

TERRORISM UNDER INTERNATIONAL LAW AND HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Acts of terrorism is a global crime which occurred in many countries randomly and organized by state actor and non state actor. It is condemned as the unlawful use and the manifestation of political movement which is seriously threatening the human civilization & the security of mankind. After the September 11 attack in the World Trade Centre which has killed more than 3000 civilians, more and more acts of terrorism are occurred in many countries and becoming widespread around the world. Efforts to prevent and counter terrorism are currently has been done where each country uses its national law to handle acts of terrorism. This research aims to analyze the legal measures to eradicate acts of terrorism in the perspective of international law and human rights. Many countries must dealt with global terrorism by implementing the international conventions on terrorism and implement UN resolutions on the protection of civil rights of citizens from acts of terrorism

Keywords: Human Rights, Terrorism, Violation, International Law

INTRODUCTION

Terrorism can be understood as acts of violence that target civilians for political and ideological purposes. Terrorism in fact is a complex and multivariate phenomenon. It appears in many different forms in many parts of the world in pursuit of many different objectives. It occurs in democracies, autocracies, and transitional states and in developed, under-developed and developing economies. It is practiced by adherents of many religions and by adherents of none. What all terrorist groups have in common is that they are weaker than their enemies and that they are prepared deliberately to murder non-combatants in furtherance of their objectives. The adoption of terrorism as a tactic to effect political change is, therefore, a deliberate choice.¹

Generally, acts of terrorism was recognized as being a form of a political activity. Terrorist use criminal methods to pursue political objectives, not material gains. There are many debate within governments on whether to treat terrorism as a crime or as a form of a warfare. Terrorism can of course be prosecuted as murder, destruction of property and so on, but the political nature of terrorism suggests that the activity must be given a higher priority than regular street crime or organized crime.² Just as states use war “as a method of carrying on politics by other means”, terrorist use acts of terrorism by using violence to intimidate or instill fear for the purpose of advancing a political objectives.³

Terrorism acts as a crime can be distinguished from another ordinary crime because it was characterized particularly as following; a) it's a discrete crime that were conducted as part of a state policy; b) its directed to some identified group of people; c) it was part of a crime in international criminal law of many countries; d) it was committed by the state agencies for the government's purposes; e) it has connection with a warfare.⁴ Terrorism is often confused or equated with or treated as synonymous with guerilla warfare and insurgency because guerillas and insurgents often employ the same tactics (assassination, kidnapping, hit and run attack, bombings of public gathering places, hostage taking, etc) for the same purposes (to intimidate or coerce. Thereby affecting behavior through the arousal of fear) as terrorist.⁵

Terrorist as well as guerillas and insurgents wear neither uniform nor identifying insignia and thus are often indistinguishable from non-combatants. Guerilla, for example in its most widely accepted usage, is taken to refer to a numerically larger group of armed individuals, who operate as a military unit, attack enemy military forces and seize and hold territory and exercising some form of sovereignty or control over a defined geographical area and its population. Insurgents share these same characteristics, however their strategy and operations transcend hit and run attacks to embrace what in the past has variously been called revolutionary guerilla warfare, modern revolutionary warfare or people's war but is today commonly termed “insurgency”. Insurgencies typically involve coordinated informational (e.g. propaganda) and psychological warfare efforts designed to mobilize popular support in a struggle against an established national government, imperialist power or foreign occupying force.

Terrorism must be recognized as its very core as being a form of political activity where they use many criminal methods to pursue political objectives. This analysis is important because a lot of debates within governments on whether to treat terrorism as a crime or as a form of a warfare. Terrorism can be prosecuted on the basis of its constituent acts such as murder, destruction of property and so on but it has political nature which distinguish it from any ordinary crimes or regular street crime or organized crime. Some experts considered acts of terror as a warfare because of its method of carrying on politics by other means by using violence.

However, there is one major difference between war and terrorism. War is considered legitimate, while terrorism is considered illegitimate. This is why the best analysis concedes that terrorism falls somewhere in the middle of the spectrum

¹ Louise Richardson, 2006, *The Roots of Terrorism: An Overview*, Club de Madrid- The Club de Madrid series on Democracy and Terrorism, Vol. 1, New York: Routledge Taylor & Francis Group, p.3

² Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1, p. 12

³ Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1, p. 12

⁴ King Faisal Sulaiman, *Who is The Real Terrorist*, Elmatara Publishing, Yogyakarta, 2007, p. 26

⁵ Bruce Hoffman, *Inside Terrorism*, New York: Columbia University Press, 2006, p.35

between war and crime.⁶ By distinguishing terrorist from other types of criminals and irregular fighters from other forms of crime and irregular warfare, terrorism consists of essential elements such as; a) inelectably political in aims and motives; b) violent or threatens violence; c) designed to have far reaching psychological repercussions beyond the immediate victim or target; d) conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated, or inspired by the ideological aims for example of some existent terrorist movement and / or its leaders; and e) perpetrated by a subnational group or nonstate entity.⁷

Terrorism has become a crime against humanity because of its wide spread and systematic nature, which carried out in an organized manner, where this act has killed thousands of innocent people. Various terrorism events that occurred in the world became phenomenal, starting from the tragedy of the World Trade Center (WTC) September 11 (2001), the Bali Bombings I and II (2002), the Madrid Bombings, the London Bombings, Mumbai Bombings, and the Oslo Bombings. (2011), the bomb explosion in Boston, USA (2013), the bomb explosion in Nice, France (2017) and the bomb explosion in Boston, USA, increasingly show the identity of terrorism as a latent danger that will appear constantly in the world community. international. Therefore, all the peoples of the world should not stop for the war against terrorist crimes. The international community should be able to find the best solution in solving the crime of terrorism.

The issue of international terrorism has presented a conceptual challenge to legal disciplines, particularly in International Law. Previously, international law only dealt with matters that related to states and cooperation between states. However, as the world becomes increasingly globalized and with more and more incidents of terrorism that occurred in various parts of the world, this indicates that international terrorism is actually an important phenomenon, and really affecting all related aspects.

Terrorism is a crime that will continue to grow. Not only now but also in the future along with the progress of the times and technology on a broad scale and across countries. Terrorism is a world phenomenon in the era of the Third Millennium that will never stop, but on the contrary it is a global issue that needs to be carefully observed and addressed by countries around the world.

The current countermeasures and eradication of terrorism are not merely the obligations of a country, but have become an obligation for the entire international community. Terrorism is our common enemy and has become the enemy of human civilization (*Hostis humanis generis*). The act of terrorism under any pretext is a heinous act and actually undermines the values of human civilization as a dignified being.

TERRORISM IN VARIOUS PERSPECTIVES

Terrorism is actually not a new phenomenon because terrorism has existed since the 19th century in the international political arena. In the beginning, acts of terrorism is a small and local, with selected targets and it is within the framework of low intensity conflict, which is generally closely related to the domestic stability of a country. But nowadays terrorism has broad dimensions related to various aspects of life and transcends national boundaries and it is no longer categorized as low intensity conflict.⁸

Terrorism has become actual especially since the explosion of the World Trade Center (WTC) in New York, on September 11, 2001. This event is known as the "Grey September," which has killed about 3,000 people. The attack was carried out by air, not using fighter aircraft, but using commercial aircraft belonging to the United States (US) company itself, so it was not caught by their radar. Three US commercial planes were hijacked, two of which were crashed into the twin towers of the WTC and the Pentagon.

Towards a year after the incident at the WTC Building, on October 12, 2002, a bomb exploded in Legian, Kuta, Bali, which killed more than 180 people and injured more than 200 people. As a result of these actions thousands of people died, traumatized, and crippled for life in an instant. On November 26, 2009, there was a terrorist occupation of the Taj Hotel Mumbai, India, which was carried out by terrorists who were all from the Pakistani fundamentalist group (militant group), Lashkar el-Taiba (LeT).⁹ This terrorist attack killed nearly 200 people and injured 300 others. The incident occurred because of a dispute between Indian citizens of different religions, where this incident caused tension between the Governments of India and Pakistan.

Norway has experienced two of its worst consecutive terror attacks since the Second World War in a short period of time. Initially, bombs shook in the center of the capital, Oslo and destroyed the building where the Prime Minister of Norway is based. The bomb went off at noon at lunch time which exploded and destroyed 17 storey building with car bomb. As a result of this incident, seven people were killed and many victims were injured due to building debris and broken glass. At the same time, there was a terror attack on an island, 90 km north of Oslo City, precisely on Utoya Island, where a summer camp was taking place where youth from the Norwegian labor party were attended by up to 700 people. The shooting was carried out by Norwegian native Andres Behring Breivik on Utoya Island, and he was also reported to have been in the vicinity of the building that exploded in the city of Oslo two hours earlier. But in the end, he was caught by the local police.

One of the most rigorous attempts to define terrorism, Alex P. Schmid and Albert J. Jongman examine 109 different definitions of terrorism. Thereby they identify 22 elements in these definitions, calculate the frequency of their occurrence, and issue a lengthy consensus definition incorporating most of these elements: *Terrorism is an anxiety-inspired method of repeated violent action, employed by (semi-)clandestine individuals, groups, or state actors, for idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperilled) victims, and the main targets are used to manipulate the main target (audience(s)), turning it into a*

⁶ Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1, p. 12

⁷ Bruce Hoffman, 2006, *Inside Terrorism*, New York: Columbia University Press, p.40

⁸ Muhyiddin Arubusman, 2006, *Terrorisme di Tengah Arus Global Demokrasi*, Jakarta: SPECTRUM, p. 2.

⁹ A.M. Hendropriyono, 2009, *Terrorisme: Fundamentalists Kristen, Yahudi, Islam* Jakarta: Buku Kompas, p. 11

target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.¹⁰

According to A.C. Manullang, seeing so many terrorist events happening in various parts of the world today, it is no exaggeration to call this the "era of terrorism" and "intelligence war."¹¹ This is because the terrorism that has occurred in this century is part of an intelligence war whose aim is none other than to strengthen the roots of neo-colonialism and neo-capitalism of the West around the world.¹²

Terrorism is any act that violates the law by spreading terror widely to the community, by threats or by means of violence, whether organized or not, and causing physical and psychological suffering for a prolonged period of time which can be categorized as an extraordinary crimes (extraordinary crimes) and crimes against humanity (crime against humanity).¹³ In general, terrorism is carried out by an organized crime or a crime organization or at least by more than one person. Terrorism always involves a large enough community and organizational network to carry out a successful action. This action also requires great moral support for the perpetrators to justify massive acts of destruction (destruction) against a country or to pardon brutal attacks on the lives of others, especially the lives of someone who is not known or against people who are not enemies.¹⁴

Terrorism also demands approval or justification of internal beliefs, social recognition, and a sign of justification from the ideology that legitimizes it or the most respected ruler. Because of the need for such moral, ideological and organizational support, many of them carry out acts of terrorism collectively such as the plot that dared to release toxic sarin gas on the subway network in Tokyo-Japan, the bombings planned by the Hamas group¹⁵, Al-Qaeda group carried out terror bombs that destroyed the WTC Building which killed thousands of people, bombs detonated on transportation facilities in Madrid-Spain (2003) which killed 191 people, followed later by bombings in London. The bombers did not come from one group alone, but they coordinated with other networks. In other words, they are not acting alone but there are other networks that help. The same thing can also be seen in the series of terror bombs that occurred in Madrid, London, Egypt, Iran, and Turkey which were also part of the intelligence war.¹⁶

The Concept of Terrorism

Terrorism as the most widely accepted contemporary usage of the term, is fundamentally and inherently political. It is also ineluctably about power: the pursuit of power, the acquisition of power and the use of power to achieve political change. Terrorism is thus violence or equally important, the threat of violence, used and directed in pursuit of, or in service of, a political aim.¹⁷

The term of terrorism began to be used in the end of the eighteenth century which shows the actions of violence from the ruling government in order to ensure that the people will obey the government. In other words, the term of terrorism refers to coercion from the ruling government.¹⁸

There are no definitions of terrorism that universally or globally used in many countries, even the United Nations cannot define terrorism because the notion of terrorism has a different point of view from each person or each party. The difference in views on terrorism is caused by different ways of looking at the actions of terrorists. The phrase of "one man terrorist's is another man's freedom fighters" indicates that there is still a lack of uniformity in the way of looking at acts of terrorism and this results in weak handling of terrorism. For example, for Mrs. Thatcher, Ms. Cheney and the apartheid regime in South Africa, Nelson Mandela was a terrorist, but for many others, he was a freedom fighter. The same also can be said about Yasser Arafat and Abdullah Ocalan.¹⁹

It is not easy to define terrorism because a comprehensive definition should include national and even local variables of the problem and also state terrorism, state sponsored terrorism and group of private parties (non state actors). In spite of the definitional problem it is not difficult to distinguish a terrorist from an ordinary criminal. A criminal is branded as a terrorist when he indulges in criminal acts with an illegitimate political motive irrespective of the fact whether his targets and victims were international or otherwise. An ordinary criminal, on the other hand, is a person who commits a criminal act with "required criminal intent" irrespective of motive. Therefore, it is the political motive, which distinguishes a terrorist from an ordinary criminal.²⁰

In general, terrorism comes from the word 'terror' which emerged in the English language as a descriptor for the actions of French revolutionaries against their domestic enemies in 1793 and 1794, most notably referring to repression in the form of executions. Beginning with citations from the 1790s, terrorism was quite literally defined as: (1) government by intimidation as directed and carried out by the party in power in France during the Revolution of 1789-94 and (2) policy intended to strike terror in those against whom it is adopted²¹. The latter half of this early definition of terror has persisted through global history and

¹⁰ Alex P. Schmid & Albert J. Jongman, 1988, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*, Amsterdam: North-Holland Publishing Company, p. 28

¹¹ A. C. Manullang, 2006, *Terorisme dan Perang Intelijen, Behauptung Ohne Beweis, (Dugaan Tanpa Bukti)*, Jakarta: Manna Zaitun, p. xii.

¹² A. C. Manullang, 2006, *Terorisme dan Perang Intelijen, Behauptung Ohne Beweis, (Dugaan Tanpa Bukti)* Jakarta: Manna Zaitun, p. 19

¹³ Petrus Reinhard Golose, 2009, *Deradikalisasi Terorisme, Humanis, Soul Approach dan Menyentuh Akar Rumput*, Jakarta: YPKIK, p. 6

¹⁴ Mark Jurgensmayer, 2003, *Terorisme Para Pembela Agama*, (Yogyakarta: Tarawang Press, p. 16.

¹⁵ Tb. Ronny Rahman Nitibaskara, 2006, *Tegakkan Hukum Gunakan Hukum*, Jakarta: Kompas, p. 179.

¹⁶ Tb. Ronny Rahman Nitibaskara, 2006, *Tegakkan Hukum Gunakan Hukum*, Jakarta: Kompas, p. 179

¹⁷ Bruce Hoffman, 2006, *Inside Terrorism*, New York: Columbia University Press, p. 2

¹⁸ Bruce Hoffman, 2006, *Inside Terrorism*, New York: Columbia University Press, p. 2

¹⁹ John Dugard, 2005, The Problem of Definition of Terrorism in International Law, in Paul Eden's and Therese O' Donnell (eds), *September, 11, 2001, A Turning Point in International Law?*, Transnational Publishers, p. 188

²⁰ C. Raj Kumar, 2005, Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil Liberties, *Denver Journal of International Law and Policy*, Vol. 33, No. 2, Article 3

²¹ Tilly, C., 2004, Terror, Terrorism, Terrorists in *Sociological Theory*, Vol. 22 No.1, p. 5-13.

politics, with many scholars agreeing that the point of terrorism is to terrorise, with the act of doing so historically assumed by an organised force.²²

The same that way that a singular definition of the concept of terrorism is very difficult to articulate, it is clear that any definition is also problematised when considering *who* decides what it is or is not. Previously, Western governments were reluctant to weigh in on the difficult debates around attempts to define terrorism. Instead, many states deferred to the United Nations conventions that list terrorist threats and prohibit activities associated with terrorism, which include but are not limited to hijacking, hostage-taking and assassination.²³ However, all of this changed after the events of September 11th, 2001 (shortened to 9/11). In the years following that attack, many countries have sought to modernise or create anti-terrorism legislation, with specific legal definitions of terrorism being drafted.

Historically, the definition of terrorism is compiled in many international convention of terrorism. For example, the article 1 paragraph 2 of the International convention from League of Nations ,1937, defines terrorism as : “ *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*”.²⁴

An example of this is Canada’s Anti-Terrorism Act of 2001 which for the first time in that country’s history legally defined terrorism as action separate from regular criminal offences. The definition states that terrorism is defined as “*that which is committed in whole or in part for a political, religious or ideological purpose, objective or cause; and in whole or in part with the intention of intimidating the public or a segment of the public, with regards to its security... or compelling a person, a government or a domestic or international organisation to do or refrain from doing any act, whether the public or the person, government or organisation is inside or outside Canada*”²⁵

The definition goes on to include causing intentional death, bodily harm, damage to public and private property, and causing interference with or serious disruption to essential services, amongst others, as incidents defined as terrorism. Further to this legal definition, the government of Canada, through the Department of Public Safety and Emergency Preparedness defines terrorism as “*terrorist acts committed in whole or in part for political, religious or ideological reasons with the intention of intimidating the public, or a subset of the public*”.²⁶

In the United Kingdom, the present legal definition of terrorism is outlined in section 1 of the country’s Terrorism Act of 2000. It interprets terrorism as “*the use of threat or action... designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause*”²⁷.

The definition goes on to list against whom or what actions may cause harm and thus be defined as terrorism; it specifically includes the use of firearms or explosives as falling within the ambit of terrorism; and it includes actions occurring outside of the United Kingdom as ones that could fall within the definition. Both the British and Canadian legal and political definitions of terrorism provide some insight into the ways that these definitions are crafted for the use of legislation and policies protecting the countries’ status as nation states against violence perpetrated by non-state groups.

The definition of terrorism as put forward by the United States’ Department of State in 1983 is one of the most widely used around the world today. It reads: “*terrorism is premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience*”²⁸ Similarly, the United States’ Federal Bureau of Investigation (FBI) defines terrorism as “*the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives*”²⁹

On the other hand, definitions of terrorism acts, particularly in east asian countries such as Indonesia and Malaysia also have their own definitions about terrorism. The government of Indonesia have issued the policy and the regulation against terrorism acts by formulating elements of terrorism acts into Indonesia’s Anti Terrorism Law through Act Number 15 of 2003 , where in the Article 6 clearly stated: “*Every person who deliberately uses violence or threat of violence that creates an atmosphere of terror or fear of people widely or cause mass casualties by depriving independence or loss of life and other people’s property, or resulting in damage or destruction to strategic strategic objects or the environment or public facilities or international facilities, are sentenced to death sentence or life imprisonment or imprisonment for a maximum of 4 (four) years and a maximum of 20 years (twenty years)*”.³⁰

In determining to protect democracy, peace and security, the Malaysian government has instituted a new Act that is the Security Offences (Special Measures) Act 2012 which is having elements preventive in nature so that lives and property can be protected before the death or damage can be done. The Act is to provide for special measures in dealing with security offences and at the same time recognizing the grave risks to internal security and public order presented by the threat of terrorism, sabotage and espionage. This Act is made under Article 149 of the Malaysian Federal Constitution.

²² Chailand, G. and Blin, A.,2007, “Introduction” in *The History of Terrorism: From Antiquity to Al Qaeda*. Berkeley and Los Angeles: University of California Press.

²³ Carver, A., 2016, “Parliamentary Attempts to Define Terrorism in Canada and Australia” in *Journal of Applied Security Research*, Vol 11 No, 2: p. 124-138.

²⁴ *League of Nation of Convention for the Prevention and Punishment of Terrorism*, council on foreign relations, <http://www.cfr.org/terrorism-and-the-law/league-nations-convention-prevention-punishment-terrorism/p24778>, retrieved on August, 29, 2019

²⁵ Carver, A.,2016, “Parliamentary Attempts to Define Terrorism in Canada and Australia” in *Journal of Applied Security Research*, (11)2: p. 130

²⁶ Public Safety Canada, 2017

²⁷ Government of the United Kingdom Home Office, 2007

²⁸ Sinai, J. 2008. “How to Define Terrorism” in *Perspectives on Terrorism*, (2)4: pp.9-11.

²⁹ Shanahan, T., 2016,. “The Definition of Terrorism” in Jackson, R. *Routledge Handbook of Critical Terrorism Studies*. London: Routledge. pp. 103-113.

³⁰ See Article 6 of Indonesia’s Anti Terrorism Law from Act No. 15 of 2003

The Act underlies the special powers for security offences, special procedures relating to electronic monitoring device, special procedures to sensitive information, special procedures relating to protected witness and matters related to evidence. The very onset of the Act specifically mentioned whereas action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia ; –(1) *To cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;* (2) *To excite disaffection against the Yang di Pertuan Agong;*(3) *Which is prejudicial to public order in, or the security of the Federation or any part thereof;* or (4) *To procure the alteration, otherwise than by lawful means, of anything by law established.*³¹

Shortly after the September 11 terrorist attacks in the United States, India passed its own anti-terrorism ordinance, the Prevention of Terrorism Act (POTA), following a terrorist attack on India's Parliament building in December 2001. The POTA clearly defined the terrorist acts in Section 3 and grants special powers to the investigating authorities under the act. Section 3 states that: Whoever with the intent to overawe the Governments as by law established or to strike terror in the people or any section of the people to alienate of the people or to adversely affect the harmony amongs different sections of the people does any act or thing by bombs, dynamite or other explosives substances or inflammable substances or lethal weapons or noxious gases or other chemicals or by any other substances of a hazardous nature in such a manner as to cause, or as is likely to cause death or injuries to any persons or persons or loss. The punishment for this activities is life imprisonment or death sentence and fine etc.³²

Amongst UN Security Council resolutions calling for action against terrorism, Resolution 1566 (2004) is closest to defining terrorism adequately³³ by including three cumulative conditions: (1) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and (2) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act; and (3) . Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.³⁴

The Nature of Terrorism Acts in the 21st Century

Whatever definition of terrorism one might adopt, many scholars, government analysts and politicians claim that since the mid 1990s 'terrorism' has changed into an inherently new form with new characteristics. They have articulated a 'new' concept, which involves different actors, motivations, aims, tactics and actions, compared to the 'old' concept of terrorism used in the mid twentieth century.³⁵ Since September the 11th (hereafter 9/11) this 'new' type of terrorism has greatly gained in prominence and without doubt has become a central issue throughout the world.

Prior to 9/11, some of the most famous terrorism experts such as Walter Laqueur, Ashton B. Carter, John Deutch and Philip Zelikow argued for the existence of a 'new terrorism' and proposed the concepts '*postmodern*'³⁶ and '*catastrophic*'³⁷ terrorism in articles. Since then Walter Laqueur suggests the "*there has been a radical transformation, if not a revolution, in the character of terrorism*".³⁸ Bruce Hoffman points out that the 'new terrorist' "*represents a very different and potentially far more lethal threat than the more familiar 'traditional' terrorist groups*".¹³

Some analysts coined the term 'new terrorism' in order to describe what they believed were fundamentally new ways for terrorists to operate and express their violence. This 'new terrorism' had resulted from the forces of late modernity and, in particular, globalisation, which had manifested themselves in three areas.³⁹ First, terrorist groups continue to be relatively small organisations, but their structures have become more diffuse and their reach has extended into transnational space. In contrast to the more formalised organisations of 'old' terrorism, 'new' terrorist groups are often described as networks, because hierarchies have been replaced with personal relationships. What matters is not someone's formal rank but whom they know and what kinds of connections they can facilitate. Furthermore, these structures often extend beyond national boundaries. Unlike old terrorism, which usually had a well-defined geographical 'centre of gravity' to which all the group's activity could be related, some of the new terrorists have no single permanent geographical point of reference. As the example of Al-Qaeda shows, the place in which most of the group's operations take place may not be identical to the place from which the majority of its recruits originate or where its leadership is based.

Cheap international travel and modern communication technologies are partly responsible for this transformation. For example, no longer restricted by geographical distance, terrorist groups have been able to take advantage of 'weak' or 'failed' states with lax security regimes in which to base their organisations and host training camps. At the same time, there are wider developments which need to be taken into account. The demand for transnational identities, for instance, cannot be understood without considering global migration and the consequent splitting of identities, which made an increasing number of people – especially, it seems, the second and third generation descendants of immigrants to Western Europe – susceptible to ideas and

³¹ Badrah Binti Yusoff, *Terrorism- the Threat to Democracy, Peace and Security* , <http://www.parliamen.gov.my>, retrieved on July 26, 2021

³² Anti Terrorism Law in India; *Distinguishing Myth & Reality*, www.legalserviceindia.com, retrieved on July 26, 2021

³³ UN Doc. S/RES/1566 (8 October 2004), para. 3.

³⁴ The Statute of the International Court of Justice is an Annex to the United Nations Charter (1945).

³⁵ See Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, (London: Oxford University Press, 1999), Ian O. Lesser, Bruce Hoffman, John Arquilla, David F. Ronfeldt, Michele Zanini & Brian M. Jenkins, *Countering the New Terrorism*, (Santa Monica: RAND, 1999) or Stefan M. Aubrey, *The New Dimension of International Terrorism*, (Zurich: Vdf Hochschulverlag, (2004).

³⁶ Walter Laqueur, "Postmodern Terrorism", *Foreign Affairs*, Vol. 75, No. 5, (1996), pp. 24-36.

³⁷ Ashton B. Carter, 1999, John Deutch & Philip Zelikow, "Catastrophic Terrorism", *Foreign Affairs*, Vol. 77, No. 6, pp. 80-94.

³⁸ Walter Laqueur, 1999, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, London: Oxford University Press, p. 4.

³⁹ Peter R. Neuwman, 2008, *Terrorism in the 21st century; The rule of law as a guideline for German Policy*, Compas 2020, Berlin :Friederich -Ebert -Stiftung, p.3

ideologies that have no national point of reference. Furthermore, the Internet has created an entirely new social environment in which a sense of (global) community can be projected.

The second area in which significant change has taken place is that of terrorists' aims and ideologies. As Bruce Hoffman points out, whereas in the late 1960s, not a single terrorist group anywhere in the world could be described as religiously motivated, by the mid-1990s, their 'share' had risen to nearly one third of all terrorist groups. This included Christian anti-abortionists in the United States, Jewish extremists in the West Bank, the Buddhist inspired cult Aum Shinrikyo (responsible for the nerve gas attack against the Tokyo underground in 1995), and various groups in the Muslim world ranging from Hezbollah to Al Qaeda. Nationalism, of course, remains a strong motivator of terrorism

However, it is important to note that – in many of the places where the kind of nationalism adopted by terrorist groups used to be secular and/or left-wing – nationalism is now mixed with religious themes. In the Israel/Palestine conflict for example, the (secular) PLO has made way for the (religiously inspired) Hamas. Likewise, in Chechnya and Kashmir, formerly secular groups have now adopted religious themes and symbols.

Ideologically, the rise of religiously inspired terrorism can be traced back to the so-called 'religious revival' which began in the 1970s. Arguably, the renewed interest in religion constituted a more or less consistent response to feelings of insecurity and uncertainty that were caused by the encounter with late modernity and, then, globalisation. In that sense, the religious revival must be seen as thoroughly modern in its genesis and manifestations. Indeed, the politicisation of the revivalist movements often resulted from the perceived failure of supposedly modern, secular ideologies (especially in the Arab world) and/or the widening gap between 'fundamentalist' lifestyles and increasingly secular and liberal societies (especially in the West). In either case, these conflicts demanded a radical transformation of society according to religious principles and thus pushed some of their activists into the political sphere.

Third, terrorism has evolved as a method. Needless to say, even old terrorists often killed civilians and – occasionally – their operations were aimed at producing large numbers of casualties. In the era of new terrorism, however, mass-casualty attacks against civilian populations seem to have become routine and intentional rather than 'mistakes' or 'exceptions', and terrorists' use of weapons of mass destruction has for the first time become a real possibility. Indeed, all major databases recording terrorist incidents bear out the rise of mass-casualty attacks in no uncertain terms. What databases often do not record, however, is that the increase in lethality has been accompanied by an increase in brutality. Partly, of course, this is reflected in the deliberate **targeting of civilian** populations – often through suicide bombers – but it also becomes evident when looking at individual tactics, such as the public beheading of kidnap victims which would have been unimaginable some decades ago. Whereas killing people used to be secondary to the communicative effects that could be achieved through a particular terrorist action, it now seems as if the two considerations – violence for violence's sake and symbolic value – have merged.

Terrorism as an Extraordinary Crime

Terrorism almost always targeting combatants, involves the killing (or threat of killing) of non-combatant civilians. This goes to the heart of terrorism's illegitimacy because terrorists make a deliberate decision to abandon or to refuse to accept as binding the prevailing moral distinction between belligerents and neutrals, combatants, and non-combatants, appropriate and inappropriate targets, legitimate and illegitimate methods.⁴⁰ Terrorism acts always targeting civilians (non-combatants) and this acts delegitimizing as well as delegitimizing aspects of terrorism which compares terrorism to other crimes like war crimes. Although the international community agree to classify the acts of terrorism as a universal crime to the mankind (*Hostis Humanis Generis*), the characteristic of terrorism acts is difference than the ordinary crime.

It is important and useful to distinguish terrorist acts from ordinary criminals. Like terrorists' criminals use violence as a means to attain a specific end. However, while the violent act itself may be similar (kidnapping, shooting, and arson for example) the purpose or motivation clearly is different. Whether the criminal employs violence as a means to obtain money, to acquire material goods, or to kill or injure a specific victim for pay, he is acting primarily for selfish, personal motivations (usually material gain).⁴¹

The ordinary criminal's violent acts are not designed or intended to have consequences or create psychological repercussions beyond the act itself. The criminal use some short term acts of violence to "terrorize" his victim such as waving a gun in the face of a bank clerk during a robbery in order to ensure the clerk's expeditious compliance. The violence is not meant to have any effect reaching beyond either the incident itself or the immediate victim. The violence is neither conceived nor intended to convey any message to anyone other than a bank clerk himself.⁴² The most fundamentally, the criminal is not concerned with influencing or affecting public opinion, he simply wants to abscond with his money or accomplish his mercenary task in the quickest and easiest way possible so that he may reap his reward and enjoy the fruits of his labors.

By contrast, the fundamental aim of the terrorist's violence is ultimately to change "the system" of which the ordinary criminal couldn't care less. The terrorist is also very different from the lunatic assassin, who may use identical tactics (e.g. shooting, bombing) and perhaps even seeks the same objective (e.g. the death of political figure). The terrorist's goal is again ineluctably political which is to change or fundamentally alter a political system through its violent acts.⁴³ For example, the acts of terror used by Narodnaya Volya to justify its campaign of tyrannicide against the czar and his minions, nor even to the Irish Republican

⁴⁰ Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1, p.13

⁴¹ Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1, p. 36

⁴² Paul J. Smith, 2008, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, New York: M.E. Sharpe, Chapter 1., p. 36

⁴³ Bruce Hoffmann, 2006, *Inside Terrorism*, New York: Columbia University Press, 2006., p.37

Army's efforts to assassinate Prime Minister Margaret Thatcher or her successor, John Major, in hopes of dramatically changing British policy toward Northern Ireland.⁴⁴

Unlike the ordinary criminal or the lunatic assassin, the terrorist is not pursuing purely egocentric goals. The terrorist is fundamentally an altruist, they believed that they serving a "good" cause designed to achieve a greater good for a wider constituency-whether real or imagined- that the terrorist and his organization purport to represent.⁴⁵ In other words, a terrorist without a cause is not a terrorist. If they do not use violence in the pursuit of their beliefs, they can't be considered as terrorists because terrorist is fundamentally a violent intellectual, prepared to use and indeed, committed to using force in the attainment of its goals.⁴⁶

Antonio Cassese has given the general features of terrorism as an international crime that has three important elements as following: a) those activities must be recognized or at least, has the element that can be categorized as a crime in many countries; b) those activities were intended to spread terror by using violence or threat directed to the state, public or a group of people; c) It must have a political, ideology, religious purpose behind it and it has no purpose for individual benefits.⁴⁷

Terrorism also distinguished from ordinary crimes which its characteristics can be seen as following: 1) it has a widespread influence, not only to a country but to many countries; 2) it was conducted and were focused inside the region of a country which could be transformed to state promotion, state toleration or state acquiesce, so that the international and regional prevention became the reason; c) it became a concern of the international community and a threat to the world peace; d) it was conducted systematically or widespread.⁴⁸

The nature of terrorism acts as an extraordinary crime is indicated from elements as following: a) its harming and violates the human rights and human values; b) its committed with a random, indiscriminate and non selective way so it could directed to innocent people; c) it contains the elements of violence, threats, coercive and intimidation that caused fear to civilian population widely; d) it has connection and relation to the transnational organized crime; e) it using the modern technology such as chemical, biology, and nuclear weapons.

Over the past quarter century reveals that terrorists have violated all these rules as following:⁴⁹ a) taken civilians as hostages, and in some instances then brutally executed them (e.g. the former Italian Prime Minister Aldo Moro and the German industrialist Hans Martin Schleyer who respectively were taken captive and later murdered by the Red Brigades and the Red Army Faction in the 1970's and more recently, Daniel Pearl, a Wall Street Journal reporter, and Nicholas Berg, an American businessman who were kidnapped by radical Islamic terrorists in Pakistan and Iraq that were kidnapped and beheaded); b) abused and murdered kidnapped military officers even when they were serving on UN-sponsored peacekeeping or truce supervisory missions (e.g., the American Marine Lieutenant Colonel William Higgins, the commander of a UN truce-monitoring detachment, who was abducted by Lebanese Shi'a terrorists in 1989 and subsequently hanged; c) undertaken reprisals against wholly innocent civilians, often in countries far removed from the terrorists "theater of operations" (e.g. the brutal 1986 machine gun and hand-grenade attack on Turkish Jewish worshipers in Istanbul synagogue carried out by Palestinian Abu Nidal Organization (ANO) as retaliation for a recent Israeli raid on a guerilla base in southern Lebanon); f) repeatedly attacked embassies and other diplomatic installations (e.g. the bombings of the U.S. embassies in Nairobi and Dar es Salaam in 1998 and in Beirut and Kuwait City in 1983 and 1984, and the mass hostage-taking at the Japanese ambassador's residence in Lima, Peru, in 1996 -97 as well as deliberately targeting diplomats and other accredited representatives (e.g. the British Ambassador to Uruguay, Sir Geoffrey Jackson, who was kidnapped by leftist terrorist in that country in 1971 and the fifty-two American diplomats taken hostage at the Tehran legation in 1979)

By distinguishing terrorist acts from other types of criminals and irregular fighters and terrorism from other forms of crime, and irregular warfare, we come to appreciate that terrorism acts contains essential elements as following; (1) ineluctably political in aims and motives; (2) violent or equally important, threatens violence; (3) designed to have far-reaching psychological repercussions beyond the immediate victims or targets; (4) conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated, or inspired by the ideological aims or example of some existent terrorist movement and / or its leaders and; (5) perpetrated by a subnational group or non-state entities; (6) using publicity from the media (internet) to show their violence, in order to obtain the leverage, influence and power they otherwise lack to effect political change on either a local or an international scale.

Terrorism as a Violation of Human Rights

Terrorism is generally understood as acts of violence which spread terror among the civilians and civilian population.⁵⁰ Terrorist use terror as their weapon. The hijacking and crashing of the aircrafts create terror in the minds of people, especially the direct and indirect victims. Such is the fear created that people now afraid to fly. The Abu Sayyaf kidnappers inspire fear by beheading their hostages. Exploding bombs in public places and killing innocent people inspire fear and terror, and a feeling of being unsafe anywhere at any time.⁵¹ Terrorism is a serious human rights violation; undermines the State and peaceful political processes; and threatens international peace and security.

⁴⁴ Bruce Hoffmann, 2006, *Inside Terrorism*, New York: Columbia University Press, 2006, p.37

⁴⁵ Bruce Hoffmann, 2006, *Inside Terrorism*, New York: Columbia University Press, p.37

⁴⁶ Bruce Hoffmann, 2006, *Inside Terrorism*, New York: Columbia University Press, p.37

⁴⁷ Antonio Cassese, 2003, *International Criminal Law*, in Malcolm D. Evans (ed), *International Law*, New York: Oxford University Press, p.751

⁴⁸ Antonio Cassese, 2003, *International Criminal Law*, in Malcolm D. Evans (ed), *International Law*, New York: Oxford University Press, p. 125

⁴⁹ Bruce Hoffman, 2006, *Inside Terrorism*, revised and expanded edition, New York: Columbia University Press, p.27

⁵⁰ Saqib Jawab, *Terrorism and Human Rights, Sociology and Anthropology* Vol.3 No.2, pp. 104 -115, <http://www.hrpub.org.>, retrieved on 14 September 2019

⁵¹ Mahathir Mohammad, 2003, *Terrorism and The Real Issues*, Malaysia: Pelanduk Publications, p. 24

Numerous resolutions of the UN General Assembly since the 1970's, and of the Commission on Human Rights since the 1990's assert that terrorism threatens or destroys basic human rights and freedoms, particularly life, liberty and security but also civil and political and economic, social and cultural rights. Regional anti terrorism instruments such as 1998 Arab Convention, preamble; 1999 OIC Convention, preamble; 1971 OAS Convention, preamble; 1999 OAU Convention, preamble, OAS Declaration of Lima to Prevent, Combat and Eliminate Terrorism, 26 April 1996, preamble also stated that terrorism gravely violates human rights. The UN Special Rapporteur observes that there is probably not a single human rights exempt from the impact of terrorism.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.⁵²

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are uni-versal—in other words, they belong inherently to all human beings—and are interdependent and indivisible.⁵³ The definition of human rights basically is freedom to do something or not to do something related to the subject without interference from any party and those freedoms are recognized and have protected by law and therefore have a legal basis.⁵⁴ The human rights norms based on the idea that the people must be freed from the cruel and inhumane acts. Every human has three kinds of human rights, 1) the right to live, 2) the right for freedom, 3) the right to have something.

The Universal Declaration of Human Rights (UDHR) preamble states that 'freedom from fear' is part of 'the highest aspiration of the common people' while the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Political Rights (ICESCR) preambles refer to 'the ideal of free human beings enjoying freedom from fear'. The political ideal of 'freedom from fear' was first articulated as one of four freedoms in a speech by US President Franklin D. Roosevelt in 1941.

Franklin D. Roosevelt stated the Four Freedom which was known as "the four freedom speech" (1941 State of the Union Address) where he proposed four fundamental freedoms that people everywhere in the world ought to enjoy as follows; a) freedom of speech, b) freedom of worship, c) freedom from want; d) freedom from fear. The four freedoms of Roosevelt formed an important pillar of the Universal Declaration of Human Rights that were adopted on December 10, 1948 by United Nations General Assembly. The freedom from fear is mentioned in the preamble of the Declaration.⁵⁵

Universal Declaration of Human Rights is considered fundamental human rights document and binding on all states. International human rights law has been codified through major human rights treaties and the remaining portion is available in customary international law. The most important of these treaties are, International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights, and its two Optional Protocols.⁵⁶ Modern human rights standards are rooted in the following four simple values; a) freedom of want, b) freedom of fear; c) freedom of belief, d) freedom of expression. These freedoms form the core principles of the Universal Declaration of Human Rights which set out the fundamental elements of international human rights accepted United Nations member states and elaborated in many subsequent human rights treaties. This declaration is accepted as "a common standard of achievement for all people and all nations".⁵⁷

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.⁵⁸ Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably in the new Human Rights Council which states have set out that terrorism: a) threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights; b) has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments; c) has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery; d) has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and e) threatens the territorial integrity

⁵² Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism & Counter Terrorism*, Fact Sheet No. 32, <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, pp.1 retrieved on October 14, 2019

⁵³ Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism & Counter Terrorism*, Fact Sheet No. 32, <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, pp.1 retrieved on October 14, 2019

⁵⁴ Max Boli Sabon, 2014, *Hak Asasi Manusia Bahan Pendidikan untuk Perguruan Tinggi*, Universitas Atmajaya, p. 14

⁵⁵ United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights/> retrieved on December 1, 2019

⁵⁶ Max Boli Sabon, *Hak Asasi Manusia Bahan Pendidikan untuk Perguruan Tinggi*, Universitas Atmajaya, 2014., p.29

⁵⁷ Office for Democratic Institutions and Human Rights (ODIHR)- Poland, *Countering Terrorism Protecting Human Rights: A Manual*, 2007, <http://www.osce.org/odihr/29103?download=true> retrieved on December 14, 2019

⁵⁸ Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism & Counter Terrorism*, Fact Sheet No. 32, <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, pp.1 retrieved on September 14, 2019

and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.⁵⁹

International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right" because without its effective guarantee, all other human rights would be without meaning. As such, there is an obligation on the part of the State to protect the right to life of every person within its territory and no derogation from this right is permitted, even in times of public emergency.

The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations. In addition, international and regional human rights law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats.

LEGAL MEASURES TO ERADICATE TERRORISM

International Treaties against Terrorism

As human rights law forms a part of the broader normative framework of public international law, the sources of human rights law are to be sought by applying the general doctrine of public international law. Article 38 (1) of the Statute of the International Court of Justice⁶⁰ provides an authoritative account of the sources of law to be applied by the Court. This list, widely understood as reflecting the catalogue of sources of international law generally, includes four items: (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

According to its formulation, the fourth category (d) is clearly subsidiary in respect of the three preceding sources. Otherwise, there is no hierarchy between the sources of international law.⁶¹ In particular, treaty norms and customary law norms are equally authoritative and may result in deviations from each other. This should not be confused with the hierarchically superior position of peremptory norms of international law (*jus cogens*)⁶² which, as reflected in Article 53 of the Vienna Convention of the Law of Treaties (VCLT),⁶³ enjoy primacy in respect of treaty norms and result in the invalidity of a conflicting treaty norm.⁶⁴ Although *jus cogens* norms - as being peremptory for all states - by definition fall within the category of customary international law, they can also be included in treaties. For instance, the prohibition against torture is a *jus cogens* norm based not only on customary law, but also on a number of widely ratified treaties pertaining to human rights law and international humanitarian law.⁶⁵ Therefore, hierarchically superior status of *jus cogens* norms does not imply any primacy of customary law in respect of treaty norms in general.

There are so many international conventions which have been produced to combat acts of terrorism. The Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963, is considered to be the first international treaty against terrorism.⁶⁶ Five more were adopted during the 1970s: the 1970 Convention for the Suppression of Unlawful Seizure

⁵⁹ Office of the United Nations High Commissioner for Human Rights, "Human Rights, Terrorism & Counter Terrorism", www.ohchr.org/Documents/Publications/Factsheet32EN.pdf, retrieved on September 14, 2019

⁶⁰ The Statute of the International Court of Justice is an Annex to the United Nations Charter (1945)

⁶¹ See also Pierre Dupuy, *Droit International Public*, 1995, Paris: Précis Dalloz, pp. 14-16 (arguing that there is no hierarchy in international law norms and that logically there can be none). For the relationship between treaty and custom see Mark E. Villiger, 2009, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden: Martinus Nijhoff Publishers, pp. 1-27.

⁶² See in general, Ian Seiderman, 2001, *Hierarchy in international law: the human rights dimension*, Antwerp: Intersentia

⁶³ According to Shelton, 'the concept was controversial from the start'; 'Article 53 demands that there first be established a norm of general international law and, second, that the international community of states as a whole agree that it is a norm from which no derogation is permitted. While this definition precludes an individual state from vetoing the emergence of a peremptory norm, it sets a high threshold for identifying such a norm and bases the identification squarely in state consent.' D. Shelton, 'Normative Hierarchy in International Law', (2006) *American Journal of International Law* 100, pp. 300-301

⁶⁴ See separate opinion of John Dugard, Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of Congo v. Rwanda*), Jurisdiction and Admissibility (International Court of Justice, 3 February 2006), para. 6. Shelton however comments: 'Yet it is hard to accept the practical import of the VCLT: if one assumes that two states enter into an agreement, for example to commit genocide, slave trading, or aggression, Article 71 would dictate that the parties should then eliminate the consequences of any illegal act performed in reliance on the treaty and bring their relations into conformity with the peremptory norm. Since the treaties and acts mentioned would also be likely to constitute breaches of UN Charter Article 103, it would seem unnecessary to resort to *jus cogens*.' Shelton, p. 304. See fn. 30.

⁶⁵ See also Erika de Wet, 2004, 'The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and International Customary Law', *European Journal of International Law* 15, p. 97.

⁶⁶ This Convention entered into force on 4 December 1969 and has 180 states parties, according to the website of the UN Counter-Terrorism Committee (CTC)

of Aircraft,⁶⁷ the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,⁶⁸ the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,⁶⁹ the 1979 International Convention against the Taking of Hostages⁵ and the 1979 Convention on the Physical Protection of Nuclear Material.⁷⁰ Three treaties were adopted in 1988: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,⁷¹ a Protocol to that Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,⁷² and a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.⁷³ The 1990s saw the adoption of the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection,⁷⁴ the 1997 International Convention for the Suppression of Terrorist Bombings⁷⁵ and the 1999 International Convention for the Suppression of Financing of Terrorism.⁷⁶ The most recent addition is the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005.⁷⁷

These treaties define nearly fifty offences, including some ten crimes against civil aviation, some sixteen crimes against shipping or continental platforms, a dozen crimes against the person, seven crimes involving the use, possession or threatened use of “bombs” or nuclear materials, and two crimes concerning the financing of terrorism. There is a tendency to consider these treaties as establishing a sort of evolving code of terrorist offences. The most significant evidence of this trend is the 1999 Convention against the financing of terrorism, which establishes the crime of donating or collecting funds “with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex”.⁷⁸

The duties of states parties to this Convention with respect to the crime of financing the activities defined in the treaties listed in the annex is independent of their ratification of them, although it does allow states that are not party to one or more of the listed treaties to make reservations limiting the scope of their obligations under the 1999 Convention with respect to the financing of the activities prohibited by any unratified treaty or treaties.⁷⁹

In 2002 the Organization of American States adopted a second treaty against terrorism, which uses the same approach. The Inter-American Convention against Terrorism establishes a series of obligations for states parties with respect to the crimes defined in ten treaties: the 1999 Convention against the financing of terrorism and the nine international treaties listed in the annex thereto.⁸⁰ The 1977 European Convention for the Suppression of Terrorism as amended by the Protocol of 2003 adopts a similar approach, establishing a series of obligations concerning acts of terrorism as defined in ten international treaties.⁸¹ UN Security Council Resolution 1566 also supports that idea that the crimes recognized by existing international treaties form part of a code of terrorist offences.

Terrorism and Human Rights

Internationally-recognized human rights are commonly understood to encompass those rights to which all persons are entitled without discrimination by the mere fact of being human—that is, rights that cannot be denied or restricted on the basis of culture, tradition, nationality, political orientation, social standing or other factors, but must be protected in fact and given effect by law. Broadly speaking, these rights include the most fundamental preconditions for a dignified human existence. They are primarily asserted against government authorities (i.e., must be respected, protected and given effect by the government) but in some instances are also capable of assertion against other individuals in their private capacities (e.g. discrimination).

⁶⁷ Done at The Hague on 16 December 1970, 860 UNTS 12325. This Convention entered into force on 14 October 1971 and has 181 states parties, according to the website of the UN CTC

⁶⁸ Done at Montreal on 23 September 1971, 974 UNTS 14118. This Convention entered into force on 26 January 1973 and has 183 states parties, according to the website of the UN CTC

⁶⁹ Adopted by the UN General Assembly by resolution 3166 (XXVIII) of 14 December 1973, 1035 UNTS 15410. This Convention entered into force on 20 February 1977 and has 159 states parties, according to the website of the UN CTC

⁷⁰ Adopted by the UN General Assembly by resolution A/34/146 of 17 December 1979, 1456 UNTS 24631. This Convention entered into force on 8 February 1987 and has 116 states parties, according to the website of the UN CTC

⁷¹ Done in Rome on 10 March 1988, IMO Document SUA/CONF/15/Rev.1. This Convention entered into force on 1 March 1992 and has 134 states parties, according to the website of the UN CTC

⁷² Done in Rome on 10 March 1988, IMO document SUA/CONF/15/Rev.1. This Convention entered into force on 1 March 1992 and has 123 states parties, according to the website of the UN CTC

⁷³ Done at Montreal on 24 February 1988, ICAO document 9518. This Convention entered into force on 6 August 1989 and has 156 states parties, according to the website of the UN CTC

⁷⁴ Adopted by the International Civil Aviation Organization on 1 March 1991. The treaty entered into force on 21 June 1998 and has 123 states parties, according to the website of the UN CTC

⁷⁵ Adopted by the UN General Assembly on 15 December 1997 by resolution A/52/164. This Convention entered into force on 23 May 2001 and has 145 states parties, according to the website of the UN CTC

⁷⁶ Adopted by the UN General Assembly on 9 December 1999 by resolution A/54/109. This Convention entered into force on 10 April 2002 and has 150 states parties, according to the website of the UN CTC

⁷⁷ Adopted by the UN General Assembly on 13 April 2005 by resolution A/59/290. It has 100 signatories but no Parties, according to the website of the UN CTC

⁷⁸ Article 2(1). (Article 2(1)(b) contains a general provision concerning other terrorist acts. S

⁷⁹ Article 2(2).

⁸⁰ Article 2(1). (Article 2(2), like Article 2(2) of the Convention against the financing of terrorism, allows reservations with regard to the crimes defined in unratified treaties.)

⁸¹ The obligations set forth in the European Convention as amended apply only insofar as the states parties also have ratified the listed treaties against terrorism, and the states party to the European Convention may opt to accept certain of the obligations established therein with respect to two offences defined without reference to other treaties, namely, other serious acts of violence against the life, physical integrity or liberty of a person and serious acts against property that pose a collective danger for persons (Article 2).

The main articulation of international human rights law is found in various human rights treaties and other international instruments.⁸² The core documents are the 1948 Universal Declaration of Human Rights (UDHR) and two multilateral treaties, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (sometimes referred to collectively as the “International Bill of Rights”). As a General Assembly resolution, the UDHR is technically non-binding under international law but is generally accepted as articulating the obligations undertaken by UN Member States under the UN Charter. The two Covenants are legally binding on States that have ratified them, and they are in fact widely ratified (if not equally widely respected in practice).⁸³

Other core universal human rights treaties include the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,⁸⁴ the 1980 Convention on the Elimination of All Forms of Discrimination against Women,⁸⁵ the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,⁸⁶ the 1989 Convention on the Rights of the Child,⁸⁷ the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁸⁷ the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, and the 2006 Convention on the Rights of Persons with Disabilities.

In addition to these “universal” conventions, several regional human rights systems are founded on their own treaties and feature regional enforcement mechanisms (e.g., commissions and courts), specifically in Europe (under the Council of Europe), Africa (within the African Union) and the Americas (OAS). No such agreements or mechanisms exist for the Middle East (or Asia). With the proliferation of international human rights instruments, it has become common to differentiate between: (a) civil and political rights, sometimes called “first generation” rights, (b) economic, social and cultural rights (“second generation” rights), and (c) a group or collective rights, often denominated “third generation” rights.

These are not precise categorizations but nonetheless serve to highlight some helpful distinctions. By way of example, “first generation” rights relate primarily to personal freedom and liberty from governmental interference. They encompass many of the basic individual rights protected by the U.S. Constitution and related legislation, including (i) such “physical integrity rights” as the rights to life, liberty and security of the person, protection from physical violence including torture and inhuman treatment, exile, slavery and servitude; (ii) “due process” rights such as protection against arbitrary arrest and detention, the right to a public hearing by an independent and impartial tribunal, the presumption of innocence, freedom from double jeopardy, the right to equal treatment and protection in law; and (iii) “personal freedom” rights such as protection of one’s privacy and rights of ownership, freedom of expression, thought, conscience and religion, association, assembly, movement, etc. They also include “political participation rights” common to democratic governance, including the right to take part in the government of one’s country, to vote, to stand for election at genuine periodic elections held by secret ballot, etc.

By contrast, the “second generation” of human rights addresses the broader societal conditions necessary for well-being and prosperity, including, for example, the rights to property, work (which one freely chooses or accepts), a fair wage, a reasonable limitation of working hours, safe working conditions, and trade union rights. Notably this category extends to elements considered necessary for an adequate standard of living, including inter alia rights to health, shelter, food, water, social care, education, to participate freely in the cultural life of the community, to share in scientific advancement and to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author.

Third generation” rights include both “solidarity rights” deemed necessary to protect specific groups in need of particular protection (women, children, migrants, the disabled, the indigenous, etc.) and rights owing to the “global community” in general, for example the rights to development, peace or a clean global environment. Perhaps the most fundamental “collective” human right is the right to self-determination, which is textually vested in “peoples” rather than in individuals. (A vibrant debate has emerged over whether this right applies outside the context of a struggle for post-colonial independence, e.g., to the “people” in Quebec, Catalonia, California or Corsica). It is generally accepted that collective rights may not infringe on universally-accepted individual rights, such as the right to life and freedom from torture.

If one accepts that terrorism involves the use of politically-motivated, fear-generating violence to commit criminal acts aimed at harming innocent individuals for the purpose of coercing governments or societies to take or refrain from action, then it clearly violates —indeed, is precisely intended to violate —fundamental human rights (and, more generally, the very concept of rule of law. By committing acts of terror, terrorists by definition attack the values at the heart of the Universal Declaration of Human Rights, the two Covenants, and other international instruments, in particular many “first generation” rights (such as the rights life, liberty and physical integrity) but also second and third generation rights. Moreover, terrorist acts can be distinguished from “ordinary” crimes precisely because they are aimed at destabilizing Governments, undermining civil society, jeopardizing peace and security, and threatening social and economic development, all outside “normal” political and legal channels and in defiance of the law.

The Impact of Terrorism on Human Rights

Terrorism is generally understood as acts of violence which spread terror among the civilians and civilian population. Terrorism is a serious human rights violation; undermines the State and peaceful political processes; and threatens international peace and security. Numerous resolutions of the UN General Assembly since the 1970’s, and of the Commission on Human Rights since the

⁸² See Buergentahl, 2018, Shelton, Stewart and Vazquez, *International Human Rights in a Nutshell*, West, 5th ed.

⁸³ Currently, 169 States are party to the ICCPR (six others have signed but not yet ratified, but not Oman, Qatar, Saudi Arabia or the UAE); 166 States are party to the ICESCR and four others (including the United States) have signed but not yet ratified (not Oman, Qatar, Saudi Arabia or the UAE).

⁸⁴ In the region, only Iran has not ratified the Racial Discrimination Convention.

⁸⁵ The Torture Convention has 162 States Parties, not including Iran or Oman

⁸⁶ The United States is the only State not to have ratified the Rights of the Child Convention

⁸⁷ Algeria, Egypt, Libya, Morocco, and Syria are among the 51 States Parties to the Migrant Workers Convention.

1990's assert that terrorism threatens or destroys basic human rights and freedoms, particularly life, liberty and security but also civil and political and economic, social and cultural rights. Regional anti terrorism instruments such as 1998 Arab Convention, preamble; 1999 OIC Convention, preamble; 1971 OAS Convention, preamble; 1999 OAU Convention, preamble, OAS Declaration of Lima to Prevent, Combat and Eliminate Terrorism, 26 April 1996, preamble also stated that terrorism gravely violates human rights. UN Special Rapporteur observes that there is probably not a single human rights exempt from the impact of terrorism.

Terrorist acts can destabilize governments, undermine civil society, jeopardize the peace and security, threatens social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights. The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, under the Human Rights Council which stated that terrorism: a) threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights; b) has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments; c) has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery; d) has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and e) threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security. International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of State's obligations to ensure respect for the right to life and the right to security.

The destructive impact of terrorism on human rights and security has repeatedly been recognized by the United Nations. Consider, for instance, the preamble to UN Security Council Resolution 2396 (adopted Dec. 21, 2017): *Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever, wherever and by whomsoever committed, and remaining determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level*

Reaffirming that terrorism poses a threat to international peace and security and that countering this threat requires collective efforts on national, regional and international levels on the basis of respect for international law and the Charter of the United Nations

*Emphasizing that terrorism and violent extremism conducive to terrorism cannot and should not be associated with any religion, nationality, or civilization...*⁸⁸

As a matter of contemporary international law, States have an affirmative duty to protect individuals under their jurisdiction against interference in the enjoyment of their human rights, in particular the right to life and the right to security. These rights have been described as "preeminent" rights because without them all the other rights would effectively be meaningless. In many respects, terrorism aims to undermine the ability of governments and governmental entities —and perhaps more importantly, the *confidence* of the population in that ability —to safeguard society in precisely this fundamental respect. Perhaps more directly, acts of terrorism violate the rights of individual victims, who suffer an attack on their most basic right to live in peace and security.

Increasingly, support for the victims of terrorism has become an important aspect of international focus. In the 2005 World Summit Outcome (General Assembly Resolution 60/1), for example, Member States stressed "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief." Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to "promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation." In one sense, the failure of governments to provide assistance and relief to victims of terrorism may well be described as a human rights violation itself.

Terrorism is not a single phenomenon. It comes in many varieties. Nor is it generated by a single "cause" but can arise from a variety of circumstances and motivations which differ (in nature, impact, and extent) from situation to situation. In many instances, those circumstances and motivations involve real or perceived human rights violations. Among the commonly-cited conditions that make terrorism possible or likely ("precursors") are extreme poverty, social exclusion, and economic privation; religious and ethnic prejudice and discrimination; political repression and denials of due process; communal alienation; and lack of education, employment opportunities and social services. Without question, political objectives and ideological orientation have frequently played important roles (i.e., desire to end foreign occupation or outside interference, to overthrow or promote a particular form of governance) as have factors (belief in the superiority of one's faith or in commandments from the Deity).

Terrorism appeals to individuals and groups denied fundamental human rights (for example, those subjected to oppressive and authoritarian regimes) because they have no alternatives. Deprivation of human rights unquestionably fuels that sense of alienation and exclusion that is often used to justify terrorist acts. Of course, more personal factors - marital difficulties, broken relationships, recent loss of employment, mental health problems, etc. - can all be "triggers" in specific instances. It is also surely the case that some individuals who become terrorists have certain predispositions or psychological traits conducive to violent or anti-social behavior. Many are drawn to emulate what they see as the heroic feats of others. It may also be true that a "tyrannical mindset" does exist in some segment of every population, and perhaps it does take "monstrous people" to produce atrocious

⁸⁸ UNSC Res. 2396, preamb. paras 2-4 (Dec. 21, 2017).

deeds.”⁸⁹ Without question, violent crime occurs even in the most human-rights compliant societies. Compliance with international human rights obligations cannot prevent all acts of violence or terrorism.

Yet it also seems true that recruitment by international terrorist groups is aided by deeply-felt grievances nurtured by poverty, foreign occupation, and the absence of human rights and fundamental freedoms, as well as the lack of means of redress “within the system.” Democracy may be neither a necessary nor sufficient bulwark against terrorism (even from within) but it certainly seems that the social and political communities that are most compliant with human rights norms tend to suffer the least from domestic (“home grown”) terrorism. It also appears that improvements in domestic human rights conditions tends to reduce the level of terrorist violence.

The UN General Assembly has repeatedly emphasized that the rights of the alleged perpetrators of terrorist attacks must be respected in the course of their apprehension and prosecution, including their rights to public trial, to be presumed innocent until proven guilty, and not to be subject to torture or other degrading treatment. For example, in adopting its fundamental “Global Counter-Terrorism Strategy” in 2006, the UNGA reaffirmed that “the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism.”⁹⁰

To the same effect, the 2009 UNGA resolution on the “protection of human rights and fundamental freedoms while countering terrorism” stressed “the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law.” It emphasized that “Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law” and underscored that “respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism.” Finally, it noted that “failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity.”⁹¹

The UN Security Council echoed these principles in a recent anti-terrorism resolution, reaffirming that “*Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.*” It also stressed that “respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort,” noted “the importance of respect for the rule of law so as to effectively prevent and combat terrorism.” and said that “*failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity.*”

Emphasizes that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law, including coordination with the Office of the UN High Commissioner for Human Rights.⁹²

Within the UN Secretariat, an Office of Counter-Terrorism headed by an Under-Secretary General was recently established²⁷ to assist Member States in implementing the UN Global Counter-Terrorism Strategy. It will evidently combine the functions of the pre-existing UN Counter-Terrorism Implementation Task Force and the UN Counter-Terrorism Centre. Among its mandates is preventing violent extremism in accordance with the 2006 Global Counter-Terrorism Strategy (thus ensuring emphasis on compliance with human rights norms).

The newly-appointed Special Rapporteur of the UN Human Rights Council on “the promotion and protection of human rights and fundamental freedoms while countering terrorism,” Fionnuala Ní Aoláin, indicated in her recent report to the UN General Assembly that she will focus on four substantive areas: (1) the proliferation of permanent states of emergency and the normalization of exceptional national security powers within ordinary legal systems; (2) the need for greater clarity in respect to the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law, and international.⁹³

These principles have become embedded in the expanding UN structures for dealing with terrorism and counter-terrorism. The Security Council’s Counter-Terrorism Committee, established in 2001, criminal law) as well as the relationship of human rights to the emergence of stand-alone international security regimes regulating terrorism and counter-terrorism; (3) the advancement of greater normative attention to the gendered dimensions of terrorism and counterterrorism; and (4) advancing the rights and protection of civil society in the fight against terrorism.⁹⁴

⁸⁹ Albert Bandura, 2015, *Selective Moral Disengagement In the Exercise of Moral Agency*, Journal of Moral Education, Vol. 31, No. 2, 2002, cited in Coffee, “What Motivates Terrorists,” The Atlantic, June 9

⁹⁰ Annexed Plan of Action, Part IV, UNGA Res 60/288 (Sept. 20, 2006) (“The United Nations Global Counter-Terrorism Strategy”).

⁹¹ UNGA Res 63/185, preamb. paras. 2 and 7 (March 3, 2009) (“Protection of human rights and fundamental freedoms while countering terrorism”)

⁹² See <http://www.un.org/en/sc/ctc/rights.html>.

⁹³ UNSC Res. 2396, preamb. paras. 7 and 8 (Dec. 21, 2017).

⁹⁴ See Promotion and protection of human rights and fundamental freedoms while countering terrorism, UN General Assembly Seventy-second session Item 73 (b) of the provisional agenda, September 27, 2017, A/72/43280.

CONCLUSION

The result of this study can be concluded as follows. Firstly, terrorism acts are violates the International law norms and human rights principles where this acts conducted systematically or widespread, organized by State or non-State actors , directed to civilian people and mostly conducted deliberately to achieve political objectives or ideology and influence the audiens. Secondly, acts of terrorism are still criminalized as an ordinary crime in many countries nowadays , but the facts show that terrorism is not just an ordinary crime, it is a crime that uses violent means by a person or group of people which aimed at civilian targets, both to the community and to their property for different political purposes which carried out with inhumane measures. Thirdly, international and regional human rights law has recognized that in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of terrorism acts. It is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats.

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