just cause, which is contrary to divine laws and international norms. Fair issues and confront injustice and occupation as happens in Palestine and some countries in the world."<sup>52</sup>.

## 2.2 Terrorism in the View of International Community

The efforts of the international community to combat terrorism have resorted to conventions that criminalize specific acts as constituting international terrorism and impose specific obligations on signatory States to combat these crimes and bring the perpetrators to justice. However, these conventions did not distinguish between terrorism and a number of crimes<sup>53</sup>. In its counter-terrorism efforts, the United Nations has persisted in the development of several conventions.

### 2.2.1 Terrorism and the legislative of the major powers

In its domestic laws, the countries of the world have adopted the threat of terrorism. The British law defines terrorism as; "...*the use or threat of action where—(a) the action falls within subsection (2)...*", and the action (2), from the British law, provides; "*2) Action falls within this subsection if it— (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health*

<sup>51</sup>Dr. Ali Mohamed Jafar, الاتجاهات الحديثة في القانون الدولي الجزائي [Modern Trends in International Criminal Law](trn.), (First Edition), Beirut, University Institution for Studies, Publishing and Distribution, (2007).

<sup>52</sup>CLT/CH/THS/2001/CD/H/1, Proceedings of the Doha Conference of 'Ulamâ on Islam and Cultural Heritage, Doha, Qatar; 30-31 December, UNESCO(2001), <  
<http://unesdoc.unesco.org/images/0014/001408/140834m.pdf>> accessed 21 April 2018.

<sup>53</sup>Do not determine whether the resistance of the liberation movements against the occupation of other countries is considered terrorism or not? For example the resistance of the Palestinian people to the Israeli occupation of the Palestinian territories.

*or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system.”<sup>54</sup>*

The American code has also defined international terrorism as; *“the term “international terrorism” means activities that— (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) Appear to be intended— (i) To intimidate or coerce a civilian population; (ii) To influence the policy of a government by intimidation or coercion; or (iii) To affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;”<sup>55</sup>*. Canadian law<sup>56</sup> considers that the crime of terrorism is an act committed to intimidate the public or a specific segment of them by endangering their security, including their economic security, or to compel a person, government or local or international organization to do or refrain from doing any act, causing serious bodily harm by violence and endangering public health and public security<sup>57</sup>.

<sup>54</sup>Terrorism Act 2000 legislation.Gov.uk,the National Archive\2000),<

<https://www.legislation.gov.uk/ukpga/2000/11/section/1>> accessed 21 April 2018.

<sup>55</sup>18 U.S. Code § 2331 – Definitions, < <https://www.law.cornell.edu/uscode/text/18/2331>> accessed 21 April 2018.

<sup>56</sup>STATUTES.OF CANADA,2001,C.41,Anti-Terrorism,PartTerrorism,Interpretation,<[http://laws-lois.justice.gc.ca/PDF/2001\\_41.pdf](http://laws-lois.justice.gc.ca/PDF/2001_41.pdf)> accessed 21 April 2018

<sup>57</sup>STATUTES OF CANADA, 2001, C.41, Anti- Terrorism, Part II, Terrorism, Interpretation, p.12 states; “ “terrorist activity” means; (a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

(i) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,

(ii) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971,

(iii) the offences referred to in subsection 7(3) that implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973,

(iv) the offences referred to in subsection 7(3.1) that implement the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979,

(v) the offences referred to in subsection 7(3.4) or (3.6) that implement the Convention on the Physical Protection

of Nuclear Material, done at Vienna and New York on March 3, 1980,

(vi) the offences referred to in subsection 7(2) that implement the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988,

In the French Penal Code<sup>58</sup>, Article 421 of the Act provides that acts of terrorism shall be deemed to be the following acts when committed intentionally by an individual or group with the intent to cause serious disturbance in public order by resorting to intimidation and intimidation<sup>59</sup>. But, which appears through the laws of those States, it did not amount to a specific definition of terrorism as an international crime because it did not amount to general principles.

## 2.2.2 The United Nations and international terrorism

International efforts have not ceased to seek to define the concept of international terrorism and to adopt effective means to combat it. The Second International Terrorism Committee of the United Nations has concluded that, International terrorism is an act of violence or threat emanating from an individual or group,

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(vii) the offences referred to in subsection 7(2.1) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March

10, 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15,

1997, and

(x) the offences referred to in subsection 7(3.73) that implement the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999, ...”

<sup>58</sup>French.Penal.Code,.Chapter.oneArticle.111-1.to727-2],<

[file:///C:/Users/Dell/Documents/Downloads/Code\\_33.pdf](file:///C:/Users/Dell/Documents/Downloads/Code_33.pdf)> accessed 21 April 2018.

<sup>59</sup> Article 421-1, of French Penal Code, Chapter one, p.85, states; “The following offences constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror: 1° wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of transport, defined by Book II of the present Code; 2° theft, extortion, destruction, defacement and damage, and also computer offences, as defined under Book III of the present Code; 3° offences committed by combat organisations and disbanded movements as defined under articles 431-13 to 431-17, and the offences set out under articles 434-6, 441-2 to 441-5; 4° the production or keeping of machines, dangerous or explosive devices, set out under article 3 of the Act of 19 June 1871 which repealed the Decree of 4 September 1870 on the production of military grade weapons; - the production, sale, import or export of explosive substances as defined by article 6 of the Act no. 70-575 of 3 July 1970 amending the regulations governing explosive powders and substances; - the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances, as defined by article 38 of the Ordinance of 18 April 1939 defining the regulations governing military equipment, weapons and ammunition; - the detention, carrying, and transport of weapons and ammunition falling under the first and fourth categories defined by articles 4, 28, 31 and 32 of the aforementioned Ordinance; - the offences defined by articles 1 and 4 of the Act no. 72-467 of 9 June 1972 forbidding the designing, production, keeping, stocking, purchase or sale of biological or toxin-based weapons; - the offences referred to under articles 58 to 63 of the Act no. 98-467 of 17 June 1998 on the application of the Convention of the 13 January 1993 on the prohibition of developing, producing, stocking and use of chemical weapons and on their destruction;...”

whether acting individually or in association with other individuals and directed against persons, organizations, residential, governmental or diplomatic sites, Or against members of the general public without discrimination of color, sex or nationality with a view to threatening, causing injury to or death of such persons, causing damage or harm to such places or property, or destroying means of transport and communication with a view to corrupting friendly relations between States or citizens Different countries<sup>60</sup>. The United Nations has provided for a series of conventions and called upon States to ratify them, through their respective bodies<sup>61</sup>. These conventions include the 1964 Tokyo Convention on Combating Crimes and Certain Other Acts Committed on Board Aircraft, the 1970 Hague Convention on the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention on Unlawful Acts against the Safety of Civil Aviation, Crimes against internationally protected persons including diplomatic agents, the 1979 New York Convention against the Taking of Hostages, the 1980 Convention on the Physical Protection of Nuclear Material and the 1988 Convention on the Suppression of Unlawful Acts of Violence For Airports and Civil Aviation, and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Also, the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection and General Assembly resolution 52/165 of 1997 for the Suppression of Terrorist Bombings and the International Convention of the United Nations General Assembly No. 54/109 of 2000 on the Suppression and Financing of Terrorism<sup>62</sup>. The question that can be raised here is can consider international terrorism as an international crime or not? To answer this question, we should refer to the Statute of

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<sup>60</sup> Article 1, of European Convention, states that;

“For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: (a ) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; (b ) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; (c ) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; (d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention; (e ) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; (f ) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.”

<sup>61</sup> General Assembly resolution A/56/593, in 27, Nov. 2001, Pursuant to General Assembly resolution 55/158 of 12 December 2000 concerning measures to eliminate international terrorism.

<http://www.un.org/documents/ga/docs/56/a56593.pdf>> accessed 21 April 2018

<sup>62</sup> S/RES/1373(2001), Resolution 1373(2001),

[https://www.unodc.org/pdf/crime/terrorism/res\\_1373\\_english.pdf](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf)> accessed 21 April 2018



the Criminal Court, where Article 20 provides that, a person shall be criminally liable only under a statute, and a person shall not be criminally liable under this Statute unless the conduct in question constitutes, at the time of its occurrence, an offense within the jurisdiction of the Court <sup>63</sup>. However, it can look for the criminalization of terrorism in general.

### **2.2.2.1 The General Assembly and its role in combating terrorism**

The General Assembly is one of the most important organs of the United Nations which, through its regulations and resolutions, seeks to contribute to the fight against terrorism<sup>64</sup>. The General Assembly of the United Nations considers that terrorism is the greatest threat to human rights, and this has led to the development of a large number of regulations and decisions aimed at raising the awareness of the international community and contributing to combating this phenomenon which is threatening the entire world. The question raised here is, to what extent the United Nations General Assembly has succeeded to pass its resolutions against terrorism and the legal value of these resolutions.

#### **2.2.2.1.1 Some of the relevant resolutions of the General Assembly against terrorism**

The General Assembly adopted a resolution to assess international crimes from 30 June to 28 July 1945. It considered that "the crime against the security and safety of humanity is the creation by State authorities of terrorist activities in a State" or

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<sup>63</sup> Article 20, of Rome statute, states; "1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court. 2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court. 3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court: (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.", < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>>, p.16 accessed 21 April 2018

<sup>64</sup> The United Nations General Assembly has adopted several resolutions to combat terrorism and respect for human rights, such as resolution 59/195 of 22 March 2005, at the 59th session, on the basis of the report of the Third Committee, entitled Human rights and terrorism. The violation of rights and urged States to combat terrorism, intensify efforts and cooperate for that purpose. See Official Records of the United Nations (A / RES / 59/195)



against tolerance of activities to commit terrorist acts. Since then, the General Assembly has adopted several resolutions dealing with international terrorism and called for intensified international efforts and international cooperation to combat it<sup>65</sup>. Another Resolution No. 2654/25 of November 25, 1970, on the United Nations General Assembly on interference in the diversion of aircraft routes<sup>66</sup>. In this resolution, the General Assembly of the United Nations referred to the important role played by aviation in promoting and strengthening relations between States. In this resolution, the General Assembly of the United Nations condemned all acts that lead to change the course of aircraft, or interfere with the interests of air transport, and called upon States to take the necessary measures to prevent such acts. After a period of time, the General Assembly has moved to combat terrorism and, to the other, to reduce and eliminate international terrorism. On 24 October 1970, the General Assembly adopted the Declaration on the Principles of International Law concerning International Relations and International Cooperation. It also approved the Convention on the Prevention of Crimes against Internationally Protected Persons, including Diplomats, on October 14, 1973, it decided to establish a special committee to define international terrorism, which was divided into three committees, one of which charged with defining a definition of international terrorism. It has been clear from the beginning that the Committee on the Definition of (International Terrorism) is floundering in the same conflict over fundamental issues within the United Nations<sup>67</sup>. Resolution No. 3034 of the General Assembly of the United Nations on 18 December 1972 and the most important of the resolution is to affirm the fixed right to self-determination and independence of all peoples under exploitation and colonization and to strengthen the legitimacy of their struggle, especially the struggle of liberation movements<sup>68</sup>. This decision included the establishment of a special committee, during the years 1973, 1977 and 1979. The report shows that there is a difference in the opinion of states regarding the terrorist

<sup>65</sup> Bashe Samira, (على ضوء التحولات الجديدة لمفهوم الدفاع الشرعي) [The role of the United Nations in the fight against international terrorism (in light of the new transformations of the concept of legitimate defense)] (trn.). Master's thesis, International Law and Human Rights, Tizi Ouzou University, (2009)

<sup>66</sup> General Assembly- 25<sup>th</sup> Session, 2645 /59, Aerial hijacking or Interference with civil air travel, P.126, < [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/2645\(XXV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2645(XXV))> accessed 22 April 2018

<sup>67</sup> Essam Mafleh, (n 49)

<sup>68</sup> A/RES/3034(XXVII), 18 December 1972, "Measure to prevent international terrorism...", <https://unispal.un.org/DPA/DPR/unispal.nsf/85255db800470aa485255d8b004e349a/69cb600fbde9edd852570840050c345?OpenDocument> accessed 22 April 2018

crime. Some of these countries wanted to include the actions of peoples against racist regimes that denounce the legitimate right of peoples to self-determination and independence and other human rights and freedoms within terrorist acts<sup>69</sup>. Some countries have introduced repression and control measures without addressing the definition, such as the United States of America and Israel, unlike Arab and non-aligned countries, which have advocated the need to define terrorism. However, despite numerous attempts to define terrorism, Consideration and differing views prevented this. In 1979, at its 34th session, the United Nations General Assembly adopted the results of the Commission's work, which unequivocally condemned acts of terrorism which endanger human lives, lead or threaten fundamental freedoms, and condemned the continued acts of repression and terrorism perpetrated by colonial, racist and alien regimes, Its legitimate right to self-determination, independence and other fundamental rights and freedoms. At its forty-second session, resolution 42/159 was issued for all situations, urging all States to pay particular attention to colonialism, racism, and situations involving gross violations of human rights and freedoms Basic<sup>70</sup>. Resolution 51/1 of the General Assembly of the United Nations of 12 September 2001, which strongly condemns the terrorist attacks on the United States of America, which have caused heavy human losses and serious damage to the World Trade Center in New York and Washington, and appealed to the General Assembly of the United Nations to cooperate with In order to bring to justice the perpetrators of the attacks of 11 September 2001, as well as to hold States responsible for harboring and assisting the perpetrators of such acts<sup>71</sup>. Resolution 59/195 of the UN General Assembly on Human Rights and Terrorism on 22 March 2005<sup>72</sup>, in which it referred to the increase in terrorism in all its forms and manifestations aimed at undermining human rights. But, terrorist acts continued despite international and national efforts. Also, referred to the right to life, which is a fundamental right that cannot be accepted or violated. the resolution stresses that

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<sup>69</sup> Ibid

<sup>70</sup> A/RES/42/159, Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes, 7 December 1987, < <http://www.un.org/documents/ga/res/42/a42r159.htm>> accessed 20 April 2018

<sup>71</sup> See A/RES/51/1 < <http://www.un.org/documents/ga/res/51/ares51-1.htm> > accessed 22 April 2018.

<sup>72</sup> A/RES/59/195, General Assembly, 22 March (2005), Human rights and terrorism, < [https://digitallibrary.un.org/record/537903/files/A\\_RES\\_59\\_195-EN.pdf?version=1](https://digitallibrary.un.org/record/537903/files/A_RES_59_195-EN.pdf?version=1)> accessed 22 April 2018.

the war on terrorism must be intensified and urged States to combat it in accordance with special international instruments and the Charter of Human Rights<sup>73</sup>.

Resolution 62/71 of 8 January 2008 on the United Nations General Assembly, entitled "*Measures to eliminate international terrorism*"<sup>74</sup>. In this resolution, it noted its great alarm at the increase in acts of international terrorism and strongly affirmed its condemnation of the heinous acts of terrorism which led to heavy losses. In this resolution also stressed the need to increase and strengthen cooperation for the elimination of terrorism, and stressed that acts of terrorism have no justification. Also, called upon all States and organizations to implement the United Nations strategy in the fight against terrorism and called upon States to join the conventions related to the fight against terrorism. It also called for refraining from financing or encouraging terrorist activities. It also called on countries to impose sanctions on all those who carry out these acts. She also referred to the pivotal role played by the Assembly in the implementation and modernization of the strategy. The General Assembly had made a declaration on measures to eliminate international terrorism, in which it had expressed its deep alarm at the persistence of acts of international terrorism in all its forms and expressed its concern about the increasing gravity of terrorism and the dangerous links between terrorist groups, drug traffickers and gangs, All kinds of violence and pointed out that the solutions to international peace and security can only be achieved through the elimination of international terrorism. In particular, the Declaration noted that States should refrain from organizing, inciting, financing, encouraging or tolerating terrorist activities, as well as ensuring the arrest of perpetrators of terrorist acts, seeking agreements in this area and cooperation among all States in the exchange of information<sup>75</sup>. Resolution 68/187, The General Assembly adopted this resolution under the heading of "Technical assistance for implementing the international conventions and protocols related to counter-terrorism ", issued in 11 February 2014<sup>76</sup>. This resolution has been

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<sup>73</sup>The Human Rights Charter is the Universal Declaration of Human Rights of 1948, as well as the International Covenants on Rights of 1966

<sup>74</sup>A/RES/62/71 , General Assembly, 8 January 2008, Measures to eliminate international terrorism, < [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/62/71](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/71)> accessed 23 April 2018

<sup>75</sup>A/RES/49/60, General Assembly, 9 December 1994, 84<sup>th</sup> plenary meeting, <http://www.un.org/documents/ga/res/49/a49r060.htm> accessed 23 April 2018

<sup>76</sup> A/RES/68/187, General Assembly, 11 February 2014, Technical assistance for implementing the international conventions and protocols related to counter-terrorism, < [https://www.unodc.org/documents/commissions/CCPCJ/Crime\\_Resolutions/2010-2019/2013/General\\_Assembly/A-RES-68-187.pdf](https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2010-2019/2013/General_Assembly/A-RES-68-187.pdf)> accessed 23 April 2018

included the report of the Secretary-General, in which he reviewed a multifaceted approach to strengthening the international legal regime against terrorism, as well as broadening the scope of action to combat terrorism and establishing a partnership for that, as well as evaluating and improving assistance. All the above-mentioned resolutions are just a sampling of the vast number of Assembly resolutions relevant to the fight against international terrorism. The resolutions of the General Assembly have worked to establish a dividing line between the wars on terror and not to violate the rights of the people. So that the resolutions of the General Assembly were aimed at protecting and promoting human rights and safeguarding them in the context of the war on terror. Wherein almost all of its resolutions they praised the need to respect human rights. The Charter of the United Nations authorizes the General Assembly of the United Nations<sup>77</sup>, such as the consideration of the general principles of cooperation for the maintenance of international peace and security and to make recommendations to the Security Council or to combat terrorism through its counter-terrorism resolutions, in the form of an invitation, an appeal or a claim. The resolutions of General Assembly can only be regarded as having a moral value. This means that the above-mentioned resolutions have no binding force for States as per of Article 12 of the Charter<sup>78</sup>. The General Assembly has a major role to play to make recommendations, not decisions, and whether or not the situation threatens international peace and security. At the request of a State, may make a recommendation to the Security Council and shall take the appropriate decision. The role of other important organizations of United Nations such as Security Council, and International Criminal Court, in combating terrorism will be elaborated in next chapter.

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<sup>77</sup> CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945, < <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed 23 April 2018

<sup>78</sup> Article 12 from Charter of United Nations, states that; "1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. 2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters."

## CHAPTER THREE

### CONVENTIONS OF SECURITY COUNCIL AND THE INTERNATIONAL CRIMINAL COURT FOR COMBATING TERRORISM

#### 3.1 The role of Security Council in combating Terrorism

Security Council is one of the main six UN organs, this committee works to restore and maintain international peace and security with other few responsibilities<sup>79</sup>. The intensification of the phenomenon of terrorism and its expansion and threat to international peace and security, particularly after the events of September 11, 2001, prompted the Security Council to intervene under its authority in Chapter VII of the Charter. The Security Council has adopted a series of deterrent measures against these acts, of the decisions in this area. The terrorist acts constituted an important turning point in the role of the Security Council, especially after the events of September 11, 2001, under which these decisions imposed several resolutions and obligations of peremptory and permanent orders under Chapter VII condemning terrorist acts and denouncing them<sup>80</sup>. As the Security Council serves as the organ for the maintenance of international peace and security, its resolutions and orders are binding on States to implement them. This leads us to ask whether Security Council resolutions on counter-terrorism are international law and whether all its

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<sup>79</sup> R. Thakur, 'Law, Legitimacy and United Nations'. [2010], Vol. 11, Melbourne Journal of International Law, 1-26

<sup>80</sup> See Chapter VII of CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945, "Action With Respect to Threats to the Peace, Breaches of the Peace .and Acts of Aggression", .Article 39 to 51, <  
<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed 23 April 2018.

interventions were based on the maintenance of international peace and security, freedoms and excessive use of Chapter VII of the Charter did not exclude the Security Council from its terms of reference.

### **3.1.1 Some Security Council resolutions relating to combating terrorism**

The Security Council has issued numerous resolutions to combat terrorism and to protect human rights, all under Chapter VII, and some of those resolutions will be mentioned in this part. Resolution 57 of 18 December 1948 was the first resolution adopted by the Security Council to combat terrorism, condemning the assassination of the United Nations mediator and his collaborators in Palestine and describing assassinations as terrorist acts. The Security Council considered terrorist crimes to be local rather than global, until Resolution No. 286 of September 9, 1970, in response to the increasing number of hijackings or any interference in the flight of civil aircraft in the future<sup>81</sup>. Resolution No. 635 of the Security Council of 14 July 1989 concerning the condemnation of illegal acts against the security and safety of civil aviation, referring to the effects of terrorism in the attack on the aircraft<sup>82</sup>. In the same year, the Security Council was forced to issue resolution 638 of 31 July, in which it unanimously condemned the hostage-taking and abduction in general and the prevention and prosecution of perpetrators of all acts of hostage-taking and kidnapping because they are considered to be terrorist acts and are in violation of international humanitarian law<sup>83</sup>.

#### **3.1.1.1 The legal value of Security Council resolutions**

In origin, Security Council decisions are binding, but sometimes non-binding decisions are made and it is possible to determine whether they are binding or non-binding by examining the resolution, so that if it begins with the words "the Security Council" decides to be binding, "Calls", "urges", and "encourages" to be non-

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<sup>81</sup> S/RES/286(1970), on 9 Sept. 1970, adopted in 1552<sup>nd</sup> meeting, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/286\(1970\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/286(1970)) accessed 23 April 2018

<sup>82</sup> Resolution 635, 14 June 1989, Marking of explosives, adopted in 2869<sup>th</sup> meeting, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/557/72/IMG/NR055772.pdf?OpenElement> > accessed 23 April 2018

<sup>83</sup> Resolution 638, 31 July 1989, Hostage-Taking, adopted in 2872<sup>nd</sup> meeting < <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/557/75/IMG/NR055775.pdf?OpenElement> > accessed 23 April 2018.

binding<sup>84</sup>. Security Council resolutions derive their legitimacy from Chapter VII of the Charter and all States must accept and implement it, according to Article 25 of the Charter of the United Nations, in accordance with the provisions of Chapter VII<sup>85</sup>. Hence, the Security Council is the only body authorized to take coercive measures in the event of a threat to peace and security. As it have the right and the mechanism for the application and implementation of international sanctions is military and non-military, and its resolutions are unequivocally binding on all Member States. However, we have recently noticed the marginalization of the role of the Security Council, which has become superficial and does not exceed the function of recommendation and guidance to the major countries, especially after the events of September 11, 2001, where the Security Council became under the absolute control of the "CIA" through its decisions in favor of " Such as Resolution 1441, in which the Security Council violated the provisions of the Charter of the United Nations and guaranteed the United States of America war on Iraq by setting the legal cover for military action<sup>86</sup>. However, the Security Council's decision remains binding on all States, especially in accordance with Chapter VII, which is binding and does not accept any discussion.

### **3.1.1.1.1 Counter-Terrorism Committee (CTC) , which established by the Security Council**

Following the attacks of 11 September 2001, the Security Council adopted resolution 1373<sup>87</sup>, by which the Counter-Terrorism Committee was established in accordance with Article 28 of the Security Council<sup>88</sup>, consisting of all 15 members of the Security

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<sup>84</sup> Article 13, of UN charter, states; "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

<sup>85</sup> Article 25, of UN Charter, states; "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

<sup>86</sup> S/RES/1441 (2002), Security Council, 8 Nov., 2002, Adopted by the Security Council at its 4644th meeting, on 8 November 2002 < <http://www.un.org/Depts/unmovic/documents/1441.pdf>> accessed 25 April 2018.

<sup>87</sup> S/RES/1373 (2001), Security Council, 28 September 2001, Adopted by the Security Council at its 4385th meeting, < [https://www.unodc.org/pdf/crime/terrorism/res\\_1373\\_english.pdf](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf)> 26 April 2018

<sup>88</sup> Article 28, of UN Charter, states that; "1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization. 2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative. 3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work."

Council, whose primary task was to monitor and implement Security Council resolution 1373, and it has its responsibilities, and makes recommendations.

#### 1. The Jurisdiction of the Counter-Terrorism Committee (CTC)<sup>89</sup>:

The International Counter-Terrorism Committee (CTC) has the mandate to monitor States' prohibition of the financing and criminalization of terrorism and to refrain from providing support to terrorist groups, either explicitly or implicitly. Work and without delay, on freezing of terrorist funds, as well as the failure to provide terrorist groups with weapons or shelter, or to bring to justice any person related to terrorism or who has participated in the financing of terrorism or in the management, perpetration or support of terrorist operations<sup>90</sup>. It also attempts to prevent the movement of terrorists, and prevent to provide them by documentation. States with expertise and capabilities should provide the requesting State with information to the maximum extent possible. Support them with assistance in criminal investigations and criminal financing procedures, and prevent the movement of terrorists and terrorist groups through effective border controls and control of issuance of identity papers and travel documents<sup>91</sup>.

#### 2. Recommendations of the Counter-Terrorism Committee (CTC):

The CTC has developed a set of recommendations:

- a. The first recommendation criminalizes terrorist acts and demands that all terrorists be deprived of all forms to support cooperation in investigations and exchange of information on planned terrorist acts.
- b. The second recommendation criminalizes the financing of terrorism, terrorist acts, terrorist organizations and money laundering.
- c. Recommendation three is; all countries must implement the freezing of funds and assets of terrorists and those who are prone to terrorism according to United Nations reports.
- d. The fourth recommendation stipulates that financial institutions are obliged to inform the competent authorities immediately if there is reasonable reason to

<sup>89</sup> The United Nations Counter-Terrorism Complex Bureaucracy, Political Influence and Civil Liberties, UN, (2017), < [https://www.fidh.org/IMG/pdf/9.25\\_fidh\\_final\\_compressed-2.pdf](https://www.fidh.org/IMG/pdf/9.25_fidh_final_compressed-2.pdf)> accessed 27 April 2018.

<sup>90</sup> Larissa J. Herik, Larissa van den Herik Nico Schrijver, Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges, Cambridge University Press, (2013)

<sup>91</sup> Hamel Salihah, The Evolution of the Concept of Legal Defense in Light of the Current Change from Forensic Defense to Forensic Defense, Memorandum of Master's Degree in Law, Tizi Ouzou University, 2011



suspect that they are connected to terrorist acts or terrorist organizations or that they are intended for use in terrorist acts.

e. The fifth recommendation stated that all States must commit themselves to providing assistance to other States and to legal mechanisms in the implementation of criminal and civil laws and administrative investigations.

f. Sixth recommendation, in which States demanded that security measures be taken and that the work of legal persons transferring money was authorized.

g. Seventh recommendation requiring financial institutions to follow the procedures for examining suspicious activities and remittances that do not contain sufficient information on the issuer.

h. Eighth Recommendation, in which States were requested to improve the efficiency of their laws and regulations with regard to non-profit organizations in order to determine whether they would be used for terrorist purposes<sup>92</sup>.

### **3.2 International Criminal Court (ICC) and the Crime of Terrorism**

After 50 years of international efforts, the ICC Statute was adopted at the International Diplomatic Conference held in Rome on 17/07/1998. The establishment of the International Criminal Court as one of the most important international judicial bodies will ensure that humanity benefits from it for the protection of rights and common heritage, and for the sake of peace and international security. The preamble to the statute of 1998 states that the United Nations intended to achieve the goals for present and future generations to establish a permanent and independent international criminal tribunal in relation to the United Nations and all the most serious crimes of the international community are within its jurisdiction<sup>93</sup>.

#### **3.2.1 The Jurisdiction of the International Criminal Court**

The ICC has complementary and substantive jurisdiction. Complementary jurisdiction means the relationship between national jurisdiction and the jurisdiction of the International Criminal Court. This relationship is complementary and precautionary to the jurisdiction of the Court, because the priority is the jurisdiction of

<sup>92</sup> Ahmed Mahmoud Khalil, (الإرهاب وغسيل الأموال) الجريمة المنظمة [Organized Crime (Terrorism and Money Laundering)] (trns.), Alexandria, Modern University Office for Publishing, (2009).

<sup>93</sup> Rome Statute of the International Criminal Court, <<https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>>accessed 27 April 2018

the national judiciary. This is what was adopted in the preamble to the Statute by the words; "...*the duty of each State to exercise its criminal jurisdiction*"<sup>94</sup>. The purpose of this principle is to reaffirm the principle of the national sovereignty of States and the idea of complementary jurisdiction has been affirmed in the body of the Statute, which states in its content that the jurisdiction of the Court is to view the case even though if it is considered by national courts according to certain specific cases, as mentioned in Article 17 of the Statute<sup>95</sup>. The substantive jurisdiction of the criminal court is based on the type of crime. Article 5 of the Statute of the International Criminal Court defines its jurisdiction as genocide, crimes against humanity, war crimes and the crime of aggression. The International Criminal Court stated that it was competent to consider crimes more serious, but in did not address all crimes, and did not mention the crimes of international terrorism<sup>96</sup>.

### **3.2.2 The role of International Criminal Court (ICC) in combating Terrorism**

The International Criminal Court has jurisdiction over the most serious crimes of genocide, crimes against humanity, war crimes and crimes of aggression, as mentioned earlier. Several proposals have been made to include the crime of terrorism within the jurisdiction of the International Criminal Court (ICC), but these

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<sup>94</sup> Ibid. p. 1

<sup>95</sup> Article 17, of Rome statute, mentioned that; "1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3; (d) The case is not of sufficient gravity to justify further action by the Court. 2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable: (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5; (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice. 3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings."

<sup>96</sup> Article 5, of Rome statute, mentioned that; "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression."

proposals have not been approved by all States<sup>97</sup>, some of which have argued that national courts are better able to combat the crime of terrorism<sup>98</sup>. However, the permanent international criminal court could pursue the perpetrator of the crime of terrorism if it was linked to a war crime, genocide or a crime against humanity.

The accused follows the crime of genocide if it is linked to a terrorist crime. Where, if the accused instigates terror among the rest of the group and compels them to stop their opposition, this act is a terrorist offense because it deliberately terrorizes the general public and at the same time is a crime of genocide within the jurisdiction of the International Criminal Court. It is considered as a crime against humanity which the ICC has jurisdiction to pursue in accordance with Article 7 of the court system<sup>99</sup>, and at the same time a terrorist act because it relies on spreading terror among the general public to achieve a political objective or ruling the country<sup>100</sup>

However, international terrorism, if not within the jurisdiction of the International Criminal Court, does not mean that it is not an international crime or that international law does not provide judicial mechanisms for the prosecution of perpetrators, but because international law has now allowed prosecution of the crime of terrorism to national courts. However, this does not prevent the international judiciary from prosecuting the crime of terrorism because it represents a global advantage and objective impartiality that contributes to put the matters in the legal status. In addition, in the pursuit of international crimes, the existence of an international judiciary does not eliminate the role of national courts. Several countries have passed laws giving their courts the right to prosecute those accused of international terrorist crimes, perhaps the most famous of which is Belgian law of 1993, which was the basis for the Israeli Prime Minister Ariel Sharon's responsibility for the 1982 'Sabra and Shatela' massacres. Jurisdiction because the accused did not exist on Belgian territory. However, international terrorism, if not within the jurisdiction of the International Criminal Court, does not mean that it is not an

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<sup>97</sup> See Article 5, 6, and 7 of Rome statute of International Criminal Court, < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> >accessed 27 April 2018.

<sup>98</sup> William Driscoll, Joseph P. Zompetti, Suzette Zompetti, *The International Criminal Court: Global Politics and the Quest for Justice*, IDEA (2004).

<sup>99</sup> See Article 7 of Rome statute, PP.3-5, < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> >accessed 27 April 2018.

<sup>100</sup> The Rome Statute of international Criminal Court, mentioned in the preamble, that; " Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,.."

international crime or that international law does not provide judicial mechanisms for the prosecution of perpetrators, but because international law has now allowed prosecution of the crime of terrorism to national courts<sup>101</sup>. However, this does not prevent the international judiciary from prosecuting the crime of terrorism because it represents a global advantage and objective impartiality that contributes to put the matters in the legal status. In addition, in the pursuit of international crimes, the existence of an international judiciary does not eliminate the role of national courts.<sup>102</sup> Several countries have passed laws giving their courts the right to prosecute those accused of international terrorist crimes, perhaps the most famous of which is Belgian law of 1993, which was the basis for the Israeli Prime Minister Ariel Sharon's responsibility for the 1982 'Sabra and Shatela' massacres. But the Brussels Court of Appeal declared that it had no jurisdiction because the accused was not present on Belgian territory<sup>103</sup>.

### **3.2.2.1 The crime of terrorism in the preparations for the Rome Conference**

During the preparations for the Rome Conference, opponents of the inclusion of the crime of terrorism in the Statute of the International Criminal Court focused on two problems:

1. There is no specific definition of this crime that can be adopted.
2. The distinction between the crime of terrorism and the right of persons to self-determination as the main cause of some terrorist acts, which can continue increasingly, but some terrorist acts are extremely dangerous and can be included in the statute of the permanent international criminal court. In assessing the gravity of a terrorist act, it is necessary to take into account the feelings of anger that such behavior can bring about within the international community.

As, the role played by such persons or when their armed groups commit crimes on a large scale must be within the scope of the criminal court. Countries such as,

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<sup>101</sup> Spain's former General Pinochet (former) President of the Chilean Republic has been followed for his orderly conduct in Chile and abroad acts of murder, torture, disappearances, illegal detention and forcible deportation of individuals. These acts were considered by a Spanish court by a decision of 18 November 1998 as genocide and terrorist offenses

<sup>102</sup> Theodor Meron, 'Is international law Moving Towards criminalization' , (1998), Vol. 9, European Journal for International Law, 18-31.

<sup>103</sup> See Article 17, of Rome Statute of International Criminal Court, pp. 13-14, < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> >accessed 27 April 2018.

Algeria, India, Sri Lanka and Turkey have called strongly in the inclusion of the crime of international terrorism in the Statute of the Court as a crime threatening the security of humanitarian and according to Article 5, paragraph (01) on crimes against humanity, and consider "Terrorist Crimes" as shape of crimes against Humanity<sup>104</sup>. Also, Article 02, paragraph 5, of the Preparatory Commission on the Crime of Terrorism in Final Act of The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court<sup>105</sup>, defines it as follows: *"Any act of terrorism in all its forms and manifestations necessitates recourse to blind violence, is a crime directed against persons or property for the purpose or purpose of creating a state of panic, fear and Uncertainty between the general population or the population, which leads to death or leads to serious bodily injury or damage to mental or physical health or causes serious material losses, whatever considerations or objectives, whether of a political, ideological, philosophical or racial nature Ethnic, religious or any other such character This work.*

<sup>106</sup> The relevant working group has submitted<sup>107</sup>, proposed a text containing and combining the definitions contained in United Nations resolutions since 1989 and the 1996 draft law with reference to international conventions describing situations that could include terrorism. The Preparatory Committee had drawn up a draft identifying terrorist crimes falling within the jurisdiction of the Criminal Court As follows:

1. The initiation, organization, supervision, command, operation, financing, encouragement or condoning of acts of violence directed against, or against the nationals or property of, another State, or the nature of which is to spread panic, panic or insecurity in the hearts of leaders Or groups of persons, peoples or populations for reasons or purposes of a political, philosophical, ideological, racial, ethnic, religious or other nature that are invoked to justify such action.
2. Any violations of the provisions of the conventions relating to unlawful acts against the safety of civil aviation, illegal seizure of aircraft, persons protected by international law, the Convention against the Taking of Hostages and the Convention against the Safety of Maritime Navigation;

<sup>104</sup> See Article 5, Para (01), of Rome Statute of International Criminal Court, p. 3

<sup>105</sup> See (U.N. Doc. A/CONF.183/10), < <http://legal.un.org/icc/statute/finalfra.htm>> accessed 27 April 2018

<sup>106</sup> The Preparatory Commission on the Crime of Terrorism was established by resolution 46/50. United Nations on December 11,

<sup>107</sup> (A/Conf.183/c.1/L.27),<

[http://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings\\_v1\\_e.pdf](http://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings_v1_e.pdf)> accessed 28 April 2018.

3. The use of firearms, explosives or dangerous materials for indiscriminate acts of violence leading to death, serious injury to persons or damage to property. However, during the Rome Conference, the main evidence opposing the idea of including international terrorism as a crime within the jurisdiction of the International Criminal Court became clear because:

- There is no unified definition of international terrorism.
- Agreement on this subject takes time.
- Some believe that the crimes of terrorism are ordinary crimes tried by national courts<sup>108</sup>.

### **3.2.3 The right of the International Criminal Court to prosecute on the crime of terrorism**

The International Criminal Court has the right to prosecute persons accused of terrorist offenses without the legal adaptation of this crime through crimes against humanity in accordance with Article 7 of the Rome Statute<sup>109</sup>. The crime of terrorism is certainly based on systematic aggression. The commission of such a crime requires that an organization actively participate in or encourage such an attack against the civilian population. The legal adaptation of the crime against humanity is of great importance for prosecuting those accused of committing terrorist acts, particularly if committed against civilians<sup>110</sup>.

The return to the ICC system is complementary to the national judicial authority, in the sense that prosecution of terrorist offenses is within the jurisdiction of the national judiciary and is the right of the State, as mentioned in Article 1 from Rome statute<sup>111</sup>. In the sense that the case under consideration or prosecution falls within the jurisdiction of a State, it shall derogate from the jurisdiction of the International

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<sup>108</sup> In 1999 and 2000, the Preparatory Commission formed two main working groups, with the first group preparing the Rules of Procedure and Evidence for the Court, while the second group dealt with the elements of the crime. See

<sup>109</sup> See Article 7, of Rome Statute of International Criminal Court, pp. 3-5, < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> > accessed 27 April 2018.

<sup>110</sup> Antonio Cassese, Paola Gaeta, and John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, (VOL .I), oxford university Press (2002).P.518.

<sup>111</sup> Article 1 from Rome statute of ICC, mentions that; "An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute."

Criminal Court if that State does not show its willingness to have a role or that State is unable. Where, the jurisdiction of the Court shall be limited to the offenses provided for in Articles 5 and 8 of the Rome Statute<sup>112</sup>.

### **3.2.3.1 Role of the International Criminal Court in the elimination of international terrorism**

The current system of the International Criminal Court allows it to cooperate with States parties in the trial of those accused of a terrorist offense so that Article 93 of the Rome Statute provides that the Court is entitled to cooperate with States parties, and this article in paragraph 10 states that: "10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this

Statute. "<sup>113</sup> It is clear to us from this text that the Court has no obligation to provide assistance. According to the text "the Court may cooperate" and has the power to take such a decision. States may apply to the Court for assistance, as a "crime within the jurisdiction of the Court" and "a serious offense from the point of view of the

<sup>112</sup> See Article 5 & 8 , of Rome Statute of International Criminal Court, p3& p. 9 , < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> >accessed 27 April 2018.

<sup>113</sup> Article 93, Para (10) from, Rome Statute of International Criminal Court, p3& p. 61 , < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> >accessed 27 April 2018.

domestic law of the State". Therefore the Court may provide such assistance if it deems it necessary in the interests of justice. In this case, the State does not deal with a foreign court or a foreign jurisdiction, but deals with an international judicial body. The International Criminal Court is an extension of the jurisdiction of the national judiciary and can prosecute cases of international terrorism.



## CHAPTER FOUR

### TERRORISM IDENTIFICATION: JURISTS' LEGAL ATTEMPTS AND NATIONAL LEGISLATIONS

Despite the importance of defining terrorism as the basis for defining the phenomenon which has caused a serious threat to international peace and security. However, despite numerous attempts, the international community has not reached an agreement on the concept of terrorism. Perhaps the most important reasons are:

1. Trying to stick to the generality of goals. Some try to distance themselves from the essence of the problem and flatten it to suit its interests, making all acts of violence illegal. As a result, we have to have a general concept of terrorism that includes justified and unjustifiable violence. For this reason, the political will has changed so that there can be no definition between terrorism and resistance, and hence the chaos of terminology will stay. Thus, calls the killer as a man of peace, and who defends his land is presenting as a terrorist. The combination of the boundaries between terrorism and resistance and the difficulty of separating between legitimate and illegal acts and the resulting non-discrimination between the terms are the interests of the stronger party by putting terrorism and resistance in one basket.

2. The difference in the definition of terrorism is closely related to the different ideologies between East and West. While Lenin distinguished terrorism from shame and terrorism as a boon, and called those who carried out recent acts as heroes of terrorism, the Soviet Union then adapted terrorism according to reconciliation and served the spread of its influence and ideas. It is therefore not very different from the United States of America in its adaptation of terrorism. The latter, through her delegation to the United Nations at the 28 th session of 1973, attempted to define the phenomenon of terrorism as an isolated act of political isolation and that every act it does *“every person who kills another in circumstances that violate the law or causes serious physical harm to him or abducts him or tries to Or engage in a person who*

*has or attempted to do such an act*<sup>114</sup>. It is clear from the definition not to deal with the political nature of terrorism so as to restrict acts to the extent that the criminal law applies only to others. In addition, it excludes state terrorism and the actions of governments in this regard are legitimate for the adoption of the state's law<sup>115</sup>. The definition shows the extent of disregard for the rights of the peoples struggling for their independence, which is confirmed by the mixing of works so as not to benefit the resistance from the political rights provided by international laws.

3. Stay away from international law and international agreements that can serve as a basis for definition if political wills agree on this, especially in the distinction between terrorism and resistance. However, jurists have made good efforts in their definition of terrorism. Some national and regional legislation have also tried to reach the same goal. Therefore, we will first talk about the efforts of jurists and, secondly, some national legislations.

#### 4.1 The Jurists' Efforts

The idea of social crimes first emerged in 1892 through the recommendations of the Institute of International Law in Geneva, where the commission of these crimes was considered to be the "*overthrow of the foundations of society as organized in its present form*"<sup>116</sup>. The first foremost initiatives to define the phenomenon of terrorism came in 1930 during The Unification Conference of Criminal Law. This initiative focused on a legal definition of the concept of terrorism, and two trends emerged. The first is that terrorism is a collective danger, which led the participants in the 1930 conference to consider the terrorist crime "*deliberate use of any means capable of creating a collective danger*"<sup>117</sup>. The second trend considered terrorism a social crime that undermines the foundations of societies based on the idea of social crime according to the recommendations of the Institute of International Law. Thus, both directions excluded the political objective of terrorism. This was confirmed by the

<sup>114</sup> (A/9028), General Assembly, Session Supplement No. 28, 1973, REPORT OF THE AD HOC COMMITTEE ON INTERNATIONAL TERRORISM, < <http://legal.un.org/avl/pdf/ha/dot/A9028.pdf> > accessed 29 April 2018

<sup>115</sup> Dr. Abdul Hussain Shaaban, *الاسلام والارهاب الدولي* [Islam and International Terrorism] (trn.), London, (1<sup>st</sup> Ed.), Dar al-Hikma, (2002).

<sup>116</sup> Edward McWhinney, *Aerial Piracy and International Terrorism: The Illegal Diversion of Aircraft and International Law*, Martinus Nijhoff Publishers, (1987).

<sup>117</sup> Dominik J. Schaller, Jürgen Zimmerer, *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence*, Routledge, (2013).

Sixth International Conference on the Unification of Criminal Law, which was held in Copenhagen in 1935, which stated in its decisions that "*crimes that result in a general danger or a state of terror are not considered crimes Political*"<sup>118</sup>. Which led to the division of jurists into two groups in the definition of terrorism: The first is that there are many problems that prevent the definition and argument of the absence of a specific legal content of the term terrorism because the meaning of evolution and change continuously since the Great French Revolution, they consider a term that is ambiguous. This is supported by Judge Baxter's statement, "*We have cause to regret that a legal concept of terrorism was ever inflicted upon us. The term is imprecise; it is ambiguous; and, above all, it serves no operative legal purpose*"<sup>119</sup>. In addition, there is another reason, which is a political reason that led some researchers to say that there is no agreement on the definition of terrorism. As, there is also no reason to undertake a first-class research manual for terrorism in the foreseeable future. These and other reasons have led some to say that the description of terrorism is easier to define, and that some resort to identifying the general characteristics of the terrorist act, avoiding definition. Because, according to some, this definition does not make progress in studying the problem. Thus making the definition of the term problematic. The jurist (Rimon Aron) merely mentioned the characteristics of terror without defining it<sup>120</sup>. The second group supported the first group in the absence of a legal content of terrorism and in the absence of a legal or political definition which is a confirmation of the reality. However, this should not be an obstacle to achieving its definition, but should be a reason for exerting more effort in order to reach an agreed definition globally. This is what (Palmer) and (Basioni) and (Shukri) supported. Where, Dr. Shukri said, that the term terrorism does not have a valid or precise legal content, is a confirmation of reality. But this reality should be conducive to the scientific institutions to undertake a more thorough and thorough research in order to reach an understanding of this phenomenon and to a universally accepted definition of it. Bassiouni went further, when said; "*The reference to terrorism without a clear understanding of the meaning and scope of the*

<sup>118</sup> Myra Williamson, *Terrorism, War and International Law: The Legality of the Use of Force against Afghanistan in 2001*, Routledge, (2013).

<sup>119</sup> Almiro Clere, *An Examination of the Special Tribunal for Lebanon's Explosive Declaration of 'Terrorism' at Customary International Law*, University of Otago, (2012).

<sup>120</sup> Dr. Mohammed Azziz Shukri, *الأرهاب الدولي [International Terrorism]* (trn.), (1<sup>st</sup> Eds), Beirut, (1992).

*term is misleading*,”<sup>121</sup>. Below is a list of definitions of terrorism by some of the most distinguished scholars: Antonio Sottile defines terrorism as, “*a criminal act accompanied by terror, violence, or terror with the intention of achieving a certain purpose*”<sup>122</sup>.

What is noticeable in this definition is the confusion between violence, which means hardship and cruelty, and the fear of fear. In addition to that the definition of the target launched the target did not determine the nature of political. The criminal law professor at the University of Madrid, Dr. Quintilliano Saldana, defined the terrorism as “*every crime, crime, political or social act that results in the commission of a public panic, which in turn creates a general danger*”<sup>123</sup>. Saldana is a generalist in his definition and without distinction between political crime and social crime.

Roland Gaucher defined (terrorism) as a “resort to forms of combat, which are of little importance to the forms used in conventional conflicts, namely, the killing of politicians or the assault on property, but terrorism goes further, as it constitutes a clearly declared conflict pattern drawn by a certain apparatus and carried out by a secret army”<sup>124</sup>. It is noted that this definition includes terrorism of the weak and excludes state terrorism practiced by its official institutions. Hardman, who has the first academic definition of terrorism, sees terrorism as an approach or theory that is aimed at, through an organized group or party, to achieve declared goals of violence<sup>125</sup> Brian Michael Jenkins defines terrorism as “*can be based on a set of specific acts intended primarily for terror and fear*”. He then describes the terrorist groups as “*any group that carries out one of these acts, it bears the description of the terrorist that is attached to it, whether it is intended to establish the state of terrorism or not, and thus interfere with all acts of guerrilla warfare within the scope of terrorism*”<sup>126</sup>. And terrorism according to the definition of Dr. Abdel Aziz Sarhan is any attack on the lives and public property or the violation of the provisions of international law and its various sources and it can therefore be considered on the basis that it is an international crime based on the violation of international law, and

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<sup>121</sup> Ibid.

<sup>122</sup> Andrea Bianchi, Yasmin Naqvi, *Enforcing International Law Norms against Terrorism*, Hart Publishing, 2004, P.242.

<sup>123</sup> Caleb M. Pilgrim, ‘Terrorism in National and International Law’, (1990), Vol. 8: No. 2, Article 2. Penn State International Law Review, P. 157, < <http://elibrary.law.psu.edu/psilr/vol8/iss2/2> > accessed 30 April 2018.

<sup>124</sup> Roland Gaucher, *The Terrorists, from Tsarist Russia to the O.A.S.*, Secker & Warburg, (1968)

<sup>125</sup> Rene A. Larche, *Global Terrorism Issues and Developments*, Nova Publishers, (2008), p.23

<sup>126</sup> Brian Michael Jenkins, *The Study of Terrorism: Definitional Problems*, Rand Corporation, (1980).

the act is international terrorism and therefore an international crime whether carried out by an individual or Group or state, as well as, it include racial segregation carried out by some states<sup>127</sup>. Dr. Mohamed Aziz Shukri proposes the definition and judicial mechanism of terrorism as such next one:

(a) International terrorism is primarily a violent act behind a political motive, whatever its means, a scheme that creates a state of terror and panic in a particular sector of people to achieve a goal by force or to propagate a demand for employment, whether the actor is acting for himself or for a representative group Semi-state or on behalf of a State that is directly or indirectly involved in the act committed, provided that it goes beyond the work described in peacetime or in times of armed conflict. It is then proposed to identify and initiate the commission of penalties for the perpetrator and to commit and participate in the commission of the offense. The second paragraph states that;

(b) Pushing of a state of war or of superior orders shall not alter the criminal nature of the perpetrator, street, conspirator, instigator or co-conspirator involved in a crime of international terrorism.

(c) Nothing in the preceding paragraphs shall be construed as affecting the civil liability of the perpetrator or the legal personality on whose behalf the offense was committed against the victim or the victims, whether natural or juridical persons.

(d) The International Criminal Court shall be competent to hear all cases relating to the punishment of the crime of international terrorism, including civil and criminal liability arising therefrom. Until such time as the Court is constituted and begins its work and exercise its powers, a criminal chamber shall be established in the International Court of Justice which shall have the jurisdiction of the International Criminal Court referred to<sup>128</sup>.

According to Walter Laqueur, "*Terrorism is the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets... [I]t aims to induce a state of fear in the victim that is ruthless and does not conform to humanitarian rules... [P]ublicity is an essential factor in the terrorist strategy.*"<sup>129</sup>

Bruce Hoffman, mentioned that "*Terrorism is ineluctably political in aims and motives, violent—or, equally important, threatens violence, designed to have far-*

<sup>127</sup> Abdel-Aziz Sarhan, حول تعريف الارهاب وتحديد مضمونه [on the definition and definition of terrorism'] (trn.), (1973), Vol. 29, The Egyptian Journal of International Law.

<sup>128</sup> Dr. Mohammed Azziz Shukri, الارهاب الدولي [International Terrorism] (trn.), (1<sup>st</sup> Eds), Beirut, (1992).

<sup>129</sup> Laqueur, Walter, The Age of Terrorism, (2nd Ed.). Boston: Little & Brown, (1987). p. 143.

*reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia), and perpetrated by a sub national group or non-state entity.”*<sup>130</sup> Whereas, David Rapoport addressed that terrorism is *“the use of violence to provoke consciousness, to evoke certain feelings of sympathy and revulsion.”*<sup>131</sup> Yonah Alexander mentioned that terrorism is *“the use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.”*<sup>132</sup> The Terrorism was defined by Professor “Cherif Bassiouni”, and this definition was taken by the Regional Expert Committee in Vienna (14-18 March) in 1988 as “an internationally prohibited strategy of violence motivated by ideological motives and aimed at creating horrific violence within a particular segment of a particular society to achieve access to power or to propagate a demand or organization Regardless of whether the perpetrators of the violence are acting for themselves and on their behalf or on behalf of a State. Bassiouni's definition is clearly based on:

- Motivation to work (exclusively political).
- The scope of work (international scale only).
- The perpetrator of the act (terrorism of the individual and the state)<sup>133</sup>

From what is mentioned in the definitions and what is not mentioned, we conclude:

1. The definitions are divided into two directions, each of which adopts a specific approach:

(a) The exclusive trend that restricts the concept of terrorism which excluded many acts that cannot be excluded from the concept of terrorism.

(b) The holistic approach, which was expanded in the concept and enter into works that are not originally within the concept of this phenomenon.

2. The definitions differed from the standard it adopted to distinguish terrorist operations. Some have relied on the nature of the means used to produce violence that arouses fear or a general threat to public security. While others depend on the

<sup>130</sup> Hoffman, Bruce (2006). Inside Terrorism (2nd Ed.). New York: Columbia University Press, p. 43.

<sup>131</sup> Rapoport, David C. (1977, November 26), 9, ‘The Government Is Up in the Air over Combating Terrorism’, National Journal, 1853–1856.

<sup>132</sup> Alexander, Yonah, International Terrorism: National, Regional and Global Perspectives. New York: Praeger, (1976) p. xiv.

<sup>133</sup> Muhammad Aziz Shukri, *دراسة قانونية ناقدة: الارهاب الدولي* [International Terrorism: A Critical Legal Study] (trn.), Dar Al-Ilm for Millions, (1999).

impact of the act and the resulting material impact of destruction and the impact of the moral is fear and dread.

3) Accreditation of scholars and researchers in their definitions of terrorism on one of the following points:

A - Material Theory: The conduct or actions constituting the crime is based on the definition, and therefore whoever carries out these acts is considered a terrorist. Based on this, Brian Michael Jenkins defined terrorism as a work or a set of specific actions aimed at achieve a specific goal; (Murder, assassination, destruction, destruction of public documents, dissemination of rumors and seizure of property, all of which are shared by one result, including spreading terror). In its definition of terrorism, this method relies on the enumeration of crimes considered terrorist without looking into the purpose or purpose of the act. In this sense, terrorism can be defined as whether the acts in which it is included are enumerated and defined in an objective manner without discrimination as to the actor, such as individuals, members of political groups and agents of a State<sup>134</sup>. What distinguishes this theory is the elimination of the mazes of definition and its legal problems and the different interpretations of texts. What is ignored is the most important element of the terrorist crime, the political goal. And the unpredictability and limitation of all acts that are considered terrorist acts, especially as terrorism is a phenomenon that is constantly developing and steadily benefiting from the scientific progress and the accompanying development in the means used by inevitably the different actions carried out by these means. In addition, the definition of specific crimes as terrorist may result in many crimes from the circle of terrorism, not because they are non-terrorist acts, but because they are not mentioned in these crimes. This leads to the impunity of many of the perpetrators or at least the failure of the penalties prescribed for terrorist acts.

In addition, the mention of acts of terrorism and the avoidance of definition result in the omission of the purpose of these acts. Here, confusion begins between terrorist acts and other acts, as stated in the definition of Bryan, which states (and thus intervenes all acts of guerrilla warfare within the scope of terrorism) Not from him.

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<sup>134</sup> Leonard Weinberg , Ami Pedahzur, and Sivan Hirsch-Hoefler, 'The Challenges of Conceptualizing Terrorism', (2004), Vol.16, No.4, Terrorism and Political Violence, 777-794, DOI: 10.1080/095465590899768

B. Objective Theory; The authors of this theory believe that each definition must be distinguished by objective consideration and focus on the goal and objective pursued by the terrorist. However, supporters of this theory differ in the nature of the goals. The goals may be political, religious or ideological. However, the majority said that the moral element of this crime is reflected in the political objective<sup>135</sup>. However, taking this theory may lead to some kind of congruence between the political crime and the terrorist acts and the resulting reduction in the punishment of criminals and prevent their extradition. However, the objectivity of the definition requires the exclusion of political considerations, and this leads to a single definition, regardless of the different forms of terrorism, whatever its political motives<sup>136</sup>. In addition to that, the adoption of certain criteria as a basis for definition, such as the foundations of terror, civilian victims and the means of violence used to achieve illegal targets. Thus, it is possible to discard differences in a certain incident or facts, avoid confusion between terrorism and others, and not be a single act of terrorism in the eyes of some in what others see as a struggle<sup>137</sup>.

#### 4. Terrorism has certain characteristics:

A. It is a work that feeds a certain ideology and has ideological motives, adopted by movements and organizations within a country or in the international arena. These movements resort to the clandestine work of the people's disconnection from them and their unwillingness to adopt their ideas. As happened with the separatist Basque movement (ETA), which resorted to clandestine action after a large number of Basque people were satisfied with the autonomy offered them and insisted on secession and then carried out the assassinations. This is also true of the Arab Afghans returning from Afghanistan. After some peoples supported them during the Russian occupation of Afghanistan, we see the same peoples reject their thesis, which led them to move to clandestine work.

(B) Terrorism is a means used by States, organizations and movements to achieve ends that they have failed to achieve by peaceful means. In the eyes of its author, a means of obtaining a right, in what the victim sees as terrorism.

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<sup>135</sup> Talal Asad Thinking about terrorism and just war, (2010), Vol. 23, Issue,1, Cambridge Review of International Affairs, 3-24, DOI: 10.1080/09557570902956580

<sup>136</sup> Iryna Marchuk, The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis, Springer Science & Business Media, (2013)

<sup>137</sup> K. K. Kuriakose, Religion, Terrorism and Globalization: Nonviolence : a New Agenda, Nova Science Publishers, (2006).



C- Confidentiality in the planning and execution of terrorist acts. Where terrorism has benefited from the progress of administrative sciences in the planning and accuracy of implementation and in the organizational structure of its cells, so that the terrorists have more freedom of movement than the state in its wars. Where the latter adheres to international laws. It therefore differs from the war from two angles: The first is that the war confronts two states and the armies use it to run it, while terrorism is a secret and convincing conflict used to carry out by small groups that expect large losses in the target party while their losses are few. The second difference is that war is a work organized by laws, whereas terrorism derives its power and freedom in the movement from being not subject to laws but outside the law.

(D) Civilians and public and private property shall be a primary objective for the achievement of the ultimate objective and produce two material traces, such as murder, destruction, and another is moral, which is the terror and fear that is spreading among civilians.

5. Terrorism is not confined to the actions of groups and organizations, but also includes the illegal acts of the state. It is divided into two parts: the first is state terrorism and the second is the terror of groups or individuals.

## **4.2 National legislations**

The Penal Code is the first line of defense and guard for the protection of the homeland and the citizens of those who defy security. It is a tool to deal with crime in general, including terrorism. However, the national legislation differed in how to deal with the crime of terrorism, divided into three axes; the first axis: The Penal Code and the application of its provisions to terrorist crimes, whether those affecting the security of the state or against people and property, as in the case of Kuwaiti law. The Second, the legislator in these countries has issued a legislative amendment to confront the crime of terrorism and to include it in the criminal law, using the emergency law as the Egyptian legislator did in defining terrorism and increasing the punishment for terrorist acts under Law No. 97 of 1992, come to force from the beginning of the 1980s until the present and after the approval of the People's Assembly to extend it. The Third: The legislators in these countries adopted laws on terrorism without prejudice to the provisions of the Penal Code in force, as happened in Iraq where the issue was addressed in two stages:

### 1. The first stage before the occupation:

In which the legislator did not adopt a definition of terrorism in Penal Code No. 111 of 1969, but the term "terrorist crimes" was included in Article 21 in his enumeration of terrorist crimes which were not considered political crimes, even if they were committed by political means<sup>138</sup>. The perpetrator does not enjoy the political advantages enjoyed by the perpetrator of the political offense, including the replacement of the death penalty with life imprisonment and the perpetrator of civil and political rights<sup>139</sup>. In addition, the Iraqi legislator set forth some acts that he considered to be terrorist and the penalty prescribed for them as stipulated in Article 194; (Shall be punished with execution, any person who organized, presided or took command of an armed gang attacking a population or aimed at preventing the implementation of laws, raping land, looting state-owned property or a group of people by force or resisting the arms of the public authority. Any Co-operated or carried out the orders by a leadership shall be punished with life or temporary imprisonment). Article 195 states: (Any person who aims to provoke civil war or sectarian fighting by arming citizens or carrying them to arm one another against one another or by urging the fighting shall be punished with life imprisonment. The penalty shall be death if the target of the perpetrator is committed). Whereas, Article (200) of it stated: (Be punished by 7 years imprisonment as maximum, any person who promotes any of the doctrines aimed at altering the basic principles of the constitution or the social basic systems or for establishing a social class over other social systems of the social body when the use of force, terrorism or any illegal mean is remarked in that)<sup>140</sup>.

It seems that the Iraqi legislator adopted the materialistic theory in dealing with terrorism by mentioning terrorist acts and committing the sanctions imposed on those who commit them in order to avoid falling into the pitfalls of definition, which is not his duty, but rather his duty to criminalize terrorist acts. Or to keep the Penal Code as the ultimate authority of the government to undermine its opponents, especially as it considered terrorist crimes to be ordinary crimes, even if the motive to commit them is political and the mixing between them.

<sup>138</sup> See Iraqi Penal Code No. 111 of 1969, < <https://www.rwi.uzh.ch/dam/jcr:00000000-0c03-6a0c-ffff-ffff96be3560/penalcode1969.pdf>> accessed 01 May 2018.

<sup>139</sup> Hassan El-Helou, Terrorism in International Law Comparative Legal Study, MA thesis, Open Arab Academy in Denmark (2017).

<sup>140</sup> Iraqi Penal Code No. 111 of 1969, (n 138)

## 2. The second stage after the occupation:

Which opened the doors of Iraq to attract terrorists to become a battlefield of Iraq between terrorists and US forces, and the arena of conflict between the wills and international interests. In the name of resistance to the occupier, civilians were targeted. Under the guise of religion, fatwas were issued by some scholars who are ignorant of religion and circles in the orbit of the political system of their countries or who serve them in the service of royal palaces, which allowed the killing of Iraqis. In order to preserve the thrones so that their role does not come after Iraq, some countries have recruited terrorists and sent them to Iraq to kill the Iraqis, not to fight the Americans, and this resulted in insecurity.

These and other reasons called for the administration of the occupation to issue orders that amended some provisions of the Penal Code without referring to the cancellation. And to deal with the kidnapping crimes that prevailed in this period issued Order No. 30 of 2003<sup>141</sup>, which imposed the perpetrators of the crimes of kidnapping a life sentence and the abolition of the death penalty. With no any mitigating in any circumstance for the hijacker. Note that the Penal Code No. 111 of 1969 considered the crime of kidnapping crimes that affect human life. Also, to make it as aggravated as if the abduction took place from a person who wore the uniform of a government official or carried an official mark or that the abductee was under 18 years of age. As it has been given varying penalties ranging from execution to kidnapping if the abductee is raped and imprisonment for more than one year if the abduction ends before 48 hours<sup>142</sup>. After the issuance of the Iraqi constitution, which was approved by the National Assembly on Sunday 28/5/2005 and the referendum was held, Article 7 from the constitute states: After the issuance of the Iraqi constitution, which was approved by the National Assembly on Sunday 28/5/2005 and the referendum was held, Article 7 from the constitute states: (1) Any entity or approach that adopts racism, terrorism, infidelity or sectarian cleansing, incites, preaches or glorifies or promote or justify it, especially the '*Saddamist Baath*' in Iraq and its symbols under any name, and not allowed to be within the political pluralism in Iraq, and should regulated by law.

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<sup>141</sup> See CPA order, 30, in 08 Sept. 2003, Reform of Salaries and Employment with Annex A, < <http://dosfan.lib.uic.edu/ERC/cpa/english/>> accessed 01 May 2018.

<sup>142</sup> Iraqi Penal Code No.111 of 1969, (n 138)

Second: The State is committed to fighting terrorism in all its forms and works to protect its territory from being a headquarters, corridor or arena for its activities.)<sup>143</sup>. Article (21) of the Constitution provides that ( Third-the right to political asylum shall not be granted to the accused for the commission of international crimes, terrorism or anyone who has the right to harm in Iraq.)<sup>144</sup> According to the constitution, the National Assembly approved a new anti-terrorism law, which was approved by the Presidential Council in its resolution No. 14 of 7/11/2005 and published in the Official newspaper under the name of the Anti-Terrorism Law No. 13 of 2005. The law defines terrorism in its first article as: (Any criminal act committed by an individual or an organized group targeting an individual, group of individuals, groups or institutions, official or unofficial, has caused damage to public or private property in order to disrupt the security situation, stability and national unity, Panic among people or stir up chaos for terrorist purposes)<sup>145</sup>. Although the legislator cited the definition above but did not address the term terrorism directly, it described the behavior of some individuals and groups and the resulting breach of security and stability to achieve terrorist goals.

However, he mentioned in the Article 2 acts that are considered terrorist where he stated;

(The following acts considers as terrorism: 1. Violence or intimidation aimed at terrorizing people or endangering their lives, freedoms and security and exposing their property and property to damage, whatever their motives and purposes, is carried out in the implementation of an organized individual or collective terrorist project. 2. Acts of violence and intimidation against the destruction or damage of buildings, public property, government interests, institutions, government bodies, government departments, the private sector, public facilities, places of public use, public meetings, Seize or endanger it or prevent its use for the purpose intended to cause insecurity and stability. (3) To organize, command or assume the leadership of a terrorist armed gang that practices and plans terrorism, as well as to contribute and participate in such work; (4) Working with violence and intimidation to provoke sectarian strife or civil war or sectarian strife by arming citizens or to force them to

<sup>143</sup>Iraqi Constitution Project,2005,<

[https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en) > accessed 02 May 2018.

<sup>144</sup>See Article.7 from Iraqi Constitution Project,2005,p.4,<

[https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en) > accessed 02 May 2018.

<sup>145</sup> Law No. 13 of 2005, the Anti-Terrorism Law, << <http://gjpi.org/wp-content/uploads/anti-terrorism-law-iraqi-no-13-2005> > accessed 02 May 2018.

arm each other and harassment or funding ...) <sup>146</sup>. In addition, the legislator mentioned crimes against state security and considered them terrorist crimes if they threaten national unity and harm state security and stability or weaken the ability of the security services to maintain the security of citizens. Article (4) defines the death penalty for the perpetrator of the acts mentioned in Articles 2 and 3 whether he is an original actor, a partner, an accomplice or a planner who is responsible for these acts. The legislator also considered the said crimes to be crimes of honor <sup>147</sup>. What is noted in the anti-terrorism law referred to above is:

1. The legislator, in his definition of terrorism, relied on materialistic theory and merely mentioned some acts that are considered terrorist without addressing the essence of terrorism. Here, the disadvantages of this theory, which we mentioned earlier, are reflected in this definition.
2. There is confusion in the legislation, as the legislator passed some of the provisions of the Penal Code No. 111 of 1969 which is still in effect - as stated in Article 6 of the final provisions of the new law (the provisions of the Penal Code shall apply in all cases unless provided for in this law) To show his position on these provisions and here is repeated in the legislation. His example is the transfer of the provision of Article (195) of the Penal Code related to civil wars and sectarian fighting to Article 4, paragraph 4, of the new law. As well as in relation to the command or leadership of an armed gang of article 194 of the old law.
3. Dr. Tarek Harb said that the new law was behind the Iraqi Penal Code because it was not successful in its definition of terrorism. It requires that the criminal act be organized so that the description of terrorism applies to it and does not show the legal position of the criminal act if it is not organized.

I think that the legislator was successful at this point, since the terrorist act must be organized to qualify as terrorism. The non-regulation does not mean that the act is permissible, but it falls out of the category of terrorism into the criminal field in which it is realized. 1969 on the basis of Article 6 of the new Act <sup>148</sup>.

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<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Hassan El-Helou, (n 139)

4. The legislator stipulated in Law No. 13 of 2005<sup>149</sup> in the acts mentioned therein, in order to achieve the terrorist characterization of terrorist targets. I believe that the legislator was successful in this, in order to separate between terrorist and non-terrorist action, despite the difficulty that accompanied the application of the law. In other words, if the act is not a terrorist act, it is a criminal act, but not a terrorist act. It is clear from the definition that the legislator has stipulated in the terrorist act the following conditions:

(A) That there be an individual or an organized group carrying out criminal acts; in the sense that the act was provided for and criminalized under the Penal Code based on the principle of crime and punishment only by text.

(B) The criminal result of the act is the result of the act. In other words, the legislator is silent about the state of initiation of such acts, as if an organized group was preparing to carry out these acts, the legislator did not specify the position of the law, and this deficiency cannot be ignored.

(C) The act committed, and the results of which have been achieved on the ground, is a terrorist objective. If the actor does not have a terrorist purpose from his actions, the material results of which have been caused by damage to others or morals, such as fear, terror and fear, this act does not apply to terrorism. In addition, the purpose is difficult to prove, especially if the offender is an expert. This is due to the subject court to decide whether the purpose is Terrorist or not.

(D) If terrorist acts are carried out in accordance with an individual or collective organized terrorist project. As stated in the first paragraph of Article 2 thereof<sup>150</sup>.

<sup>149</sup> The Council of Ministers in its session on 07 November 2005 decided to issue the following law: Number (13) for the Year 2005, Anti-Terrorism Law, < <http://gjpi.org/wp-content/uploads/anti-terrorism-law-iraqi-no-13-2005>> accessed 02 May 2018.

<sup>150</sup> Article 2, Para 1 of Law No. 13, for the Year 2005, states that; "1. Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which takes place in the execution of a terrorist act, individually or collectively organized."

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATION

Terrorism is a criminal behavior of force and unlawful violence and its immediate aim is people and property, which constitutes a danger to the security of society, causing fear and panic to the intended objective of forcing the authorities to submit to their demands. Because its ultimate political goal was to draw attention to its demands through its damaging action.

We have presented in this study the concept of terrorism, by presenting shapes, causes, and some jurisprudential views, the findings of some international laws, as well as some domestic laws. The presentation of these destinations led us to say that terrorism is: 'Intended to create a state of terror among the general public for political purposes, and these acts cannot be justified in any way, whatever the philosophical, ideological, ethnic, religious or any other character'. Terrorism must also be distinguished from armed resistance and the struggle of peoples for self-determination based on a legitimate right recognized by international law. Therefore, acts of violence for self-determination and independence are sacred acts to be used against the forces of colonialism. Terrorism differs according to the arena in which it operates. It will be internal if the acts are directed at groups or property within the State of which the individual or terrorist group belongs. This type is not a legal dilemma where it can be dealt with in accordance with national law that penalizes such conduct as long as the elements of the crime are available in the terrorist act. And that some countries took advantage of the term "Terrorism" to eliminate their political opponents. According to Iraqi national law, terrorist acts are not included in the political crimes, so that the perpetrator does not benefit from the rights enjoyed by the politician, but considers them to be ordinary crimes and calls for increased punishment. But the forms are in the second type of terrorism, international terrorism, and the essence of the forms is the failure of the international community to reach an agreed define for an anti-terrorism despite the international agreement on its seriousness. This is what some countries consider it terrorism, in another hand considered by some other countries as legitimate, and truly approved by divine laws and international instruments. This difference was a reason for preventing a unified definition of terrorism. Which led the international community to conclude

agreements dealing with the criminalization of some images of terrorist acts. While others remained outside the agreements. The latter is due to two reasons:

1. The unwillingness of Western countries to define terrorism that excludes armed resistance against occupation. But they have blocked any international attempt to define it. While, some of the occupied countries aim to exclude armed resistance as a legitimate right recognized by international law from the Terrorism. If there is an agreement between the parties on this right, the difference is on the means used to exercise it. While the first group believes that the exercise of the right through peaceful means and not the use of force, and aims to remain free while working outside of their countries and against other peoples according to their interests, so they deserve the means. While the second considered the use of force justified when peaceful means were not possible. If officials do not tackle this politically dangerous phenomenon, it will worsen. To be meaningful and correct, the concept of terrorism should not remain indefinite, but standards must be defined for this concept until a definition can be reached by all States to combat this scourge that is everywhere. To be able to say that we have a crime punishable by international law in accordance with the principle of crime and punishment only by text. It is the countries that have been subjected to foreign occupation that demanded the exclusion of resistance from any definition of terrorism as a right of occupied countries to get freedom. But at the same time does not want to introduce the use of force from the state against its citizens within the definition of terrorism, so as to remain absolute in the suppression of opponents in power.
2. The efforts of the League of Nations and its success in defining a definition of terrorism in 1937 - despite its shortcomings - was a good step in the right way to legitimize terrorist action in order to combat it. But the lack of exploitation by the international community for these efforts and the completion of the shortcomings in the definition to crystallize the phenomenon by international agreement on its definition led to the neglect of the definition and the lack of another definition despite the efforts made by the United Nations in this area and its failure in the success that made by the League of Nations. Therefore, international activity in the fight against terrorism has been wrongly treated as long as each side proceeds from its own understanding of terrorism and



according to its interests. The difference prevented the intended outcome from the fight against terrorism and further complicated the issue. The international mechanisms to combat international terrorism play an important role in combating it. The resolutions of the UN General Assembly have a major role in the conclusion of numerous conventions against terrorism by issuing many resolutions criminalizing terrorist acts in all its forms and calling for the promotion and respect of human rights, although it is merely a non-binding recommendation, opposite to the Security Council, which makes its decisions in a mandatory manner, is mandatory for all States. It is the organ for the maintenance of international peace and security. Since terrorism is the most serious phenomenon that threatens international peace and security. However, the absence of effective international control over Security Council resolutions has made it beyond its competence to interfere with the competence of other organs under the umbrella of the protection of international peace and security. Therefore, the Counter-Terrorism Committee, which belongs to the Security Council and which has played a major role in the fight against these serious crimes through several laws and laws, has been established. It has pursued and prosecuted criminals all over the world. Assistance and advice. The neutralization of the International Criminal Court from the exercise of its jurisdiction over terrorist crimes has had a significant impact on the delay of the process of control and the end of terrorism. However, despite the absence of an explicit provision for the punishment of crimes against terrorism in the jurisdiction of the International Criminal Court to consider terrorist crimes, it does not prevent them from having an effective role in combating terrorist crimes, especially as they fall within their jurisdiction if they are considered crimes against the humanity, genocide, or if it is considered to threaten security and international peace. Despite all this, and through the huge number of agreements that have been put in place to combat international terrorism in all its forms and forms - although considered an important step in the examination of the problem of international terrorism - it remains incomplete reform attempts to find a radical solution to the problem of terrorism and exacerbate it. Moreover, many of the countries that participated in the preparation of the draft conventions have refrained from ratifying them. This is due to the absence of an effective legal

regime for the fight against international terrorism that concludes general and comprehensive agreements to combat terrorism. According to the investigation in the study of the definitions of terrorism for jurists it have been found that they were divided into two directions; the first was the exclusive trend that restricts the concept of terrorism which excluded many acts that cannot be excluded from the concept of terrorism. Another was the holistic approach, which was expanded in the concept and enter into works that are not originally within the concept of this phenomenon. Where, the definitions varied from the standard it adopted to identify terrorist operations. Some have depended on the tools used to produce violence that stimulate fear or threatening the public security. Whilst, others relied on the effect of the act and the resulting material impact of destruction and the impact of the moral is fear and dread.

## **5.1 Recommendations**

The following recommendations are made in this study:

1. An international conference in which the representation on an ideological or geographical basis represents the majority of States whose task is to overcome the problem of definition of terrorism, drawing on the recommendations of the United Nations on new threats and challenges, as a basis for the consensus of the delegations participating in the conference to achieve the desired goal.
2. Urge the speedy ratification of all international conventions against terrorism and take them in a binding and serious manner.
3. The need to include terrorist crimes within the jurisdiction of the International Criminal Court, in addition to the four competencies, to ensure preventing impunity for criminals. The International Criminal Court provides the most fair trial guarantees and respect for the rights of the accused.

If the strategy of counterterrorism is not changed, starting with a specific definition of international terrorism and terrorist crime, leading to the imposition of specific sanctions applicable to anyone who commits acts that fall within the scope of terrorist acts, international efforts and strategy will remain in a vicious circle through which Counter terrorism with terrorism and so forth, thereby violating rights, penetrating international sovereignties and instability in the world.

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Article 1 from Rome statute of ICC, mentions that; “*An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall*

*be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute."*

Article 17, of Rome statute, mentioned that; *"1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3; (d) The case is not of sufficient gravity to justify further action by the Court. 2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable: (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5; (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice. 3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings."*

Article 5, of Rome statute, mentioned that; *"The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression."*

Article 1 of the Arab Convention for the Suppression of Terrorism signed at the headquarters of the League of Arab States considered that: *"Not considers as a crime of Terrorist, the situations of struggle through various means, including armed struggle against foreign occupation and aggression, for liberation and self-determination "*.

Article 421-1, of French Penal Code, Chapter one, p.85, states; *"The following offences constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror: 1° wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of*



transport, defined by Book II of the present Code; 2° theft, extortion, destruction, defacement and damage, and also computer offences, as defined under Book III of the present Code; 3° offences committed by combat organisations and disbanded movements as defined under articles 431-13 to 431-17, and the offences set out under articles 434-6, 441-2 to 441-5; 4° the production or keeping of machines, dangerous or explosive devices, set out under article 3 of the Act of 19 June 1871 which repealed the Decree of 4 September 1870 on the production of military grade weapons; - the production, sale, import or export of explosive substances as defined by article 6 of the Act no. 70-575 of 3 July 1970 amending the regulations governing explosive powders and substances; - the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances, as defined by article 38 of the Ordinance of 18 April 1939 defining the regulations governing military equipment, weapons and ammunition; - the detention, carrying, and transport of weapons and ammunition falling under the first and fourth categories defined by articles 4, 28, 31 and 32 of the aforementioned Ordinance; - the offences defined by articles 1 and 4 of the Act no. 72-467 of 9 June 1972 forbidding the designing, production, keeping, stocking, purchase or sale of biological or toxin-based weapons; - the offences referred to under articles 58 to 63 of the Act no. 98-467 of 17 June 1998 on the application of the Convention of the 13 January 1993 on the prohibition of developing, producing, stocking and use of chemical weapons and on their destruction;...”

Article 1, of European Convention, states that;

“For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: (a ) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; (b ) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; (c ) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; (d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention; (e ) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; (f ) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.”

Article 20, of Rome statute, states; “1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court. 2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court. 3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court: (a) Were for the

*purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.”, < <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>>, p.16 accessed 21 April 2018.*

Article 2, Para 1 of Law No. 13, for the Year 2005, states that; “1. *Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which takes place in the execution of a terrorist act, individually or collectively organized.*”

Article 12 from Charter of United Nations, states that; “1. *While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.* 2. *The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.*”

Article 13, of UN charter, states; “*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*”

Article 25, of UN Charter, states; “*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*”

Article 28, of UN Charter, states that; “1. *The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.* 2. *The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.* 3. *The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.*”

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- (i) *the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,*
- (ii) *the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971,*
- (iii) *the offences referred to in subsection 7(3) that implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973,*
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