

The Legal Settlement for Acts of Terrorism as an Extraordinary Crime in Legal and Human Rights Perspectives

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Abstract: *Terrorism has become a worldwide phenomenon in the 21st century. Terrorism as one of the international serious crimes has threatened and endangers the peace and the international and national security. This study aims to analyze the legal settlements for acts of terrorism as an extraordinary crime from the perspective of the law and human rights. This study is using a legal research methodology which aims to find the law as instrument to resolve the problem by using statutes approach, legal doctrines, acts and regulations for the acts of terrorism. The result of this study is that the acts of terrorism constitute a crime against humanity where the International Criminal Court has jurisdiction to prosecute it under the Rome Statute of the International Criminal Court.*

Keywords: *Acts of Terrorism, Anti-Terrorism Law, Extraordinary Crimes, International Conventions, National Law*

1. Introduction

1.1. The Legal Concepts of Terrorism

Historically, the definition of terrorism is compiled in many international convention of terrorism. In the article 1 Paragraph (2) of the International Convention from 'League of Nations', 1937, it is clearly stated that terrorism is "the criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public".

A better definition of terrorism can be seen in the International Convention for the Suppression of Terrorist Bombings, 1997 in article 2 paragraph (1) as following;

"Every 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."

In 1999, the UN General Assembly has issued the International Convention for the Suppression of the Financing of Terrorism as follows:

"Any other acts 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 abstain from doing any act".

The definition of terrorism is also formulated by some countries who are members of the Arab League through the Arab Convention for the Suppression of Terrorism which took place in Kairo, 1998, which states terrorism as following;

“Any act or threat of violence, whatever its motives or purposes that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them or seeking to jeopardize a national resources”.

The definition of terrorism in the UK Legislation is contained in the Terrorism Act (2000) which is stated clearly as following:

“Terrorism is the use or threat of the action where (a) the action falls within subsection (2) which includes a) involves serious violence against a person; b) involves serious damages to property; c) endangers a person’s life, other than that of the person committing the action, d) creates a serious risk to the health or safety of the public or a section of the public; or e) is designed seriously to interfere with or seriously to disrupt an electronic system. (b) Terrorism also means the use or threat which is designed to influence the government or to intimidate the public or a section of the public ; (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.”

In 2002, the Council of the European Union adopted the ‘Framework Decision on Terrorism’, containing a detailed definition specifying a terrorist act as following :

“An act which 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”.

The definition enumerates nine types of terrorist acts, including: a) certain attacks on life and integrity of persons, b) seizure of aircraft and ships, c) kidnapping or hostage taking, d) causing destruction of government property or infrastructure, e) manufacture of what amounts to weapons of mass destruction and c) interfering with a country’s resources with the effect of endangering human life.

From those various definitions, we can identify several elements that related to terrorism; a) the unlawful use of force; b) intimidation ; c) coercion; d) the use of threat; e) motivated by ideological, political and religious things; f) aim to influence the public (audience) ; g) destroy the government facilities; h) conducted by State actors or non-State actors; i) targeting the civilian and military objects; h) causing death or serious bodily injury.

2. Terrorism Acts in the Law and Humanity Perspectives

2.1. Terrorism as an ‘Extraordinary Crime’

Generally, acts of terrorism was recognized as being a form of a political activity. Terrorist use criminal methods to pursue political objectives, not material gains. There many debate within governments on whether to treat terrorism as a crime or as a form of a warfare. Terrorism as a crime can be distinguished from another ordinary crime because it was characterized particularly as following; a) it’s a discrete crime that were conducted as part of a state policy; b) its directed to some identified group of people; c) it was part of a crime in international criminal law of many countries; d) it was committed by the state agencies for the government’s purposes; e) it has connection with a warfare.

Terrorism is often confused or equated with or treated as synonymous with guerilla warfare and insurgency because guerillas and insurgents often employ the same tactics (assassination, kidnapping, hit and run attack, bombings of public gathering places, hostage taking, etc) for the same purposes (to intimidate or coerce. Thereby affecting behavior through the arousal of fear) as terrorist. Terrorist as well as guerillas and insurgents wear neither uniform nor identifying insignia and thus are often indistinguishable from non-combatants.

Guerilla, for example in its most widely accepted usage, is taken to refer to a numerically larger group of armed individuals, who operate as a military unit, attack enemy military forces and seize and hold territory and exercising some form of sovereignty or control over a defined geographical area and its population. Insurgents share these same characteristics: however their strategy and operations transcend hit and run attacks to embrace what in the past has variously been called revolutionary guerilla warfare, modern revolutionary warfare or people's war but is today commonly termed "insurgency". Insurgencies typically involve coordinated informational (e.g. propaganda) and psychological warfare efforts designed to mobilize popular support in a struggle against an established national government, imperialist power or foreign occupying force.

However, there is one major difference between war and terrorism, apart from the tactics and tools, which is the legitimacy of the use of that particular type of force. War is considered legitimate, while terrorism is considered illegitimate, so that the response to terrorism will often involve law enforcement agencies, intelligence departments, and if it necessary, the military forces. Terrorists do not function in the open as armed units. Generally do not attempt to seize or hold territory, deliberately avoid engaging enemy military forces in combat, are constrained both numerically and logistically from undertaking concerted mass political mobilization at either the local or the national level.

Terrorism almost always targeting combatants, involves the killing (or threat of killing) of non-combatant civilians. This goes to the heart of terrorism's illegitimacy because terrorists make a deliberate decision to abandon or to refuse to accept as binding the prevailing moral distinction between belligerents and neutrals, combatants, and non combatants, appropriate and inappropriate targets, legitimate and illegitimate methods. Terrorism acts always targeting civilians (non-combatants) and this acts delegitimizing as well as delegitimizing aspects of terrorism which compares terrorism to other crimes like war crimes.

The fundamental aim of the terrorist's violence is ultimately to change "the system" of which the ordinary criminal couldn't care less. The terrorist is also very different from the lunatic assassin, who may use identical tactics (e.g. shooting, bombing) and perhaps even seeks the same objective (e.g. the death of political figure). The terrorist's goal is again ineluctably political which is to change or fundamentally alter a political system through its violent acts. For example, the acts of terror used by Narodnaya Volya to justify its campaign of tyrannicide against the czar and his minions, nor even to the Irish Republican Army's efforts to assassinate Prime Minister Margaret Thatcher or her successor, John Major, in hopes of dramatically changing British policy toward Northern Ireland.

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

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

3. The International Policy against the Acts of Terrorism

Generally, acts of terrorism still categorized as an ordinary crime where many countries prefer to take legal measures by criminalizing terror acts into the domestic law with the Anti-Terrorism Laws. There are many international and regional conventions that related to the acts of terrorism, as following : (1) International Civil Aviation Organization , (2) Convention on Offences and Certain Other Acts Committed on Board Aircraft (signed at Tokyo, September 14, 1963); (3) International Civil Aviation Organization Convention for the Suppression of Unlawful Seizure of Aircraft (signed at Hague, December 16, 1979); (4) International Civil Aviation Organization ; (5) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed at Montreal, September 23, 1971); (6) United Nation, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Adopted by General Assembly with Resolution 3166 on December 14 , 1973); (7) United Nation, International Convention against the Taking of Hostages (Adopted by the General Assembly with Resolution 34/36 on December 17, 1979);(8) International Atomic Energy Agency, Convention on the Physical Protection of Nuclear Material (signed at Vienna and New York, March 3, 1980); (9) International Civil Aviation Organization, (10) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Protocol for the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, February 24, 1988); (11) International Maritime Organization, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Adopted at Rome, March 10,1988); (12) International Maritime Organization, (13) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Adopted at Rome, March 10, 1988); (14) International Civil Aviation Organization, Convention on the Marking of Plastic Explosives for the Purpose of Detection (signed at Montreal, March 1, 1991); (15) United Nations, International Convention for the Suppression on Terrorist Bombing (Adoted by General Assembly with Resolution 52/164 on December 15, 1997); (16) United Nations, International Convention on the Suppression of Financing of Terrorism (Adopted by General Assembly with Resolution 54/109 on December 9, 1999); League of Arab States, (17) Arab Convention on the Suppression of Terrorism (signed at Cairo, April 22, 1998); (18) Organization of the Islamic Conference, Convention on Combating International Terrorism (Adopted at Quagadoudou, July 1, 1999); (19) Council of Europe, European Convention on the Suppression of Terrorism (signed at Strasbourg, French, January 27,1977); (20) Organization of American States, Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are International Significance (signed at Washington D.C., February 2, 1971); (21) African Union (formerly Organization of African Unity), (22) Convention on the Prevention and Combating of Terrorism (Adopted at Algiers, July 14, 1999); (23) South Asian Association for Regional Cooperation, Regional Convention on Suppression of Terrorism (Signed at Kathmandu, November 4, 1987); (24) Commonwealth of Independent States, Treaty in Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism (Adopted at Minsk, June 4, 1999); (25) ASEAN Convention on Counter Terrorism (ACTT) which has been ratified by all ten members of ASEAN.

The international criminal law has developed since the last decade by the establishment of International Criminal Court in June 1, 2002 through the Rome Statute 1998. The Rome Statute is a multilateral treaty which serves as the foundational and government document. The International Criminal Court as an intergovernmental organization and International Tribunal that sits in the Hague, Netherland, has the jurisdiction to prosecute individuals for the serious crimes such as following: 1) Genocide, 2)Crimes against humanity, 3)Aggression and 4)War crimes.

The International Criminal Court was established to achieve the legal justice and intended to complement the existing national judicial systems where its only exercise its jurisdiction when the national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer situations to the court. Although, acts of terrorism were not a part of the core crimes that was mentioned above, but it has potential to be included into the jurisdiction of the International Criminal Court, as a crime against

humanity because mostly acts of terrorism involving acts of a crime against humanity such as murder, persecution, rape, disappearance of persons, extermination, and etc.

The Rome Statute of International Criminal Court, article 7, has given the definition and elements of crimes against humanity as follow: For the purpose of this Statute, crimes against humanity means any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack: (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, 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; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical mental.

4. Conclusions

The conclusions of this study are: first, the acts of terrorism constitute a crimes against humanity under the International Criminal Court Statute where it is conducted as a widespread or systematic attack, on the basis of a policy, by State or non-State Actor against the civilian population, and the perpetrators knew that the actions is widespread or systematic which causing death more than one person where it is usually in a large scale. As a crimes against humanity, terrorism acts always contains of inhumane acts. Although acts of terrorism excluded as a specific provision from the ICC statute, it may be prosecuted under a crimes against humanity for doing acts like murder, torture, deportation, forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, persecution, enforced disappearance and more generally as the inhumane act pursuant to Article 7(1) of the International Criminal Court Statute. In another words, the terrorist actions has a potential to be prosecuted under the International Criminal Court. Secondly, the legal settlements to acts of terrorism are still weak in domestic level and international level , where in facts many countries criminalized terrorism as an ordinary crime and the prosecution of terrorist acts still rely on the domestic courts. The acts of terrorism should be prosecuted under the Rome Statute of the International Criminal Court. Thirdly, the efforts to combat terrorism not only requires a legal approach but much more important is a human-based approach where civil society has an important role to prevent and to eradicate the spread of terrorism by strengthening respect of human rights , the rule of law , the principles of democracy and the unity in religious diversity.

5. References

- [1] Antonio Cassese, 2003, International Criminal Law, in Malcolm D. Evans (ed), International Law, Oxford University Press: New York, p. 125
- [2] Bruce Hoffman, 2006, Inside Terrorism, revised and expanded edition, Columbia University Press: New York, p.27
- [3] Gerard Chaliand, 2007, The History of Terrorism, University of California Press, California, p. vii
- [4] Gus Martin, 2013, Understanding Terrorism, Challenges, Perspective and Issues, 4 th Edition, SAGE Publications, California
- [5] Mardenis, 2011, Terrorism Suppression, International Politic and Indonesia National Law Politic, Rajawali Press, p. 138
- [6] Muchammad Ali Syafaat, 2003, Terror Delict, New Restriction for Freedom, in Terrorism Definition, Action, and Regulation, Imparsial Press., p.66
- [7] Imparsial, 2003, Terrorism Definition, Action and Regulation, Imparsial Press, p.50

- [8] Jawahir Thontowi, 2003, The Review of Terrorism Acts in the Perspective of International Law, workshop paper about the urgency of Terrorism Acts Amendment, Yogyakarta, p.3
- [9] Paul J. Smith, 2008, The Terrorism Ahead, Confronting Transnational Violence in the Twenty-first Century, M.E., Sharp, New York
- [10] Yoram Schweitzer & Shaul Shay, 2003, The Globalization of Terror, The Challenge of Al- Qaida and the Response of the International Community, Transaction Publishers, p. 4
- [11] League of Nation of Convention for the Prevention and Punishment of Terrorism, Council on Foreign Relations, retrieved on 15 August 2017 from <http://www.cfr.org/terrorism-and-the-law/league-nations-convention-prevention-punishment-terrorism/p24778>
- [12] UN Security Council Resolution 1566, retrieved 15 August 2017 from www.cfr.org/international-organizations-and-alliances/un-security-council-resolution-1566-terrorism/p11223
- [13] International convention for the Suppression of Terrorism, retrieved 10 August 2017 from <http://www.un.org/en/sc/ctc/docs/conventions/Conv11.pdf>
- [14] The Arab Convention for the Suppression of Terrorism, League of Arab States, retrieved on 12 August 2017 from <http://www.refworld.org/pdfid/3de5e4984.pdf>
- Human Rights and Terrorism, Icelandic Human Rights Centre, retrieved 12 August 2017 from humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-terrorism
- [15] United Kingdom Terrorism Act 2000, retrieved on 22 August 2017 from http://www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga_20000011_en.pdf