

## CHAPTER II

### LITERATURE REVIEW

This chapter consists of three types of frameworks, namely Theoretical Framework, Conceptual Framework, and Legal Framework.

#### A. Theoretical Framework

There are two theories that will be used in this research, among others:

##### 1. Legal Protection

The legal protection is to give shelter to the human rights that harmed others and the protection is given to the people that they deserved all the rights granted by law or in other words the legal protection is a wide range of legal remedies that must be provided by law enforcement officials to provide a sense of security, both in mind and physical harassment and threats from any party.<sup>7</sup>

The term comes from the theory of legal protection of the English language, namely legal protection theory, whereas in the Dutch language, called the *Theorie van dewettelijke Bescherming*, and in German is called with *Theorie der rechtliche Schutz*.

<sup>7</sup> Satjipto Rahardjo. Loc Cit. page 74

Legal protection is the protection of the value and dignity, and recognition of human rights that are owned by the legal subject under the provisions of the law of tyranny or as a collection of laws or rules that can protect a thing from another.

In connection with the consumer, the law provides protection to the rights of the customers of something that resulted in non-fulfillment of these rights.<sup>8</sup>

According to Philip M. Hadjon, there are two type of protection of the Law:

1. Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to file an objection or opinion before a decision government received a definitive form. The aim is to prevent disputes. Preventive legal protection of great significance for acts of government based on freedom of action due to the absence of legal protection that is preventive compelled governments to be careful in making decisions based on discretion.

2. Repressive Legal Protection

Protection of repressive laws aimed at resolving the dispute. The principle of legal protection against government action rests and comes from the concept of the

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<sup>8</sup> Philipus M. Hadjon.Loc Cit. page. 25

recognition and protection of human rights because according to the western history, the birth of the concept of the recognition and protection of the human rights are directed to such limitations and laying responsibilities of the public and government. The second principle underlying the legal protection against acts of governance is the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights a prominent place and can be associated with the purpose of state law.<sup>9</sup>

## 2. Theory of States

In literal terms, the definition of state is a translation of foreign words, the state (English), *Staat* (Dutch and German) and *etat*(French), the word *state*, *staat*, *etat* was taken from the Latin word *status* or *statum*, which means the state is upright and fixed or something that has the properties are upright and constantly.<sup>10</sup>

In terminology, the State is defined by the highest organization among the groups of people who aspired to unite, live in a certain area and has a sovereign government.<sup>11</sup>

Here is following the theory the form of the state:<sup>12</sup>

<sup>9</sup> Philipus M. Hadjon. Op Cit. page. 30

<sup>10</sup> DrNimatul Huda, *Ilmu Negara*, ( Jakarta: RajawaliPers, 2012), page 8

<sup>11</sup> *Ibid.*

## 1. Theory of Social Contract

This theory assumes that the state was formed under the agreements with public. Some expert's adherents of the social contract theory

that explains the theory of the origin country, including:

### 1. Thomas Hobbes (1588-1679)

According to the terms forming the State is to hold a joint agreement of individuals who had been in a state of

nature promised to hand over all the rights of its nature to a person or a body.

Mechanical agreement made public

Hobbes as follows each individual told another individual that "I give you power and give up the right to rule to this

person or to people who are in this council on the condition that I give rights to him and give validity all acts in a

certain way".

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<sup>12</sup>*Ibid.*

2. John Locke (1632-1704)

Contractual basis and the State presented

Locke as a warning that the ruling power is never absolute but always limited, for

in an agreement with a person or group of people; individuals do not hand over all their natural rights.

3. Jean Jacques Rousseau (1712-1778)

State of nature is likened to a state of nature, to live free and equal

individuals, all of them produced by the individual and the individual was satisfied. According to the "State" or "a

corporate entity" formed to express the "will generally" (general will) and aimed at happiness together. Besides

state also pay attention to the interests of the individual (particular interest).

Sovereignty is in the hands of the people through willpower general.

J.J. Rousseau in his books *Social Contract Du* found after receiving a

mandate from the people, rulers restore

the rights of the people in the form of citizens' rights (civil rights). He also stated that the state formed by Community Treaty must guarantee freedom and equality. Ruler simply representatives of the people, set up under the will of the people. So, if it is not able to guarantee the freedom and the equality, ruling it can be replaced.<sup>13</sup>

## **2. Theory of Godhead**

State established by God and state leaders appointed by the Lord the King and the leader of the state is accountable only to God and not to anyone. Adherents of this theory were Augustine, Julius Stahi, Haller, Kranenburg and Thomas Aquinas.

## **3. Theory of Strength**

The first state is the result of the dominance of communication is strong against a weaker party, the state formed by conquest and occupation. With the conquest and occupation of an ethnic group that is stronger over the weaker ethnic

<sup>13</sup>Teori Terbentuknya Negara <https://sofiakartikablog.wordpress.com/teori-terbentuknya-negara/>  
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groups, began the process of formation of the State. Adherents of this theory are H.J. Laski, L. Duguit, Karl Marx, Oppenheimer and Kollikles.

#### **4. Theory of Organic**

According to Dede Rosyada, et al (2005: 54) argues the organic conception of the nature and origin of the state is a biological concept that describes the state with the terms of natural science. Countries considered or identified with a living being, human or animal individuals that are components of the state is considered as the cells of living creatures. Corporal life of the State may be equated as human bones, legislation as nerves, the king (emperor) as the head and the individual as the creature's flesh.

#### **5. Theory of History**

This theory states that social institutions are not made, but grow evolutionarily according to human needs.

#### **6. Theory Rule of Law**

According to this theory that the law is a statement published ratings of consciousness

human law and that law is the source of sovereignty.

### **7. Theory of Natural Law**

Theory of natural law that states occurred because the will of nature is a natural institution that man needs to hold public interest. Adherents of this theory were Plato, Aristotle, Augustine, and Thomas Aquinas.

Although states are not the only entities with international legal standing and are not the exclusive international actors, they are the primary subjects of international law and possess the greatest range of rights and obligations.<sup>14</sup>

In general, a subject (a person) of law is an entity to whom the law provides rights and assigns obligations. The requirements to be met for an entity to be considered a subject of International Law are the ability to have rights and obligations under International Law, the capacity to enter into relations with other subjects and to stand before international courts. States are, in this sense, clearly subjects of

<sup>14</sup> States in International Law <https://www.britannica.com/topic/international-law/States-in-international-law> downloaded on 17 Oct 2016



International Law since they fulfill all of these requirements.<sup>15</sup>

A State is the primary legal subject (person) in International Law. A State, by evidencing a separate legal and corporate personality, fulfills the basic requirement for the entrance into the community of nations. For an entity to be a State, it should be free from political control of another State and be free to enter into relations with other States.

Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933 provides the following the criteria of statehood:<sup>16</sup>

The state as a person of international law should possess the following qualifications:

- a. a permanent population;
- b. a defined territory;
- c. government; and
- d. capacity to enter into relations with other States.

#### 1. A Permanent Population

The existence of a permanent population is naturally required as an initial evidence of the existence of a State. This requirement suggests a stable community. Evidentially it is important, since in the

<sup>15</sup>State as Subject International Law <https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/5-a-state-as-a-subject-of-international-law> downloaded on 17 Oct 2016

<sup>16</sup>Convention on Rights and Duties of States adopted by the Seventh International Conference of American States <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166aef> downloaded on 25 Dec 2016

absence of the physical basis for an organized community, it will be difficult to establish the existence of a State.<sup>17</sup>

The size of the population, however, is not relevant since International Law does not specify the minimum number of inhabitants as a requirement of statehood. Nevertheless, an acceptable minimum number of inhabitants is required with regard to self-determination criterion.

## 2. A Defined Territory<sup>18</sup>

The requirement of a permanent population is intended to be used in association with that of territory. What is required by a defined territory is that there must be a certain portion of land inhabited by a stable community. A defined territory does not suggest that the territory must be fixed and the boundaries be settled since these are not essential to the existence of a State, although in fact all modern States are contained within territorial limits or boundaries.

The past practice shows that the existence of fully defined boundaries is not required and that what matters is the existence of an effective political authority having control over a particular portion of land. In 1913,

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<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

Albania was recognized as a State by a number of States even though it lacked settled boundaries, and Israel was admitted to the United Nations as a State in spite of disputes over its existence and territorial delineation.

The existence of a particular territory over which a political authority operates is essential for the existence of a State. For this reason, the “State of Palestine” declared in November 1988 at the conference of Algiers was not legally regarded as a valid State since the Palestine Liberation Organization had have no control over any part of the territory it was claiming.

The size of the territory of a State and alterations to its extent, whether by increase or decrease, do not of themselves change the identity of that State. A State continues to exist as long as a portion of land.

### 3. A Government<sup>19</sup>

For a stable community to function reasonably effectively, it needs some sort of political organization. It is required that an effective government be created, and this political authority must be strong enough to assert itself throughout the territory of the State without a foreign assistance. The existence

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<sup>19</sup> *Ibid.*

of an effective government, with some sort of centralized administrative and legislative organs, assures the internal stability of the State, and of its ability to fulfill its international obligations.

However, the requirement related to the existence of an effective government having control throughout its territory although strictly applied in the past practice, it has been subjected to certain modification in modern practice. In certain cases, the requirement of an effective government was not regarded as precondition for recognition as an independent State. The State of Croatia and the State of Bosnia and Herzegovina were recognized as independent States by the member States of the European Community, and admitted to membership of the United Nations at a time when substantial areas of the territories of each of them, because of the civil war situations, were outside the control of each government. In other cases, the requirement of an organized government was unnecessary or insufficient to support statehood. Some States had arisen before government was very well organized, as for example, Burundi and Rwanda which

were admitted as States to the membership of the United Nations in 1961.

Moreover, a State does not cease to exist when it is temporarily deprived of an effective government because of civil war or similar upheavals. The long period of *de facto* partition of Lebanon did not hamper its continuance as a State. The lack of a government in Somalia did not abolish the international personality of the country. Even when all the territory of a State is occupied by the enemy in wartime, it continues to exist as in the cases of the occupation of European States by Germany in the Second World War and the occupation of Germany and Japan by the Allied powers after that war. Nevertheless, the requirement of effective government remains strictly applied in case when part of the population of a State tries to break away to form a new State.

#### 4. A Capacity to Enter into Relations with Other States<sup>20</sup>

The capacity to enter into relations with other States is an attribute of the existence of an international legal personality. A State must have recognized capacity to maintain external relations with other States. Such capacity is essential for a sovereign State; lack of such

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<sup>20</sup> *Ibid.*

capacity will avert the entity from being an independent State. Capacity distinguishes States from lesser entities such as members of federation or protectorates, which do not manage their own foreign affairs, and are not recognized by other States as full-members of the international community.

Generally, the recognition of state have a two type, there are:<sup>21</sup>

### **1. Recognition *de facto***

In general, the recognition of *de facto* granted to the recognized based on facts or reality that the party has recognized there. So, without questioning the validity of the parties legally recognized it. The emphasis is a recognized fact that it actually exists, so it can be said that the recognition of *de facto* still temporary.

### **2. Recognition *de jure***

If it turns out the *de facto* recognition by increasingly effective existence so as to control the territory and the citizens fully support it and show its willingness to abide by obligations

<sup>21</sup> Wayan Parthiana, Op.Cit., hlm. 337-338.

international obligations, then the party who originally providing recognition *de facto* it can continue to provide recognition *de jure*. Given the recognition *de jure*, the parties concerned have accepted its existence in relations and international affairs. In practice, to get recognition *de jure* of the other party, the parties want to obtain such recognition is usually active in trying to convince the other party, for example by way of diplomacy and confirms that he is willing to abide by the rights and obligations as applicable international obligations in law and international relations.

## B. Conceptual Framework

### a) Definition

#### 1. Definition of Terrorism

Terrorism is derived from the Latin word “*terre*” means threatening. Derived from the word terror as an act to threaten the other hand, an effort to create an effect or psychological condition of a person to make a decision amid fears something. Terrorism more closely associated with the concept of militancy, radicalism popularized by the Western media, is attached to a region like the Middle East and Northern Ireland.<sup>22</sup>

Although the international community has adopted a number of international treaties that are designed to combat specific types of terrorism, such as the hijacking of aircraft, at the UN level to date there has been no agreement on a definition of terrorism. There is no settled definition of terrorism in international law, despite many attempts to achieve one by intergovernmental organizations, governments, and academics. One International Court of Justice judge has observed, “Terrorism is a term without any legal significance. It is merely a convenient way of alluding to activities, whether of States or individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both”. However, as such, much is at stake in the

<sup>22</sup> Teror, Terorisme dan Sejarah Perkembangannya di Indonesia.  
[http://eprints.undip.ac.id/38356/3/BAB\\_2.pdf](http://eprints.undip.ac.id/38356/3/BAB_2.pdf) downloaded on 17 Nov 2016



definition of terrorism. To call act terrorism is to assert not just that it possesses certain characteristics, but that it is wrong. To define an act as a terrorist act also has significant consequences with regard to co-operation between states, such as intelligence sharing, mutual legal assistance, asset freezing and confiscation and extradition.<sup>23</sup>

The United Nations Members States still have no agreed-upon definition of terrorism, and this fact has been a major obstacle to meaningful international countermeasures. Terminology consensus would be necessary for a single comprehensive convention on terrorism, which some countries favor in place of the present 12 piece meal conventions and protocols. Cynics have often commented that one state's "terrorist" is another state's "freedom fighter".<sup>24</sup>

1) According to the United Nations Security Council Resolutions 1566:<sup>25</sup>

*"Terrorism as any act intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a*

<sup>23</sup>What is Terrorism? <http://www.osce.org/odihr/29103?download=true> downloaded on 26 Oct 2016

<sup>24</sup> Definition Terrorism. <https://dema.az.gov/sites/default/files/Publications/AR-Terrorism%20Definitions-BORUNDA.pdf> downloaded on 28 Oct 2016

<sup>25</sup> "International Convention for the Suppression of the Financing of Terrorism." Declarations and Conventions Contained in General Assembly Resolutions. December 9, 1999.

*government or an international organization to do or abstain from doing any act.”*

- 2) According to the United Nations General Assembly Resolution 49/60 (adopted on December 9, 1994), titled “Measures to Eliminate International Terrorism”<sup>26</sup>

*“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”.*

- 3) According to Article 14 The Prevention of Terrorism (Temporary Provisions) act, 1984<sup>27</sup>

*“Terrorism means the use of violence for political ends and includes any use of violence for the purpose putting the public or any section of the public in fear.”*

- 4) According to Boaz Ganor<sup>28</sup>

*“The intentional use of or threat to use violence against civilians or against civilian targets, in order to attain political aims”*

<sup>26</sup>United Nations : General Assembly <http://www.un.org/documents/ga/res/49/a49r060.htm> downloaded on 31 Oct 2016

<sup>27</sup> *Ibid.*

<sup>28</sup> Ganor, Boaz. "Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?" *Police Practice and Research* 3, no. 4 (2002): 287-304. downloaded on 31 Oct 2016

5) According to the European Union defines terrorism for legal/official purposes in Article 1 of the Framework Decision on Combating Terrorism (2002)<sup>29</sup>

*“This provides that terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.”*

6) According to the Federal Bureau of Investigation (FBI)<sup>30</sup>

*“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.”*

7) According to Steven Best and Anthony J. Nocella<sup>31</sup>

<sup>29</sup> Various Definition of Terrorism <https://dema.az.gov/sites/default/files/Publications/AR-Terrorism%20Definitions-BORUNDA.pdf> downloaded on 31 Oct 2016

<sup>30</sup> "What We Investigate." FBI. Accessed November 9, 2012.

<http://www.fbi.gov/albuquerque/about-us/what-we-investigate>. downloaded on 31 Oct 2016

<sup>31</sup> Defining Terrorism <http://www.drstevebest.org/DefiningTerrorism.pdf> downloaded on 11 Nov 2016

*“Terrorism is the intentional use of physical violence directed against innocent persons human and/or non human animals to advance the religious, ideological, political, or economic purposes of an individual, organization, corporation, or state government.”*

8) According to Kent Leyne Oots<sup>32</sup>

*(1) a military action or psychologically designed to create fear, or make economic collapse or material, (2) a method of coercive behavior of others, (3) a criminal offense tend publicity, (4) criminal acts aimed at political, (5) politically motivated violence and, (6) a criminal act in order to achieve political or economic objectives*

Acts of terrorism also implies that the attack terrorist acts committed inhumane and has no justification. The terrorists generally refer to themselves as separatists, liberation fighters, crusaders, militants, mujahidin, and others. Terrorism activities whose purpose is to make other people feel frightened and thus can attract people's attention, a group or a nation. Acts of terror usually used when there is no other way that can be taken to carry out his will.<sup>33</sup>

<sup>32</sup> M. Riza Sihbudi, 1991, *Bara Timur Tengah*, Bandung, hal. 94

<sup>33</sup> Adian Husaini, 2001, *Jihad Osama Versus Amerika*, Gema Insani Pers, Jakarta, h.83

Regarding of the definition of terrorism above, the definition of terrorism that researcher will used in this research is according to the Charter of United Nations.

## b) Conceptual Approaches

### 1. Subjects of International Law

A subject of International Law is a person (entity) who possesses international legal personality, i.e., capable of possessing international rights and obligations and having the capacity to take certain types of action on the international level. Traditionally, States have been the only subjects or persons of International Law. However, with the establishment of international organizations, it has become necessary that a sort of international legal personality be granted to these entities. Thus, international organizations become subjects or persons of International Law.<sup>34</sup>

Beside States and International Organizations, Intergovernmental Organizations, Individuals, Insurgent Group as well as Transnational Cooperation are considered, in certain circumstances, subjects of International Law. These persons and subjects of International Law are discussed in the following<sup>35</sup>

<sup>34</sup> Subjects of International Law <https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/3-subjects-of-international-law> downloaded on 2 Nov 2016

<sup>35</sup> *Ibid.*

**a. States**

A State has the following characteristics: (1) a permanent population; (2) a defined territory; (3) a government; and (4) the capacity to enter into relations with other States. Some writers also argue that a State must be fully independent and be recognized as a State by other States. The international legal system is a horizontal system dominated by States which are, in principle, considered sovereign and equal. International law is predominately made and implemented by States. Only States can have sovereignty over territory. Only States can become members of the United Nations and other international organizations. Only States have access to the International Court of Justice.

**b. International Organizations**

International Organizations are established by States through international agreements and their powers are limited to those conferred on them in their constituent document. International organizations have a limited degree of international personality, especially *vis-à-vis* member States. They can enter into international agreements and their representatives have certain privileges and immunities. The constituent document may also provide

that member States are legally bound to comply with decisions on particular matters. The powers of the United Nations are set out in the United Nations Charter of 1945. The main political organ is the General Assembly and its authority on most matters (such as human rights and economic and social issues) is limited to discussing issues and making recommendations.

The Security Council has the authority to make decisions that are binding on all member States when it is performing its primary responsibility of maintaining international peace and security. The main UN judicial organ is International Court of Justice (ICJ), which has the power to make binding decisions on questions of international law that have been referred to it by States or give advisory opinions to the U.N.

### **c. Individuals**

Individuals are generally not regarded as legal persons under international law. Their link to State is through the concept of nationality, which may or may not require citizenship. Nationality is the status of being treated as a national of a State for particular purposes. Each State has wide discretion to determine who is a national. The most common methods of acquiring nationality at birth are

through one or both parents and/or by the place of birth.

Nationality can also be acquired by adoption and naturalization.

#### **d. Intergovernmental Organizations**

Intergovernmental organizations are groups established by international treaties to serve a particular function. They enjoy certain legal benefits and are important parts in the public international law. They are commonly referred to as IGOs. Examples of IGOs include World Trade Organization, International Monetary Fundament many others.

They enjoy a certain level of privileges similar to those ones of the states, an example being diplomatic immunity. Intergovernmental organizations are provided with privileges and immunities that are intended to ensure their independent and effective functioning. They are specified in the treaties that give rise to the organization such as the Convention on the Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the International Criminal Court, which are normally supplemented by further multinational agreements and national regulations for example the



International Organizations Immunities Act in the United States.

The organizations are thereby immune from the jurisdiction of national courts. Rather than by national jurisdiction, legal accountability is intended to be ensured by legal mechanisms that are internal to the intergovernmental organization itself and access to administrative tribunals. In the course of many court cases where private parties tried to pursue claims against international organizations, there has been a gradual realization that alternate means of dispute settlement are required, as states have fundamental human rights obligations to provide plaintiffs with access to court in view of their right to a fair trial.

Otherwise, the organizations' immunities may be put in question in national and international courts. Some organizations hold proceedings before tribunals relating to their organization to be confidential, and in some instances have threatened disciplinary action should an employee disclose any of the relevant information. Such confidentiality has been criticized as a lack of transparency.

#### e. Insurgency and Belligerency Group

The recognition of belligerency is merely an assertion of the fact that the rebels are in a position to exercise authority over the territory in their possession. The recognition does not give cause for any offence to the State concerned. And according this recognition is not a violation of neutrality either. Insurgency means rebellion, revolt, or mutiny by a section of the citizenry of a State against the established government. It denotes a sustained armed struggle carried out by dissident forces in a State against the established order.

International law treats insurgencies and civil wars as internal matters falling within the domestic jurisdiction of the state concerned and it is up to the municipal law to deal with it. Generally, as a rule, States do not interfere in the internal affairs of other States, and especially so when civil strife or condition of insurgency exists within a State. However, when rebels or insurgents come to occupy and effectively control a substantial part of the State territory, it may become necessary for the recognizing States to take cognizance of the state of insurgency.

The rebel forces may not be acting under an organized command structure and may not be following the

laws of war. In such circumstances, outside States may grant the rebels only a form of recognition, viz. as insurgents and refrain from treating them as law-breakers and recognize their de facto authority in the territory under their occupation. They maintain such relations with the insurgents as may be necessary for the protection of their nationals, commerce and for such other purposes connected with hostilities. Belligerency is a formal status involving rights and duties.

The rebel group (belligerency) are groups or insurgents who have reached the level of more powerful and well-established, both politically, and military organizations, so as to appear as an independent political entity. Independence of these groups not only within but also out. The point is that within certain limits, he has been able to manifest themselves at the international level on its own existence.

“Belligerency” is a term used in international law to indicate the status of two or more entities, generally sovereign states, being engaged in a war. Wars are often fought with one or both parties to a conflict invoking the right to self-defence under Article 51 of the United Nations Charter (as the United Kingdom did in 1982 before the start

of the Falklands War) or under the auspices of a United Nations Security Council resolution (such as the United Nations Security Council Resolution 678, which gave legal authority for the Gulf War).<sup>35</sup>

A state of belligerency may also exist between one or more sovereign states on one side and rebel forces, if such rebel forces are recognized as belligerents. If there is a rebellion against a constituted authority (for example, an authority recognized as such by the United Nations), and those taking part in the rebellion are not recognized as belligerents, the rebellion is an insurgency. Once the status of belligerency is established between two or more states, their relations are determined and governed by the laws of war.

In international law, regarding the conditions so that it can be said as the rebel groups, implicitly contained in the Convention Den Haag IV 1907 On Rules of War on Land, namely:

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

- a) To be commanded by a person responsible for his subordinates;
- b) To have a fixed distinctive emblem recognizable at a distance;
- c) To carry arms openly; and

<sup>35</sup> Belligerency. <https://www.law.yale.edu/news/4340.htm> downloaded on 10 Nov 2016

- d) To conduct their operations in accordance with the laws and customs of war.

#### **f. Transnational Cooperation**

Another possible candidate for international personality is the transnational or multinational enterprise.

Various definitions exist of this important phenomenon in international relations. They in essence constitute private business organizations comprising several legal entities linked together by parent corporations and are distinguished by size and multinational spread.

In some places, countries and international organizations to make contact with the multinationals who then gave birth to the rights and international obligations, which of course affect the existence, structure of the substance and scope of international law itself.<sup>36</sup>

## **2. Terrorism**

### **a. History**

The first recorded use of "terrorism" and "terrorist" was in 1795, relating to the Reign of Terror instituted by the French government. The use of "terrorist" to signify anti-government

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<sup>36</sup> Subjek dan Objek Hukum Internasional <https://younghendra.wordpress.com/2009/01/26/tugas-mt-kul-hukum-internasional/> downloaded on 17 Nov 2016

activities was recorded in 1866 referring to Ireland, and in 1883 referring to Russia.<sup>37</sup>

Throughout history humans have terrorized their neighbors to generate fear and compel changes in behavior. At the dawn of China's imperial age, T'ai Kung, the first Chinese general and progenitor of strategic thought, described the "spreading of civil offensives" to sow dissension, demoralize the populace and incapacitate the government.

Today terrorism must be viewed within the context of the modern nation-state. Indeed, it was the rise of a bureaucratic state, which could not be destroyed by the death of one leader that forced terrorists to widen their scope of targets in order to create a public atmosphere of anxiety and undermine confidence in government.

This reality is at the heart of the ever more violent terrorism of the last 100 years, from anarchists' assassinations to hijackings and suicide bombings.

Terrorism is not a 21st century phenomenon and has its roots in early resistance and political movements. The Sicarii were an early Jewish terrorist organization founded in the first century AD with the goal of overthrowing the Romans in the Middle East.

Judas of Galilee, leader of the Zealots and a key influence on the

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<sup>37</sup> History of Terrorism <http://www.wussu.com/current/levine.htm> downloaded on 15 Nov 2016

Sicarii, believed that the Jews should be ruled by God alone and that armed resistance was necessary.<sup>38</sup>

Unlike the Zealots, the Sicarii targeted other Jews they believed to be collaborators or traitors to the cause. The tactics employed by the Sicarii were detailed by the historian Josephus around 50AD: “they would mingle with the crowd, carrying short daggers concealed under their clothing, with which they stabbed their enemies. Then when they fell, the murderers would join in the cries of indignation and, through this plausible behavior, avoided discovery.”<sup>39</sup>

There are many other key examples of terrorism throughout history before the modern terrorism of the 20th century. Guy Fawkes’ failed attempt at reinstating a Catholic monarch is an example of an early terrorist plot motivated by religion. Meanwhile, The Reign of Terror during the French Revolution is an example of state terrorism.

Thomas Mockaitis has discussed in depth the terrorist risk to American lives. Accordingly, an average American has a 1 in 88,000 lifetime odds of dying from a terrorist attack, a 1 in 55,928 odds of dying from a lightning strike, a 1 in 315 chance of being shot to death, a 1 in 229 chance of being killed by accidental fall, a

<sup>38</sup> Research on Terrorism.

[http://www.springer.com/cda/content/document/cda\\_downloaddocument/9780387716121-c1.pdf?SGWID=0-0-45-560212-p173733614](http://www.springer.com/cda/content/document/cda_downloaddocument/9780387716121-c1.pdf?SGWID=0-0-45-560212-p173733614), downloaded on 17 Nov 2016

<sup>39</sup> Terrorism <https://ourworldindata.org/terrorism/> downloaded on 2 Nov 2016

1 in 228 chance of dying in a car, and a 1 in 211 chance of dying from an assault.

The situation in Europe seems to be fairly stable as well. In 2006 al-together 498 terrorist attacks were carried out in the EU with the vast majority of them causing limited material damage and deliberately avoiding casualties. There was only one (failed) Islamic terrorist attack in the EU (in Germany) that was aimed at causing mass casualties, and one uncovered terror plot in the UK having the same objective. At the same time, 257 (36.4%) of the 706 apprehended terrorist suspects we're arrested on suspicion of being connected to Islamist terror activities. France, Spain and the UK are the EU members most affected by terrorism, whereas Estonia, Finland, Hungary, Latvia, Lithuania, Slovakia and Slovenia are the least affected member states.

Considering the information mentioned above, it seems that the risk of falling victim to terrorism is really not that serious in the modern (developed) world – after all it seems to be lower than that of being struck by lightning. Yet we should keep in mind two things: (1) using fear as a weapon is not expected to kill the target, but to shape target audience's behaviour in a desired manner, and (2) there is always the 'shadow of the future' meaning that calculated probabilities are based on the past and terrorists may come up with new, much more destructive acts of terror.



## b. Characteristic Terrorism

General characteristic terrorism following:<sup>40</sup>

1. Increasing lethality of domestic and international terrorism
2. Bombings account for a large percentage of terrorist attacks
3. Terrorist groups becoming smarter, tougher, and more difficult to capture
4. Gathering intelligence is key
5. Terrorists getting more adept at killing – weapons more sophisticated
6. State support – axis of evil
7. Successive generations more lethal
8. Changing technology – 9/11
9. Weapons of mass destruction – chemical, biological, and nuclear weapons)
10. Growth in ethnic and religious fanaticism
11. Growth of non-traditional groups

Matrix comparison of the characteristics of the user group acts of violence in order to achieve its objectives, it can be concluded traits - traits of terrorism are as follows:<sup>41</sup>

- a. A good organization, discipline and militancy implanted through indoctrination and training for many - years.

<sup>40</sup> General Characteristic of Terrorism <http://hhs.csus.edu> downloaded on 25 Feb 2017

<sup>41</sup> The Mind of Terrorist [http://www.diplomatie.gouv.fr/fr/IMG/pdf/critik\\_psychoterrorisme.pdf](http://www.diplomatie.gouv.fr/fr/IMG/pdf/critik_psychoterrorisme.pdf) downloaded on 5 Nov 2016

- b. Have a political purpose, but is a criminal act to achieve the goal.
- c. Not heeding the norm, such as religion, law, and others.
- d. Selecting targets high psychological effect to cause fear and getting wide publicity.

### c. Purpose of Terrorism

The aim of the terrorists can be divided into long-term goals and short-term goals.<sup>42</sup>

#### a) Short Term Goal

- Gain recognition from local, national and international for them scrambles
- Triggering the government's reaction, over-reaction and repressive measures that could lead to unrest in society.
- Bother, weaken and embarrass the government, military or other security forces. Shows the inability of the government in protecting and securing the citizen.
- Obtaining money.
- Interfere with or destroy the means of communication and transportation.
- To prevent or inhibit a decision from the executive or the legislative.
- Potential strike

<sup>42</sup>Define Goals and Objectives Terrorism [www.michigan.gov/documents/8-pub207\\_60743\\_7.pdf](http://www.michigan.gov/documents/8-pub207_60743_7.pdf) downloaded on 22 Nov 2016

- To prevent the flow of foreign investment or foreign aid program.
- Influencing the course of elections
- Freeing captives into their group
- Satisfactory or avenge.

Some terrorist groups use terrorist acts aimed at short-term to weaken the government to achieve their long term goals.

#### b) Long Term Goals

- Potential dramatic changes in government such as revolution, civil war or wars between countries.
- Creating favorable conditions the terrorists during the guerrilla war.
- Affects wisdom decision makers both within the local, national or international.
- Obtaining political recognition as a legal entity to represent an ethnic or national group.

#### d. Development of Terrorism

According to David C. Rapoport, a prominent terrorism is now a part of the fourth wave of terrorism, which is different from earlier waves of terrorism. In the period from 1880 until 1920, a terrorist group is trying to win the first wave of civilian political reform authoritarian governments, such as the Tsarist government in Russia. In the period 1920 to 1960, terrorist groups emerged in

the face of efforts to national self-determination, such as the IRA in Northern Ireland, the Red Army in Japan, the Palestinians in the occupied territories of Israel, Militants NPA in the Philippines, HarakatAnsar in Pakistan, Militants LaskarJhangvi in Kashmir , the Tamil Tigers in Sri Lanka, AumShinrikyo in Japan. This terrorist group considers itself as the defender of the interests of the third world countries to face the forces of global capitalism.<sup>43</sup>

Similarly, the fourth generation groups that emerged in the period in 1980 driven by a belief in the revolutionary ideology or religious impulse. The main thing that distinguishes terrorist groups fourth generation with generation-a generation ago is that the group did not hesitate to make the fourth generation of civilians as targets violence.

Mark Juergenmeyer in his book *Terror in the Mind of God*, trying to understand the relationship between the religious view that is owned by a community with such acts of terror that are legitimated by the group. Juergenmeyer try to collaborate relationship between the two in terms of the views that are owned cosmic religion.

What is meant by cosmic pattern in religion is a tendency to understand a specific problem from the standpoint of the public, which go beyond the specific lives of people where the problem

<sup>43</sup> Moch. Faisal Salam, *Motivasi Tindakan Terrorisme*, (Bandung: Mandar Maju, 2005), page 4

occurs and to base their understanding of the historical events that often metaphysical. The reason underlying the act of terrorism by a community is usually a cosmic view of religion is concerned with the outbreak of war. In any religious teaching that is used to legitimize violence, Juergenmeyer seen any sort of myth of the war between truth against evil, between regularities against chaos.

### **3. The International Law Against Terrorism**

#### **a. Definition of International Law Against Terrorism**

There is a growing body of international law which is directly relevant to the fight against terrorism. International law provides the framework within which national counter-terrorism activities take place and which allows States to cooperate with each other effectively in preventing and combating terrorism.<sup>44</sup>

This framework includes instruments addressing specific aspects of counter terrorism alongside other international instruments designed for international cooperation in criminal law, the protection of human rights or refugees or the establishment of the laws of war which provide the broader context within which counterterrorism activities take place. International law specifically addressing terrorism exists within the general framework of

<sup>44</sup> Frequently Asked Questions on International Law Aspects of Countering Terrorism  
<https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> downloaded on 11 Nov 2016

international law including international criminal law, international humanitarian law, international human rights law and refugee law.

Much of the international law of terrorism has taken the form of multilateral treaties. Major anti-terrorism instruments include the International Convention Against the Taking of Hostages, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents. These and other treaties on terrorism have developed to contain several provisions that are considered particularly pertinent in combating this form of violence.<sup>45</sup>

These provisions include articles that define particular acts of terrorism as criminal offenses for the purposes of the treaties, oblige states parties to make the offenses punishable by appropriate penalties under their domestic law, and require states parties to establish their jurisdiction over offenses and suspected offenders in particular cases and to prosecute or extradite alleged offenders. Also included in anti-terrorism instruments are provisions that require states parties to cooperate in preventing terrorist offenses and to provide mutual legal assistance in criminal proceedings relating to crimes of terrorism.

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<sup>45</sup> The International Law Against Terrorism <http://www.cidh.org/terrorism/eng/part.a.htm> downloaded on 11 Nov 2016

## b. History of International Law Against Terrorism

In 2001, following the September 11 attacks, the United Nations Security Council declared that “acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty first century” but exactly what constitutes this threat is subject to conjecture. Rather than define and prohibit terrorism, international and domestic instruments frequently prohibit particular acts recognized as falling under the banner of terrorism. Such acts are often proscribed without expressly acknowledging that the acts are considered to be terrorism. Thus, when identifying the content of terrorism as a concept, the inquiry cannot be limited to international instruments that expressly mention terrorism.<sup>46</sup>

Legal measures targeting terrorism operate on both the domestic and international planes. To engage the United Nations, as a political and legal matter, terrorism must have a significant international dimension. Although a significant proportion of terrorism is intrastate, terrorism is frequently international in character: by crossing borders, by the nationality of participant and/or victim, or by target despite being geographically intra-state.

Acts may also be considered international in character when they

<sup>46</sup> Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1054&context=iclr> downloaded on 11 Nov 2016

attempt to influence foreign governments and when they implicate the interests of more than one state.

There is a set of currently nineteen international conventions and protocols which relate directly to the prevention and suppression of terrorism. They each deal with specific criminal conducts rather than addressing the more general notion of “terrorism” as such. Most are penal in nature with a common format. Typically, the instruments: Define a particular type of terrorist violence as an offence under the convention; Require State Parties to penalize that activity in their domestic law; Identify certain bases upon which the Parties responsible are required to establish jurisdiction over the defined offence; Create an obligation on the State in which a suspect is found to establish jurisdiction over the convention offence and to refer the offence for prosecution if the Party does not extradite pursuant to other provisions of the convention. This last element is commonly known as the principle of *aut dedere aut judicare*.<sup>47</sup>

There are namely:

1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft

<sup>47</sup> *Ibid.*



3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
4. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
5. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation
6. 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft
7. 2014 Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft
8. 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons
9. 1979 International Convention against the Taking of Hostages
10. 1980 Convention on the Physical Protection of Nuclear Material
11. 2005 Amendments to the Convention on the Physical Protection of Nuclear Material
12. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

13. 2005 Protocol to the Convention for the Suppression of

Unlawful Acts against the Safety of Maritime Navigation

14. 1988 Protocol for the Suppression of Unlawful Acts

Against the Safety of Fixed Platforms Located on the

Continental Shelf

15. 2005 Protocol to the Protocol for the Suppression of

Unlawful Acts Against the Safety of Fixed Platforms

located on the Continental Shelf

16. 1991 Convention on the Marking of Plastic Explosives for

the Purpose of Detection

17. 1997 International Convention for the Suppression of

Terrorist Bombings

18. 1999 International Convention for the Suppression of the

Financing of Terrorism

19. 2005 International Convention for the Suppression of Acts

of Nuclear Terrorism

### **c. Source of International Law Against Terrorism**

Since International Law Against Terrorism is an integral part of Public International Law, its sources defined in Article 38

Paragraph I Statute of the International Court of Justice. There are

four sources of international law as defined in the Statute of the International Court of Justice, namely:<sup>48</sup>

- a. **International conventions**, whether general or particular, establishing rules expressly recognized by contesting states;
- b. **International custom**, as evidence of a general practice accepted as law;
- c. **The General principle of law**, recognized by civilized nations;
- d. Subject to provisions of Article 59, **judicial decisions and the teachings of the most highly qualified publicist** of the various nations as subsidiary means for the determination of rules of law.

Generally, the four sources of the law can be divided into two namely, the legal sources of primary and secondary legal sources. International conventions, international custom, and the general principles of law are classified into primary legal source. The third source of law generally a binding law. On the other hand, court decisions and doctrines or teachings of the jurists are classified into secondary legal sources. Consequently, the source of secondary law is not binding in general. The court ruling is only binding on the extent of the parties to the dispute, while the

<sup>48</sup> Pengaturan Hukum Mengenai Pemberantasan Terrorisme  
<http://repository.usu.ac.id/bitstream/123456789/54909/3/Chapter%20II.pdf> downloaded on 11 Nov 2016

doctrine can only be legal provisions through the primary legal source. These sources will be analyzed below<sup>49</sup>

#### 1) International Convention

International treaties are contracts signed between states. They are legally binding and impose mutual obligations on the states that are party to any particular treaty (states parties). The main particularity of human rights treaties is that they impose obligations on states about the manner in which they treat all individuals within their jurisdiction.

Even though the sources of international law are not hierarchical, treaties have some degree of primacy. More than forty major international conventions for the protection of human rights have been adopted. International human rights treaties bear various titles, including 'covenant', 'convention' and 'protocol'; but what they share are the explicit indication of states parties to be bound by their terms.

#### 2) International Custom

Article 38 of the Statute of the ICJ refers to an international custom as evidence of a general practice accepted as law. This definition comprises of two

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<sup>49</sup> Source of International Law <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/sources-of-international-law> downloaded on 13 Nov 2016

elements: a general practice and its acceptance as law. These two elements are necessary for the formation of customary international law. The first element, the behavioral or objective element, requires a recurring consistent action or lack of action by States, which is indicated by such activities as official statements or conducts, legislative or administrative action, court decisions and diplomatic behaviors or correspondence.

The second element (the psychological or subjective element) entails the conviction that in similar case such a practice is required or permitted by international law. In this sense, international customs may be defined as practices or usages which have been observed by a large number of States over a lengthy period of time and considered by them to be legally obligatory, i.e., being a law.

### 3) The General Principle of Law

Article 38 of the Statute of the ICJ refers to “the general principles of law recognized by civilized nations” (all nations are now considered as civilized) as a primary source of International Law. This source is listed the third after international conventions and international customs. The Court shall apply the general principles of

law in cases where treaties and customs provide no rules to be applied.

Notably, there is no agreement on what the term “general principles of law” means. Some say it means general principles of international law; others say it means general principles of national law. Actually, there is no reason why it should not mean both; the greater expansion in the meaning of this term, the greater chance of finding rules to fill the gaps in treaty law and customary law. Indeed, international tribunals had applied general principles of law in both senses for many years before the Permanent Court of International Justice was established in 1920.

#### 4) Judicial Decisions and the Teachings of the Most Highly Qualified Publicist

According to Article 38 of the Statute of the International Court of Justice, *judicial decisions and the teachings of the most qualified publicists* are ‘subsidiary means for the determination of rules of law’. Therefore, they are not, strictly speaking, formal sources, but they are regarded as evidence of the state of the law.

As for the judicial decisions, Article 38 of the Statute of the International Court of Justice is not confined

to international decisions (such as the judgements of the International Court of Justice, the Inter-American Court, the European Court and the future African Court on Justice and Human Rights); decisions of national tribunals relating to human rights are also subsidiary sources of law.

The writings of scholars contribute to the development and analysis of human rights law. Compared to the formal standard setting of international organs the impact is indirect. Nevertheless, influential contributions have been made by scholars and experts working in human rights fora, for instance, in the UN Sub-Commission on the Promotion and Protection of Human Rights, as well as by highly regarded NGOs, such as Amnesty International and the International Commission of Jurists.

#### **4. United Nations Bodies Relating to Counter Terrorism**

##### **a. History of United Nations Organization**

The United Nations Organization is the global international organization of sovereign independent states. It was established on 24 October 1945. The destruction caused by the Second World War compelled the people to establish an international organization for keeping the world away from war and in favor of friendship and cooperation among all the nations. The United Nations was

designed to save the future generations from the scourge of war by promoting International peace and security.<sup>50</sup>

After the end of the Second World War, the United States, the United Kingdom, the Soviet Union (Former USSR) some other states held several meetings and planned to establish an organization for preserving peace and promoting social, economic and political co-operation among all nations. As a result of their efforts, the United Nations Organization came into existence in 1945 when the representatives of 51 nations signed the Charter of the United Nations at San Francisco.

The name “United Nations” was suggested by US President Franklin Roosevelt. It was first used in the Declaration of the United Nations made on January 1<sup>st</sup>, 1942. At San Francisco Conference, it was unanimously adopted as the name of the new international organization as a tribute to the late President of the United States. India had not achieved its independence by then and yet it became one of the founder members of the United Nations.

#### **b. Purpose of United Nations Organization**

The purposes of the United Nations are defined in Article 1 of the United Nations Charter:<sup>51</sup>

<sup>50</sup>United Nations: Objectives and Roles of United Nations

<http://www.yourarticlelibrary.com/uno/united-nations-objectives-and-roles-of-united-nations/40332/>downloaded on 2 Nov 2016

<sup>51</sup>Charter of United Nations <http://www.un.org/en/sections/un-charter/chapter-i/index.html>downloaded on 2 Nov 2016



1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

### **c. Main Organs of the United Nations**

The main organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the

United Nations Secretariat. All were established in 1945 when the United Nations was founded.<sup>52</sup>

### **1) General Assembly**

The General Assembly is the main deliberative, policymaking and representative organ of the UN. All 193 Member States of the United Nations are represented in the General Assembly, making it the only United Nations body with universal representation. Each year, in September, the full United Nations membership meets in the General Assembly Hall in New York for the annual General Assembly session, and general debate, which many heads of state attend and address. Decisions on important questions, such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority of the General Assembly. Decisions on other questions are by simple majority. The General Assembly, each year, elects a GA President to serve a one-year term of office.

### **2) Security Council**

The Security Council has primary responsibility, under the UN Charter, for the maintenance of international peace and security. It has 15 Members (5 permanent and 10 non-permanent members). Each Member has one vote. Under

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<sup>52</sup>About United Nations <http://www.un.org/en/about-un/> downloaded on 27 Nov 2016

the Charter, all Member States are obligated to comply with Council decisions. The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security. The Security Council has a Presidency, which rotates, and changes, every month.

### **3) Economic and Social Council**

The Economic and Social Council is the principal body for coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues, as well as implementation of internationally agreed development goals. It serves as the central mechanism for activities of the UN system and its specialized agencies in the economic, social and environmental fields, supervising subsidiary and expert bodies. It has 54 Members, elected by the General Assembly for overlapping three-year terms. It is the United Nations' central platform for reflection, debate, and innovative thinking on sustainable development.

#### **4) Trusteeship Council**

The Trusteeship Council was established in 1945 by the UN Charter, under Chapter XIII, to provide international supervision for 11 Trust Territories that had been placed under the administration of seven Member States, and ensure that adequate steps were taken to prepare the Territories for self-government and independence. By 1994, all Trust Territories had attained self-government or independence. The Trusteeship Council suspended operation on 1 November 1994. By a resolution adopted on 25 May 1994, the Council amended its rules of procedure to drop the obligation to meet annually and agreed to meet as occasion required by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council.

#### **5) International Court of Justice**

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in the Hague (Netherlands). It is the only one of the six principal organs of the United Nations not located in New York (United States of America). The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions

referred to it by authorized United Nations organs and specialized agencies.

#### **6) Secretariat**

The Secretariat comprises the Secretary-General and tens of thousands of international United Nations staff members who carry out the day-to-day work of the United Nations as mandated by the General Assembly and the Organization's other principal organs. The Secretary-General is chief administrative officer of the Organization, appointed by the General Assembly on the recommendation of the Security Council for a five-year, renewable term. United Nations staff members are recruited internationally and locally, and work in duty stations and on peacekeeping missions all around the world. But serving the cause of peace in a violent world is a dangerous occupation. Since the founding of the United Nations, hundreds of brave men and women have given their lives in its service.

#### **d. The Role of Security Council**

The Security Council has primary responsibility, under the United Nations Charter, for the maintenance of international peace and security. It is for the Security Council to determine when and

where a United Nations Peacekeeping operation should be deployed.<sup>53</sup>

The Security Council responds to crises around the world on a case-by-case basis and it has a range of options at its disposal.

It takes many different factors into account when considering the establishment of new peacekeeping operation, including:

- Whether there is a ceasefire in place and the parties have committed themselves to a peace process intended to reach a political settlement;
- Whether a clear political goal exists and whether it can be reflected in the mandate;
- Whether a precise mandate for a UN operation can be formulated;
- Whether the safety and security of UN personnel can be reasonably ensured, including in particular whether reasonable guarantees can be obtained from the main parties or factions regarding the safety and security of UN personnel.

The Security Council establishes a peacekeeping operation by adopting a Security Council resolution. The resolution sets out that mission's mandate and size. The Security Council monitors the work of United Nations Peacekeeping operations on an ongoing

<sup>53</sup> The Role of Security Council <http://www.un.org/en/peacekeeping/operations/rolesc.shtml>  
downloaded on 4 Nov 2016

basis, including through periodic reports from the Secretary-General and by holding dedicated Security Council sessions to discuss the work of specific operations.

The Security Council can vote to extend, amend or end mission mandates as it deems appropriate. Under Article 25 of the Charter, all United Nations members agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to Member States, the Council alone has the power to take decisions which Member States are obligated to implement.

#### **e. International Criminal Court**

The International Criminal Court (“the ICC” or “the Court”) is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Some of the most heinous crimes were committed during the conflicts which marked the twentieth century. Unfortunately, many of these violations of international law have remained unpunished. The Nuremberg and Tokyo tribunals were established in the wake of the Second World War. In 1948, when the Convention on the Prevention and Punishment of the Crime of

Genocide was adopted, the United Nations General Assembly recognized the need for a permanent international court to deal with the kinds of atrocities which had just been perpetrated. The idea of a system of international criminal justice re-emerged after the end of the Cold War. However, while negotiations on the ICC Statute were underway at the United Nations, the world was witnessing the commission of heinous crimes in the territory of the former Yugoslavia and in Rwanda. In response to these atrocities, the United Nations Security Council established an ad hoc tribunal for each of these situations. These events undoubtedly had a most significant impact on the decision to convene the conference which established the ICC in Rome in the summer of 1998.

On 17 July 1998, a conference of 160 States established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. Among other things, it sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties.<sup>54</sup>

<sup>54</sup> Understanding International Criminal Court <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf> downloaded on 15 Nov 2016



ICC is composed of four organs. These are the Presidency, the Judicial Divisions, the Office of the Prosecutor and Registry.

#### 1. The Presidency

The Presidency is one of the four Organs of the Court. It is composed of the President and First and Second Vice-Presidents, all of whom are elected by an absolute majority of the Judges of the Court for a three year renewable term. The judges composing the Presidency serve on a full-time basis.

The Presidency has three main areas of responsibility: judicial/legal functions, administration and external relations. In the exercise of its judicial/legal functions, the Presidency constitutes and assigns cases to Chambers, conducts judicial review of certain decisions of the Registrar and concludes Court-wide cooperation agreements with States. With the exception of the Office of the Prosecutor, the Presidency is responsible for the proper administration of the Court and oversees the work of the Registry. The Presidency will coordinate and seek the concurrence of the Prosecutor on all matters of mutual concern. Among the Presidency's responsibilities in the area of external relations is to maintain relations with States and

other entities and to promote public awareness and understanding of the Court.

## 2. The Judicial Divisions

The ICC's 18 judges are elected by the Assembly of States Parties for their qualifications, impartiality and integrity, and serve 9-year, non-renewable terms. They ensure fair trials and render decisions, but also issue arrest warrants or summonses to appear, authorize victims to participate, order witness protection measures, and more. They also elect, from among themselves, the ICC President and two Vice-Presidents, who head the Court.

## 3. The Office of the Prosecutor

The Office of the Prosecutor (OTP) is an independent organ of the Court. It is responsible for examining situations under the jurisdiction of the Court where genocide, crimes against humanity and war crimes appear to have been committed, and carrying out investigations and prosecutions against the individuals who are allegedly most responsible for those crimes. It is for the first time in history that an international Prosecutor has been given the mandate, by an ever-growing number of States, to independently and impartially select situations for investigation where atrocity crimes are or have been

committed on their territories or by their nationals. Like the judges of the Court, the Prosecutor and Deputy Prosecutor are elected by the ASP for a non-renewable mandate of nine years.

#### 4. Registry

The Registry is a neutral organ of the Court that provides services to all other organs so the ICC can function and conduct fair and effective public proceedings.

The Registry is responsible for three main categories of services:

- **judicial support**, including general court management and court records, translation and interpretation, counsel support (including lists of counsel and assistants to counsel, experts, investigators and offices to support the Defence and victims), the detention centre, legal aid, support for victims to participate in proceedings and apply for reparations, for witnesses to receive support and protection;
- **external affairs**, including external relations, public information and Outreach, field office support, and victims and witness support; and
- **management**, including security, budget, finance, human resources and general services.

## 5. International Community Against Terrorism

### a. Definition

In the past few years, journalists, politicians and academics have closely associated international law and international relations with the concept of the international community. It is their view that the international community is a protector of collective values and bearer of identical interests without which humanity could not exist in a peaceful and moral society. According to them, the ‘international community’ needs to take measures to secure peace and security, to send humanitarian assistance, to prevent massive refugee flows and so on. Yet, despite the numerous references made to the international community, there is hardly any agreement as to its composition.<sup>55</sup>

A definition is of paramount importance for determining the legal and moral validity of the “war on terrorism” lead by the United States and of the claims and criticisms aired against the policy of that State. A classical definition of international community would encompass all sovereign States, each State being equal and independent from other State entities.

A more contemporary approach would also include other entities which enjoy legal personality on the international level such as international organizations or entities which are legally recognized

<sup>55</sup> Definition of International Community <http://sam.gov.tr/wp-content/uploads/2012/02/NoelleQuenivet.pdf> downloaded on 29 Nov 2016

on the national level and have a certain leverage on international affairs such as non-international organizations, and transnational corporations. An even wider definition of the international community would include non-State entities (such as rebels, terrorist networks, transnational regions), international scholars and probably the press.

This modern definition appears to be more relevant in the current context since the fight against terrorism aims to disarm and dismantle the Al Qaeda network, a non-State entity that contests the concept of territory upon which the principle of sovereignty is based. Another reason for adopting such an approach is that inter-ethnic conflicts have shown the limits of contemplating the world in terms of an assembly of States. Yet, as of now, “there are no grounds for concluding that the state-based system cannot meet the challenge[s]” because the war against terrorism is being waged by States, which, thereby, proves the utmost relevance of States in international affairs.

#### **b. International Community Fight to Terrorism**

The international community, in numerous fora, condemned acts of terrorism. The primary intent is to apply and strengthen the rule of law by improving judicial and legal mechanisms and more particularly enforcement capabilities of States that are victims of international terrorism. For years, the

international community has felt the need to combat terrorist acts and has stressed States' obligation to cooperate. Strong emphasis has been put on intelligence gathering, information sharing and improved security arrangements for aircraft and maritime facilities.

First to be mentioned is the work of the General Assembly that has adopted no less than 25 resolutions setting measures to prevent international terrorism and harshly criticizing terrorist methods.<sup>56</sup>

While these resolutions are not legally binding on Member States of the United Nations, they are of paramount importance as they clearly and expressly assert the impermissibility of terrorism in any manifestation. Resolution 49/60 is assuredly one of the best illustrations of how the international community views terrorism.

Such acts "constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international co-operation, and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society." In addition, the UN has developed a wide range of international legal instruments that enable the international community to take action to suppress terrorism. Bassiouni speaks of 14 Conventions dealing with specific

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<sup>56</sup>*Ibid.*

methods of terror violence while the Special Rapporteur on Terrorism and Human Rights, Ms. Kalliopi K. Koufa cites 19 Conventions.

The Security Council on several occasions and more particularly in Resolution 1373 called upon States to sign and ratify the anti-terrorism conventions so as to ensure better cooperation between States in the fight against terrorism.

Furthermore, the Security Council, in adopting Resolution 1373, showed its willingness to combat international terrorism through a series of steps and comprehensive strategies and through the establishment of a committee that gathers material related to States' anti-terrorist measures. Amongst others are mentioned the prevention and suppression of financing terrorist acts, the exchange of information and assistance amongst States in preventing terrorism, the denial of safe haven to terrorist, an effective control of the borders and the denial of usage of the territory for terrorist purposes.

The international community, now working through the General Assembly and the United Nations specialized agencies, has since adopted 16 international counter-terrorism legal instruments dealing with issues ranging from the hijacking of airlines and taking of hostages to the possible use of nuclear

weapons by terrorists. Member States are currently working on the draft of a comprehensive convention against terrorism.<sup>57</sup>

## 6. Human Right and Victims of Terrorist Attacks

The rights of victims of terrorism are protected by human rights law. The specific rights outlined later in this manual will therefore apply, where relevant, to victims of terrorism. Under international human rights law states have a general duty to protect human rights. This may mean putting into place a proper legal framework for criminalizing certain activity that violates human rights and for dealing with victims of terrorism. States have a duty to provide protection for victims of crime, including acts of terrorism. There is a positive obligation on the state to protect identifiable potential victims who are at a real and immediate risk of serious crime or terrorist acts, which the law-enforcement agencies know about or ought to have known about.<sup>58</sup>

Under these circumstances, the state must take all reasonable measures to put in place procedures and practices to prevent terrorist activity and to minimize the collateral impact of counter-terrorism activities. Victims of terrorism and their families have the right to an effective remedy when their rights have been violated in relation to

<sup>57</sup> The Role of the Counter-Terrorism Committee and its Executive Directorate in the International Counter-Terrorism Effort

[http://www.unis.unvienna.org/pdf/counter%20terrorism\\_2008\\_press%20kit\\_english.pdf](http://www.unis.unvienna.org/pdf/counter%20terrorism_2008_press%20kit_english.pdf)

downloaded on 27 Nov 2016

<sup>58</sup> Protecting the Rights of Victims of Terrorist Attacks

<http://www.osce.org/odihr/29103?download=true> downloaded on 29 Nov 2016



terrorist acts. OSCE participating States have agreed that those who claim that their rights have been violated have the right to a public hearing before an independent and impartial tribunal.

This means that there must be effective access to court for such victims. The right to an effective remedy for violation of human rights is a key protection for victims of human rights violations. It requires that a range of remedies is available to victims of serious crime, which includes an effective investigation and prosecution of alleged offenders.

Although the right to a fair trial is principally concerned with defendants, it also acknowledges that the rights of witnesses must be respected. For example, if necessary, screens and other equipment can be used in court to protect vulnerable witnesses. However, if a less restrictive measure can suffice then that measure should be applied. Victims' rights to privacy should also be respected, especially where this relates to medical confidentiality. Effective prosecution of terrorist offenders is a key to protecting the rights of victims; miscarriages of justice do nothing to protect the rights of victims and may lead to impunity for the real offenders. The guarantee of the right to a fair trial is essential, therefore, to the protection both of the rights of the suspect and of the rights of victims. Impunity for those alleged to have committed serious violations of human rights standards is an affront to the victims of those violations. From the perspective of victims' rights, therefore, impunity is a key issue.

## C. Legal Framework

The international community has elaborated 19 international legal instruments to prevent terrorist acts. Some of the contributions are regulations relating to terrorism. Some of the important regulations relative to terrorist act and penalties for breaching international law are as following:

### 1. Charter of United Nations

Chapter V, article 24:<sup>59</sup>

- 1) In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
- 2) In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
- 3) The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Chapter V, Article 25:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

### 2. Security Council Resolution 1373

Article 1:<sup>60</sup>

*Decides* that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their

<sup>59</sup> Charter of United Nations

<sup>60</sup> Security Council Resolution 1373

[https://www.unodc.org/pdf/crime/terrorism/res\\_1373\\_english.pdf](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf) downloaded on 24 Dec 2016

territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

#### Article 3:

*Calls upon all States to:*

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
- (e) Increase cooperation and fully implement the relevant international.

### 3. International Convention For The Suppression Of Terrorist

#### Bombings

Article 2 paragraph 1:<sup>61</sup>

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- a. With the intent to cause death or serious bodily injury; or
- b. With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

Article 4:

Each State Party shall adopt such measures as may be necessary:

- a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 6 paragraph 1 and 2:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
  - a) The offence is committed in the territory of that State; or
  - b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
  - c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
  - a) The offence is committed against a national of that State; or
  - b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
  - c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

<sup>61</sup> International Convention For The Suppression Of Terrorist Bombings  
<http://www.un.org/law/cod/terroris.htm> downloaded on 29 Nov 2016

- d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- e) The offence is committed on board an aircraft which is operated by the Government of that State.

Article 7 paragraph 1 and 2:

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

Article 8 paragraph 1:

The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

Article 10 paragraph 1 and 2:

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### 4. Montevideo Convention on the Rights and Duties of States

##### Article 1:<sup>62</sup>

The state as a person of international law should possess the following qualifications:

- a. a permanent population;
- b. a defined territory;
- c. government; and
- d. capacity to enter into relations with other States.

#### 5. International Convention for the Suppression of the Financing of Terrorism

##### Article 2 paragraph 1:<sup>63</sup>

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects 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; or
- b. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

##### Article 4:

Each State Party shall adopt such measures as may be necessary:

- a. To establish as criminal offences under its domestic law the offences set forth in article 2;
- b. To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

##### Article 5:

<sup>62</sup> Convention on Rights and Duties of States adopted by the Seventh International Conference of American States <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166aef> downloaded on 25 Dec 2016

<sup>63</sup> International Convention for the Suppression of the Financing of Terrorism [www.un.org/law/cod/finterr.htm](http://www.un.org/law/cod/finterr.htm) downloaded on 24 Dec 2016

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

#### Article 8:

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

## 6. International Convention Against Taking of Hostage

### Article 1:<sup>64</sup>

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.
2. Any person who:
  - a. Attempts to commit an act of hostage-taking, or
  - b. Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

### Article 2:

Each State Party shall make the offences set forth in Article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

### Article 3:

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.
2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in Article 1, as the case may be, or to the appropriate authorities thereof.

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<sup>64</sup> International Convention Against Taking of Hostage  
<http://www.un.org/en/sc/ctc/docs/conventions/Conv5.pdf> downloaded on 26 Dec 2016



Article 4:

States Parties shall co-operate in the prevention of the offences set forth in Article 1, particularly by:

- a. Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;
- b. Exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

## 7. Rome Statute of the International Criminal Court

Article 5:<sup>65</sup>

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a) The crime of genocide;
- b) Crimes against humanity;
- c) War crimes;
- d) The crime of aggression.

Article 6:

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

<sup>65</sup> Rome Statute of the International Criminal Court [https://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf) downloaded on 26 Dec 2016

Article 7 paragraph 1 and 2:

For the purpose of this Statute, "crime against humanity" means ...

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

For the purpose of paragraph 1:

- a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- b) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; ....

Article 8 paragraph 2 part b:

Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
- v. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.
- xi. Killing or wounding treacherously individuals belonging to the hostile nation or army.

- xxii. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.
- xxvi. Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

## **8. Protocol I Geneva Conventions**

Article 51 paragraph 2:<sup>66</sup>

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

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<sup>66</sup> Protocol I Geneva Conventions