CHAPTER II

LITERATURE REVIEW

This chapter consists of three types of frameworks, namely Theoretical

Framework, Conceptual Framework, and Legal Framework.

A. Theoretical Framework

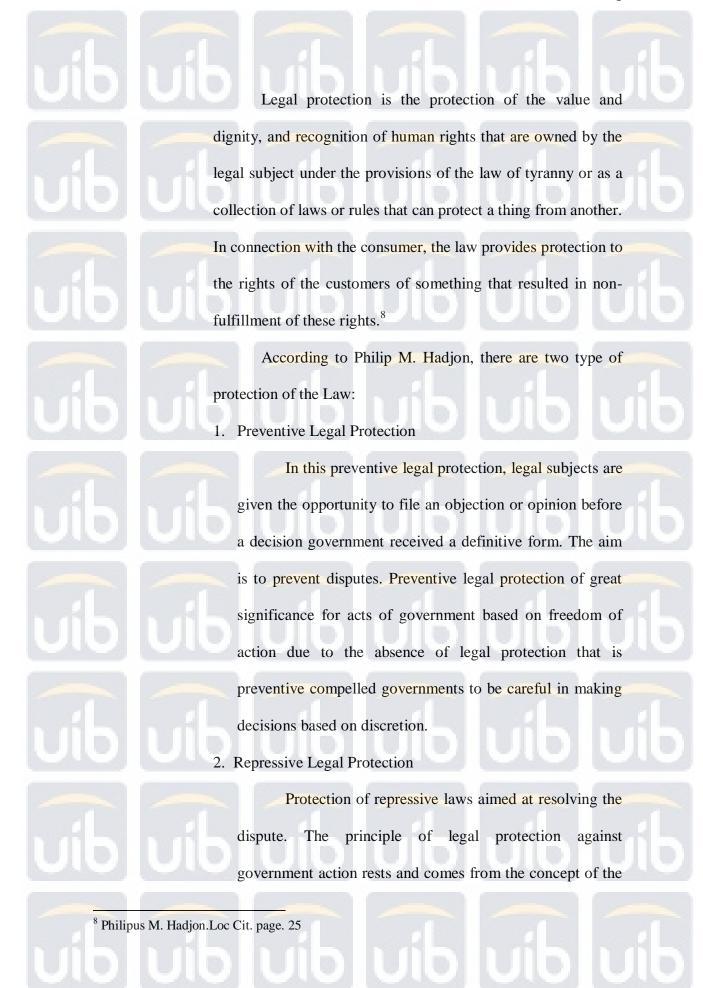
There are two theories that will be used in this research, among others:

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.

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 dewettelijkeBescherming*, and in German is called with *Theorie der rechtlicheSchutz*.

⁷ SatjiptoRahardjo. Loc Cit. page 74



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.

2. Theory of States

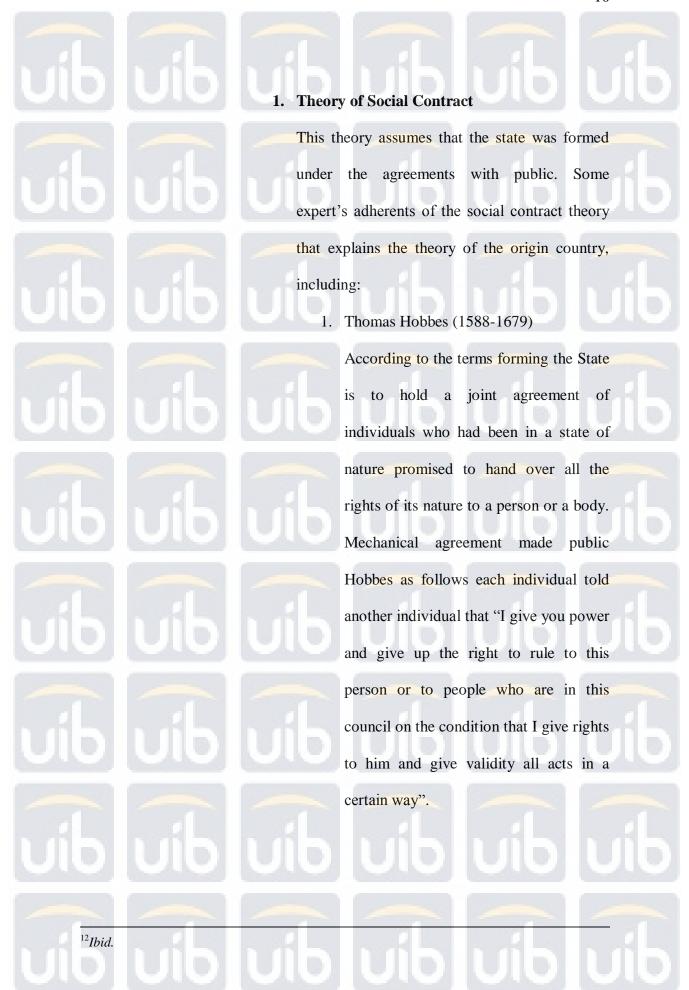
In literal terms, the definition of state is a translation of foreign words, the state (English), *Staat* (Dutch and German) and *etat*(French), the word *state*, *staat*, *etat* was taken from the Latin word status or *statum*, which means the state is upright and fixed or something that has the properties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

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. Here is following the theory the form of the state: 12

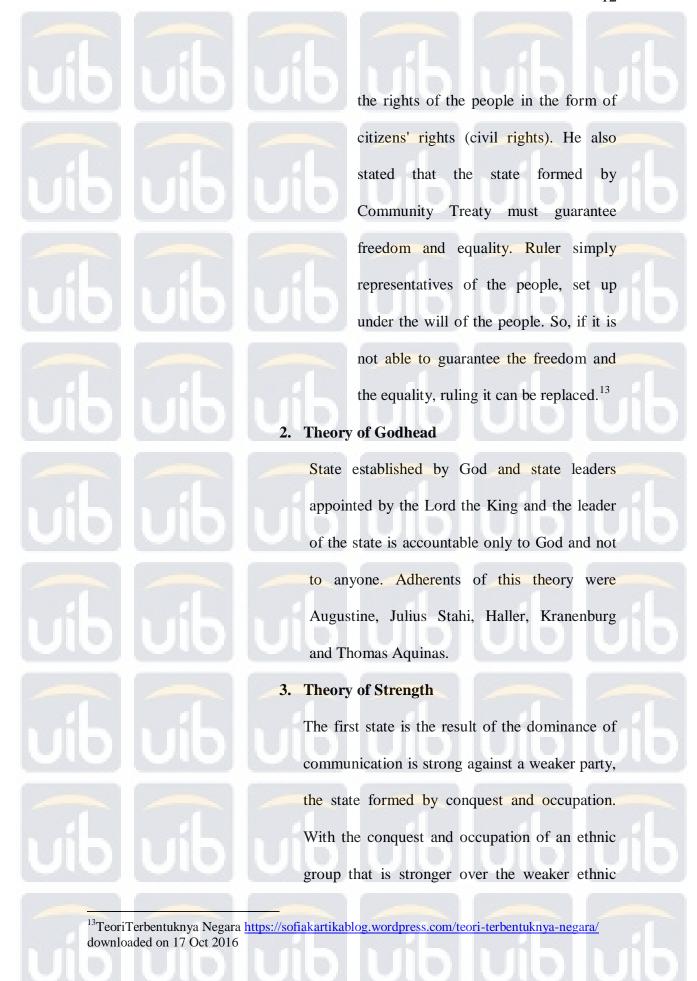
 11 Ibid.

⁹ Philipus M. Hadjon. Op Cit. page. 30

¹⁰ DrNimatul Huda, *Ilmu Negara*, (Jakarta: RajawaliPers, 2012), page 8









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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.

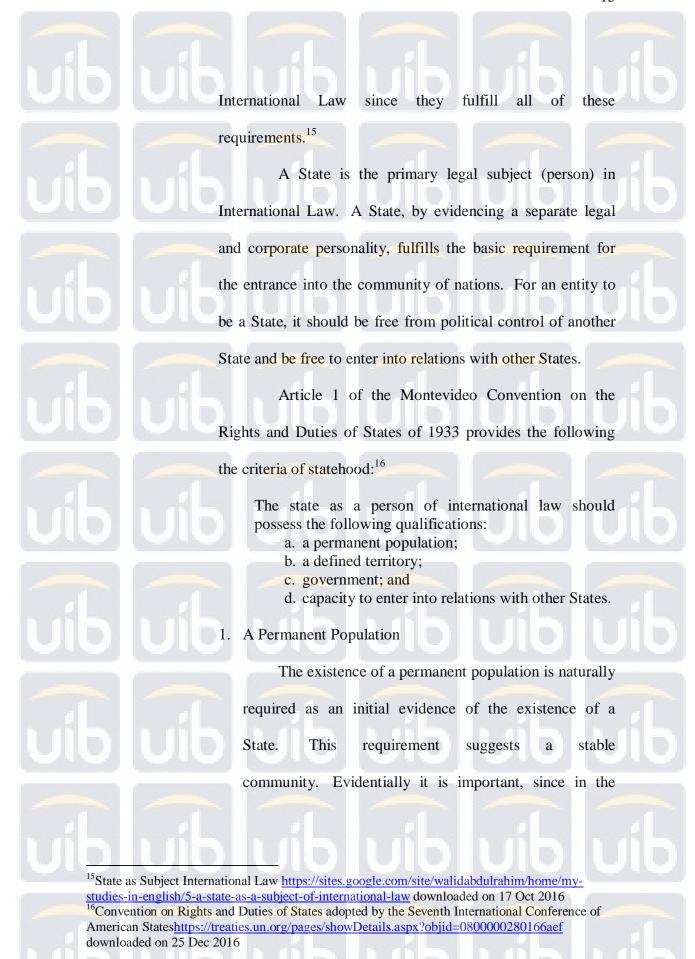
Adherents of this theory were Plato, Aristotle, Augustine, and Thomas Aquinas.

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. 14

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

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

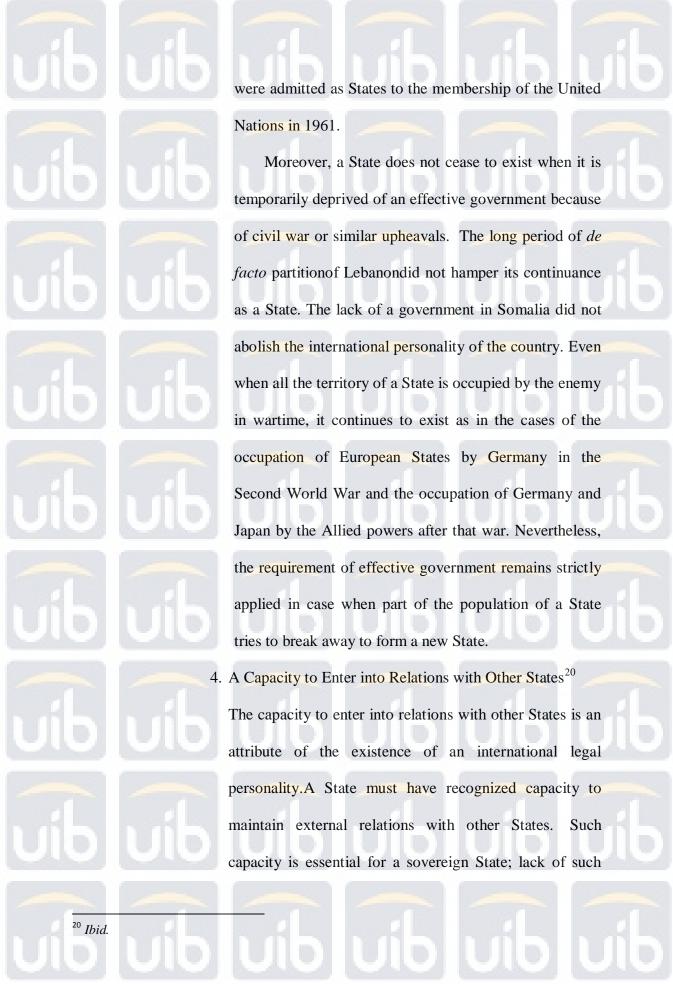
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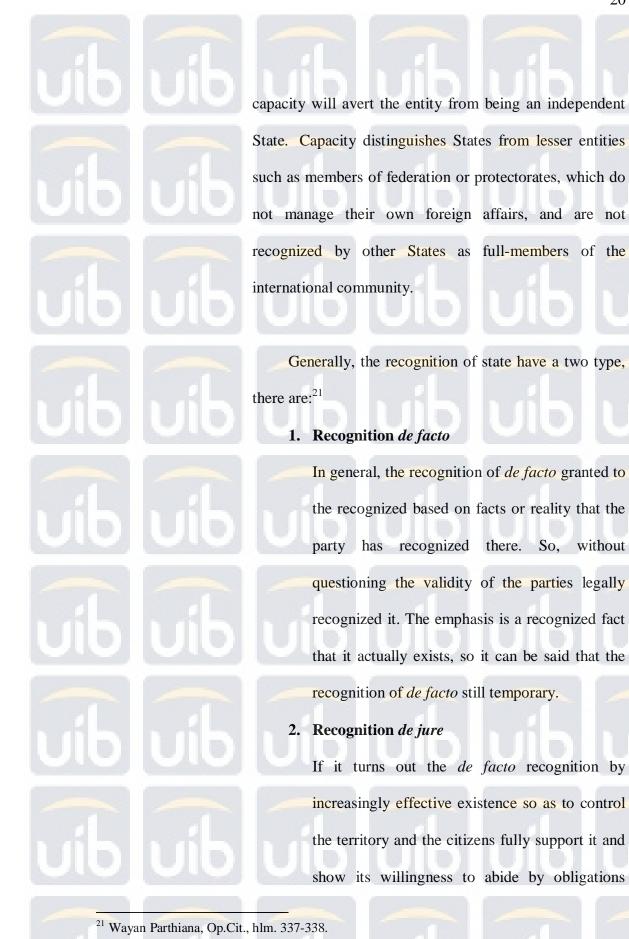


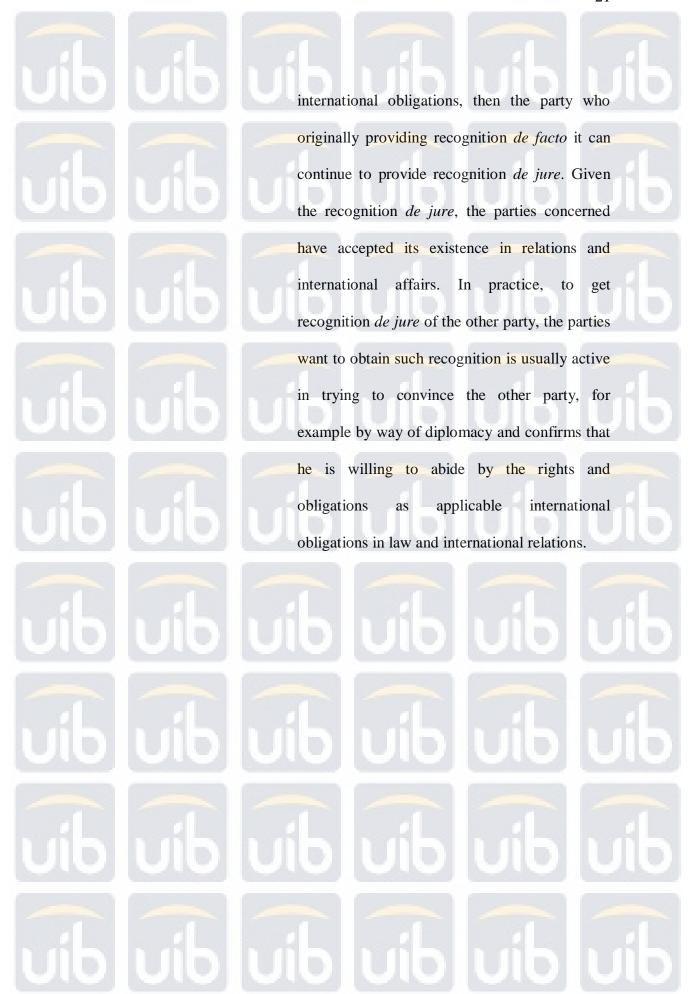












B. Conceptual Framework

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.²²

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

http://eprints.undip.ac.id/38356/3/BAB 2.pdfdownloaded on 17 Nov 2016

²² Teror, Terorisme dan Sejarah Perkembangannya di Indonesia.

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.²³

The United Nations Members States still have no agreedupon 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".24

1) According to the United Nations Security Council Resolutions 1566:²⁵

"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

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

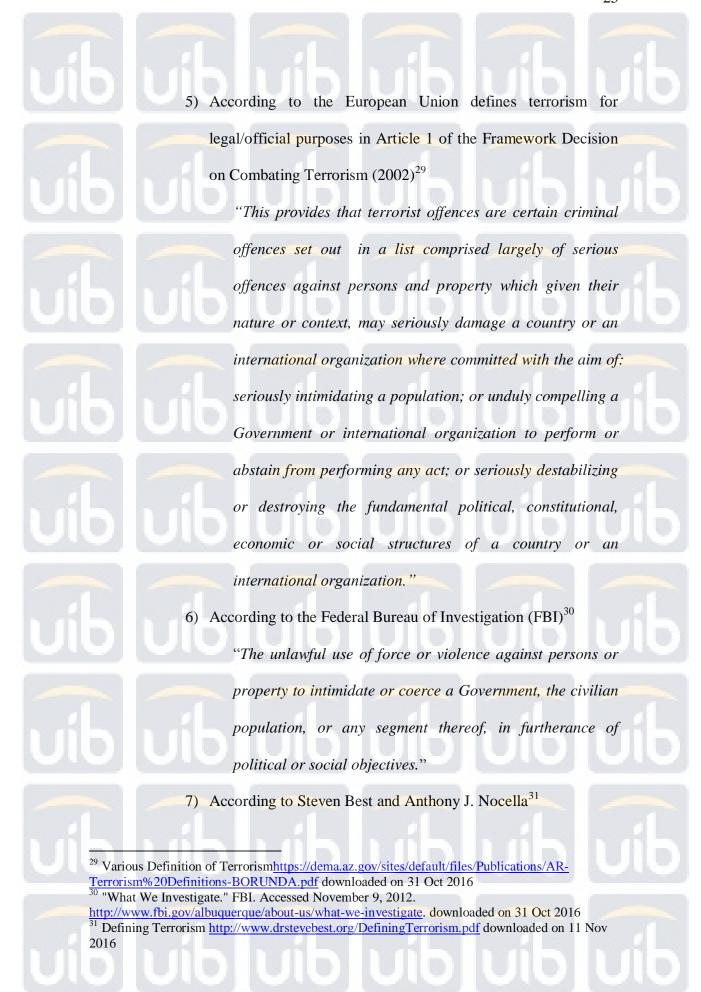
²⁴ Definition Terrorism. https://dema.az.gov/sites/default/files/Publications/AR-Terrorism% 20Definitions ROPLINDA and downloaded on 28 Oct 2016

Terrorism%20Definitions-BORUNDA.pdf downloaded on 28 Oct 2016

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



²⁸ 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





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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.

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

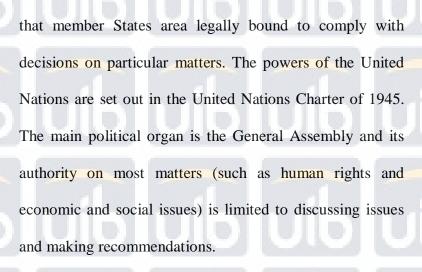
³⁴ Subjects of International Law https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/3-subjects-of-international-law downloaded on 2 Nov 2016
35 Ibid

a. Stat

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

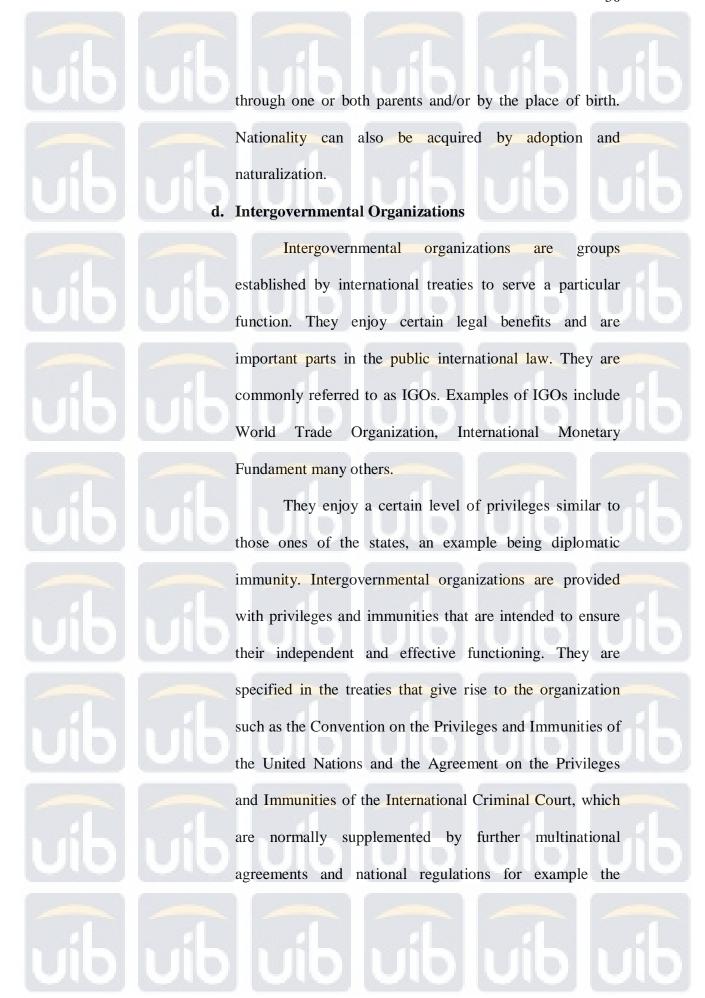
International Organizations are established by States through international agreements and their powers are limited to those conferred on them in their constituent document. International organizations have a limited degree of international personality, especially *vis-à-vis* member States. They can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

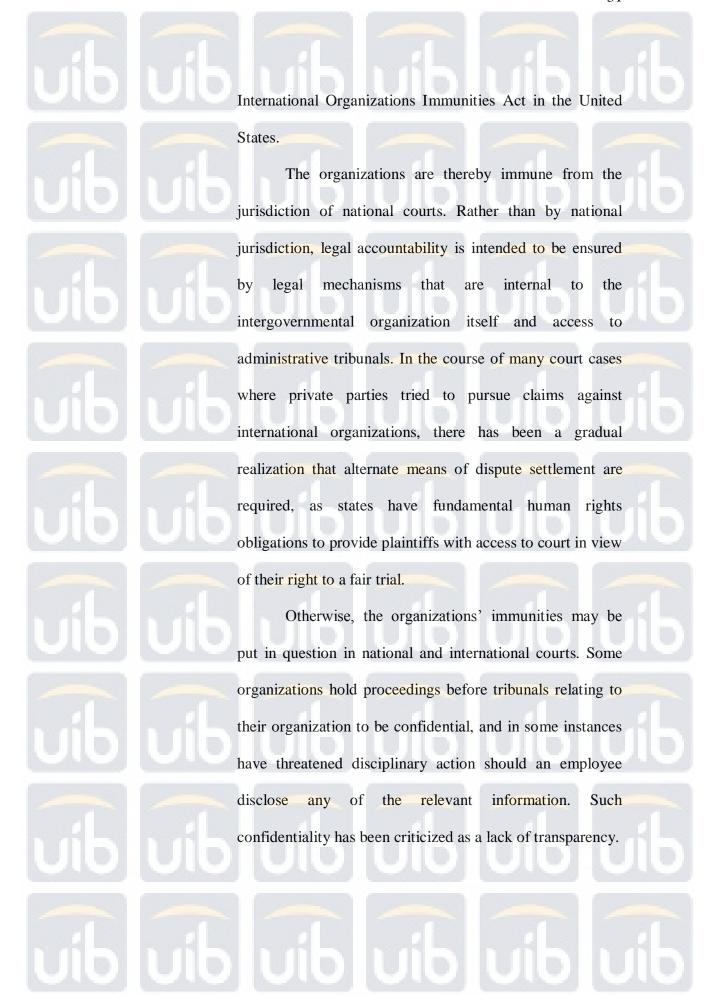


The Security Council has the authority to make decisions that are binding on all member States when it is performing its primary responsibility of maintaining international peace and security. The main UN judicial organ is International Court of Justice (ICJ), which has the power to make binding decisions 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



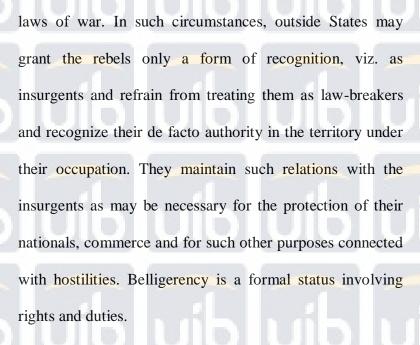


e. Insurgency and Belligerency Group

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



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).

A state of belligerency may also exist between one
or more sovereign states on one side and rebel forces, if

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

³⁵ 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.³⁶

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

³⁶ Subjek dan Objek Hukum Internasional https://younkhendra.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.³⁷ 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

³⁷ 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.³⁸

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."

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

http://www.springer.com/cda/content/document/cda_downloaddocument/9780387716121-c1.pdf?SGWID=0-0-45-560212-p173733614. downloaded on 17 Nov 2016

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

³⁸ Research on Terrorism.

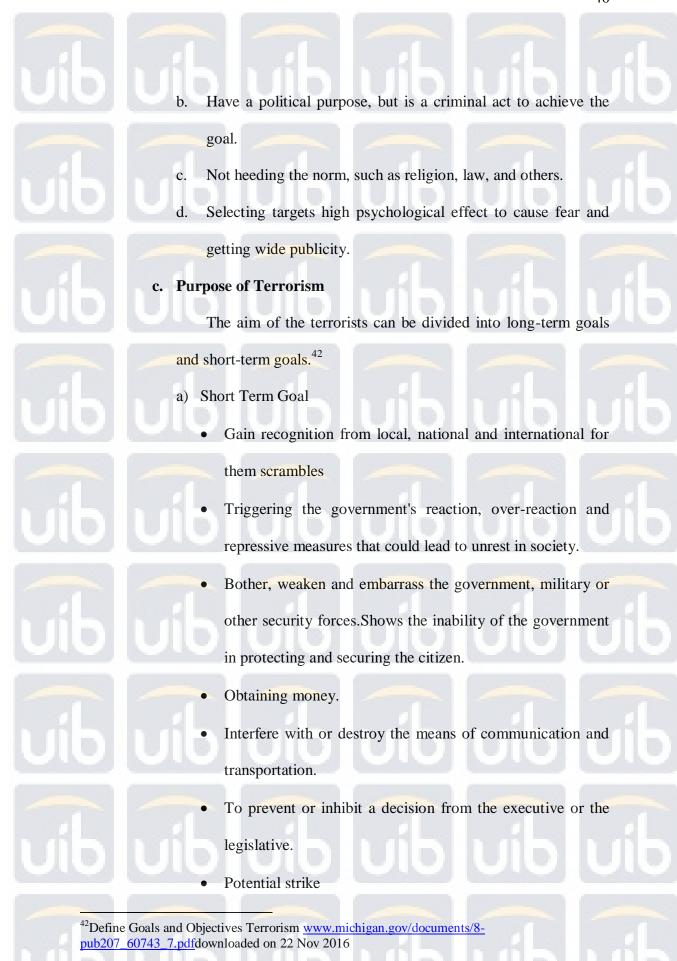
1 in 228 chance of dying in a car, and a 1 in 211 chance of dying from an assault.

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.



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reform authoritarian governments, such as the Tsarist government

in Russia. In the period 1920 to 1960, terrorist groups emerged in



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.⁴⁴

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

⁴⁴ 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. 45

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.

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

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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.

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.

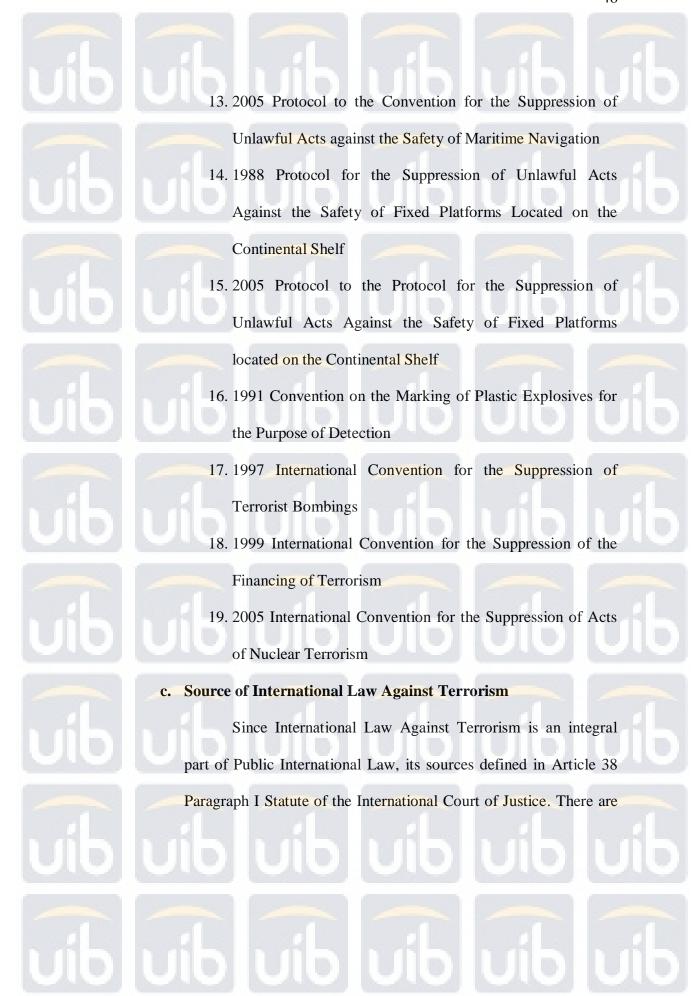
Acts may also be considered international in character when they

⁴⁶ 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 nineteeninternational 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 autdedereautjudicare.⁴⁷ 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 47 Ibid.





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four sources of international law as defined in the Statute of the

International Court of Justice, namely: 48

- 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

⁴⁸ 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 below⁴⁹

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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⁴⁹ 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



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 scourage of war by promoting International peace and security. ⁵⁰

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 1st, 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:51

⁵⁰United 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

⁵¹Charter of United Nations http://www.un.org/en/sections/un-charter/chapter-i/index.htmldownloaded on 2 Nov 2016

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.⁵²

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

⁵²About 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 selfgovernment and independence. By 1994, all Trust Territories attained self-government independence. had 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.⁵³ 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

⁵³ 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



⁵⁴ 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. Presidency has three main areas 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 impartiality 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:

- 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. ⁵⁵

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

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

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⁵⁵ Definition of International Communityhttp://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



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 heaven 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. 57

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 rightsand 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.⁵⁸

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

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⁵⁷ 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 downloaded on 27 Nov 2016

⁵⁸ 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 24:⁵⁹

- 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 1:60

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 orindirectly, of funds by their nationals or in their

⁶⁰Security Council Resolution 1373

https://www.unodc.org/pdf/crime/terrorism/res 1373 english.pdf downloaded on 24 Dec 2016

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⁵⁹ Charter of United Nations

- territories with the intention that thefunds should be used, or in the knowledge that they are to be used, in order to carryout terrorist acts:
- (c) Freeze without delay funds and other financial assets or economicresources of persons who commit, or attempt to commit, terrorist acts or participatein or facilitate the commission of terrorist acts; of entities owned or controlleddirectly or indirectly by such persons; and of persons and entities acting on behalfof, or at the direction of such persons and entities, including funds derived organizated from property owned or controlled directly or indirectly by such personsand 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 otherrelated services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission ofterrorist acts, of entities owned or controlled, directly or indirectly, by such 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 operationalinformation, especially regarding actions or movements of terrorist persons ornetworks; forged or falsified travel documents; traffic in arms, explosives orsensitive materials; use of communications technologies by terrorist groups; and thethreat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic lawand cooperate on administrative and judicial matters to prevent the commission ofterrorist 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 InternationalConvention 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 1:61

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
 - 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
 - The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

⁶¹ 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.



Article 1:62

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 1:⁶³

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:

- 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:
- To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5:

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

⁶³ International Convention for the Suppression of the Financing of Terrorism www.un.org/law/cod/finterr.htmdownloaded 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:

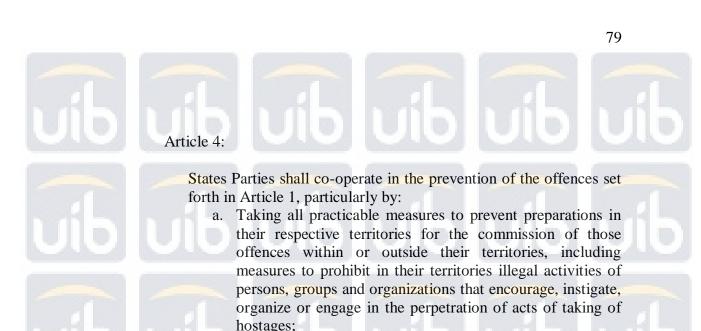
- 1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such 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 1:64 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. 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.



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



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 5:65

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:

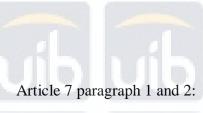
For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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.

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⁶⁵ Rome Statute of the International Criminal Court https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome statute english.pdf downloaded on 26 Dec 2016







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.

