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## Impact of the “War on Terrorism” On Development of International Criminal Law

Ayser Alhelme

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# **GOLDEN GATE UNIVERSITY**

Impact of the “War on Terrorism”

On

Development of International Criminal Law

A DISSERTATION SUBMITTED

TO

THE COMMITTEE OF INTERNATIONAL LEGAL STUDIES

IN CANDIDACY FOR THE DEGREE

OF

**SCIENTIAE JURIDICAE DOCTOR (S.J.D.)**

DEPARTMENT OF INTERNATIONAL  
LEGAL STUDIES

BY

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SAN FRANCISCO, CA

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# **TITLE**

Impact Of The “War On Terrorism”

On

Development Of International Criminal Law

## **DEDICATION**

I dedicate this dissertation to the pure soul of my mother, who passed away ten months ago and who has always been waiting for my success in this work. I also dedicate this work to the soul of my dear brother, who died two months later after my mother's death. May God show them mercy and forgive them and rest them in paradise.

## **ACKNOWLEDGEMENTS**

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## INTRODUCTION

Terrorism is not a modern anomaly, but an ancient scourge. Its lengthy history is reflected in the definition of terrorist crime and all aspects of its complexities. Anyone who thinks that terrorism is simply criminal in nature, or links terrorism to an organization, country or religion, or advocates that terrorism was born on 9/11/2001, is mistaken. Understanding terrorism requires studying its historical origins, so as to grasp the evolution and development of criminal legislation, and the magnitude of its growth up to modernity.<sup>1</sup> We shall study how the international community treats this problem, and explore how legislators have dealt with it by reviewing the important features of the legislative policies of the international community.

This research elucidates international terrorism by reviewing the stages of sociological analysis of terrorism, and by analyzing its theoretical framework. This research traces the historical development of the prevailing uncertainty by which it is characterized. Implications on global security leads us to study international legal development to counter international terrorism that has engulfed entire human societies. The objectives include highlighting international terrorism, and the counter-terrorism measures on part of the international community as it develops international criminal law to handle the problem. We will highlight important points, as follows:

- 1) Provide a snapshot of the principles of terrorism and its types.
- 2) Identify the efforts of the international community to codify this crime.
- 3) Track the efforts and differences involved in defining the crime.
- 4) Highlight the elements of international crime, and distinguish between it and terrorism.

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<sup>1</sup> Magdi Moheb Hafez: *Criminal Protection of the Secrets of the State*, Egyptian General Book Authority, no year of publication, at 17.

- 5) Identify the mechanisms the international community uses to address terrorist violations of the international law.
- 6) Study the legal basis for the legal system of the International Criminal Court, (ICC), international criminal law, and international crime.
- 7) Determine the criminal responsibility of individuals for international acts and crimes they commit.
- 8) Study the stages of development of the international criminal law in the face of terrorism.

\* \* \*

## I. CHAPTER

### Overview of Study

Previously, terrorists were not as threatening as they are now, as societies and world relations are becoming increasingly complex. This makes it difficult to determine the roots of terrorism, or its operations. International terrorism includes hijacking aircraft, seizing ships at sea, destroying ground installations, assassinating world leaders, attacking diplomatic public figures, and abducting individuals, whether they are foreigners or citizens. Such acts do not enjoy international protection.<sup>1</sup> Attacks on embassies, trains and public institutions, placing explosives in public places, and mass murder, lead to the destabilization of society<sup>2</sup> has led to international conventions to eradicate terrorism at international and regional levels.<sup>3</sup>

We shall address international terrorism, some rationales, intellectual approaches and practical implications, as well as highlight the international community and its legal adaptation to terrorism. We will consider terrorism in international relations with suggestions to focus on the legal aspects into which our research project falls.

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<sup>1</sup> Abbas Shafea. Ph.D. dissertation in international law entitled Terrorist phenomenon between International Law and Religious Perspective (at 5).

<sup>2</sup> Id., at 6.

<sup>3</sup> Id.

## I. LEGAL STANDARDS FOR THE NATURE AND CONCEPT OF TERRORISM

### A. A Legal and Historical Approach to The Concept of Terrorism

Ancient societies did not suffer terrorism to same extent as the modern world.

Nevertheless,<sup>4</sup> terrorism is deeply rooted in human history. Terrorism grew after the emergence of organized civil society and the Hyksos invasion of Pharaonic Egypt.<sup>5</sup> Pharaonic Egypt knew of terrorism in 1198 B.C., and called it the "crime of the monstrosities." After an attempt to assassinate Ramesses III, that event became known as "The Great crime."<sup>6</sup> In the seventh century BC, Assyrians used terrorism.<sup>7</sup> The oldest terrorist organization was the "Sipkarbon" organization, formed by extremists in the area of Palestine in 66 BC.

In the Roman era it was difficult to distinguish between terrorism and political crimes. The political criminal was considered an enemy of the nation, and political offenses were considered general crimes, which involved serious acts beyond the detriment of individuals, and inflicted on society as a whole, such as crimes against the security of the State, and revolution against the president.<sup>8</sup> With the Greeks, political crime was linked to religious concepts, and political crime was separated from the concept of religious crime, where political crime had become a crime against the state or its social construction or against the sovereignty of the people.<sup>9</sup> In the era of pre-Islamic "Jaahiliyyah," violence, terrorism and domination prevailed. After the emergence of Islam, terrorism based on religious extremism appeared. Some

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<sup>4</sup> Dr. Mohamed Abdelmutallab, Definition of international terrorism between political considerations and objective considerations, Publishing house-New University, Alexandria, Egypt, 2007, at 5.

<sup>5</sup> International terrorism between reality and distortion, a study prepared by the Arab Center for Publishing, Distribution and Studies, Center publications, 1, Paris, 1982, at 9.

<sup>6</sup> Id. Dr. Mohamed Abdelmutallab, at 5.

<sup>7</sup> Dr. Mohamed Abdul Latif Abdel-Al, *The terrorism, comparative study*, Publishing House-Arabiya, Cairo, 1994, at 22.

<sup>8</sup> Dr. Mahmoud Salam, *A Brief History of Social and Legal Systems*, Al-Arabiya Modern printing house, Cairo, 1975, at 28.

<sup>9</sup> Dr. Abdel Wahab Homed, *Political Criminology*, Publishing house Al Ma'aref, Lebanon, 1963, at 12.

researchers believe it dates back to the movement of “Kharijis,” which resulted in many dissident movements in Islamic history.<sup>10</sup>

The middle ages witnessed unsightly forms of oppression and violence during the Inquisition, initiated by the popes to avenge the perpetrators and those who did not owe allegiance to the Papacy. This violence took a collective form during the French Revolution of 1789. After the fall of King Louis XVI, France went through a period of terrorism during the era of the "Jacobite Republic" which lasted from 1792 to 1794.<sup>11</sup> Accordingly, the world at that time did not know the modern meaning of terrorism, because international terrorism in its current form did not exist.

Terrorism first appeared as an international crime just prior to the First World War with the assassination of the Crown Prince of Austria, "Duke Franz-Ferdinand," and his wife in Sarajevo by a Serbian assassin on June 28, 1914. This event sparked WWI.<sup>12</sup> The fact that the colonial era was a factor in the development of international terrorism was due to the injustice and domination exercised by the colonial powers over colonized States.<sup>13</sup> In the twentieth century, terrorism has been one of the most serious crimes against the international community. In 1972, the United Nations (UN) added “international” to the term, and established a committee to study the causes behind the international terrorism.<sup>14</sup> Finally, international terrorism developed at the beginning of this age in a new and different way because of the structure of the new world order.

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<sup>10</sup> Ibrahim Nafi, *The nightmare of terrorism and the fall of masks*, Al-Ahram Center for Translation and Publishing, Cairo, 1994, at 19.

<sup>11</sup> Hussein Sherif, *International Terrorism and its Implications in the Middle East*, C1, Egyptian General Book Authority, Cairo, 1997, at 67.

<sup>12</sup> *Id.*, at 215.

<sup>13</sup> Hail Abdel Mawla, *Terrorism and its Meaning*, 1, Dar Al Kindi Publishing and Distribution, Cairo, 2008, at 79.

<sup>14</sup> *Id.* Dr. Mohamed Abdelmutallab, previous source, at 9.

## **B. Jurisprudential Definitions of Terrorism**

International legal scholars have attempted to define terrorism. However, these efforts have not been sufficient to understand terrorism because of the focus on the legal aspects without attention to other aspects such as the social, psychological, economic, political and ideological. Unfortunately, Jurists have been swayed by the attitudes of their countries. Therefore, we will divide this topic into two sections in the definition of terrorism in the Arab and Western jurisprudence.

### **1. Definition of Terrorism by Arab Jurists**

In the following sections, the various definitions of terrorism proffered by Arab jurists are discussed. Elucidations of the same are offered wherever the author believes they are most helpful:

Dr. Sherif Bassiouni offers a new definition, which is to say,

Terrorism is an internationally prohibited strategy of violence motivated by ideological motives and designed to provoke horrific violence within a particular segment of a particular community to achieve power, or to make demand or grievance, regardless of whether or not the perpetrators of the violence are acting for themselves or on their behalf, On behalf of a State.<sup>15</sup>

Dr. Hassanein Obaid defines ‘terrorism’ as,

Criminal acts against the State whose purpose or nature are to intimidate certain persons or groups of persons or the general public. Terrorist acts are characterized by intimidation associated with violence, such as bombings, destruction of public facilities, destruction of railways and barricades, poisoning of drinking water, spreading infectious diseases and mass murder.<sup>16</sup>

Dr. Mohammed Aziz Shukri, defines terrorism as,

a violent act, whatever its motive and method, a scheme that creates a situation of terror panic in a certain sector of people, to achieve a strong goal, or to spread propaganda for a demand or a grievance, whether the actor is acting for himself or on

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<sup>15</sup> Abdel Salam Bouhouch, Abdelmajid Chafik - The Terrorist Crime in Moroccan Legislation - Al Karama Press - First Edition: 2004, at 21.

<sup>16</sup> Id., at 43.



behalf of a group representing a semi-state, or on behalf of a State that is directly or indirectly involved in the act being committed, provided that the prescribed act transcends the borders of one State to another State or States, whether the act was committed described in peacetime or in time of armed conflict.<sup>17</sup>

Dr. Salah Eddin Amer defines terrorism as,

the “systematic use of violence to achieve a political goal and, in particular, all acts of violence including incidents of individual or collective assault and subversion, carried out by a political organization against the citizenry, and designed to create insecurity. It involves hostage-taking, kidnapping, homicide, and placing explosives in public transport.”<sup>18</sup> Therefore, any violence that creates insecurity and instability, with the aim of achieving political objectives is a terrorist act.

## **2. Definition of Terrorism by Western Jurists**

Terrorism in Western countries means terrorizing civilians and attacking their property. Schimed defines terrorism as, a method of causing confusion and disorder through violence by an individual, group, State, or secret agent, for political or special reasons. Victims are the direct target of violence, but not the main objective, but are randomly selected. Violence, threats and intimidation are only a means of communicating terrorist organizations with the media, and the victims are the public, even though they are a means, not a goal.”<sup>19</sup> Schimed further describes terrorism as a deliberate exploitation of the emotional reactions of people, to achieve high anxiety about being victimized by violence. It is difficult to think about the effects of terrorism, and therefore the attraction to extremists.

This was illustrated by Feriland and Merari, who described terrorism as having two basic characteristics:

- 1) Realizing the real threat that is not commensurate with the real capabilities of terrorists.

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<sup>17</sup> Muhammad Azzayz Shukri, *International Terrorism*, publisher Dar al-Ilm for millions, Beirut, Lebanon, 1991, at 204.

<sup>18</sup> Dr. Salah al-Din Amer, *Armed Popular Resistance in Public International Law*, publisher, Arab Thought House, Cairo, Egypt, 1977, at 486, 487.

<sup>19</sup> Joseph S. Tuman, *Communicating terror: The Rhetorical dimensions of terrorism*, San Francisco State University, SAGE Publications, 2003, at 13.

- 2) The ability to use violence to influence victims more than to reach the primary goal directly.<sup>20</sup>

The conclusion is that violence itself is not an element of terrorism; however, it is the method or manner in which it is used that characterizes terrorist action, which results in a state of terror and panic through which control is achieved so as to impose and dictate the terms of the executors after weakening the confidence of individuals in the ability of governments to protect them.<sup>21</sup>

This facilitates achieving a particular objective, which is political or ideological. Method or style are the most important elements in defining terrorism, and the psychological impact of terrorism on the mind is an element that distinguishes it from other crimes. We shall examine terrorism in terms of the terror by which the terrorist seeks to control and impose his will upon others hoping to achieve a nefarious objective.

### **C. Concept of Terrorism in Heavenly Law**

Terrorism is global and not tied to any religion, but might be committed in the name of Judaism, Christianity, or Islam. The heavenly religions, as revealed to the prophets and messengers, are religions of tolerance and brotherhood. They do not recognize terrorism because they do not endorse human bloodshed. Islam has been condemned as a religion of terrorism and some have also accused the Jewish religion of terrorism by the Jews in Palestine and others have accused Christianity of terrorism for atrocities the allies committed in Afghanistan and Iraq. The major religions denounce terrorism, and refuse to recognize its legitimacy; however, I shall refer to terrorism in the name of Islam. Considering that the word “terrorism” is nowadays linked to the Islamic religion, it is imperative that we research terrorism as espoused by Islam.

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<sup>20</sup> John Morgan, *The Psychology of Terrorism*, LONDON, Rutledge, 2005, at 3.

<sup>21</sup> Muhammad Moanis Hobbuddin. *Terrorism in Criminal Law, Comparative Legal Study at the National and International Levels*, the Anglo-Egyptian Library, Cairo, Egypt, 1983, at 206.

Islam urges Muslims to be pious, and not harm a person, regardless of his or her religion, race, gender, or nationality. But Islam goes further in holding that a person is not property of himself, but that he belongs to his creator. Accordingly, it is not permissible for a person to kill or cause harm to himself or others, as explained in the Holy Quran:

O you who believe, devour not your property among yourselves by illegal methods except that it be trading by your mutual consent. And kill not your people. Surely Allah is ever Merciful to you. And who so does this aggressively and unjustly, we shall soon cast him into fire. And this is ever easy for Allah.<sup>22</sup>

God has also forbidden human aggression against others and considers such aggression the most dangerous and sinful, and demanding of punishment. There are verses in the Qur'an and Sunnah forbidding and warning against such aggression. As stated in the Koran “. . . do not kill anyone whose killing Allâh has forbidden,”<sup>23</sup> rather, he made Allah out of killing a soul, as if he had killed all the people, as the god said in the book; “Because of that, we ordained for the Israelis that if anyone killed a person, not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind.”<sup>24</sup>

The term terrorism in the *Holy Quran* states, “. . . prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged.”<sup>25</sup> This text demonstrates that the meaning of terrorism is aimed at the meaning of deterrence, which the meaning of "terrorizing the enemy of God" is that they are prepared to fear war and are deterred from violence that may lead to counter-violence. It is resistance to self-defense and religion by

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<sup>22</sup> Aaail.org> Holy Quran> English Translation of the Holy Quran by Maulana Muhammad Ali> Chapter 4: Al-Nisa ' - The Women, (29.30).

<sup>23</sup> Id., Quran, Surat, Al-Israa, Verse 33.

<sup>24</sup> Id., Quran, Surat Al-Maida, Verse 32.

<sup>25</sup> Id., Quran, Surah Anfal, Verse 60.

preventing the need to respond to violence with counter-violence as a natural, spontaneous and legitimate response against the violence to be established and directed against the peaceful.<sup>26</sup>

Military awe is known at the level of states and regular armies, meaning those who do not intimidate the military are blighted. Indeed, the Koranic texts and the noble prophetic narration denounce violence and terrorism. Among the Quranic texts in this regard, are the following:

- 1) “As God forbade radical extremism to violence and called for moderation, Almighty said “Thus, have We made of you an Ummat justly balanced, that ye might be witnesses over the nations, and the Messenger a witness over yourselves.”<sup>27</sup>
- 2) “The Almighty ordered Muslims to abstain from using force except in the event that they are under the injustice of another and needed to be redressed by the power of the other entrusted to them, as said “And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed. But if you are patient it is better for those who are patient.”<sup>28</sup>
- 3) Islam also forbid aggression and abomination, or cooperation and alliance to commit any of them, as the god said “And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah.

Then arose the prophetic, Sunnah, confirming what is stated in the Koran about killing. The Prophet (peace and blessings of Allah be upon him) said “The first thing that people have to pay on the Day of Resurrection is the blood.”<sup>29</sup> This Prophet’s view (Peace and blessings of Allah be upon him.) “For the demise of the world is easier for God than to kill a believer without a right,”<sup>30</sup> therefore, Islam forbids violence.

As for international relations in Islam, the origin is peace, which is based on charity, cooperation, mercy and justice between nations, as stated in holy book “O you who have

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<sup>26</sup> Hussain Azzouzi, Islam and the charge of terrorism, BDS, at 13-14.

<sup>27</sup> Id., Quran, Surat Al-Baqarah Verse 143.

<sup>28</sup> Id., Quran, Surat An-Nahl, Verse 126.

<sup>29</sup> Ahmad ibn Hajar al-Askalani, Fath al-Bari, explaining the Sahih al-Bukhari, directing, correcting and supervising the printing of Mahab al-Din al-Khatib, publisher Dar al-Maarifah, Cairo, Egypt, at 6471.

<sup>30</sup> Al-Hafiz Abi Abdullah Muhammad Ibn Yazid Al-Qazayni Ibn Majah, Sunan Bin Majah, His Texts, Number of Books, chapters and Hadiths, Commented by Muhammad Fouad Abd Al-Baqi, The Scientific Library, Beirut, Lebanon, no date of publication, at 2619.

believed, enter into Islam completely [and perfectly] and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy.”<sup>31</sup> Therefore, the position of Islam on terrorism is clear as a result of rejecting extremism where the Islamic law has developed integrated legal legislation that depicts terrorist crimes and sets out conditions and elements where it established a clear and explicit regime in renouncing violence and terrorism.<sup>32</sup>

The word “terrorism” is not new to Islamic jurisprudence, but appears in several places in the *Holy Quran*:

- 1) “O Children of Israel, remember My favor which I have bestowed upon you and fulfill My covenant [upon you] that I will fulfill your covenant [from Me], and be terrified of [only] Me.”<sup>33</sup>
- 2) “And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy.”<sup>34</sup> The word "terror" in this verse means terrorizing the enemies.
- 3) “And when the anger subsided in Moses, he took up the tablets; and in their inscription was guidance and mercy for those who are terrified of their Lord.”<sup>35</sup>

In this verse, the word "terror" means fear of God Almighty. Terrorism, in the Arabic language, is defined as fear, awe and horror. However, the meaning of terrorism in the sense of current political, jurisprudential and legal thought, as mentioned in Islamic jurisprudence is embodied in the term, "harabah." For more than fourteen centuries, Islamic law has considered it the kind of criminality that results in terror, or that is committed for political purposes, and for which severe penalties are imposed.

Accordingly, "harabah," means “terrorism” in Arabic, which is the same term "harabah" in Islamic jurisprudence as derived from the *Holy Quran*: “The punishment of those who wage war

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<sup>31</sup> Id., Quran, Surat Al Baqarah, verse 208.

<sup>32</sup> Majid Yasin al-Hamawi, *International Terrorism in the Legal and Legal Perspective and its Discrimination from legitimate Resistance*, at 232.

<sup>33</sup> Id., Quran, Surat al-Baqarah verse 40.

<sup>34</sup> Id., Quran, Surah Anfal, verse 60.

<sup>35</sup> Id., Quran, Surat al - A'raf, verse 154.

against Allah and His Messenger, and strive with might and main for mischief through the land.”<sup>36</sup> The declaration of war on the community, means those who do are fighting Allah and His Messenger. The term, "fighting," is only metaphorical because fighting Allah is impossible. “Hariba” is known in Islamic law as the “cutting off the road,” which involves armed groups causing chaos, bloodshed, malice and theft. So long as this criminal act occurs within the limits of Dar Islam, it does not matter what religion the person claims, who commits the crime. Islamic scholars defined “harabah” as follows:

### **1. Malikis**

The Maliki jurists say that the warrior is “showed a weapon with the intention of robbery, whether in Egypt or Fifa, in company, or alone, male or female.”<sup>37</sup> According to the definition this school espouses, irrespective of gender or nationality, a terrorist is a person who frightens people to take their wealth. The Shaafa'is define the road cutter, “harabah,” as “ Every person responsible according to the provisions of Islam attacks everyone without distinguishing between a Muslim and a non-Muslim.” Also, anyone who exposes others to take his money after giving them safety is considered a “harabah.”<sup>38</sup>

### **2. Hanbala**

Scholars of the Hanbali school know the road cutter “harabah” as “one who is charged by the law, who is exposed to people with weapons, even if they are sticks or stones in a desert or city . . .”<sup>39</sup> After our presentation of the concept of the “harabah” in Islam, we find agreement

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<sup>36</sup> Id., Quran, Surat Al - Maida verse 33.

<sup>37</sup> Syed Sabq, jurisprudence of the Sunnah, C2, publisher Dar al-Fath al-Mawliyya al-Wali, I 21, 1999, at 298.

<sup>38</sup> Munsir Sa'id Hamouda, Terrorism A Study of Islamic Criminal Legislation, publisher New University House, Alexandria, 2008, at 73.

<sup>39</sup> Id., at 299.

between the authors of the Islamic “harabah,” and modern terrorism. Islamic law is the first comprehensive legislation regarding the description of terrorist crimes and the conditions that are in line with modern definitions of terrorism. The crime of barbarism is one form of this legislation, which is described as the most heinous crime, both in terms of the moral aspect of its malicious purposes or in terms of its serious repercussions such as intimidating and robbing people.<sup>40</sup>

Islam also considers “barbarism” a major sin, which specifies severe penalties, as is the case with the crime of the *cutting off the road*,<sup>41</sup> terrorizing or killing people. For this reason, the religion has attempted to purge society of all violence and terrorism; hence, Islam’s desire to instill security and stability in society.<sup>42</sup> Referring to the conditions outlined by the jurists in road cutting (al-Harabah), as far as the superiority and the use of force, which applies to most of the widespread and modern international terrorist operations, it is represented in maritime piracy and hijacking aircraft.<sup>43</sup>

Furthermore, if the purpose of terrorism is to spread fear among the general populace, or intimidate individuals or the Government to change their policies, then the intimidation or panic that results from violence, has the same intent found in barbarism because its goal is to achieve terror objectives, whatever their nature, whether personal, political, or religious. Thus, Islamic jurisprudence is compatible with international law of war,<sup>44</sup> as well as with rules governing

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<sup>40</sup> Abbas Shafa'a. Terrorist Phenomenon between International Law and the Religious Perspective Thesis Submitted to the Degree of Doctor of Science in Law, Specialization: International Law and International Relations, (PhD dissertation), at 262

<sup>41</sup> **The crime of banditry in Islamic jurisprudence is to block the roads of peaceful passers-by, plunder their money and kill them.**

<sup>42</sup> Id., at 263.

<sup>43</sup> Imam Hassanin Khalil, Terrorism Crimes in Comparative Legislation, publisher Gulf Center for Strategic Studies, 2001 Edition, Cairo, Egypt, at 50.

<sup>44</sup> Id., Abbas Shafa'a. Terrorist Phenomenon between International Law and the Religious Perspective, at 263.

international terrorism. If hijackings are for political purposes, they might also be motivated by motives, such as collecting ransom. Further, there is a convergence between terrorism today and the al-Harabah as defined by Islamic jurisprudence.

## **II. LEGAL BASES FOR DEFINING TERRORISM**

Despite the jurisprudential, regional and international efforts to define terrorism, it has only uncovered there is a problem with definition. The causes of the problem are due to violence as a tool of terrorism. Some jurists consider violence to be a terrorist means that are subject to legal sanction, while others believe there is legitimate and illegitimate violence, and the latter is only form punishable by law. One of the reasons for the definition problem is the focus on individual or group terrorism, and the exception for state terrorism. These and other reasons involve international interests that preclude access to a universal definition. It is necessary to understand terrorism, and know its causes by identifying its components, so that it can be separated from other offenses, such as crime committed for other purposes such as pure monetary gain, or revenge not related to a political objective.<sup>45</sup> This limits the freedom of states in combating terrorism. Accordingly, we refer to these pillars, as mentioned by some specialists, as follows:

- 1) The use of unlawful and organized violence against innocent people to achieve a political.
- 2) Motives to carry out terrorist acts.
- 3) The sources of Terrorism.

With regard to the elements of terrorism and its definitions, violence is the focus of terrorist activity, which makes it imperative that we study the basic elements of terrorism.

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<sup>45</sup> Hassan Aziz Nour El Helou, Terrorism in International Law Comparative Study Thesis Introduction to the requirements for obtaining a Master of Public Law degree in 2007, at 72.



## A. Unlawful Violence Against Innocent People

One important element of terrorism is violence which must be organized and exercised so as to create terror. By *violence*, we mean the tools terrorists use to strike fear, which is but a temporary goal paving the way to a political goal. Lawful violence must be distinguished from any use of force, which is, the legal use of force and that dialogue should not be replaced whenever possible. Illegal violence means the misuse of force. Because force and dialogue are inversely proportional when used, one of them leads to the non-use of the other.

Violence is generally unacceptable, and only one exception has been approved by national and international laws; e.g., if a person is subjected to violence, whether against his person or property, the act is a simple offense, and the law and only the law would determine the punishment commensurate with the act committed. The offended individual has no legal right to take the law into his own hands, lest it give rise to social chaos. However, the law recognizes an exception; one may defend himself or property where an act of violence against him or that property is unprovoked. Likewise, when a people or a group is exposed to violence that threatens their existence, independence, sovereignty and values, counter-violence used by them is a right guaranteed by heavenly laws, as well as the statutes of the UN Charter, which allow self-defense as a legitimate right.<sup>46</sup> Violence against innocent civilians, whatever the motive, is considered a terrorist act in accordance with the Geneva Convention of 1949.<sup>47</sup> The fact that terrorism is “the use or threat of violence as a means of spreading terror in society in order to weaken or overthrow the authorities and make political changes,”<sup>48</sup> is summarized as follows:

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<sup>46</sup> Dr. Mohamed Mohieddin Awad, *The Reality and Trends of Terrorism*, in the Anti-Terrorism Seminar, Naif Security Academy, 1999, at 23.

<sup>47</sup> The First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (first adopted in 1864, revised in 1906, 1929 and final (1949).

<sup>48</sup> Walter Laqueur, *Le terrorisme de demain*. [usinfo.state.gov/journals/itgic/0297/ijgf/frgj-10.htm](http://usinfo.state.gov/journals/itgic/0297/ijgf/frgj-10.htm).

## 1. Use of Violence

Violence is a material or moral pressure of an individual or collective nature,<sup>49</sup> directed to a particular victim (individual, a group of people or hostages),<sup>50</sup> through the use of force to force, frighten and intimidate others, or assault objects and property by destroying them, or misappropriating or unlawfully seizing them. Violence is one of the most important characteristics of a terrorist act that is intended to create an atmosphere of social and psychological instability. This shows a common denominator in all definitions of terrorism.<sup>51</sup> According to Sloon, acts of violence committed by terrorists, are expressions of anger and disappointment, designed at least in part to arouse fear and fright, moreover, as Brodeur says, the exercise of moral pressure is far more important than the use of force.<sup>52</sup>

## 2. Terror

“Terror” emerged as an essential element in defining the concept of terrorism, as was made clear in the rotation of Copenhagen Denmark for the International Conference for the Unification of Criminal Law. It has been adopted by several jurists such as “Saldani,” who understands “terrorism as a method of disintegrating the masses and paralyzing the movement of their leaders through coercion and criminal intimidation.”<sup>53</sup> The jurist " Freedman" goes in this direction by saying,

Unlike criminal and war crime, the purpose of committing a terrorist crime is not to kill, or wreak psychological instability, the most important objective is the psychological effects of

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<sup>49</sup> Dr. Nabil Bashir, *International Responsibility in a Changing World*, First Edition, Cairo, 1994, at 377.

<sup>50</sup> Dr. Ahmed Mohamed Refaat, Dr. Saleh Bakr al-Tayyar, *International Terrorism*, oaty City, at 204.

<sup>51</sup> Dr. Abdul Razzaq Mohammed al-Dulaimi, a view towards rooting terrorism against the world. According to a study conducted by the jurist "Schmid" proved that about 83% of the definitions contain violence as a key element in terrorism, at 41.

<sup>52</sup> Alexandre Blais, *Terrorisme conventionnel et non-conventionnel*.  
[www.fsa.ulaval.ca/personnel/vernag%20eh/f/cons/lectures/blais-terrorisme.htm](http://www.fsa.ulaval.ca/personnel/vernag%20eh/f/cons/lectures/blais-terrorisme.htm).

<sup>53</sup> Terrorism is a means and not a goal. Violence is not the intent, but rather the disclosure of a state of fear and chaos rather than the killing of some persons whose death does not achieve any objective. Dr. Abdul Razzaq Mohammed al-Dulaimi, a view towards rooting terrorism against the world.[www.kifah.org/studies](http://www.kifah.org/studies), at 5.

the terrorist act on a particular political party, or government, spreading anxiety, fear and panic.<sup>54</sup>

Therefore, terror is fear, dread and mental disorder brought on by anticipation.<sup>55</sup>

### **3. Dominance**

The purpose of terrorization is to extend the hegemony of the terrorist to his victim, whether it is aimed at sabotaging the foundations of the social system, the political group or the decision-makers in the state,<sup>56</sup> identifying terrorist suspects, or amending a law or policy of governance. Terrorism is not practiced just for terrorism itself.<sup>57</sup>

### **4. The Political Goal of Terrorism**

The main objective of terrorist operations is political, that is, forcing the State or a political group to make decisions or refrain from making decisions. This gives some importance and gravity because it puts pressure on political decision making. In those events where terrorist groups are forced to commit bank robberies, kidnappings and ransoms, the objective is to obtain funding for operations and meeting their needs of caches and arming.<sup>58</sup> When terrorists resort to the media, they stress the presentation of their ideas and activities, which have been expanded in recent years, with availability of organization, planning, armament and expertise that will facilitate ease of movement and implementation.<sup>59</sup>

### **5. Random**

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<sup>54</sup> Jerzy Waciorski, *Le terrorisme politique*, 1939, Paris, at 90.

<sup>55</sup> A definition developed by the French Academy to define terror.

<sup>56</sup> Dr. Muhammad Taj al-Din al-Husseini, *Contribution to Understanding the Phenomenon of International Terrorism*, oaty City. at 23.

<sup>57</sup> *Id.*, Alexandre Blais, *Terrorisme conventionnel et non conventionnel*, oaty city.

<sup>58</sup> *Id.*, Dr. Abdul Razzaq Mohammed al-Dulaimi, [www.kifah.org/studies](http://www.kifah.org/studies), at 12.

<sup>59</sup> *Id.*, at 13

There tends to be non-discrimination between victims who are targeted and often unintended civilians, but through them they want to spread terror and panic. Perhaps a car bomb may explode in a popular market or on a busy street. The result of the explosion is that people who are not known by the terrorists, are killed or injured, but are simply in the wrong place at the wrong time. However, victims may be targeted either because of their positions, or nationality, political, religion.<sup>60</sup> Therefore, what matters most for terrorists is not the victim, but rather the reaction reflected by the killing of that victim, or the multitude of victims of exposing the state of fear and panic.<sup>61</sup>

## **6. Organization Related to Violence**

The terrorist adopts a particular strategy in the use of means, and ways of organizing methods to achieve a particular objective.<sup>62</sup> Terrorist activity has now been complicated by highly specialized, highly organized and armored groups and is sometimes managed by State intelligence.<sup>63</sup>

Thus, terrorism involve murder and deportation, and bombing within densely populated places.<sup>64</sup> Violence and terrorism overlap in some ways.<sup>65</sup> In other words, violence is more comprehensive than terrorism, yet violence is one of the fundamental elements of terrorism. Not all violence is terrorism; i.e., an act may be violent and not terrorism, and as well, there may be terrorist and non-violent acts, such as money laundering and Internet crime.<sup>66</sup> However, violence is the main method terrorism uses.

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<sup>60</sup> Id. Hassan Aziz Nour El Helou. Terrorism in International Law Comparative Legal Study. at 80.

<sup>61</sup> Dr. Abdullah Abdul Ghani Ghanem, Crimes of Violence and Confrontation, 1, Riyadh 2004, at 31

<sup>62</sup> Id., at 32

<sup>63</sup> Id., at 33

<sup>64</sup> Id. Hassan Aziz Nour El Helou. Terrorism in International Law Comparative Legal Study, at 81.

<sup>65</sup> Id.

<sup>66</sup> Id., at 82.

## **B. Motives Underlying Terrorism**

Motivation means the incentives behind an individual's behavior that drives him towards his goals.<sup>67</sup> The motive for crime is in the concern of criminology, and it examines the reasons that lead to crime, whether those reasons are subjective or objective. Criminology deals with crime in terms of its causes, methods and circumstances. Regardless, the criminal law is not concerned about motivation as an internal or external incentive behind the individual's act of violence. Its only concern is that the individual's act runs counter to the law. Therefore, if the elements required by law are present, the act becomes a punishable offense regardless of the internal and external reasons that led the individual to commit the illegal act.<sup>68</sup>

Terrorist crimes differ from ordinary crimes in motives and objectives. As noted thus far, if the motive is personal, the act is not terrorism even if that act is causing harm. If the same act is committed because of a political or ideological motive, the act is a terrorism.<sup>69</sup> Therefore, if a plane is hijacked and the motive is personal gain, the action is not considered terrorism, despite the incidental kidnapping and fear engendered in the crew and passengers.<sup>70</sup> On the other hand, if any act is similar to another, but there are political reasons behind it, the act is would probably be considered terrorism.

Though the two acts might be considered of a different character, one terroristic, the other not, they both could create a state of terror and apprehension; thus, motive seems irrelevant.<sup>71</sup> There are commentators who consider terrorist crime political because they take the political or

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<sup>67</sup> Id.,at 88.

<sup>68</sup> Id., at 89

<sup>69</sup> Dr. Mohammed Aziz Shukri, International Terrorism, First Edition, Beirut 1992, at 61

<sup>70</sup> Id.

<sup>71</sup> Id., at 62.

ideological motivation into account; however, crimes are not subject to political characterization at the penalty stage, but are deemed ordinary crimes. The motivation is not considered.<sup>72</sup>

Motivation has a broad, and a narrow concept; the first includes the psychological and physical conditions in which the free man moves his personal feelings, and the narrow meaning is the direct cause of the action.<sup>73</sup> The ambiguity surrounding the definition of terrorism is reflected in motives, which leads scholars to differ in identifying these reasons.<sup>74</sup> However, there is a near consensus of certain political, ideological and ethnic reasons, and terrorism varies according to these reasons:

- 1) Political terrorism.
- 2) Ideological and Dogmatic terrorism.
- 3) Racial or racial terrorism

## **1. Political Terrorism**

Terrorism is a strategy of using violence in political conflict that is rooted in low participation in decisions affecting a citizen's life, whether within the family, school, home, region, city or country in which he lives.<sup>75</sup> Non-participation, especially political, makes citizens objects and not human beings with rights.<sup>76</sup> This is the main reason that such deprivation is the absence of a circulation of power, and disregarding the demands of the people, as well as repressing opposition groups and the subsequent growth of violence and terrorism.<sup>77</sup> This is observed in Arab countries and is characterized by religious influences and not given the

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<sup>72</sup> Id.

<sup>73</sup> Dr. Dounounis Al Akara, Political Terrorism, Second Edition, Dar al-Tali'ah, Beirut, 1993, at 102

<sup>74</sup> Id.

<sup>75</sup> Dr. Abdullah Abdul Aziz Al-Yusuf, Social Structures and its Role in Fighting Terrorism and Extremism, 1<sup>st</sup> 2006, at 201.

<sup>76</sup> Id., at 203.

<sup>77</sup> Id.

freedom of legitimate political action. This pushes actors with aggressive tendencies to adopt the path of violence.

A few countries use violence to implement their policies, which leads to destabilization because it is incompatible with the basic objectives of political activity. These countries seek justification for the use of violence at a time when the public interest or the interest of the state is under threat that the state offers to justify its actions. This persuades terrorists to pursue any violence that they believe will prevent the state from continuing its action, or inaction.<sup>78</sup>

On the other aspect, each party refrain from designating its acts as terrorism, but may consider the actions of another party as terrorism. For instance, this is what happened in France during the German invasion, when the French considered their defensive actions, not as terrorism, but as resistance against occupying German forces. As for the violent measures the German forces employed to impose their control over French territory and subject the French people to acts of terrorism, their actions constituted nothing less than retaliation against the French terrorists.<sup>79</sup>

The legitimacy of resistance and armed struggle for self-determination and independence is a right recognized by the international community and guaranteed by international law in many ways, including the UN Charter and resolutions as following: The second paragraph of Article 1 of the Charter, and Article 55 of the Charter.<sup>80</sup>

It is clear from resolutions of the UN that self-determination is a right of the peoples and is one of the basic principles on which the international order is based.<sup>81</sup> However, the right of resistance is not exercised without restrictions, and there must be restrictions and controls

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<sup>78</sup> Id., Dr. Dounounis Al Akara, Political Terrorism, at 115.

<sup>79</sup> Id., at 116.

<sup>80</sup> Charter of the UN.

<sup>81</sup> Dr. Mohammed Abdullah Al-Amiri, Position of Islam on Terrorism, Riyadh 2004, at 23.

governing such objective.<sup>82</sup> It is not considered if it is practiced by the minorities within the state because it will lead to the fragmentation of the state and its collapse.<sup>83</sup> Finally, the motivations of the terrorist act differ from those that lead to resistance, where the motives of the resistance may justify violence if the people cannot obtain their right to free expression.<sup>84</sup> Absent a balance of power between the occupier and the resistance, and the silence of the international community against this occupation, in which the honorable motive that drives the resistance to carry out armed struggle is the one that justifies its work and makes it obligatory for the resistance.

## 2. Ideological and Dogmatic Terrorism

Dogmatic factors aren't considered as motivation, but as elements that drive the fanaticism of certain political ideologues to adopt terrorism as political expression to achieve political objectives.<sup>85</sup> The sectarian intolerance and extremism, whatever its subject, is linked to terrorism, which may be accompanied by crimes, including assassination and suicide bombings.<sup>86</sup> Incorrect interpretations of ideology and extremism are the most important reasons for the spread of terrorism.<sup>87</sup>

Ideological terrorism is concentrated on two doctrines, anarchism and nihilism; each has an impact on terrorism because both help to show the new meaning of terrorism because of their influence on each other and their association with one ideological source.<sup>88</sup> The source of anarchist ideology, of which there are two varieties, are the socialist ideas of the nineteenth century. The first is led by Max Stearner and is called *individual anarchism*, and the second,

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<sup>82</sup> Id., at 25.

<sup>83</sup> Id.

<sup>84</sup> Id. Hassan Aziz Nour El Helou. Terrorism in International Law Comparative Legal Study, at 103.

<sup>85</sup> Id., Dr. Abdullah Abdul Aziz Al-Yusuf, Social Structures and its Role in Fighting Terrorism and Extremism, at 204.

<sup>86</sup> Id., at 206.

<sup>87</sup> Id., at 207.

<sup>88</sup> Id., Dr. Dounounis Al Akara, Political Terrorism, at 118.



called the *chaotic community*, is a combination of the ideas of the French Pierre Joseph Proudhon and the Russian Michel Bakunin.<sup>89</sup> Anarchism, represented by people and institutions reject authority whose existence dominates individuals and groups, as they consider systematization limits the freedom of individuals. After all, the existing systems of society are destroyed and chaos reigns, this anarchism turns into a system based on freedom.<sup>90</sup>

Nihilism is rooted in the Revolutionary Socialist Currents and the rebellion against prevailing values and customs as a challenge to human freedom.<sup>91</sup> Nihilism is sincere in all social relations unless there is a distinction between classes or races. Russian socialists adopted this principle and did not merely put it forward as a theory, but they sought public support, which led to terrorism.<sup>92</sup> Thus, ideological terrorism, with both anarchist and nihilism types, has a connection to the quality of the capitalist or socialist system.<sup>93</sup> The conflict between the two groups could lead to a civil war of ideology, and each tries to get rid of the existing system and come up with a system compatible with its ideology.<sup>94</sup>

On this basis, those whose regimes are harmed by the advent of the violence that is adopted by certain ideological supporters, are treated harshly and may be considered dangerous criminals against society.<sup>95</sup> Therefore, some of the legislation and conventions adopted the establishment of the concept of terrorist crime while taking the criterion of seriousness of crime and means used to commit the crime, regardless of their motive.

### 3. Racial Terrorism

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<sup>89</sup> Id., at 120.

<sup>90</sup> Id., at 121.

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id., Hassan Aziz Nour El Helou. Terrorism in International Law Comparative Legal Study. at 97.

<sup>94</sup> Id.

<sup>95</sup> Id.

The Convention on the Suppression of the Crime of Apartheid, adopted by the General Assembly of the UN in its General Assembly in 2163 on 2 November 1973, considered racial discrimination a crime against humanity.<sup>96</sup> In its first article, (States Parties to the present Convention declare apartheid to be a crime against humanity, and inhuman acts resulting from policies apartheid practices and similar policies and practices of racial segregation and discrimination, as defined in Article 2 of the Convention, are crimes that violate the principles of international law and constitute a serious threat to international peace and security, In article 3 The States Parties to the present Convention shall criminalize the organizations, institutions and persons who commit the crime of apartheid).<sup>97</sup>

Article 2 of the Convention defines apartheid; (The term apartheid, which includes similar policies or practices of racial segregation and discrimination practiced in South Africa, applies, for the purposes of this Convention, the following inhuman acts committed for the purpose of establishing and sustaining the domination of any category of human element in any category and systematically persecute them).

The third article states that (International criminal responsibility, whatever the motive, rests with individuals, members of organizations, institutions and state representatives, whether resident in the territory of the State in which the acts are committed or in the territory of another State: If they commit the acts set forth in article 2 of this Convention,

- 1) Participated in it, instigated it directly, or conspired to commit it.<sup>98</sup>
- 2) If they directly incite or encourage the commission of the crime of apartheid or directly cooperate in its commission).<sup>99</sup>Article 11 states that acts leading to racial

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<sup>96</sup> Human Rights: A Compilation of International Instruments, vol. I, UN, New York, 1993, Sales No 1. E.94.XIV-Vol.1, Part 1, at 110. International Convention on the Suppression and Punishment of the Crime of Apartheid. Adopted and offered for signature, ratification and accession by the General Assembly of 3068 (1973) of 30 November 1973. Entry into force: 18 July 1976, in accordance with article 15.

<sup>97</sup> Id., at 110.

<sup>98</sup> Id.

<sup>99</sup> Id., at 111.

discrimination are not considered political offenses, and therefore States Parties undertake to extradite those who carry out such acts.<sup>100</sup>

To be considered terrorist crimes, their aim and motivation to commit them must be to maintain rule by spreading terror and panic. It is an international crime because it violates the UN Charter, as confirmed by the above-mentioned international convention.<sup>101</sup> Although jurists and lawmakers consider that violent practices motivated by racism are terrorist crimes, this does not mean that this description is universally accepted. For example, these practices are not considered terrorist crime under the European Convention, which in Chapter 1 lists terrorist crimes and does not refer to racial discrimination as one of these crimes.<sup>102</sup>

### **C. Sources of Terrorism**

It is not practical to discuss terrorism without searching out its sources of funding because money is essential to the needs of terrorist organizations. This is true, whether preparing and training personnel, or providing logistics such as accommodation, clothing and food, or mobility and acquiring weapons and explosives. Terrorist organizations, knowing the importance of funding, ensure the continuation of their criminal activity, by drawing on legitimate sources through economic projects and investments. On the other hand, illegal sources, many and varied, include money laundering, drug and weapon trafficking, robbery, kidnapping and demanding ransom.

Various countries have paid attention to the financing of terrorism, as well as the sources of these financing have been included in counter-terrorism strategy. The attention has shifted to the international level, whereas the International Convention for the Suppression of the

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<sup>100</sup> Id.

<sup>101</sup> Id., Hassan Aziz Nour El Helou. *Terrorism in International Law Comparative Legal Study*, at 93.

<sup>102</sup> Id., at 95.

Financing of Terrorism was adopted by the GA of the UN on December 9, 1999. However, the issue of financing terrorism became more important after September 11, 2001, following which resolution 1373 was issued by the Security Council at its 4385th meeting on September 28, 2001. This legislation aimed at tracking and criminalizing all forms of support and funding for terrorists.

Terrorist sources are defined as “any collection or supply, directly or indirectly, of funds, weapons, explosives, cars, communications equipment or other means, provided to individuals or organizations that support terrorism or plan terrorist operations with the intention of using them to commit terrorist acts.” In this context, the legislation sought to make the financing a separate crime and not merely a complicity in the terrorist crime. Financing precedes the occurrence of the terrorist crime itself, and the first may occur without requiring that a terrorist act occur. The funding that terrorist organizations rely on has not been clearly seen in recent decades, since funding is no longer limited to the material cost of committing the crime through the use of weapons, but also includes banks. Financing terrorism is linked to other crimes, which in the view of legislators, are considered illegal acts that violate the provisions of the law and threaten the security and stability of society in general, such as the drug and arms trade and money laundering.<sup>103</sup>

Terrorist groups cooperate with organized criminal groups in various ways in the trade of drugs, weapons or trafficking in human beings to provide the required financial support in return for the services of these groups to organized gangs and in some cases to assist them in carrying out operations on their behalf.<sup>104</sup> The relationship between gangs, organized crime, and terrorist

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<sup>103</sup> Dr. Mohammed al-Abashir, *Corruption and Organized Crime*, Riyadh, Naif Arab University for Security Sciences, 2007, at 82.

<sup>104</sup> *Id.*, at 83.

gangs sometimes reaches close alliance, but that does not mean that organized crime and terrorism related to violence are one case, but each has its own purpose and method and style.<sup>105</sup> When organized crime gangs resort to the methods and strategies of terrorism, the purpose is to obtain profits or protect themselves from prosecution and detention.

On the other hand, when terrorist groups follow the methods and strategies of organized crime, they are seeking to finance their operations, hoping to gain power; therefore, the purpose of each group is different.<sup>106</sup> In the end, all international legislation have aimed to combat the financing of terrorism via drug trafficking, arms smuggling, money laundering, and other crimes. This legislation is summarized as follows:

- 1) States Parties shall provide for the crime of financing acts of terrorism in criminal legislation.
- 2) The States Parties shall provide for the entry into force of extensive cooperative relations with other States Parties and to provide them with legal assistance.
- 3) The States Parties shall provide for requirements relating to the role of the financial institutions in the disclosure of terrorist financing activities to the competent
- 4) authorities in the relevant evidence.

### **III. LEGAL STANDARDS FOR THE NATURE AND CONCEPT OF “WAR ON TERRORISM”**

The world has witnessed remarkable political, economic, social and legal changes, resulting in a reconsideration of the adequacy of the armed war against terrorism. There has been a growing interest in this phenomenon, particularly after the events of September 11, 2001 in the United States. Since then, there has been controversy over the relationship between terrorist acts and anti-terrorism acts and their relationship to the law of armed conflict. Thus, there has been controversy and conflicting opinions on the concept of the war on terror. This has been

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<sup>105</sup> The Seventh Conference of the Arab police and Security Leaders, "Violence and patterns of Violence and its patterns and the Means of Reducing Spread," the fifth agenda item, held in Tunis on 20 to 22 September 1993, at 56.

<sup>106</sup> *Id.*, at 57.

demonstrated in the reports of the International Committee of the Red Cross as one of the challenges of contemporary armed conflicts. There is no uniform answer so far. This leads us to wondering whether the war on terror is a legal, or a conventional war.

#### **A. War on Terror Since the September 11, 2001 Attacks**

The events of September 11, 2001, prompted international condemnation as acts of international terrorism, which awakened an unprecedented unity with the aim of punishing and combating terrorism.<sup>107</sup> This sparked the war on terrorism, and had a significant impact on the balance of power at the international level.<sup>108</sup> With regard to the application of international law, if this law applies to situations that amount to armed conflict, the questions raised are the scope and nature of these armed conflicts that emerged after September 11 and the applicability of rules of international law.

The events of September 11, 2001 prompted development of a so-called new terrorism; these events have expanded the international dimension of terrorism in that it transcends the borders of one state, and that which globalization and modern technology have created.<sup>109</sup> International recognition of the seriousness of terrorism on international peace and security has emerged.<sup>110</sup> The result was an international coalition against terrorism, and the war against terrorism became the main form of conflict on the international scene, including the war on terrorism in Afghanistan 2001, Iraq's 2003 war against al-Qaeda, and the war on Organization of the Islamic State (Isis) in Syria and Iraq 2013 up to now. Thus, the events of September 11, 2001

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<sup>107</sup> Implementation of international humanitarian and human rights law in the context of combating terrorism. Dissertation for a Ph.D. in Public Law. Prepared by the student: Atto Mohammed. University year: 2015 – 2016 at 144.

<sup>108</sup> *Id.*, at 145.

<sup>109</sup> Walid al-Sadiq and others. *Combating terrorism between the problem of the concept and the different standards in the application*. Amman Academic Book Center, 2016. First Edition 2018, at 72.

<sup>110</sup> *Id.*

have transformed terrorism at several levels; we briefly mention the most important of these transformations.<sup>111</sup>

Cross-border Terrorism: Terrorism has expanded as a result of globalization and its transnational mechanisms, especially information systems, the Internet and communication channels. This makes terror easier to spread to many regions of the world without having fixed, specific and anonymous rules. This renders it difficult to identify the perpetrator, thus the difficulty of controlling terrorism geographically and legally.<sup>112</sup>

Legitimization and Standardization of The War on Terrorism:

It is the international nature of the war on terrorism that has a global dimension and international recognition. All countries are concerned with this threat, thus, the international legitimacy of the war on terror is reflected in UN resolutions.<sup>113</sup>

Resolution No. 1386, issued on 12/12/2001:

This Declaration affirmed the right of self-defense as an inherent right of States individually or collectively, with an invitation to all Member States to cooperate to reach the organizers and perpetrators of the September 11, 2001 attacks and the implementation of international conventions on war on terror.<sup>114</sup> Resolution No. 1373 of September 28, 2001, according to Chapter Seven, defines three international obligations,<sup>115</sup> which include preventing

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<sup>111</sup> Id., at 73.

<sup>112</sup> Mohammed Al-Majzoub, Ahmed Sarhan, *International Terrorism in Light of International Variations* (Lebanon: 2005), 1, at 88.

<sup>113</sup> Id., at 89.

<sup>114</sup> Id. *Combating terrorism between the problem of the concept and the different standards in the application*, at 73.

<sup>115</sup> The incident of Charles Hebdo in France, which is an example of international terrorism, can be found in all these elements.

financing terrorist acts, refraining from supporting terrorist organizations, and the exchange of information on acts and movements of terrorist networks.<sup>116</sup>

In this context, terrorism is characterized by occurring in more than one country, where the holders of the nationality of more than one country are affected by the occurrence of a terrorist event, the diversity and nationality of the participants, the occurrence of a terrorist offense in a country other than the country of nationality of the perpetrators, the state of execution, and runaway to another country after the execution of the terrorist act.<sup>117</sup>

### **B. The War Against Terrorism is a War in The Legal Sense**

There has been a great controversy and a conflicting opinion on the concept of the "war on terror," which has been evident in the reports of the International Committee of the Red Cross, which it dealt with as one of the challenges of contemporary armed conflicts.<sup>118</sup> There is no uniform answer to the question of whether "the war against terrorism is "war "in the legal sense. The view of the supporters of this view is that there is a "war" in the legal sense after 9/11/01 and the events that followed have confirmed the rise of a new phenomenon, that being global networks capable of instigating deadly violence against targets located in distant states.

Based on this view, the law enforcement model, which previously applied to combat acts of terrorism, both at the international and national level, is no longer sufficient because the magnitude of the terrorist attacks, which have actually occurred or are likely to occur makes them reach the level of hostilities of war. The criteria for evidence required in criminal proceedings do not permit the detention or prosecution of the majority of persons accused of

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<sup>116</sup> Id., at 75.

<sup>117</sup> Id.

<sup>118</sup> Id. Implementation of international humanitarian and human rights law in the context of combating terrorism, at 145.



terrorism. The national judicial system with its detailed rules and cumbersome procedures will be burdened with cases. Another problem is that the law enforcement model is designed to take punitive measures and is not protective. Neither international cooperation in criminal matters nor the practical application of the "extradition or prosecution" provisions of international treaties can be relied on as analogues to political, bureaucratic and legal obstacles that often arise in relations between States.

Proponents of the above view argue that the world is facing a new type of violence to which the laws of armed conflict does not apply. The definition of international armed conflict does not apply to international violence because it does not exist between, or among States and does not conform to conventional understanding of the non-international armed conflict because it covers places that cross wide geographical areas. Therefore, the law on armed conflict must be amended to be the main legal instrument in dealing with international terrorism.<sup>119</sup> According to this theory, individuals suspected of involvement in terrorism are "enemy combatants" who may be the target of direct attack, and when they are captured may be detained after the actual hostilities in the "war on terror."

The traditional classification defined two cases of armed conflict: the armed conflict among states classified as war, and non-international armed conflict classified as civil war. This binary structure no longer responds to the complexity of the structure of the international community, and so the old concepts are not appropriate and envision a new concept of "global civil war," which considers the characteristics of both concepts. It is a civil war because it faces

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<sup>119</sup> International Commission on the Red Cross, International Humanitarian Law and Contemporary Armed Conflicts, Extract from the Report prepared by the International Committee of the Red Cross of the 28th International Conference of the Red Cross and Red Crescent, Geneva, December 2003, at 55.

one or more countries with non-international entities, but an international war, because the conflict is not confined to the borders of one state but has become global.<sup>120</sup>

### **C. The War Against Terrorism is not a War in the Legal Sense**

This view is counter to pro-opinion and argues that terrorism is not a new phenomenon. On the contrary, it has been committed at the national and international levels for centuries, leading to a series of international conventions criminalizing specific acts of terrorism and forcing States to cooperate to prevent and punish it. The fact is that terrorists can now direct violence across international borders or create a global network, which does not in and of itself justify calling this crime an armed conflict.<sup>121</sup>

Under this viewpoint, confusion arose from using "war" to describe the activities that would have been better described as "combating terrorism." The bulk of activities to prevent terrorism do not lead to armed conflict.<sup>122</sup> The anti-terrorist campaign includes gathering intelligence, police and judicial cooperation, extradition and criminal penalties, diplomacy, economic pressure, financial freezing, and controlling the production of weapons of mass destruction.<sup>123</sup> Supporters of this view emphasize not abandoning international cooperation because of the global nature of the networks, and the implementation of the law also performs a protective function.<sup>124</sup> The speed of dealing with terrorist suspects cannot be justified by

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<sup>120</sup> Brigitte Stern, Introductory report: The legal context of "the after" 11 September 2001, in Karine BANNEL, Théodore CHRISTAKIS, Olivier CORTEN and Barbara DELCOURT (dir.) *International law against terrorism* Préf. From S.E. Gilbert Guillaume Paris, Editions A. Pedone, 2002, (Coll Cahiers international du CEDIN - Paris I, N ° 17), at 31-32.

<sup>121</sup> International Commission of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, Extract from the Report prepared by the International Committee of the Red Cross of the 28th International Conference of the Red Cross and Red Crescent, Geneva, December 2003, at 66.

<sup>122</sup> *Id.* Implementation of international humanitarian and human rights law in the context of combating terrorism, at 148.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*, at 149.

depriving them of fundamental rights, such the right to appear before independent courts.<sup>125</sup> As the International Committee has stated, international humanitarian law applies when the "fight against terrorism" leads to armed conflict. This was the case in Afghanistan, where the situation was governed by rules of international humanitarian law applicable in international armed conflicts.<sup>126</sup>

Absent further empirical evidence, it is unclear whether the overall violence between states and global networks is armed conflict in the legal sense.<sup>127</sup> An armed conflict of any kind requires a certain level of violence and other events, including conflicting contingencies.<sup>128</sup> A party to an armed conflict means armed forces or armed groups to a certain degree of organization and structure, and thus the ability to implement international law. The logic of international law requires contingencies that can be defined as above because these legal provisions do not affect the legal status of warring parties. International law provides rights and duties for parties so that they know the rules within their borders.

The principle of equality between combatants is the basis of the law of armed conflict. In other words, there is no war in which a party enjoys all rights while the other party has none. Applying the logic of armed conflict to the totality of the ongoing violence between states and global networks may mean these groups must be accorded equal rights under international law as with the states they are fighting.<sup>129</sup>

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<sup>125</sup> Id.

<sup>126</sup> Id. ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, excerpt from the report prepared by the International Committee of the Red Cross of the 28th International Conference of the Red Cross and Red Crescent, Geneva, December 2003, at 68.

<sup>127</sup> Id. *Implementation of international humanitarian and human rights law in the context of combating terrorism*, at 49.

<sup>128</sup> Id.

<sup>129</sup> Id., at 50.

The term "war on terror" describes actions and processes aimed at preventing and combating terrorist attacks, and may include armed conflict. It can include<sup>130</sup> diplomatic work aimed at harmonizing the efforts of foreign governments against terror,<sup>131</sup> investigative works by the different bodies charged with applying the law, legal proceedings of terrorist courts, and the proceedings of financial bodies to prevent the financing of terrorists.<sup>132</sup> Actions can include armed conflicts such as the wars against Afghanistan and Iraq. In both cases, and as in other situations involving an armed conflict, international law applies regardless of appellant and reason.<sup>133</sup>

The International Committee of the Red Cross (ICRC) considers terrorism "a phenomenon." It is neither practical nor legal to wage a war against a phenomenon; the war is waged only on a well-known party in an armed conflict.<sup>134</sup> For these reasons, the use of the phrase "multifaceted struggle against terrorism" may be more appropriate than the "war on terror."<sup>135</sup> Most of the measures taken by States and other actors to avoid or end terrorism do not amount to armed conflict either in a practical, or legal sense.<sup>136</sup> Those who committed the September 11, 2001 attacks considered them part of their war, and the American response categorized them as terrorism.

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<sup>130</sup> Omar Saadallah, *The Evolution of Liberalization of International Humanitarian Law ... New Concepts*, in *Gazan Contributions on International Humanitarian Law*, International Committee of the Red Cross, First Edition, 2008, at 171.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*, at 172.

<sup>133</sup> Kamel Filali, *International Humanitarian Law and Terrorism*, in *Algerian Contributions to International Humanitarian Law*, International Committee of the Red Cross, First Edition, 2008, at 49.

<sup>134</sup> International Commission of the Red Cross, *International Humanitarian Law and Terrorism: Frequently Asked Questions*, *Frequently Asked Questions*. An article published on 01/01/2011, is available on the Committee's website, at 12.

<sup>135</sup> *Id.*

<sup>136</sup> International Committee of the Red Cross, *Challenges to International Humanitarian Law - Terrorism: Overview*, article published on 15/04/2010, on the Committee's website.

From October 6, 2002, former US President Bush used the term "war" in many of his speeches.<sup>137</sup> Therefore, a reason to consider whether international law applies to the 9/11 attacks in New York City and Washington, and the application of international law in the war on terror, is whether the attacks are an armed conflict according to the definition of international law. It also came in the context of the International Committee of the Red Cross's recognition of the so-called "war on terror" as an international war on terror after the 9/11 attacks.<sup>138</sup>

#### **IV. THE LEGAL STRUCTURE OF TERRORISM**

Jurisprudential, regional and international efforts to define terrorism and determine its legal structure, has only revealed there is a problem in definition. Some consider violence a tool of terrorism, and subject to legal sanction. Others believe there is legitimate violence and illegitimate violence, so the only illegitimate violence punishable is terrorism of individuals and groups. They divide terrorism into two parts, and focus only on the terrorism of individuals and groups and exclude State terrorism.<sup>139</sup> This has caused the failure to reach a unified definition of terrorism, as well as the lack of convergence of the interests of the international community in finding a common definition. The definition problem has led to its transformation into a complex political, security and social phenomenon, and it is difficult to determine the basis for combating terrorism in the absence of a unified definition. Hence, we find that everyone defines terrorist

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<sup>137</sup> "The President of the American people has made it clear that the war on terror is not a conventional war . . . which means that there is a field for a particular fight, a particular nation or a certain area. The President has clearly indicated that we will fight terrorism wherever we need to fight to fight terrorism ... This is a different kind of war, with a different form of battlefield where the border which are known in the past and are present in wars, are no longer in the war on terror. "See: Press Gaggle by Ari Fleischer, White House Press Secretary, 5 November 2002, available at <http://www.whitehouse.gov/news/releases/2002/11/20021105-2.html#3>).

<sup>138</sup> International Commission of the Red Cross, International Humanitarian Law and Terrorism: Questions and Answers, article published on 05/05/2004, on the Committee's website.

<sup>139</sup> Id. Hassan Aziz Nour El Helou, Terrorism in International Law Comparative Study. at 72.

acts and determines ways to combat them, but according to their interests, which is not in favor of the international community.

Force alone is not sufficient to fight terrorism without knowing its causes by defining its components in a way that distinguishes them from organized crime and the right of people to resist legitimately. Hence, we should determine the legal bases of terrorism and define it, so as to determine if an act is terrorism.<sup>140</sup> Violence is the main focus of terrorism. The foundations on which terrorism is based include the following:<sup>141</sup>

- 1) The use of unlawful and organized violence against innocent people to achieve a political, or non-political end.
- 2) The motives for carrying out terrorist acts.
- 3) The actual sources of terrorism.

A terrorist act may come from an individual or group that declares its goals through violence.

This results in a state of violent retaliation and the resulting violation of human rights and lawlessness to eliminate this group. In other words, there are two sources of terrorism for individuals or groups and they are called institutional terrorism, and the second source is the state or so-called official terrorism.<sup>142</sup>

#### **A. The Characteristics of Terrorism**

Knowing the characteristics of international terrorism is important because of universal vagueness of the definition.<sup>143</sup> Despite the difficulty in determining the meaning of terrorism, the characteristics of terrorism are less vague.<sup>144</sup> Consider the following:

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<sup>140</sup> Id., at 73.

<sup>141</sup> Id., at 74.

<sup>142</sup> Id., at 75.

<sup>143</sup> Yusuf, Abdullah Abdul Aziz. *Social Struggle and its Role in Countering Terrorism and Extremism*, 2006. Riyadh: The Arab University for Security Sciences, at 83.

<sup>144</sup> Id.

As the organization of the Islamic state is an armed organization that follows the ideas of the Salafist Jihad. Its members aim to restore the "Islamic Caliphate and the application of Shari'a." Its members are spread

## 1. Use of Violence or Intimidation

Violence or intimidation is one of the most prominent features of terrorist acts,<sup>145</sup> where terrorists use these features to bully and to exert political, military or economic pressure on a particular group or state.<sup>146</sup> Violence is the weapon of intimidation and is the basis of terrorism, which is a means of psychological pressure, and without this violence the actions are an ordinary crime.<sup>147</sup> Terrorism generates fear, panic and terror within society. The purpose of the terrorist mechanism to influence the decision-making process through the pressures imposed by terrorists on individuals and countries.<sup>148</sup> Terrorists use violence to torture or injure victims, to attract attention, deliver messages, and create a state of insecurity.<sup>149</sup>

## 2. Organization

Terrorist acts are characterized by organizing, which is an integral part of terrorist activity. The more organized and sustained terrorist acts, the more widespread and effective the fear.<sup>150</sup> Organized terrorism can execute complex and protracted terrorist operations through planned protocols and dedicated people acting under the auspices of well-organized organized groups, that have financial backing, training in advanced weapons, and the construction and use of explosives.<sup>151</sup> These capabilities need to be organized to carry out successful operations.<sup>152</sup>

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mainly in the east and Syria with news of its presence in other southern Yemen, Libya and Sinai. Azzawad, Somalia, northeastern Nigeria and Pakistan. The organizer of this organization is Abu Bakr al-Baghdadi.

<sup>145</sup> Abd al-Hayy, Ramzi Ahmed (2008), Education and the phenomenon of terrorism, Cairo: The Egyptian Anglo Library, at 155.

<sup>146</sup> Id., at 156.

<sup>147</sup> Adli, Mohamed Saleh (2003) Encyclopedia of the Criminal Law of Terrorism, Alexandria: Publisher University Thought House, at 40.

<sup>148</sup> Id.

<sup>149</sup> Id., at 41.

<sup>150</sup> Sultan Anad Ibraheem Al Adinat. The International Mechanism to Encounter Terrorism. The thesis is a continuation of the requirements for obtaining a master's degree in public law. 2018, at 24.

<sup>151</sup> The Anth Ali Bin Ibrahim (2008) The thought of countering terrorism is a review of the concept, reasons, identity, and balances, Riyadh: King Fahd National Library, at 39.

<sup>152</sup> Id., at 40.

Through our observations of terrorist acts perpetrated by organized terrorist organizations, we can conclude that these acts might have reached a peak.<sup>153</sup> Previous periods in history did not witness acts of terror in the same sense as today where terrorist acts have expanded globally.<sup>154</sup>

### **3. Political Objective**

Terrorists seek to achieve a political goal and this is what distinguishes them from other organized crime.<sup>155</sup> Terrorist<sup>156</sup> acts do not aspire to material gain, but are carried out to create effective pressure on political decision-makers, to force the state or political group to make a conscious decision in its favor, or to refrain from implementing a specific decision.<sup>157</sup> The political trait of terrorist acts is that these actions are a means of pressuring politics.<sup>158</sup> The policy has also played an important role in terrorist acts and has affected the spread and increase of terrorist acts in the international community.<sup>159</sup>

#### **B. Motives and Causes of Terrorism**

In 1978, the UN conducted a study on international terrorism to identify the causes and motives underlying terrorism. It was agreed that the title of the study would be "studying the underlying causes and forms of terrorism and violence, which create misery, disappointment, injustice and despair, and which lead some people to sacrifice human lives, including their lives, attempting to make radical changes."<sup>160</sup> However, some terrorist operations are difficult to

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<sup>153</sup> Id., at 41.

<sup>154</sup> Id.

<sup>155</sup> Hamoud, Ibraheem bin Nasser (2008), *Intellectual Disagreement and its Relationship to Terrorism, Saudi Arabia: The Balance of Higher Education*, Imam Muhammad bin Saud Islamic University, Deanship of Scientific Research, at 64.

<sup>157</sup> Id., at 65.

<sup>158</sup> Shuaib, Mukhtar (2004) *Terrorism Global Industry New Era of Chaos*, Cairo: Nahdet Misr, at 148.

<sup>159</sup> Id.

<sup>160</sup> Bader, Osama Muhammad (2000) *Counter-terrorism Study in Comparative Egyptian Legislation* (unpublished), at 77.



assess for cause and motive because the perpetrator dies during the terrorist operation, or because of the inability of the competent authorities to investigate motives of the perpetrators.<sup>161</sup>

The most important reasons that led to the emergence and spread of the phenomenon of terrorism, such as political, economic, media and social reasons, will be clarified in following sections.

## **1. The Political Reasons and Motives**

The political reasons and motives lie behind many terrorist acts, and because of the inability of the policy in some cases to achieve the desired goals, terrorist acts are a powerful means of expressing a cause, spreading a grievance or protesting against a particular policy, with intent to harm the interests of a particular state.<sup>162</sup> State policy may be the target of terrorist acts aimed at harming the interests of that, as happened in the bombing of the American Embassy in Dar es Salaam and Nairobi in 1998. Because of a policy of the United States practiced by the world and double standards in dealing with international issues was the target of terrorist acts, which was the cause of the terrorist acts that occurred at that time, as was confirmed by the American journalist (Jim Hogland).<sup>163</sup> There are countries that have created, or that have supported terrorist groups whose aim is to carry out by proxy, terrorism against other countries. This has been the case with Afghanistan.<sup>164</sup>

Among the causes and motives of terrorism are the weakness of the international political system, no response to violations of international instruments, and the lack of firmness in the

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<sup>161</sup> Hilmi, *International Terrorism in accordance with the Rules of Public International Law*, at 13-14.

<sup>162</sup> Hassan, Hitham Mousa (1999), *The distinction between international terrorism and resistance to occupation in international relations*, a doctoral thesis, Ain Shams University, Cairo, Egypt, at 81.

<sup>163</sup> *Id.*, at 82.

<sup>164</sup> *Id.* Shuaib, Mukhtar. *Terrorism Global Industry New Era*, at 148.

application of international and deterrent sanctions.<sup>165</sup> The clear and blatant contradiction between the promotion of international norms of human principles and values and the practice of States in practices far removed from those principles and values have led to the emergence of certain terrorist practices.<sup>166</sup>

The political causes and motives of terrorist acts are intended to dominate, control, and expand at the expense of others. Therefore, combating international terrorism by eradicating corruption and repression are to suppress the authoritarian and expansionist tendencies of the major countries through implementing fair and comprehensive international legal norms for the international community to maintain international peace and security.

## **2. The Economic Reasons and Motives**

Though the political causes and motives of terrorist acts are the most often scrutinized, the economic reasons should be equally considered.<sup>167</sup> The increasing role of the economy in international life, and the poverty and misery caused by the injustice of the world's economic system as a result of the exploitation and looting of smaller countries by the major powers, have led individuals and exploited countries to resort to violence on the international level.<sup>168</sup>

Also, poor countries are experiencing difficult economic conditions, poverty and unemployment. Citizens of these countries are in despair, which is reflected in isolation within their societies and makes them resentful of their societies due to their sense of injustice.<sup>169</sup> This

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<sup>165</sup> Tataruri, Muhammad Awad and Juwaihian, Aghadir Arafat (2006), *Terrorism: The Foundations of Thought, Psychology, Sociology and Education for the Study of Terrorism*, Amman: Dar Al-Hamed Publishing and Distribution, at 47.

<sup>166</sup> Id.

<sup>167</sup> Egypt, Ahmed Abdel-Azim (2003), *The Legislative Confrontation of Terrorist Organizations in Egyptian Legislation and Comparative Law*, Cairo University Press, Cairo, Egypt, at 218.

<sup>168</sup> Id, at 218.

<sup>169</sup> Sultan, Muhammad Said (2007), "Islam and the Problems of Terrorism Between Deletion and Reacting," Conference on Islam and Contemporary Challenges, July 2-3, College of Religious Origins at the Islamic University, Gaza, Palestine, at 135.

leads to economic problems in those countries; therefore, members of these communities may use violence to satisfy their material needs,<sup>170</sup> and they may be recruited and exploited by terrorist organizations to carry out actions in favor of such organizations.<sup>171</sup> Finally, financial factors are means of assisting terrorist organizations in the processing, and proliferation of their nefarious operations.<sup>172</sup>

### 3. Media Reasons and Motives

Terrorists attempt to achieve their goals via the media, which disseminates their ideas and actions to the public and international organizations to obtain support.<sup>173</sup> Through the media, terrorists may pressure a particular state or international body to conduct, refrain from doing any act or spreading terror.<sup>174</sup> ISIS uses the media to instill fear by broadcasting video clips through the media, on the Internet and social networks.<sup>175</sup> There is a media strategy used by terrorist groups, which states, "intimidate your enemy and spread your case."<sup>176</sup>

The Internet, through which terrorist groups and organizations have recruited many people, has a major role in terrorism.<sup>177</sup> During these years, the members of the organization have mobilized the Internet terrorist and social networks to recruit numbers of organizations to carry out terrorism throughout the world.<sup>178</sup> Video clips on the Internet have posted profiles of

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<sup>170</sup> Id.

<sup>171</sup> Id., at 136.

<sup>172</sup> Sultan, Abdulla bin Abdul Mohsen (2003) on Terrorism and Terrorists, Riyadh: The Jersey Foundation for Distribution and Advertising, at 73.

<sup>173</sup> Ezz Aldin, Ahmed Galal (1986), Terrorism and Political Violence, Cairo: Dar al-Hurriya Press, Printing and Publishing, at 151.

<sup>174</sup> Id., at 152.

<sup>175</sup> Id.

<sup>176</sup> Id., at 153.

<sup>177</sup> Karracha Abdulmutallab (2006). Legal Processing of the Terrorist Phenomenon, and the Role of the Judiciary in its Application, Memorandum of Formation for the Release of the High School of the Judiciary, Batch 14, Al-Ruwaiba Court, Jazair, at 23.

<sup>178</sup> Id., at 24.

individuals wishing to join terrorist organizations, and this has helped to increase the number of individuals affiliated with terrorist organizations.<sup>179</sup> Thus, terrorism has gained great importance in our time and this is the result of technological development in various media. Through high-tech media and communications that transmit news and terrorist operations at high speed around the world, the world has become a small village.<sup>180</sup>

#### **4. Social Reasons and Motives**

Crime in general can result from a range of social factors.<sup>181</sup> One of the most important social factors affecting the individual is a low level of education.<sup>182</sup> Other factors include low income and lack of health and other vital services, such as water and electricity, and lack of attention to infrastructure.<sup>183</sup> The impact of these factors can motivate some individuals to turn to terrorism to respond to any injustice they believe is afflicting them.<sup>184</sup> The disintegration of society and the deterioration of social conditions make individuals vulnerable to being easy recruits.<sup>185</sup> There are many causes such as psychological, educational, intellectual and ideological reasons that can be a cause or motive for terrorist action.

#### **C. Types of Terrorism According to The Perpetrators**

Terrorism is of two types, the first is called “terrorism of individuals and groups,” while the second type is so-called “State terrorism.” There may be overlap between these two types, such as when a State commits terrorism, or supports individuals or groups.

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<sup>179</sup>

Id.

<sup>180</sup>

Hatham, Abdel Salam (2001), "Terrorism and Islamic Sharia," Al-Hikma Magazine, 21, at 60.

<sup>181</sup>

Shawa, Muhammad Sami (1996), Criminal Phenomenon, Cairo: University Press, at 273.

<sup>182</sup>

Id. Sultan, Islam and the Problems of Terror, at 116.

<sup>183</sup>

Id., at 117.

<sup>184</sup>

Badr bin Nasser (2006), Terrorism, Truth and the Position of Islam, Riyadh: King Fahd National Library, at

114.

<sup>185</sup>

Id., at 115.

## 1. Terrorism of Individuals and Groups

The first modern history of individual terrorism was a reaction to State terrorism and is generally committed by an individual or group of individuals against the State or one of its organs.<sup>186</sup> Individual terrorism is called insurgent or non-violent terrorism, terrorism of the weak and multiple forms of individual terrorism, and all based on the goal of terrorism, which can be divided as follows:

Revolutionary terrorism is practiced by organizations that do not have the capacity to receive power or to induce change by working within the system, which lead to armed violence against State institutions.<sup>187</sup> It aims to effect a comprehensive change in the political and social structure of the existing system.<sup>188</sup>

Similarity Revolutionary Terrorism desires to make some structural and functional change in a particular political system, and may become part of a broader program of political change.<sup>189</sup>

Nihilistic Terrorism aims at eliminating the existing regime. There are no contemporary examples of this type of terrorism, but it was found during the French Revolution.

Ordinary Terrorism practiced by individuals with selfish motivation and for the achievements of personal achievements interests, economic or social interests. It is far from the political objective of kidnapping and hostage-taking if it is intended to demand financial funds, as well as what is called terrorism of drugs. Individual terrorism, or terrorism practiced by informal groups, to

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<sup>186</sup> Nqouzi Abdelkader Zuhair, the legal concept of domestic and international terrorism crimes. Manshwar Al-Halabi, Beirut, First Edition, 2008, at 48.

<sup>187</sup> The legitimacy of resistance. Dar Al-Thaqafa for Publishing and Distribution, First Printing, Amman 2009, at 36.

<sup>188</sup> Imam Hassanin Attallah, Terrorism and the legal construction of the crime. University Press, Alexandria, 2004, at 137.

<sup>189</sup> Id., at 381.

achieve their own goals, is often a political, or ideological goal.<sup>190</sup> There are many reasons for the spread of individual and collective terrorism. These reasons deny certain ethnic groups the right to decide their fate.<sup>191</sup> We include the most important effects of the ordinary terrorist acts represented by:

- 1) The oppression, persecution and violation of human rights against specific groups,
- 2) The prevalence of social injustice and the denial of economic and social rights, Spread of intolerance and lack of tolerance in the general social and cultural structure,
- 3) The Confiscation of peoples' rights to national sovereignty and the seizure of their lands by force.<sup>192</sup>

The Security Council has emphasized that terrorism is one of the gravest threats to international peace and security, and that any act of terrorism cannot be justified regardless of its motives and regardless of its timing or identity.<sup>193</sup> The Security Council also states that the Islamic State in Al-Arian and Al-Sham, also known as ISIS, is an unprecedented threat to international peace and security because of its violent extremist doctrine, and attacks on civilians. Also note that the Front of Nasra group in Syria and other individuals, groups, institutions and entities associated with the organization of al-Qaeda is also a threat to international peace and security.<sup>194</sup> Member States should ensure that all measures taken to combat terrorism comply with all their obligations under international law.<sup>195</sup>

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<sup>190</sup> Mohamed Nour Farhat, *Terrorism and Human Rights*, at 47, article on the position of the Arab Academy in Denmark. <http://www.ao-academy.org/ar/2010/8/2267.htm>:

<sup>191</sup> *Id.*, at 48.

<sup>192</sup> *Id.*

<sup>193</sup> Security Council resolutions 1267 (1999), 1368 (2001), 1618 (2005), 1624 (2005), 2083 (2012), 2129 (2013), 2133 (2014), 2161 (2014), 2170 (2014), 2195 (2014), 2199 (2015), 2214 (2015), 2249 (2015).

<sup>194</sup> *Id.*

<sup>195</sup> Security Council No. 2249 of 20 November 2015.

## 2. State Terrorism

This is terrorism by a State, or groups acting on that State's behalf, to spread terror among citizens, and subjugate them in the country or abroad to achieve their objectives.<sup>196</sup> Terrorist acts may be directed at a State, groups, or individuals, by using economic, political, military, or media forces which means terrorism: "Terrorist policies and acts sponsored and supported by States directly or indirectly."<sup>197</sup> Terrorist acts are usually against the interests of another State, or against individuals and groups that the State considers its adversaries or political opponents.<sup>198</sup>

State terrorism is used by the strongest party, and is an instrument of state sovereignty, aggression and interference in the internal affairs of states.<sup>199</sup> The State may act in violation of national and international legislation, violate human rights, and carry out crimes against humanity, genocide, or not abide by the international conventions against terrorism.<sup>200</sup> In this sense, State terrorism is a dangerous form of terrorism.<sup>201</sup> State directed terrorism, inside or outside the state, directly or indirectly, is intended for the State and its interests, such as intelligence, armed forces and national security agents, both citizens and non-citizens, to attack another country to create terror among citizens and achieve political objectives.<sup>202</sup> Indirect terrorism is State sponsorship of individuals or terrorist groups.<sup>203</sup>

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<sup>196</sup> Hayat Abdel Mawla (2008) Terrorism is a reality and means an analytical study of terrorism in terms of meaning, historical background, motives, causes and Types, Contemporary Terrorism, Irbid: Canadian House for Publishing and Distribution, at 152.

<sup>197</sup> Id.

<sup>198</sup> Shukri, Ali Yusuf (2008) International Terrorism, Jordan: Osama House for Publishing and Distribution, at 116-117.

<sup>199</sup> Ibraish, Ibrahim (1990), "Political Violence Between Terrorism and the Legislator's Struggle," Al-Wahda Magazine, No. 67, at 84.

<sup>200</sup> Suidan, Ahmed Hassin (2005), International Terrorism, Beirut: Halabi Human Rights Organization, at 75.

<sup>201</sup> Id., at 76.

<sup>202</sup> Abidat, Khalid (2003) Terrorism is dominated by a non-biased political, political and critical study, Amman: Amman Center for Human Rights Studies, at 106.

<sup>203</sup> Khalil, Imam Hassanin (2002), Terrorism and National Liberation Wars, Analytical Analysis, Cairo: Dar Al-Mahrousa, at 139.

State terrorism is one of the main points of contention that prevents a global definition of terrorism.<sup>204</sup> Until recently, the rules of international law did not define legal rules limiting or restricting the conduct of States on the basis of the principle of equality of States in sovereignty.<sup>205</sup> Therefore, any of its work is an act of sovereignty as it is deemed to act according to its own judgment and interests.<sup>206</sup> In this sense, the State cannot be held accountable even if it carried out acts of violence such as terrorist acts.<sup>207</sup> In general, terrorist acts by the State can be limited to two forms:

**a. Direct State Terrorism**

Direct terrorism occurs when the authorities of a State, or one of its official organs, commit terrorism against the nationals or property of another State, as well as when they carry out a terrorist act outside its borders, as a strike against a particular goal, or as a strike against a specific strategic objective.<sup>208</sup> State terrorism, in the modern era, is traceable to the terror regimes that accompanied the Great Wars, such as the terror of Robespierre, the Crusaders during the French Revolution, and Stalin's terror campaign during the Bolshevik Revolution.<sup>209</sup> It includes various images of the behavior of contemporary universalist and fundamentalist states, such as the horrors of Nazi Germany's, Hitler, the crimes of Idi Amin in Uganda, Bukasa in Central Africa, Mobutu in Azer, and Pol Pot in Cambodia.<sup>210</sup> State terrorism uses legal mechanisms to

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<sup>204</sup> Id. Ngouzi Abdelkader Zuhair, the legal concept of domestic and international terrorism crimes. at 52.

<sup>205</sup> Id., at 53.

<sup>206</sup> Abd Allah Seliman, The phenomenon of terrorism and law. Algerian Journal of Legal, Economic and Political Sciences, No. 04, December 1990, at 925.

<sup>207</sup> Id.

<sup>208</sup> Id., at 926.

<sup>209</sup> Atto Mohammed. The application of international humanitarian and human rights law in the context of combating terrorism Dissertation for a PhD in Public Law. University year: 2015 – 2016, at 104.

<sup>210</sup> Id., at 105.



achieve its objectives, and whether democratic and legal, is often terrorism by law,<sup>211</sup> through legislation enabling State to exercise coercion, under a guise of valid legal rules.<sup>212</sup>

**b. Indirect State Terrorism**

A state participates indirectly in the commission of terrorist acts by encouraging, or covering up to provide assisting, facilitate the presence of armed groups, or condoning their activities of violence and vandalism against the nationals or property of a State.<sup>213</sup>

The international community is concerned about this type of terrorism, and has frequently recognized such acts as terrorism.<sup>214</sup> The draft of the Commission on Crimes against Humanity and Security of Humanity submitted to the UN in 1954, as well as the Tokyo Declaration of the Summit of the Industrial States on 05 May 1986, also condemned State support for terrorism.<sup>215</sup> States must refrain from organizing, undermining, facilitating, financing, encouraging or condoning terrorist activities,<sup>216</sup> and they must ensure that their lands are not used to provide terrorists' training facilities.<sup>217</sup> They must ensure that perpetrators of terrorist acts are arrested, tried or handed over in accordance with the relevant provisions of their national law.<sup>218</sup>

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<sup>211</sup> Mohamed Nour Farhat, Terrorism and Human Rights. Arab Academy in Denmark. Available at the following link <http://www.ao-academy.org/ar/2010/8/2267.html>, at 46.

<sup>212</sup> Id.

<sup>213</sup> Sami Jad Abdulrahman Wasel, State terrorism under general international law. New University House, Alexandria, 2008, at 98.

<sup>214</sup> Id. Abd Allah Seliman, The phenomenon of terrorism and law. at 919.

<sup>215</sup> Id.

<sup>216</sup> Para. 5 (a) and (b) of the Declaration on the Elimination of All Forms of International Terrorism, contained in General Assembly Resolution 49/60 / A / RES of 17 February 1995.

<sup>217</sup> Id.

<sup>218</sup> Id.

#### **D. Types of Terrorism According to Its Scope**

The two types of terrorism are domestic terrorism, whose practice and operations are confined to a state, and international terrorism, which is international. They do not differ in content as being violence leading terror among specific individuals to achieve certain objectives, however, there are fundamental differences.

##### **1. Domestic Terrorism**

Domestic terrorism is often confined to the borders of the State and its courts are competent to prosecute the perpetrators in accordance with the principle of regional law.<sup>219</sup> It requires local or national elements, whether in terms of implementation, place of implementation, planning or preparation for work, as well as victims and targets, their consequences and reliance on local support for funding.<sup>220</sup> It is practiced by groups with specific goals within the state, which do not exceed their borders and are aimed at changing the regime, and have no external link in any way.<sup>221</sup> The state may also practice some kind of terrorism against its citizens or practiced by citizens of the state against its authorities, but not against foreigners, otherwise, it will become international terrorism, even if it is in the territory of the state.<sup>222</sup>

##### **2. International Terrorism**

This type of terrorism is characterized by an international element that adds to the crime in general, creates a conflict of jurisdiction between the courts and is contrary to the law to be applied. An international character exists in one of its components when one of the parties is

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<sup>219</sup> Id. Sami Jad Abdulrahman Wasel, State terrorism under general international law. at 70.

<sup>220</sup> Id.

<sup>221</sup> Id. Imam Hassanin Attallah, Terrorism and the legal construction of the crime. at 142.

<sup>222</sup> Id., at 143.

international, whether persons or places, the international target, or the terrorist act against a person or money under international protection.<sup>223</sup> This terrorism includes hijacking aircraft, attacks on international personnel, bombing embassies, and taking hostages.<sup>224</sup>

Terrorism is carried out by terrorist groups to achieve political objectives intended to influence the attitudes of governments of certain countries towards certain global or regional issues.<sup>225</sup> There have been attempts to address it at the international level through the development of international legal agreements and principles aimed at establishing clear legal rules to combat terrorism and agree on concrete and descriptive measures to combat its various forms.<sup>226</sup> It is clear from the above that international terrorism is one of the most serious international crimes, and is characterized by the presence in addition to elements of the terrorism.

#### **E. Methods and Tools of Terrorism**

There have been numerous terrorist attacks, due to methods of executing operations, whether assassinations, hijackings of aircraft, piracy of ships, or killing of the individual and destruction of public and governmental installations. These methods are not limited to groups and individuals that pursue terrorism, but also include countries that can use them to pass their political agenda. The most prominent methods used in terrorist operations are as follows:

##### **1. Political Assassination**

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<sup>223</sup> Abdul Fattah Mard, *Encyclopedia of Terrorism*. Al Maaref Establishment, First Edition, Alexandria, 2008, at 56.

<sup>224</sup> *Id.*

<sup>225</sup> Bassem Karim Suwaidan al-Janabi, *Terrorism between the supporters and the truth*. *Journal of the Center for Palestinian Studies and Studies*, No. 02, 2005, at 55.

<sup>226</sup> *Id.*, at 56.

Assassination is one of the methods that terrorists used, and it is usually directed against prominent figures of the state.<sup>227</sup> For example, the assassination of Prince Rudolf and his wife in the city of Sarajevo by a Serb terrorist of the Black Cape organization.<sup>228</sup> Due to the continued annexation of Bosnia and Herzegovina to the Austrian Empire, and the murders that led to World War I,<sup>229</sup> the Black Cape achieved its goal of returning Bosnia and Herzegovina to a united Yugoslavia.<sup>230</sup>

## **2. Kidnapping and Hostage-taking**

Kidnapping is one of the most important methods of terrorist operations known to the world by pirates in international law. In the mid-twentieth century, the world witnessed the spread of terrorism, such as hijacking planes and ships, and seizing civilian and diplomatic hostages.<sup>231</sup> The aim of the kidnapping is to achieve a goal sought by the abductors; for example, the hijacking of the first plane in Peru in Latin America in 1931.<sup>232</sup> In the twenty-first century, the most recent kidnappings occurred on September 2001 in the United States where four aircraft were used to attack the World Trade Center, and the Pentagon. Many maritime piracy operations that occur in Somalia and elsewhere on the seas and oceans.<sup>233</sup>

## **3. Sabotage**

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<sup>227</sup> Hussein, Khalil. (2007): Contemporary International Issues, Second Edition, Lebanese Manhal House, Beirut. at 111.

<sup>228</sup> Id., at 112.

<sup>229</sup> Tal, Ahmed. (1998): Terrorism in the Arab and Western World, First Edition, Department of Publications and Publishing, Amman. at 36.

<sup>230</sup> Id.

<sup>231</sup> Amiri, Mohamed. (2004): Islam's Position on Terrorism, First Edition, Center for Studies and Research, Naif Arab University for Security Sciences, Riyadh, at 70.

<sup>232</sup> Id., at 71.

<sup>233</sup> Id.

Terrorist utilize subversive acts to destabilize a political entity, instill terror, and influence state policy.<sup>234</sup> For example, the Organization of “Al-Dar Al-Muqayyat” in Peru between 1980 and 1995, as well as the bombings that took place in 1993 in the United States, and the events of September 2001 in New York City, and Washington, D.C.<sup>235</sup>

#### **4. Militias and Terrorist Organizations**

Organizations have their own political, religious and intellectual ideologies. They work against governments and even individuals.<sup>236</sup> They have certain goals that they try to reach by following illegal methods.<sup>237</sup> The absence of an international agreement on the definition of terrorism, has affected terrorist organizations, where some consider liberation movements, terrorism, and others consider them freedom fighters. Thus, terrorist acts are not the only means to determine terrorist organizations in the world, <sup>238</sup> such as al-Qaeda founded by Osama bin Laden in 1990 to recruit the Arabs who participated in the Afghan war against the Soviet invasion.<sup>239</sup> Al Qaeda has helped finance, recruit, and train Sunni extremists to participate in the Afghan resistance movement, and its declared goal is the establishment of an Islamic state. The attacks of September 11, 2001, are considered the most dangerous terrorist operations in history for which Al-Qaeda adopted responsibility.<sup>240</sup>

Therefore, terrorism is not subject to an international consensus as to its nature, and this may be due to different interests and international interests. The overlap of terrorism with other concepts may be seen by some as a struggle for liberation and legitimate defense, and by others

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<sup>234</sup> Id. Hussein, Khalil. (2007): Contemporary international issues, at 116.

<sup>235</sup> Id.

<sup>236</sup> Id., at 117.

<sup>237</sup> Id., at 118.

<sup>238</sup> Id.

<sup>239</sup> Harfi, Abdul Rahman. (2005): Roots of Excessive, First Edition, Dar Ibn al-Jawzi, Qatif, at 79.

<sup>240</sup> Id., at 80.

as a crime. The difference depends on the goals that countries pursue. Also, most researchers agreed to the description of terrorism, but without reaching a specific definition of terrorism, in order to obtain benefit of it when the definition is specific. They cannot introduce other concepts into the concept of terrorism, as we have found that revolutionary actions and legitimate resistance fall within the indeterminate concept of terrorism in many cases. Thus, the difference between jurists and politicians in determining who is a terrorist, as some may see it from their point of view as resistance and struggle, and others see the contrary.

## **V. DISTINCTION BETWEEN TERRORISM AND OTHER TYPES OF VIOLENCE**

Although terrorism is a violent event, it has characteristics that distinguish it from other types of violence, both in terms of reasons and motives, in terms of tools and methods, in terms of purposes, or in terms of legality or otherwise. To distinguish terrorism from similar actions, let us consider the subject as follows:

### **A. The Conventional Warfare and Terrorism**

The definition of war is intertwined with many different elements and factors that are mostly close to the same content, so we can define war as, “Armed battles in various ways, means and weapons between armed forces of two or more States.” This definition applies only to States, that is, the belligerents are States; however, the “1949 Geneva Convention for the Protection of War Victims of Prisoners, Wounded and Others,” introduced the struggle of liberation movements fighting against the occupying Power in the same context.<sup>241</sup> In other words, the Convention of 1949 considered that the parties to a conflict may be States, and may

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<sup>241</sup> Khairou, Izzedine Ali: *Palestinian Resistance and the Right to Self-Determination*. University of Baghdad, Faculty of Arts. 1971, at 43.

be liberation movements.<sup>242</sup> This is tantamount to armed fighting on the battlefield, as is common in the many wars that have taken place, and continue in many countries, and throughout human history.<sup>243</sup> War has two parts: in the first, it expresses a legitimate situation in self-defense and national interests, and is therefore legitimate by the consensus of the majority of jurists of international law; in the second, it expresses a hostile situation if the objective is to carry out the occupation expansion related to the invasion, and is an illegal act in international law.<sup>244</sup>

Human history has been filled with wars and atrocities that have claimed the lives of millions.<sup>245</sup> The two world wars, and the resulting great human and material losses, are prominent examples of a violent approach to resolving disputes among states.<sup>246</sup> War has used all violent means, which are no different from terrorism, and the use of prohibited weapons, the attempts to exterminate the human race, the plundering of peoples' rights to their land and sovereignty, looting and theft, kidnapping and detention, and a long list of common practices between conventional warfare and terrorism, place both war and terrorism at the same level.<sup>247</sup>

In legal terms, however, they are different. International law, through international humanitarian law, has derived a large set of legal and customary rules to regulate wars between nations, and even set the rules that govern the prerogatives and consequences of those wars.<sup>248</sup> We are facing an organized legal situation, known as the rules and regulations.<sup>249</sup> This is clear in the case of regular wars between states, or between them and liberation movements, that this is

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<sup>242</sup> Id., at 44.

<sup>243</sup> Id.

<sup>244</sup> Nihad Abdel Ilah Abdel Hamid Khanfar. The distinction between terrorism and resistance and the impact on the Palestinian resistance between. 2001-2004, at 40.

<sup>245</sup> Al-Shawi, Tawfiq Muhammad: Lectures on Criminal Legislation in the Arab States. Cairo: Institute of Arabic Studies, 1954, at 83.

<sup>246</sup> Id.

<sup>247</sup> Id. Nihad Abdel Ilah Abdel Hamid Khanfar. The distinction between terrorism and resistance and the impact on the Palestinian resistance between. at 41.

<sup>248</sup> Id., at 42.

<sup>249</sup> Id.

contrary to terrorism, which is considered an irregular and unspecified situation.<sup>250</sup> War is a legal contract and is recognized as a means of resolving disputes that peaceful means have failed to resolve.<sup>251</sup> Terrorism is outside of law and subject to its control by punitive measures. Whatever the extent of overlap between conventional war and terrorism, each has its own limitations, requirements and assumptions.<sup>252</sup>

## **B. Guerrilla Warfare and Terrorism**

The term “guerrilla” refers to the pattern of war waged by irregular forces in a limited range, through limited operations against conventional military forces.<sup>253</sup> There is some similarity between terrorism and guerrilla warfare, given the similarity in some of the methods used by terrorist groups with those of guerrilla groups, both of which involve organized violence and seeking political objectives.<sup>254</sup> From here, the differences between terrorism and guerrilla warfare is limited in terms of the methods used, the nature of the targeted individuality, the objectives envisaged, the scope of activities and processes, and the positions of international jurisprudence of the two groups, as follows:

### **1. Methods used for Each of Them**

Guerrilla fighters carry out their operations through semi-conventional military forces based on surprise attacks, where attacks intensify on government buildings, army and police units characterized by weak armament and few numbers. In contrast, terrorists usually operate without distinguishing between combatants and non-combatants and without distinguishing

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<sup>250</sup> Id. Al-Shawi, Tawfiq Muhammad: Lectures on Criminal Legislation in the Arab States, at 83.

<sup>251</sup> Id.

<sup>252</sup> Id., at 84.

<sup>253</sup> The New Encyclopedia Britannica (Chicago: Helen Hemingway Benton, Publishers, 1983.Vol. 8, at 458.

<sup>254</sup> Harez, Abdel Nasser: Political Terrorism. I. Library of Medbouli, 1996, at 43.



between military and civilian objectives.<sup>255</sup>

## **2. Scope of Activities and Operations**

Operations of guerrilla warfare are mainly concentrated in mountainous places, forests, and isolated roads and villages. Terrorists focus on populated areas such as buses, trains, restaurants, theaters, and other densely populated areas.<sup>256</sup>

## **3. Nature of Targeted Individuality**

Guerrillas often target members of the armed forces of the hostile government and may also direct their operations to people who play indirect roles in combat, such as military contractors or civilian personnel providing services to the government's military forces.<sup>257</sup>

However, those who are targeted by terrorism are often non-military, such as ministers, religious leaders, socialists or ordinary citizens.<sup>258</sup>

## **4. Targets**

There are two objectives pursued by guerrilla fighters: the first is to reduce the areas occupied by the occupation army on the path of liberation and the final disposal of the hostile foreign presence, at the strategic level. In the interim, the aim is to inflict severe material losses on the enemy.<sup>259</sup> Terrorists operations attempt to stir up feelings, spread terror and gain sympathy for their cause.<sup>260</sup>

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<sup>255</sup> Id. Nihad Abdel Ilah Abdel Hamid Khanfar. The distinction between terrorism and resistance and the impact on the Palestinian resistance between. at 43.

<sup>256</sup> Id., at 44.

<sup>257</sup> Amer, Salahuddin: Armed Popular Resistance in Public International Law. Cairo: Arab Thought House, at 490.

<sup>258</sup> Id.

<sup>259</sup> Id., at 491.

<sup>260</sup> Id.

The decisions of the Sixth International Conference on the Unification of Criminal Laws, held in Copenhagen from 31 August to 3 September 1935, are consistent with the collective extradition agreement between Arab States that do not include terrorist crimes as political offenses.<sup>261</sup> Therefore, guerrilla fighters often become units of the regular army in the event of victory and then control of the reins of government in the state, as happened in Cuba, China, Vietnam, Cambodia and Libya.<sup>262</sup> Modern jurisprudence in international law has dealt with guerrilla fighters as legitimate combatants and they are treated as prisoners of war, if they are in uniform.<sup>263</sup> This should be a correlation to the extent of their commitment to the laws and customs of war during the implementation of their operations.<sup>264</sup> As for the terrorist groups, the situation is different. In addition that they do not have this statue, the crimes they commit do not fall under the political crimes that are distinct from ordinary crimes.<sup>265</sup>

### **C. Political Crimes and Terrorism**

Political crime emerged after the French Revolution, as a crime of a special kind, in which the perpetrator was treated differently from other criminals.<sup>266</sup> A political crime is motivated by a political motive, even if it includes acts that are classified as ordinary crimes such as murder.<sup>267</sup> Some legislators consider every crime against the State a political crime if it threatens the integrity and security of the State, internally or externally.<sup>268</sup> However, there is

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<sup>261</sup> Dabara, Mustafa: Terrorism, its concept, and its most important crimes in international criminal law. 1, University of Qar Younis, 1990, at 67-66.

<sup>262</sup> Id., at 67.

<sup>263</sup> Id.

<sup>264</sup> Id., at 68.

<sup>265</sup> Id.

<sup>266</sup> Recueil de cas sur les affaires de terrorisme, Office des Nations Unies contre la drogue et le crime, New York, Janvier 2010, at 58.

<sup>267</sup> El Sawy, Mohamed Mansour: Provisions of international law relating to combating crimes of an international nature. Alexandria: University Publications House, 1984, at 645.

<sup>268</sup> Id.

confusion between terrorist crime and political crime. Thus, some persons sentenced were granted political asylum, because their actions were considered a political crime that requires them to receive this right.<sup>269</sup> The view of criminal jurisprudence varies from political violence, to violence against the state, and any attack on it is an attack on society, given that the authority is the legitimate representative of this society; therefore, the political or terrorist criminal is an enemy of society.<sup>270</sup> Other commentator argue a political crime is an attack on the ruling person and not an attack on society, and is an ordinary crime.<sup>271</sup>

With the beginning of the seventeenth century and the French revolution, and the spread of liberal ideas, the treatment of the political offender was not the same as that of the ordinary criminal; therefore, the penalty imposed on the political offender was less severe.<sup>272</sup> Terrorism has been excluded from political crime since the International Conference on the Unification of the Penal Code of 1953, which affirmed that "political crimes shall not be considered as crimes of an insidious nature, nor are they a general danger, or terrorism."<sup>273</sup> This was followed by a review of the principle of non-extradition of a political offender in accordance with international conventions on the exchange of offenders.<sup>274</sup> In contrast, the political criminal is an enemy of authority while the terrorist is an enemy of authority and the people. Most world constitutions prohibit the extradition of political refugees, but not the extradition of terrorists.<sup>275</sup> Political crime

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<sup>269</sup> Khalil Hassin, the international terrorism and wars of the new Middle East, the occupation of Iraq and aggression and aggression on Gaza and Lebanon. Manshoor Art Halabi Human Rights, Beirut, First Edition, 2012, at 48.

<sup>270</sup> Id.

<sup>271</sup> Id., at 49.

<sup>272</sup> Ahmed al-Sayyed, in the political crime. Al-Halabi Human Rights Organization, Beirut, First Edition, 2003, at 7.

<sup>273</sup> Abdul Fattah Mard, Encyclopedia of Terrorism. Al Maaref Establishment, First Edition, Alexandria, 2008, at 263.

<sup>274</sup> Abdul-Aziz Mukhaimar Abdul-Hadi, International Terrorism with the Study of International Agreements and Codes issued by International Organizations. Arab Renaissance House, 1986, at 305.

<sup>275</sup> Al - Fatalawi Sahil Hassan. International terrorism and the legitimacy of resistance. Dar Al-Thaqafa for Publishing and Distribution, First Printing, Amman 2009, at 67.

is an internal crime punishable by national law, and terrorism is an international crime criminalized by international criminal law.<sup>276</sup>

#### **D. Distinction Between Terrorism and Organized Crime**

The emergence of organized crime is an agrarian formula adapted to evolving societal patterns. The emergence of complex economic relations, the complexity of social life patterns, the development of modern technologies and communication technologies have contributed to this new crime.<sup>277</sup> The general rule is that elements of organized crime are found in terrorist crime; however, organized crime does not necessarily have to be a terrorist act.<sup>278</sup> Terrorist crimes do not contain the element of economic objective, which is generally characteristic of organized crime. Organized crime is only that which is perpetrated by organized groups, with the aim of achieving material gains, which is different from terrorism.<sup>279</sup>

Terrorist groups have the characteristics of organized crime groups, and sometimes should be subject to punishment under the laws targeting those groups. A significant difference is that the ideological motivation of the terrorist group may limit the use of legal mechanisms directed at organized crime groups for profit, when financial profit is not the main goal but rather a modest financial goal just for self-financing.<sup>280</sup>

The terrorist motive, unto the terrorist, is honorable within the framework of terrorists' policy, ideas, and principles. That is why they sacrifice themselves for their beliefs.<sup>281</sup> The

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<sup>276</sup> Id.

<sup>277</sup> Mohammed Sulaiman al-Wahid, *What is the organized crime? In the Organized Crime Seminar and the Methods of Confrontation in the Arab World*, The Nive Arab Academy of Security Sciences, First Edition, Riyadh, 2003, at 9.

<sup>278</sup> Mohamed Abdel Moneim Abdel Khaliq. *International Conference: An Empirical Study of Refugees against Humanity, Peace and War Crimes*. Dar al-Nahda al-Arabiya, Cairo, first edition, 1989, at 72.

<sup>279</sup> Id.

<sup>280</sup> Id., at 73.

<sup>281</sup> Id. Mohammed Abdul Moneim Abdul Khaliq. *International Crimes: An institutionalization of crimes against humanity and peace, and war crimes*. at 54.

motivation of the organized groups is purely physical, namely, collecting money.<sup>282</sup> Usually a criminal act that leaves a psychological impact of a limited scope does not go beyond the victims in organized crime, while the terrorist leaves an unlimited psychological impact beyond the victims, and pressures the society or the ruling authority to abandon a policy or decision.<sup>283</sup>

The “UN Convention against Transnational Organized Crime 2000,” requires that the material motive be explicitly stipulated. Because the number of parties to the Convention is close to 150, it provides an opportunity for international cooperation in combating criminal groups, including terrorist groups. If a hostage-taking or hijacking of three or more members of a terrorist group for the purpose of self-financing is made, the convention can be useful in the exchange of legal aid or extradition.<sup>284</sup> However, if the crime is an explosion, a murder, destruction of property or other violence committed on ideological grounds without the intention of any material benefit, such action is outside the scope of the Convention.<sup>285</sup> Article 2 of the Organized Crime Convention defines the organized criminal group as "a structured organizational group of three or more persons and works to obtain, directly or indirectly, a financial or material benefit. "<sup>286</sup>

#### **E. Distinguishing Terrorism from War Crimes, Genocide and Crimes Against Humanity**

The distinction between these crimes and terrorist crimes helps confirm the specificity and specificity of the terrorism in international law, which the boundaries its material elements defined to prevent confusion.<sup>287</sup> Some jurists have considered war crimes and crimes against

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<sup>282</sup> Id.

<sup>283</sup> Id. Khalil Hassin, *the international terrorism and wars of the new Middle East, the occupation of Iraq and aggression and aggression on Gaza and Lebanon*, at 51-52.

<sup>284</sup> Id. *Recueil de cas sur les affaires de terrorisme*, Opcit, at 58.

<sup>285</sup> Id., at 59.

<sup>286</sup> Id.

<sup>287</sup> Mohamed Azzik Shoukry, *International Terrorism: A Critical Legal Study*. Dar al-Alam al-Malain, Beirut, first edition, 1991, at 135.

humanity to be terrorism, while others have thought them to be war crimes in times of armed conflict, and crimes against humanity in times of peace.<sup>288</sup> An act can be genocide and at the same time an act of terrorism when it includes elements that can be considered genocide with the addition of the distinct purpose of terrorist acts. Moreover, the use and exploitation of terrorism to achieve political goals is what distinguishes terrorism from other international crimes, as is the case with war crimes and crimes against humanity.<sup>289</sup>

The former International Law Commission (ILC) has tried to find a link between the concept of crime against humanity and the concept of terrorism, arguing that in the light of the crime against humanity, terrorism presupposes the existence of a particular criminal intent and a certain policy. The ILC states that terrorism "can and should be considered a crime against humanity when acts are committed by individuals."<sup>290</sup> This similarity is not the same, as jurisprudence rejects this and considers it as "arbitrariness that considers crimes against humanity similar to those of terrorism . . . as rules of conduct set by international law."<sup>291</sup>

On the material and moral elements, we find a distinction between terrorism and crimes against humanity. Terrorism is often followed by acts that are crimes against humanity, especially murder, and "other inhumane acts of a similar nature that deliberately cause severe suffering."<sup>292</sup> To adapt these acts as a crime against humanity, it is necessary to be "systematic" or "wide-ranging." This means that a crime against humanity is of a collective nature, targeting

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<sup>288</sup> Id.

<sup>289</sup> Id. Suidane Ahmed Hassin, *International Terrorism in the light of international changes*. at 70.

<sup>290</sup> ACIDI, 1986, vol. II, 2<sup>eme</sup> partie, at 48, §98 et ACIDI, 1990, vol. II, 2<sup>eme</sup> partie, article 16 commentaires at 29. (certains membres sont reserves au sujet de cette assimilation (ACDI, 1986, op-cit., § 99).

<sup>291</sup> Adriano Mendy, *la lutte contre le terrorisme en droit international*. THESE Pour obtenir le grade de Docteur de l'Université de Reims Champagne-Ardenne Discipline: Droit international et Relations internationales, 2008, at 91- 92.

<sup>292</sup> Simon Peter Faraj Allah, *Crimes Against Humanity, Genocide, The Harmony of War and the Evolution of Its Concepts*. In Mevid Shehab, *Studies in International Humanitarian Law*, Arab Future House, Cairo, 2000, at 434-443.

many victims, and that an injury to one victim does not entail international criminal responsibility for the perpetrator.<sup>293</sup>

The concept of "systematic" is related to a plan or policy of a continuing nature, that is, the repeated and continuing perpetration of inhumane acts.<sup>294</sup> The same continuous and repeated nature is generally part of the logic of terrorism. In this regard, Italian philosopher, Antonio Cassese, stated that the 9/11/01 attacks were part of a systematic exercise, a plan to create many victims as had happened in previous attacks against the US, such as the attacks on the US embassies in Tanzania and Kenya in 1998.<sup>295</sup>

With regard to the moral element, in the sense of committing acts under the policy of intimidation, the difference between the concept of the two crimes is minor.<sup>296</sup> In fact, just because terror is sequential in both concepts does not mean that it is equal in both. On the contrary, the rate of terror that feeds the two crimes is different.<sup>297</sup> Terrorism uses terror to influence a government or organization, while the horror of the crime against humanity is discriminatory, given that victims are of an ethnic, national, political or political group.<sup>298</sup>

Terrorism in the context of armed conflict is defined as, all acts or threats of violence, the primary objective of which is to spread terror among the civilian population, which violates the provisions of humanitarian law prohibiting the use of brutal and barbaric means, on civilian targets or attacking targets that have no military advantage.<sup>299</sup> This definition is close to the definition of war crime, "all serious violations of the rules of international humanitarian law,

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Id.

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Id.

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Id., at 444.

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Id., Adriano Mendy, *Op-Cit.*, at 92, 93.

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Id.

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Id.

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Salmon Jean, *Dictionnaire de droit international public*. Bruxelles, Bruylant / AUF 2001, at 1081.

which can raise the criminal responsibility of its perpetrators, whatever the international or non-international nature of the conflict."<sup>300</sup>

The International law defines "war" as "a situation that begins with an armed confrontation between two or more states and with an ordinary declaration in this regard." This definition shows that, initially, terrorism was excluded from the application. Even with State support, States generally do not commit terrorism, which is often committed by individuals or groups. On the other hand, war presupposes an armed conflict (international or non-international), whereas terrorist acts are originally committed in time of peace.<sup>301</sup>

The International Committee of the Red Cross (ICRC) states that in cases of armed conflict, there is no legal term to describe acts of deliberate violence against civilians or civilian targets as "acts of terrorism" because such acts constitute in themselves war crimes.<sup>302</sup> On the basis of the principle of universal jurisdiction, criminal proceedings may be brought against the suspect committing war crimes not only by the country in which the crime took place, but by all States.<sup>303</sup> The existence of a particular crime under the name of terrorism is mentioned in international criminal law.<sup>304</sup> There is no international terrorism of crimes against the law of nations, so terrorism is not a war crime or a crime against humanity, because there is no general international agreement on the definition terrorism.<sup>305</sup>

The statutes of the various courts also do not include "terrorism" as a particular crime,<sup>306</sup> where the terrorism is outside the jurisdiction of the Nuremberg and Tokyo Tribunals for the

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<sup>300</sup> Id., at 288.

<sup>301</sup> Id.

<sup>302</sup> Id. International Commission of the Red Cross, International Humanitarian Law and Terrorism.

<sup>303</sup> Id.

<sup>304</sup> Acte final de la Conférence diplomatique de plénipotentiaires des Nations Unies sur la création d'une cour criminelle internationale· fait à Rome le 17 juillet 1998 (A/ CO NF. 183/10).

<sup>305</sup> Id.

<sup>306</sup> Article 40 (d) of the ICTR Statute and article 3 (d) of the Statute of the Tribunal for Sierra Leone.



prosecution of war criminals after the end of the Second World War, and the Statute of the International Criminal Tribunal for Yugoslavia and Rwanda for Terrorism.<sup>307</sup> The question of including terrorism in the Rome Statute was discussed as a category of crimes for which the International Criminal Court has jurisdiction, and there was no consensus at the time of the adoption of the Statute.<sup>308</sup> However individual terrorist acts may fall within the category of war criminals, which terrorism resembles in many ways, or a crime against humanity,<sup>309</sup> if it meets the conditions set out in the provisions. Disproportionate and unlawful reactions to terrorism by a State may result in individual criminal responsibility amounting to international crimes.<sup>310</sup>

Finally, discrimination is required between these crimes, and that national and international legal authorities must provide the proper legal classification. Terrorism is a crime in international law and must be affirmed in the field of international law as a separate crime, and not in the list of crimes already in existence.

## **VI. CONCLUSION**

Terrorism is often mixed with violence or extremism. In the minds of many, it is associated with a specific religion or nationality. The importance of defining terrorism is that it would be easier to identify the practitioners of terrorism, if they do the acts described and defined in the definition. Terrorism threatens peace and security at the international and non-international levels, which means states must discard differences, and create a uniform definition at the global

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<sup>307</sup> Id. Suidane Ahmed Hassin, International Terrorism in the light of international changes, at 49

<sup>308</sup> Id. Acte final de la Conférence diplomatique de plénipotentiaires des Nations Unies sur la création d'une cour criminelle internationale, Opcit.

<sup>309</sup> Regarding the concept of these two crimes, articles 70 and 80 of the Statute of the International Criminal Court of Rome for 1998 are provided.

Questions les plus fréquemment posées sur les aspects du droit international touchant la lutte contre le terrorisme, Office Des Nations Unies Contre La Drogue Et Le Crime, Nations Unies, New York, 2009. at 41. <sup>310</sup>

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In this context, the study of the history of international terrorism means recognizing the existence of an international community governed by international law, which suggests old societies lacked stable international relations. Therefore, monitoring international crime in ancient societies is to show the historical fact that these societies were familiar with certain aspects of terrorism, which led to the development of international criminal law.

As a result of the historical developments of international conflicts and international terrorism, the international community emphasized the principle of establishing peace, achieving security and respecting human rights as a basis for friendly relations between countries. Therefore, the relations between the international community in the current era are protected by international conventions and treaties that govern these relations.

Terrorism has also been linked to various political, socio-economic and ideological backgrounds, or in all these respects. Terrorism undermines societies, threatens peace and security among States, undermines their relations and causes them to fail. Terrorism is an ancient crime that is deeply rooted in history. This is reflected in the definition of terrorist crime and its complex aspects. It is not surprising that this would cast a shadow over all attempts in this regard, whether legislative or doctrinal definitions or definitions at the international level.

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## II. CHAPTER

### Confusion Between Arab Revolutions

#### And

### Combat Of Terrorism In Light Of The Libyan Revolution

In the beginning of 2019, the Arab Islamic nation entered the ninth year of the outbreak of successive popular revolutions that, under the weight of the counterrevolutionary forces internally and externally, became civil wars, and foreign interventions under the banner of the war on terrorism. The Arab revolutions opened a new phase in the development of the entire Arab region in a multidimensional development.<sup>311</sup> The revolutionaries declared the goal of overthrowing authoritarian regimes and making radical changes related to underdevelopment, corruption, repression, social inequality and the permanent failure that had dominated the Arab world for decades.<sup>312</sup>

Developments beyond the first days of each revolution and the ways in which the image of the revolutionary landscape in each of the countries of the Arab revolutions were formed. Then the rise of counter-revolutionaries produced other situations and issues that may have become more central on top of which the explosion of violence and counter-violence nationally and regionally renewed forms of interventions.<sup>313</sup> Foreign affairs and the orientation towards a complete restructuring of the region, nationally and regionally, and in terms of links abroad all under the banner of the war on terrorism.<sup>314</sup> It is not only important to see how the region has

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<sup>311</sup> Dr. Nadia Mahmoud Mostafa. The Two Great Powers and the Third World from the Cold War to the New Cold War, Arab Strategic Thought Journal, October 1986, at 71.

<sup>312</sup> Id.

<sup>313</sup> Id., at 72.

<sup>314</sup> Id.

shifted from revolution and political change, especially in the modeling of peace to the state of terrorism and the war on terror, with its implications and possibilities ranging from state to state, but it is more important to understand how it is in its entirety. Accordingly, as it expands and extends in time, the region is going through crises of a different type as a result of the chaos from the change of authoritarian regimes and the exploitation by terrorist groups and others seeking to restore the authoritarian regimes.<sup>315</sup> Therefore, it is important to understand the situation that led the region to move from the aspirations of liberation to the search for security and stability, and the consequences of tyranny and chaos.<sup>316</sup>

At the top of these aforementioned assumptions, are alliances between the counter-revolutionary interior and the patterns of intervention by the major powers in the region's crises, and between resorting to a military solution and attempts to negotiate compromises.<sup>317</sup> In spite of the popular revolutions that erupted against the authoritarian regimes after a long history of opposition, these regimes sought to return the people to the circle of tyranny and suppress the revolutions that have ignited counter-revolutionaries and alternative wars.<sup>318</sup> Accordingly, after the emergence of terrorism in the countries of the Arab revolutions, the counter-revolutions were confused with the war on terror as a pretext to confront the revolutions, as all these matters were managed remotely.<sup>319</sup> It is these backward regimes that have been taken over by the revolutions that are fighting now against counter-revolutions and terrorism. They have created militias against peaceful revolutions and participate in putting down revolutions and punishing the people that revolted against these regimes. Finally, although revolution and counter-revolution have

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<sup>315</sup>

Id..

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Id., at 73.

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Id.

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Dr. Hassanein Tawfiq. *The New World Order*, Cairo, The Egyptian General Book Authority, at 19.

<sup>319</sup>

Id., at 20.

become a definite system that no one can understand, these revolutions have not been defined due to their intertwining since the beginning of these revolutions.<sup>320</sup>

The current map of the battles of this period, 2011, led by counter-revolutions in the region, presents five current cases: the war against ISIS in Iraq and Syria, especially since June 2014; the war between the Baathist Regime and the armed opposition,<sup>321</sup> the war with the Houthis in Yemen since August 2014, the war in Libya between the forces of Hafter, and the forces of the February 17 revolution since 2014, and between each of them and ISIS; and the war in Egypt between the coup regime and the armed groups in the Sinai, and peaceful opposition since June 2013. These issues, despite their differences, are led by counter-revolutions, in common with the outgoing previous regimes and their allies, in exploiting the war on terror as an excuse to suppress revolutions against authoritarian regimes.<sup>322</sup>

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<sup>320</sup> Dr. Nadia Mahmoud Mostafa, *The Arab Region and the New International System*, Section I, *The Nation Report* 1992, Cairo. Center for Cultural Studies, 1993, at 51.

<sup>321</sup> Wahid Abdul Majeed, *The Role of Major International Powers in the Growing Terrorism*, Editorial, *International Politics Magazine*, Issue 203, January 2016, at 43.

<sup>322</sup> Id.

## I. THEORETICAL FRAMEWORK OF THE ARAB REVOLUTIONS

Revolution is the overthrow of a socio-economic political system, replaced by a different regime by a mass popular movement, or by armed violence, and may be against a foreign occupier such as the American and Algerian revolutions. The revolution can be within the borders of a country, directed against a specific political class, or a ruling regime that has dominated the people for a long period of time, and the people will drastically overthrow this ruling regime, and replace it with another in all ideological, economic, social and political aspects to achieve social justice.<sup>323</sup> Jurisprudence distinguishes between revolution on the one hand, and coups, civil wars and rebellion on the other hand. All of these may lead to the fall of the regime and establish a new regime, but it is only the revolution that establishes a radical and comprehensive situation at all political, economic and social levels.<sup>324</sup>

There are three great revolutions in modern history to which this definition applies: the French Revolution of 1789-1799, the Russian Revolution of 1917, and the Iranian Revolution of 1979. It is certain that a revolution may take years to reach a state of stability, depending on the circumstances of the country in which it was launched.<sup>325</sup> The French revolution took ten years to stabilize; the Bolshevik revolution took five years; the Iranian revolution, two years.<sup>326</sup> The Arab region witnessed a dangerous political turn, embodied in large popular movements, which started in Tunisia in late 2010, and then spread throughout the Middle East and North Africa. The change reached Tunisia, Egypt, Libya and Yemen, and civil war in Syria.<sup>327</sup> All the

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<sup>323</sup> Tamara Kazem Al – Asadi. Storm of change: Arab Spring and the political Transitions in the Arab Region, at 5.

<sup>324</sup> Id.

<sup>325</sup> Id., at 6.

<sup>326</sup> Id.

<sup>327</sup> Id.

revolutions that occurred in the Arab countries could not lead to achieving stability, because after their success, there were other counter-revolutions supported by previous regimes that threaten the interests of the revolution to restore authoritarian regimes, as happened in the Arab Spring. These events led to many attempts to study the reasons behind them, their nature and peculiarities, and the reasons for their revolutions.<sup>328</sup>

### **A. The Arab Revolutions**

A revolution is a sudden change in a political regime, which leads to the overthrow of an old political regime and its elite, and replacing it with a new regime followed by a new elite, different from the old in terms of political philosophy and governance.<sup>329</sup> Revolution differs from other disturbances, such as sectarian movements, whose purpose is to achieve special demands, but without leading to the detour of other groups around them. Such moves are often suppressed, or some of their demands are met, without affecting the political system and its ruling elites.<sup>330</sup>

The revolution is also different from the coup that comes from the ruling authority itself when the president, for example, seizes power and excludes other bodies outside the legitimate frameworks and assumes himself a president for life or becomes king.<sup>331</sup> The coup may also lead the army, or some other group, to encroach on the ruling political power and seize power, without overthrowing the previous political regime, as main goal of the coup leaders at the constitutional, social, or economic level is to seize power only.<sup>332</sup> Unlike a revolution, one of its

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<sup>328</sup> Id., at 7.

<sup>329</sup> Abdin, Sherif (2011), "The European Union and the Search for a Role under the Shadow of the Arab Revolutions," Al-Ahram, Egypt, Cairo, May 12, No. 4562, at 15.

<sup>330</sup> Id.

<sup>331</sup> Mustafa, Mohammed and Sabri, Abdul Rahman and Wazni, Khal, and Abu Arja, Tayseer (2012), the economic and social roots of the current transformations in the Arab countries, Abdul Hameed Shoman Foundation, Amman, at 11.

<sup>332</sup> Id.

objectives is to change the structure of the regime in terms of its political philosophy or its approach to the economy and the management of society.<sup>333</sup> In his book *Anatomy of the Revolution*, Crenberton states, "It is a dynamic motor process characterized by a transition from one social structure to another." The most important characteristics of the revolution are the following:

- 1) It is always civil in that its beginning is linked to the movement of the civilian population.<sup>334</sup>
- 2) Its demands, goals, and slogans do not concern a particular group as much as it seeks to overcome an old situation that affects most groups.<sup>335</sup>
- 3) Despite its sudden nature, it is often preceded by organizational attempts (the formation of cells, popular committees) aimed at organizing the revolutionaries and overseeing the revolutionary situation until the revolution reaches its end by overthrowing the existing authority and establishing a new regime that achieves the expectations of the revolutionaries.<sup>336</sup>
- 4) It breaks out of constitutional frameworks because no constitution or law legitimizes revolution. The revolutionary project itself comes to change the constitution that may legitimize tyranny.<sup>337</sup>

The revolution in some Arab countries at the beginning of 2011 was associated with what was termed the "Arab Spring or the Democratic Spring."<sup>338</sup> "Arab Spring," refers to the events that took place in the Arab region and was first used by the *British Independent* newspaper at the beginning of the Tunisian revolution.<sup>339</sup>

The Arab Spring Revolutions, is Western terminology proposed by Western media, perhaps at a moment of recall in 1968, during which time the Soviet Union was dissolved in August of the same year, amid the Western indifference to the current events in the Arab

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<sup>333</sup> Id., at 12.

<sup>334</sup> Musa Rio, (2013), "The Art of the Arab Spring and the Future of Political Change," The Philadelphia Conference Seventeenth Faculty of Arts, University of Philadelphia, Jordan, at 33.

<sup>335</sup> Id., at 34.

<sup>336</sup> Id.

<sup>337</sup> Id.

<sup>338</sup> Id., Abdin, Sherif (2011), "The European Union and the Search for a Role under the Shadow of the Arab Revolutions," Al-Ahram, Egypt, Cairo, May 12, No. 45621, at 15.

<sup>339</sup> Id., Mustafa, Mohammed and Sabri, Abdul Rahman and Wazni, Khal, and Abu Arja, Tayseer (2012), the economic and social roots of the current transformations in the Arab countries, at 15.



world.<sup>340</sup> These revolutions were further defined as, “activities taking place in the wake of the political protests to the original war that occurred in many Arab countries, including Tunisia, Egypt, Libya, and Syria, in 2010.”<sup>341</sup> Even though these revolutions led to protests in other Arab countries, they are considered as partial protest movements, not a comprehensive revolution.<sup>342</sup> As commentators have noted, “The protests led to a radical change in the political regimes within the Arab world, and these protests spread very quickly, which led to the outbreak of fighting between the demonstrators and the regular security forces and reached the death of citizens and security forces that resulted in the fall of the Arab regimes that had ruled for decades.”<sup>343</sup>

The beginnings of the winds of revolutionary change were what Tunisia witnessed in the first half of 2011, against the policy of Tunisian President Zine El Abidine Ben Ali, at the beginning of its launch, it called for reducing poverty, eliminating unemployment and achieving political reform. This uprising then overthrew the Tunisian president and spread the revolution to Egypt and Libya, as Yemen witnessed the same trends and revolutionary movements.<sup>344</sup> Yemeni President Ali Abdallah Saleh faced popular protests, the political opposition party, the opposition party and some southern tribes, all demanding that Saleh step down from power and achieve political reforms, which led the president to resignation from power, as happened in Egypt.<sup>345</sup>

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<sup>340</sup> Id., Musa Rio, (2013), “The Art of the Arab Spring and the Future of Political Change,” The Philadelphia Conference Seventeenth Faculty of Arts, University of Philadelphia, Jordan. at 33.

<sup>341</sup> Id., Abdin, Sherif (2011), “The European Union and the Search for a Role under the Shadow of the Arab Revolutions,” Al-Ahram, Egypt, Cairo, May 12, No. 45621, at 15.

<sup>342</sup> Id., at 16.

<sup>343</sup> Id., Musa Rio, (2013), “The Art of the Arab Spring and the Future of Political Change. at 33.

<sup>344</sup> Id.

<sup>345</sup> Id. Mustafa, Mohammed and Sabri, Abdul Rahman and Wazni, Khal, and Abu Arja, Tayseer (2012), the economic and social roots of the current transformations in the Arab countries, at 16.

## **B. Causes of The Arab Revolutions**

The Arab revolutions are distinguished by their collective and popular character, meaning they were led by collective currents, and this is what distinguishes them from the Arab revolutionary coups in the 1950s and 1960s that were and led by the army. Although the army played a part in the current revolutions, these were civilian revolts initiated by the masses,<sup>346</sup> especially the youth from about 20 to 35 years of age, who had university educations and had mastered the mechanisms of information technologies and social networking through international information networks. In addition to the youth groups, there were other forces participating in these revolutions: political parties and opposition forces, labor and professional forces.<sup>347</sup>

### **1. The Domestic Causes of The Arab Revolutions**

Domestic causes may be divided into political, social, economic, and administrative as follows:

#### ***a. Political Factors***

Political stability in any society is a result of several factors including a balance between the political system and its social environment. The factors that triggered the protests can be summarized in the following points:<sup>348</sup>

- 1) The gap between the political discourse and reality is one of the reasons for the unrest, where there is a crisis of confidence and credibility in the speech of the ruling authority, which made young people to come out and demonstrate against the poor general conditions in the country.
- 2) The collapse of the legitimacy of existing regimes came as a result of their inability to find solutions to social and economic problems and their refusal to allow greater freedoms and political participation.

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<sup>346</sup> Salam Ahmed Al Sawair. Jordanian Foreign Policy Orientation toward the crises Arab Spring (2011-2017). This thesis provided an update to the requirements for obtaining a master's degree in political science, Department of Political Science, Faculty of Arts, Middle East University, January 2017, at 20.

<sup>347</sup> Id.

<sup>348</sup> Id., at 21

- 3) The presence of the governing parties administratively and at various levels nationally, regionally and locally, exercise oversight through the establishment of party coordination committees. In light of the lifelong presidency, authoritarian rule, weak party activity, and lack of expression of concerns about youth issues, political parties in Arab countries became unable to play an effective and influential role in political and social life.<sup>349</sup>
- 4) There was a lack of fairness in the elections, and there were many instances of electoral fraud and lack of transparency.<sup>350</sup>

**b. Social Factors**

The social factor is considered the best explanation of behavior of protest movements:

Unemployment: Labor is a key social actor and the background of the protests in Tunisia and Egypt can be explained by the demands of marginalized groups, especially young people who have university degrees, and the unemployment rate in this category is about 25%. Arab governments have implemented projects to alleviate unemployment.<sup>351</sup>

Social injustice: It is one of the causes of social congestion, the psychological pain that turns into popular anger confines the people when they see a group of powerful families seize the country's economic potential, the state of opulence and luxury is at their expense.<sup>352</sup>

In Tunisia, Egypt, Libya and Yemen, as most of the protest movements in the Arab countries were due to the deterioration of social services and these factors appear in the following elements:<sup>353</sup>

Lack of Social Justice: Unfair development policy in the Arab countries is one of the most important causes of social unrest, because it causes the creation of huge social differences among groups of the same society.<sup>354</sup>

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<sup>349</sup> Al-Anani Khalil, (2012), The Arab Revolution between Success and Failure. Number, at 149.

<sup>350</sup> Id.

<sup>351</sup> Id.

<sup>352</sup> Id. Mustafa, Mohammed and Sabri, Abdul Rahman and Wazni, Khal, and Abu Arja, Tayseer (2012), Economic and Social Roots of Transformation in Arab Countries, at 17.

<sup>353</sup> Id.

<sup>354</sup> Id.

Administrative and Financial Corruption: Corruption in all its forms and types is the basic rule in dealing with the citizen, has turned into a cancer that necrosis in the administration and society as well.<sup>355</sup>

**c. Economic Factors**

We have an example of a general economic environment, the basic environment for growth and turbulence, with the normalization of the policy of economic liberalization, which is based on stabilizing the economy and structural adjustment, that have been adopted by some Arab countries under pressure from the IMF and the World Bank.<sup>356</sup> The subsequent actions associated with these policies, especially with regard to increasing taxation, reducing public spending, and the abandonment of the employment policy by the state, have affected the poor and the marginalized, and have widened the social gap.<sup>357</sup> Contradictions and imbalances within the Arab Spring societies have intensified. In addition to the lack of balance and justice in development, Arab economies face difficulties that have led most citizens to seek employment in the parallel sector (street vendors) or migrate to Europe.<sup>358</sup>

**d. Management Factors**

Failure in the performance of government agencies led to administrative weakness and corruption. In addition to relying on an undemocratic approach to performance and development, reform programs have been transformed into propaganda rituals with sham content without actual censorship and governance administrative.<sup>359</sup>

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<sup>355</sup> Id., at 18.

<sup>356</sup> Salama Ghassan (2011), *The Arab Spring Rebellions* Tunis, Beirut, Lebanon, Darsat Center Arabic Union, at 160.

<sup>357</sup> Id.

<sup>358</sup> Id., at 161.

<sup>359</sup> Abu Sa'ab Fares, (2011), *The Arab Transformation in a Changing World in the Triangle of Power in the Middle East*, Arab Future Magazine, No. 389, at 96.

## **2. The Foreign Causes of The Arab Revolutions**

US Interference in Arab Affairs: After the events of September 11, 2001, the Arab region came under external pressure, after the United States linked terrorism to the lack of freedom in the Arab world.<sup>360</sup> The US has called on Arab countries to carry out political, economic and social reforms, according to their opinion, the school curricula should be reformed, especially religious ones, as these curricula are the foundations of a generation of young people who believe in terrorism. These interventions generated frustration among Arab peoples.<sup>361</sup>

### ***a. Rising Influence of Regional States***

The Arab region witnessed an escalation in the inability of the Arab regime to be unaffected by the influence of emerging regional powers such as Iran and Turkey, and this began to greatly affect Arab affairs. As for Iran, it led the anti-American camp in the region and supported regimes and movements such as the Syrian regime, Hezbollah in Lebanon, and Hamas in Palestine and the Houthi rebellion in Yemen. This led some to believe that a new chapter began to emerge as a hidden conflict between two camps, the first camp led by Iran, Syria and Hezbollah, which is called the resistance countries, and the other camp led by Arab moderates, which is represented by Egypt and Saudi Arabia with the support of the United States.<sup>362</sup>

### ***b. Revolution in The Field of Information and Communication***

The revolution of information, communication and new media from the public is contributing to the displacement of political fear and breaking the silence of the media on Arab public

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<sup>360</sup> Nahar Fard, (2011), America and the Democratization Transition in the Arab Region, Journal of Sharon Middle, Number 139, at 63.

<sup>361</sup> Id.

<sup>362</sup> Mohareb Mahmoud (2012), Israel, and Strategic Changes in the Arab World, Center Arab Institute for Foreign Policy Studies, at 11.

opinion.<sup>363</sup> One positive effect of the media is that it has given the protest movement the means to deliver their voice and image to the world, enabling other actors to keep up with them and respond immediately. The movement was characterized by the blogger support for the protest action, which led to the emergence of the role of "individual media" in confronting the official media of authoritarian regimes.<sup>364</sup>

There was the idea that the Arab revolutions were an internal industry where there was no external role. Supporters of this idea believe that the West, especially the US, does not welcome Arab revolutions, but deal with them as a reality.<sup>365</sup> There is another idea that the foreign factor has an influential power in moving the Arab people to change the ruling regimes. This trend also says, based on confidential documents disclosed by WikiLeaks that the United States was one of the most important foreign powers that supported the democratic movement in Egypt to make the revolution a success.<sup>366</sup> Some believe that these documents, and the site itself had an active role in what happened in the Arab world because these documents revealed many secrets about the rulers and their entourage, and about the extent of corruption in these countries.<sup>367</sup>

### **C. The Secretions of The Arab Revolutions and Its Repercussions**

Despite the high hopes that were built on the Arab movement that began in 2011, the results did not come as requested by the youth who started these uprisings. Rather, it reflected negatively on all Arabs, and the reality of mobility is as follows:

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<sup>363</sup> Id.

<sup>364</sup> Id., at 12.

<sup>365</sup> Id. Nahar Fouad, *America and Democratic Transition in the Arab Region*, Middle East Affairs, at 2011-21.

<sup>366</sup> Id.

<sup>367</sup> Id.

Authoritarian apostasy: the margin of freedoms in the Arab countries that witnessed a movement shrunk and the citizen became less secure. This led to a return to tyranny.<sup>368</sup> The manifestations of this are the reality of the Arab countries, where the divisions in Tunisia and the military coup in Egypt and the killings and destruction in Libya, Yemen and Syria, and media bias, were a reversal.<sup>369</sup> The Arab media witnessed in the period before the movement some kind of openness to the other, but it does not exist under the sharp polarization, and the absence of major Arab issues, such as the Palestinian cause, despite the fact that the Palestinians were in the democratic movement to serve their cause.<sup>370</sup>

Polarization has increased: The repercussions of the Arab movement have increased the polarization in the Arab arena, where religious, sectarian, and ethnic intolerance has increased.<sup>371</sup> Each group called its followers to take up arms and prepare for self-defense. The polarization also affected the view of the other, where calls for exclusion and lack of acceptance of opposing opinion led to bloodshed.<sup>372</sup>

External Intervention: One problem of the Arab movement was to call other countries to intervene.<sup>373</sup> This has caused bloodshed and was because of the reasons that led to the failure of democratic transformation, as it caused the Arab future to depend on foreign power.<sup>374</sup>

In spite of the positive aspects, the Arab movement negatively affected other aspects, and these negatives have emerged even more in countries where the movement is transformed into civil

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<sup>368</sup> Qassem, Abd al-Sattar. Arab movement and the overthrow of democracy. Al Jazeera Net. 5 | 1 \ 2016. On the link: <http://www.aljazeera.net/knowledgegate/opinions/2015/12/26>.

<sup>369</sup> Id,

<sup>370</sup> Id.

<sup>371</sup> Islam Nazih Said Abu Aoun. The repercussions of the Arab movement in light of the concept of revolution and its impact on political development in the Arab world. This thesis provided an update on the requirements for obtaining a master's degree in planning and political development at the Faculty of Graduate Studies at An-Najah National University in Nablus, Palestine. 2017, at 66.

<sup>372</sup> Id.

<sup>373</sup> Id., at 67.

<sup>374</sup> Id.

wars, in addition to the counter-revolution and the coup against the outputs of the movement. The Arab citizen has moved from demanding human rights and demands for freedom, dignity, basic rights and justice, to the mere attempt to obtain the right to life after the transformation of events from an iron fist security carried out by the state, to the era of chaos and non-state and bloodshed.<sup>375</sup>

The administrative structures were significantly affected by the movement in some Arab countries, which led to the dismantling of the State and its service institutions, the army, security and infrastructure due to the deliberate spread of unregulated and legalized weapons and the absence of the rule of law.<sup>376</sup> This led to an increase in the spirit of fragmentation between the forces of the revolution and society to infighting, atonement, the use of religion and ethnic conflict, as happened in Syria, Libya and Yemen. The movement negatively affected the central issues of the Arabs. It has reduced attention to the Palestinian cause because of the concern for the restoration of destruction and devastation inflicted on the state, society and infrastructure.<sup>377</sup>

## **1. Transition to Armed Conflict**

The transition of Syrian and Libyan revolution from the peaceful, civil phase, which lasted a short time, to armed conflict, has deepened and appeared as civil war, sectarianism, and a regional and complex international conflict. Since the beginning of the revolutions, the Syrian and Libyan people have been subjected to a policy of security repression which has manifested by firing on demonstrators, by torture, and bombing cities and displacement.<sup>378</sup> No analysis

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<sup>375</sup> Id.

<sup>376</sup> Talal Azraq. Revolutions of the Arab Spring. Gains and cons. Aden newspaper tomorrow. April 16, 2014 at <http://adenalgd.net/news/101065/#.VttsWH1942w>.

<sup>377</sup> Id.

<sup>378</sup> Id.



dealing with armed conflict should ignore the truth: the regime's violence against society andman, and comprehensive and indefinite violence by laws, values or deterrents.<sup>379</sup>

The conflict in Syria and Libya has become an armed conflict as a result of the regimes' insistence on armed repression throughout that period, and the proliferation of violent phenomena on the margins of armed conflicts is not an anomaly, especially when the people themselves are armed, including marginalized social sectors. This is exactly what happened in Libya and Syria, as threatened by Colonel Muammar Gaddafi, when he said weapon stores will be opened to arm civilians.<sup>380</sup> Therefore, these revolutions are national popular revolutions led by people, and then they spread throughout the country when the revolution turned to bear arms due to the regime's persistence and perseverance on the security solution and the scope of fire on demonstrations.<sup>381</sup>

The greatest danger in resorting to violence in the process of peaceful transformation and the public search for democracy, is the transformation of this research into a conflict, thus transferring peaceful change to violence and weapons, while just demands turn into a struggle for power. The excuses and justifications change, and common sense is absent, paving the way for the emergence of ethnic tendencies and reinforcing the fears of each sect, and pushing them to defend themselves. Furthermore, the idea of dividing the country becomes an issue, as happened in Libya and Syria.<sup>382</sup>

The resort to violence in the Arab case was only a combination of the desire of some participants in the Arab movement to bring rapid change, in addition to the Arab regimes' desire

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Id.

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Id.

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Id. The Arab Center for Research and Policy Studies. 6

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Id.

to defend their outdated legitimacy.<sup>383</sup> One of the most important reasons that led to violence was the despotic Arab regime, because they reacted harshly to the people's demand to step down and turn over power.<sup>384</sup> The Libyan Colonel faced the Arab movement with hostility from its inception. This led to the country turning into a scene of conflict, and the great repression of the Syrian demonstrations took up arms against the regime and Syria continues to suffer the scourge of violence.<sup>385</sup>

It is clear from the foregoing, that Arab movement is not the reason for the spread of violence in Arab societies as the regimes has claimed. Rather, tyranny and dictatorial regimes are the main reason for the spread of violence, which relied on violence for a long period of time to impose their control over the peoples in most Arab countries, and contributed to the consolidation of regimes by threatening the destinies of the peoples who suffered because of these tyrannical regimes.

## **2. Islamic Attempt to Take Power**

Arab autocratic regimes have emptied all Arab societies of politics, with the need to note the unevenness of the situation from one Arab state to another. Consequently, the only mobilizing protective power that had a political role was the energy of the movements of political Islam. In the Middle East and the Arab world there are a large number of extremist and moderate Islamist parties, and many of these movements and parties are associated in one way or another to al-Qaeda.<sup>386</sup>

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<sup>383</sup> Id., at 7.

<sup>384</sup> The tipper, good. Why the Arab Spring turned into an earthquake and tragedy? On the link: <http://aawsat.com/home/article/637896/>

<sup>385</sup> Id.

<sup>386</sup> Ghazi al-Tawba, "The Syrian Revolution", a study presented to the Conference of the Islamic Ummah held in Istanbul, London, The Arab Center for Cultural and Strategic Studies 2012, at 5.

Islamic parties have emerged and have become one of the scenarios for the future of the region, which is the control of Islamic power over influence in the countries of the Arab Spring, which has raised the fear of the international community. The Western countries are concerned about this scenario and it may not satisfy the West, which may find it difficult to obtain new advantages in commercial and economic relations.<sup>387</sup> Given the difficulty of dealing with the democratic transition that gave the Islamic movement an overwhelming majority, the level of change in relations with the West will vary according to the formation of the government and the dominant power of the Islamists.<sup>388</sup>

Political Islam groups were at the forefront of the forces demanding change. These groups were revising the revolution in terms of their desire for change. However, most of them were based on an ideology that did not recognize the others and did not believe in patriotism, national project or democracy.<sup>389</sup> Nevertheless, some Islamic movements have brought about a revolution that is reconciled with the terms of civilization and modernity.<sup>390</sup> As with a revolt against the Shah's power in Iran in return, these movements continue to arouse debate about their usefulness in a crisis, even for the heavenly message that it claims to represent; this is the case with al-Qaeda and Jihadist groups in Afghanistan.<sup>391</sup> This continued until the Tunisian and Egyptian revolutions, although political Islam groups possess media and organizational power and have a huge financial potential, the majority of people are not interested in political Islam.<sup>392</sup>

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<sup>387</sup> Id.

<sup>388</sup> Id., at 6.

<sup>389</sup> Ben Kaddour Iman. The other side of globalization is "Arab Spring as a Model". Ministry of Higher Education and Scientific Research Abu Bakr Belkayed University Tlemcen Faculty of Arts and Foreign Languages Department: Arabic Language and Literature Specialization: Arab-Islamic Civilization. University season: 2013-201, at 103.

<sup>390</sup> Id.

<sup>391</sup> Id., at 104.

<sup>392</sup> Id.

Parties may be the most dominant in some Arab countries, but they do not represent the majority, and the reason for their strength and spread is due to the weakness of national political parties and the loss of legitimacy of the ruling regimes.<sup>393</sup> The Islamists have four aspects, and this is precisely what the former Egyptian President Mohamed Morsi tried to fulfill to achieve the aspirations of Egyptians,<sup>394</sup> which are as follows:

- 1) A new relationship between peoples and their governments based on participation, accountability, transparency and the rule of law.
- 2) a reasonable program for economic development that includes the justice and social agenda.<sup>395</sup>
- 3) A new foundation for international relations based on peer.<sup>396</sup>
- 4) Reviewing the Middle East peace process to achieving just peace.<sup>397</sup>

After the start of the Arab Spring elections from Tunisia and the Islamic Ennahda Party won 90 seats, equivalent to 41% in the Constituent Assembly elections, and after the Islamists also lead the government in Libya after the overthrow of the Gaddafi regime, it becomes clear the extent of the influence of the aforementioned aspects on the peoples.<sup>398</sup> This is what happened in Morocco and Egypt, where the Justice and Development Party won 80 seats in the Moroccan legislative elections, and Islamic parties in the Egyptian People's Assembly elections won the elections by 65%, a percentage indicating the strength of Islamism parties and their growing popularity.<sup>399</sup> Islamic movements remained capable of organizing opposition in Egypt, Syria and Tunisia, as the culmination of the Islamic rise, which was evident in the rise of the

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<sup>393</sup> Id.

<sup>394</sup> Mohamed Morsi Essa El Ayat, known as Mohamed Morsi, born August 08, 1951, the fifth president of the country was declared the winner on 24 June 2012, and a year after his rule mass demonstrations demanded his departure on 03 June 2013.

<sup>395</sup> Id.

<sup>396</sup> Jihad Odeh, "Arab Revolutions and their Impact on the Nature of Arab Media", Cairo, 2013, at 18.

<sup>397</sup> Id., at 19.

<sup>398</sup> Khalid Alawi Al-Ardawi, The Implications of Post-Dictatorship in the Arab Spring Countries, Seminar organized by the Law and International Studies Research Unit Law, University of Karbala Iraq, Adar 2013, at 09.

<sup>399</sup> Id.

Egyptian Muslim Brotherhood to power in democratic elections on June 24, 2012, and Mohamed Morsi assumed the president office.<sup>400</sup>

As for Syria and Libya, the Muslim Brotherhood group had relative control over the state apparatus, and other groups also had a clear presence in other parts of the state, represented by al-Qaeda, Salafism, jihadists, and ISIS as a result of the rise of political Islam. The domination of Islamic groups led to the intervention of countries in the region, such as the Gulf countries and Turkey, to control the Syrian and Libyan affairs. Islamic groups played an important political role in the region's transformation into a regional arena of conflict, which resulted in thousands of deaths, displacement of more than half of the people outside the country, and the destruction of the infrastructure.<sup>401</sup>

The situation is completely different in Tunisia, where the “Tunisian Ennahda Movement” was able to control itself in the democratic game, which led to the country being spared armed conflict. The public interest of the country was separated from the interests of the private political parties, especially the party leader. Rached Ghannouchi made a series of concessions and settlements with various Tunisian political parties, which led to relative stability in the country.<sup>402</sup> As for Egypt, the moment of the military coup, was the same moment of the end of the stage of political Islam and democracy in general, and the beginning of the counter-revolution and the return of the old regime.

### **3. Military Attempt to Control**

Some researchers believe counter-revolution is among the concepts associated with the revolution in general. Counterrevolution is a "movement that reject the revolution, and work to

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<sup>400</sup> Id., at 10.

<sup>401</sup> Id.

<sup>402</sup> Id., at 11.

restore the previous system and principles to what they were before the revolution."<sup>403</sup> The Encyclopedia of Politics also defined it as "the political-military forces that took up arms to confront the revolution with the aim of eliminating its achievements by reviving the political and economic institutions that existed before the revolution and restoring the social privileges that they had by the important classes within the limits permitted by circumstances."<sup>404</sup>

The counter-revolution is similar in some aspects to the popular revolutions; in fact it has two sides: an institutional aspect related to its ownership of ruling institutions influencing society, and another ethical aspect that is similar to popular revolutions related to the struggle over the concepts, values and aspirations of a post-revolution society.<sup>405</sup> Accordingly, the supremacy was in the first aspect, as we said to the counter-revolution, which facilitates control over the ruling institutions before the revolution, but this is not sufficient for those institutions to prevent the people's revolution. Therefore, the counter-revolutions need hard work on the ethical aspect, such as using several concepts that help them consolidate the foundations of their rule and their success against popular revolutions, as example, they used the accusation of terrorism against all their opponents and trying to convince people that they were terrorists.<sup>406</sup>

Leadership is one of the most important concepts used by the counter-revolution to eliminate a revolution. People need an inspiring leader who will solve all their problems, especially in a post-revolution society where insecurity, political instability and fear of the future. This indicates the necessity of a savior who has the keys to solving all problems, especially those related to security and stability. This concept is contrary to the revolution's

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<sup>403</sup> Id. Islam Nazih Said Abu Aoun. The repercussions of the Arab movement in light of the concept of revolution and its impact on political development in the Arab world. at 23.

<sup>404</sup> Abdul Wahab Kayyali et al. Encyclopedia of Politics. C 1, Beirut: Arab Publishing Foundation. Dat, at 527.

<sup>405</sup> Id.

<sup>406</sup> Id., at 528.

values based on equality, pluralism, participation and construction of state.<sup>407</sup> This concept also helps counter-revolution when the revolution loses its ethical value, which results in highlighting just the leader's accomplishments, thus the people's role ends in favor of one individual, the leader.<sup>408</sup>

One of the concepts used is that of ignorance. The counter-revolution considers people ignorant of their rights and not ready to lead themselves. This is the same argument that authoritarian regimes used before their fall in response to the issue of democracy.<sup>409</sup> The problem with this concept is a revolutionary is seen as an intellectual, while describing society as ignorant, which is contrary to the principle of the revolution based on the awareness of peoples. In the same context, the realistic conception of the revolution is the need to use the reformist approach instead of the revolutionary in dealing with state institutions and gradual change instead of radical change.<sup>410</sup> Through the above the differences between revolution and counter-revolution, we can summarize the following points:

- 1) The counter-revolution uses the concept of popular revolution to gain legitimacy to return things to what they were before the revolution.
- 2) The popular revolution aims to create a radical change in society while the counter-revolution aims to return things to normal.
- 3) The popular revolution depends on the people for the success of the revolution against the regimes, while the counter-revolution depends on the state's institutions and creates discord among the revolutionaries.
- 4) The popular revolution uses positive values such as belonging, responsibility, freedom, participation and equality before the law, while the counter-revolution relies on concepts of ignorance, people, chaos in society, and the one leader.
- 5) Foreign interference is not excluded from the counter-revolution, as the countries affected by the revolution seek to defeat the popular revolution by encouraging the counter-revolution to restore things to what they were.

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<sup>407</sup> Mohamed Bamieh. What is the counter-revolution?

<http://www.jadaliyya.com>

<sup>408</sup> Id.

<sup>409</sup> Id.

<sup>410</sup> Id. Abdul Wahab Kayyali et al. Encyclopedia of Politics. C 1, Beirut: Arab Publishing Foundation, at 528.

#### 4. Terrorists Exploit Opportunities

Since mid-2014, some countries have witnessed an escalation and spread of terrorism, taking advantage of instability, such as Iraq and Libya, where ISIS appeared in a frightening way, which resulted in the unification of people using armed force to confront terrorism to maintain the will of the peoples. On the other hand, the counter-revolutions and their allies took advantage of the situation these countries reached and described all the users of military force as (terrorism and extremism) without distinguishing between different positions in terms of context, ideology, goals and means.<sup>411</sup> Thus, everyone described as terrorist without any discrimination, as the revolutionaries and armed reactions against injustice have been called “terrorist” while forgetting the real terrorists such as ISIS, Al Qaeda and authoritarian regimes.<sup>412</sup>

The emergence of terrorism effected the return of the deep state and the counter-revolution to the arena, motivated by the fight against terrorism and the resistance of extremist groups.<sup>413</sup> In other words, the pretext of fighting terrorism was what enabled the military coup in Egypt and Haftar to turn Libya into an international conflict, and gave the green light to Bashar al-Assad's regime to kill more than a million civilians in Syria and destroy entire cities.<sup>414</sup>

Despite the lack of clarity of the image in some Arab Spring countries, recent geopolitical changes in the Arab countries indicate that Arab political geography is in the process of formation after a long period of autocracy. Whereas the most prominent features that confirm the aforementioned are the emergence of non-governmental actors, national organizations and

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<sup>411</sup> Series: Doha Report. Event: Conference “From the revolutions of peoples to the arena of regional and international competition: the Arab region between the rise of ISIS and renewed American engagement.” Place and date: Doha - 81 and 81 October 4182 Copyright © 2014 Arab Center for Research and Policy Studies. All rights reserved, at 13.

<sup>412</sup> Id., at 14.

<sup>413</sup> Dr. Nadia Mahmoud Mostafa. The Arab-Islamic Nation: Between Popular Revolutions, Civil Wars and the War on Terror, at 4.

<sup>414</sup> Id.



regional organizations instead of the nation-state.<sup>415</sup> For example, the rise of ISIS and its control over some regions, such as Sirte in Libya, led to the formation of a state unprecedented in Arab political geography.<sup>416</sup> Despite the tyranny of security and defense systems in authoritarian regimes, which have always spent huge sums of money in them instead of spending on development, it has not been able to confront popular revolutions, and then the inability to confront the dangers of division, violence, chaos and terrorism, which exploit this chaos.<sup>417</sup>

In fact, after the purification of terrorist groups in these countries, such as the situation in Libya, where the revolutionaries succeeded in eliminating ISIS in cooperation with the American forces, politicians in the Arab world awarded this success to the counter-revolutions and put all their opponents in the terrorist basket.<sup>418</sup> Egypt, the largest Arab country that joined the Arab Spring revolution, after the success of the military coup, which practiced serious repressive behavior, banned Islamist parties, and declared war on everyone.<sup>419</sup> Abdel Fattah al-Sisi as a leader of the coup, and the current president of Egypt in an interview with a French newspaper has equated political Islam with terrorism, placing everyone in the category of “terrorist.”<sup>420</sup>

Accordingly, President Sisi’s response was clear with regard to political Islam, as he considered all of its names and forms the same, with no difference between them.<sup>421</sup> Currently, Saudi Arabia and the UAE have supported the counterrevolutions in Egypt, Yemen and Libya. In these countries, reactionary alliances were formed to restore the old and corrupt regimes, under

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<sup>415</sup> Id. Series: Doha Report. Event: Conference “From the revolutions of peoples to the arena of regional and international competition:”, at 15.

<sup>416</sup> Id.

<sup>417</sup> Id.

<sup>418</sup> Thaer absolute Ayasar. The main factors and views of the outbreak of protests and revolutions in the Arab Spring countries in 2009-2011. *Studies, Humanities and Social Sciences*, Vol. 43, Supplement 4, 2016, at 123.

<sup>419</sup> Id., at 124.

<sup>420</sup> Id.

<sup>421</sup> Id., at 125.

the pretext of the war on terrorism that they carried out to suppress the Arab Spring revolutions. Terrorism has led to the deterioration of the situation in the Arab Spring countries, but the Gulf states also have had a share in supporting all orientations, whether extremist groups or military leaders, in spreading terrorism to respond and confront in the name of the war on terrorism in order to control these countries again.<sup>422</sup>

Therefore, instead of heading towards freedom, and democracy, the focus is now on combating terrorism and maintaining stability and security, which is the pretext used by the aforementioned countries as a way to restore the autocracy that is no one has the right to dream of self-determination and self-rule.<sup>423</sup> This intimidation from the freedom that these regimes have created will not create civilized States.<sup>424</sup> Finally, the most important question remains, what is the Islamic politician that parallels the terrorism that was introduced to the Arab Spring countries to suppress and return them to authoritarian regimes?<sup>425</sup>

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<sup>422</sup> Arab revolutions and the international system: (map features, problems, and fate). Prof. Nadia Mahmoud Mostafa Professor of International Relations and Head of the Department of Political Science Faculty of Economics and Political Science Cairo University 20 June 2011, at 12.

<sup>423</sup> Id., at 13.

<sup>424</sup> Id.

<sup>425</sup> Khaled Abu Fadl. The end of the Arab Spring and the rise of ISIS and the future of political Islam. Opinions published on 25/04/2015.

## II. THE RIGHT OF NATIONS TO DETERMINE THE RESISTANCE

Despite the fundamental difference between terrorism and armed resistance, in an attempt to eliminate armed resistance movements, distort their image and restrict their support at the level of global and local public opinions, several trends have emerged to describe and classify some resistance movements as terrorism movements.<sup>426</sup> This intentional political mixing between international terrorism and armed resistance has led to confusion in world public opinion which affected the march of peoples' struggle for freedom.<sup>427</sup> However, this disagreement will disappear when referring to the rules of international law, as we find that the rules of international law did not prohibit all types of armed resistance, but distinguished between legitimate violence and unlawful violence.<sup>428</sup> Armed resistance is one of the means of self-determination, whereby the liberation forces fight with the available military means against the tyrannical rule that deprives peoples of independence and freedom from totalitarian domination.<sup>429</sup> Hence armed resistance was established as a legitimate method in international law. Therefore, we will discuss the definition of armed resistance, and then stand on the legal foundations that support the legitimacy of armed resistance and the right to self-defense.<sup>430</sup>

### A. Definition and Identification of Resistance

Armed resistance is, "combat operations carried out by national elements other than members of the regular armed forces in defense of national or national interests against foreign

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<sup>426</sup> Legitimate armed resistance in Islamic law and public international law comparative study of Iraq as a model. Mohammed Ahmad Qasim Shaddad (university ID 3080053). Research submitted to obtain a master's degree in international law under the supervision of Dr. Sadiq Daw Alnour Abdulkader Faculty of Sharia and Law. Malaysian Islamic Science University. Nilay. March 2011, at 68.

<sup>427</sup> Adam Curl, "The Use of Nonviolence Against Injustice and Aggression", cited in *Civil Resistance in Political Struggle*, Tahrir Saad Eddin Ibrahim, Arab Thought Forum, International Dialogues Series, Amman, 1988, at 12.

<sup>428</sup> Id.

<sup>429</sup> Id., at 13.

<sup>430</sup> Id.

forces, whether acting within an organization under the supervision and direction of a legal or factual authority or on its own initiative, activity above the national territory or from bases outside that territory.”<sup>431</sup> Some scholars also define armed resistance as, “operations of a military nature, in which armed force is used by regular armed forces or by national elements other than members of the regular forces, and carried out against the occupying authorities or their forces and their position above ground, the national motive to defend the country and resist the occupation in order to liberate the usurped land and expel the occupier, whether these elements operate within the framework of an organization subject to supervision and guidance.”<sup>432</sup>

The document on the concept of terrorism and resistance issued by the Middle East Studies Center in Jordan also defines armed resistance as "the legitimate use of all means, including armed force, to prevent aggression, expel occupation and colonialism, and achieve independence that eliminates injustice as legitimate political objectives, which is in accordance with international law and supported by Islamic law."<sup>433</sup> Thus, the definition of armed resistance refers to military operations, in which armed force is used, and is carried out against the occupying authorities or their forces over the occupied territory or against military and similar objectives above or outside the territory of the occupied State.<sup>434</sup>

## **B. The Legitimacy of Resistance in International Law**

International law took a tough stance towards national liberation, the right of resistance, where the colony was part of the territory of the colonial state. Consequently, what is going on

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<sup>431</sup> Journal of Isra University for Humanities. Isra University for Humanity 2016. First year. The first issue. July 2016, at 22.

<sup>432</sup> Haytham Mousa Hassan, Distinction between International Terrorism and Resistance to Occupation in International Relations, Ph.D. Thesis in Public Law, Ain Shams University, Egypt, 1999, at 214.

<sup>433</sup> Concepts of Terrorism & Resistance an Arabic-Islamic Understanding Amman–Jordan, May, at 7, 2003.

<sup>434</sup> Journal of Isra University for Humanities. Isra University for Humanity 2016. First year. The first issue. July 2016, at 23.

above the colony is beyond the scope of international law beyond the domestic jurisdiction of the State of origin and subject to its domestic law.<sup>435</sup> Noting that much of the armed conflict known to the world in the aftermath of the Second World War was one of those often described as internal conflicts, which led the international community to pay attention to those conflicts and make way for the application of certain rules of international law relating to war, in particular, those rules of a humanitarian nature related to the protection of war victims.<sup>436</sup> During the diplomatic conference held in the summer of 1949 on the protection of victims of armed conflicts, protection was extended to non-international armed obligations, in which the wars of national liberation were included.<sup>437</sup> The era of the League of Nations did not mention the right of peoples to self-determination, as well as the right of resistance, although in the first and second projects, it mentioned the right to self-determination.

With the establishment of the UN in 1945, the principle of the right to self-determination was enshrined in its Charter.<sup>438</sup> The resolutions of the General Assembly of the UN and various international charters continued, affirming the principle of the right of self-determination and the right of people to be free from all forms of colonialism and to be permanently liquidated.<sup>439</sup> Therefore, the majority of international jurisprudence went on to say that the General Assembly in this legal and legislative work had established a new customary rule, which is to recognize people who are oppressed by the methods of assistance represented in the armed struggle for the right to self-determination.<sup>440</sup> Although jurists of international law agreed on the legality of

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<sup>435</sup> Mohamed Talaat El-Ghoneimy, *Mediator in Peace Law, UN Law in Time of Peace*, Al-Ma'arif Establishment in Alexandria, 1982, at 34.

<sup>436</sup> *Id.*

<sup>437</sup> Ahmad Omar Hashim, *The Duty of Peace in the Face of Challenges*. Year 55, 11/8/2006, at 14.

<sup>438</sup> Dr. Wallison: an international law appraisal of the juridical characteristic of the resistance of the people of Palestine: the struggle for human rights, R.E.D.R, 1972, at 4.

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*, at 5.

armed resistance, they differed on the basis on which it was adopted. This legitimacy went on to say that the right of legitimate self-defense and resistance to aggression is the legal basis for the legitimacy of armed resistance.<sup>441</sup>

### **C. The Right of Legitimate Self-defense**

Part of the international jurisprudence in support of the legitimacy of the armed popular resistance and its right to use armed force against colonialism, or the occupation authorities, established the right to legitimate self-defense, according to the text of Article 51 of the Charter of the UN, based on the fact that colonialism and military occupation constitute an international crime,<sup>442</sup> or at least an illegal international act that allows their victims to resist on the basis of legitimate self-defense.

This trend has been confirmed by the conclusion of some international judicial rulings of international tribunals established in the aftermath of the Second World War.<sup>443</sup> These include the ruling in the case of German General, Rauter, commander of the German police force in the Netherlands. During the occupation by Nazi forces in World War II, the Dutch court set up for trial in its ruling of 5 May 1948 (that the people in the occupied territory was not legally, or morally, a duty to obey the occupation authorities). The resistance of the people of the occupied territory could therefore be considered a legitimate means of exercising the right of self-defense.<sup>444</sup>

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<sup>441</sup> Essam al-Din Hawas, *The Autonomy of the People of Palestine*, National Studies, No. 13, at 200.

<sup>442</sup> *Id.*

<sup>443</sup> Musa al-Qudsi al-Dweik, *Geneva Conventions of 1949, and its annexes and the Al-Aqsa Intifada*, The Egyptian Volume of International Law, Volume 59, 2003, at 385.

<sup>444</sup> Ahmad Abu Al-Rous, *phobia, extremism and international violence*, modern university office in Alexandria, year 2001, at 67.

Brownlie defines the right of self-determination as the right of every national group to choose for itself the form of its political system and its relationship to other groups.<sup>445</sup> The right to self-determination is one of the fundamental objectives of the UN, and this principle is explicitly stated in two areas:<sup>446</sup> Article 1, paragraph 2, sets out the objectives and purposes of the UN (to develop friendly relations among nations on the basis of respect for the principle of equal rights and self-determination of peoples, as well as other appropriate measures to promote public peace).<sup>447</sup>

The second place in the Charter, in which reference is made to self-determination, is Article 55, which states that “there is a desire for stability and prosperity necessary for peaceful and friendly relations among nations based on respect for the principle of the equal rights of peoples. Each has its own self-determination.”<sup>448</sup> The UN has recognized this right in many of its resolutions, and the use of armed force by colonial peoples, whose territories have been occupied, or against which racial discrimination is so blatant with a view to exercising their right to self-determination. Therefore, this is not a violation of the general principle that prohibits the use of force in international relations.

#### **D. Corroboration of The International Community of Resistance**

The UN General Assembly has affirmed the legitimacy of the maturity of the people under the occupation for self-determination, as well as condemnation by those governments that do not consider self-determination as a requirement for the implementation of international

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<sup>445</sup> Hassan Kamel, *The Right to National Self-Determination*, Egyptian Journal of International Law, Vol. 12, 1956, at 35.

<sup>446</sup> Id.

<sup>447</sup> General Assembly Resolutions in this regard, and the Decision of 14 December 1960 on the Declaration on the Granting of Independence to Peoples and Colonial Countries.

<sup>448</sup> Id.

agreements, in particular the four Geneva Conventions.<sup>449</sup> The most prominent decisions of this Decision No. 2852, issued by the General Assembly on December 20, 1971, called for,

The need to develop principles to strengthen the protection of individuals who are opposed to control colonialism, foreign, anti-foreign and racist regimes, as well as the need to develop rules regarding the status, protection and humane treatment of militants and guerrillas in international and non-international armed conflicts.<sup>450</sup> The UN and many international organizations affirmed the legitimacy of the struggle of the peoples for their independence and the elimination of foreign colonial domination by all possible means, including armed struggle.

At the International Conference on the Development of the Rules of Humanitarian Law held in Geneva in 1976, which resulted in the two “Additional Protocols of 1977” to the four Geneva Conventions, wars of liberation were considered international wars.<sup>451</sup> Article 1 of Protocol I states that wars of national liberation are legitimate and just wars. These are international wars in which all rules established by international law on the laws of war apply as national liberation movements are fighting entities of an international character and act as countries in the making.<sup>452</sup> The GA in many of its resolutions on the legitimacy of the struggle of peoples under occupation for self-determination and condemned governments that do not recognize the right of self-determination and the application of international conventions, especially the four Geneva Conventions.<sup>453</sup>

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<sup>449</sup> Abu Issa Shadi Hossam, resistance in the concept of international law, Forum Faculty of Law Mansoura University, Mansoura, 2009, viewed 5-4-2015.

<sup>450</sup> Id.

<sup>451</sup> Ahmed Abou El Wafa, the mediator in public international law, Dar Arab Renaissance Cairo 1996. at 637.

<sup>452</sup> Saif al-Din Iraqi, Ahmed, armed Alquaomh in international law, a network of Dhi Qar, Baghdad 2011, at 4.

<sup>453</sup> Id., at 5.



### III. EFFORTS TO COMBAT TERRORISM

International terrorism has been a global event that does not recognize geographical boundaries, political divisions, the nature of the victims, nor the magnitude of the material, human or moral damages it causes.<sup>454</sup> The most serious characteristic of this crime is its world-wide affect.<sup>455</sup>

The concern is that international terrorism has led to international agreements to limit and criminalize this phenomenon.<sup>456</sup> Many States have concluded agreements, whether in the context of bilateral, or collective agreements or at the level of resolutions of the UN organs.<sup>457</sup> Given the development in the means used by terrorist organizations to move from one country to another, and to possess sophisticated weapons, the international community realizes it is impossible for one State to eliminate terrorism, which calls for enhanced international cooperation,<sup>458</sup> as well as seeking an international judicial organ to prosecute these criminals.<sup>459</sup> This calls for concerted and intensified international efforts to combat terrorism.<sup>460</sup> We will address them first at the regional level and then at the international level.

#### A. National Efforts in The Combating Against Terrorism

Terrorism has not only been combated at the international level, through international organizations, conventions and treaties, but has also imposed itself at the regional level, in

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<sup>454</sup> Daniel O'Donnell, *International Treaties Against Terrorism and the Use of Terrorism during Armed Conflict, and by the Armed Forces*, *International Journal of the Red Cross*, Vol. 88, No. 864, 2006, at 203.

<sup>455</sup> Allal Vali, *The Limits of Combating International Terrorism, A Study Day on the Problematic Legal Framework for Combating International Terrorism* Faculty of Law and Political Science, University of Abdelmira, Bejaia, 2014, at 8.

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*, at 9.

<sup>458</sup> Mashhour Bakhit Al-Araimi, *International Legitimacy against Terrorism*, Culture House for Publishing and Distribution, 2009, at 31.

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*, at 32.

addition to intensifying the efforts of African and Arab countries, which have also to take all necessary measures to curb and combat terrorist crime.<sup>461</sup> Many countries have enacted laws to combat international terrorism to meet domestic needs and reduce international terrorism, and fulfill their obligations under international conventions.<sup>462</sup> As the international conventions on combating terrorism have been developed, States have fought terrorism through national legislation. Some countries have enacted special international legislation to combat terrorism or include the penal laws of some texts on combating terrorist acts and increasing the punishment for such acts.<sup>463</sup>

### *Libya*

In a reflection of the security situation in Libya and the spread of terrorism and the spread of terrorist groups in some cities, an accredited research institute conducted a comprehensive survey of values in which a random sample of Libyans answered revealing questions about the Libyan value system. Expressing their aspirations and highlighting the most important concerns, one of those concerns was the security concern; an overwhelming majority (81.1%) expressed concern about a terrorist attack.<sup>464</sup>

This result coincided with the orientation of the Ministry of Justice during the reign of Minister “Salah Merghani,” who was aware of the importance of issuing an anti-terrorism law that could aid its elimination.<sup>465</sup> However, the National Congress felt that it had not been put to

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<sup>461</sup> Shukri, Muhammad Aziz (1983). *Introduction to Public International Law in Peace*, Damascus: Dar Al-Fikr, at 51.

<sup>462</sup> *Id.*

<sup>463</sup> *Id.*, at 52.

<sup>464</sup> The project is a global explorer of people's values and beliefs in the sixth wave of it (2010/2014), which surveyed the views of 52 countries, and they participated in the first time Libya, through the Center for Research and Consulting University of Benghazi, at 2.

<sup>465</sup> Dr. Ahmed Al-Jehani, Participant in a panel discussion on Anti-Terrorism Law No. 3 of 2014, held at the Faculty of Law, University of Benghazi on 6/10/2015.

deliberation and voting, in the context of a public policy. In doing so, they ignored the concerns of the Libyan people.<sup>466</sup> When the legislative power was transferred through elections to the House of Representatives and despite poor performance, they passed the Anti-Terrorism Law No. 3 of 2014.

This was the first terrorism-related law to be promulgated in Libya; in fact, this was a positive point for the Libyan parliament.<sup>467</sup> In article 3, the law stated, "Any crime stipulated in this law as well as any crime committed with the intent to achieve one of the objectives of the terrorist act or the financing of terrorist acts set forth in this law," and the "terrorist organization" in article 1 Paragraph b that "any group with an organizational structure of three or more persons formed for any period and working concertedly to commit a terrorist crime inside or outside Libyan territory, are considered as crime."<sup>468</sup>

The Anti-Terrorism law, published by the House of Representatives, stated in article 2, "any use of force, violence or intimidation with the aim of seriously disrupting public order or endangering the safety, interests or security of society is a terrorist act."<sup>469</sup> Added in article 2, "Where such use harms or frightens persons, endangers their life, liberties, public rights or security, or harms the environment, natural materials, monuments, property, buildings or public or private property, or exploits or seizes them" this is under terrorist acts.<sup>470</sup> Similar to international laws, the law considers in article 1 paragraph A, that "a terrorist is a natural person

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<sup>466</sup> Id.

<sup>467</sup> Id.

<sup>468</sup> Legal Texts Relating to the Security Sector in Libya, Introduction to the Latest Laws and Legislation Enforced by the Council of Representatives, Law No. (3) of 2014 on Combating Terrorism, Issued in Tobruk, Corresponding to 19/09/2014.

<sup>469</sup> Id.

<sup>470</sup> Id.

who commits or attempts to commit a terrorist crime by any direct or indirect acts, participates in this crime or engages to the activity of a terrorist organization."<sup>471</sup>

The law passed by the Council is laid out in four sections, and thirty articles, with sentences up to life imprisonment, while noting that there is no breach of the laws in force and any harsher penalty for the offenses committed in those laws and provided for in the provisions of this law.<sup>472</sup> The law punishes acts deemed "terrorist" by the Council without allocating them to religious extremism. It also punishes the attempt to commit any of the felonies and misdemeanors in terrorist crimes, provided that the attempted penalty is the penalty prescribed for the whole crime. The law also punishes the participation in the commission of one of the crimes stipulated in it with the same penalty prescribed for the whole crime, even if it has no effect.

## **B. International Efforts in Combating Terrorism**

World and international organizations have developed solutions to organize the international community and regulate its combating of terrorism. International organizations have developed solutions to disputes that may arise among nations.<sup>473</sup> Due to the rise of terrorism, it has in one way or another influenced international relations in the international community. International relations have intertwined; their interests have intertwined, conflicts have proliferated, and the dominance of States over others has expanded.<sup>474</sup> This was accompanied by acts of terrorism that went beyond the borders of States and became

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<sup>471</sup> Id.

<sup>472</sup> Id.

<sup>473</sup> Sultan Enad Ibraheem Al-Adainat International Mechanism to Encounter. This thesis submitted an update of the requirements for obtaining a master's degree in Public Law Department of Public Law Faculty of Law Middle East University January 2018, at 106.

<sup>474</sup> Obeidat, Khaled (2003). Terrorism dominates the world. An objective, critical and unbiased scientific political study, Amman: Amman Center for Human Rights Studies, at 156.

transnational. Terrorism has many forms, including wars and terrorist acts.<sup>475</sup> In the late nineteenth and early twentieth century international organizations began to move to control and reduce terrorism, which was practiced by the colonial powers.<sup>476</sup> We will address the emergence of international organizations that have enhanced cooperation between States and the international community to combat international terrorism as follows:<sup>477</sup>

## **1. The UN in The Combating Against Terrorism**

The GA has discussed terrorism and methods of combating it since the UN was established.<sup>478</sup> The GA has sought to curb international terrorism, especially in the late 1960s and early 1970s, following the increase in terrorism during that period. The GA adopted several resolutions concerning eliminating international terrorism:<sup>479</sup>

### ***a. Resolution of Principles of International Rights 1946***

The first resolutions adopted by the GA in November 1946 were under the name of the principles of international rights to combat the international terrorism. The resolution provided for holding officials in States and officials, who turn the state into a tool to carry out violence, responsible for their actions.<sup>480</sup>

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<sup>475</sup> Id.

<sup>476</sup> Id., at 157.

<sup>477</sup> Id.

<sup>478</sup> Arshad, Alauddin (1999). UN and Terrorism before and after 9/11 with the analysis of the texts of the international anti-terrorism instruments, Cairo: Arab Renaissance House, at 66.

<sup>479</sup> Abu Ghazaleh, Hussein Akil (2002). Fundamentalist Movements and Terrorism in the Middle East, Amman: Dar Al-Fikr for Printing, Publishing and Distribution, at 48.

<sup>480</sup> Id.

**b. Decision to Define the Concept of Terrorism Phenomenon 1956**

This resolution included defining international terrorism and preventing colonial countries from achieving their goals of labeling terrorism on national liberation movements.<sup>481</sup> The resolution contained principles for combating international terrorism, that principle is (no State has the right to intervene directly or indirectly in the internal or external affairs of another State, no State has the right to regulate, incite or encourage the practice of sabotage or terrorist activity).<sup>482</sup>

**c. Resolution Condemning the Hijacking of Civil Aircraft in 1969**

As a result of the increase in terrorism against civil air transport, the GA adopted a resolution condemning the hijacking and control of civil aircraft by force while in flight. The GA has called on the world to enact national legislation and ratify the conventions on combating terrorism against civil aviation.<sup>483</sup>

**d. General Assembly Resolution 2625 on 24/10/1970**

The GA has adopted a resolution to ensure that each state refrains from, encouraging terrorist acts in another country, aiding terrorists, allowing them to operate on its territory, or carrying out terrorist acts within its territory.<sup>484</sup>

**e. General Assembly and Its Twenty-Seventh Session in 1972**

The GA discussed terrorism under the item, “Measures to Prevent International Terrorism,” which endangers or harms innocent human lives or threatens fundamental freedoms. The causes

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<sup>481</sup> Karahali, Salim (1989). *The Concept of Terrorism in International Law*, Master Thesis, University of Algiers, at 231.

<sup>482</sup> Id.

<sup>483</sup> Ayad, Sami Ali (2007). *Financing of Terrorism*, Alexandria: University Thought House, at 357.

<sup>484</sup> Abdul-Hadi, Abdul Aziz Mukhaimir (1986). *International Terrorism with the Study of International Conventions and Decisions of International Organizations*, Cairo: Dar Al-Nahda Al-Arabi, at 82.

and forms of terrorism and violence resulting from misery, and the despair that results in the violence to satisfy this feeling of frustration, may lead some people to sacrifice their lives to bring change, such as suicide operations.<sup>485</sup>

#### GA Resolution 3034 of 18.12.1972

- 1) The GA moved from condemnation to the operations and boldness of the terrorist, to the study of international terrorism to the causes and the circumstances, to its prevalence, and to find measures for its prevention.<sup>486</sup> The GA issued a resolution (3034), the text of which establishes a special committee to study the observations submitted by the States. The committee consisted of The Subcommittee on the Definition of International Terrorism.
- 2) The Sub-Committee to discuss the underlying causes and the views of terrorthirty-five members appointed by the President of the GA, and divided its work into three sub-committees, namely the following:<sup>487</sup>
- 3) The Sub-Committee to discuss measures to suppress terrorism.<sup>488</sup>

Unfortunately, the subcommittees of the Special Committee were unable to agree on the most important issues entrusted to its study, such as the definition of terrorism.<sup>489</sup> Further, there was no agreement on the underlying causes and motives for international terrorist acts,<sup>490</sup> nor precautionary and remedial measures.<sup>491</sup>

#### ***f. General Assembly Resolution 130 on 19/12/1983***

At its thirty-eighth session, the GA addressed international terrorism and asked States to "comply with their obligations, and in accordance with international law to refrain from encouraging,

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<sup>485</sup> Hamdi, Tariq Abdul Aziz (2008). Crimes of International Terrorism, Cairo: Legal Books House, at 339.

<sup>486</sup> Helmi, Nabeel Ahmed (1988). Terrorism in accordance with the rules of public international law, Cairo: Arab Renaissance House, at 104.

<sup>487</sup> Shalala, Nazih Naim (2003). International Terrorism and Criminal Justice, Beirut: Halabi Human Rights Publications, at 86.

<sup>488</sup> Id., at 87.

<sup>489</sup> Id.

<sup>490</sup> Id.

<sup>491</sup> Id., at 88.

inciting, assisting or participating in terrorism in other States, or condoning such acts of organized intra-State activities in other countries."<sup>492</sup>

***g. General Assembly Resolution 39/159 on 27/12/1984***

At its 39th Session (1984), the GA included a supplementary item on its agenda under the heading, "The inadmissibility of the terrorism policy of States with a view to undermining the social and political systems of other sovereign States."<sup>493</sup> It has addressed State terrorism and the GA has expressed concern over the increasing practices of State terrorism, including military interventions and other acts against its sovereignty and the right of self-determination of peoples.<sup>494</sup>

***h. General Assembly Resolution 61/40 on 9/12/1985***

During the fortieth session of the GA, they issued a resolution and condemned terrorist acts in all forms, types, methods and practices, regardless of the perpetrator, whether States, groups, or individuals.<sup>495</sup>

***i. General Assembly Resolution 42/159 on 7/12/1987***

During the forty-second session of the GA, at the request of Syria and the support of the Arab Group represented by Kuwait and Algeria, the initiative convened an international conference to define terrorism and discrimination.<sup>496</sup>

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<sup>492</sup> Id. Arshad, Alauddin (1999). UN and Terrorism before and after 9/11 with the analysis of the texts of the international anti-terrorism instruments, at 75.

<sup>493</sup> Id. Obeidat, Khaled (2003). Terrorism dominates the world. An objective, non-partisan and critical political and scientific study, at 179.

<sup>494</sup> Id.

<sup>495</sup> Id. Arshad, Alauddin (1999). UN and Terrorism before and after 9/11 with the analysis of the texts of the international anti-terrorism instruments, at 75.

<sup>496</sup> Hamouda, Montasser Said (2006). International Terrorism: Its Legal Aspects - Means of Combating it in Public International Law and Islamic Jurisprudence, Alexandria: New University House, at 76.



Declaration on Measures to Eliminate Terrorism adopted by The General Assembly in Its resolution No. 60/49 of 9 December 1994. At its forty-ninth session, the GA adopted the “Declaration on Measures to Eliminate International Terrorism,” which will contribute to strengthening efforts to combat international terrorism.<sup>497</sup>

***j. General Assembly Resolution 51/210 of 17 December 1996***

This decision came in its fifty-first session, in which the GA adopted a complementary resolution, as this “The declaration of the elimination of international terrorism and the inclusion of executive procedures, the most important of which is the regulation of political asylum to prevent perpetrators of terrorist crimes from taking advantage of political asylum to allow them impunity.”<sup>498</sup>

***k. General Assembly Resolution 53/108 on 8/12/1998***

In view of the increase in terrorism, the dependence of international terrorism on money to carry out terrorism, the GA entrusted the Special Committee to draft an international convention to suppress the financing of terrorism.<sup>499</sup>

***l. General Assembly Resolution 54/109 on 9/12/1999***

During the fifty-fourth session of the GA, it adopted the “Convention for the Suppression of the Financing of Terrorism,” which criminalized financing terrorism by any means, directly or indirectly, or funding with the intent to carry out terrorist acts.<sup>500</sup>

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<sup>497</sup> Id. Shalala, *International Terrorism and Criminal Justice*, at 88.

<sup>498</sup> Id. Obaidat, Khaled, *Terrorism dominates the world, an unbiased and objective political and scientific study*, at 189.

<sup>499</sup> Id.

<sup>500</sup> Id. Arshad, *The UN and Terrorism Before and After 9/11 with the Analysis of the Texts of the Global Counter-Terrorism Instruments*, *oat Cit.*, at 82-85. Qassem, Mus'ad Abdurrahman (2007). *Terrorism in the Light of International Law*, Egypt: Legal Books House, at 241.

***m. General Assembly Resolution 56/1 of 12 September 2001***

The GA, at its 56th session, addressed the terrorist acts of the World Trade Center Towers in New York City. The GA called for international cooperation to eliminate international terrorism and to bring the perpetrators, organizers and sponsors of the brutal attacks to justice. The GA distinguished between international terrorism and national liberation movements against the colonialist, and its position was most abiding by international law and the provisions of the UN Charter.<sup>501</sup> In defining terrorism and how to eliminate it, its resolution was not implemented because the GA's resolutions often are recommendations addressed to Member States or organs of the UN, and these recommendations are often non-binding, having no legal value.<sup>502</sup>

**2. The Most Important Regional and International Conventions in The Combating Against Terrorism**

***a. International Agreements on Combating Terrorism***

There have been efforts to confront terrorism and the international community has worked to internationalize this phenomenon because it affects the security of the international community.<sup>503</sup> Thus, several international conventions have been concluded to prevent and punish international terrorism.<sup>504</sup> Perhaps technological development has contributed to the spread of terrorism, which is affecting the international community either through security, political, economic, or air traffic.<sup>505</sup> Through this discussion, international conventions on the prevention and punishment of international terrorist acts will be addressed.

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<sup>501</sup> Id. Hamouda, *International Terrorism and its Legal Aspects - Means of Combating it in Public International Law and Islamic Jurisprudence*, at 329.

<sup>502</sup> Id.

<sup>503</sup> Id., at 330.

<sup>504</sup> Id.

<sup>505</sup> Yazji, Amal, and Shukri, Mohammed (2013). *International Terrorism and the Mortgage Regime*, Damascus: Dar Al-Fikr Press, at 30.

***i. International Conventions on Suppressing Terrorism and Combating The Financing of Terrorism***

Geneva Convention Prevention and Punishment of Terrorism for the of 1937: The assassination of Yugoslav King Alexander I and the Prime Minister of France, Louis Barto, in Marseilles in 1934 incited violent reactions across Europe, and Yugoslavia protested to the League of Nations.<sup>506</sup> The Nazi German government was accused of involvement, and the Italian government's refused to hand over the killers to France, granting them political asylum. Thus, came the need for an international agreement to prevent international terrorism.<sup>507</sup>

An international conference was held in Geneva in December 1937, and ended on December 16, 1937 with the adoption of two international conventions, one on the criminalization and punishment of international terrorism and the other on the establishment of an international criminal court.<sup>508</sup> The Geneva Convention for the Prevention and Suppression of Terrorism, is one of the most prominent and oldest international conventions on combating terrorism, which includes a definition of terrorism.<sup>509</sup> Terrorism is directed at criminal acts that are directed against a state, and is intended to cause terror to certain individuals of a group, or the general public.<sup>510</sup>

The Geneva Convention for the Prevention and Suppression of Terrorism consists of a preamble and 29 articles. The preamble states it is the duty of every State to prevent and punish terrorist offenders of an international character. In article 1 of the Convention, the State Parties undertake to refrain from any act of encouragement of terrorist activities and prevent and punish

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<sup>506</sup> Id. Hamouda, *International Terrorism: Its Legal Aspects - Means of Combating it in Public International Law and Islamic Jurisprudence*, at 376.

<sup>507</sup> Id.

<sup>508</sup> Id., at 377.

<sup>509</sup> Abdel Hay, Ramzi Ahmed (2008). *Education and the phenomenon of terrorism*, Cairo: Al-Anjou Egyptian Library, at 297.

<sup>510</sup> Id.

acts of terrorism directed against any other State. The second paragraph of Article 1 of the Convention defines what is meant by terrorist acts, “It is criminal acts directed against a State and aimed at creating a state of terror in the minds of certain persons, a group of persons or the general public.<sup>511</sup>” It defines terrorism in the second paragraph of Article: "Terrorist acts are criminal acts directed against a State and are intended, or are intended, to cause terror and panic among certain personalities or groups of people, or the public in general."<sup>512</sup>

**ii. *The International Convention on Combating The Financing of Terrorism of 1999***

In studying international conventions on combating international terrorism, international efforts and conventions have kept pace with the development of terrorism and dealt with many terrorist acts, whether directed against the State, individuals, or aviation safety.<sup>513</sup> The international community has been alerted to the illegal acts that help spread terrorism, which is the subject of financing international terrorism, and has agreed to suppress financing terrorism.<sup>514</sup>

Accordingly, the Special Committee drew up an agreement to suppress the financing of terrorism based on GA Resolution 53/108, issued in December 1998. The draft agreement was presented after it was completed by the GA, which adopted it by resolution (109). (54) On September 9, 1999, it entered into force on April 10, 2002.<sup>515</sup> This Convention contains 28 articles, and general principles and provisions relating to measures to combat financing of

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<sup>511</sup> Article 1 The second paragraph of the Geneva Convention for the Prevention and Punishment of Terrorism of 1937.

<sup>512</sup> Id.

<sup>513</sup> Bassiouni, Mahmoud Sharif (2004). Money Laundering: International Responses and Regional and National Control Efforts, Cairo: Al-Shurooq Publishing House, at 132.

<sup>514</sup> Id., at 133.

<sup>515</sup> Id.

international terrorism, as well as provisions relating to the criminalization of the financing of terrorism.<sup>516</sup>

Article 1 of the Convention defines money as any, “tangible or intangible property, movable or immovable property obtained by any means whatsoever, and legal documents or instruments in any form, including electronic or digital form, which indicate ownership or interest in such funds, including, but not limited to, bank credits, Travel Checks, Bank Checks, Remittances, Stocks, Securities, Bonds, Bills of Exchange and Letters of Credit.”<sup>517</sup> Article 3 states that provisions of the Convention apply only to acts that contain elements of international law. The Convention includes the criminalization of natural persons, and includes legal persons, and it has measures to establish liability for legal persons according to its national legislation of States Parties.<sup>518</sup>

### ***iii. International Conventions on Combating Terrorism Against Individuals***

Terrorism evolves with the development of society, and has used all means to increase pressure on states and the international community.<sup>519</sup> Terrorist acts are directed against individuals, such as the kidnapping and hostage-taking of innocent people, whether they are ordinary individuals or those with special qualities such as diplomats or envoys, to be a means of pressuring countries or obtaining certain demands, such as ransom or certain gains.<sup>520</sup> An international effort has been made to combat terrorist acts against individuals, to preserve their

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<sup>516</sup> Serag, Abdelfattah Mohamed (2001). The General Theory of Extradition of criminals, "An Analytical Study and rooting," Cairo: Dar Al-Nahda Al-Arabiyy, at 293.

<sup>517</sup> Article 1, first paragraph of the Convention for the Suppression of the Financing of Terrorist Acts.

<sup>518</sup> Kamel, Sharif Sayed (1979). Criminal Responsibility of Legal Persons, Comparative Study, Cairo: Dar Al-Nahda Al-Arabiyya, at 89.

<sup>519</sup> Sultan Inad Ibraheem Al-Adainat. The International Mechanism to Encounter Terrorism, at 55.

<sup>520</sup> Id.

right to life or protect their physical integrity. In addition, the international agreements have been enacted to protect individuals.<sup>521</sup>

**iv. *Convention on The Prevention and Punishment of Terrorist Acts in The Form of Crimes Against Individuals, and The Associated Blackmail of International Significance, signed in Washington in 1971***

The Convention on the Prevention and Punishment of Terrorism, was of international importance under the General Assembly of the Organization of American States (OAS) in 1971, because of the violence and sabotage in Latin America in the late 1960s, due to political tension in the region.<sup>522</sup> The aforementioned actions have threatened the political and economic systems of states, which led these countries to unite their efforts to combat terrorist acts, and the GA agreed to condemn terrorism against individuals, such as kidnapping and extortion.<sup>523</sup> It also condemned acts directed at persons protected by international protection, and held that such acts are serious public crimes, and must be confronted, and punished.<sup>524</sup>

This Convention contains a preamble and thirteen articles, to protect individuals enjoying special protection in accordance with the provisions of international law.<sup>525</sup> The Convention obliges States to cooperate to prevent and punish terrorist acts in accordance with Article 1, in particular kidnappings and killings directed against the life and safety of individuals.<sup>526</sup> The States are also obliged to include these offenses in their penal legislation. Article 1 of the

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<sup>521</sup> Id., at 56.

<sup>522</sup> Id.

<sup>523</sup> Id.

<sup>524</sup> Refaat, Ahmed Mohamed, and Al-Tayyar, Saleh Bakr (1998). *International Terrorism*, Paris: Center for Arab-European Studies, at 76.

<sup>525</sup> Id.

<sup>526</sup> Article 1 of the Convention on the Prevention and Punishment of Terrorism, which takes the form of a crime against persons.

Convention was general and expanded, as it did not specify who the individuals under international protection were.<sup>527</sup>

Article 2 of the Convention has helped limit its scope to certain terrorist acts against persons with special protection in accordance with international law, namely the abduction, murder and extortion associated with it.<sup>528</sup> Regardless of the motives behind such acts, they are international crimes, which is clear from this article that protected persons are members of diplomatic missions and senior officials.<sup>529</sup> What distinguishes this Convention is the attempt to internationalize it by opening the way for non-OAS Member States, members of the UN or any of its specialized agencies or any State which is a party to the ICJ to enter into it.<sup>530</sup> Moreover, the principle of punishment, as indicated in Article 5 of the Convention, has shown it has the frameworks of international cooperation to combat terrorism against persons enjoying international protection in accordance with the rules of international law.<sup>531</sup>

**v. *The International Convention Against The Taking of Hostages, signed in New York in 1979***

With the development of terrorism, especially in the 1960s and 1970s, terrorists resorted to a violence, including hostage-taking, often in conjunction with hijacking aircraft.<sup>532</sup> It is now a means of pressuring governments and blackmailing the wealthy to implement the demands of the kidnappers, and exploiting hostages to strengthen kidnapper demands as they attempt negotiations.<sup>533</sup>

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<sup>527</sup>

Id.

<sup>528</sup>

Id. Refaat, Al Tayyar, International Terrorism, at 77.

<sup>529</sup>

Id.

<sup>530</sup>

Article 5: Preventing and punishing acts of terrorism that take the form of crimes against persons.

<sup>531</sup>

Id.

<sup>532</sup>

Refaat, Ahmad (1992). International Terrorism in the Light of International Law and International Conventions and the UN Resolutions, Cairo: Arab Renaissance House, at 79.

<sup>533</sup>

Id., at 80.

As hostage-taking is one of the most cruel and violent crimes against individuals, international law has criminalized this offense, and the UN General Assembly set up a committee to draft a convention against hostage-taking. After the committee finalized its draft, it was presented to the Sixth Committee, which presented it to the Assembly at its 34th session on December 10, 1979. The Convention entered into force in 1983,<sup>534</sup> and contains twenty articles dealing with the different aspects of hostage-taking in terms of States' obligations, confrontation or the appropriate punishment of the perpetrators.<sup>535</sup>

Article 1 defines hostage-taking as, the arrest, threatening, killing or harming of another person by a hostage, threatening or abetting a detainee, in order to compel a third party, whether a State, an intergovernmental organization, a natural, legal person, or a group of persons to carry out a particular act or practice, curse as an explicit or implicit condition for releasing the hostage.<sup>536</sup>

Implementing the provisions of the Convention derives from the hostage-taking that occurs during armed conflict waged by the national liberation movements that are not included in this Convention. These acts are covered by the Geneva Conventions for the “armed struggle of the national liberation movements,” and are subject to the provisions and Protocols that prohibit taking hostages, which entails criminal liability.<sup>537</sup>

**vi. *International Conventions on Combating International Terrorism Against The Safety of International Civil Aviation***

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<sup>534</sup> Id.

<sup>535</sup> 174 countries have ratified the Convention, of which 173 are members of the UN, in addition to Niue as of December 2014.

<sup>536</sup> Article 1, first paragraph of the International Convention against the Taking of Hostages, signed in New York in 1979.

<sup>537</sup> Hosni, Mahmoud Najib (1960). *Lessons in International Criminal Law*, Cairo: Arab Renaissance House, at 165.



Technological and scientific development has enhanced air transportation, which has contributed to trade, and travel. However, air transport is not spared from terrorism that has committed many crimes against civil aviation, especially the hijacking of planes and re-routing them.<sup>538</sup>

**vii. *Convention on Crimes and Other Acts Committed in The Aircraft, Signed in Tokyo on 14/9/1963.***

It was the first international convention to deal with the subject of crimes committed on board aircraft and was the result of efforts made by States and international bodies.<sup>539</sup> In particular, the International Civil Aviation Organization (ICAO), which convened an international conference in Tokyo to draft convention criminalizing acts committed on board aircraft.<sup>540</sup> The Convention highlights the common rules and procedures that Member States are obliged to undertake on board aircraft, and it is an element of international law.<sup>541</sup>

The Convention was signed on September 14, 1963 and entered into force on December 4, 1969. It consists of twenty-six articles, some relating to hijacking aircraft, and principles relating to jurisdiction and control of aircraft. Article 1 of the Convention stipulates that its provisions should be applied to an offense pursuant to the criminal law and the acts deemed offensive, and acts that would jeopardize the safety of the aircraft, and those on board.<sup>542</sup>

**viii. *Convention for Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16/12/1970***

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<sup>538</sup> Id.

<sup>539</sup> Abdel-Khalek, Mohamed Abdel-Moneim (1989). *International Crimes*, 1st Floor, Cairo: Arab Renaissance House, at 84.

<sup>540</sup> Id.

<sup>541</sup> Id., at 85.

<sup>542</sup> Id. Sultan Inad Ibraheem Al-Adainat. *The International Mechanism to Encounter Terrorism*, at 67.

The shortcomings of the 1963 Tokyo Convention against Aircraft Hijacking showed the need for a new convention to combat terrorism aboard aircraft. The International Organization of Aviation (ICAO) called for a conference in The Hague and the draft agreement was presented at the Diplomatic Conference, and it was held in The Hague from December 1 to 16, 1970. The Convention was approved and entered into force on 14 October 1971.<sup>543</sup>

The preamble of the Convention for the Suppression of Aircraft Seizure states, “the purpose of this Convention is to suppress and deter terrorist acts committed against aircraft, in particular acts of seizure of aircraft illegally and to punish the perpetrators of such acts because they endanger the safety of individuals and property.” Article 1 defines the offenses, “any person who commits an act on an aircraft in the event of a flight shall be deemed to have committed the offense of unlawful appropriation of the aircraft.”<sup>544</sup> Pursuant to the text of Article 1, criminal acts may be carried out by force or threat or by any other form of coercion by seizing or attempting to control the aircraft or attempting to commit any of these acts.<sup>545</sup>

***ix. Convention for The Suppression of Unlawful Acts Against The Safety of Civil Aviation, signed at Montreal on 23 September 1971***

The lack of legal provisions in both international conventions on crimes committed on board aircraft and the suppression of unlawful seizure of aircraft (The Hague) led to the need to find legal provisions to find solutions to the air terrorism, which increased in the early 1970s.<sup>546</sup> A new international agreement was concluded in the series of legislative development related to

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<sup>543</sup> The number of signatories to the Convention for the Suppression of Unlawful Seizure of Aircraft in The Hague was 185, of which 183 were Member States.

<sup>544</sup> Article 1, paragraph 1, of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague.

<sup>545</sup> Id.

<sup>546</sup> Abdul-Hadi, Abdul Aziz Mukhaimer (1986). *International Terrorism with the Study of International Conventions and Resolutions of International Organizations*, Cairo: Dar Al-Nahda Al-Arabi. at 146.

combating air terrorism, which is a series of international efforts that made by the international community to preserve air navigation from any terrorist act. According to this series of international legislation, appropriate solutions for the safety of international civil aviation and the safety of air navigation facilities have been developed to a great extent.<sup>547</sup>

A diplomatic conference was held in Montreal, Canada, in September 1971, which resulted in the adoption of a “Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.” It entered into force in January 1973.<sup>548</sup> The Montreal Convention reproduced the provisions of the Hague Convention, with the exception of the first paragraph of Article I and the second paragraph of Article II.<sup>549</sup> Article 1 of the Convention sets forth the unlawful acts committed against the safety of the international civil aviation, which are criminalized by the Convention, and the text of Article 1 of the Convention stipulates that these criminal acts specified in the article must prove the intentional and illegitimate intent and that the aircraft is in service.<sup>550</sup>

The second paragraph of Article 2, clarifies what is meant by, "aircraft in service" which is the aircraft is in service from the time the ground staff or crew members prepare the plane for flight, until 24 hours after any landing. Since the aircraft stops outside the territory of the State of registration for a different period, it is necessary to protect the aircraft during a stopover abroad for 24 hours after landing at any airport.<sup>551</sup>

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<sup>547</sup> Id.

<sup>548</sup> Id., at 147.

<sup>549</sup> Id.

<sup>550</sup> Al-Qassas, Akram (2002). September 11, Testing of Liberties and the Conditions of Arabs and Muslims in America, Abu Dhabi: Azed Center for Coordination and Follow-up, at 15.

<sup>551</sup> Id. Abdul-Hadi, International Terrorism, at 148.

## ***b. Regional Conventions for Combating Terrorism***

### ***i. European Convention for The Suppression of Terrorism***

The “European Convention for the Suppression of Terrorism” was signed on September 27, 1977 in Strasbourg, France, and entered into force on August 4, 1978.<sup>552</sup> It is a model of regional cooperation for suppressing terrorist acts. The European Convention, and removing the protection for criminals, stipulated in the Convention, which comes out of the list of those politically motivated acts, is more advanced than the previous anti-terrorism conventions.<sup>553</sup> The Convention defines the elements of international terrorism and organizes the extradition of those accused of committing the acts stipulated in the Convention.<sup>554</sup> However, it does not provide sanctions against a State that refuses to extradite a terrorist.<sup>555</sup>

The Convention is composed of a preamble and sixteen articles. The preamble provides for adopting measures to ensure the perpetrators of crimes and terrorist acts do not escape conviction and punishment, to get a fair trial, and ensure that deterrent penalties are applied to the perpetrators of such crimes.<sup>556</sup>

This Convention with political terrorism of an international character, whereby individual terrorist acts committed with a non-political purpose fall outside the scope of application of the Convention. The Convention mainly covers political terrorist acts of an international character, when the perpetrators of these acts resort to a country other than the country in which the terrorist acts were committed to escape prosecution and punishment.<sup>557</sup> Thus, Article 1 of the

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<sup>552</sup> Id., at 149.

<sup>553</sup> Id.

<sup>554</sup> Alexander Yonah (1992), terrorism, political and legal documens, at 250.

<sup>555</sup> Id.

<sup>556</sup> Al-Far, Abdul Wahid Muhammad (2007). International Crimes and the Authority for Punishment, Cairo: Arab Renaissance House, at 561.

<sup>557</sup> Id.

convention defines the acts that constitute international terrorism, which must be dealt with as terrorist crimes, not as political crimes or acts related to politically motivated crimes.

The State parties shall extradite the perpetrators of the crimes stipulated in Article 1 to the State where the crime was committed, to be tried, and receive proper punishment.<sup>558</sup> Article 2 of the convention prohibits States from expanding into a non-political crime and also requires the parties not to grant political asylum to terrorists.<sup>559</sup> The Convention permits the extradition of criminals in two cases, the first case, any dangerous act of violence against a individual's life, physical, integrity, or freedom, and the second case, any act of violence against property if it constitutes a collective danger.<sup>560</sup>

**ii. *The Arab Convention for The Combating of Terrorism, 1998***

Arab countries also have made collective efforts to combat and suppress terrorism after realizing that individual efforts are not effective, because terrorism has become global, and must be combated through Arab collective efforts.<sup>561</sup> The Arab Convention for the Suppression of Terrorism was adopted 22 April 1998 and entered into force on May 7, 1999.<sup>562</sup>

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<sup>558</sup> Article 1 of the European Convention for the Suppression of Terrorist Acts.

Article 1 of the agreement defines these actions as follows:

1. Crimes within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft Signed in The Hague, 1970.
2. The boldest intervention in the scope of the Convention on the Prevention of Unlawful Non-Civil Aviation Safety, signed at Montreal in 1971.
3. Serious offenders are assaults on life, bodily integrity, or freedom of persons with international protection, including diplomatic envoys.
4. Bolders that include kidnapping, hostage-taking, or unlawful detention.
5. Bolders including the use of missiles, grenades, missiles, firearms, and speeches Deceptive parcels, if use threatens the lives of individuals.
6. Trying to commit a crime from previous courageous and participating with a person who is committing this crime or trying to commit it.

<sup>559</sup> Article 2 of the European Convention for the Suppression of Terrorist Acts.

<sup>560</sup> Id.

<sup>561</sup> Center for Middle East Studies (2003), *The Concept of Terrorism and the Right of the Palestinian People to Resist*, Amman, at 19.

<sup>562</sup> Id.

The agreement consists of a preamble and forty-two articles. The preamble stipulates the desire to enhance cooperation among Contracting States to combat terrorist crimes that threaten the security and stability of the Arab nation and constitute a threat to its vital interests.<sup>563</sup> The provisions of the agreement adhere to the principles of Islamic Sharia, which renounce terrorism and preachers. The Convention also enshrine the principles of international law and the foundations of the Charter of the UN, and guarantee the right of peoples to armed struggle against foreign occupation with a view to liberating their territory from the occupier in accordance with the principles and purposes of the UN, and the right of peoples to self-determination and independence.<sup>564</sup> The Convention defines terrorism as,

Any act of violence or threat thereof, whatever its motives or purposes, is the implementation of an individual or collective criminal enterprise, aimed at terrorizing people, intimidating them, harming them, or endangering their lives, liberty or security, damage to the environment, any public, private property, facility, its occupation, appropriation, or endangering a national resource.<sup>565</sup>

The Convention defines a terrorist offense as “any crime or attempted crime committed for the purpose of a terrorist act in any of the contracting States or their nationals, property or interests punishable by their domestic law, it shall also be considered as a terrorist offense provided for in the following agreements, except as exempted from the legislation of the Contracting States or not ratified by it:<sup>566</sup>

- 1) The Tokyo Convention on Offenses and Acts Committed on Board Aircraft signed on 9/14/1963.

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<sup>563</sup> Hamouda, Montaser Said (2006). *International Terrorism: Its Legal Aspects - Means of Combating it in Public International Law and Islamic Jurisprudence*, Alexandria: New University House, at 388.

<sup>564</sup> Id.

<sup>565</sup> Arab Convention for the Suppression of Terrorism, Article I, at paragraph 2.

<sup>566</sup> Id., at paragraph 3.

- 2) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft signed on 16 December 1970.
- 3) The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed on 9/23/1971, and the Protocol thereto, signed at Montreal on 5 October 1984.
- 4) New York Convention on the Prevention and Punishment of crimes against Persons Covered by International Protection
- 5) Including diplomatic representatives, signed on 14/12/1973.
- 6) Convention on the Abduction and Hostage-taking of 17/12/1979.
- 7) The UN Convention on the Law of the Sea of 1982, relating to maritime piracy.<sup>567</sup>

The most important characteristic of this Convention is that it preserves the rights of peoples in armed struggle against foreign occupation and aggression, and the right to self-determination.<sup>568</sup>

### **C. The Implications of International Terrorism for The Sovereignty of The State**

Sovereignty is one of the basic elements upon which the contemporary international law is built, and its concept is one of the important concepts that the jurists and political researchers have been interested in equally since the thought of “Jean Baudin” in 1576 in his six books on the state.<sup>569</sup> The idea of sovereignty has emerged at various levels since the emergence of the first human societies, and it has had several evolution through the ages.<sup>570</sup>

Sovereignty under the nation-State has gained an excellent position in modern politics, and has become a slogan of national dignity, the best embodiment of the meanings of supreme power, freedom and independence. However, sovereignty was subjugated after the dramatic developments in the world following the Second World War, which led to a reduction in the role of national sovereignty at the expense of what was described as collective action in the scope of

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<sup>567</sup> Id., at paragraph 3.

<sup>568</sup> Abu Hajib, Osama Badruddin, Ibrahim (2010). *The Relationship of Terror with Political Crime and Legal Ways to Combat it*, PhD. Thesis, Al-Zaim Al-Azhari University, Khartoum, Sudan, at 79

<sup>569</sup> Amira Hannachi, *The Principle of Sovereignty in the Light of Current International Transformations*, Master Thesis in Public Law, Branch of International Relations and Law of International Organizations, Faculty of Law, University of Mentouri Constantine, University Year 2007/2008, at 23 at 10.

<sup>570</sup> Id., at 23.

international relations.<sup>571</sup> The exercise of the sovereign rights of the State has become conditions of international accountability in the context of internationalization, regardless of the system of "values" that revolve around it.<sup>572</sup>

The Charter of the UN has placed "sovereignty" in the internationalization service through the objectives set forth in Article 1, as follows:<sup>573</sup>

- 1) Maintaining international peace by taking collective measures to prevent anything that threatens peace, suppress any aggression and resolve any conflict that may threaten peace.
- 2) Developing good relations among peoples on the basis of respect for the principle of equality and the right of self-determination of peoples.
- 3) Urging cooperation among peoples to solve international problems, whether social, economic, cultural or humanitarian.<sup>574</sup>

The crises that struck the world after the establishment of the UN in 1945 imposed a new pattern in international political needs, especially in the protection of "international peace" from threats. To address these dangers, the Security Council, whose mission was to "safeguard international peace and security" had the right to adjudicate international disputes. All Member States agreed to place at their disposal any armed forces or military facilities requested or agreed upon.<sup>575</sup>

International commentators argue that internationalization of sovereignty involves an expansion of its external dimensions, and the fundamental basis of the international community is the mutual recognition of sovereign States.<sup>576</sup> In particular, the conditions for the exercise of sovereign rights by the State have expanded, and most importantly, as a result of these rights, they do not disturb the world order. In many cases, the Security Council has exercised the

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<sup>571</sup> Dr. Ismail Ghazal, *Constitutional Law and Political Systems*, University Foundation for Studies, Beirut, without mentioning the year of reprint, at 78.

<sup>572</sup> Id.

<sup>573</sup> Charter of the UN, article 1

<sup>574</sup> Id.

<sup>575</sup> Id. Dr. Ismail Ghazal, *Constitutional Law and Political Systems*, at 49.

<sup>576</sup> Dr. Jihad Nasri Al-Aql, *Sovereignty and Nationality*, on the Syrian National Information Network website: [www.ssnb@info.com](mailto:www.ssnb@info.com), at 12.



powers vested in it, overriding the traditional rights of sovereignty.<sup>577</sup> Therefore, the requirement to recognize the authority of the supreme state is no longer solely due to the people, but to the fact that the State is not an element of chaos and turmoil in the international community.<sup>578</sup> The concept of the internationalization of sovereignty means there is accountability of States in the event of their abusive exercise of sovereign rights. This new condition of State sovereignty was confirmed when former UN Secretary-General Kofi Annan stated there was no longer immunity for sovereignty.<sup>579</sup>

On the other hand, Kofi Annan, in a draft presented to the UN General Assembly at its 54th session, argues that sovereignty is no longer specific to the nation-State that is the basis of contemporary international relations, but it is about the individuals themselves, which means the fundamental freedoms of everyone, which are enshrined in the UN Charter, and calls for the protection of the human existence of individuals, not the protection of those who violate them.<sup>580</sup> In this way, Annan removed obstacles to organizations engaged in an intervention project to stop violations of human rights without the authorization of the UN.<sup>581</sup>

The concept of sovereignty in this form cannot be settled. There is no justification for any State, even a superpower like the United States, to change any political regime in any other country.<sup>582</sup> The UN does not have such a right, but in the event that the regime is changed through a coup or revolution, accepting the new regime does not in itself mean changing the

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<sup>577</sup> Id. Confirmed the military action taken by NATO towards Kosovo and the military action by the United States of America towards Iraq, the new reality confirmed that it was possible for a State to act when the UN and the Security Council did not take adequate action.

<sup>578</sup> Dr. Talal Yassin Al-Essa. Sovereignty between its traditional and contemporary concept "A study of the internationalization of sovereignty in the present era". Department of Private Law. Damascus University Journal for Economic and Legal Sciences - Volume 26 - First Issue – 2010, at 61.

<sup>579</sup> Id.

<sup>580</sup> Id., at 62.

<sup>581</sup> Id.

<sup>582</sup> Id.

regime, rather is merely recognition of the new regime. The UN does not have the right to interfere with the right of member states to self-determination, because it threatens the main foundation of states, which is the state's sovereignty and freedom.<sup>583</sup>

#### **D. International Developments and Implications on Sovereignty**

International developments have affected ideas and terminology related to the State as a member of the international community. One of these international developments is known as international terrorism and its impact on the state's sovereignty.<sup>584</sup> The effects of international terrorism and the effects of combating terrorism are evident in the sovereignty of the State, which is the first to be affected by terrorism.<sup>585</sup> Terrorism, whether in terms of its spread or the means used, is a threat to State sovereignty.<sup>586</sup> However, combating terrorism does not justify the occupation of peoples and the violation of state sovereignty under the pretext of the war on terror.<sup>587</sup> The disparity in the capabilities of States made some researchers distinguish between sovereignty as a legal concept and the general international reality standard for all states without discrimination.<sup>588</sup>

One of the most important international developments is the change of the structure of the international system from a bipolar system to a unipolar system, which some political jurisprudence considers as threatening State sovereignty.<sup>589</sup>

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<sup>583</sup> Id., at 63.

<sup>584</sup> Ismail Ghazel, *Terrorism and International Law*, University Foundation for Studies, Education and Distribution, 2nd ed. 2000, Beirut, at 39.

<sup>585</sup> Id.

<sup>586</sup> Id., at 40.

<sup>587</sup> Id.

<sup>588</sup> Id.

<sup>589</sup> Id. Professor Jihad Nasri Aqel states it would not have been possible for the sovereignty of Iraq to have the violations that are happening to it today if the international bipolar system continued.

However, sovereignty cannot be absolute, in which States have international obligations that limit their sovereignty, and these obligations increase when states join international conventions that decrease their sovereignty.<sup>590</sup>

Moreover, international law is a system of obligations, whereby states are obligated to restrict their freedom of action, thus restricting their international and domestic political independence. In fact, the principle of sovereignty affirms the legal equality and political independence of states.<sup>591</sup> However, the independence of a State was always bound by international obligations that led to subordination and control, and the principle of sovereignty was never fully enjoyed.<sup>592</sup>

The humanitarian tragedies resulting from wars and the use of force as a means of resolving conflicts on the one hand, and the development of relations of interdependence between States on the other, have shown the proportionality of sovereignty, which is essentially a tool for regulating relations among States.<sup>593</sup> In this sense, any contradiction between sovereignty and the requirements for commitment to the rules of public international law can be removed through the institutional procedures required for regulating State relations.<sup>594</sup>

Sovereignty and equality among States is one of the fundamental rules of public international law, as found in article 2 of the UN Charter: “the Organization is based on the principle of equality in sovereignty among all members.” Article 2 (b) of the Charter of the Organization of the Islamic Conference refers to the same principle as one of the basic principles

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<sup>590</sup> Stephen D. Krasher. *Compromising Westphalia*. International Security. Vo. 1,20, No 3, winter, 1995-1996, at 115.

<sup>591</sup> *Id.*, at 116.

<sup>592</sup> *Id.*

<sup>593</sup> Abdulaziz Al-Yasiri, *The atrobblem of Globalization and the State*, Master Thesis submitted to Saint Clement International University, Iraq Branch, Baghdad, 2007, at 30.

<sup>594</sup> *Id.*, at 31.

of the charter of this organization, which states: "The sovereignty, independence and territorial integrity of each member state must be respected."<sup>595</sup>

The Arab League also focuses in its Charter on the principle of national sovereignty excessively, although it calls for "the strengthening of close relations and the rest of the bonds that bind the Arab states" as stated in the introduction.<sup>596</sup> However, it attached particular importance to the issue of sovereignty and the preservation of independence and sovereignty (M/A) and called on each Member State to respect the existing system in other Member States.<sup>597</sup> This idea of sovereignty has many implications, the most important of which are:<sup>598</sup>

- 1) States shall enjoy the rights and privileges inherent in all their sovereignty, both at the international level and domestic level, such as the conclusion of international treaties and the exchange of diplomatic and consular representation.
- 2) Equality between States, as sovereignty also implies that states are legally equal as there is no gradations in sovereigns, which means that the rights and obligations that States enjoy or abide by are legally equal, even if they differ in terms of population density, geographical area or economic resources.<sup>599</sup>
- 3) Finally, the notion of sovereignty entails the inadmissibility of interference in the affairs of other States, since international law prohibits interference by any State in the domestic affairs of another State, each State is free to develop its political, economic, and social system without interference.<sup>600</sup>

Based on the foregoing, we say that the concept of sovereignty, which was surrounded by a halo of sacredness and not to be affected by any diminution or prejudice has been significantly changed since the middle of the twentieth century as a result of international transformations and the resurgence of globalization, and can be attributed to several factors, for example:<sup>601</sup>

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<sup>595</sup> Dr. Ali Sadeq Abu Habaf, *In-depth Study of Public International Law*, Cairo, 2005, at 184

<sup>596</sup> Id.

<sup>597</sup> Id.

<sup>598</sup> Id., at 185.

<sup>599</sup> Id. The principle of sovereign equality enshrined in the Charter of the UN is not absolute. There are many rights enjoyed by the permanent members of the Security Council and other Member States, including the use of the veto and the right to amend the Charter of the UN.

<sup>600</sup> Id.

<sup>601</sup> Abdul Aziz Mohamed Sarhan: *The Crisis of Arab and Islamic Organizations in the Age of American Domination*, Dar Al-Nahda Al-Arabiya, Cairo, 1994, at 32.

- 1) The increasing expansion of international treaties and conventions containing binding rules and provisions for States has resulted in:<sup>602</sup>
  - a) There have become jus cogens international rules pertaining to the organization of many areas, and these rules have become authoritative in the face of all States, so that it may not be agreed on the contrary, even if it invoked the principle of sovereignty:<sup>603</sup>
  - b) Within the framework of the international community, there are systems of international supervision that carries out verification and inspection tasks; for example, in the field of human rights and nuclear armaments.
  - c) Stability of international jurisprudence and judiciary on the inability of States to invoke their constitutions or national legislation, which is a manifestation of sovereignty, to evade their international obligations, whether contractual in nature or arising out of the provisions of public international law of a legitimate character, even if they are not ratified by States or acceded to it.<sup>604</sup>
- 2) The trend towards respect for human rights and fundamental freedoms and international guarantees to ensure respect for these rights and to ensure that they are not violated by the Governments of States.<sup>605</sup>
- 3) Recent trends in the codification of international responsibility, which authorizes an international legal person who has suffered harm, including individuals who have been recognized as having legal status in international law, to initiate a claim of liability in the event of damage, irrespective of the legality or illegality, which caused it.<sup>606</sup>
- 4) The trend towards the establishment of international transnational or supranational entities, and the emergence of a quality of international problems such as the problems of the environment, pollution, illegal migration, organized crime, terrorism, drugs, desertification, poverty, intractable epidemics and others that require the intensification of international efforts and the concerted political will Countries to address them and find effective solutions.<sup>607</sup>

Some jurists see the transition of the international community to post-sovereignty, and they need to review the concept of sovereignty to present a new definition that is more realistic and appropriate than the historical idea of sovereignty.<sup>608</sup> However, some argue that the new concept of State sovereignty is based on a contradiction between respect for human rights and

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<sup>602</sup> Id.

<sup>603</sup> Id.

<sup>604</sup> Id., at 33..

<sup>605</sup> Abdulaziz Mohamed Sarhan: International Organizations, University Culture House, Cairo, 1990, at 23.

<sup>606</sup> Ali al-Sadiq Abu Haif: Public International Law, Al-Maaref Establishment, Alexandria, 1971, at 210.

<sup>607</sup> Id, at 210.

<sup>608</sup> Mohammed Sami Abdel Hamid: The Origins of Public International Law, International Rule, First Edition, Community Youth Foundation for Publishing, Cairo, 1972, at 58.

democratic transition on the one hand, and the principle of national sovereignty, on the other.<sup>609</sup>

Whereas they argue that it may be just an exploitation to interfere in the domestic affairs of other countries under various pretexts, such as humanitarian intervention, protection of human rights or terrorism. It may also be merely a means of interfering to change the regimes in independent and sovereign states by limiting dictatorial practices in different regions of the world.<sup>610</sup>

Therefore, incidents of interference often happen for declared or undeclared political goals, as a country exposed to international interference and violation of its sovereignty is fully conscious that interference in the domestic affairs of the state is incompatible with human rights, democracy and the protection of minorities.<sup>611</sup> This is also what happens to peoples whose countries are exposed to international interference, as they endure suffering that is not in line with the slogans and declarations of humanitarian goals.<sup>612</sup>

#### **E. Conditions for The Use of Force in International Relations**

Power has always been the title of international relations, as war was before the establishment of the UN a legitimate and legally acceptable means to settle any disputes between states.<sup>613</sup> Therefore, the right of states to resort to war has always been associated with the historical concept of the principle of the absolute sovereignty of states.<sup>614</sup> As a result of the chaos and instability on the international scene, the international community has introduced new concepts that renounce force and move towards the peaceful solution of international disputes.<sup>615</sup>

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<sup>609</sup> Id.

<sup>610</sup> Hussein Hanafi Omar: *Interfering in the affairs of states under the pretext of protecting human rights*, the first edition, Dar Arab Renaissance, Cairo, 2005, at 33.

<sup>611</sup> Id., at 34.

<sup>612</sup> Id.

<sup>613</sup> Taleb Khaira, *Principle of the Prohibition of the Use of Force in International Relations*, Memorandum for Master's Degree in Legal and Administrative Sciences, Faculty of Humanities and Social Sciences, Ibn Khaldun University, Tiaret, 2007, at 2-9.

<sup>614</sup> Id.

<sup>615</sup> Id.

Several attempts were made to prevent recourse to force, the first of which is The Hague First Conventions of 1899,<sup>616</sup> in which the parties undertake to refrain from using force to recover debts, followed by the Second Hague Conventions of 1907.<sup>617</sup> International efforts to restrict the use of armed force by states are continued. Especially after the First World War, which was followed by the 1928 Paris Charter, considered the starting point for the emergence of the illegality of the armed force in international relations.<sup>618</sup>

In the aftermath of WWII, efforts of the international community led to the establishment of the UN,<sup>619</sup> by concluding a charter that united all states under which the use of armed force in resolving conflicts is prohibited as stated in Article 33.<sup>620</sup> The UN Charter redounds to drafting the general rule prohibiting the use of force in international relations and exceptions where the use of force is lawful. From this point of view, we will discuss the prohibition of the use of force within the framework of the UN, and then the conditions for the use of force in international relations.

## **1. Prohibition of The Use of Force within The Framework of The UN**

The failure of the League of Nations in peacekeeping and international security had an impact on the establishment of the UN, which works to ensure that human rights are the

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<sup>616</sup> The first Hague Conventions were concluded during the first peace conference attended by 26 countries. These agreements dealt with the peaceful resolution of international disputes, the codification of the laws and customs of land warfare and the amendment of the principles of maritime war adopted in Geneva 1964. The conference also created the Permanent Court of Arbitration in The Hague, which was concerned with the settlement of international disputes by peaceful means.

<sup>617</sup> Mohammed Khalil al-Mousa, *The Use of Force in Contemporary International Law*, Wael Publishing House, Jordan, 2004, at 9.

<sup>618</sup> Id.

<sup>619</sup> The Charter of the UN was signed on 26/06/1945, following the San Francisco Conference and entered into force on 24 October 1945.

<sup>620</sup> Article 33 of the Charter of the UN states: "Parties to any conflict whose continuation would endanger the maintenance of international peace and security shall seek, first and foremost, a solution through negotiation, investigation, mediation, conciliation, arbitration and judicial settlement, and shall resort to regional agencies, organizations or other peaceful means of choice. "

cornerstone in the establishment of the principle of the prohibition of the use of force in international relations.<sup>621</sup> Article 4/2 of the Charter states, “All Members of the Commission shall refrain in their international relations from the threat of the use of force, their use against the territorial integrity or political independence of any State or any other State, or on the political independence of the UN.”<sup>622</sup> The Charter seeks to formulate regulations and restrictions that keep the issue of the use or threat of force in international relations outside the scope of international law.<sup>623</sup> Thus, it must be clarified that there is a broad interpretation of the meaning of force in Article 2/4 so that the term “force” is broader than the term “war” and that the term force includes all aspects that may be covered by this term.<sup>624</sup> It is based on the following fact:

- 1) Article 4.2 of the Charter of the UN did not limit the prohibited forms of force to the extent that they were merely stipulated that it was directed against the territorial integrity or political independence of any State and that the exercise of political and economic pressures against a particular State leads to the same result.<sup>625</sup>
- 2) Also based on the measurement of the provisions of Articles 41 and 42 of the UN Charter, which provided for the military and non-military measures adopted by the UN Security Council, as the use of economic measures is one form of the use of force.<sup>626</sup>
- 3) In addition to drawing on the international conventions issued by the UN General Assembly that prohibit interference and exert political and economic pressures in international relations.<sup>627</sup>

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<sup>621</sup> Majzoub Muhammad, *International Organization, General Theory and International and Regional Organizations*, University House for Printing and Publishing, Lebanon, 1998, at 175.

<sup>622</sup> Text of Article 4/2 of the Charter of the UN.

<sup>623</sup> Bouyahia Gamal, *The Use of Force in International Relations: Between Methap Regulations and the Requirements of International Practice*, *Academic Journal of Legal Research*, Issue No. 02, *Quantity of Laws and Political Amity*, University of Abdel Rahman Rafah, Bejaia, 2011, at 134-133.

<sup>624</sup> *Id.*, at 134.

<sup>625</sup> *Id.*

<sup>626</sup> *Id.*, at 135.

<sup>627</sup> *Id.*



Considering that force encompasses all political and economic pressures, the force contained in Article 4.2 of the UN Charter was comprehensive and did not specify the type of military force, which would obviously encompass all types of force.<sup>628</sup>

In the framework of regulating international relations and ensuring the stability of the international community, several resolutions have contributed to the prohibition of the use of force, the most important of which is General Assembly Resolution No. 26/25, which includes the principles of international law and international cooperation on international relations which is consistent with the purposes of the UN.<sup>629</sup> This is one of the most important achievements that has been made in the service of international peace and security and the change of democratic relations between States and peoples.<sup>630</sup> The resolution states the principle of the prohibition of the use of force in international relations, which, in its first paragraph, affirmed the duty of states to abstain in their international relations in the threat of the use of force or its use against the territorial integrity of any State in a manner inconsistent with the purposes of the UN.<sup>631</sup>

Article 3 also provides that no consideration may be invoked to justify the threat or use of force in violation of the Charter,<sup>632</sup> and states must not urge, encourage or assist other States to resort to the threat of force.<sup>633</sup> In addition to prohibiting hostilities and promoting bilateral and

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<sup>628</sup> Emad El-Din Atta Allah Mohamed, *Intervention in the Light of the Principles and Provisions of Public International Law*, New University, Egypt, 2007, at 189-198.

<sup>629</sup> Mohammed Al-Said Dakkak, *International Organization*, University House, Egypt, DSN, at 235.

<sup>630</sup> Bouras Abdelkader, *International Humanitarian Intervention and the Return of the Principle of National Sovereignty*, New University House, Algeria, 2009, at 137.

<sup>631</sup> *Id.*, also Article 39 of the Charter of the UN states: "The Security Council shall decide whether there has been a threat to peace or any action that has taken place pursuant to acts of aggression and makes recommendations or decides on measures to be taken in accordance with the provisions of Articles 41 and 42 for the maintenance or restoration of international peace.

And General Assembly Resolution 3314 (1974) concerning the definition of aggression  
A / RES / 3314 (1974) du 14 December 1974

<sup>632</sup> General Assembly resolution (26/25) (1970) on the principles of international law relating to friendly relations and A / RES / 26 (1970) du 24 December.

<sup>633</sup> *Id.*

regional cooperation, and promoting global stability,<sup>634</sup> States should also reaffirm the protection of the effective exercise of all human rights and fundamental freedoms as fundamental elements of international peace and security, justice and the development of friendly relations and cooperation among all States.<sup>635</sup>

## **2. Exceptions or Conditions Prohibiting The Use of Force in International Relations**

Prohibiting the use, or threat of use of force is one of the basic pillars of the international legal system established by the Charter, which has become the basis for all the rules of contemporary international law.<sup>636</sup> This ban is mentioned in Article 2, Paragraph 4, of the Charter,<sup>637</sup> which forms the legal basis for the absolute prohibition of the use of force, and which classifies this article as a peremptory norm.<sup>638</sup> However, the Charter has made exceptions to this principle, whereby the use of force in international relations is legitimate in the case of self-defense (Section I) and collective security measures (Section II).

### ***a. Case for Self-defense***

The right of self-defense occupies an important place in international relations as stated in Article 51 of the Charter as a general rule prohibiting the use of force.<sup>639</sup> Therefore, this is an

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<sup>634</sup> Id.

<sup>635</sup> The resolution affirms the principle of the prohibition of the use of force in international relations, which is explicitly stated in the phrase “the principle of the duty of States to refrain from resorting to force or to threaten it in international relations, whether sovereignty against each other, whether there is any peace or security. Purposes of the UN. “. Document number: A / RES / 2625 (1970) du 26 December 1970.

<sup>636</sup> Bouakba Naima, “The Right of Legitimate Defense Between the Provisions of International Law and International Practice”, *Journal of Fiqh and Law, Skikda University*, 2006, at 1.

<sup>637</sup> Article 4.2 of the Charter of the UN states: “Members of the Organization shall refrain in their international relations from resorting to the use or threat of use of force against territorial integrity, the political independence of any State or in any other manner inconsistent with the purposes of the UN.”

<sup>638</sup> Article 53 of the 1969 Vienna Convention on the Law of Treaties defines the directive *jus cogens* as: “A set of principles and rules accepted and recognized by the international community as a rule that may not be violated or vetoed.” *Vienna Convention on Treaties*, 1969/05/29.

<sup>639</sup> Article 51 of the Charter states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the UN, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members

unacceptable right to be waived, either by the individual or by the state, and it is also an inevitable outcome of the right to survival and self-preservation.<sup>640</sup>

Article 51 states that “nothing in this Charter weakens or decreases from the natural right of states to self-defense,” through which it is clear that self-defense is an exceptional and natural right from the text of Article 2/4 of the Charter and that it is a sacred right for states.<sup>641</sup>

Accordingly, self-defense is, “The right stipulated by international law for a state or group of states to use armed force to repel an immediate armed aggression committed against the territorial integrity of the state in order to prevent this aggression.”<sup>642</sup> There are basic conditions governing the right to self-defense, some of which are related to aggression, and another for defensive action directed against aggression under the control of the UN Security Council. These conditions will be discussed in detail according to the rules of international law as follows:

#### ***b. Conditions of The Act of Aggression***

Article 51 of the Charter of the UN requires the establishment of the right of legitimate defense:

- 1) **Unlawful Armed Aggression:** In this context, this clause has created a problem regarding the ambiguity of the term “if an armed force is attacked”. Attempts to continue until the decision of the General
- 2) **Assembly of the UN on the definition of aggression under No. 3314,** which defines aggression in its first article 55,<sup>643</sup> Article 3 then defines a series of acts which constitute an act of aggression that empowers States to have the right of

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in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

<sup>640</sup> Maher Abdel-Moneim Abu Younis, *The Use of Force in Enforcing International Legitimacy*, Egyptian Library for Printing, Publishing and Distribution, Egypt, 2004. at 128.

<sup>641</sup> Al-Omari Zakar Mounia, *Forensic Defense in Public International Law*, Memorandum for Masters in Public Law, Faculty of Law and Political Science, University of Metnori, Constantine, 2011, at 41.

<sup>642</sup> Bouznada Muammar, *Regional and Collective Security Organizations*, University Press Office, Legal Books House, Egypt, 2004, at 92.

<sup>643</sup> Article 1 of Resolution 3314 states: “The use of armed force by a State against the sovereignty, territorial integrity, political independence or other form of State contrary to the Charter of the UN”. - See document no. 1970 A / RES / 3314 (1970), du 14 December

legitimate defense to deter it.<sup>644</sup> In order to be confronted with illegal armed aggression, certain elements must be available, such as:

- 3) Aggression shall be of a military character.
- 4) The aggressive act must be of a high degree of gravity.<sup>645</sup>
- 5) The aggression must be direct and immediate: that is, the aggression has already taken place, and it is not imminent that the future danger is not sufficient to achieve aggression even if it involves the threat of force.<sup>646</sup>
- 6) Armed aggression against the State and its properties: There is no doubt that the territory of the State is considered a fundamental pillar of the establishment of the State, and given the great importance has always been the object of aggression, as we find that international conventions are intense to ensure the protection of all obliged its members to respect and preserve the territorial integrity and political independence of all members against any aggression.

### ***c. Conditions of The Act of Legitimate Defense***

- 1) Condition of necessity: It is intended that defense is the only means of repelling aggression, and the defense must be directed to the source of danger, which against the aggressor State itself.<sup>647</sup>
- 2) Proportionality: It is intended that the force used in the act of defense is proportional to the act of aggression.<sup>648</sup>
- 3) International Security Council Control: It is evident that the right of States to exercise the right of legitimate defense is not at all, but is subject to the

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<sup>644</sup> Cases considered to be aggression are:

- Invasion or attack by the armed forces of a State of the territory of another State or any military occupation, even if temporarily as a result of such invasion or attack, or against the use of armed force against another State, or by the use of any weapons against the territory of another State.
- Bombing by the armed forces of one State against another State or by using any State's weapons against any other State.
- Blockade of the ports or coasts of a State by the armed forces of another State. - Attack by the armed forces of a State against the land, sea or air forces, airports or ports of another State.
- The use of the armed forces of a State within another State with the consent of the host State of the conditions set forth in the Convention or any extension of its presence in that territory.
- Allowing a State to use its territory against a State if it places it at the disposal of another State to prepare for aggression against that third State.
- Sending armed groups to identify or through a State, or mercenaries, to carry out armed acts against another State in a serious manner that amounts to the acts established in the foregoing or their material immersion.

<sup>645</sup> Hmml Shaleha Salih, Evolution of the concept of legal defense in the light of the current international changes: from legal defense to preventive legal defense, a master's degree in law, international cooperation law branch, faculty of law, doctoral school of legal and political sciences, Mouloud Mammeri University, Tizi Ouzou, 2011, at 50.

<sup>646</sup> Nejad Ahmad Ibrahim, International Responsibility for Violating the Rules of International Humanitarian Law, Al-Ma'arif Establishment, Egypt, 2009, at 101.

<sup>647</sup> Bouyah Jamal, "The Use of Power in International Relations Between Charter Bindings and the Requirements of International Practice," Academic Journal of Legal Research, No. 2, Faculty of Law, Abdul Rahman Meera University, Bejaia, 2001, at 137.

<sup>648</sup> Id.

subsequent control of the International Security Council, as it has the competence to maintain international peace and security this is confirmed by Article 51 of the Charter.<sup>649</sup>

Therefore, legitimate defense requires two conditions: the first is that the state has to be a victim of armed aggression, and the second is to obtain permission from the Security Council.<sup>650</sup> On this basis, self-defense, in accordance with this article, is considered a temporary situation for the use of force until the Security Council takes the necessary legal measures to maintain international peace and security.<sup>651</sup>

#### ***d. Collective Security Measures***

Collective security is the second exception in which force can be used according to Article 42 of the UN Charter.<sup>652</sup> The first attempt to create a collective security system was in the League of Nations through many of its articles such as Articles 11, 16, 67, and 68. As a result of the shortcomings of previous attempts, the UN avoided these shortcomings by granting states the ability to establish effective collective security capable of establishing permanent peace.<sup>653</sup> The UN introduced a new system to collective security, devoting an entire chapter to this topic, which is Chapter Seven, through Articles 39 and 42. The seventh chapter defines the jurisdiction relating to security matters to the Security Council, which has the authority to assess, whether there is a threat to international peace and security and what action should be taken.<sup>654</sup>

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<sup>649</sup> Id., at 138.

<sup>650</sup> DIANE of Cochborne, *the preventive war in the theory of the just war*, University of Quebec, Montreal, 2011, at 32.

<sup>651</sup> Mostafa Ahmed Fouad, *UN and NGOs*, Legal Books House, Egypt, 2004, at 86.

<sup>652</sup> Article 42 of the Charter states: "If the Security Council considers that the measures provided for in Article 41 are not adequate or proved to be ineffective, it may take the action of the air, sea and land forces of its actions or acts to the extent necessary for its actions as may be necessary for the maintenance of international peace and security. Such actions may deal with demonstrations, blockades and other operations through the air, sea or land forces of the Members of the UN.

<sup>653</sup> Shabwa Wasila, *Dimensions of Collective Security under Public International Law*, Thesis submitted for a PhD in Public Law, Yusuf Bin Khadda University, Algeria, at 22-23.

<sup>654</sup> Id.

According to the UN Charter, the collective security is defined as “the effort to maintain international peace and security, which consists of two parts, a preventive part, meaning preventive measures to prevent aggression, and a remedial part after the occurrence of aggression, such as arresting and punishing the aggressor.”<sup>655</sup> Therefore, the UN Charter has determined the actions of the Security Council, that is, military and non-military measures as follows:

***e. Temporary Measures***

These are aimed at preventing the escalation of conflict and its spread to other parties from the international community and the deterioration of the situation as stated in article 40 of the UN charter.<sup>656</sup> These procedures include the following:<sup>657</sup>

1- Cease-fire, 2- Stop military recruitment, 3- Withdrawing the armed forces from certain areas, 4- Call to conclude armistice agreements, 5- To refrain from undertaking any act that would prejudice the sovereignty, independence and territorial integrity of the state.<sup>658</sup>

***f. Non-military Measures***

Article 41 of the UN Charter states the following:

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<sup>655</sup> Id. Maher Abdel-Moneim Abu Younis, *The Use of Force in Enforcing International Legitimacy*, at 94.

<sup>656</sup> Al-Dahaq Qusai, *UN Security Council and its Role in Maintaining International Peace and Security Between Texts and Application*, Master of Laws Note in International Law and International Relations, Faculty of Law, University of Algeria, 2002, at 46.

<sup>657</sup> Article 40 of the Charter states: "In order to prevent the situation from worsening, the Security Council, before making its recommendations or taking the measures provided for in Article 39, shall call upon the disputing parties to take such measures as it deems necessary or desirable from provisional measures. Provisional measures of the rights, claims or status of the disputants, and the Security Council shall consider that the disputants have not taken such provisional measures into account.

<sup>658</sup> Id.

The Security Council may determine the measures that must be taken that do not require the use of armed force to implement its decisions. The Security Council may request the members of the UN to implement these procedures, which may include:

- 1) Cessation of economic ties
- 2) Stop the railways, sea, air and land
- 3) Cessation of telegraphic, wired and wireless communications
- 4) Cessation of diplomatic and non-diplomatic relations.<sup>659</sup>

It is clear from Article 41 that the Council is free to impose non-military sanctions because these measures did not come exclusively, but rather for example.

#### ***g. Military Measures***

These measures are contained in the text of Article 42 of the Charter of the UN,<sup>660</sup> and shall be invoked if the non-military actions established by the Security Council are found insufficient for any purpose, so that any of these measures is subject to the approval and consent of permanent members of the Security Council.<sup>661</sup>

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<sup>659</sup> Text of Article 41 of the Charter of the UN.

<sup>660</sup> Article 42 of the Charter of the UN states: "If the Security Council considers that the measures provided for in Article 41 are not adequate or proved to be ineffective, it may take such action as may be necessary for the maintenance of international peace and security by air, naval and ground forces. Demonstrations, inventory and other operations by air, sea or land forces of the Members of the UN. "

<sup>661</sup> Mustafa Salama Hussein, *Dual Treatment in Public International Law*, Dar Al-Nahda Al-Arabiya, Faculty of Law, Egypt, 1987, at 122.

#### IV. THE REALITY OF THE SOVEREIGNTY OF THE STATE IN THE COMBATING AGAINST TERRORISM

Since the mid-twentieth century, the international community has become increasingly interested in taking effective action against terrorist crime in all its forms. To this end, the official circles of many States and international organizations, led by the UN, have worked to develop conventions, reports and recommendations condemning all forms of international terrorism and urging States to take measures to deter such crimes.<sup>662</sup> Terrorism has been on the UN agenda for decades, and fourteen international conventions have been developed within the framework of the UN system for specific terrorist activities.<sup>663</sup> Through the GA, Member States have been coordinating their counter-terrorism efforts and continuing their work on legal norms, through its specialized agencies, such as the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the International Atomic Energy Agency (IAEA) and the International Criminal Police Organization (Interpol).<sup>664</sup> These include:

- 1) Convention on crimes and certain Other Acts Committed on Board Aircraft in 1963.
- 2) The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, in addition to its 2010 Protocol.
- 3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.
- 4) Convention against the Taking of Hostages in 1979.
- 5) International Convention for the Suppression of the Financing of Terrorism, 1999.
- 6) International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.
- 7) Convention for the Suppression of Unlawful Acts Relating to the International Civil Aviation in 2010.<sup>665</sup>

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<sup>662</sup> Terosh Seyyed Ahmad. International intervention between state sovereignty and international peace and security. The Democratic Republic of Algeria Ministry of Higher Education and Scientific Research University of Bougherra Boumerdes. Faculty: Rights. School Year: 2016/2015, at 137.

<sup>663</sup> Id., at 138.

<sup>664</sup> Available at official website of the UN: [www.un.org/ar/terrorism/instruments](http://www.un.org/ar/terrorism/instruments).

<sup>665</sup> Id. Available at the official website of the UN: [www.un.org/ar/terrorism/instruments](http://www.un.org/ar/terrorism/instruments).



Member States have begun a new phase to combat terrorism by agreeing on a global counter-terrorism strategy, which was adopted on September 8, 2006 and formally launched on September 19, 2006, the first-time countries around the world have agreed on a unified strategic approach to combating terrorism.<sup>666</sup> This strategy is the basis for a specific plan to confront terrorism, as follows:

- 1) To address the circumstances conducive to the spread of terrorism
- 2) To prevent and combat terrorism
- 3) Take measures to build the capability of states to combat terrorism
- 4) Strengthening the UN counter-terrorism function
- 5) Ensuring respect for human rights in combat terrorism

This strategy is based on the consensus reached by the international community in the September 2005 conference, which condemns terrorism in all its forms.<sup>667</sup> This international consensus also led to the adoption of decisions and the establishment of numerous subsidiary bodies through the Security Council in combating terrorism.<sup>668</sup>

The GA passed Resolution 60/49 in February 1995 concerning measures needed to eliminate international terrorism. It states in the resolution that terrorist acts, methods and practices violates the UN's purposes and threatens international peace.<sup>669</sup> Through the previous report, terrorist acts can be defined as "those acts that aim to create a state of terror for political purposes among people, a group of people or specific individuals, which cannot be justified in

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<sup>666</sup> Id. Terosh Seyyed Ahmad. International intervention between state sovereignty and international peace and security, at 139.

<sup>667</sup> UN in Counter-Terrorism, available on the official website of the UN [www.un.org/en/terrorism](http://www.un.org/en/terrorism).

<sup>668</sup> Id. Terosh Seyyed Ahmad. International intervention between state sovereignty and international peace and security, at 140.

<sup>669</sup> - General Assembly resolution 60 at its 49th session of 17 February 1995, on the basis of the report of the Sixth Committee No. 49/743 / A.

any way, regardless of what these justifications are political, philosophical or Ideological, Ethnic."<sup>670</sup>

Since the Peace of Westphalia, January 30, 1648 and October 24, 1648, (Peace of Westphalia), a series of treaties that led to the end of the Thirty Years' War (1618-1648), Europe transformed from a political system to another order and a new international order arose. As the Peace of Westphalia resulted in the establishment of institutional arrangements devoted to the inviolability of the state's sovereignty and the immunity of its territorial borders by adopting the principle of non-interference in its domestic affairs.<sup>671</sup> However, these normative pillars that sought to sanctify state sovereignty have lost much of their value in light of the international changes after the post-Cold War, especially in the context of regional cooperation and interdependence movements between states.<sup>672</sup> In addition, new standards emerged with values as new human-centered concepts such as human security, international protection of human rights and the right to humanitarian intervention. This led to the dismantling of the values that had been established by peremptory norms of international law, such as the principle of national sovereignty and non-interference in the domestic affairs of States.<sup>673</sup>

Thus, combating international terrorism is one of the reasons that have led to the undermining of the national sovereignty and political independence of some countries.<sup>674</sup> The events of September 11, 2001 led to repercussions on the principle of national sovereignty, as the US strategy towards international terrorism was a unilateral approach based on force, which led

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<sup>670</sup> Id.

<sup>671</sup> Hassan al-Haj Ali Ahmed, *The African State and Theories of International Relations*, International Politics, No. 160, April 2005. at 28.

<sup>672</sup> Salim Bargouk, *Epistemology of International Relations in the Globalization of Human Rights in: The Strategic World*, Issue 08, Algeria: People's Center for Strategic Studies, January 2009, at 6.

<sup>673</sup> Id.

<sup>674</sup> Yousfi Amal, *Towards the Establishment of a New Legitimacy Parallel to International Legitimacy*, in: *The National Forum on the Use of Force in International Relations Between the Rule of Law and the Dominance of Power*, Tizi Ouzou: Faculty of Law and Political Science, 19-20 May 2013, at 1.

to the violation of the principle of national sovereignty.<sup>675</sup> As example, Richard Haass, director of the State Department's Bureau of Planning, believes that "states are no longer sovereign when their territories become safe shelter for international terrorism."<sup>676</sup>

The theory of absolute sovereignty has ended, especially in the current global situation, characterized by increasing interdependence between states, as well as with the impact of combating international terrorism, human rights and democracy, which results in the right to humanitarian and democratic intervention.<sup>677</sup> This made the concept of sovereignty more theoretical than realistic. The state has become, in light of the current international changes, a more legal entity than is realistic due to the contraction of the material value of absolute national sovereignty, through the increasing role of non-national and transnational actors.<sup>678</sup> Indeed, national sovereignty under the current international transformations has ended due to foreign pressures and interventions, as well as domestically due to identity struggles and separatist movements that often lead to the fragmentation of national unity.<sup>679</sup>

In the final analysis, the issue of sovereignty can be divided into three main directions that dealt with the challenges of national sovereignty in light of the current international changes.

- 1) The regression in sovereignty is due to the effects of the forces of globalization at all levels, whether economic, political, cultural, and technological. . . etc.<sup>680</sup>
- 2) Sovereignty has to be flexible enough to be suitable for current international changes. However, at the same time, they reject the idea of the demise of sovereignty, and link the existence of sovereignty to the continuity of the state.<sup>681</sup>

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<sup>675</sup> Id., at 2.

<sup>676</sup> Id.

<sup>677</sup> Id. Salem Bargouk, *Epistemology of Drug Relations in the Globalization of Human Rights*, at 8.

<sup>678</sup> Id.

<sup>679</sup> Id., at 9.

<sup>680</sup> Hassan A. Al-Aid, *The Implications of Globalization on National Sovereignty*, First edition, Amman: Dar of Treasures of Knowledge, 2008, at 61.

<sup>681</sup> Id.

- 3) The idea of transforming the sovereignty of the single state into institutions of global governance as a goal in achieving the desired global government.<sup>682</sup>

In light of these new theoretical assumptions that challenge the traditional concept that governs international relations, we will discuss the challenges facing national sovereignty in light of the current international changes in Libya.

#### **A. The Reality of Sovereign in The War Against Libya in 2011**

Based on the above study, we will address the intervention in Libya 2011 through the legal concept and focus on all its aspects and the application of international laws regarding that crisis and its impact on international peace and security, as well as whether the 2011 met international legal requirements.

Libya's transformation changed its political history, which had been under the rule of Colonel Muammar Gaddafi for nearly 41 years, and tribal control, which deprived most of the community's intellectuals from participating in political life.<sup>683</sup> Gaddafi relied on an authoritarian policy that made him the foundation of the state, and which created the mechanisms that guaranteed his continuity, including the formation of revolutionary committees and tribal politics as components of the system.<sup>684</sup> As a result of the strict policy of the Gaddafi regime, it was difficult for the people to lead regime change on their own.<sup>685</sup>

As a result of the strictness of the regime, the protests that erupted in Libya turned into an armed conflict between the opposition and the regime, which was out of control, prompting

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<sup>682</sup> M. Boubouche, *The Impact of Current International Transformations on the Concept of National Sovereignty*, Hafez Abdul Rahim et al.: *Sovereignty and atower, National Perspectives and Global Boundaries*, Beirut: Center for Arab Unity Studies, at 132.

<sup>683</sup> Faqih, Ahmad, and others: *Where the Arabs Go*, Arab Thought Foundation, Beirut, 2012. at 211.

<sup>684</sup> Id.

<sup>685</sup> Id.

the international community to intervene through NATO forces.<sup>686</sup> The use of excessive force and aerial bombardment to suppress the demonstrators during the Libyan revolution resulted in many civilian deaths. The repression operations resulted in human tragedy and gross violations of human rights, forcing many Libyans to flee the country, especially to Tunisia and Egypt.<sup>687</sup>

To confront these human rights violations, the leaders of the revolution, through the League of Arab States, used NATO air forces under the justification of protecting Libyan civilians from the persecution by Gaddafi's regime.<sup>688</sup> The recognition by the international community of the National Transitional Council led to Gaddafi's government, and the collapse of its political legitimacy, as the National Council became the legitimate representative of the Libyan people.<sup>689</sup> Through the UN and the UN Security Council, the international community took measures to protect Libyan civilians and save them from the armed conflict in Libya, by issuing resolutions 1970 and 1973 as a legitimate umbrella for international humanitarian action to intervene in Libya.<sup>690</sup>

## **B. UN Resolutions**

Implementation of the Responsibility to Protect in light of Security Council resolutions in the Libyan case was based on a legal duty to protect by humanitarian intervention.<sup>691</sup> As there were convictions among the international community that protecting Libyans was the responsibility of all countries, when there were mass killing, ethnic cleansing and crimes against

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<sup>686</sup> Id., at 212.

<sup>687</sup> Haseeb, Kheireddine: Libya. Where to? The fall of the Gaddafi Regime. But? Arab Future Magazine, Center for Arab Unity Studies, No. 372, Year 34, September 2011, at 7.

<sup>688</sup> Id.

<sup>689</sup> Id., at 8.

<sup>690</sup> Tayseer Ibrahim Qudaih. International Humanitarian Intervention The case study of Libya 2011 This thesis provided an update to the requirements for obtaining a master's degree in political science from the Faculty of Economics and Administrative Sciences - Al-Azhar University – Gaza. 2013, at 140.

<sup>691</sup> Id.

humanity, the international community had to address the situation.<sup>692</sup> Therefore, the UN, through the Security Council, implemented legal measures to protect Libyan civilians.<sup>693</sup>

The view of the International Committee for Intervention and State Sovereignty in preparing its report for the year 2001 came as “there is no preferable or more appropriate body than the UN Security Council to handle issues of international humanitarian intervention, as the executive organ of the UN, and it bears primary responsibility for preserving international peace and security in accordance with article 24 of the Charter.”<sup>694</sup>

As a result of the Security Council’s move, Resolution No. 1970 was unanimously adopted on February 26, 2011, which may be justified by precedents as a case of Lockerbie that distinguished Libya alone among other Arab countries that witnessed the same events.<sup>695</sup> As evidenced by previous sanctions, the sanctions imposed on Libya previously in the wake of the Lockerbie case, in Resolution 748 of March 31, 1992 by the Security Council, imposed an economic embargo. We will discuss resolution 1970, and resolution 1973, issued with regard to the responsibility to protect civilians by the UN, which is explicitly mentioned in the resolution in the ninth pre-ambler paragraph: “ indicating that the responsibility of the Libyan authorities to provide protection for their residents.”<sup>696</sup>

## **1. Security Council Resolution 2011/1970**

The justification for this resolution is to condemn the violence practiced by the Libyan authorities against civilians, as well as the gross violations of human rights and international

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<sup>692</sup> Id.

<sup>693</sup> Id., at 141.

<sup>694</sup> Protection Responsibility Report, International Commission on Intervention and State Sovereignty, December 2001, at 52.

<sup>695</sup> Id. Tayseer Ibrahim Qudaih. International Humanitarian Intervention The case study of Libya 2011, at 41.

<sup>696</sup> Security Council, Resolution 1970 (2011) of 26 February 2011, relating to the situation in Libya.

humanitarian law.<sup>697</sup> As well as the dire humanitarian situation that requires intervention in accordance with international law and which falls within the scope of the Security Council, which prompted the Security Council to intervene by issuing Resolution No. 1970/2011 on the Libyan issue.<sup>698</sup> The content of the Security Council resolution as follow:

The first preambles paragraph of the resolution states that the Security Council:

- 1) Expressing concern about the situation in the Libyan Arab Jamahiriya, and condemning the violence and use of force against civilians.
- 2) Condemnation of gross and systematic violations of human rights, including the repression of peaceful protesters<sup>699</sup>
- 3) Expresses concern over the killing of civilians, and categorically rejects incitement from the highest levels of the Libyan government to acts of aggression.<sup>700</sup>
- 4) The intervention of the Security Council is carried out in accordance with Chapter VII of the UN Charter, which allows it to work for the conservation of international peace and security, in particular Article 41 of the Charter.<sup>701</sup>
- 5) The Security Council is allowed to take any appropriate measures, which are not based on the armed forces, including the suspension of economic relations and transportation of all kinds, as well as the possibility of severing diplomatic relations.<sup>702</sup>

According to the preamble, the widespread and systematic attacks in Libya may constitute a crime against humanity, and the Council was concerned about the refugees who were forced to flee the violence in Libya.<sup>703</sup> The resolution also included non-military measures consistent with the principle of responsibility to protect civilians in order to deter the continuous and systematic aggression against the civilian population in Libya, as follows below.<sup>704</sup>

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<sup>697</sup> Hussein Khalil: Occupation of Libya by Resolution 1970, UAE Gulf newspaper, 3/4/2011

<sup>698</sup> Valos Yassin. Intervention in Libya between Legitimacy and Aggression, Master's Degree in International Law and International Relations. Ben Youssef Ben Khedda University, Algeria - 1- Faculty of Law. University Year 2017/2016, at 158.

<sup>699</sup> Id.

<sup>700</sup> Id., at 159.

<sup>701</sup> Id.

<sup>702</sup> Id.

<sup>703</sup> Zardoumi Alaeddine, Foreign intervention and its role in the overthrow of the Gaddafi regime, Master Thesis, Faculty of Law and Political Science, University of Biskra, 2013/2012, at 123.

<sup>704</sup> Id.

**a. Forward The Case to The International Criminal Court**

Refer the situation in Libya to the Prosecutor of the International Criminal Court to investigate the crimes committed by Gaddafi forces against civilians, as previously discussed in Section 2 of Chapter 1.<sup>705</sup>

**b. Arms Embargo**

Article 9 of the resolution stated that “all member states shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer of all types of weapons to Libya, including arms, ammunition, military and paramilitary vehicles, equipment and auto parts.”<sup>706</sup>

**c. Travel Ban**

The travel ban was mentioned in Article 15 of the decision as " All states must take the necessary measures to prevent individuals listed in the first annex to this resolution, whose names are publicly identified by the committee established under Article 24 of the resolution, from entering their territories or transiting into other countries."<sup>707</sup>

As a decision was issued to ban travel on 16 individuals from Libya, including Gaddafi and his sons: “Muhammad Al-Baghdadi, Abdul Qadir Youssef Al-Debri, Abu Zaid Omar Dorda, Abu Bakr Yunus, Maatuq Muhammad Maatouq, Seed Muhammad Qaddaf Al-Dam, and Abdullah Al-Senussi.”<sup>708</sup>

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<sup>705</sup> Id., at 124.

<sup>706</sup> Id. Valos Yassin. *Intervention in Libya between Legitimacy and Aggression*, at 161.

<sup>707</sup> Id. Zardoumi Alaeddine, *Foreign intervention and its role in the overthrow of the Gaddafi regime*, at 125.

<sup>708</sup> Id.



#### **d. Freeze Assets**

Whereas it is stated in Article 17 of the resolution that “all member states shall, without delay, freeze all funds, financial assets and other economic resources on their territories that are owned or controlled directly or indirectly by the entities or individuals listed in the second annex of this resolution, or as determined by the committee established pursuant to Article 24 of this resolution.”<sup>709</sup>The council is also obligated to apply the principle of responsibility to protect civilians, which falls under international responsibility, as stated in the resolution.<sup>710</sup>

Based on the Libyan regime's responsibility to protect its citizens, the Council noted that the resolution did not address the second pillar of the responsibility to protect, which is the responsibility of the international community to protect in accordance with paragraphs (138, 139) of the 2005 World Summit Outcome. The second pillar is international assistance to Libya to build its capacity to achieve security for its citizens.<sup>711</sup>

## **2. Security Council Resolution 2011/1973**

On 17 March 2011, after the Libyan authorities failed to respond to Security Council Resolution 1970, the security and humanitarian situation deteriorated in Libya and the large number of civilian casualties occurred, the situation in Libya became a threat to international peace.<sup>712</sup> Also, the 1970 resolution failed to provide protection for civilians who suffered massive violations of their rights in accordance with the rules of international human rights and humanitarian law.<sup>713</sup> In fact, the first resolution does not include full protection in a way that

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<sup>709</sup> Saleh Mohamed Mahmoud Badr El-Din, *The Principle of Responsibility to Protect in International Law: An Empirical Study on the Libyan Crisis*, *Helwan Journal of Legal and Economic Studies*, No. 26, January-March 2012, at 156

<sup>710</sup> *Id.*

<sup>711</sup> *Id.*, at 157.

<sup>712</sup> *Id.* Valos Yassin. *Intervention in Libya between Legitimacy and Aggressio*, at 164.

<sup>713</sup> *Id.*

protects the civilian population, as it did not entrust clear and specific obligations to the member states of the UN to undertake assistance in accordance with the principle of responsibility to protect.<sup>714</sup> The resolution imposed only the fragile and flexible obligations that were previously described, as states can evade these obligations, especially those bordering regionally with Libya, without any consideration of the 1970 resolution.<sup>715</sup> As mentioned, the continuation of aggression and warnings launched by organizations working in the field of human rights, caused the Security Council to issue Resolution No. 1973/2011 on the Libyan issue.<sup>716</sup>

The Security Council adopted this resolution, which included several measures that focused on punishing Gaddafi and his government and preventing his forces from advancing while helping and rescuing civilians at the same time.<sup>717</sup> The Security Council imposed a comprehensive no-fly zone over Libyan territory, including commercial and military aircraft to prevent over-flights and movement of Gaddafi forces over their airspace and prevent them from bombing civilians,<sup>718</sup> calling upon all countries to prevent the take-off or landing of any military or even commercial aircraft coming from or heading to Libya.<sup>719</sup> Also, all countries were asked to protect civilians in Libya, even if the state's military intervention. At the same time, the resolution confirmed that there would be no presence of the UN military forces on Libyan land.<sup>720</sup>

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<sup>714</sup> Id., at 165.

<sup>715</sup> Id.

<sup>716</sup> Id., at 166.

<sup>717</sup> Id. Tayseer Ibrahim Qudaih. International Humanitarian Intervention The case study of Libya 2011, at 142.

<sup>718</sup> Id., at 143.

<sup>719</sup> Id.

<sup>720</sup> Id.

UN states would be allowed to organize bombing, other than the no-fly zone, to destroy Gaddafi's forces and protect the population in case Gaddafi refused a ceasefire.<sup>721</sup> However, the application of Resolution No. 1970 on the arms embargo on Gaddafi's forces was broader and better in terms of implementation, as well as adding more names of people and organizations to the travel ban and money freeze list as a way to prevent Gaddafi from using them.<sup>722</sup>

In addition, the resolution requested the Secretary-General of the UN to form an eight-person monitoring committee to verify the implementation of all these decisions. Similar to Resolution 1970, the Resolution No. 1973 affirmed the responsibility of the Libyan authorities to protect civilians, and considered that the situation in Libya threatens international peace and security.<sup>723</sup> Resolution 1973 also referred to the responsibility to protect in the four-preamble paragraph, which making it consistent with Resolution 1970.<sup>724</sup> This decision stated, once again, "the council reiterates the responsibility of the Libyan authorities to protect the Libyan people, and reaffirms that the armed conflict parties bear the primary responsibility for taking all possible steps."<sup>725</sup> The new that came in Resolution 1973 in the matter of protecting civilians is in the text of the fourth paragraph as "authorizes Member States that have notified the Secretary-General, acting at the national level or through regional organizations or arrangements, and in cooperation with the Secretary-General, to take all necessary measures, notwithstanding the provisions of paragraph 9 of resolution 70/2011, to protect civilians and populated areas, those

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<sup>721</sup> Id. Saleh Mohamed Mahmoud Badr El-Din, *The Principle of Responsibility to Protect in International Law*, at 157.

<sup>722</sup> Id.

<sup>723</sup> Id., at 158.

<sup>724</sup> Rabhi Lakhdar, *International Intervention between International Legitimacy and the Concept of Sovereignty*, athD Dissertation, Faculty of Law and Political Science, University of Abi Bakr Belkaid, Tlemcen, 2015/2014. At 314.

<sup>725</sup> Id.

exposed to the risk of attack, while excluding any occupying forces of any form and on any part of the Libyan territories."<sup>726</sup>

### **C. Analysis of Decisions**

The specialists see the resolution to intervene in Libya that it is characterized by lack of specificity and clarity about who should intervene in Libya, and they also believe that it does not explicitly order military intervention by force, this is what we will address as follows:

#### **1. Lack of Clarity on Who Should Intervene**

After the issuance of the UN resolution 1970 calling for an end to violence in Libya, which critics considered it inadequate and Gaddafi did not stop his progress in violence, which made the international community confused about the humanitarian situation in Libya. After the Arab League directly appealed to the Security Council with Resolution 7360/2011, which summarizes the situation in Libya, the UN Security Council issued its Resolution No. 1973.<sup>727</sup> Whereas, the League of Arab States holds the Security Council directly responsible, by Resolution 7360/2011, in the event of non-immediate intervention and imposing an air embargo on preventing Gaddafi from advancing towards Benghazi.<sup>728</sup> However, this resolution came with unclear and overbroad clauses and phrases such as:

##### **a. The Fourth Paragraph**

Authorizes Member States that have notified the Secretary-General, acting at the national level or through regional organizations or arrangements, and in cooperation with the Secretary-

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<sup>726</sup> Id., at 315.

<sup>727</sup> Torelli, Maurice: Is humanitarian assistance turning into humanitarian intervention, Studies in contemporary international law, by d. Mufid Shehab, Dar al-Mustaqbal al-Arabi, Beirut, 2000, at 26.

<sup>728</sup> Id.

General, to take all necessary measures,<sup>729</sup> notwithstanding the provisions of paragraph 9 of resolution 70/2011, to protect civilians and populated areas, those exposed to the risk of attack, while excluding any occupying forces of any form and on any part of the Libyan territories.<sup>730</sup>

**b. The Sixth Paragraph**

Member States that have notified the UN Secretary-General and the Secretary-General of the League of Arab States, at the national level or through regional organizations or arrangements, are authorized to take all necessary measures to comply with the flight ban according to Paragraph 6 of the same resolution.”<sup>731</sup> Whereas the Security Council decided in paragraph 6 of this resolution, as an example, to ban all flights in the airspace of Libya to help protect civilians, except for humanitarian flights.<sup>732</sup> In March 2011, based on the mandate granted by the Security Council under Resolution 1973, NATO forces intervened in Libya for humanitarian reasons.<sup>733</sup>

Through these previous articles of the resolution, we note the following defects: <sup>734</sup>

- 1) The aforementioned international resolution did not contain any reference or authorization to NATO to intervene in Libya, except for the establishment of a no-fly zone.<sup>735</sup>
- 2) NATO attacked a sovereign country inconsistent with the UN Charter.<sup>736</sup>
- 3) NATO is just a defensive alliance, and no country has been exposed to any aggression from Libya, therefore, NATO's actions are considered a case of aggression according to international law.<sup>737</sup>

Thus, the NATO intervention in Libya had political goals.

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<sup>729</sup> Id., at 27.

<sup>730</sup> UN Security Council Resolution 2011/1973.

<sup>731</sup> Id.

<sup>732</sup> Jad, Emad: International Intervention between Humanitarian Considerations and Political Dimensions, Center for Political Studies, Strategy in the pyramids, Cairo, 2000, at 131.

<sup>733</sup> Id.

<sup>734</sup> Zaidan, Mosaad Abdulrahman, UN Intervention in Non-International Armed Conflicts, Legal Books House, Mahalla al-Kubra, 2008, at 255.

<sup>735</sup> Id.

<sup>736</sup> Id.

<sup>737</sup> Id., at 256.

## 2. The Explicit Absence of Any Military Action in The Resolution<sup>738</sup>

The Security Council issued Resolutions No. 2011/1970 and Resolution No. 2011/1973. In the preamble to the resolutions, the Security Council expresses its concern about the deteriorating situation in Libya and condemns the gross and systematic violations of human rights.<sup>739</sup> The council's concern is mainly based on international conventions and customs related to human rights, and that the council acted in accordance with Chapter Seven of the Charter.<sup>740</sup> The aforementioned resolutions emphasized the protection of civilians as well as authorizing Member States to act at the national level through national or regional organizations to take the necessary measures to protect civilians while excluding the use of force or occupation in any form in accordance with Article 4 of Resolution 1973.<sup>741</sup>

Thus, the Security Council has authorized member states to take deterrent arrangements through regional organizations or recommend specific plans with a deterrent status on the basis of Articles 53 and 54 of the UN Charter in order for NATO's intervention to be legal.<sup>742</sup> NATO's intervention in Libya is contrary to what has been indicated in accordance with the legal provisions contained in Chapter Eight of the Charter. This military intervention is considered aggression and violates the principles and objectives stipulated in the UN Charter, which constitutes aggression against others according to the definition of aggression approved by the UN in its Resolution No. 3314 of 12/24/ 1974.<sup>743</sup> Because protecting human rights and the

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<sup>738</sup> Id.

<sup>739</sup> Id.

<sup>740</sup> Al-Alayli, Jihan: Responsibility for Protection: The Cases of Libya and Syria, Al-Shorouk Newspaper, September 12, 2012: <http://www.shorouknews.com/columns/view.aspx?id=5909d2d9>.

<sup>741</sup> Hussein, Khalil: Libya's Occupation by Resolution 1970, UAE Gulf Newspaper, 3/4/2011. <http://www.alkhaleej.ae/portal/9bb7b822-a17d>.

<sup>742</sup> Id.

<sup>743</sup> Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the UN, in accordance with this definition.

freedoms that some countries depend on against others is a standard that aims to achieve only one-sided interests.<sup>744</sup>

The use of regional arrangements by the Security Council to interfere in the affairs of other states and resort to force under Chapter VII of the Charter obligates those organizations to be under supervision.<sup>745</sup> Therefore, it is not permissible to carry out any act of suppression without permission from the Council and should be fully aware of what has been done.<sup>746</sup> These regional arrangements were approved by the UN Declaration No. 265 (25th) session on October 24, 1970.<sup>747</sup>

Although the two resolutions are based on Chapter 7 of the UN Charter, which establishes a framework for restrictive UN interventions in respond to aggression and maintain international peace and security, they do not explicitly and directly address military action against Libya.<sup>748</sup> The first resolution affirmed the ceasefire, referred the situation to the International Criminal Court, imposed a freeze on the assets and resources of the Libyan regime, and a list of individuals and institutions concerned with this procedure.<sup>749</sup>

The second resolution affirmed the urging of the member states of the UN to coordinate among them and in cooperation with the Secretary-General to facilitate and support the return of humanitarian organizations to Libya and to provide humanitarian aid to them.<sup>750</sup> The fact that the UN intervention in Libya under the two previous resolutions was imposed by humanitarian

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<sup>744</sup> Zarq Hamad al-Awadi, article entitled, his look at the legal aspects of NATO military intervention in Libya, Available on the website 279011 = <http://www.ahewar.org/debat/show.art.asp?Aid=279011> Last visit

<sup>745</sup> Id. Torelli, Maurice: Is humanitarian assistance turning into humanitarian intervention?, at 31.

<sup>746</sup> Id.

<sup>747</sup> Id., at 32.

<sup>748</sup> Id.

<sup>749</sup> Boras Abdelkader, International Intervention and the Return of the Principle of National Sovereignty, Dar Al-Jamia New, Alexandria, 2009, at 10.

<sup>750</sup> Id.

factors and a moral responsibility of the international community, due to the seriousness of the situation in Libya.<sup>751</sup>

#### **D. Consequences**

The intervention in Libya had serious consequences, which are as follows:

##### **1. Security Problem**

The transformation of the Libyan crisis from peaceful to armed revolution had a great impact on prolonging the duration of the crisis since the outbreak of the February 2011 revolution until the death of Libyan President Muammar Gaddafi. The armed conflict also had an impact on the process of building Libya after the revolution, in terms of the proliferation of weapons in the hands of all tribesmen, which threatens the existence of any state.<sup>752</sup> The proliferation of weapons after the fall of the Gaddafi regime led to the emergence of armed groups with a "jihadist" idea based on various ideological backgrounds among the Salafists, the Muslim Brotherhood, Al Qaeda, ISIS and others.<sup>753</sup> Whereas the militants split into different directions in the form of armed militias, which affected all state institutions and disrupted the foundation of the state.<sup>754</sup> The crisis has produced armed formations such as the rebels, as they call themselves, in addition to the Gaddafi Brigades and the militias, which indicates that the revolution had turned into a civil war.<sup>755</sup>

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<sup>751</sup> Jamal Hammoud Dmour: Legitimacy of International Sanctions and Intervention against Libya Sudan, Somalia, 1st edition, Jordan, New Printing and Publishing Company, 2004, at 51.

<sup>752</sup> Id.

<sup>753</sup> Id., at 52.

<sup>754</sup> Id.

<sup>755</sup> Ziad Akl, an article entitled, Internal Failure and External Interference in the Jamahiriya, Politics International. Available at <http://www.siyassa.org/NewsContent/12/116/1670/>



## 2. Partition Risk

Historically, Libya was comprised of three states, and on April 26, 1963, Idris Al-Senussi, the King of Libya, announced the end of the federal system and the transformation of Libya to a unified state. After the government of Mohieddin Fakini proposed a constitutional amendment, which was approved by the House of Representatives, the Senate and the legislative councils of the three states, resulted in the unity of Libya as a result of the struggle of the founding fathers.<sup>756</sup> This marked the end of the federalism that divided the country into three states of Cyrenaica, Fezzan and Tripoli, which practically reflected the political and administrative reality of Libya after the Allied victory in World War II.<sup>757</sup> As a result of the crisis, a wide debate emerged about the return of the previous division of federalism, which poses problems and challenges that will affect the shape of the country's political future.<sup>758</sup> These challenges relate not only to the fact that Libya does not have effective power, but also to the post-war situation. The revolution also led to regional and tribal trends and conflicts, especially in the regions or cities where the armed conflict occurred.<sup>759</sup> During the era of Gaddafi, federalism was not an issue in Libya; however, after the revolution, the situation changed and advocates of federalism appeared, especially in Cyrenaica, which was marginalized.<sup>760</sup>

Tribal leaders, political figures and militia leaders in eastern Libya announced a plan to form a council to manage the affairs of what they called the “Cyrenaica Region.” About 3000 tribal delegates in eastern Libya participated in the Cyrenaica conference, in which Ahmad Al-Zubair Al-Senussi was elected president of the state of Cyrenaica. Libyan sources stated that

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<sup>756</sup> Id.

<sup>757</sup> Menchaoui Ibrahim, article entitled, Conflict rages: The dilemma of armed groups in Libya, available on the website <http://www.acrseg.org/2390>

<sup>758</sup> Id.

<sup>759</sup> Id.

<sup>760</sup> Id.

"Fezzan" was also ready to declare itself a federal region in the next few days, in which a member of the Transitional Council, Abdul Majeed Saif Al-Nasr, announced efforts to declare the State of Fezzan.<sup>761</sup> In the end, this will be confirmed by the war in the vicinity of Tripoli between the forces of Khalifa Haftar and the forces of the Government of National Accord, which is described as the war between the east and west of the country, which resulted in a threat to the unity of the country.<sup>762</sup>

### 3. Nation-building

During the Gaddafi era, Libya was distinguished from the rest of the Arab system by the absence of a specific definition of the political system of a state in terms of the constitution and the bureaucratic institutional structure of the army, parliament, and security, as it relied on a backward system.<sup>763</sup> This has resulted in a major challenge for the National Council during the transitional period in terms of the maturity of the sovereign institutions such as the National Army, security and various ministries. In addition to the difficulty of creating a political climate that allows political ideas to be crystallized in different directions and thus contribute to providing the necessary environment for the formation of real institutions.<sup>764</sup> The future of state and regime in Libya is a difficult political reality. The armed conflict that became a civil war was one of the main causes that threaten the existence of the country.<sup>765</sup>

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<sup>761</sup> Mohammed al-Harmawi, article entitled, Responsibility to Protect: Assessing NATO's Military Role in Libya, available on the website, at 1.

<http://www.ahewar.org/debat/show.art.asp?aid=375376>

<sup>762</sup> Id., at 1.

<sup>763</sup> Id., at 2.

<sup>764</sup> Idriss Lakrini, article titled, Humanitarian Intervention in Libya and the Dangers of Deviation, available on the website, at 2.

[http://www.diwanalarab.com/spiatphp?page=article&id\\_article=28057](http://www.diwanalarab.com/spiatphp?page=article&id_article=28057).

<sup>765</sup> Id., at 2.

#### 4. Security Challenge

In the absence of a regular army in Libya, whether in the Gaddafi regime or in the current regime the militias have become the biggest problem in the country, which considers these militias the most important pillars of the informal security structure of the state.<sup>766</sup> This security chaos resulted in more than 125,000 armed civilians, and also led to several wars between militias. The collapse of security institutions and the looting of weapons stores, the proliferation of weapons in Libya, provided an opportunity for the emergence of organized crime and the spread of reprisals that led to the deaths of thousands.<sup>767</sup>

Therefore, the basic requirements for building a new Libyan state are to provide a minimum level of security stability. Accordingly, militias must be disarmed, and the building of the Libyan National Security Forces must be supported in order to achieve general stability. On the other hand, all Libyans must be granted the right to participate in the new system without any political or social discrimination because of its impact on the stability of the security situation.<sup>768</sup>

Finally, changing the Libyan regime through international humanitarian intervention in the form of a military intervention opened the door to the unknown in Libya, whether from a humanitarian, political, security or social point of view. The assassination of the American ambassador in Libya during the attack on the consulate in Benghazi revealed the disastrous and chaotic situation that the country has reached.<sup>769</sup> The international intervention should have been linked to national efforts to establish a democratic state, which would lead to dismantling

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<sup>766</sup> Id.

<sup>767</sup> Nouri al-Salah, an article entitled international intervention in Libya humanitarian reasons? Or a colonial cook., 03/28/2011, Available on the website, at 1.  
<http://www.turess.com/alchourouk/186024>

<sup>768</sup> Moataz Salama, article entitled, League of Arab States and post-revolutionary challenges, Available at <http://www.alarabiya.net/en/arabic-studies/2013/04/21/>, at 3.

<sup>769</sup> Id.

anarchic structures and creating new structures capable of achieving peace and security.<sup>770</sup> The effective intervention aims to find a final solution through building a state capable of maintaining the stability and providing security and safety.<sup>771</sup>

## **V. CONCLUSION**

The events of September 11, 2001, which had repercussions in the confrontation of the spread and diversity of transnational terrorist organizations, led to the development of security strategies to combat terrorism and manage the war on terror, which has become the basis of global politics. Because it has turned into a war zone as it is the best environment for terrorism, the Arab region became the focus of attention on terrorism. As a result, this region has not achieved complete peace and independence until now, especially with the spread of international terrorist organizations such as Al Qaeda and ISIS in Iraq, Syria and Libya.

The dramatic transformation of the Arab world at the beginning of 2011, through peaceful protest movements calling for democratic change and the establishment of a free society, led to a decline in terrorism discourse. On the contrary, different segments of society have expressed their desire to create a democratic climate that safeguards public freedoms, basic rights and human dignity, and establishing a state of right and development. However, extremist tendencies soon returned to the countries of the Arab Spring, and terrorist organizations dominated the political scene in many Arab countries as a result of these conflicts, especially after the emergence of the counter-revolution and the return of previous regimes with vengeful desires, which led to the deterioration of the security situation and the provision of a suitable environment for terrorism. Based on the above, it is necessary to clarify the difference between

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<sup>770</sup> Id.

<sup>771</sup> Id., at 4.

the Arab revolutions and the counter-terrorism and how international laws deal with these phenomena, as well as highlight their prospects in the Arab region and the world. The study showed that there are many reasons and motives that have led to the spread of terrorist acts and that make legislation, whether national, regional or international, insufficient to combat international terrorism alone. The international community and international organizations must implement international conventions and legislation that criminalize terrorism. To complete the international efforts to combat terrorism at the international level, there is a need for complementary action and cooperation at all levels, and intensify sincere national and regional efforts to create a stable and secure international community.

Therefore, to be successful in combating international terrorism, the term itself must be carefully reviewed and defined in an objective, scientific manner. It must also be placed in its proper context, and the moral, political and legal standards must be established to distinguish terrorism from the struggle of peoples for their liberation and independence. Terrorism must also be distinguished from similar crimes such as aggression, political violence, political crime and organized crime.

Finally, the framework of the Convention against International Terrorism has produced legal provisions, but it lacks binding force, resulting in ineffective law enforcement and non-compliance by states. Therefore, the absence of an effective legal system to combat international terrorism has created sufficient space for the development of methods used by terrorists in their operations. This is due to the failure of states to join international conventions in combating terrorism and the failure of the international community to conclude a comprehensive general convention for combating terrorism. The absence of the will of some countries has led to the

failure and weakness of the Convention's framework to combat international terrorist.

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**III. CHAPTER**  
**Development Of Individual Responsibility**  
**In**  
**International Criminal Law And Criminal Justice**  
**As An Impact On The War Against Terrorism**

The First and Second World Wars are considered the most horrific conflicts in terms of human carnage. The First World War was the starting point that led to the idea of personal criminal responsibility against perpetrators of those grave violations. The international criminal judiciary was cleared to prosecute the perpetrators, which was by establishing a court to try Emperor Germany Gallium II, which is considered the first attempt to lay responsibility in international criminal law, as well as the trial of major German war criminals in Leipzig.<sup>772</sup>

World War II was the starting point for establishing personal criminal responsibility and creating an international criminal jurisdiction to determine this responsibility, by creating the Nuremberg and Tokyo Courts, which formulated important principles. These courts tried many of those responsible for crimes and violations of human rights and international humanitarian law. The international community joined to establish a criminal judiciary to prosecute individuals and punish them for serious violations of the rules of international humanitarian law and human rights. As a result, the Security Council intervened under Chapter VII and issued Resolution No. 827 and Resolution No. 955, according to which the Yugoslavia and Rwanda Courts were established, in view of the grave breaches of human rights in the commission of war

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<sup>772</sup> Amjad Anwar, Immunity is One of the Challenges Facing the International Criminal Court, Journal of the Police Research Center, No. 27, 2005, at 461.

crimes, crimes against humanity, and genocide.<sup>773</sup>

The individual's position in international law was strengthened, and became one of the subjects of criminal responsibility at the international level, which led the international community to call for a permanent international criminal jurisdiction to condemn international crimes, and punish the perpetrators, whatever their official position. This is what was previously expressed in the list of Nuremberg and Tokyo.<sup>774</sup> This is what happened in the 1998 Rome Conference of Plenipotentiaries, where a permanent international criminal court was established whose statute entered into force in 2002 and thus the court began exercising its jurisdiction over individuals who contributed to, or committed crimes within the jurisdiction of this court (genocide, war crime, crime of aggression and a crime against humanity). This responsibility (the criminal responsibility of individuals) has been largely confirmed in Article 25 of the Rome Statute, where we find that the permanent international criminal court system recognizes individual criminal responsibility for all perpetrators of international crimes that fall within the jurisdiction of the court, and without distinguishing between commanders and military chiefs or those of high and official ranks in the state, meaning that it no longer considers immunity.<sup>775</sup>

The importance of this issue, that individual criminal responsibility, is evident in that criminal legal rules is one of the most important controls for safeguarding the values and interests of humanity and this is to achieve the justice that the international community wants towards the perpetrators of criminal acts, after excluding the idea of holding persons accountable for the difficulty of determining the responsibility of a state. As individual criminal responsibility did not formally appear until the emergence of the Military Court (Nuremberg) under the London

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<sup>773</sup> Id., at 462.

<sup>774</sup> Abu Al-Khair Ahmed Attia, *The Permanent International Criminal Court: Study of the statute of the court and the crimes that are concerned with its consideration*, Dar Al-Nahda Al-Arabiya, Cairo 1999, at 5.

<sup>775</sup> Id.



Convention 1945, whose provisions were aimed at Semitic citizens of the Nazi regime and not only ordinary individuals, and to punish those responsible for violating the principle of international peace and security.<sup>776</sup>

## **I. THE EVOLVING POSITION OF INTERNATIONAL CRIMINAL LAW ON TERRORISM**

Combating terrorism, along with the strong rhetoric of counter-terrorism in international forums, have blurred the lines between armed conflict and terrorism, with potential negative implications for humanitarian law. There is an increasing orientation among states regarding any act of violence carried out by a non-state armed group in an armed conflict consider as a “terrorist” act by definition.<sup>777</sup>

This is with the some countries that recognizing armed conflict in their territories would legitimize armed groups from non-states. The result denies that these terrorists, can be a party to a non-international armed conflict within the meaning of criminal international law. The developments witnessed by the international scene have placed the issue of the relationship between the legal frameworks that govern international criminal law and terrorism once again in the spotlight.<sup>778</sup>

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<sup>776</sup> Ahmad Bishara Musa, International Criminal Responsibility of the individual, Letter to obtain a doctorate degree in international law and international relations, University of Algeria 2007/2006, at 02.

<sup>777</sup> Ao Muhammad. The application of international humanitarian law and human rights in the framework of combating terrorism. Thesis for a doctorate in public law, University of Algeria 01 Faculty of Law. University year: 2015 – 2016, at 123

<sup>778</sup> Id.

## A. Prohibiting Terrorism in International Armed Conflicts

The four Geneva Conventions of 1949 stipulate in their joint article two that: “In addition to the provisions that apply in peacetime, this agreement is applied in cases of declared war or any other armed conflict that arises between two or more of the High Contracting Parties even if one of them does not recognize the state of war.”<sup>779</sup> An international conflict in accordance with the text of the article is considered to be between two or more states and also falls within the framework of the international armed conflict the occupation, in accordance with the second paragraph of the same article, regardless of its duration or scope, and whether there is armed resistance, the agreements are applied in the cases of occupation that formulated the most important provisions of the agreement.<sup>780</sup>

Also, the fourth paragraph of Article 1 of the First Additional Protocol on International Armed Conflicts added a provision after stressing in its second paragraph that it extends to the previously mentioned cases when it states: “Armed conflicts where peoples struggle against colonial domination and foreign occupation and against racist regimes in their exercise of the right of peoples to self-determination.”<sup>781</sup> It was also enshrined in the UN Charter and the Declaration on the Principles of International Law concerning Friendly Relations between States in accordance with the UN Charter, and in this text, it was possible to adapt the wars of national liberation as international conflicts, thus, bringing the wars of liberation to the level of conflicts between states.<sup>782</sup>

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<sup>779</sup> Sharif Palm, the meaning of international humanitarian law, its historical development and its scope of application, in lectures on international humanitarian law, International Committee of the Red Cross, Cairo, sixth edition, 2006, at 36 and 37.

<sup>780</sup> Id.

<sup>781</sup> Amer al-Zmali, Introduction to International Humanitarian Law, the publication of the Arab Institute for Human Rights and the International Committee of the Red Cross, second edition, Tunis, 1997, at 34.

<sup>782</sup> Id.

Therefore, when examining the four Geneva Conventions of 1949 and the two protocols of 1977, by “terrorist acts,” we mean by using violence without discrimination to spread terror among the civilian population, (It is prohibited in all circumstances and without exception, and the powers of the warring parties and all states parties to the instruments of international humanitarian law are obligated to respond to everyone who violates this prohibition).<sup>783</sup>

Regarding the law on armed conflict, the provisions on the prohibition of terrorism are limited directly to the Geneva Convention of 1949, and indirectly in the First Additional Protocol of 1977.

### **1. Terrorist Acts in The Geneva Conventions**

The 1949 Geneva Convention for the Protection of Civilians explicitly prohibits terrorist acts, this prohibition is based on the principles of customary international humanitarian law. It is the distinction between civilians and combatants, whereby the parties to the conflict must distinguish between civilians and combatants, and attacks are directed only at the combatants.<sup>784</sup>

The principle of distinction between civilians and combatants was first mentioned in the Petersburg Declaration, which argues that "the only legitimate aim that states must strive to achieve during the war is to weaken the enemy's military forces." The Hague Regulations relating to the laws and customs of land warfare do not stipulate the distinction between civilians and combatants; however, Article 25, prohibits “attacking or bombing cities, villages, residential areas, or buildings devoid of defense means whatever the means used” is based on this principle,

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<sup>783</sup> José Luis Rodríguez-Villasante Y Prieto, *Terrorist Acts, Armed Conflicts and International Humanitarian Law*, IN Sixth Symposium on International Humanitarian Law, In Honor of Professor Juan Antonio Varrillo-Salcedo, Pablo Antonio Fernandez-Sanchez, *The New Challenges of Humanitarian Law in Armed Conflicts*, Martinus Nijhoff Publishers, Leiden. Boston, 2005, at 20.

<sup>784</sup> John Mary Hanckaerts and Louise Doswald Beck, “Customary International Humanitarian Law”, Volume 1: Rule International Committee of the Red Cross, Cairo, 2007, at 3.

but now this principle has been codified in Articles 48,51 (2) and 52 (2) of the first additional protocol.<sup>785</sup>

**a. Article 33 of The Fourth Geneva Convention**

Article 33 of the 1949 Geneva Accord is the only provision within the Geneva Conventions that uses the term, “terrorism,” which states that: “No protected person may be punished for a violation he has not personally committed, that prohibits collective punishment and likewise all measures of intimidation or terrorism.” The text prohibits collective penalties enshrined in state practice as one of the rules of customary international law applicable in international and non-international armed conflicts.<sup>786</sup> The text also refers to situations in which a person subject to enemy control is exposed to the risk of falling victim to “intimidation and terror actions” while in prison or in any occupied land. It prohibits all measures of intimidation or terrorism.<sup>787</sup>

During previous armed conflicts, the goal of collective punishment was more repression than attack prevention. That is why prohibiting threats and terrorism against protected persons, wherever, complement the prohibition of collective punishment. That is why the prohibition of collective punishment was formally implemented by prohibiting threats and terrorism against

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<sup>785</sup> Id., at 4.

<sup>786</sup> No person may be convicted of a crime except on the basis of individual criminal responsibility, and collective penalties are prohibited in its comprehensiveness, it is not limited to criminal penalties, but also all penalties and harassment, and the imposition of collective sanctions as a war crime has been categorized in the report of the Committee of Responsibilities that formed after the First World War, as confirmed by the Rule of 1997, On the customary nature of this rule that was applied during the Second World War, the imposition of collective sanctions as a war crime is also included in the statutes of the International Criminal Court for Rwanda and the Special Court for Sierra Leone, and the prohibition of collective penalties is contained in many military, and the legislation of many countries includes this prohibition as supported by official data.

<sup>787</sup> Article 4 of the convention defines the scope of its personal application as follows: “The persons protected by this convention are those who find themselves at a given moment, and in any form whatsoever, in the event of the establishment of a conflict or occupation under the authority of a party in the conflict who is not a guardian.”

protected persons, wherever they are.<sup>788</sup>

This text also complements the general rule that each civilian party subject to its authority and that of the hostile party shall be treated humanely as stated in Article 27, and any terrorist act may never be justified. The adoption of this text was preceded by what was stated in the report of the Committee of Responsibilities that formed after the First World War, and which classified "barbaric intimidation" as a violation of the laws and customs of war.<sup>789</sup>

In this regard, the Fourth Geneva Convention ensures the provision of humanitarian conditions to civilians living under foreign control, the rules in this agreement leave no room for doubt that terrorist acts, committed by civilians who find themselves under the control of a party, are illegal.<sup>790</sup>

### ***b. Evaluation of Article 33***

The terrorist prohibition on commercial businesses in Article 33 complements the prohibition against pillage and collective punishment, as it is a form of unlawful violence during international armed conflicts. The importance of this text is that the Geneva Conventions indicated that "all acts of terrorism Prohibited" long time before the UN adopted its first anti-terrorism instruments, which is one of the first noticeable developments in the Confrontation of terrorism at the international level.<sup>791</sup> Although the treaty does not define terrorism, terrorist acts are attacks on civilians and civilian objects protected by international humanitarian law. The

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<sup>788</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949. Commentary - Individual responsibility. Collective punishments. Looting. Retaliation, available at: <http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA RT & article UNID = 7074902170BED50CC12563BD002C02DF>.

<sup>789</sup> Id. John Marie Hanckaerts and Louise Doswald B.C., "Customary International Humanitarian Law". at 9.

<sup>790</sup> Hans-Peter Gasser, Terrorist Acts and "Terrorism" and International Humanitarian Law. Selected from the International Review of the Red Cross, No. 847, 2002. at 125.

<sup>791</sup> Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, the fifteenth session from 11 to 15 April 2011, and the General Assembly document (A / 66/37), sixty-sixth session, Appendix 73, at 13.

prohibition of terrorist acts is also mentioned in Article 33 as a complement to the prohibition contained in the pillage and collective penalties mentioned in the Article, as it is considered a form of unlawful violence during international armed conflicts and the reaffirmation of the prohibition of acts under the first Additional Protocol of 1977.<sup>792</sup>

## **2. Terrorist Acts in The First Additional Protocol**

This prohibition is divided into terrorist acts in accordance with the provisions of the Protocol relating to the protection of civilians and civilian objects, and those related to methods and means of warfare, as well as rules for prohibiting them in wars of national liberation. The obligation to protect the civilian population from the dangers of military operations is a commitment to customary law. The more the Hague Land War Regulations address protecting the civilian population, the more detailed are the applicable rules found in the First Protocol.<sup>793</sup> The first section of Chapter Four (the civilian population), which is devoted to "general protection from the effects of detention" contains twenty detailed articles that address protecting civilians.<sup>794</sup> In this regard, a distinction must be made between civilians and combatants and between civilian objects and military targets, to ensure their through Article 48 of Protocol I, which is the cornerstone of the set of provisions that govern protecting civilians.<sup>795</sup>

It also emphasizes the rules that must be respected in military operations, according to the text of Article 51, under the title "Protection of the Civilian Population," which is considered from among the most important texts included in the first protocol, which affirms explicit

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<sup>792</sup> Id.

<sup>793</sup> Fritz Kalshaugen and Elizabeth Zgfyvel, *Controls for Warfare: An Introduction to International Humanitarian Law*. Translated by Ahmed Abdel-Halim, International Committee of the Red Cross, 2004, at 113.

<sup>794</sup> Id. Civilians mean persons who do not form part of the armed forces and do not participate in hostilities, directly, in other words, anyone who does not belong to any category of combatant, at 114.

<sup>795</sup> Id.

norms.<sup>796</sup> According to the extent feasible, it is necessary to keep civilians free of hostile operations.<sup>797</sup> Article 52 added rules prohibiting the destruction of civilian facilities, especially those that are part of a civilian infrastructure.<sup>798</sup>

The First Additional Protocol prohibits attacks against civilians, and Article 51 (2) stipulates, "The civilian population as such and such civilian persons shall not be the object of attack."<sup>799</sup> According to the first sentence of the text, this is considered a clear and unequivocal ban, and it is likely to include most terrorist acts.<sup>800</sup> This prohibition is a customary rule of customary international humanitarian law and is enshrined in state practice as one of the rules of customary international law applicable in international and non-international armed conflicts.<sup>801</sup> Also, terrorist attacks against civilians, which cause serious injury or death, must be considered war crimes and grave violations under Article 85 of Protocol I and in breach of the Geneva conventions.<sup>802</sup>

Terrorism threatens civilians, who are a majority of the victims of terrorist attacks, as well as cultural property. International humanitarian law prohibits attacks on civilian objects, cultural objects, and places of worship that are given special protection in accordance with Articles 52 and 53 of the First Additional Protocol and attacks against engineering works or

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<sup>796</sup> During the diplomatic conference that led to the adoption of the two additional protocols of 1977, Mexico declared that Article 51 was very fundamental in that it could not be the subject of any reservations at all, and that any of the reservations would be opposed to the first.

<sup>797</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary - Protection of the Civilian Population, available on the website: [http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA\\_RT&articleUNID=1C05636226FBEE14C12563BD002C24B0](http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA_RT&articleUNID=1C05636226FBEE14C12563BD002C24B0)

<sup>798</sup> Id. Hans-Peter Gasser, *Terrorist Acts and "Terrorism" and International Humanitarian Law*, at 122.

<sup>799</sup> Id. No reservations were made to this text, and it was adopted in favor of 77 votes, 1 against and 16 abstentions, at 122.

<sup>800</sup> Id., at 123.

<sup>801</sup> At the diplomatic conference that led to the adoption of the two additional protocols of 1977, the United Kingdom declared that Article 51 (02) is "a reaffirmation of value," for a rule found in customary international law.

<sup>802</sup> Id. Hans-Peter Gasser, *Terrorist Acts and "Terrorism" and International Humanitarian Law*, at 381.

facilities that contain dangerous materials, such as dams, bridges and nuclear plants in accordance with Article 56.<sup>803</sup> The 1954 Hague Convention for the Protection of Cultural Objects also prohibits armed conflict, any hostile action against protected objects, but it is not doubtful that the mere threat of the destruction of these objects for the purpose of terrorizing the population is prohibited.<sup>804</sup>

**a. Terrorist Acts Related to The Methods and Means of Warfare**

If international humanitarian law prohibits terrorism in international armed conflicts and protects civilians and civilian property, and considering that the armed forces are deploying participants in military operations, which may appear to be a terrorist act in the civil context, it is a legitimate military action when executed against enemy forces. However, the right of the parties to a conflict to choose methods and means of warfare is not an absolute right or a right without limitations, as the first paragraph of Article 35 of the First Protocol imposes restrictions on the armed forces in armed conflicts.<sup>805</sup> The second paragraph prohibits using weapons, missiles, materials and means of fighting that would cause undue pain; for example, the use of toxic gases or the use of methods and methods of fighting that intended or expected to cause widespread and long-term damage.<sup>806</sup>

**b. Treachery and Betrayal are Also Prohibited in (Article 37)**

Treachery arises from betraying another's trust. For example, the use of violence while pretending to be civilian, as an unreal situation may result in serious harm, as some terrorist acts

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<sup>803</sup> Hans-Peter Gasser, Prohibition of Terrorist Acts in International Humanitarian Law, Farsat in International Humanitarian Law, Dar Al-Mustaqbal Al-Arabi, First Edition, 200,. at 381.

<sup>804</sup> Id.

<sup>805</sup> Id. Hans-Peter Gasser, Terrorist Acts, "Terrorism" and International Humanitarian Law, at 124.

<sup>806</sup> Protocol I did not elaborate on these types of means, but rather left that to relevant international agreements.



may be of a treacherous nature.<sup>807</sup> It is prohibited to order that no one be kept alive, threaten the opponent, or conduct hostilities on this basis (Article 40).<sup>808</sup> This is related to our analysis, because the threat of indiscriminate killing is sufficient for terrorist activity. Even in armed conflict, members of the armed forces may be threatened in this way, and the implementation of the threat is prohibited.<sup>809</sup>

Accordingly, the ban on terrorist means and methods are intended to protect civilians at the time of international armed conflict, who enjoy absolute protection under the provisions of Protocol I. On the other hand, members of the armed forces are not protected from terrorist measures. Military operations between parties to the conflict must respect certain borders.<sup>810</sup> The provisions of the four Geneva Conventions, the First Additional Protocol of 1977, on the Prohibition of Terrorist Acts, and international public law oblige states to refrain from terrorist acts and to prevent their perpetration in territories under their jurisdiction.<sup>811</sup>

## **B. Prohibition of Terrorist Acts in Non-international Armed Conflicts**

The provisions of international law applicable in internal armed conflicts is a product of the harmony between the concept of sovereignty and humanitarian concerns, which are less detailed than the provisions applicable in international armed conflicts.<sup>812</sup> In any internal armed conflict, there is at least one party, not a state, and usually not a dissident group intending to overthrow the government or a rebellion that fights for self-government or secession.<sup>813</sup>

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<sup>807</sup> Id., at 124.

<sup>808</sup> Id. Fritz Kalshohn and Elizabeth Zgfyvel, Controls Governing War: An Introduction to International Humanitarian Law. at pages 110. 109.

<sup>809</sup> Id.

<sup>810</sup> Id.

<sup>811</sup> Id., at 111.

<sup>812</sup> International Committee of the Red Cross, Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Thirty-first International Conference of the Red Cross and Red Crescent, October 2011, at 10.

<sup>813</sup> Id.

Generally, internal conflicts that contain violence cannot remain subject to international law that protects individuals from the effects of hostilities, whether or not these individuals participate in violence, which in reality often have the same destructive damaging effects of armed conflicts between countries.<sup>814</sup> Since 1949 and 1977, respectively, the third common article between the four Geneva Conventions and the Second Additional Protocol stipulates the main standards that aim to reduce violence and suffering in non-international armed conflicts. Customary laws affirm and support the third essence article and the fifteen articles of Protocol II.<sup>815</sup>

### **1. Article 3 Common to The Four Geneva Conventions of 1949**

The rules prohibiting terrorist acts in non-international armed conflicts are identical to the rules applicable in international armed conflicts.<sup>816</sup> Regarding terrorist acts in internal armed conflicts, we begin with text of the third article, which is common to the four Geneva Conventions of 1949. It stipulates that,

Persons who do not actually participate in hostilities, including the personnel of the armed forces who lay down their arms and surrender, and persons who are unable to kill because of illness, wound, or detention, or for any other reason, are treated in all circumstances without any humane treatment, Belief, gender, birth, wealth, or any other similar standard.<sup>817</sup>

For this purpose, the following actions are prohibited in relation to the above-mentioned individuals and are always prohibited:

- 1) Assault on life and physical integrity, especially killings of all kinds, mutilation, cruel treatment, and torture.
- 2) Taking hostages.
- 3) Assaults on personal and particularly insulting and degrading treatment.<sup>818</sup>

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<sup>814</sup> Id. José Luis Rodríguez-Villasante Y Prieto, *Terrorist Acts, Armed Conflicts and International Humanitarian Law*, In Sixth Symposium on International Humanitarian Law, Juan Antonio Varrillo-Salcedo, In Honor of Professor, Pablo Antonio Fernandez-Sanchez, *The New Challenges of Humanitarian Law in Armed Conflicts*. at 21.

<sup>815</sup> Id., at 22.

<sup>816</sup> Id. Hans-Peter Gasser, *Terrorist Acts, "Terrorism" and International Humanitarian Law*, at 127

<sup>817</sup> Id.

<sup>818</sup> John Mary Henckaerts and Louis Doswald Beck, *Customary International Humanitarian Law, Volume 1: Rules of the International Committee of the Red Cross*, Cairo, 2007, at 272 and 273.

Although the word “terrorism” was not used in Article 3, and its wording was succinct, it prohibits terrorist acts through the aforementioned words, and it leaves no room for doubt whatsoever that terrorist acts of hostility.<sup>819</sup> Terrorist acts are strictly prohibited by article 3, and leave no room for terrorist acts against individuals caught in the conflict, in application of the original rule that individual non-participants, or those no longer participating directly in the hostilities must be treated humanely.<sup>820</sup> The killing of civilians and prisoners of war was mentioned as a war crime in the Charter of the Military Court of Nuremberg, and the Geneva Conventions of the four "intentional killing" of protected persons are listed as grave breaches, and the prohibition of murder is recognized as a fundamental safeguard in the Additional Protocols I and II of 1977.<sup>821</sup> Killings are also classified as a war crime under the statute of the International Criminal Court in relation to non-state armed conflicts and likewise in international armed conflicts, and also under the statutes of the international criminal tribunals for the former Yugoslavia, for Rwanda and for the Special Court of Sierra Leone.<sup>822</sup>

The International Committee of the Red Cross has condemned the killing of civilians and persons unable to fight. In cases related to non-state armed conflicts, the Human Rights Committee and the African Commission on Human and Peoples' Rights, the European Court of Human Rights, the American Commission for Human Rights and the American Court of Human

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The need for humane treatment of civilians and persons incapable of fighting is contained in certain provisions of the Geneva Conventions Fourth: Article 12 (01) for both the First and Second Geneva Conventions, Article 13 of the Third Geneva Convention, Articles 5. 27 (01) of the Fourth Geneva Convention, and the duty to treat prisoners of war as humane in a blog of Libre was established (Article 76), the Brussels Declaration (Article 23, paragraph 3), the Oxford Guide (Article 63), and it was codified in The Hague Regulations ◊ (Article 04), just as the Additional and First Additional Protocols recognize this duty as a solemn guarantee, as the basis of solitude This was reaffirmed in national and international precedents. This human rights law focuses and its instruments stress the necessity of humane treatment for persons deprived of their liberty and respect for their human dignity.

<sup>819</sup> Id. Hans-Peter Gasser, *Prohibition of terrorist acts in international humanitarian law*, at 384.

<sup>820</sup> Id. J. M. Henckaerts and L. D. Beck, *Customary International Humanitarian Law*, at 274.

<sup>821</sup> Id.

<sup>822</sup> Id., at 275.

Rights, emphasize the need to take appropriate precautions to limit the use of force to only the necessary extent.<sup>823</sup> The grave danger is excessive cruelty, maltreatment and the regulation of terrorism or counter terrorism, which may lead to the addiction of these reprehensible acts, and thus weaken the conscience of the individual, and society.<sup>824</sup>

## 2. The Provisions of Additional Protocol II of 1977

The Second Additional Protocol to the Protection of Victims of Non-International Armed Conflicts of 1977 reaffirmed the rules contained in Article 03 common to the four Geneva Conventions.<sup>825</sup> It expanded and improved the scope of protection, as Article 04 of it affirmed, which came under the title of basic guarantees from the chapter on human treatment. According to the prohibitions referred to in the aforementioned article Three, it states in its first and second paragraphs that:<sup>826</sup>

- 1) All individuals who do not participate directly or who no longer cease to participate in hostilities, whether deprived of their liberty or not restrict the right to respect for their persons, their honor, their beliefs and practice rituals and religious should be treated in all circumstances be treated humanely, without any adverse distinction, and prohibited it not to keep one in life.
- 2) The following acts directed against the individuals referred to in the first paragraph are prohibited immediately in any time and place, without prejudice to the nature of the comprehensiveness that characterizes the previous provisions:
- 3) Assaulting a person's life, health, and physical or mental integrity, in particular murder and cruel treatment, such as torture and mutilation, or any form of corporal punishment.
- 4) Criminal penalties.
- 5) Taking hostages.
- 6) Acts of terrorism.
  
- 7) Violation of personal dignity, the degrading treatment of human, rape, forced prostitution and everything that scratched life.
- 8) Slavery and the slave trade in all its forms.

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<sup>823</sup> Id. Hans-Peter Gasser, Prohibition of terrorist acts in international humanitarian law, at 387.

<sup>824</sup> Jan S. Paktia, International Humanitarian Law: its development and principles. In studies in international humanitarian law, Dar Al-Mustaqbal Al-Arabi, first edition, 2000, at 51 and 52.

<sup>825</sup> Id. Hans-Peter Gasser, Terrorist Acts, "Terrorism" and International Humanitarian Law, at 127.

<sup>826</sup> Id.

- 9) Looting and plunder.
- 10) Threatening to commit any of the aforementioned acts.

Article 4 covers, in its first and second paragraphs referred to above, the essence of Article Three, which is common to the Geneva Conventions, especially the first paragraph (a), (b) and (c), which have been complemented and supplemented by new provisions from Conventions and the International Covenant on Civil and Political Rights.<sup>827</sup> According to the text, the prohibition of violence aimed at intimidating or threatening civilians, we find, has been reinforced by a broader ban on acts of terrorism, especially since the explicit prohibition of terrorist acts comes in Article (02), which is the second time that the word "terrorist" appears explicitly in an instrument of international humanitarian law.<sup>828</sup> Article 33 of the Fourth Geneva Convention of 1949 inspires it, where the text in the draft article submitted by the International Committee of the Red Cross was stipulated to prohibit terrorist acts that constitute acts violence against protected individuals.<sup>829</sup> The statutes of the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone classify the prohibitions referred to in Article Four as war crimes, as the Secretary-General of the UN indicated in his report on the establishment of a special court for Sierra Leone, that the violation of Article 04 of the Second Additional Protocol has been long considered crimes under customary international law.<sup>830</sup>

Article 13, entitled, "Protection of the Civilian Population," is considered among the provisions of international humanitarian law that prohibits the explicit expression of terrorism,

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<sup>827</sup> Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés non internationaux (atrotocole II), 8 juin 1977. Commentaire - Article 4 - Garanties fondamentales, voir le lien: [http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA\\_RT & article UNID = A035336A5010C6C3C12563BD002C310F](http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA_RT&articleUNID=A035336A5010C6C3C12563BD002C310F)

<sup>828</sup> Daniel O'Donnell, International Treaties Against Terrorism and the Use of Terrorism During Armed Conflicts and by the Armed Forces. *International Review of the Red Cross*, Vol. 88, No. 864, December 2006, at 212.

<sup>829</sup> Id. J. M. Henckaerts and L.D. Beck, *Customary International Humanitarian Law*, at 10.

<sup>830</sup> Id., at 11.

which codifies the principle of protecting civilians from hostilities, which is already recognized by customary international law and the law of war.<sup>831</sup> It is of great importance, as paragraph 02 stipulates, "it prohibits acts of violence or the threat thereof, the aim of which is primarily to create terror among the civilian population."<sup>832</sup> The prohibition of terrorist acts applies to the civilian population set forth in Article 13 on the government armed forces and the dissident armed forces, hence, it is prohibited in non-international armed conflicts, any terrorist act against civilians who do not actively participate in hostilities.<sup>833</sup>

The Second Additional Protocol, likewise, Article 3 common to the four Geneva Conventions, is binding on the dissident forces involved in the armed conflict, those who do not have the status of a state. Armed groups must obey the ban on terrorism, and the leaders of the dissident forces are committed to the work of embargoes and the suppression of violations committed by members of their organizations in the event of their occurrence.<sup>834</sup>

The provisions are essential components of international humanitarian law that governs the conduct of hostilities, as they prohibit acts of violence during armed conflicts that do not lead to a specific military achievement. Even a legitimate attack on military targets can terrorize civilians. Consequently, the two protocols annexed to the Geneva Conventions prohibit actions aimed at sowing terror among the civilian population.

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<sup>831</sup> -Protocol Additional to the Geneva Conventions of 12 August 1949 on the protection of victims of non-international armed conflicts (Protocol II), 8 June 1977. Commentary - article 13 - Protection of the civilian population, see the link: <http://www.icrc.org/applic/ihl/dih.nsf/Comment.xsp?viewComments=LookUpCOMA RT & articleUNID = 1CC33D9828A21EEAC12563BD002C3254>

<sup>832</sup> Id. Daniel O'Donnell, *International Treaties Against Terrorism and the Use of Terrorism During Armed Conflicts and by the Armed Forces*, at 212.

<sup>833</sup> Id. Hans-Peter Gasser, *Prohibition of terrorist acts in international humanitarian law*, at 383.

<sup>834</sup> Id.

### C. International Criminal Law Dealing with Transnational Terrorist Groups

The emergence of new non-state actors has had an impact on international law, especially in aspects related to the description of the conflict in which cross-border terrorist groups are a part of. The attacks of September 11, 2001, and the war the US declared against terrorism in response to these attacks, have aroused special interest in “cross-border armed groups,” including the organization of Al-Qaeda, responsible for these attacks, and which was declared a major enemy in the "war on terror."

The United States, in the words of former President Bush, announced in several statements that he is in a state of war against terrorist groups and organizations.<sup>835</sup> On September 20, 2001, President Bush stated in a speech addressed to the Congress and the American people that, "The war against terrorism begins with Al-Qaeda and does not end with it, as it will not end until every terrorist group is defeated."<sup>836</sup>

Based on the statements mentioned, the United States entered into an armed conflict with Al-Qaeda and the Taliban, which was considered an "international armed conflict."<sup>837</sup> Thus, we are facing a situation in which we wonder about the possibility of applying international law to the mentioned entities, especially considering containment of non-state actors.<sup>838</sup> For international law to apply to armed groups crossing borders, these must be engaged in armed conflict, or at least, an armed conflict between other parties present in the territory of the state in which the armed group operates. As noted above, the presence of the parties is considered one of the most essential elements that allow the classification of a situation as an armed conflict;

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<sup>835</sup> <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>

<sup>836</sup> Id.

<sup>837</sup> J. Paust, November 2001, available at <http://www.asil.org/taskforce/paust.pdf>. See also the memo of the President of the United States, Bush, on "the humane treatment of al-Qaeda and Taliban prisoners of war".

<sup>838</sup> Id.

simply, international criminal law can be applied only with the presence of parties in an armed conflict.<sup>839</sup>

We must clarify what conditions must fulfill by the cross-border armed group, to become an armed conflict. As mentioned previously, only states (and national liberation movements under the first additional protocol) can be parties to an international armed conflict. Armed groups are the protagonists in non-international armed conflicts, and in accordance with the law this requires the presence of at least one-armed group and a government, or two armed groups fighting each other.

#### *Conditions that An Armed Group Must Meet in Order to Be Treated by International Criminal Law*

In light of the wording of Article 3 common to the Geneva Conventions, it is binding on every “party to the conflict,” because a non-state armed group is the same as the government.<sup>840</sup> In this regard, there are several legal structures that explain why armed groups are bound by international law.<sup>841</sup> Either there is a rule of customary international law that claims it is bound by the obligations accepted by the government of the state where it fights,<sup>842</sup> or the principle of effectiveness, which means that every active force in the territory of a state is bound by the obligations of that state, or is obligated under the implementation of international rules in national legislation, or by the direct application of self-executing international rules.<sup>843</sup>

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<sup>839</sup> Gabor Rona, *International Law under Fire – Interesting Times for International Humanitarian Law: Challenges from the ‘War on Terror’*, 27 *The Fletcher Forum of World Affairs*, (2003), at 60-61.

<sup>840</sup> Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge: Cambridge University Press, 2002, at 9-38.

<sup>841</sup> Michael Bothe, *Internal Armed Conflicts and International Humanitarian Law*, 82 *General Review of Public International Law*, 1978, at 91-93.

<sup>842</sup> Roger Pinto, *The rules of international law concerning civil war*, *Collected Courses*, Tome / Volume 114, 1965, I, at 528.

<sup>843</sup> Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva · Dordrecht: ICRC, Martinus Nijhoff Publishers, 1987, para. 4444; and Georges Abi-Saab · *Non-international Armed Conflicts, in International Dimensions of Humanitarian Law* · Geneva and Paris: Henry Dunant Institute and UNESCO, 1988, at 230.



As for the criteria that the group must meet, Article 01 (01) of Additional Protocol II, sets out high standards, so that the group is addressed to it, which is at least fulfilled by one of the anti-government armed groups to make the second protocol applicable. These groups must exercise “under responsible leadership, control the territory (the Contracting Party) and be able to carry out continuous and coordinated military operations, and implement this protocol.”<sup>844</sup> In addition, the provisions of the text require that the conflict on the territory of one of the Contracting Parties take place, between its armed forces and an armed group, which should exclude fighting between a State and an armed cross-border group on the territory of a third State.<sup>845</sup> Although drafted in this way, the meaning of the text is to exclude the submission of states that are not party to the Protocol.

The criteria that the group must meet to make Article 03 common and customary international law applicable are less demanding. The text itself does not clarify anything, so for humanitarian reasons, the International Committee of the Red Cross has stated, "The scope of application of this article shall be as wide as possible."<sup>846</sup> The previous International Security Council and the UN Commission on Human Rights have applied international humanitarian law to thirty established groups in a state of anarchy in Somalia.<sup>847</sup>

Regarding the application of these standards in the war on terror, a jurist wrote of al-Qaeda, "There is no doubt that it does have the ability to carry out armed hostilities against the United States of America".<sup>848</sup> What has been observed on this issue is that everything depends mainly on facts that are not well known and are still controversial, as previously mentioned.

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<sup>844</sup> Id.

<sup>845</sup> Id., at 231.

<sup>846</sup> Jean S. Pictet, International Committee of the Red Cross, Commentary, IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva: ICRC, 1958, at 36.

<sup>847</sup> Id. Liesbeth Zegveld, Accountability of Armed Opposition Groups in International Law, at 138-141.

<sup>848</sup> Derek Jinks, September 11 and the Laws of War. Yale Journal of International Law, Vol ,28, 2000,. at 38.

Those responsible for the attacks in 2004 and 2005 in London and Madrid, may have been linked to the organization of the base only by looking at the websites and carrying the same hatred, this cannot be a sufficient basis for them to be considered “individuals” of an armed group.

As mentioned above, if cross-border armed groups are a party to an armed conflict, they must respect the entirety of international law for non-international armed conflicts, which in recent years approached international law for international armed conflicts.<sup>849</sup> Also, through,

- 1) The case law of the International Criminal Tribunals for Yugoslavia and Rwanda based on its broad assessment of customary international law.
- 2) Crimes defined in the statute of the International Criminal Court.
- 3) Countries accept that both categories of armed conflict include the same rules as those contained in recent treaties on weapons and cultural property.
- 4) The increasing impact of international human rights law, and according to a very optimistic estimate of customary international law by the International Committee of the Red Cross.<sup>850</sup>

International humanitarian law forbids all international and non-international armed conflicts, all acts that can be classified as terrorism, especially the attacks against civilians,<sup>851</sup> acts of violence or intimidation, whose purpose is spreading terror among the civilian population.<sup>852</sup> However, as always, international law restricts not only the individuals of this group, but also their enemies.

Article 4 of the Geneva Convention identifies the four prisoners of war, members of armed groups, as members of armed groups crossing borders can be, according to the definition, regular forces of the state, which fall under Article 04 (a) (1), or (03) of the Third Geneva Convention and may be members of other militias, or volunteer forces, including those affiliated

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<sup>849</sup> Marco Sassòli and Antoine Bouvier, *How Does Law Protect in War?* second edition, Geneva: ICRC, 2006, at 250.

<sup>850</sup> *Id.*, at 250.

<sup>851</sup> Article 51 (02) of Protocol I, Article 13 (02) of Protocol II, and the relevant customary rules of international humanitarian law (see Rules 01 and 02 of the study prepared by the International Committee of the Red Cross).

<sup>852</sup> Marco Sassòli, *International Humanitarian Law and Terrorism*, in Wilkinson and Steward, eds., *Contemporary Research on Terrorism*, Aberdeen: Aberdeen University Press, 1987, at 470-472.

with the resistance movements of the state as a party to the conflict fall under Article 4, A, 2.<sup>853</sup>

This text requires them, however, to collectively fulfill several conditions, including distinguishing themselves from civilians and respecting the laws of war.<sup>854</sup>

In case of doubt about individuals, who are combatants, Article 5, paragraph (02) of the Third Geneva Convention stipulates that they must be treated as prisoners of war "until their status is decided by a competent court".<sup>855</sup> The United States in the Vietnam War and the Gulf War of 1991 established these courts.<sup>856</sup> If a member of cross-border armed group is a civilian covered by international humanitarian law for international armed conflicts, or if non-international armed conflicts law is applied and if this member participates directly in the hostilities, then he will lose protection from attacks, but only during the time of this engagement.<sup>857</sup> Civilians, as well as combatants, may be denied privileges and be a target for attack, when they participate in an unlawful manner in hostilities. The Fourth Geneva Convention does not prohibit punishment for the unlawful participation in hostilities, and even describes such a punishment for war crime.<sup>858</sup>

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<sup>853</sup> Article 4 (4) of the Fourth Geneva Convention states that: "The persons protected by the Convention are those who find themselves at some point and in any form whatsoever, in the event of a dispute or occupation, under the authority of a party from the one who dispersed from one of the states from whom its nationals. "According to Paragraph (04) of the same Article, the persons protected by the third agreement "They may not be considered protected persons within the meaning of this agreement." This clearly indicates anyone (who meets the condition of the status of a protected person) who is not protected by the third convention is under the four Convention.

<sup>854</sup> Id.

<sup>855</sup> United States Military Assistance Command, Vietnam. Directives No. 381-46, Military Intelligence: Combined Screening of Detainees, 27 December 1967, reproduced in Sassòli/ Bouvier, *supra* note 40, at 1125, and Department of Defense, Report to Congress on the Conduct of the Persian Gulf War, 31 ILM (1992), at 629. 401 Donald Rumsfeld, Fiscal Year 2003 Department of Defense Budget Testimony, available online at: [www.defenselink.mil/speeches/2002/s20020205-secdef2.html](http://www.defenselink.mil/speeches/2002/s20020205-secdef2.html).

<sup>856</sup> Id., at 629.

<sup>857</sup> Article 51 (3) of Protocol I and Article 13 (3) of Protocol II.

<sup>858</sup> Article 05 (1) and (2) of the Four Geneva Convention.

## II. EVOLUTION OF INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS IN INTERNATIONAL CRIMINAL LAW

The rules of international responsibility are related to the obligations that international law imposes on. It is the effect of a figure breaching international law from the international obligations.<sup>859</sup> The international legal system, like other legal systems, imposes obligations on figures and assigns rights to them.<sup>860</sup> If one of the figures of international law has done an unlawful act contrary to an international obligation, the wrongful act may reach an act that international law considers an international crime, and it violates the fundamental interests of the international community, which constitutes international criminal responsibility and requires punishing the perpetrator.<sup>861</sup>

Hence, countries are concerned with attention from the provisions of international law. They are the subjects of international law, but as a result of the development witnessed by international law, states are no longer alone in the scope of this law, and states are no longer the only entities addressed by the provisions of this law.<sup>862</sup> One of the manifestations of this

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<sup>859</sup> Dr. Abbas Hashem Al-Saadi, *Individual Criminal Responsibility for International Crime*, University Press House, Alexandria, 2002, at 173.

<sup>860</sup> Dr. Abdel-Wahed Mohamed Al-Far, *Public International Law*, Arab Renaissance House, Cairo, 1991, at 317.

<sup>861</sup> Id.

<sup>862</sup> Some UN personnel were injured while performing their duties for the UN in two years 1947,1948, the most important of which was the killing of the UN mediator for the settlement of the Palestinian war (Count Bernadotte) during his visit to the lands seized by the Jewish gangs - the occasion that raised the question about whether the UN body has the right to raise the claim of international responsibility against the state responsible for these damages, which is the UN December 3 1948 To ask the International Court of Justice to show her the consultant on this issue, and the court has confronted the discussion of the extent to which the UN body has been able to describe the international character on the grounds that that research was in itself a necessary introduction to answer the question about The extent of the eligibility of the UN to move the claim of responsibility in the event of injury to one of its employees due to damage due to his mission, and on the date of April 11, 1949, the court issued its consultative opinion to it, as it decided that the Commission has an international legal personality in its relations with member and non-member states, and that it therefore has the capacity to protect its delegates and to claim international compensation for them in the state responsible for compensation for themselves in the state responsible to compensation - Referred to by: Dr. Salah Al-Din Amer, *General International Project*, Dar Al-Fikr Al-Arabi, Cairo, 1978, at 222 and 223.

development was the recognition of the international legal personality of international organizations, and this development was also the concern of international law with the individual and the care of this matter.<sup>863</sup> International law has included many provisions aimed at protecting the individual against the arbitrariness of society, as well, as many provisions aimed at protecting the community from certain actions by individuals that harm the interests of society.<sup>864</sup> That is, the individual has gained a prominent place at the international level, and individual affairs have become important to international law and the international law's concern in the individual among the figures of international law became controversial among jurists.<sup>865</sup>

#### **A. Definition of International Criminal Responsibility of Individuals**

The international criminal responsibility of individuals arising from their violations of the rules of international humanitarian law is the focus of the international legal system. Responsibility is the center of attention of international criminal law, which regulates relations between states on the one hand and between states and individuals on the other, to direct them towards justice.<sup>866</sup> The Treaty of Versailles was the first to embody the International criminal responsibility of the individual at the international level for violating the rules and principles of war. Before that time, the individual in the presence of traditional international jurisprudence was merely a subject, not a figure of international law.<sup>867</sup>

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<sup>863</sup> Dr. Ali Sadiq Abu Haif, *Public International Law*, Twelfth Edition, Monshaat Al-Maaref, Alexandria, 1971, footnote, at 227.

<sup>864</sup> Id. Dr. Abdul Wahid Muhammad al-Far, *Public International Law*, at 11.

<sup>865</sup> Dr. Ghazi Hassan Sabarini, *The brief in the Principles of Public International Law*, Dar Al-Thaqafa Library for Publishing and Distribution, Amman, Jordan, 1992, at 131.

<sup>866</sup> Bin Fardia Muhammad, *the international criminal responsibility of individuals for the crime of torture with a study of the crime of torture in Abu Ghraib prison*, thesis for a master's degree in law studies, League of Arab States, 2008, at 63.

1) It means that the individuals must be held responsible for the criminal act by applying the sanction prescribed for these crimes in the law, by assigning an unlawful act to the individual and having caused harm to one of the figures of international law, which constitutes international responsibility.

From this standpoint, we address a multiple definition of international criminal responsibility for individuals as follows.

Finally, international criminal responsibility is that entrusted to figures of international law as a result of his unlawful act internationally that would cause harm to another figure that makes the first figure obligated.<sup>868</sup>

Although these definitions differ in their wording, they are placed in one source, namely that international criminal responsibility is assigned to every natural individual who has committed or contributed to the commission of an international crime regardless of his official capacity, meaning that the individual has free will.<sup>869</sup> Hence, the various international conventions, especially treaties and agreements in the field of international criminal law, have explicitly adopted the principle of international criminal responsibility of the individual.<sup>870</sup>

The first basis for organizing the international criminal responsibility of the individual was in the Versailles Treaty established on June 28, 1919.<sup>871</sup> According to its famous article 227, “Allied countries declare responsibility for the German Emperor “Gallium II” and consider him accused of a great crime against international morals and the sanctity of treaties”.<sup>872</sup> The first international convention also established this principle and its application in the field and in

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- 2) It is a situation in which an individual is held accountable for carrying out an unlawful act.
  - 3) It is the penalty resulting from a violation of a figure of international law by a rule found in international treaties, international custom, and general principles of law.
  - 4) An individual must bear the responsibility for his unlawful actions under international law.

<sup>867</sup> Id., at 65.

<sup>868</sup> Abdullah Suleiman Suleiman, Basic Introductions to International Criminal Law, Basic Publications Office, Algeria, 1992, at 123.

<sup>869</sup> Id.

<sup>870</sup> Daceaux Emmanuel: The international custom in question? In Victim and international criminal responsibility, collective work, ed. Calmann Levy, France, 2002, at 459.

<sup>871</sup> Martain Pierre Marie: Public international law, individuals, ed. Masson, Paris, 1995, at 112.

<sup>872</sup> Part Seven Concerning Penalties and Penalties, Articles 227-228-229, respectively, of the Versailles Treaty signed on June 28, 1919.

practice. This is the London agreement signed on August 08, 1945,<sup>873</sup> after Moscow's declaration of 1943, to try major war criminals from the European Axis countries through its establishment of the Nuremberg Court, which stipulated the international criminal responsibility of the individual in Article 6.<sup>874</sup> This principle was also confirmed through the approval of the General Assembly in its resolution No. 1/95 of 11 December 1946, by affirming the principles of international law recognized in the Nuremberg Court and its issued rulings.<sup>875</sup> In addition, several international treaties witnessed the establishment of the principle of international criminal responsibility for the individual as a general and absolute rule, as follows:

### **1. The 1948 Suppression and Punishment of The Crime of Genocide**

Article 4 of the Convention on the Prevention and Punishment of the Crime of Genocide states, “The perpetrators of the genocide or any of the other acts mentioned in Article Three shall be punished, whether they are constitutional rulers, public officials or individuals.”<sup>876</sup>

### **2. International Convention for The Suppression of The Crime of Apartheid, 1973**

With reference to the International Convention on the Suppression of the Crime of Apartheid of 1973, the third article of this convention imposes international criminal responsibility on the individual committing the crime of apartheid.<sup>877</sup>

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<sup>873</sup> Article 1 of the London Convention of 1945 states: “An international military court is established to try large war criminals whose crimes have no precise geographical identification, whether they are accused individually, or as members of organizations or groups, or both.”

<sup>874</sup> Stern Brigit: International responsibility, legal encyclopedia, directory of international law, Dalloz, Paris, 1998, at 332.

<sup>875</sup> Id.

<sup>876</sup> Articles 2 and 3 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>877</sup> Article 3, at 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, of 1973.

### 3. The Convention Against Torture of 1984

Article 2 of the first paragraph of the agreement stipulates the responsibility of the perpetrator of torture.<sup>878</sup> Article 5 also obligate the states parties to the agreement to take all internal measures and procedures to establish their jurisdiction over torture crimes to ensure that the perpetrators of the crime of torture do not escape prosecution and criminal accountability.<sup>879</sup>

The principle of international criminal responsibility of the individual also addressed the final draft prepared by the International Law Commission in the draft of its code on crimes against peace and security of mankind for the year 1996 in the text of Article II P1.<sup>880</sup> The provisions of international humanitarian law also recognize the principle of international criminal responsibility of individuals, whereas the four Geneva Conventions of August 12, 1949, affirm the need for individuals to bear criminal responsibility for crimes committed against international humanitarian law.<sup>881</sup> In addition, the First Additional Protocol to the Geneva Conventions signed in 1977 include the provision of an individual's criminal responsibility for crimes committed in times of armed conflict in Article 86 thereof, which required the individual to bear international criminal responsibility if he committed one of the acts mentioned in Article 85 of the Additional Protocol I.<sup>882</sup>

What can be learned at the end of this section is that the principle of the international criminal responsibility of the individual is enshrined in the scope of international criminal law as

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<sup>878</sup> Art 1 Al 1 and 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10/11/1984.

<sup>879</sup> Al-Shafi'i Muhammad Bashir: Torture in Prisons, Prisons, and the Means of Resisting it, Taken from Human Rights: Studies on International and Regional Documents A Collective Book, prepared under the supervision of: Muhammad Sharif Basyouni and others, second volume, at 2, Dar al-Alam for millions, Beirut, 1998, at 284.

<sup>880</sup> Report of the International Law Commission 1996, at 43.

<sup>881</sup> Nasir's book: Torture and its tools of contemplation in contemporary international law, thesis for a doctorate degree in public law, University of Algeria, Youssef Benkhadda, Faculty of Law 2010, at 315.

<sup>882</sup> Articles 85-86, respectively, of the First Additional Protocol of 1966 to the Four Geneva Conventions signed in 1977.



well as international humanitarian law through their rules, and it can be considered exclusively as the legal basis on which to rely in order to impose and apply the international criminal responsibility of the individual for acts that are International crimes.

## **B. The View of International Jurisprudence on International Criminal Responsibility**

The views of international jurisprudence differ on the individual's enjoyment of the international legal personality: as following directions:

### **1. The First Trend: The State is The Only One Who Bears Criminal Responsibility**

This trend recognizes the attribution of the criminal responsibility of the state alone, as it is the only legal figure addressed by the rules of international law; therefore, there is no international criminal responsibility for individuals even if they commit this unlawful act.<sup>883</sup>

Which they are based on:

That international law addresses only states, and thus can be held accountable, just as the idea of sovereignty does not conflict with the determination of the state's criminal responsibility in the event that it commits an international crime that requires responsibility and punishment. In addition, the state has an independent will that is different from the will of individuals, international law is addressed by the state, and the individual is a mere tool for expressing its will.<sup>884</sup>

This opinion is criticized in some ways. The criminal responsibility of the state contradicts the principle of sovereignty, because the determination of the principle of state sovereignty, excludes it from criminal sanctions, which leads us to ask who can sign these

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<sup>883</sup> Abdullah Suleiman Suleiman, Basic Introductions to International Criminal Law, Basic Publications Office, Algeria, 1992, at 124.

<sup>884</sup> Id.

sanctions on the state.<sup>885</sup> Since criminal intent is necessary to determine criminal responsibility, it is difficult to verify this intent for the state to be held accountable as a legal figure without criminal intent.<sup>886</sup>

## **2. The Second Trend: Duplication of International Criminal Responsibility**

This trend has merged the state and the individual,<sup>887</sup> which is taking the responsibility of the state and the individual together, as the state has an international personality that must bear international criminal responsibility, and the individual is the one who commits this act in the name of the state, and to that end, punishment must be imposed on them together with the consideration of inflicting penalties that are consistent with the nature of each of them. Upon the state is imposed penalties such as intervention and blockade, but the individual is subjected to physical punishments such as imprisonment and execution.<sup>888</sup>

This trend has been criticized, as follow:

- 1) The sanctions imposed on the state are not criminal but civil.
- 2) The incorporation of the responsibility of the state and the individual is not associated with the principles of international law if they do not have criminal contribution.
- 3) That the legal figure is just a legal assumption and the individual is the real mastermind of it.<sup>889</sup>

## **3. The Third Trend: Only Individuals Can Be Hold Responsible**

This trend recognizes that individuals alone, not states, decide international criminal

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<sup>885</sup> Abbas Hashem Al-Saadi, *Individual Criminal Responsibility for International Crime*, University Press House, Alexandria, 2002, at 239.

<sup>886</sup> Id.

<sup>887</sup> The founders of this trend are Lautrpakht and Pella.

<sup>888</sup> Shwaya Onisa - Shiha Hanan, *International Criminal Responsibility for an individual on light of International Criminal Courts*, a memorandum for obtaining a master's degree in law specializing in international humanitarian law and human rights, University of Abdul Rahman Mira - Bejaia, Faculty of Law and Political Science, Department of Public Law, University Year: 2012 2013, at 6.

<sup>889</sup> Ahmad Abdul Hamid Muhammad Al-Rifai, *General Principles of International Criminal Responsibility*, a study in the light of the provisions of international humanitarian law, *Journal of Higher Studies*, at 46, 47, 48.

responsibility. In the sense that individuals, and the individual can only commit international crimes is solely responsible for the full range of acts committed.<sup>890</sup> Considering that in the past the individual was not recognized by the international legal personality, this has evolved after the Second World War, and this is evident in the UN Charter and the Tokyo and Nuremberg Regulations; thus, the individual has assumed responsibility for international crimes as he is concerned with international law. The state cannot be considered an accused person, following the trial procedures against it, or imposing a criminal penalty on it, as it is a hypothetical rather than a real figure.<sup>891</sup> This view is considered the most correct and prevalent in contemporary international thought as well as international action and criminal jurisdiction.

Despite this it was not spared from criticism, but it is not as severe as the first two opinions.<sup>892</sup> Therefore, saying the responsibility of the individual alone can make the state free from criminal punishment, and for the state to exclude its responsibility, it must bring the officials to criminal trial.<sup>893</sup>

However, the international legal personality of the individual differs from the international legal personality of states, which has a full legal personality, so the individual cannot establish international norms like states (such as international treaties, and the exchange of diplomatic representation, for example).<sup>894</sup> An international legal personality of an individual is a legal personality limited to the limits established by the rules of international law.<sup>895</sup> The enjoyment of an individual with an international legal personality has an important impact,

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<sup>890</sup> This trend is represented by Al-Faqih Qallaser, Trianin, Duji and others.

<sup>891</sup> Id., at 48.

<sup>892</sup> Abbas Hashem Al-Saadi, *Individual Criminal Responsibility for International Crime*, University Press House, Alexandria, 2002, at 173.

<sup>893</sup> Id., at 174.

<sup>894</sup> Dr. Ahmad Abu Al-Wafa, *Mediator in Public International Law*, Fifth Edition, Arab Renaissance House, Cairo, 2010, at 222.

<sup>895</sup> Id.

which is that individual is held accountable according to the rules of international law for the acts committed that violate the fundamental values and interests of the international community.<sup>896</sup>

Thus, responsibility is no longer a relationship between states alone (state responsibility towards another), but rather it is conceivable that there are other cases of international responsibility, including the individual's criminal responsibility at the international level.<sup>897</sup>

### **C. International Criminal Responsibility of Individuals in The Context of Trials of First World War**

The effects of the heinous crimes committed during the two world wars and grave breaches of the rules of international humanitarian law have resulted in the establishment of international criminal courts to hold perpetrators of these crimes and inhuman acts accountable.<sup>898</sup> Human rights were violated during the two world wars, and for this purpose it was necessary to address attacks that seriously affected all the laws and customs of war. Therefore, several committees and courts have been formed under different legal designations according to the obligations.<sup>899</sup> To achieve criminal justice and end these violations by establishing responsibility for the perpetrators, the study of these trials must be in two ways:<sup>900</sup>

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<sup>896</sup> It should be noted that the memorandum submitted by the Secretary-General of the UN to the International Law Commission of the UN in 1948 in the second section contained important suggestions regarding persons for international law, stating that the issue of international legal personality is no longer the subject of purely theoretical studies twenty-five years ago. Rather, it has become one of the things that an official international organization lacks in the international abandonment of the theory that the state is the only person of international law, and the memo cited international precedents according to which the individual was granted legal capacity such as (the Versailles Treaty for the jurisdiction of the courts) Mixed Arbitration, German-Polish Treaty of Upper Silesia

<sup>897</sup> Id., at 568.

<sup>898</sup> Mahmoud Sharif Bassiouni, *The International Criminal Court, its establishment and statute with a study of the history of international investigation committees and international criminal courts*, Arab Renaissance House, Cairo, third edition, 2002, at 8.

<sup>899</sup> Id., at 9.

<sup>900</sup> Dr. Hassanein Ibrahim Saleh Obaid, *International Criminal Court*, Dar Al-Nahda Arabia, Cairo, 1997, at 19,1-

The causes of the First World War were due to a number of events. These events began with the assassination of the Crown Prince of Austria in Hungary on 28/6/1914, in which the Government of Austria considered that the

## 1. Trials of First World War

The First World War was the first war in which laws and customs of war was widely violated. It inflicted many human losses, including both civilians and military personnel.<sup>901</sup> These violations raised the international public opinion, which focused on establishing an international criminal court and lay down binding legal rules to take measures that would be effective in preventing recurrence of such violations.<sup>902</sup> By stipulating punishment and prevent escaping from it, this is what the French Prime Minister said on 05/05/1917: "We will not demand after the victory to take revenge, but with justice, it is not permissible to have a crime without punishment".<sup>903</sup> There were also several statements that followed this idea, that the necessity of applying the law, and preventing revenge, and addressed for the first time the idea of international criminal responsibility of individuals, such as the statement of a French officials in 1918, saying, "The perpetrators of these crimes and those who lead them are both morally and criminally responsible". Likewise, the British "George Lloyd" stated, "whoever commits a war crime will be punished, regardless of his status".<sup>904</sup>

The First World War ended with the victory for the Allies, as they reaffirmed the idea of trying German war criminals. The first of these attempts was the one that was formed during the preparatory peace conference on January 25, 1919, according to which a "commission for

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Serbian government was responsible for that crime, and it was directed to it if it was strongly worded, followed by the declaration of war on it in 1914 / 8/1, and as Russia surrounded Serbia with its patronage, it announced the general mobilization objected to by the armpits of Germany, and portrayed it as an act that benefited Azzi and because Russia did not care to sell its land. And Belgium, as well as declared war on France, which was Russia's ally, and declared Luke Simburg and Belgium joined the French-Russian camp due to the violation of their neutrality, also joined the same camp Britain, Italy, America and some other countries, while the Ottoman Empire joined Germany where it was an ally, and the war continued with its horrors for four years as the hostilities ended in 11/1112 / 11 Defeat of Germany and the victory of the Allies.

<sup>901</sup> Id. Muhammad bin Fardiya, International Criminal Responsibility for Individuals for Torture Crimes with a Study of the Crime of Torture at Abu Ghraib Prison, at 63.

<sup>902</sup> Id. Abdullah Suleiman Suleiman, Basic Introductions to International Criminal Law, at 33.

<sup>903</sup> Id.

<sup>904</sup> Id., at 34.

determining responsibility" was established.<sup>905</sup> This committee recognized the responsibility of the war mediators, and Germany and Austria condemned them for violating the neutrality of Belgium and Luxembourg, and determining the individual responsibility of the Germans as disciples.<sup>906</sup> This committee's report raised the idea of personal responsibility, and paved the way for the emergence of the Treaty of Versailles signed on June 28, 1919. Part Seven contains a set of texts on war crimes, peace crimes and international responsibility under the heading "sanctions" from articles 227 to 230.<sup>907</sup> The Versailles Treaty included the establishment of a criminal court to try German war criminals and Turkish officials who violated humanitarian laws against the citizens of the Allied countries, as individual responsibility was determined for the first time in the history against the German emperor "Gallium II" in article 227. Articles 228 and 229 of the treaty also stipulated the trial of German army officers accused of violating the laws and customs of war.<sup>908</sup>

## **2. Responsibility of Gallium II, German Emperor**

Chapter 7 of the Treaty of Versailles of 1919 has mentioned in Article (1/227) (1/227) to set up a special international criminal court to try German Emperor Gallium II after he committed a crime against morality and treaty sanctity.<sup>909</sup> Article 227 stated that "The authorities

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<sup>905</sup> Established in January 1919, consisting of 15 members from the allied and great countries, they are: the United States, Britain, France, Italy, Japan, two members each, and the rest of the allied countries met and decided that Belgium, Greece, Romania and Serbia have the right in appointing a representative from each country.

<sup>906</sup> Dr. Muhammed Hosni Ali Shaaban, International Criminal Court with an applied and contemporary study of the International Criminal Court, Dar Al-Nahdha Arabia, Cairo, 2010, at 21.

<sup>907</sup> Edirnmution Amal, specialized in international criminal law at the former International Criminal Court for the former Yugoslavia, and the case of Slobodan Milosevic, graduation note for a master's degree, Saad Dahlab University, Blida, 2006, at 20.

<sup>908</sup> Dr. Mahmoud Sharif Bassiouni, the International Criminal Court established and statute with a study of the history of international investigation committees and former international criminal courts, without publishing house 2001, margin of at 11.

<sup>909</sup> Dr. Mohamed Abdel-Moneim Abdel-Ghani, International Criminal Law, "A study in the general theory of international crime", New University House, Egypt, 2008, at 282.

of allied and organized nations directed public accusations against the former emperor, Gallium II, for gross violations of the principles of international morals and the sanctity of treaties." A special court shall be formed for the accused, and he shall have the essential guarantees for the exercise of the right of self-defense, and this court shall be composed of five judges. Each of the following countries shall appoint a judge from its citizens: The United States, Britain, France, Italy, and Japan. The court relies in its judgments on the highest political principles among states, while ensuring respect for the declared obligations and international morals. "The court also has the right to determine the punishment it deems appropriate for the application, [and] allied and organized countries will direct the government of the Netherlands to request extradition of the former emperor to conduct the trial".<sup>910</sup>

However, this article was never applied, and the emperor was not tried for the great crime against international morals and the sanctity of the treaties, and the special court was not established because the Netherlands refusal to extradite him after he obtained the right to use it. The Netherlands protested non-extradition, as the principle of extradition conflicts with its constitution, and argued that extradition of its enemies does not guarantee a fair trial.<sup>911</sup> Also, his trial was a political, not a legal trial, because the extradition request was not issued by a judicial authority, but rather from countries that were considered enemies. This confirms the biased nature that is inconsistent with the nature of the judiciary.<sup>912</sup> That is why he remained there until he died in 1941, despite this, it is considered a first step in establishing individual responsibility against the largest figure in the state.<sup>913</sup>

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<sup>910</sup> Id, at 282.

<sup>911</sup> Id. Muhammad Bin Fardia, *The International Criminal Responsibility of One Person for the Crime of Torture with a Study of the Crime of Torture in Abu Ghraib Prison*, at 107.

<sup>912</sup> Id.

<sup>913</sup> Id., at 108.

### 3. Responsibility of Senior German War Criminals in Leipzig

The Versailles Treaty established in Articles (229,228) individual international criminal responsibility and the necessity of the courts to try senior German war criminals.<sup>914</sup> Article (228) stated that the Allies had jurisdiction in their military courts to punish German war criminals and their allies, and it placed obligations on Germany to extradite figures accused of war crimes. This indicated the embodiment of the extradition decision, while international criminal responsibility for individuals approved Article 229 of the same treaty, which distinguished between two categories of criminals.<sup>915</sup> The first category was war criminals who committed crimes in the territory of a single country where they were subject to the jurisdiction of the military judiciary of the state concerned.<sup>916</sup> The second category were war criminals who committed crimes in more than one ally country, and this jurisdiction belonged to the military judiciary of the countries embodied in an international military court formed by the representatives of those countries.<sup>917</sup>

The German government pledged to provide everything in its possession and said it would facilitate the identification of criminal acts and establish evidence for these accused, facilitate their arrest, or help in assessing their responsibility in detail, which is stated in Article 230 of the Versailles Treaty.<sup>918</sup> German law allows the Prosecutor of the Supreme Court of

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<sup>914</sup> Article 288 states: "The German government recognizes that the allied and organized authorities are free to try persons accused of having committed acts contrary to the laws and customs of war before their military courts and to apply the penalties stipulated in the laws to those found guilty".

Article 229 stipulates that "persons accused of committing criminal offenses against the nationals of allied states organized to them shall be tried before the military courts of those states. As for those accused of a criminal offense against nationals of states, they shall be tried before the military courts of the countries with jurisdiction."

<sup>915</sup> Id. Shwaya Onisa - Shiha Hanan, International Criminal Responsibility for an individual on light of International Criminal Courts, at 14.

<sup>916</sup> Id.

<sup>917</sup> Id., at 15.

<sup>918</sup> Id.



Germany to appoint cases to be tried, and this is why the Leipzig trial was not serious, and the penalties imposed were not commensurate with the gravity of the acts committed. The disproportionality between punishment and crime caused the anger of the Allies because no punishment was applied against criminals. However, Germany considered the Leipzig trials an example of the sacrifice of justice for the benefit of the Allies.<sup>919</sup>

#### **4. The Responsibility of The Turks for Committing War Crimes**

On August 10, 1920, the “Sefer” Treaty (Peace Treaty) was concluded (between the Allies and Ottoman Empire on the issue of “Armenians” in Turkey who were subjected to genocide and ethnic cleansing operations in 1915.<sup>920</sup> This Treaty includes in Article (226) addressing the obligation of the Ottoman Empire to hand over to the allies the individuals accused of committing genocide in the territories of the lands of the Allies in August 1914, they were tried for a crime against the laws and customs of war, which led to the affirmation of the individual responsibility of the perpetrators.<sup>921</sup> As for Article (230) of the same treaty, it stipulated that the Allied countries retained the right to form this court and the Ottoman Empire shall recognize it, however, in the event that the League of Nations is established for this court, allied countries must refer these people to it.<sup>922</sup> However, it was not established for reasons including the failure to ratify the Sefer Treaty, which led to change it in 1923 by the Liuzan Treaty.<sup>923</sup>

Germany, despite what it pledged, opposed trying its nation’s military before the courts

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<sup>919</sup> Id., at 16.

<sup>920</sup> Linda Muammar Yashoy, *The Permanent International Criminal Court and its terms of reference*, Mu'tah University, Jordan 2008, at 43.

<sup>921</sup> Id. Dr. Mohamed Abdel-Moneim Abdel-Ghani, *International Criminal Law “A study in the general theory of international crime”*, New University House, Egypt, 2008, at 288.

<sup>922</sup> Id.

<sup>923</sup> Id., at 289.

of the Allied Countries, who numbered about 816,<sup>924</sup> including military leaders and political figures, such as "Ludnorov" "McKenzen" "India Narj", arguing that this was causing disturbances in the country that could not be controlled, and suggested that the suspects be tried in Germany.<sup>925</sup> In 12/18/1919 a German government issued a law establishing the German Supreme Court, which was held in "Leipzig" to follow German war criminals for violations of the rules and customs of the war in Germany or abroad. The Allies agreed, with German reservations, to the request for the extradition of the accused, when it proved that the trials were not serious and fair. The Allies submitted a supplementary list of 45 accused, and the trial began on May 23, 1921.<sup>926</sup> However, this trial faced difficulties in determining individual responsibility of some of the defendants fleeing to foreign countries, or the difficulty of bringing witnesses in some cases.<sup>927</sup>

The German court held 16 trials against war criminals, but only 6 of them were sentenced, while the others acknowledged their innocence, but the trial did not contain any articles on the trials included in the "Sefer" treaty, but rather organized an undeclared annex that included a comprehensive amnesty for the crimes committed by the Turks.<sup>928</sup>

In the end, the First World War is the starting point for moving the international criminal responsibility of individuals against perpetrators of international crimes, this idea was raised in the aftermath of the Second World War, following the commission of the most heinous crimes against humanity, and thus the idea of establishing an international criminal court to try the

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<sup>924</sup> Germany has extradited only 6 of its officers to France and Britain, while it has not extradited others on the pretext that it conflicts with its law and leads to difficult-to-control internal disturbances.

<sup>925</sup> Abdullah Suleiman Suleiman, the basic premises of international criminal law, at 43.

<sup>926</sup> Abdel-Rahim Sedky, International Criminal Law, Egyptian Journal of International Law, No. 40, 1984, at 18.

<sup>927</sup> Id.

<sup>928</sup> Id. Dr. Mohamed Abdel-Moneim Abdel-Ghani, International Criminal Law, "A study in the general theory of international crime," at 287

perpetrators of crimes, in which the idea of international criminal responsibility was developed and implemented at the initiative of the four allied countries.<sup>929</sup>

#### **D. Scope of International Criminal Responsibility**

Each society has its own legal system, with its own rules to organizing the relationships that arise within it and determining the people to whom the law addresses.<sup>930</sup> The international community, as a society with its own legal system embodied in the rules of public international law, defines its material scope and those who are authenticated by describing its people within the international community and gaining a description of the legal personality with all the implications of that description.<sup>931</sup> If the individual has the full legal personality in accordance with the provisions of the internal law, which prove him from his birth until his death and arranges rights and obligations for him, then the individual's enjoyment of the legal personality in international law is a matter of controversy among jurists with regard to the scope of criminal responsibility.<sup>932</sup>

##### **1. Personal Scope**

The legal personality in general is the expression of the relationship that exists between a specific unit and a specific legal system, and this relationship consists in assigning this system a set of rights or obligations to this unit.<sup>933</sup> An important consequence of this is that there are no individuals in legal systems by nature, rather, individuals exist in these systems to the extent and

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<sup>929</sup> The countries are the United States of America, Britain, France, Japan.

<sup>930</sup> Id. Dr. Salah Al-Din Amer, *International Organization Law*, at 71.

<sup>931</sup> Id, at 71.

<sup>932</sup> Dr. Suhail Hussein Al-Fatlawi, Dr. Ghalib Awad Hawamdeh, *General International Law*, atart One, Dar Al-Thaqafa for Publishing and Distribution, Amman , Jordan, 2007, at 271.

<sup>933</sup> Dr. Mufeed Mahmoud Shehab, *International Organizations*, Tenth Edition, Arab Renaissance House, Cairo, 1990, at 91.

within the limits determined by each system by designating who has enjoyment of rights and who has to perform obligations within the scope.<sup>934</sup> Accordingly, the international legal personality means the ability of a unit to acquire rights and carry obligations through obligations in accordance with the rules of the international legal system.<sup>935</sup> Therefore, the figures of international law have the capacity to acquire rights and carry obligations recognized directly by international law for these figures.<sup>936</sup> In the same direction, the International Court of Justice defined in the advisory opinion issued on April 11, 1919 (in the case of compensation for damages) the international legal personality as one eligible to enjoy rights and abide by international obligations.<sup>937</sup> International jurisprudence required two conditions in a unit to be recognized for the international legal personality:

- 1) That the unit be able to establish international legal rules by mutual consent with other similar units (Conclusion of international treaties, exchange of diplomatic representation, etc.).
- 2) That the unit be among those who are addressing by the provisions of international legal rules in the sense that they have the capacity to enforce and the capacity to perform, that is, the eligibility to enjoy the rights and the capacity to comply with the duties in accordance with the rules of international law.<sup>938</sup>

Accordingly, if the two conditions exist with a unit, it does have the international legal personality, and if the two conditions are not met, it does not have this personality. However, what if the unit has the capacity to acquire rights and assume compliance with international obligations without having the ability to establish international legal norms, as is the case with

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<sup>934</sup> Dr. Hamid Sultan, Dr. Aisha Artab, Dr. Salah Al-Din Amer, Public International Law, Third Edition, Arab Renaissance House, Cairo, 1921, at 77.

<sup>935</sup> Adel Abdullah Al-Masadi, Law of International Organizations, Arab Renaissance House, Cairo, 2009, at 111.

<sup>936</sup> Dr. Ali Ibrahim, Public International Law, Arab Renaissance House, Cairo, 1991, at 211.

<sup>937</sup> Dr. Abbas Hashem Al-Saadi, Individual Criminal Responsibility for International Crime, University Press House, Alexandria, 2002, at 175.

<sup>938</sup> Dr. Ali Ibrahim, International Organizations, Arab Renaissance House, Cairo, 2001, at 321

the individual?<sup>939</sup> The prevailing view is that in this case the unit also has an international legal personality.<sup>940</sup> Through all the above, the individual is considered a person of international law, which has an international legal personality, based on the following:

- 1) International law recognizes the individual's capacity to acquire rights directly.
- 2) International law recognizes the individual's capacity to assume international obligations directly.
- 3) The international recognition of the individual's legal capacity to sue and file complaints directly internationally to protect his rights and interests.

However, the international legal personality of the individual differs from the international legal personality of states, which has a full legal personality, so the individual does not have the ability to establish international norms like countries (such as international treaties, and the exchange of diplomatic representation, for example). Therefore, an international legal personality of an individual is a legal personality limited to the limits established by the rules of international law. There is no doubt that granting the international legal personality to persons without a description of the state is a renewal in the contemporary international legal order, because of combating terrorist acts<sup>941</sup>. As we mentioned earlier, an individual has an international legal personality. An important effect is that individual is subject in accordance with the rules of

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<sup>939</sup> Dr. Muhammad Talaat Al-Ghunaimy has argued that unity in this case enjoys what might be called the international identity, and decided that the subjectivity is a legal center that mediates between the lack of legal personality and its availability, and is specific to the unit that has international legal capacity without the legal will. Dr. Muhammad Talaat Al-Ghunaimi, Al-Ghunaimi, Mediator in atace Law, Monshaat Al-Maaref, Alexandria, 1922, at 107.

<sup>940</sup> Dr. Jafer Abdul Salam, Principles of Public International Law, Fifth Edition, without publishing house, 1992, at 274.

<sup>941</sup> Dr. Ahmad Abu Al-Wafa, Mediator in Public International Law, Fifth Edition, Arab Renaissance House, Cairo, 2010, at 222.

It should be noted that the memorandum submitted by the Secretary-General of the UN to the International Law Commission of the UN in 1912 in the second section contained important suggestions regarding persons of international law, stating that the issue of international legal personality is no longer the subject of purely theoretical studies twenty-five years ago. Rather, it has become one of the things that an official international organization lacks in the international abandonment of the theory that the state is the only person of international law, and the memo cited international precedents according to which the individual was granted legal capacity such as (the Versailles Treaty for the jurisdiction of the courts) Mixed Arbitration, the German-Polish Treaty of Upper Silesia, and the Nuremberg Court Charter that joined the London Convention in 1911-

international criminal responsibility at the international level, for the acts that individual committed.<sup>942</sup>

## 2. Physical Scope

International criminal responsibility of an individual for its establishment requires that an international crime be committed and that all its elements be established because responsibility is not an element that is required in the criminal act, but rather an effect of it, requiring its perpetrator to bear the legal consequences of the wrongful act.<sup>943</sup> For there is no international criminal responsibility of individual without committing an international crime, and therefore the basis for the establishment of international criminal responsibility is the commission of an international crime.<sup>944</sup> This is confirmed by Article 1/22 of the statute of the International Criminal Court, which states "a person is not criminally responsible under this statute unless the conduct in question at the time of its occurrence constitutes an offense within the jurisdiction of the court".<sup>945</sup>

Therefore, if the previous text is limited only to the fact that the basis for the establishment of criminal responsibility of an individual under the statute is the commission of an offense within the jurisdiction of the court, then the international crime is the broad scope, origin of the offenses that fall within the jurisdiction of the International Criminal Court.<sup>946</sup> Therefore, the third paragraph of the same article ruled that, "This article does not affect the adaptation of any conduct as criminal behavior under international law outside the framework of

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<sup>942</sup> Id., at 223.

<sup>943</sup> Dr. Mohamed Abdel Moneim Abdel Ghani, *International Crimes*, New University House, Alexandria, 2011, at 391.

<sup>944</sup> Id.

<sup>945</sup> For the texts of the statute of the International Criminal Court, see Dr. Mahmoud Sharif Bassiouni, *International Criminal Court documents*, Dar El Shorouk, Cairo, 2001

<sup>946</sup> Id.

this statute,"<sup>947</sup> which requires exposure to international crime as a basis for the establishment of international criminal responsibility of individual in general. Therefore, there is no international criminal responsibility of individual without these crimes:

- 1) International crimes
- 2) The crime of genocide
- 3) The crimes against humanity
- 4) The war crimes
- 5) The crimes of aggression
- 6) The crimes of terrorism as crimes against humanity

As we will discuss it in the following topic.

### **III. INTERNATIONAL CRIMES FALLING WITHIN THE SCOPE OF INTERNATIONAL CRIMINAL RESPONSIBILITY**

Crime in general means an aggression against an interest protected by the law, and the criminal law is concerned with stipulating it, stating its elements and the penalty prescribed for its perpetrator.<sup>948</sup> The matter does not differ regarding international crime, which is an aggression against an interest protected by international criminal law. One of the most important interests worthy of criminal protection in the international community is the maintenance of international peace and security, as well as the maintenance of humanity.<sup>949</sup> International jurisprudence did not agree on a unified definition of international crime, and this was confirmed by the absence in the international documents of the definition of international crime and its restriction as an alternative to the number of crimes to which the legal rules contained therein apply.<sup>950</sup> In fact, even in the statute of the International Criminal Court, there was no definition of international crime. Rather, it was sufficient to provide for the crimes that fall within the

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<sup>947</sup> Id.

<sup>948</sup> Dr. Hassanin Ibrahim Saleh Obaid, *International Crime*, Arab Renaissance House, Cairo, 1999, at 5.

<sup>949</sup> Id, at 5.

<sup>950</sup> Dr. Muhammad Safi Yusef, *the general framework of international criminal law in the light of the provisions of the statute of the International Criminal Court*, Arab Renaissance House, Cairo, 2002, at 31.

jurisdiction of the court in article 5.<sup>951</sup> Therefore, international jurisprudence has endeavored to define a definition of international crime and distinguish it from other crimes such as internal, political and global crimes. To clarify this, we will discuss this crime and distinguish international crime from other crimes.

#### **A. The Definition and Elements of Crime**

As is the case in the domestic legislation of countries that have not established a unified and comprehensive definition of crime, which is satisfied with texts that define the various crimes, the same is true for international crime. There is no international legal basis for its definition, with the exception of jurisprudence whose definitions differ. A group of jurists of international law has developed various definitions of international crime. Among these jurists, is GLASER who defined it as "the act that commits a violation of the rules of international law and is harmful to the interests protected by that law, while recognizing this act as a crime and the perpetrator's entitlement to punishment, or it is a criminal crime contrary to the rules of international law that harms the interests of the states protected by this law."<sup>952</sup>

To the jurist Claude Lombo, international crime is defined as "aggression against a fundamental interest of the international community that has the protection of the international legal system through the rules of international criminal law".<sup>953</sup>

In Arab jurisprudence, we find Professor Dr. Hussein Obaid, who defines international crime as "aggression against an interest protected by international criminal law that consider as one of the branches of international law that characterizes criminal protection against an interest that he

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<sup>951</sup> Id.

<sup>952</sup> Stefan Glaser, "International Conventional Criminal Law", Brussels 1970, at 49.

<sup>953</sup> Claude Lombois, "International Criminal Law", Dalloz, Paris, 1971. at 2.



considers important and essential to the international community".<sup>954</sup> Article 19 of the draft of the International Law Commission to codify the rules of international responsibility defined international crime as: "those that violate the rules of international law contained in the texts of a widely accepted agreement, established as an international custom or as general principles recognized by civilized countries, and that this crime be of such gravity that it affects international relations or the human conscience".<sup>955</sup>

Through the above definitions, we define international crime as a negative or positive criminal behavior, by a legally deemed will, and it affects international interests protected under international law, and should be punished in the name of the international community. What should be emphasized in relation to the definition of international crime, is that the crimes committed by natural people in their name and for their benefit. International crimes are characterized by containing an international or foreign component that is not considered international crimes subject to the rules of international criminal law, rather, they are domestic crimes of an international character and subject to the norms of international criminal law. Hence it is necessary to define its elements, which we will address as follows:

### **1. The Legal Element of International Crime**

The legal element is defined as the unlawful character of the act that is defined by the legal text that clarifies the act constitutes the crime and determines the punishment imposed on the perpetrator, and this element is one of the main elements of international crime.<sup>956</sup> It is required that the legal pillar, in addition to the presence of the criminal text defining the unlawful

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<sup>954</sup> Hussein Ibrahim Salih Obaid, "International Crime, An Analytical Study," Dar Al-Nahda Al-Arabiya, Cairo, 1979, at 7.

<sup>955</sup> Id.

<sup>956</sup> Nayef Hamid Al-Olaimat, "The crime of aggression in the shadow of the International Criminal Court system," first edition, Dar Al-Thaqafah for Publishing and Distribution, Amman, Jordan, 2007, at 115.

act and the penalty prescribed for it, which is known legally as "the principle of legality of crimes and penalties," meaning that this act should not be subjected to any of the grounds of permissibility.<sup>957</sup>

However, the principle of the legality of crimes and penalties does not have the importance that it has in the domestic law, according to the significance of this principle and its consequences. The significance of the principle in international law expands to include other than the written legislative rule, which is the customary international criminal rule, because custom is considered the most important source of general international law, which is the original in relation to international criminal law, so that it should be affected by the origin to which it belongs in terms of customary character.<sup>958</sup> In any case, this element must be present in international criminal law, in order to consider, the security and interests of the international community, in addition to the principle of this Universal Declaration of Human Rights, which requires: "No person shall be convicted for performing work or abstaining from performing work unless it is considered an offense in accordance with national or international law at the time of the commission".<sup>959</sup>

Also, it was mentioned in Article 99 of the Third Geneva Convention of 1949, which stipulates "the inadmissibility of the trial or judgment of a prisoner of war for an act not prohibited by the law of the Detaining Power or by international law that is effective at the time the crime is committed".<sup>960</sup> Finally, the International Criminal Court "ICC" also confirmed this, as Article 22 of the Rome Statute stipulated the following "A person is not criminally

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<sup>957</sup> Id., at 116.

<sup>958</sup> Muhammad Adel Muhammad Saeed, "Ethnic Purification", First Edition, New University House, Alexandria, 2009, at 701, at 32.

<sup>959</sup> Id. Nayef Hamid Al-Olaimat, "The crime of aggression in the shadow of the International Criminal Court system," at 119.

<sup>960</sup> Id.

responsible under this statute unless the conduct in question at the time of its occurrence constitutes an crime within the jurisdiction of the court”.<sup>961</sup>

## **2. The Material Element of International Crime**

The material element of the crime means all the elements required by the criminal text for the crime to take place, as the law does not punish intentions, as long as it is trapped in the same perpetrator without expressing it with a tangible material act that produces its effect on the world outer.<sup>962</sup> International criminal law presupposes that international crime exist in the form of human behavior in the form of an act or omission. International legislation defines the material element of each crime, as regards the rights and interests of criminal protection.<sup>963</sup> The legislative text includes the material related to each crime and defines its material model, the material pillar of international crime consists of three components: criminal conduct, the outcome, and the causation.<sup>964</sup>

## **3. The Moral Element of International Crime**

International crime does not occur solely by the occurrence of a material incident that is subject to the text of the criminalization and is not subject to any reason for legalization; rather, this incident must occur by the will of a perpetrator, and it is linked morally.<sup>965</sup> The moral element is the moral bond or psychological connection or moral relationship that links the materialities of the crime and the psyche of its perpetrator, so that it can be said that the act is a result of the will of the perpetrator.<sup>966</sup> The concept of criminal intent in international criminal law

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<sup>961</sup> Id., at 120.

<sup>962</sup> Abdullah Ali Abbou Sultan, “The Role of International Criminal Law in Protecting Human Rights” First Edition, Dar Tigris of Jordan, 2010, at 88.

<sup>963</sup> Id., at 89.

<sup>964</sup> Id.

<sup>965</sup> Id. Hassanein Ebeid, "International Crime", an applied analytical study, at 117.

<sup>966</sup> Id.

is not different from that of domestic law and is based on the same two elements, knowledge and will. Criminal intent is defined as the knowledge of the perpetrator of all elements constituting the crime and the departure of his will to cause it, which is called direct or original intent.<sup>967</sup>

The moral element of international crime takes three forms: intent and unintentional error, and potential intent.<sup>968</sup> The perpetrator's will is described as intentional when it causes both the act and the criminal outcome; that is, the perpetrator is aware of his criminal act and the crime that may result from it and seeks to achieve the criminal result.<sup>969</sup> The will of the perpetrator is described as non-intentional if it tends to commit the act alone without intending to achieve the criminal result which is called an unintentional error.<sup>970</sup> As for the probabilistic intent, which distinguishes it from intentional error is the actor expects the outcome to occur and will accept if it occurs, whereas in the actor's intentional error, the actor knows in advance that the result is an inevitable impact of his behavior and seeks to achieve it. The statute of the International Criminal Court has indicated the potential intent in subparagraph (b) of paragraph 2 of Article 30.<sup>971</sup>

#### **4. The International Element of International Crime**

It is the element that distinguishes international crime from domestic crime, and is based on two elements<sup>972</sup>:

The Personal: The necessity that the international crime be committed in the name of the state or

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<sup>967</sup> Id., at 118.

<sup>968</sup> Id. Abdullah Ali Abbou Sultan, "The Role of International Criminal Law in Protecting Human Rights", at 92.

<sup>969</sup> Ali Abdul-Qadir Al-Qahwaji, "International Criminal Law, the Most Important International Crime, International Criminal Courts", First Edition, Al-Halabi Juridical Publications, Beirut, 2001. at 109.

<sup>970</sup> Id.

<sup>971</sup> Paragraph 02 of Article 30 states the following: (For the symptoms of this article, a person has intent when: b - this person intends, in relation to the outcome, to cause that outcome or is aware that it will occur within the normal course of events)

<sup>972</sup> Mahmoud Saleh Al-Adly, "International Crime", Dar Al-Fikr Al-Arabi, 2003, Alexandria, at 69.

with the consent of it, although the behavior in international crime is committed by the natural person, it is not committed in his personal capacity, but rather at the request of the state, with the consent of it, or in its name.<sup>973</sup>

Objective: The interest covered by protection has an international character.<sup>974</sup>

International crime assaults on interests protected by international criminal law, foremost of which are human rights, and this interest is covered by international protection and its attack constitutes a violation of international public order.<sup>975</sup> Accordingly, for the internationalization of the crime to be required, the act or omission leading to it prejudices the interests or values of the international community, as well as in the attacks on accredited diplomatic persons benefiting from special protection, for example.<sup>976</sup> This crime is committed in the name and on behalf of a state, organization, or non-governmental organization, and the perpetrator is not asked as an ordinary individual, but asked as actor in the name of the state and for its account, this characteristic is derived from the state's authorization to the actor.<sup>977</sup> Individuals cannot carry out an international crime unless it is with prior planning sanctioned by a state, where it is outside the scope of international crimes; for example, an officer attacking another country without prior planning from his country. Likewise, it is not an international crime, pirates attacking a country's ships or launching an armed gang from the territory of a country against a state without supporting the state.<sup>978</sup>

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<sup>973</sup> Id.

<sup>974</sup> Id.

<sup>975</sup> Id. Abdullah Ali Abbou Sultan, *The Role of International Criminal Law in Protecting Human Rights*, at 95.

<sup>976</sup> Id., at 96.

<sup>977</sup> Abdel-Fattah Bayoumi Hegazy, "The International Criminal Court", Alexandria University House of thought. 2004, at 297.

<sup>978</sup> Abdullah Suleiman Suleiman, *Forward Enterprises in International Criminal Law*, University Press Office, Algeria 1992, at 143.

## B. Genocide

Article VI of the statute of the International Criminal Court, defines the crime of genocide, as the same definition of the crime of genocide as the second article of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.<sup>979</sup> Where Article VI of the Statute of the International Criminal Court defines the crime of genocide that "for the purpose of this statute," genocide "means any of the following acts committed with intent to destroy a national, ethnic, racial or religious group as such, in whole or in part."<sup>980</sup>

- 1) Killing members of the group.
- 2) Causing serious bodily or mental harm to members of the group.
- 3) Deliberately inflicting on the group conditions of life to intend in its physical destruction in whole or in part.
- 4) Imposing measures designed to prevent births within the group.
- 5) Forcibly transferring group children to another group.

The most important observations that can be made on the text of Article VI of the Statute of the International Criminal Court are:

First: The sixth article of the statute of the court restricted the groups that protected only four groups, namely, the national group, the ethnic group, the racial group, and the religious group.

Each of these groups means:<sup>981</sup>

- 1) National group: a group of individuals whose common identity is determined by the nationality of a country or by a common national origin.
- 2) Ethnic group: a group of individuals whose identity is determined by shared cultural traditions, a common language, or a common heritage.

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<sup>979</sup> Id. Sharif Palm, Muhammad Mahir Abd Al-Wahid: Encyclopedia of International Humanitarian Law Agreements, Edition Seventh, the publication of the International Committee of the Red Cross, Cairo, 2007. at 45. Article 2 of the Convention defines the crime of genocide as: "In this convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such (a) members of the group, (b) causing serious bodily or spiritual harm to members of the group (c) intentionally subjecting the group to living conditions in which its physical destruction is intended in whole or in part (d) imposing measures aimed at preventing the birth of children within the group, (e) transporting children from group by force to another.

<sup>980</sup> Abdel Hamid Mohamed Abdel Hamid: The International Criminal Court, a study of the development of the international criminal justice system and the statute of the court in the light of contemporary law, Arab Renaissance House, Cairo, 2010, at 112.

<sup>981</sup> Dr. Sami Abdel Halim Saeed, International Criminal Court, Arab Renaissance House, Cairo, 2002, at 31.

- 3) Racial group: a group of individuals whose identity is determined by their physical characteristics.
- 4) Religious group: means a group of individuals who are identified with a common religious belief, beliefs, doctrines, practices, or common rituals.<sup>982</sup>

Second: That the sixth article of the statute of the court mentioned the actions that are considered genocide exclusively and not for example.<sup>983</sup>

Third: It means by the phrase (whole or in part): the perpetrator intentionally destroyed an entire group or destroyed part of that group.<sup>984</sup> It is not a requirement in the crime of genocide that the commission of one of the acts mentioned in Article Six of the Statute of the Court lead to the total annihilation of the national, ethnic, racial or religious group, where the elements of the crime of genocide indicated that it is sufficient in the crime of genocide to commit one of the acts mentioned in this Article against one or more persons belonging to a national, ethnic, racial or religious group.<sup>985</sup>

Fourth: The crime of genocide can be committed in peacetime and can be committed in times of armed conflict (both international and domestic).<sup>986</sup>

### **C. Crimes Against Humanity**

Crime against humanity is serious international crime, which worries the entire international community and draws attention to its brutality, which is not compatible with human nature and the human rights and fundamental freedoms.<sup>987</sup> For this reason, Article Seven of the

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<sup>982</sup> Id.

<sup>983</sup> Dr. Suhail Hussein Al-Fatlawi, *Crime of Genocide and Crime Against Humanity*, Encyclopedia of International Criminal Law, Part One, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2011, at 117.

<sup>984</sup> Mohamed Maher Abdel Wahed: *The crime of genocide*, in the book of the International Criminal Court, constitutional and legislative adjustments, prepared by Sharif Palm, International Committee of the Red Cross, 2003, at 77.

<sup>985</sup> Id.

<sup>986</sup> Id.

<sup>987</sup> Abd al-Rahman Muhammad Khalaf: *The crimes against humanity within the jurisdiction of the International Criminal Court*, Arab Renaissance House, Cairo, without a year. at 5.

Statute of the International Criminal Court defines in its first paragraph the crimes against humanity: “for the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- 1) Murder;
- 2) Extermination;
- 3) Enslavement;
- 4) Deportation or forcible transfer of population;
- 5) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- 6) Torture;
- 7) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- 8) 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;
- 9) Enforced disappearance of persons;
- 10) The crime of apartheid;
- 11) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”<sup>988</sup>

We find from the text of Article 7/1 of the statute of the International Criminal Court, several observations, as follows:

1) To adapt the acts referred to in Article 7 / 1 of the statute of the court as crimes against humanity, there are four conditions:

a) **The First Condition:** that the acts are committed as part of a widespread or systematic attack.

The term {attack} as stated in paragraph 2 / a of Article VII of the Statute of the Court and paragraph 3 of the introduction relating to the elements of crime against humanity means that it is “a behavioral approach that includes repeated or multiple acts of perpetration referred to

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<sup>988</sup> Article seventh of Rome statute of the international criminal court, Published by the International Criminal Court ISBN No. 92-9227-232-2 ICC-atIOS-LT-03-002/15 Eng.



in the first paragraph of Article VII of the Statute to the court." Based on this definition, the attack is assumed to cover both cases of crime by act and omission.<sup>989</sup> The term "broad", means it is intended to target a large number of victims.<sup>990</sup> While the term {systematic} means it is a high rank of planning and organizing.<sup>991</sup> Furthermore, it is not required for the broad and systematic scope to have a relationship between them for the occurrence of a crime against humanity, rather, article 7 affirms that the crime is fully committed by fulfilling one of these elements that have been achieved.<sup>992</sup>

b) The Second Condition: that the acts are committed against any group of the civilian population.

The phrase "any group of the civilian population", as interpreted by the International Criminal Tribunal for the Former Yugoslavia during its consideration of the Tadic case, is

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<sup>989</sup> Sawsan Tamerkhan: Crimes against humanity in light of the provisions of the statute of the International Criminal Court, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2002. at 244.

<sup>990</sup> Id. Linda Muammar Yeshoy: The Permanent International Criminal Court and its terms of reference, at 196.

It should be noted that the International Criminal Tribunal for Rwanda knew (during its consideration of the Akaisawa case) a broad concept that it means that "a massive, recurring attack - on a large scale - is carried out en masse and poses a great risk against a large number of victims." The International Federation of the Former Yugoslavia (during its consideration of the Tadic case) stated to the following: "The desire to exclude isolated and indiscriminate acts from the notion of a crime against humanity is what led to the inclusion of the condition that criminal acts are directed against the civilian population, a condition that can be fulfilled in the event of widespread commission of the acts which Indicates the number of z Whatever or in the case of the systematic commission that refers to the form or plan, "and in its commentary on the draft of the crimes against the peace and security of mankind for the year 1992, the International Law Commission clarified the following) that the requirement to commit inhumane acts on a large scale means that the acts are directed against many Victims).

<sup>991</sup> Sami Abdel Halim Saeed: The International Criminal Court, Arab Renaissance House, Cairo, 2002. at 42.

It should be noted that during its consideration of the Akaiswa case, the International Criminal Tribunal for Rwanda defined the concept of systematic attack as follows: "The concept of systematic attack means that it is a completely organized attack and follows a systematic pattern and is based on a public policy and uses large public or private resources."

<sup>992</sup> Id Sawsan Tamerkhan: Crimes against humanity in light of the provisions of the statute of the International Criminal Court. at 253.

It should be noted that although Article V of the statute of the International Criminal Tribunal for the former Yugoslavia did not require that acts constituting a crime against humanity be committed under that article in the context of a widespread or systematic attack, the Criminal Court of the former Yugoslavia saw during its consideration of the Tadic Ma case It follows, "It is now stable that the requirement that actions directed against the civilian population be fulfilled if the attack was widespread or systematic, and that any of these two conditions is sufficient to exclude isolated and indiscriminate acts"

intended to include "all civilian citizens and non-citizens, as well as non-civilian regular military personnel or members of armed groups who have already ceased to participate actively in armed conflicts".<sup>993</sup> The International Criminal Tribunal for Rwanda stated during its consideration of the Akisawa case that the concept of the civilian population "includes everyone who has no active role in hostilities, including members of the armed forces who laid down their arms and those who are caught by illness, wound, detention, or any other cause".<sup>994</sup>

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<sup>993</sup> Muhammad Hosni Ali Shaaban: International Criminal Judiciary, with an applied and contemporary study of the International Criminal Court, Arab Renaissance House, Cairo, 2010., at 228.

<sup>994</sup> Id. Sawsan Tamer Khan Bekhe: Crimes against humanity in light of the provisions of the statute of the International Criminal Court. at 276.

Article 10 of the First Additional Protocol to The Geneva Conventions of 12 August 1919 defined the civilian population and civilian population as follows:

1 - A civilian is any person who does not belong to one of the categories of persons referred to in the first, second, third and sixth items of paragraph (a) of Article Four of the Third Agreement and Article (13) of this right "Protocol" and raising suspicion about whether a person is Civil or non-civilian, that person is considered a civilian.

2- All civilians are included in the civilian population. 3- The civilian population shall not be stripped of its civil status by the presence of individuals among them who are not subject to the definition of civilians With regard to the categories of persons referred to in the first, second, third and sixth items of period (a) of Article (1) of the Third Geneva Convention regarding the treatment of prisoners of war dated 12 August 1919, they are as follows:

(1) Provide the armed forces with a party to the conflict and the militias or volunteer units that are part of these armed forces.

2) Individualize other militias and other volunteer units, including members of organized resistance movements who belong to one of the parties to the conflict and operate inside or outside their region, even if this region is occupied, provided that the following conditions are met in these militias or volunteer units, including the mentioned organized resistance movements 1- To be led by a person responsible for his subordinates 2- To have a specific distinctive emblem that can be distinguished from a distance 3- To carry weapons loudly 1- To commit to their operations

Laws and customs of war.

(3) Individual regular armed forces who declare their loyalty to a government or authority not recognized by the Detaining Power. (7) Residents of the unoccupied lands who carry weapons on their own accord when the enemy approaches to resist the invading forces without having the time to form regular armed units, provided that they bear arms openly and observe the laws and customs of war, and as for Article (13) of the first additional "Protocol" To the Geneva Conventions, it provides as follows:

1- The armed forces of the extractor's party consist of all the armed forces, groups, and regular units that are under the leadership responsible for the behavior of their subordinates before that party, even if that party is represented by a government or an authority that the opponent does not recognize, and such armed forces must be subject to an internal system that guarantees what is guaranteed Follow the rules of international law that apply in armed conflict

2- The singular members of the armed forces of the party to the extractor (other than the most medical services and preachers covered by Article 33 of the Third Convention) are combatants in the sense that they have the right to participate directly in hostilities

c) The Third Condition: the knowledge of the attack

Article 7/1 of the statute of the International Criminal Court requires that the perpetrator be aware of the attack, and that his criminal actions committed part of it.<sup>995</sup> This means that there are two dimensions of the moral element of the crime against humanity, in addition to the requirement to fulfill the elements of the moral element related to the perpetration of any crime against humanity, the perpetrator must also be informed of the broader context in which his criminal act takes place.<sup>996</sup> According to what was stated in the second paragraph of the introduction to Article 7 of the Elements of the crime, it is not required to prove the perpetrator's knowledge of all the characteristics of that attack or the precise details of the plan or policy of the country or organization.

d) The Fourth Condition: The commission of the acts is pursuant to a state or organization policy or promotion of this policy.

The politics element is the touchstone in the jurisdiction that works to transform crime from a national crime to an international crime.<sup>997</sup> The policy of attacking the civilian population requires that the State or organization promote, support, or actively and positively encourage, an effective attack against the civilian population. The policy of attacking a civilian population that is carried out by the state or an organized group in exceptional circumstances may be based on a reluctance to take a specific action with the intention of encouraging the attack against the civilian population.<sup>998</sup> However, the existence of this policy cannot be inferred by the absence of

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3- If the armed forces include a party in a dispute that is a paramilitary body charged with enforcing respect for the law, it must notify the other parties to the extractor

<sup>995</sup> Id. Abd al-Rahman Muhammad Khalaf: The crimes against humanity within the jurisdiction of the International Criminal Court, at 61.

<sup>996</sup> Id. Sawsan Tamerkhan Bekhe: Crimes against humanity in light of the provisions of the statute of the International Criminal Court. at 221.

<sup>997</sup> Id. Dr. Mahmoud Sharif Bassiouni, the International Criminal Court, established and statute. at 156.

<sup>998</sup> Mahmoud Sharif Bassiouni: International Criminal Court, an introduction to the study of provisions and mechanisms for national enforcement of the statute, Dar El-Shorouk, Cairo, 2001. at 31.

governmental or organizational work only, but it must also be inferred by encouragement or positive support.<sup>999</sup>

- 2) That the seventh article does not require that the acts referred to in the first paragraph be considered as crimes against humanity to be committed during armed conflicts, which means that acts can be committed in peacetime or at the time of armed conflict (international or non-international).<sup>1000</sup> The Statute of the International Criminal Court affirms the principle of protecting the civilian population from the arbitrariness and violation of dictatorial and repressive regimes.<sup>1001</sup>
- 3) That the seventh article of the statute of the court does not require that acts constituting crimes against humanity should be committed with a discriminatory motive (committed for national, ethnic, racial, religious, or political reasons, etc.).<sup>1002</sup> This is with the exception of the act of persecution referred to in Clause (H) of Article 1/7 of the Statute of the Court, so racial, national, political, ethnic, religious ... etc. is not a required condition in crimes against humanity with the exception of the crime of persecution.<sup>1003</sup>
- 4) That Article Seven of the Statute of the Court cites the actions constituting the crimes against humanity exclusively and not by example.<sup>1004</sup>

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<sup>999</sup> Id.

<sup>1000</sup> Id., at 32.

This is in contrast to Article (1) of the statute of the International Criminal Tribunal for the former Yugoslavia, which stipulated that acts that are considered to be crimes against humanity should be committed in armed conflicts, whether of an international or internal nature.

<sup>1001</sup> Ali Yousef Al-Shukri: International Criminal Judiciary in a Changing World, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2002. at 145.

<sup>1002</sup> Id., at 146.

This is in contrast to Article (3) of the statute of the International Criminal Court for Rwanda, which stipulates that acts constituting crimes against humanity are committed according to national, political, ethnic, racial, or religious reasons.

<sup>1003</sup> Dr. Badr Al-Din Muhammad Shebl: International Criminal Protection of Human Rights and Fundamental Freedoms, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2011, at 380.

<sup>1004</sup> Id. Dr. Mahmoud Sharif Bassiouni, the International Criminal Court, an introduction to the study of the provisions and mechanisms of national enforcement of the statute. at 31.

5) That Article Seven of the Statute of the Court added new acts that constitute crimes against humanity that were not included in the two international criminal court systems of the former Yugoslavia and Rwanda Which are sexual slavery, forced prostitution, forced pregnancy, forced sterilization, sexual violence, enforced disappearance of persons, and a crime Apartheid.<sup>1005</sup>

#### **D. War Crimes**

Article 8 of the statute of the court stipulated in its "first paragraph" that the court has jurisdiction to consider war crimes, especially when these crimes are committed within the framework of a plan or a general policy, or in the context of a widespread process of committing these crimes. The "second paragraph" of this article includes images of war crimes subject to the jurisdiction of the court, and this is in four sects.<sup>1006</sup> Also, the "Introduction to Article Eight" as mentioned in the Elements of Crimes document indicated that within the framework of the interpretation of the elements of war crimes images, it is necessary to have elements: the perpetrator committed his criminal act in the context of an armed conflict and is associated with it, and that the accused is aware of the factual circumstances that Prove the existence of this

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<sup>1005</sup> Id. Sawsan Tamerkhan Bekhe: Crimes against humanity in light of the provisions of the statute of the International Criminal Court. at 59.

Article 1 of the statute of the International Criminal Tribunal for the former Yugoslavia states that "the court will be exercised The International Criminal Tribunal for the Former Yugoslavia has jurisdiction to prosecute persons responsible for the following crimes when committed in

Armed conflicts, whether of an international or internal nature, are directed against any group of us who are civilians:

1- Intentional Homicide, 2- Extermination, 3- Slavery, 4- Deportation, 5- Prison, 6- Torture, 7- Rape, 8- Persecution for Political, Ethnic, or Religious reasons, 9- Other inhumane acts.

While Article 3 of the Statute of the International Criminal Court for Rwanda provides that "the International Criminal Court in Rwanda will have jurisdiction to prosecute the persons responsible for the following crimes when they are committed as part of a widespread or systematic attack against any group of the civilian population for national, political, or ethnic reasons, Ethnic, or religious:

1- murder 2- genocide 3- slavery, 4- deportation, 5- prison, 6- torture, 7 rape, 8- persecution for political, ethnic, religious reasons, 9 - other inhumane acts

<sup>1006</sup> Id. Mahmoud Sharif Bassiouni, International Criminal Court documents, at 27.

armed conflict.<sup>1007</sup> However, regarding these last two elements mentioned for the crime, the perpetrator does not have to legally assess the existence of an armed conflict or its international or non-international character.<sup>1008</sup> We will briefly address war crimes within each of the four sects as stated in the court statute as follows:

1) Crimes Resulting from Grave Violations of the Geneva Conventions of 1949:

The four Geneva Conventions included a clear definition of many war crimes, which constitute a serious violation of the provisions contained in its texts, and we will briefly review each of these crimes as mentioned in Article Eight of the Rome Statute.

2) Intentional Homicide:

For the commission of this crime, the elements of the crimes contained in the elements of crimes document are required: the perpetrator has killed, taken any act leading to the death of one or more persons covered by the protection of one or more of the Geneva Conventions of 1949, and be aware of the factual circumstances that demonstrate that these victims are covered by the protection established by these conventions.<sup>1009</sup>

3) Torture or inhuman treatment, including conducting biological experiments:

For the commission of this crime, the perpetrator must cause physical, moral pain, or severe suffering for one or more persons covered by the protection of one or more of the Geneva Conventions, knowing that perpetrator is aware of the factual circumstances that establish this protection, and to practice his behavior with the aim of obtaining information, recognition, for the purpose of punishment, intimidation, coercion, or for any reason based on some kind of discrimination.<sup>1010</sup>

4) Inhuman treatment:

For the commission of this crime, it must have the following elements: the perpetrator inflicted severe physical, moral pain, or severe suffering on one or more persons covered by the protection of one or more of the Geneva Conventions, with the need to be aware of the factual circumstances that prove this protection.<sup>1011</sup>

5) Biological experiments:

For the commission of this crime in accordance with a document the perpetrator has subjected one or more protected persons to one or more of the Geneva Conventions to a specific biological experiment, and that the conduct of this experiment exposing these persons to grave dangers to their safety or physical or mental health, the intention of conducting of this experiment must also be non-curative, and this experiment is not done for the benefit of these people, with the perpetrator aware of the factual circumstances that prove this protection that these victims have this protection.<sup>1012</sup>

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<sup>1007</sup> Id.

<sup>1008</sup> Id., at 28.

<sup>1009</sup> Paul Tavernier, Laurence Larsen Burgogue, *a century of International Humanitarian Law*, Brussels, 2001, at 199. Sufian Hamrouche, *Statute of the International Criminal Court*, Master Thesis, Faculty of Law and Administrative Sciences, University of Algiers, 2003, at 39.

<sup>1010</sup> Id. Mahmoud Sharif Bassiouni, *The International Criminal Court (its establishment and its system)*, at 228.

<sup>1011</sup> Id., at 282.

<sup>1012</sup> Id., at 283.

- a) Intentionally causing great suffering or serious harm to the body or health.
- b) The widespread destruction and appropriation of property, without any military necessity justifying it, in violation of the law and in a futile manner.
- c) Forcing a prisoner of war or any other protected person to serve within the ranks of hostile international forces.
- d) Deliberately depriving any prisoner of war or any other protected person of his right to a fair and regular trial.
- e) Unlawful removal, transfer, or imprisonment.
- f) Taking hostages.

For the commission of these crimes, they must have the following elements: The perpetrator must carry out the acts constituting these crimes as set out in the conventions and know all knowledge of these acts that constituting the crimes and aware of the factual circumstances that prove this protection that these victims have this protection.<sup>1013</sup>

- 1) “Crimes are resulting from other serious violations of the laws and customs applicable in international armed conflicts.
- 2) Intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities.
- 3) Intentionally directing attacks against civilian locations, which are not military objectives.
- 4) Intentionally launching attacks against employees employed, facilities, materials, or vehicles used on a mission in a humanitarian or peacekeeping mission pursuant to the Charter of the UN.
- 5) A crime intentionally launching an attack, knowing that it will result in consequential loss of life, civilian casualties, civilian damage, or widespread, long-term, and severe damage to the natural environment.
- 6) Attacking or bombing cities, villages, residences, or defenseless buildings, which are not military targets by any means.
- 7) Killing or wounding a surrendered combatant, who has laid down his arms, or no longer has a means of defense.
- 8) The perpetrator abuses the armistice flag, the enemy's flag, its military emblem, its military uniform, the UN flag, its emblem, or its military uniforms, as well as the distinctive emblems of the Geneva Conventions.
- 9) The direct or indirect transfer of the occupying power to parts of its civilian population to the land it occupies, or the removal, or transfer of all residents of the occupied land, or parts of them within, or outside this land.
- 10) Intentionally directing attacks against buildings designated for religious, educational, artistic, scientific, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are

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<sup>1013</sup> Id.

not military targets.

- 11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.
- 12) Killing or wounding treacherously individuals belonging to the hostile nation or army.
- 13) Declaring that no quarter will be given.
- 14) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war.
- 15) Declaring abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.
- 16) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.
- 17) Pillaging a town or place, even when taken by assault.
- 18) Employing poison or poisoned weapons.
- 19) Employing asphyxiating, poisonous gases, and all analogous liquids, materials, or devices.
- 20) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope that does not entirely cover the core or is pierced with incisions.
- 21) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering, or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123.
- 22) Committing outrages upon personal dignity humiliating and degrading treatment.
- 23) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.
- 24) Utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operation.
- 25) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.
- 26) Intentionally starving civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions.
- 27) Conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities".<sup>1014</sup>

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Article 8/b of Rome Statute of the International Criminal Court, at 6.



## **1. Serious Violations of Article 3 Common to The Four Geneva Conventions of 12 August 1949.**

Article 8 of the Rome Statute lists in its second paragraph (c), acts that constitute war crimes, if committed in the context of non-international armed conflicts. Acts committed against persons not actively participating in hostilities, including members of the armed forces who laid down their arms, and those who became unable to fight, due to illness, injury, or detention for any other reason.<sup>1015</sup> These are the actions included in the first paragraph of the third common article among the four Geneva Conventions, as stated in paragraph (2/d) of Article Eight that paragraph (2/c) applies to armed conflicts not of an international character.<sup>1016</sup> Consequently, it does not apply to situations of internal disturbances and tensions such as: riots or isolated or intermittent acts of violence, and other acts of a similar nature.<sup>1017</sup> The second paragraph (c) mentioned these acts as follows:

- 1) Violence to life and person, particularly, murder of all kinds, mutilation, cruel treatment, and torture.
- 2) Committing outrages upon personal dignity, particularly, humiliating, and degrading treatment.
- 3) Taking hostages.
- 4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

## **2. Crimes of Other Serious Violations of The Laws and Customs Applicable to Non-international Armed Conflicts are within The Established Scope of International Law**

Article (second paragraph/e) of Article Eight of the Rome Statute included a census of acts that constitute a serious violation of the laws and customs applicable to non-international

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<sup>1015</sup> Id. Mahmoud Sharif Bassiouni, International Criminal Court documents, at 46.

<sup>1016</sup> Id.

<sup>1017</sup> Id., at 47.

armed conflicts, and which, if their special elements are available, war crimes within the jurisdiction of the permanent International Criminal Court. Paragraph (2/f) of the same article also affirmed that paragraph (2/e) applies to armed conflicts not of an international character; therefore, it does not apply to cases of internal disturbances and tensions, such as riots, isolated or sporadic acts of violence, or other acts of a similar nature. Thus paragraph (2/e) applies to armed conflicts that occur in the territory of a state when there is a long-term armed conflict between government authorities and organized armed groups or between groups.<sup>1018</sup> Serious violations of the laws and customs applicable to non-international armed conflicts are as follows:

- 1) Intentionally directing attacks against the civilian population as such, or against individual civilians not taking direct part in hostilities.
- 2) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.
- 3) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the UN, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.
- 4) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives.
- 5) Pillaging a town or place, even when taken by assault.
- 6) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions.
- 7) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.
- 8) Ordering the displacement of the civilian population for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.
- 9) Killing or wounding treacherously a combatant adversary.
- 10) Declaring that no quarter will be given.
- 11) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person

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<sup>1018</sup> Id.

- concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.
- 12) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
  - 13) Employing poison or poisoned weapons.
  - 14) Employing asphyxiating, poisonous gases, and all analogous liquids, materials, or devices.
  - 15) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

As for the third paragraph of Article Eight of the Roma statue, it is stated in paragraphs (2) (c) and (2) (d) of the statute, that nothing affects the government's responsibility to maintain or establish law and order in the state or in defense of the state's unity and territorial integrity, by all legitimate means.<sup>1019</sup> This paragraph is based on the first paragraph of Article III of Additional Protocol II, as it was inserted to address the concerns of states that have not agreed to include rules that apply to non-international armed conflicts, fearing that this would lead to interference in the internal affairs of states and limit their capabilities in addressing some issues such as, internal turmoil, which may arise within the scope of their national borders.<sup>1020</sup> It is clear from a review of the text of Article Eight that a number of provisions are merely copies of provisions, either taken from the old Hague Law of 1907, or from the Geneva Conventions and a number of other provisions that are established on the Additional Protocols, and another group containing a mixture of precedents and similar rules for developing them, for example: provisions for sexual crimes, where these rules before the court statue were few and shallow, but the court statue included sophisticated provisions regarding these crimes.<sup>1021</sup> In the end by the text of Article 8 of the Statute of the Court, several observations can be made, namely:

- 1) Article 8/2 of the basic Law stipulates exclusively acts that are considered war

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<sup>1019</sup> Muhammad Fahad Al-Shalal, *International Humanitarian Law*, Al-Maaref Establishment, Without Edition Number, Egypt, 2005, at 112.

<sup>1020</sup> *Id.*, at 113.

<sup>1021</sup> *Id.*,

- crimes.<sup>1022</sup>
- 2) War crimes must be committed during armed conflicts, whether these armed conflicts are international or non-international.<sup>1023</sup>
  - 3) War crimes can be committed in the context of a plan, policy, or in the context of a widespread process of committing these crimes, and it can be committed in a separate or random manner.<sup>1024</sup>

#### **E. Crimes of Aggression**

The crime of Aggression is one of the most threatening crimes to the international community, as described during the Nuremberg trials: “the most severe international crime ever, and it differs from the rest of the war crimes in that it alone includes the disadvantages of all”.<sup>1025</sup>

When the UN Charter was drawn up in 1945, attempts were made to prevent aggression, but this definition did not include any definition of its concept, and then the lawmakers mandated the International Law Commission to study the problems that impede the definition of a precise definition of it. The effort continued until 1974, when the committee reached a final formula to define aggression, which was adopted by the UN General Assembly on December 14, 1974, by resolution No. 3314.<sup>1026</sup> As for the preparations for the Rome conference, the discussion focused on the crime of aggression on its definition on the one hand, and the role of the Security Council on the other hand.<sup>1027</sup>

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<sup>1022</sup> Abdel-Fattah Bayoumi Hegazy: *The International Criminal Court*, University House of Thought, Alexandria, 2005, at 676.

<sup>1023</sup> Mahfouz Sayed Abdel Hamid Mohamed: *the role of the International Criminal Tribunal for the former Yugoslavia in developing international humanitarian law*, Arab Renaissance House, Cairo, 2009. at 190.

It should be noted that the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ruled in the (Tadic) case that "there will be an armed conflict whenever there is recourse to armed force between states or there is long-term armed violence between government authorities and organized groups or between these groups within State of the states

<sup>1024</sup> Abdel Hamid Mohamed Abdel Hamid: *The International Criminal Court, a study of the development of the international criminal justice system and the statute of the court in the light of contemporary law*, Arab Renaissance House, Cairo, 2010, at 584.

<sup>1025</sup> Id. Salah Al-Din Amer, *Law of International Organization*, at 133,

<sup>1026</sup> Muhammad Yusef Alwan “The jurisdiction of the International Criminal Court”, *Security and Law Magazine*, Dubai Police Academy, first issue, Dubai, 2002, at 114.

<sup>1027</sup> Id.

Article 5/1 / d of the statute of the International Criminal Court included the crime of aggression as a fourth-crime that falls within the jurisdiction of the court, but Article 5/2 of the statute of the court provided a special provision related to the crime of aggression to suspend the practice of the International Criminal Court of its jurisdiction to consider the crime of aggression until its adoption of a judgment.<sup>1028</sup> In this regard, Articles 121,123, define aggression and sets the conditions under which the court exercises its jurisdiction in relation to this crime, while this provision must be consistent with the relevant provisions of the Charter of the UN.<sup>1029</sup> It is intended that the amendment be consistent with the relevant provisions of the Charter of the UN, that have been granted to the Security Council the exclusively authority to decide whether there has been a threat to or breach of the peace, or what occurred as an act of aggression, and to submit its recommendations in that, or decide what measures to take, in accordance with the provisions of Articles 41 (relating to measures that do not require the use of force) and 42 (related to measures that require the use of force) to maintain international peace and security.<sup>1030</sup> As of this writing, the ICC's jurisdiction over the crime of aggression has been suspended.

International jurisprudence in defining aggression was divided into three directions:

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<sup>1028</sup> Dr. Nayef Hamid Al-Olaimat, the crime of aggression in the shadow of the International Criminal Court system, the House of Culture for Publishing and Distribution, Amman, Jordan, 2010, at 292.

Judgment means amendment.

<sup>1029</sup> Which determines that after the lapse of seven years from the entry into force of the statute, a definition of the crime of aggression may be proposed and for the adoption of this definition, the approval of the Assembly of States parties is required either by unanimity or by a majority of two-thirds of the States parties if consensus is not possible, and after agreeing to the definition of the crime of aggression, the crime of aggression will be applicable to the States parties that ratified the definition, one year after depositing their instruments of ratification or acceptance. As for the States parties that do not accept the definition, the court will not have to exercise its jurisdiction in relation to a crime of Aggression when committed by citizens of that state or perpetrates the crime in its territory - and in this regard, this distinction between the states parties that have accepted the definition of the crime of aggression and that the court will have jurisdiction to confront in relation to the crime of aggression, and between the bordering states that do not accept the definition c Rima aggression, which the court does not have jurisdiction to confront in relation to the crime of aggression is inconsistent with the goals that the court was established to fulfill.

<sup>1030</sup> The text of Article (39) and beyond from Chapter VII of the Charter of the UN.

## 1. The First Trend: The General Definition of The Crime of Aggression

This trend sees a general definition of aggression that could confront future developments.

Therefore, the jurist "George Cel" defined aggression as "every act against peace and security of humanity, and this crime consists of every resort to violence in contravention of the provisions of the UN Charter aimed at threatening the existing law or leading to a disturbance of public order".<sup>1031</sup> The jurist (Bella) also defined aggression as "every resort to force from a state or group of states with the exception of two cases of legitimate defense or participation in collective action that the UN considers legitimate."<sup>1032</sup> The International Law Commission charged with developing a definition of aggression in 1911 took this direction, as it defined aggression as,

every use or threat of force by a state or government against another state, whatever the image, and whatever type of weapon is used, and whatever the cause or purpose, in a manner that is not cases of individual or collective legal defense, implementation of a decision, or implementation of a recommendation issued by a specialized agency of the UN.<sup>1033</sup>

The characteristic of this trend is the definition of aggression in an unspecified general way.

However, regarding this generality, it is difficult to reach an accurate interpretation of the concept of aggression.<sup>1034</sup>

## 2. The Second Trend: Special Definition of Aggression

Jurists of this trend preferred to define aggression in a way that the actions constituting the crime of aggression appear in a descriptive or exclusive form, in the sense of describing the cases that constitute the crime in a manner that avoids ambiguity when adapting the act. This

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<sup>1031</sup> Id. Dr. Abdel-Wahid Muhammad al-Far, International Crimes and the Authority of Punishment over Them, at 161.

<sup>1032</sup> Id.

<sup>1033</sup> Id. Hassanein Ibrahim Saleh Obaid: International Crime, at 161.

<sup>1034</sup> Id. Dr. Abdel-Wahid Muhammad al-Far, International Crimes and the Authority of Punishment over them, at 162.

includes, for example, the definition that was stated in the report submitted by the jurist "Politis" to the Conference on Disarmament called for by the League of Nations and attended by 61 countries in 1933, where this definition defined aggression by one of the following actions:

- 1) A state declares war on another.
- 2) The invasion of one state into the territory of another state with its armed forces, even if a state of war does not exist among them.
- 3) Attacking a state against the territory of another state with its armed forces, whether land, sea, or air, or assaulting its forces.
- 4) Blocking the ports or shores of another country.
- 5) A state assisting armed groups present on its territory with the intention of invading another country or its failure to respond to the request of the other state to desist from assisting or protecting these armed groups.<sup>1035</sup>

The Security Committee of the Conference on Disarmament has approved this definition, to which this report is submitted, and the Committee has added to that definition a text stating, "these acts may not be justified by any political, military, economic or other considerations."<sup>1036</sup>

Although this trend is characterized by its respect of the rule of legality in the field of the international legal system, with the aim of restricting or enumerating the acts that represent the aggression, it was not spared criticism as well, as it was said that it is a method that does not cover all cases of aggression.<sup>1037</sup>

### **3. The Third Trend: Mixed or Indicative Definition of Aggression**

The supporters of this trend stand a middle position between the two prior trends, and they provide images of aggression, for example, without limitation, to be able to face the different forms that international circumstances bring, and its perpetrator cannot escape the grip of the law, and this trend has been supported by a large aspect of jurisprudence of International Criminal law. In the forefront is Professor "Jarvin." In addition to a few countries that have

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<sup>1035</sup> Id., at 165.

<sup>1036</sup> Id.

<sup>1037</sup> Id., at 166.

submitted projects, to define aggression based on it, for example the project submitted by the delegate of Syria in the Sixth Committee, the Legal Committee, from the UN committees, which is charged with developing a definition of aggression, where the aggression was defined by two ways:<sup>1038</sup>

**a. The First Way**

It relates to Article 39 of the UN Charter, where aggression is achieved with every act that violates peace, by using armed force by a state or group of states directly or indirectly, whether against the territorial integrity or political independence of a particular country or group of Countries or in any way inconsistent with the purposes and principles of the UN.<sup>1039</sup>

**b. The Second Way**

It relates to Article 51 of the Charter of the UN and the right to legal defense, where aggression is represented in every use of armed force by a state or group of states directly or indirectly against the territorial integrity or political independence of a country or group of states other than the conditions stipulated in Article 51 Concerning the right of individual or collective legal defense, or the implementation of preventive measures or compulsory provisions issued by the Security Council in accordance with Article 42 of the Charter, which includes the use of armed force.<sup>1040</sup> The project distinguished between armed and unarmed aggression, and each was given non-exclusive examples.<sup>1041</sup>

Definition and elements of the crime of aggression according to the proposal of the coordinator of the task team concerned on the crime of aggression of the Preparatory Committee for the

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<sup>1038</sup> Id. Hassanein Ibrahim Saleh Obaid: International Crime, at 164.

<sup>1039</sup> Id.

<sup>1040</sup> Id., at 166

<sup>1041</sup> Id.



International Criminal Court.

The diplomatic conference in Rome, which approved the statute of the International Criminal Court, mandated the Preparatory Committee to form a working group on the crime of aggression, and on 24 July 2002, the coordinator of the team on the crime of aggression, of the Preparatory Committee for the International Criminal Court, prepared a proposed discussion paper that included this paper defining the crime of aggression and its elements.<sup>1042</sup> Regarding the definition of the crime of aggression, the proposal states that, “for the purposes of this statute, a person commits an crime of aggression when he is in a position to control or direct the political or military action of the state, and orders or participates in active and knowing participation in planning or preparing an act of aggression, or to initiate or launch it, provided that the act of aggression, by virtue of its characteristics, gravity and scope, constitutes a flagrant violation of the Charter of the UN”.<sup>1043</sup>

The proposal added that the provisions of Articles 25/3, 23 and 33 of the statute of the court should not be applied to the crime of aggression.<sup>1044</sup> The proposal also states that when the ICC Prosecutor intends to investigate the crime of aggression, the court first assures that the Security Council has decided whether the State concerned has committed an act of aggression, and when the Security Council has not decided that, the Court shall inform the Security Council of the case before it, in order for the Security Council to take appropriate action.<sup>1045</sup> If the Security Council does not decide on the issue of a country committing an act of aggression, the proposal made several options in this case, including:<sup>1046</sup>

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<sup>1042</sup> Id. Abdel Hamid Mohamed Abdel Hamid: *The International Criminal Court, a study of the development of the international criminal justice system and the statute of the court in the light of contemporary law*, at 638.

<sup>1043</sup> Id.

<sup>1044</sup> Id., at 639.

<sup>1045</sup> Id Badreddine Muhammad Shebl: *Objective International Criminal Law*, at 192.

<sup>1046</sup> Id.

- 1) The court may proceed to hear the case.
- 2) The court may reject the lawsuit.
- 3) The court may request the General Assembly or the Security Council to request a consultation from the International Court of Justice in accordance with Article<sup>1047</sup> 96/1 of the Charter of the UN and Article<sup>1048</sup> 65/1 of the Statute of the International Court of Justice on the legal question regarding whether the state concerned has committed an act of aggression. Here, the International Criminal Court may proceed to consider the case if the International Court of Justice decides that the state concerned has committed an act of aggression.<sup>1049</sup>

As for the elements of the crime of aggression, the proposal mentioned before listing the elements of the crime of aggression a precondition for the International Criminal Court to exercise its jurisdiction in considering it in addition to the preconditions contained in the statute of the court that the competent body must decide whether an act of aggression was committed, as required by element 5 of the following elements of the crime of aggression:<sup>1050</sup>

- 1) The perpetrator was able to control or direct the political or military action of the State committing the act of aggression, according to the definition contained in element 5 of these elements.
- 2) The perpetrator was aware of that act.
- 3) To order the perpetrator to plan, prepare, or carry out the act of aggression, or to take part in an actual participation in it.
- 4) Intentionally and knowingly committed the perpetrator of element 3.
- 5) A country commits an act of aggression, that is, an act committed as defined in General Assembly Resolution No. 3314 {29-d} of December 14, 1974.
- 6) The perpetrator was aware that the actions of the State represented an act of aggression.
- 7) The act of aggression, by virtue of its characteristics, gravity, and scope, constitutes a flagrant violation of the Charter of the UN.
- 8) The perpetrator has the intent and knowledge regarding element 7.<sup>1051</sup>
- 9) Finally, the dispute still exists regarding a comprehensive definition of this crime, and the court is still pending its implementation.

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<sup>1047</sup> Article (96/1) of the Charter of the UN stipulates that "any of the General Assembly or the Security Council may request the Court of Justice to issue a consultation on any legal matter."

<sup>1048</sup> Article (65/1) of the statute of the International Court of Justice stipulates that "the court may decide on any legal matter upon the request of anybody authorized by the UN Charter to refer it or has been authorized to do so in accordance with the provisions of the said Charter."

<sup>1049</sup> Id. Badreddine Muhammad Shebl: Objective International Criminal Law, at 192.

<sup>1050</sup> Id. Abdel Hamid Mohamed Abdel Hamid: The International Criminal Court, a study of the development of the international criminal justice system and the statute of the court in the light of contemporary law, at 638.

<sup>1051</sup> Id.

## F. Terrorism as Crimes Against Humanity

Terrorist actions can reach the level of crimes against humanity if these acts are subject to conditions.

First, it can be inferred that from the relevant international rules and the jurisprudence related to crimes against humanity that terrorist acts may fall into this category of crimes, regardless of whether they were committed in peacetime or war.<sup>1052</sup> In addition, terrorist acts must cause the following "behavior:" murder, great suffering, serious bodily or mental injury, or these acts may be embodied in torture, rape, or arbitrary disappearance of persons, by arresting, detaining, or kidnapping persons. Also, these acts must be from a state or political organization, either with their permission, support for these actions, refusal to give information about their fate, or their whereabouts, in order to deny the protection of the law for them for a long period of time.<sup>1053</sup>

Second, terrorist acts must meet the circumstantial requirements of each crime. Consequently, the terrorist act must be part of a widespread and systematic attack on a civilian population launched by a governmental or non-governmental body, with the permission or support of it, even if terrorist acts are committed against individuals or government officials of another country. Finally, as for the moral element, besides the "mens rea" criminal intent required for the original crime (a crime against humanity, murder, torture, etc.) the offender must be "aware" that his action constitutes a part of a widespread and systematic attack.<sup>1054</sup>

Hence, as in the case of terrorism as a separate international crime, when terrorist acts

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<sup>1052</sup> Id. Judge Antonio Cassese, *International Criminal Law*, at 300.

<sup>1053</sup> This is the definition of "enforced disappearance of persons" in accordance with Article 7 (2) (1) of the Statute of the International Criminal Court, which could explain a rule of existing customary international law (or under bound issuance) that prohibits and criminalizes this crime. See also Article 2 From the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>1054</sup> Id. Judge Antonio Cassese, *International Criminal Law*, at 301.

constitute a crime against humanity, the victims could be both civilians and government officials, including members of the armed forces. The statute of the international criminal court, over crimes against humanity, stipulate that these crimes must have been committed against a civilian population, however, this does not mean that the victims of the original crimes must be purely civilians, which this also applies to the category of terrorism that constitutes a crime against humanity.<sup>1055</sup>

It is clear from the foregoing that, in addition to the material elements mentioned, the perpetrators of terrorist acts must also fulfill the special intention required to regard terrorism as a separate crime, especially forcing a public or private authority to do or refrain from doing certain acts, by spreading fear and panic among the public or any another crime, and that the perpetrator must be "aware" that his action constitutes a part of a terrorism.<sup>1056</sup> The issue of including terrorism in the Rome Statute was discussed as a category of crimes over which the International Criminal Court has jurisdiction, and there was no consensus at the time of the adoption of the Statute.<sup>1057</sup> Whereas, the Rome Conference on the International Criminal Court expressed regret at the lack of agreement on a generally accepted definition of the crimes of terrorism in order to include them within the jurisdiction of the court, because of the difficulty of defining the judiciary in the form of defamation of the judiciary.<sup>1058</sup> However, individual terrorist acts may fall into the category of crimes against humanity, which terrorism is similar to, if it meets the conditions stipulated.<sup>1059</sup> In addition, it may result in disproportionate and unlawful

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<sup>1055</sup> Article 7/5 of ICC

<sup>1056</sup> Id. Judge Antonio Cassese, International Criminal Law, at 302.

<sup>1057</sup> Sweden Ahmed Hussein, international terrorism in light of international changes. Al-Halabi Juridical Publications, First Edition, Beirut 2005, at 49.

<sup>1058</sup> Id., at 50.

<sup>1059</sup> Id. Al-Fatlawi Suhail Hussein, International terrorism and the legitimacy of the resistance, at 202. Regarding the concept of this crime, refer to Article 07 of the Statute of the International Criminal Court. Rome 1998.

reactions to terrorism by a state with individual criminal responsibility that amounts to acts that fall within the definition of international crimes.<sup>1060</sup> Some jurists argue that the possibility of extending the jurisdiction of the International Criminal Court to the perpetrators of terrorist crimes.

Since crimes against humanity fall within the specific jurisdiction of the court, some terrorist crimes can be adapted as crimes against humanity so that their perpetrators do not escape accountability and punishment within the framework of the criminal court.<sup>1061</sup> Some countries, including Algeria, India, Sri Lanka and Turkey, have also suggested that terrorism should be considered one of the international crimes, subject to the jurisdiction of the International Criminal Court.<sup>1062</sup> While the other side of the jurisprudence believes that the definition of crimes against humanity does not correspond to the definition of terrorism because of the indiscriminate nature of terrorist crimes.<sup>1063</sup>

The texts in the statute of the ICC are not sufficient to cover all terrorist crimes, as terrorism has characteristics that distinguish it from crimes that fall within the jurisdiction of the court. Thus, for the ICC's jurisdiction to extend to all terrorist crimes, the statute of the court must be modified to include terrorist crimes, explicitly, and provide a precise definition of terrorism. In the end, terrorism as a crime against humanity is a worse form of terrorism and is a separate crime.

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<sup>1060</sup> Frequently Asked Questions on the Aspects of International Law Relating to the Fight Against Terrorism, UN Office on Drugs and Crime, UN, New York, 2009, at 41.

<sup>1061</sup> *Id.*, at 42.

<sup>1062</sup> *Id.*

<sup>1063</sup> Al-Fatlawi Suhail Hussein, International terrorism and the legitimacy of the resistance, at 205.

#### **IV. ENFORCEMENT OF THE INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS BY INTERNATIONAL TEMPORARY AND PERMANENT COURTS**

The effects of the heinous crimes committed during the two world wars and grave breaches of the rules of international humanitarian law have contributed to establishing international criminal courts to hold perpetrators of these crimes accountable.<sup>1064</sup> Accordingly, human rights were flagrantly violated during this period, and for this reason the international community had to address such grave violations that did not take into account all the laws and customs of war.<sup>1065</sup> Several committees and courts were formed under different and end these violations by establishing responsibility for their perpetrators<sup>1066</sup>. Because of all the measures taken by the international community to combat terrorist acts, a real development of international criminal law has resulted. Accordingly, examination these experiences will be based on the following:

##### **A. Implementation of The International Criminal responsibility by Temporary Tribunals**

International work has established that the individual is the one who is criminally responsible for international crimes, and this was confirmed and embodied after the First World War.<sup>1067</sup> This is also recognized by the systems of the international criminal tribunals for the former Nuremberg, Tokyo, Yugoslavia, and Rwanda, and by what was finally established by the

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<sup>1064</sup> Id. Mahmoud Sharif Bassiouni, *the International Criminal Court, its establishment and statute with a study of the history of international investigation committees and international criminal courts*, at 8.

<sup>1065</sup> Id., at 9.

<sup>1066</sup> Id.

<sup>1067</sup> Id. Ali Abd al-Qadir al-Qahwaji: *International Criminal Law*, Al-Halabi Human Rights Publications, at 190. Many international statements and conferences have contributed to asserting individual criminal responsibility, the most important of which are:

☐ St. James Palace, issued on 12/1/1942, by nine European countries torn by the Nazi aggression

In addition to nine other countries participated in it as a watcher.

☐ Moscow Statement issued on 10/30/1943 by America, Britain and Russia

☐ Yalta conference held from 3/2/1945 between America, Britain and Russia

☐ The Potsdam Conference that took place from 8 / 17-1945 between America, Britain and Russia

statute of the International Criminal Court.<sup>1068</sup> On the other hand, in 1993 and 1994, an important step was taken in the extended process of codifying and laying down the rules for individual criminal responsibility under international law by forming two ad hoc tribunals for the crimes committed in both the former Yugoslavia (the International Criminal Tribunal for the Former Yugoslavia) and Rwanda (the International Criminal Tribunal for Rwanda). These two courts marked a major breakthrough towards establishing a permanent judicial system.<sup>1069</sup> To clarify this, we will divide this matter into four branches, as follows:

### **1. Nuremberg Tribunals**

The principle of individual criminal responsibility in the Nuremberg Court was confirmed on two scales, the first: through the statute of the court, and the second: through trials. As for the statute of the Nuremberg Court, the sixth article emphasized individual criminal responsibility, meaning that the court is competent to try and punish all individuals committed crimes in their personal capacity or as members of an organization that works for Axis countries.<sup>1070</sup>

According to the 1945 London Convention, the International Military Tribunal for Nuremberg, which was charged with carrying out the trials, was established in accordance with Article 1 of this convention. The establishment of this court was reached after consulting with the Supervisory Board of Germany to try the top German war criminals. It was a court of a special and temporary nature, established after the Second World War.<sup>1071</sup> The Allied countries

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<sup>1068</sup> Id., at 192.

<sup>1069</sup> Dr. Abd al-Rahman Muhammad Khalaf, *The Crime Against Humanity within the jurisdiction of the International Criminal Court*, Arab Renaissance House, Cairo, Without a Year, at 20.

<sup>1070</sup> Id., at 21.

<sup>1071</sup> Linda Omar Yashoy, *The Permanent Criminal Court and its Competencies*, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2000, at 56-57.

ruled that the seat of the court be in Berlin, the capital of Germany, in application of Article 22 of the Nuremberg Regulations; however, circumstances prevented this, so the seat of the first trial was set in Nuremberg, and the court was composed of four judges who were chosen from each of the countries that signed the agreement,<sup>1072</sup> in addition to four deputy judges appointed in the same way. Regarding the jurisdiction of the court, three crimes are held according to the text of Article (6) of the Nuremberg Regulations, which include:<sup>1073</sup>

**a. A Crime Against Peace**

Planning, preparing, and starting a war of aggression or war in violation of the terms of international treaties or participation in a general scheme or plot to achieve these actions.

**b. War Crime**

A violation of the laws and traditions of war, such as murder, ill-treatment, or deportation to hard labor camps, abuse of prisoners of war or persons at sea, destruction of cities.

**c. Crimes Against Humanity**

Such as murder, slavery, exile, deportation, or inhumane acts committed against civilians before or during the war, or acts of repression for various political, religious (racial) reasons, or any violation of the law of the country in which the crime was committed.<sup>1074</sup>

As for personal jurisdiction, it is concerned with the trial and punishment of all-natural persons, whatever their characteristic, so it does not consider immunity, criminal organizations,

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<sup>1072</sup> The four judges are: the French "Dovebre, deputy of Robert Ruben Falco", the British "Lawrence of Deputy Lord Burke", the American "Francis Biddle, deputy of John Baku", the Russian "Nikchenko, deputy of Vostkov",

<sup>1073</sup> Id. Linda Omar Yashoy, *The Permanent Criminal Court and its Competencies*, at 58.

<sup>1074</sup> Muhammad Fahhad Al-Shallalha, *International Humanitarian Law*, Faculty of Knowledge, Al-Quds University, D.D. 2005, at 360.



and bodies, and this embodies individual responsibility before the court.<sup>1075</sup>

The International Court Regulation ruled that excluding immunity from the head of state or senior state officials, as Article Seven of it that "the official status of the accused, whether as heads of state or as senior officials, an excuse is not exempt from responsibility or a cause of mitigation of punishment".<sup>1076</sup>

These exclusions were justified by considerations derived from the notion of justice and sound legal reasoning, as it is not acceptable for subordinates who execute illegal orders issued by the head of state and his aides to be punished while the president and his senior officials are exempt from responsibility.<sup>1077</sup> The regulation also ruled out excluding the payment of irresponsibility for the issuance of an order from a president that must be obeyed, and Article 8 stipulated that "it is not considered an exempted reason from the responsibility of defending the accused that he was working according to the instructions of his government or on the order of a superior president, but that this might be considered a reduced reason for punishment, if the court decides that justice requires this".<sup>1078</sup> This ruling justifies the supremacy of international criminal law over domestic criminal law, thus, even if the rules of domestic law require obedience to the subordinate, in violation of the rules of international law, the rules of domestic law cannot be an excuse to justify the act.<sup>1079</sup> As for the trials,<sup>1080</sup> the court demonstrated its affirmation of the

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<sup>1075</sup> Id., at 361.

<sup>1076</sup> Mahmoud Naguib Hosni: Lessons in International Criminal Law, Arab Renaissance House, Cairo, 1959-1960, at 42

<sup>1077</sup> Id.

<sup>1078</sup> Id.

<sup>1079</sup> Id., at 43.

<sup>1080</sup> Id. Dr. Abdul Wahid Muhammad al-Far, the international crime and the power of punishment over it. at 104.

It should be noted that the Nuremberg Court began exercising its jurisdiction on November 20, 1945 and completed the consideration of the cases before it on August 31, 1946, and issued its ruling on the first of October 1946. (22) Major war criminals have appeared before the court in their personal capacity, in addition to many members some bodies and organizations that described the activities that they were carrying out as criminal

principle of individual criminal responsibility, as the court stated in one of its rulings, "The crime against international law is committed by individuals and not abstract beings (states), the punishment of individuals who commit these crimes is the only way to ensure the application of the provisions of international law."<sup>1081</sup>

Based on the importance of the principles that came to the Nuremberg Regulation, the UN General Assembly paid special attention to those principles and issued its Decision No. 2/177 on November 21, 1947, in which it asked its International Law Commission to codify those principles, and prepare a special project for crimes against peace and security of humanity.<sup>1082</sup> The committee drafted the principles drawn from the Nuremberg precedent, and the report containing this formulation was presented to the General Assembly on August 13, 1950 and was adopted by the General Assembly in its Decision No. 488 of December 12, 1950.<sup>1083</sup> This report included seven principles, all of which embody the establishment of individual international criminal responsibility and its provisions, and the first of these seven principles, as it determines that " whoever commits a crime in accordance with international law is considered responsible."<sup>1084</sup>

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activities. The court sentenced (12) defendants to death by hanging, (3) life imprisonment, (2) imprisonment for twenty years, and (1) imprisonment for fifteen years., and (1) imprisonment for ten years, and it acquitted (3)  
<sup>1081</sup> Dr. Ahmad Muhammad Al-Muhtadi Billah, *The General Theory of International Criminal Justice*, Arab Renaissance House, Cairo, 2010, at 310.

<sup>1082</sup> Id. Dr. Mohamed Abdel Moneim Abdel Ghani, *International Criminal Law*, at 298.

<sup>1083</sup> Id., at 299.

<sup>1084</sup> Amjad Heikal: *International Individual Criminal Responsibility before the International Criminal Court*, Arab Renaissance House, Cairo, 2009. at 217.

\* The second principle stated that "non-punishment of internal law for an act that international law considers an international crime, the perpetrator is not exempted  
Perpetrate it of responsibility in international law "

\* The third principle states that "the perpetrator committing an international crime as the head of state or a ruler does not exempt him from liability in law  
International. "

\* The four principle states that: "Committing the crime on the order of the perpetrator's government or his superior in the career hierarchy does not exempt him from liability in international law, provided that he has the ability to choose."

## 2. Tokyo Tribunals

After Japan's surrender in World War II, the Commander-in-Chief of the Allied Forces of the Far East, issued US General "MacArthur" on January 19, 1954 a special proclamation establishing the International Military Court of the Far East in Tokyo.<sup>1085</sup> This court was not created by an international convention as the Nuremberg tribunal, but according to a proclamation issued by the Commander-in-Chief of the Allied Forces.<sup>1086</sup> Article 5 of the statute of the Tokyo Court established explicit individual criminal responsibility for crimes against peace, crimes committed in violation of the laws and customs of war, and crimes against humanity. Leaders, organizers, agitators, and partners involved in the preparation or implementation of a general plan or plot with the intent to commit one of the aforementioned crimes, are responsible for all acts committed by anyone in implementation of that plan.<sup>1087</sup>

As for the personal jurisdiction of the court, it only prosecutes natural persons with their personal capacity and excludes organizations or bodies, and it differs from the Nuremberg Court in accordance with Article (7) of it, as it treats the official capacity as a mitigating circumstance

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\* The fifth principle states that "Every person accused of committing an offense of international law has the right to a fair trial, whether in relation to facts or in relation to law."

\* The sixth principle states that "the crimes shown below are considered punishable offenses in international law, which are crimes against peace, war crimes and crimes against humanity."

\* The seventh principle states that "participation in a crime against peace, a war crime, or a crime against humanity is considered a crime in the concept of international law"

<sup>1085</sup> Id. Dr. Abdel-Wahid Muhammad al-Far, *International Crimes and the Punishment Authority over them*, at 112.

This court consisted of eleven judges representing eleven countries, including ten countries that fought Japan, and one neutral country, India. The judges of this court were chosen by the Supreme Leader of the allied authorities from the list of names submitted to him from the aforementioned countries.

<sup>1086</sup> Id. Mahmoud Sharif Bassiouni, *the International Criminal Court, its establishment and statute with a study of the history of international investigation committees and former international criminal courts*, at 39,32. This was due to many political considerations, including the fact that the Soviet Union entered the war against Japan, which was defeated a few weeks later, which raised the concern of the United States about the aspirations of the Soviet Union in the Far East, as well as the desire of the United States to prevent any influence of the Soviet Union on these measures.

<sup>1087</sup> Id., at 33.

in the determination of individual responsibility.<sup>1088</sup>

The court held its first session on April 19, 1946, and the trials continued until November 12, 1948, and issued verdicts of convictions against 28 defendants with penalties similar to those issued by the Nuremberg Court.<sup>1089</sup> Among the accused, including military and civilian, with varying penalties, ranging from death and life imprisonment to temporary imprisonment, these provisions are implemented by order of the leader, US General “Mac Arthur”, who had the authority to reduce or amend the sentence, according to the text of Article (17) of the bylaw, and the court was of a temporary nature.<sup>1090</sup>

Finally, despite the similarity between the two courts, the Tokyo Court did not have the same value for the Nuremberg Court in the conduct of the trials, due to the prevailing tension between the allies, the American side's control and its impact on the court’s administration. The Tokyo court trials did not receive the attention of international criminal jurisprudence, but it remains a judicial precedent that supported the establishment of the international criminal judiciary.<sup>1091</sup> Despite the importance of the trials of the Second World War (Nuremberg and Tokyo) and considering them an advanced step in strengthening and developing the rules of the individual's criminal responsibility at the international level, there are a number of defects that were attached to this historical precedent, the most important of which are:<sup>1092</sup>

- 1) It is the courts of the victorious party for the defeated party, it is a court consisting of opponents, and the opponent is Judgment at the same time.

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<sup>1088</sup> Id.

<sup>1089</sup> Id. Sawsan Tamr Khan Bakkah, Crimes Against Humanity in the Provisions of the Statute of the International Criminal Court, at 29.

<sup>1090</sup> Id., at 30.

<sup>1091</sup> Dr. Wael Ahmed Allam, The Individual Center in the Legal System of International Responsibility, Arab Renaissance House, Cairo, 2001, at 103.

<sup>1092</sup> Id., at 104.

- 2) The political nature of trials prevails over the legal nature.
- 3) These trials have wasted many of the legal principles established in the traditional criminal law, such as the principle of the legitimacy of crimes, penalties, and the application of punitive provisions retroactively.<sup>1093</sup>

### 3. Yugoslavia Tribunal “ICTFY”

The atrocities and massacres in armed conflicts broke out between the former republics of Yugoslavia.<sup>1094</sup> This prompted the UN Security Council to issue, on October 6, 1992, Resolution No. 780, by which it established the Committee of Experts to investigate and collect evidence regarding grave breaches of the Geneva Conventions and other violations of international humanitarian law that were committed in the territory of the former Yugoslavia.<sup>1095</sup> Commenting on the first interim report of the Committee of Experts, the Security Council issued on February 22, 1993 Resolution No. 808, which stipulated the establishment of an international criminal court to try persons responsible for grave violations of international humanitarian law committed in the territories of the former Yugoslavia since 1991. Resolution 808 required that

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<sup>1093</sup> Dr. Al-Taher Mansour, *International Criminal Law*, United New Book House, Beirut, Lebanon, 2000, at 138,139.

<sup>1094</sup> *Id.* Dr. Ali Youssef Al-Shukry. *International criminal jurisdiction in a changing world*, at 46. As a result of the disintegration of the former Yugoslav federation, each of the republics of this union sought independence, but this independence tendency fell short of the two states of Serbia and Montenegro, who wished to maintain a form of union between the republics of the former union, and therefore armed conflicts arose between the Serbs and Croats, and Muslims in the Republic of Bosnia and Herzegovina, which was conflict followed by the intervention of the states of Serbia and Montenegro in the struggle to support the Bosnian Serbs, where the most heinous crimes against Muslims were committed in Bosnia and Herzegovina

<sup>1095</sup> Dr. Mahfouz Sayed Abdel Hamid Mohamed, *the role of the International Criminal Tribunal for the former Yugoslavia in developing international humanitarian law*, Arab Renaissance House, Cairo, 2009, at 32.

In the first interim report on February 9, 1993, the commission concluded that serious violations and violations of international humanitarian law had occurred in the territory of the former Yugoslavia. On May 24, 1994, the Secretary-General of the UN submitted a letter to the President of the Security Council attached to the final report of the Committee of Experts and the committee concluded based on what was collected, studied and analyzed from information to the fact that in the territory of the former Yugoslavia, grave breaches of the Geneva Conventions were committed, and other violations of international humanitarian law on a massive, brutal and atrocious manner.

the Secretary General prepare a report on the establishment of the court within 60 days, and in implementation of this the Secretary General issued a report containing the draft statute of the court, and comments on the articles of the statute.<sup>1096</sup> As a result, the Security Council issued Resolution No. 827 on May 25, 1993, according to which the court was established in accordance with the provisions of Chapter VII of the Charter of the UN and approved the draft statute of the court.<sup>1097</sup>

With regard to individual criminal responsibility, the first article of the statute of the Yugoslavia court made clear that the court had the authority to try persons responsible for grave violations of international humanitarian law, which have been committed in the former Yugoslavia since 1991.<sup>1098</sup> According to the text of Article 6 of the Statute, the International Court will have jurisdiction only over natural persons, and Article 7 of the Statute decided in its first paragraph that every person plans to commit one of the crimes referred to in Articles 2 to 5 of the Statute (Grave violations of the Geneva Conventions of 1949, violations of the laws and customs of war, genocide, the crime against humanity), instigated, ordered, committed, assisted, or encouraged in any other way to plan, prepare, or execute it, is personally responsible for this

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<sup>1096</sup> Dr.-Omar Mahmoud Al-Makhzoumi. *International humanitarian law in the light of the International Criminal Court*, Dar al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, at 159.

<sup>1097</sup> Id. Dr.-Mahfouz Sayed Abdel Hamid Mohamed. *The role of the International Criminal Tribunal for the former Yugoslavia in developing international humanitarian law*, at 97  
The court, whose seat is located in The Hague, Netherlands, is formed according to the statute of three bodies, namely:

A - The Chambers of the Court (two chambers)

For the trial and the Appeals Chamber) consisting of eleven judges

B- The Prosecutor's Office

C- The Registry

The jurisdiction of the court includes in terms of place the territory of the former Socialist Federal Republic of Yugoslavia, including its territorial territory, airspace and territorial waters. As for time, from January 1, 1991 to the date that the Security Council will determine after peace is established in the region, penalties imposed by departments the trial is in prison, and the court may issue an order to return any property or funds that had been seized by criminal conduct to its true owners - to view the texts of the statute of the International Criminal Tribunal for the former Yugoslavia

<sup>1098</sup> Id., at 99.

crime.<sup>1099</sup> The second paragraph of Article 7 ruled that the official position of the accused, whether he is the head of state or government, or a government official, is not exempt from criminal responsibility or eligible for a reduced penalty.<sup>1100</sup> The third paragraph of Article 7 stated that subordinate committing any of the acts referred to in Articles 2 to 5 of the Basic Law does not exempt his superior from criminal responsibility if the superior knows, has reason know that subordinate was about to commit these acts, or that the subordinate actually committed them, and the superior did not take the necessary and reasonable measures to prevent the commission of those acts.<sup>1101</sup> The four paragraphs of the same article stated that a person accused of committing a crime was not exempted from criminal responsibility for having acted on the orders of the government or his superior; however, the court may consider reducing the penalty if it deems it necessary to meet the requirements of justice.<sup>1102</sup>

The court began operating in 1994, and has conducted many trials and convicted many of the accused, and the principle of individual responsibility was applied in all of these trials. For example, the trial of former Yugoslav President, (Slobodan Milosevic), was the first international trial of a head of state.<sup>1103</sup> In late March 2004, (Vinko Martinovic) and (Mladen Naletilic), two Bosnian Croats accused of a crime against humanity and a war crime, were tried. The first was sentenced to 12 years imprisonment and the second was sentenced to 20 years imprisonment for their leadership and individual responsibility for the crimes committed against the non-Croats in

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<sup>1099</sup> Id. Dr.-Mahfouz Sayed Abdel Hamid Mohamed, at 100.

The role of the International Criminal Tribunal for the former Yugoslavia in developing international humanitarian law

<sup>1100</sup> Id., at 101.

<sup>1101</sup> Id.

<sup>1102</sup> Id. Dr.-Omar Mahmoud Al-Makhzoumi. International humanitarian law in the light of the International Criminal Court, at 159.

<sup>1103</sup> Id. Dr. Ahmad Muhammad Al-Muhtadi Billah: The General Theory of International Criminal Justice, at 324.

the (Mostar) region in 1993.<sup>1104</sup> In a new development, the International Criminal Tribunal for the former Yugoslavia held on 2/6/2011 the first session of the trial of the Bosnian Serb leader (Erkomladic), accused of committing a war crime, genocide and a crime against humanity, and on 20/7/2011, the Serbian President announced the arrest of (Goren Hadjic), the last of the prosecutions of the International Criminal Tribunal for the former Yugoslavia accused of war crimes.<sup>1105</sup>

#### **4. Rwanda Tribunal**

As a result of the democracy imposed by the Belgian Mandate between 1958-1959, Rwanda suffered criminal acts and violations of international humanitarian law that did not differ significantly from what happened in Yugoslavia.<sup>1106</sup> In other words, with the transition of government from the monarchy to the democrat, with the victory of the "Hutu" in the elections, the Tutsi minority wanted to take back the reins of power, but this did not take place and the fighting continued.<sup>1107</sup> Especially after the crash of the Rwandan President's plane on 6 April 1994, when conflict broke out between the armed militias and the Republican Guard forces, several leaders, ministries and peacekeepers were killed, and the worst and most severe violations of the rules of international humanitarian law were committed against civilians.<sup>1108</sup>

The Tutsi tribe was the most affected in the Rwandan crisis, as was evident in the wake of these events, and as a result, the Security Council issued Resolution No. 935 in July 1994 regarding the establishment of a commission of experts to investigate the grave violations against

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<sup>1104</sup> Id. Dr. Amjad Heikal: International Individual Criminal Responsibility before the International Criminal Court, at 398.

<sup>1105</sup> Id. Euronews satellite channel - direct transmission of the facts of the trial on 3/6/2011  
BBC Arabic satellite channel, newsletter on 20/7/2011

<sup>1106</sup> Dr. Ali Abd al-Qadir al-Qahwaji, International Criminal Law (the most important international crimes and international criminal courts), Al-Halabi Human Rights Publications, Lebanon, 2001, at 295-298.

<sup>1107</sup> Id., at 299.

<sup>1108</sup> Id.



humanity committed on the territory of Rwanda during the civil war.<sup>1109</sup> This committee submitted its report on the situation in Rwanda to the Secretary-General of the UN. This report was relied upon to establish the Rwanda Court.<sup>1110</sup>

In an effort to punish those responsible for acts of genocide and perpetuate individual responsibility, the UN, through the Security Council, and at the request of the Rwandan government issued Resolution No. 955 on November 8, 1994. This document included the establishment of a special criminal court for one purpose, to punish and prosecute individuals who have contributed to the commission of serious crimes in Rwanda and its neighboring provinces.<sup>1111</sup> After the Security Council deemed the situation in Rwanda a threat to international peace and security, it used its authority to take whatever it thought appropriate to maintain international peace and security under Chapter VII of the Charter of the UN.<sup>1112</sup> The decision was appended to the court's statute, which contains (32) articles that dealt with both the nature of the court, its powers and the procedures followed before it.<sup>1113</sup> In accordance with Security Council Resolution 977 of February 22, 1995, Arusha, Tanzania, was chosen as the seat of the court.<sup>1114</sup> The International Criminal Tribunal for Rwanda held jurisdiction that exercised in accordance with its statute that is as follows:

***a. Personal Jurisdiction***

The subject of criminal responsibility before the court is all-natural persons accused of

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<sup>1109</sup> Id. Linda Omar Yachoy, the permanent criminal court and its jurisdiction, at 81.

<sup>1110</sup> Id.

<sup>1111</sup> Jamilat farisi, Law statute for the Individual under International Human Rights Law, Memorandum for a master's degree in Law, Mouloud Maamari University, Tizi Ouzou, at 68.

<sup>1112</sup> Id.

<sup>1113</sup> Muhammad bin Fardiya, the international criminal responsibility of individuals for the crime of torture with the study of the crime of torture in Abu Ghraib prison, thesis for a master's degree, League of Arab States, 2008, at 134-135.

<sup>1114</sup> Text of the Resolution - the official website of the UN [www.un.org](http://www.un.org)

committing serious acts against international humanitarian law, regardless of the level of their contribution to that, as well as their job position, according to what is provided for in Article 6 and 5 of its statute. With regard to individual criminal responsibility, the first article of the statute of the International Tribunal for Rwanda clarified that the court, according to Article 5 of The statute of the court has jurisdiction only for natural persons,<sup>1115</sup> has the authority to try persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda, and the Rwandan citizens responsible for these violations in the territories of neighboring countries between January 1, 1994 and December 31, 1994.

***b. Substantive Jurisdiction***

The court has jurisdiction on the crimes committed: the crimes of genocide, the crime against humanity, and the war crimes of (violating Article 3 common to the Geneva Conventions of 1949, as well as the breach of Additional Protocol II 1977). As Article 6 of the statute ruled in its first paragraph that every person planned a crime from the crimes referred to in Articles 2 to 4 of this statute (Genocide - crimes against humanity - violations of Article 3 common to the Geneva Conventions and violations of Additional Protocol II),<sup>1116</sup> or incited, ordered, committed, assisted or encouraged in any other way to plan, prepare for or execute it, personally responsible for this crime. According to the second paragraph of the same article, the official position of the accused, whether he is the head of state or government or a government official, is not exempted from criminal responsibility.<sup>1117</sup> The third paragraph of the same article also states that the

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<sup>1115</sup> Id.

<sup>1116</sup> It should be noted that Article (3) common to the 1949 Geneva Conventions relates to non-international armed conflicts, and the Second Additional Protocol to the Geneva Conventions relates to the protection of victims of non-international armed conflicts, due of course to the fact that the armed conflict in Rwanda is an internal armed conflict and not an armed conflict International.

<sup>1117</sup> Id. Text of the Resolution - the official website of the UN [www.un.org](http://www.un.org)

subordinate committing any of the acts referred to in Articles 2 to 4 of the statute cannot exempt his superior from criminal responsibility if that person knows, or there was a reasons for him to know, and also according to the four paragraphs of the same article, a person accused of committing a crime is not exempted from criminal responsibility for having acted on the orders of a government or a higher president; however, the court may consider commutation of the sentence if it deems it to fulfill the requirements of justice.<sup>1118</sup>

***c. Locative and Temporal Jurisdiction***

This is in accordance with the provisions of the first article of its statute by punishing the perpetrators of grave and serious violations of the rules of international humanitarian law in the territory of Rwanda. As it pursues the Rwandan citizens who are responsible, planners and who carried out these actions outside their territories, and within the neighboring regions,<sup>1119</sup> a date has been set for trial, starting from January 1 to December 31, 1994, the Committee of Experts based on Resolution No. 935 proved it. In addition, the court exercises joint jurisdiction with the national courts to impose punishment on people who are supposed to have violated and violated international humanitarian law, as it transcends national courts, and this is what it is stated in Article (2/8) of its articles of the statute.<sup>1120</sup>

The Criminal Court of Rwanda recognized individual criminal responsibility in Article (6) of its statute, so the individual subject to the International Criminal Tribunal for Rwanda asserted that the individual could not invoke the President's orders to exempt his

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<sup>1118</sup> Id.

<sup>1119</sup> Druryry Wafa, *The International Criminal Court and its role in implementing the rules of international humanitarian law*, Master's Thesis, Hajj Lakhdar University, Batna, 2008/2009., at 36.

<sup>1120</sup> Id., at 36.

responsibility.<sup>1121</sup> The court began its work in September 1997, when it conducted several trials that resulted in the conviction of several accused persons; for example, at the trial of the former Prime Minister of Rwanda, (Jani Campanda), on trial for genocide, the court sentenced him in September 1998 to life imprisonment.<sup>1122</sup> In October 1998, the court sentenced Tapa Mayor (John Paul Akayeswa) to life imprisonment for crimes against humanity and genocide.<sup>1123</sup> In 2001, the court issued a 12-year prison sentence against (George Ruggiero), the former broadcaster at the "Mill Moline" extremist station that incited Hutus to kill Tutsis and kill Hutus opposed to the massacres.<sup>1124</sup>

#### **B. Implementation of The International Criminal Responsibility by Permanent International Criminal Court**

One of the most effective forms of international cooperation to combat international crime and terrorism, limit its spread, and reduce its devastating impact is judicial international cooperation through requiring states to cooperate with each other to arrest and prosecute perpetrators of international crimes.<sup>1125</sup> The changes that have taken place on the international scene have stabilized, with the perpetration of the most serious crimes of concern to the international community, which should be punished. Towards this objective, the international community is attempting to find a mechanism by which responsible individuals can be prosecuted and punished for violating human rights and international humanitarian law.<sup>1126</sup>

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<sup>1121</sup> Dr. Al-Tahir Mansour: International Criminal Law, The New United Book House, Beirut, Lebanon, 2000, at 122.

<sup>1122</sup> Id.

<sup>1123</sup> Dr. Muhammad Hosni Ali Shaaban: International Criminal Justice, with an applied and contemporary study of the International Criminal Court, Arab Renaissance House, Cairo, 2010. at 101.

<sup>1124</sup> Id., at 102.

<sup>1125</sup> Abu Al-Khair Ahmad Attia, Permanent Criminal Responsibility: Studying the statute of the court and the crimes that are concerned with its consideration, Arab Renaissance House, Cairo, 1999, at 5.

<sup>1126</sup> Mukhallad Al-Tarawneh, International Criminal Judiciary, Law Journal, Maunah University, The Hashemite Kingdom of Jordan, Third Issue, 2003., at 127.

Pursuing and prosecuting individuals for committing criminal acts is an old idea that, after the insistence by a large number of NGOs and associations, and their desire to establish a permanent international judicial system that is entrusted with prosecuting individuals for their crimes.<sup>1127</sup> Thus, the General Assembly of the UN mandated the International Law Commission to prepare a draft statute for a permanent criminal court by issuing decision No. (33/47) of November 25, 1992 and decision No. 48/31 of December 9, 1993. The States Parties affirmed the need to prosecute the perpetrators of international crimes effectively.<sup>1128</sup>

After completing the project preparation and approval, the permanent International Criminal Court is considered a great historical achievement, as it is the first international court to prosecute individuals who commit grave violations of human rights and international humanitarian law regardless of their official status or any other consideration.<sup>1129</sup> In contrast to the permanent international court of justice, in which complaints are limited to countries only and not individuals, the ICC considers complaints submitted by individuals and its rulings are based on the basis of individual responsibility. The ICC's jurisdiction is unlimited, both in time and geography.<sup>1130</sup> This statute of the court is considered to be the essential start of the international criminal justice, through which the dream transformed into a reality that was long awaited by the international community.

### **1. Establishing the Permanent International Criminal Court (ICC)**

The way to establishing such a body was long and full of disputes, which led to successive

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<sup>1127</sup> Mohamed Faden, Procedures for the Progress of the Case before the Permanent International Criminal Court, Master's thesis, Saad Aleppo University, Blida, 2005, at 6-5.

<sup>1128</sup> Id., at 6.

<sup>1129</sup> Hussein Nassima, International Criminal Responsibility, thesis submitted to obtain a master's degree in international criminal law and justice, University of Mentouri Constantine, 2006-2007, at 143.

<sup>1130</sup> Id.

efforts by the international community to establish a permanent criminal court within the framework of the UN through the General Assembly, which requested the International Law Commission to address establishing an international criminal court in 1989.<sup>1131</sup> In response to this request, this committee conducted at its forty-second session, in 1990, a comprehensive study to establish this international judicial body.<sup>1132</sup> It presented its first report to the General Assembly in the same year, which indicates that the Committee had reached agreement on establishing a permanent international criminal court having a relationship with the UN.<sup>1133</sup>

Whereas in 1994 the General Assembly established a specialized committee to review the main issues and go into arrangements for an international agreement on the establishment of the International Criminal Court (ICC).<sup>1134</sup> It continued to work until 1996 when it held the diplomatic conference in the Food and Agriculture Organization in Rome to adopt an international convention on the ICC.<sup>1135</sup> After the committee prepared the project, it referred it to the conference on 3 April 1998. The conference was held in Rome between 15 and 17 June 1998. Delegations of 160 countries participated in the conference that established the ICC, and attended as observer's representatives of governmental and non-governmental organizations to establish the court.<sup>1136</sup>

After numerous deliberations on that project (establishment of a permanent criminal court), the conference adopted the Rome Statute of the ICC, which was signed by 124 countries.

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<sup>1131</sup> Ibrahim Mohamed Al-Anani, *Establishment of the International Criminal Court (study in light of the Rome Statute in 1998)*, Dar Al-Nahda Al-Arabiya Cairo, 1997, at 286.

<sup>1132</sup> *Id.*, at 287.

<sup>1133</sup> *Id.*

<sup>1134</sup> *Id.* Dr. Muhammad Fahhad al-Shallah, *International Humanitarian Law*, Monsat al-Maarif, Alexandria, 2005., at 327.

<sup>1135</sup> *Id.*, at 328. All Arab countries except Somalia attended the conference, and Palestine attended as an observer.

<sup>1136</sup> *Id.*

But seven countries objected, (USA, China, Israel, India, Iraq, Qatar, Libya), also twenty-one countries abstained from voting.<sup>1137</sup> This statute became an international treaty effective two years after the ratification of the sixtieth state (60), and this is what was done on April 10, 2002, when it was announced at the UN conference that an international criminal court would be established with the ratification of the sixty state and reaching the quorum required to implement the convention.<sup>1138</sup> Consequently, this treaty entered into force officially on July 1, 2002.<sup>1139</sup>

With that, the Rome Statute of the Permanent International Criminal Court was adopted. It included a preamble of twelve paragraphs, followed by 128 articles distributed in thirteen chapters. Also, the Rome Conference adopted several decisions after the adoption of the statute, which were included in the final document of the conference, and we turn to the two most important decisions E and F:<sup>1140</sup>

Resolution E: indicated that terrorist acts and drug crimes are serious crimes of concern to the international community. The Rome Conference regrets its inability to agree on an acceptable general definition of these crimes and recommends that the Review Conference, pursuant to Article 123 of the Statute, consider these crimes with a view to defining and including them among the crimes listed in the jurisdiction of the court.<sup>1141</sup>

Resolution F: The final document, which included the establishment of a preparatory committee consisting of representatives of the states that signed the final document of the Rome

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<sup>1137</sup> Dr. Abu Al-Khair Ahmad Attia, *The Permanent International Criminal Court, "Studying the statute of the court and the crimes that the court is competent to consider"*, 2nd Edition, Arab Renaissance House, Cairo, 1999, at 15.

<sup>1138</sup> Bariea Al-Qudsi: *The International Criminal Court (its nature and terms of reference, the position of the United States and Israel*, *Damascus Journal of Economic and Legal Sciences*, Volume 20, No. 2, 2004, at 24.

<sup>1139</sup> Id.

<sup>1140</sup> Mahmoud Sharif Bassiouni, *the International Criminal Court (an introduction to the study of the provisions and mechanisms of national enforcement of the statute)*, Dar El-Shorouk, First Edition, Egypt, 2004, at 127.

<sup>1141</sup> Id.

Conference, and other countries invited to the conference, where the conference granted this preparatory committee, and any preparation of proposals, regarding practical arrangements for the establishment of the court and its entry into the work phase,<sup>1142</sup> including the preparation of the following draft list:

- 1) Rules of Procedure and Evidence,
- 2) Elements of Crimes,
- 3) Agreement on the relationship between the Court and the UN,
- 4) Basic principles governing the headquarters agreement to be concluded through negotiation between the Court and the host country,
- 5) Financial system and financial rules, and - Agreement on the Privileges and Immunities of the Court,
- 6) First Year Budget,
- 7) Rules of Procedure of the Assembly of States Parties.<sup>1143</sup>

As for the crime of aggression, the Preparatory Committee accepted the crime of aggression as one of the crimes in Roma statue, provided that its report includes a discussion paper, related to the concept of the crime of aggression and defining its elements, which was already mentioned in the document:

(PCNICC / 2002/1 / rev2), prepared by the coordinator of the Working Group on the crime of aggression at the tenth session. This paper was transmitted to the Assembly of States Parties, with a list of all proposals on the crime of aggression issued by the Preparatory Committee. This was accompanied by a historical review of developments related to crime.<sup>1144</sup>

In the end, it is known that joining international agreements enter into the practices of state sovereignty, and no country can be blamed for not joining any international agreement.<sup>1145</sup>

## **2. The Legal Status of The Permanent International Criminal Court**

The International Criminal Court has several legal characteristics, the most important of which

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<sup>1142</sup> Id., at 128.

<sup>1143</sup> Id.

<sup>1144</sup> Id., at 129.

<sup>1145</sup> [www.marefa.org/index.php/%D8%](http://www.marefa.org/index.php/%D8%)



are permanence and independence, the international legal personality, and it is also characterized by the treaty nature of its statute in addition to the inadmissibility of reservation. The Court is a permanent international judicial body:

This characteristic is the most important feature that distinguishes the permanent international criminal court from other international criminal tribunals; however, this feature is the focus of controversy from the Second World War until its emergence.<sup>1146</sup> In view of the importance of this feature, it was stipulated in Article 1 of the statute of the Court, which stipulates that "an international criminal court will be established by this, and the court will be a permanent body with the authority to exercise its jurisdiction over persons in the most serious crime of international concern ...", thus, the International Criminal Court is not a special court established for a specific purpose that ends with the end of it, as is the case with international courts that have been known as the Nuremberg and Tokyo Courts.<sup>1147</sup>

Also, the International Criminal Court is not subject to the UN, but is independent of it, which was confirmed by the preamble of the statute of the court, which stipulates that, "The States parties to this statute have resolved to achieve these goals and for the benefit of current and future generations to establish a court, an independent, permanent, international criminal, relevant to the UN system, with jurisdiction over the most serious crimes of concern to the entire international community".<sup>1148</sup>

***a. The Court was Established to Investigate and Prosecute Those Who Commit The Most Serious Crimes of International Concern***

By adopting this method, the framers of the statute have determined the specific

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<sup>1146</sup> Id. Dr. Mohamed Hosni Ali Shaaban, International Criminal Court, an applied and contemporary study of the International Criminal Court, Arab Renaissance House, Cairo, 2010, at 132.

<sup>1147</sup> the first article of the statute of the International Criminal Court

<sup>1148</sup> Id., at 133.

jurisdiction of the court by drawing up a list of crimes for which the court has jurisdiction to consider and which are mentioned in Article 5 of the Rome Statute as, “The jurisdiction of the Court shall be limited to the most serious crimes, (a) The crime of genocide, (b) Crimes against humanity, (c) War crimes, (d) The crime of aggression”.<sup>1149</sup> This is an application of the principle of legality in international criminal law, as the birth of this statute of the court, and explicitly stipulating international crimes in its jurisdiction and determining the sanctions applied by it. Like the various national penal laws, the principle of legality has become indisputable in international criminal law.<sup>1150</sup>

***b. The ICC has The International Legal Personality***

The statute of the International Criminal Court has explicitly recognized that the court has an international legal personality, whereas, Article 4/1 of the Court’s Basic Law stipulates that “the court shall have an international legal personality, and also have the legal capacity necessary to exercise its functions and achieve its purposes”.<sup>1151</sup>

***c. The Court was Established Under an International Treaty***

Based on the treaty nature of the Rome Statute of the Court, the state will be completely free to join or refrain from it, and by adopting the Rome Conference for this solution, it would have taken into consideration the sensitivity of the issue of national criminal jurisdiction, which requires the opportunity for all states to accept or not accept the jurisdiction of the court.<sup>1152</sup> Especially as the “ICC” does not an entity above states, but rather an entity like other existing

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<sup>1149</sup> Id., at 133. Article 5 of the Rome Statute

<sup>1150</sup> Id. Mahmoud Sharif Bassiouni, the International Criminal Court, an introduction to the study of the provisions and mechanisms of national enforcement of the statute, Dar Al-Shorouk, first edition, Egypt, 2004, at 18

<sup>1151</sup> Id, at 19. Article 4 of the Rome Statute

<sup>1152</sup> Id. Mahmoud Sharif Bassiouni, the International Criminal Court, an introduction to the study of the provisions and mechanisms of national enforcement of the statute, at 18.

international entities, which is a complementary court to national criminal justice.<sup>1153</sup> The statute of the court stipulates its treaty nature. As stated in its preamble, "The States parties to this statute . . . have agreed as follows: . . ."<sup>1154</sup> It is understood that, according to the two Vienna Conventions of the Law of Treaties of 1969, 1986 that the agreement is considered an international treaty whatever its name is, it may be called (agreement - treaty - declaration - charter - covenant - instrument - statute, ... etc.). These various designations do not have any effect from a legal point of view, whether in terms of conditions of validity, in terms of their enforcement, or in terms of the implications of it.<sup>1155</sup> It results from this treaty nature of the Statute of the International Criminal Court, several things, including:

- 1) The state is not obligated to be associated with it against its will.
- 2) The statute is the result of negotiations as it took its current form and content.
- 3) That the statute applies to almost all the rules that apply to international treaties such as those relating to interpretation, spatial and temporal application, effects, ... etc. and that that is not stated otherwise.<sup>1156</sup>
- 4) The conclusion of international agreements entails important matters for states, one of the most important goals pursued by many international agreements is to unify the criminal rules it contained among the parties, and to lay down penalties for violating its provisions.
- 5) There is no doubt that any international treaty can raise some disputes between its parties regarding its application or interpretation, hence it has become necessary to address that issue by stipulating how to settle it. The statute of the International Criminal Court stipulated in Article 119 several methods for settling disputes related to its application or interpretation, namely:<sup>1157</sup>
- 6) Concerning disputes related to the judicial functions of the court, the court itself will settle it by a decision issued by it, and there is no doubt that this applies to a well-known principle that any judicial or arbitral body has (the

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<sup>1153</sup> Id.

<sup>1154</sup> Dr. Ahmad Abu Al-Wafa, Basic Features of the International Criminal Court, (within the book of the International Criminal Court Constitutional and Legislative Harmonies, prepared by Chancellor Sharif Palm), International Committee of the Red Cross, 2003, at 27.

<sup>1155</sup> Dr. Faisal Abdul Rahman Ali Taha, International Law and Border Disputes, Second Edition, Dar Al-Ameen for Publishing and Distribution, Abu Dhabi, Emirates, 1999, at 115.

The Vienna Convention on the Law of Treaties of 1969 defined the treaty as "an international agreement concluded between two or more states in written form and subject to international law, whether it was done in one or more documents and whatever the name given to it".

<sup>1156</sup> Did. r. A-Hamad Abu Al-Wafa, Basic features of the International Criminal Court, within the ICC book, Constitutional and Legislative Harmonies, prepared by Sharif Palm, at 22.

<sup>1157</sup> Id., at 23. Article (119) of the Rome Statute

competence of jurisdiction).

- 7) Concerning disputes relating to the interpretation or application of the statute of the court that may arise between two or more of the state parties are settled through negotiations between those states. If it is not settled within three months of the start of the negotiations, the contestant shall be referred to the Assembly of the States Parties that may themselves seek to settle the dispute or take recommendations regarding any other means of settling the dispute, including referring it to the International Court of Justice in accordance with the statute of the court.<sup>1158</sup>

### **3. Individual Criminal Responsibility in The Statute of The International Criminal Court**

The debate has erupted among jurists about the possibility of holding the state criminally accountable, however, given that since international criminal law emphasizes the importance of the moral element represented in the knowledge and will to establish international crime and hold perpetrators accountable.<sup>1159</sup> It rejected the idea of the criminal responsibility of the state, and criminal responsibility has become limited to the natural individuals who committed the crime in the name of and for the state. The principle of the criminal responsibility of the individual, and the exclusion of the criminal responsibility of the state and other bodies in many international documents, as this principle has been affirmed by article 227 of the "Versailles Treaty" related to the trial of German Emperor Gallium II.<sup>1160</sup>

In addition, the statute of the Nuremberg Court affirmed in Article 6, this principle, "The court established under the August 8, 1945 agreement to prosecute and punish major war criminals from the European Axis powers is competent to try and punish all Persons who committed, individually or as members of an organization working for the Axis Country, one of the following crimes ...".<sup>1161</sup> Likewise, Article 1 of the Statute of the International Criminal

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<sup>1158</sup> Id. Dr. Ahmad Abu Al-Wafa, Basic Features of the International Criminal Court, at 29.

<sup>1159</sup> Id. Abdul Wahid Muhammad al-Far, International Crimes and the atower of Punishment over them, Dar Al-Nahda al-Arabiya, Without Edition Number, Egypt 1995, at 36, 37.

<sup>1160</sup> Id., at 38.

<sup>1161</sup> Id.

Tribunal for the Former Yugoslavia states that it is within the court's authority to prosecute the natural persons responsible for grave breaches of international humanitarian law that have been committed in the former Yugoslavia since 1991.<sup>1162</sup>

As for the statute of the permanent international criminal court, article 25 stipulated in its first and second paragraphs, as it affirmed that the personal jurisdiction of the court is limited to trying only natural persons, who are responsible in their individual capacity, for committing any of the crimes included in the court's jurisdiction, and they are subject to punishment in accordance with this statute.<sup>1163</sup> Consequently, the statute excluded from its jurisdiction, states and international organizations, because subjecting them as a legal person to criminal responsibility, has not been accepted until now. However, the criminal responsibility of a natural person does not affect the civil responsibility of the legal person, especially for the state.<sup>1164</sup> Whereas this responsibility remains under international law, the state is obligated to compensate for damages arising from its act whenever it is proven responsible in accordance with the fourth paragraph of Article 25 of the statute.<sup>1165</sup>

From the foregoing, we can confirm that the scope of personal jurisdiction of the permanent international criminal court is limited to natural persons who commit international crimes within the jurisdiction of the court.<sup>1166</sup> It should also be noted that the criminal responsibility of the individual before the International Criminal Court is not limited only to the

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<sup>1162</sup> Id.

<sup>1163</sup> Adel Abdullah Al-Masadi, *International Criminal Court (jurisdiction and referral rules)*, Arab Renaissance House, first edition, Cairo, Egypt, 2002, at 11.

<sup>1164</sup> Id. Ali Youssef Al-Shukri, *International Criminal Law in a Changing World*, Ettrak for Publishing and Distribution, First Edition, Egypt, 2005., at 205.

<sup>1165</sup> Id. Suhail Hussein Al-Fatlawi, *Imad Muhammad Rabee, International Humanitarian Law*, House of Culture for Publishing and Distribution, first edition, Jordan, 2007, at 330.

<sup>1166</sup> The court may not exercise its jurisdiction over any person under the age of 18 at the time of the commission of the crime or the crimes attributed to him in accordance with Article 26 of the court statute.

case when the person committed the international crime in his individual capacity, rather, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.<sup>1167</sup> This is what was included in Article 25, which confirmed in its third paragraph that, The person is criminally responsible and liable to punishment for any crime within the jurisdiction of the court, if this person commits any of the following acts:

- 1) Committing this crime, whether it is in his individual capacity, or in association with others, or through another person, regardless of whether that other person is criminally responsible or not.
- 2) Orders, solicits, or induces the commission of such a crime which in fact occurs or is attempted.
- 3) For facilitating the commission of such a crime, aids, abets, or otherwise assists in its commission or its attempted commission, including providing the means for its commission.
- 4) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
  - 5) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
  - 6) Be made in the knowledge of the intention of the group to commit the crime
- 7) In respect of the crime of genocide, directly and publicly incites others to commit genocide.
- 8) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.<sup>1168</sup>

Finally, we want to emphasize in this context is that establishing criminal responsibility for

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<sup>1167</sup> Id. Suhail Hussein Al-Fatlawi, Imad Muhammad Rabee, *International Humanitarian Law*, at 335.

<sup>1168</sup> Id., at 335. Article 25 of Roma statue

natural persons, whether they are indigenous actors or partners in one of the international crimes within the jurisdiction of the International Criminal Court, does not affect the responsibility of the concerned state under the provisions of international law.<sup>1169</sup>

**a. Criminal Responsibility of Leaders and Presidents**

This statute added provisions for the responsibility of commanders and presidents for the crimes committed by those who were under their presidency, as Article (1/28) of the statute of the court included the responsibility of the military commander or the person already in the position of the military commander who is responsible for individual criminal responsibility for crimes committed under the jurisdiction of the court and committed by forces subject to its effective control and non-control, depending on the situation and as a result of the military commander or person not exercising his control over the forces properly, with two conditions:<sup>1170</sup>

- 1) For the military commander to know that his forces are committing or about to commit one of these crimes.
- 2) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.<sup>1171</sup>

Therefore, the military commander's criminal responsibility is based on two things:<sup>1172</sup>

**b. Knowledge and The Assumption of Responsibility**

As for the president, the second paragraph of Article (28) specified a provision related to the responsibility of the president for the actions of his subordinate, as "With respect to superior and subordinate relationships not mentioned in paragraph (a), a superior shall be criminally

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<sup>1169</sup> Id. Sawsan Tamrakhah Bakkah, Crimes Against Humanity in the Light of the Provisions of the Statute of the International Criminal Court, at 146, 147, 148.

<sup>1170</sup> Id. Article 28 of Roma statute

<sup>1171</sup> Id. Dr. Abu al-Khair Ahmad Ptiya, The Permanent International Criminal Court, "Studying the statute of the court and the crimes that the court is competent to consider", at 43.

<sup>1172</sup> Id., at 44.

responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates”.<sup>1173</sup>

***c. Irrelevance of Official Capacity and Immunities***

The criminal court statute provides for prosecution of individuals responsible for any crime that falls within the jurisdiction of the criminal court, regardless of the official character of the person. If it is proven that he committed any of these crimes, he will be punished even if he is a head of state.<sup>1174</sup> Whereas, Article 27/1 of the law stipulates that

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.<sup>1175</sup>

In addition, this statute does not consider immunity a reason that prevents a person from being subjected to criminal responsibility and punishment, Article (27/2) states that: “Immunities or special procedural rules that relate to the official character of a person, whether within the framework of national or international laws, do not preclude the court from exercising its jurisdiction over this person”.<sup>1176</sup> In the end, according to Article (26) of this statute, we find that the International Criminal Court does not hold its jurisdiction over persons who have not reached the age of 18 years at the time of committing the crime, meaning that the criminal court exempts them from criminal responsibility.<sup>1177</sup>

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<sup>1173</sup> Id. Article 28 of Roma statute

<sup>1174</sup> Id. Dr. Abu al-Khair Ahmad Ptiya, the Permanent International Criminal Court, “Studying the statute of the court and the crimes that the court is competent to consider”, at 46.

<sup>1175</sup> Id. Article 27 of Roma statute

<sup>1176</sup> Muhammad Hassan al-Qasimi, the establishment of the permanent International Criminal Court, is it a real step to develop the legal system? College of Sharia and Law, United Arab Emirates University, Journal of Law, First Issue, 2003, at 85.

<sup>1177</sup> Id., at 86.



### **C. Libya Cases Referred to The International Criminal Court on Crimes Committed**

On February 17, 2011, the UN Security Council adopted Resolution 1970 by 15 to 0 votes referring the situation in Libya to the International Criminal Court. Under the Rome Statute of the International Criminal Court, the Security Council can refer the situation in any country to the claim of the court from the mandate of Chapter VII of the Charter of the UN, if it is found that the situation in the country threatens international peace and security. Thus, the court will have ongoing and existing jurisdiction in Libya beginning on February 15, 2011. Libya is obliged to fully cooperate with the court a binding requirement of Libya under the UN Charter, although Libya is not a party to the treaty establishing the court. Security Council Resolution 2095, adopted on March 14, reaffirmed Libya's commitment to cooperate with the ICC.

This cooperation includes compliance with court decisions and requests, as well as respect for the immunity of court officials stipulated in Article 48 of the treaty establishing the court. Libya promised to comply with its obligations. The Libyan National Transitional Council - the ruling authority at that time - affirmed a commitment to cooperate with the International Criminal Court. The Transitional Council also pledged to cooperate in a letter sent in November 2011 to the judges of the court, and in a letter issued in April 2011 to the ICC prosecutor.

#### **1. International Crimes in Libyan Territories**

The UN Security Council unanimously adopted Resolution No. 1970 on February 26, 2011, by which it referred the status quo in Libya since February 15, 2011, to the Prosecutor of the ICC, noting the need to hold accountable those responsible for international crimes, including those carried out by forces under their command against civilians.<sup>1178</sup> After conducting a

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<sup>1178</sup> Resolution No. 1970, adopted by the Security Council at its 6491 st meeting, held on 26 February 2011, Security Council, UN, 1970 / S / RES, issued on 26 February 2011.

preliminary analysis of the situation, the Prosecutor of the ICC concluded that there was a reasonable basis for believing that crimes under the jurisdiction of the ICC were found in Libya, after 15 February 2011, and he decided on 03 March 2011 to initiate an investigation.<sup>1179</sup>

The anti-government demonstrations that were planned in Benghazi, the second largest city in Libya, broke out on February 17, 2011, after the security forces arrested two of the most prominent activists. The authorities soon released them, but protests spread across Libya as government forces resorted to lethal and excessive force in an attempt to contain them, firing live ammunition with automatic assault rifles at unarmed protesters, and about 170 people were killed and more than 1,500 injured in Benghazi and al-Bayda between 16-21 February 2011.<sup>1180</sup> On February 20, protests in Tripoli, were met with live bullets by the security forces, resulting in deaths and injuries, among the peaceful demonstrators and bystanders.<sup>1181</sup> "Gaddafi forces" also committed violations of international humanitarian law, including war crimes, to regain control of cities and towns captured by the opposition. "Gaddafi Forces" launched indiscriminate attacks and attacks targeting civilians in areas such as Misrata, Ajdabiya, Al-Zawiya, and Jabal Nafusa, whereas artillery, mortar and rockets were fired at residential areas.<sup>1182</sup> As well as weapons that did not distinguish between targets were used, such as anti-personnel mines and cluster bombs,

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<sup>1179</sup> Questions and answers about the procedures of the International Criminal Court regarding the situation in Libya, following the request of the Prosecutor to issue three arrest warrants, what happened after the referral of the Security Council to the situation in Libya to the International Criminal Court? International Criminal Court, document No.: -ICC-at IDS Q & A-LIB -00-002 / 11\_Ara, issued on: 16 May 2011, at 01.

<sup>1180</sup> Amnesty International Report 2012, The State of Human Rights in the World, The Situation in Libya, Amnesty International, British Library, First Edition, Sadbury Print Group, 2012, at 288.

<sup>1181</sup> Id. "Naji Girdano" who joined the anti-government demonstrations in Benghazi, was hit with a wooden stick and shot by the Qadhafi security forces on February 17, 2011. "Nagy" was killed along with two other men near the Nasr Mosque during the Moroccan prayer with snipers from the security forces who were firing Fire from the Juliana Bridge.

- On February 18, 2011, I was shot by "Rakia Fawzi Mabrouk", who was 8 years old, who was shot through her bedroom window. The bullet was fired from the "Hussein Al-Juwaifi" military base in "Shahat" near "al-Bayda", where it was said that "Gaddafi forces" were stationed there.

<sup>1182</sup> Report of the Civil Society Fact-Finding Mission in Libya (Palestinian Center for Human Rights, Arab Organization for Human Rights, International Legal Aid Group, ILAC) (January 2012).

in residential areas, these unlawful attacks killed and wounded hundreds of civilians not involved in the fighting.<sup>1183</sup>

Within two weeks, the protests developed into an armed internal conflict as people take up arms against government forces, which they overpowered them in eastern Libya, in the Jabal Nafusa region and the coastal city of Misurata. When armed confrontations intensified with the "Qaddafi forces" seeking to regain control of the areas captured by the opposition forces, and their attempt to control more areas, the UN Security Council adopted Resolution 1973, granting the mandate to establish a no-fly zone over Libya and implement all the necessary measures, but not up to the level of foreign occupation, to protect civilians.<sup>1184</sup>

The period of Qaddafi's rule witnessed flagrant violations of human rights, increased repression of freedoms, restriction of the press and censorship of publications, and increased prisoners of conscience and political prisoners, killing of them and displacement their families.<sup>1185</sup> The mass executions at the end of the seventies and mid-eighties, and many university students, intellectuals and political intellectuals who opposed the idea of Gaddafi were killed and executed in squares and universities publicly.<sup>1186</sup>

On May 16, 2014, there was an important turning point in Libya in general, and in the city of Benghazi and the eastern region in particular, after "Khalifa Hifter" announced on that date the launch of his military operation, which he called "Operation Dignity".<sup>1187</sup>

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<sup>1183</sup> The civilian death toll was especially large in "Misurata", where the residents were besieged, from February and beyond, where Gaddafi forces imposed a siege on the city and fired rockets towards the port area, which is the only entry for humanitarian aid and the only point to evacuate the wounded and sick.

<sup>1184</sup> Resolution No. 1973, adopted by the Security Council at its 6498th meeting, regarding the establishment of a no-fly zone over the territory of Libya, Security Council, UN, Document No.: (S / RES) 2011 (2011), issued on: 17 March 2011.

<sup>1185</sup> The 17 February revolution, the conflict in Libya, is available at [www.free-miinds.org](http://www.free-miinds.org).

<sup>1186</sup> Id.

<sup>1187</sup> Libya Al-Khobar, reports and articles published by the Al-Khobar Network <https://www.noonpost.com/author/11924>

Before that, Khalifa Haftar appeared on February 14, 2014, in the capital, Tripoli, and at that time announced the dissolution of the General National Congress and the freezing of the constitutional declaration "Coup Attempt", calling for the formation of a caretaker government and a committee to oversee new elections. On Friday morning, May 16, 2014, military operations began in Benghazi, where the city witnessed an aerial bombardment on the February 17 camp in Qaryounis and a ground attack on the Hawari and Sidi Faraj areas, leaving dozens of dead and wounded.<sup>1188</sup>

The “Dignity” movement caused great damage to the citizens of Benghazi, especially in the last months of 2014 and the beginning of 2015, after which the city lived through difficult days due to a shortage of flour, fuel, and cooking gas, and power outages for long periods in most areas of Benghazi, and more importantly, the displacement of thousands of families from their areas and the displacement of the families of Benghazi Revolutionaries members and fighters and their supporters.<sup>1189</sup> The “Guardians of Blood” Battalion carried out in Benghazi during the last months of 2014 and the beginning of 2015, the burning and demolishing of homes, and destroyed their property after they abandoned people from the city, in addition to extensive campaigns of arrests and torture of them in prisons of operation of “Karama”, some were killed and dumped in garbage dumps in Benghazi.<sup>1190</sup> The Libyan Relief and Humanitarian Aid Agency registered nearly 11,000 displaced families from the clashes in Benghazi, while IOM reports showed that the city of Benghazi had the largest number of internally displaced people, with 38,400.<sup>1191</sup>

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<sup>1188</sup>

Id.

<sup>1189</sup>

Id.

<sup>1190</sup>

Id.

<sup>1191</sup>

The Libyan Relief and Humanitarian Aid Agency

## 2. The Security Council Referred The Situation in Libya to The International Criminal Court

As we mentioned above, on February 26, 2011, the UN Security Council adopted Resolution 1970 by a vote of 15 to zero referring the situation in Libya to the International Criminal Court, under the Rome Statute of the ICC, for international crimes in the region.<sup>1192</sup> The Security Council can also refer the situation in any country to the court's claim from the mandate of Chapter VII of the UN Charter, if it is found that the situation in the country threatens international peace and security.<sup>1193</sup>

This led the ICC Prosecutor to request the Pre-Trial Chamber to conduct investigations into the crime that occurred in Libya. Among the findings, the Libyan security forces carried out from 15 February 2011 to 28 February 2011, attacks throughout Libya, particularly in Benghazi, Misrata and Tripoli, where more than 50% of the Libyan population resides, against the civilian population participating in demonstrations against the regime of Muammar Gaddafi.<sup>1194</sup>

It also showed that the attack by the security forces followed a consistent methodology, such as searching homes and arresting alleged dissidents, and firing heavy weapons on civilians gathered in public places, with the use of air support and sniper fire, and ensuring that these events were covered up later.<sup>1195</sup> On May 16, 2011, after the completion of the investigation procedures, the Public Prosecutor requested the judges of the First Pre-Trial Chamber to issue arrest warrants against "Muammar Abu Minyar al-Qadhafi," "Saif al-Islam al-Qadhafi," and the

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<sup>1192</sup> Richard Dicker, director of the International Justice Program at Human Rights Watch, said: "The Security Council rose to the occasion and informed Gaddafi and its leaders that if they gave orders to shoot at peaceful demonstrators - or they tolerated firing at them or complied with those orders - they would be tried in The Hague." (Human Rights Watch, Security Council referring Libya to the International Criminal Court, article published on <http://www.hrw.org/en/news/20/2011>).

<sup>1193</sup> Id.

<sup>1194</sup> The second statement of the Prosecutor of the International Criminal Court to the UN Security Council in accordance with Security Council Resolution 1970 (2011), Office of the Prosecutor, International Criminal Court, issued on November 02, 2011, at 3.

<sup>1195</sup> Id., at 4.

head of the Libyan Intelligence Service “Abdullah al-Senussi” for charges related to crimes against humanity (murder and persecution) they were allegedly involved in Libya after February, 17, 2011.<sup>1196</sup> The Prosecutor's case against "Moammar Mohamed Abu Minyar Gaddafi." After the Pre-Trial Chamber I concluded that there was reasonable basis for believing that Libyan leader, Muammar Gaddafi laid out, in coordination with his regime, plans to take all means to deter and suppress the civil demonstrations against his regime, and supervised the implementation of this plan, it issued an arrest warrant against him on 27 June 2011 after investigating the situation in the Libya.<sup>1197</sup> On November 22, 2011, the Pre-Trial Chamber I decided to end the proceedings against “Muammar al-Gaddafi” after receiving his death certificate from the Libyan authorities.<sup>1198</sup>

***a. The Prosecutor's Case Against "Saif Al-Islam Gaddafi" and "Abdullah Al-Senussi"***

According to Pre-Trial Chamber I, Saif al-Islam was the undeclared successor of Muammar Gaddafi and the most influential person in his inner circle. And there are reasonable reasons to believe that Saif al-Islam Qadhafi was exercising control over important parts of the state apparatus and security forces, including financing and logistical support, and he had the authority of the de facto prime minister. According to ICC Resolution 01/11-ICC, there were reasonable grounds to believe that although Saif al-Islam al-Qadhafi did not hold an official position, he was the most influential person exercising control over the importance of the state apparatus, including financial affairs and logistics, and had the powers of the Prime Minister de facto.<sup>1199</sup>

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<sup>1196</sup> Id.

<sup>1197</sup> Id. Report of the UN International Criminal Court for the period 2010-2011, at 15.

<sup>1198</sup> Voir Aussi : SITUATION IN LIBYA IN THE CASE OF THE PROSECUTOR v. MUAMMAR MOHAMMED ABUMINYAR GADDAFI, SAIF AL-ISLAM GADDAFI and ABDULLAH AL- SENUSSI, Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi, PRE-TRIAL CHAMBER I, No.: ICC-01/11-01/11, International Criminal Court, Date: 22 November .2011.

<sup>1199</sup> The situation in the Libyan Arab Jamahiriya, warrant for the arrest of Saif al-Islam al-Gaddafi, Pre-Trial Chamber I, document No. IK 01/11, International Criminal Court, issued on: 27 June 2011.

The Pre-Trial Chamber I found reasonable grounds to believe that from February 15, 2011 until at least February 20, 2011, Abdullah al-Senussi was the National Director of Military Intelligence, which was considered one of the most powerful and most efficient repression apparatus in Muammar Gaddafi's regime..

The Libyan court is in full compliance with the statute in the appeal lodged on the admissibility of the lawsuit filed against both Seif al-Islam Gaddafi and Abdullah Senussi. This is a judicial issue that is ultimately subject to the Chambers of the Court, and includes an assessment of whether the state is conducting real judicial procedures regarding those responsible for committing crimes against humanity.<sup>1200</sup>

On 11/02/2013, the Office of the Prosecutor responded to the additional data provided by the Government of Libya on issues related to the admissibility of the case against the Seif al-Islam Gaddafi, saying that the materials submitted so far despite some of the concrete measures taken by Libya in the investigations are insufficient to prove that there is insufficient evidence to verify in the case itself.<sup>1201</sup> The Office of the Prosecutor also states that in light of the challenges that Libya faces in this post-conflict transitional phase, and that it has obtained international assistance, it should have reasonable time to provide additional material to demonstrate that it is conducting investigations into the same case.<sup>1202</sup> In March 2013 the Office of the Public Defender of the Defense requested the Pre-Trial Chamber to withdraw its representation of Seif al-Islam Gaddafi and appointed John Rudd Jones as a defense counselor. The Pre-Trial Chamber agreed to do so in a decision on 17 April 2013.<sup>1203</sup>

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<sup>1200</sup> Id.

<sup>1201</sup> - Fifth report of the Prosecutor of the International Criminal Court to the Security Council of the UN Commission pursuant to Council Resolution 1970 (2011) see 2013 [www.icc-cpi.int / translation - uncr report - Libya](http://www.icc-cpi.int/translation-uncr-report-Libya) may

<sup>1202</sup> Id.

<sup>1203</sup> Id.

On April 21, 2013, the Libyan government submitted, pursuant to Article 19 (2) (b) of the International Criminal Court statute, to challenge the admissibility of the lawsuit against Abdullah Al-Senussi, claiming that the government is investigating.<sup>1204</sup> The prosecution against Abdullah Al-Senussi on the same issue that the office of the prosecutor is investigating in his response on April 24<sup>th</sup>, was confirmed that he sees on the basis of the Libyan request that the case of Abdullah Senussi is unacceptable and therefore should be tried at the national level.<sup>1205</sup>

***b. The Prosecutor's Case Against "Retired Major General Haftar's Army"***

The International Criminal Court has warned retired Libyan Major General Khalifa Haftar that it is monitoring his attack on the capital, Tripoli, and urged him to hand over one of his wanted aides to the court.<sup>1206</sup> The Los Angeles Times confirmed that after the UN Security Council announced that war crimes investigations in Libya will be a priority for 2018, justice is closed to those targeting civilians and innocent people in the Libyan East, led by Khalifa Haftar's forces. Noting that, the International Criminal Court issued an arrest warrant for the Libyan military leader in the Haftar Forces, Mahmoud al-Warfalli, which was a major development in the way of achieving justice there.<sup>1207</sup>

For its part, the Washington Post reported that Cadman confirmed that there were reliable reports backed by direct evidence that members of the chain of command continued to commit war crimes and crimes against humanity in their pursuit of power in Benghazi and eastern Libya

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<sup>1204</sup> Id. The Fifth Report of the Prosecutor of the International Criminal Court to the Security Council of the UN, pursuant to Council Resolution 1970 (2011).

<sup>1205</sup> Id. In this regard, he adds that the court and the public prosecution should take steps to monitor the progress made in the investigation and the prosecution to ensure that they are still able to investigate and prosecute in this matter before the court.

<sup>1206</sup> Al-Quds Al-Arabi newspaper, all rights reserved 2018.

<https://www.alquds.co.uk/> International-Criminal-warns-Haftar-and asks-from /

<sup>1207</sup> Designed and developed by Dar Al Sharq Group All rights reserved 2020 © Al Sharq Newspaper <https://al-sharq.com/article/18/11/2017/> crimes-Haftar-in front of the-criminal-international. Los Angeles Times: Justice is close to war criminals in Libya



in general, noting that the International Criminal Court has already conducted an ongoing investigation in Libya that identified the alleged crimes by one of the leaders of the Khalifa Haftar.<sup>1208</sup> Court Prosecutor Fatou Bensouda stated to the UN Security Council that investigations in the country would be a priority for her office in 2018. Bensouda said reports indicated widespread violations of human rights and international humanitarian law committed by parties to the conflict.<sup>1209</sup>

Fox News indicated that Major General Khalifa Hifter is directly responsible for the actions and behavior of his commanders, including Mahmoud Al-Warfali, indicating that this is an inherent principle and stipulated in the Rome Statute of the Court, whereby commanders bear criminal responsibility for the crimes committed by their subordinates or their forces.<sup>1210</sup> Under this principle, commanders are also obligated to prevent their forces from committing crimes.<sup>1211</sup>

### **3. The ICC Issues The Arrest Warrant**

The First Pre-Trial Chamber of the International Criminal Court issued on June 26, 2011 arrest warrants against Muammar al-Qadhafi and his son, Saif al-Qadhafi, who spoke on behalf of the Libyan government, and Abdullah al-Senussi, the director of military intelligence, for committing crimes against humanity.<sup>1212</sup> In May 2011 after the Prosecutor of the International Criminal Court requested the issuance of arrest warrants against them and stated that these orders were necessary to ensure their appearance before the International Criminal Court to prevent interference in the investigation and prevent further crimes from being committed. Implementing

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<sup>1208</sup> Id. The Washington Post: Haftar has committed war crimes in cooperation with Egypt and the UAE

<sup>1209</sup> Id.

<sup>1210</sup> Id.

<sup>1211</sup> Id.

<sup>1212</sup> Muhammad bin Ali bin Nasser bin Hadian, the crime of genocide and its punishment in international law, supplementary research to obtain a master's degree in Islamic politics, Imam Muhammad bin Saud Islamic University, Higher Institute of the Judiciary Department of Sharia Policy, Saudi Arabia, 1428 AH, at 117.

arrest warrants rests with the National Transitional Council of Libya that is obligated to cooperate fully with the International Criminal Court.<sup>1213</sup>

The International Criminal Court insisted Libya extradite Senussi and Saif al-Islam on suspicion of committing crimes against humanity during the revolution that overthrew Qaddafi because the Libyan judiciary was unfair, and this is what Islam affirmed by the defendants' lawyers.<sup>1214</sup> On November 19, 2011, the Libyan authorities arrested Saif al-Islam al-Qaddafi, a suspect of the International Criminal Court, and Abd al-Allah Sanusi was arrested in southern Libya on November 20, each of whom was responsible for the crime against humanity since February 15, 2011.<sup>1215</sup>

Although the Libyan authorities were responsible for pursuing the criminals who committed crimes against humanity on Libyan territory, the government was legally obligated to hand over the suspects to the International Criminal Court.<sup>1216</sup> The First Pre-Trial Chamber requested the Libyan government to submit observations before January 10, 2012 regarding the arrest and detention of Saif al-Islam, and this deadline was extended to January 23, 2012, as for Muammar al-Gaddafi, the Pre-Trial Chamber issued a decision to end the case Filed against him due to his death.<sup>1217</sup>

As for General Khalifa Hifter's crime, on August 15, 2017, the ICC Pre-Trial Chamber I issued an arrest warrant for Mahmoud al-Warfalli, who belonged to Haftar's forces, for war crimes and the execution of more than thirty people.<sup>1218</sup> **This came in statements by the**

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<sup>1213</sup> Id., at 118.

<sup>1214</sup> Sudan News Center Today, Libya renews its refusal to hand Sanusi to the International Criminal Court, see 06/02/2013 online.com/news phat <http://www.sudantoday.com/news>

<sup>1215</sup> Id.

<sup>1216</sup> Bulletin of the International Criminal Court Alliance No. 26. 11/12/2011. [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org). Date of access: 23 May 2013.

<sup>1217</sup> Id.

<sup>1218</sup> Id. Arab Jerusalem newspaper, all rights reserved.

Prosecutor of the International Court, Fatou Bensouda, in an interview conducted by France 24 in the Dutch city of The Hague, which hosts the court headquarters, as she said, "Our work in Libya is definitely still going, and we are still investigating there."<sup>1219</sup> She added, "In my last report to the UN Security Council, I highlighted the fact that there are still detention orders pending against those whom the International Criminal Court has issued indictments against, and Warfali is one of them". On December 11th, Washington listed Warfalli on its sanctions list, on the grounds that he was accused of "being involved, directly or indirectly, in gross human rights violations", and Warflalli is wanted by the International Criminal Court for "war crimes," and is on the wanted list for executions without trials, by the International Police "Interpol,"<sup>1220</sup>

## **V. CONCLUSION**

Terrorist crimes are among the most serious crimes to which an individual can be exposed, as these crimes leave a severe impact on a person's life, and to humankind in general. What we also draw from this study is that the great attention paid by the jurists of international law to developing the concept of crimes against humanity is due to its seriousness and its spread in many countries of the world and the devastation and disasters that afflict mankind. It is no longer acceptable under contemporary international law for crimes to be in violation of its provisions and rules, which are of concern to the entire international community without accountability, prosecution and punishment of the perpetrators, whatever their official capacity.

The international community has endeavored and continues to seek to combat terrorism

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2018 <https://www.alquds.co.uk/international-criminal-warn-haftar-and-ask-from>

<sup>1219</sup> Id.

<sup>1220</sup> Id.

and punish the perpetrators by subjecting them to the provisions and rules of international criminal responsibility, and by excluding the crime of terrorism from the customary nature of its relationship with the written character (international legitimacy), to ensure respect for international criminal law and respect for human rights and fundamental freedoms. Accordingly, the individual who was once excluded from international criminal matters, and the rules of international law, has today become an official target of these provisions and rules.

**From here on, the provisions of the international criminal responsibility of the individual for terrorism crimes began to be applied in the international criminal jurisdiction. Through the various international criminal tribunals, whether those established for the purpose such as the Nuremberg and Tokyo tribunals, or those temporary international tribunals such as the former Yugoslavia and Rwanda tribunals, or the permanent justice represented by the international criminal court “ICC”. As is the case in the national criminal justice system, by specifying the jurisdiction of criminal courts for some countries in accordance with their domestic legislation to pursue and punish perpetrators on the basis of universal jurisdiction. Based on that, after establishing the rules of international criminal responsibility for the individual for terrorist crimes, whether on the national or international level, criminals will be prosecuted everywhere by the criminal justice that is trying them in the interests of international criminal justice, to protect human rights and fundamental freedoms established under the rules of international law.**

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#### **IV. CONCLUSION OF THE WORK**

Since ancient times, terrorism has occurred around the globe, becoming more violent with the advent of technological devices and methodology. Most nations of the world have begun to enact legislation to promote a “war on terrorism.” Terrorism of the sixties and early seventies focused on assassination, taking hostages, hijacking planes, and bombings.

To limit the spread of terrorism, this study considered international, regional and national legal mechanisms, defined the development of international criminal texts addressing terrorism, and defined the international mechanisms, and as well, it studied the efforts to combat international terrorism. As this study mainly concerned the study of the war on terrorism in legal terms, it also studied the legal system for combating terrorism, international agreements for the suppression and financing of terrorism, international agreements to combat terrorism directed against individuals, and international treaties against terrorism directed against the safety of international civil aviation. This study further dealt with regional agreements on combating terrorism, and international cooperation frameworks designed to limit and suppress terrorism.

As terrorism is one of the challenges of contemporary armed conflicts confront international humanitarian law, which has reopened some problems related to the relationship between state security and the protection of individual. These challenges have led to a review of the sufficiency of international law in a way that the world has not seen since the Geneva Conventions of 1949 with the two Additional Protocols of 1977, especially after the terrorist attacks on many countries, where terrorism has left its traditional form and become a widespread phenomenon that may be committed by individuals, groups, and even countries.

More attention has been directed to terrorism, especially after the events of September 11, 2001 in the United States. Since that time, the debate has been revolving around the relationship between terrorist and counter-terrorist acts, and the relationship between them and the law of armed conflict, and the resulting confusion, as a result of the use of term “war on terrorism.” At the conclusion of this study, and after reviewing aspects of international criminal law enforcement, and developments in the war against terrorism, with reference to the various instruments of international law and customary law, as well as the jurisprudence of judicial courts of international criminal and domestic opinions of scholars on the subject, and as application of all these international efforts and jurisprudence on international practices in this field have led to many findings and recommendations.

## **I. FINDINGS**

The jurists have unanimously agreed that describing the phenomenon of terrorism is much easier than defining it. The difficulty of the definition stems from the impossibility of accurately and objectively describing the terrorism’s acts. Thus, the absence of international agreement on the minimum has prevented the adoption of an acceptable definition of this phenomenon. Therefore, in order for the issue of combating international terrorism to succeed, it is necessary to review the term of terrorism itself and carefully define it accurately and objectively, clearly delineate its borders and put it in its correct context.

The main objective of this study is to demonstrate the effectiveness of the mechanisms used in combating international terrorism and its impact on the development of international criminal law, either the legal ones in which it relied on the agreement framework, or the decisions and regulations promulgated by the United Nations and its related agencies, or those actions are imposed by states as unilateral practices, especially those of a military nature. The results I have

reached are mainly related to the difficulty of establishing very effective mechanisms in combating international terrorism in the absence of an agreed definition at the global level.

However, the world has witnessed a remarkable development from the legal point of view, but it lacks mandatory force, which led to the limitation of the effectiveness of the enforcement of laws. Based on this study, we have summarized the findings in specific points as follows:

- 1. As of this moment, as a result of the inability of international agreements and the international community to develop a specific definition of terrorist acts, there is no comprehensive and specific definition of international terrorism.**
- 2. Terrorism is a very dangerous phenomenon, as it targets human beings and public and private property, destroys the interests of states and the international community, and is considered one of the most dangerous acts that threaten international peace and security in the international community.**
- 3. There is still confusion between legitimate actions, such as the actions of people to obtain their right to self-determination and the actions of national liberation movements, and between illegal terrorist acts.**
- 4. Confronting international terrorism and trying to eliminate it has become a moral imperative more than just a legal obligation.**
- 5. Terrorist actions cannot be attributed to religious causes. Through the study, it became clear that there are many reasons and motives that lead to the spread and expansion of terrorist acts, and that legislation, whether national, regional or international, is not sufficient to combat international terrorism alone.**
- 6. Terrorism cannot be eliminated by using armed force alone to confront terrorists. This has been confirmed by global experience.**

7. The war on terrorism has gone through many stages in terms of the means used and the direct implications of the use of these means, in the period before September 11, 2001, the war on terrorism was carried out through international agreements entrusted with its implementation to the signatory states, but after September 11, the war on terrorism took the form of direct military intervention.
8. The purpose of this war is to destroy “terrorism” or terrorist networks with a global reach that may takes long time, especially in light of the emergence of a new organization, such as Al-Qaeda, which is the Islamic State’s organization (ISIS).
9. Despite international efforts to combat terrorism, the international community has remained unable to eliminate terrorist operations, and terrorism will remain part of the manifestations of contemporary international policies.
10. As an impact of the war on terrorism, the individual has an international legal personality, based on the recognition by the international law for the capacity to acquire rights, the capacity to carry international obligations, and the capacity to sue and submit complaints to protect his rights and interests, but the international legal personality of the individual is not an absolute or complete personality like countries, rather the international legal personality of the individual is limited by the rules of international law.
11. Individual criminal responsibility for committing international crimes has become a recognized principle and agreed upon in many international covenants and agreements, which was established by the recent Rome Statute of the International Criminal Court, which decided that the International Criminal Court has jurisdiction over natural persons only.



12. The trials of Tokyo and Nuremberg, which took place after the Second World War, are considered a basic nucleus in the international criminal justice system, and likewise, for the Yugoslavia Tribunal, which tried Serbian leaders for the crimes they committed in the former Yugoslavia in Bosnia and Herzegovina, as well as the Rwanda Tribunal. These trials were a strong impetus for the establishment of an international criminal court, represented in the emergence of the permanent International Criminal Court “Roma statute”.
13. The International Criminal Court was established by a legitimate international treaty, to represent the permanent international criminal justice, which distinguishes it from previous international special tribunals, as it reflects the desire of the vast majority of members of the international community, and the statute of this court entered into force on July 01, 2002.
14. Under Chapter Seven, the Security Council was given the authority to refer any lawsuit it deems necessary to refer to the Prosecutor, whether or not this case relates to state a part to the Rome Statute or not part.
15. As a result of the war on terrorism, we find that it has negatively affected state sovereignty in the traditional sense, and that international law was given the right to intervene as a legitimate basis for humanitarian intervention and the war against terrorism.
16. Finally, based on this study, I can define terrorism as “The use of intentional and systematic violence that is internationally prohibited, motivated by ideology, with the intention of creating a general state of terror within a particular society to achieve specific and predetermined political, social, ideological or economic goals, whether the

perpetrator works for himself or on behalf of a specific group or the state”.

## **II. RECOMMENDATIONS**

International cooperation to combat terrorism in international practice has not been effective, as the phenomenon of terrorism in all its forms has not been eradicated, and even it has not been reduced. Despite the legal and the agreement arsenal received at the international level in this regard, we see terrorism constantly increasing, whether at the level of those in charge of it or at the level of the mechanisms used in it. The international combat against terrorism has focused on the therapeutic side only, which it was coming after the terrorist act occurred. Moreover, international efforts to combat terrorism in the absence of a comprehensive and specific concept of terrorism remain useless. A serious confrontation with terrorism requires the necessity of agreeing on a definition of terrorism, and knowing the reasons that stand beyond the various forms of terrorism in order to prevent its repercussions, before engaging in combating it by force, which may further exacerbate and develop terrorism. This is because international experiences in this regard have made it clear that any security or military measure, regardless of the human and material capabilities, cannot eliminate the phenomenon of terrorism. In light of the results of this study, we propose some recommendations that would activate the role of international cooperation in combating and preventing terrorism, as follows:

- 1. An international conference must be convened under the auspices of the UN to address the problem of international terrorism, and expand counter-terrorism measures by establishing a comprehensive definition of international terrorism that has the approval of the international community, in accordance with the goals and principles of the Charter and with the principles of international law.**
- 2. Establish a comprehensive international convention on terrorism with the supervision of**

the UN that is binding on states, and revising said convention whenever necessary, especially after the emergence of terrorism as a real threat to international peace and security.

3. Regard terrorist crime as a social phenomenon, dealing with it through criminal justice systems and security services, and not with political interventions that increase its risks and achieve terrorist organizations as propaganda goals as result political interventions.

4. Establish clear rules for the use of force in the context of countering terrorism, and find a legislative framework governing counter-terrorism activity designed to detect, disrupt, and prevent terrorist attacks to ensure that it is proportionate to its goals.

5. The war on terrorism should not make the Human Rights Law subject to the requirements and requirements of security; likewise, the focus should not be on security and countering terrorism without accompanying that concern with respect for human rights.

6. Expedite the ratification of all conventions concerned with combating international terrorism to give them a mandatory character.

7. Find an international court specialized to consider cases of international terrorism and hold terrorist organizations accountable.

8. Develop rules for the extradition of criminals in the criminal legislation of different countries with the conclusion of international treaties at the bilateral and collective levels regarding the extradition and trial of perpetrators of the crime of international terrorism.

9. Form an international committee to be attached to the UN bodies, with the aim of uniting efforts among the bodies of the international organization to eliminate the phenomenon of international terrorism.

10. Create a permanent international force to combat terrorism at the international level to quickly intervene and report on expected terrorist acts.
11. Eliminate injustice from the people, give them the right to choose the political, economic and social system that they deem appropriate and strengthen the human rights system in a correct and logical manner.
12. The need to define both the terms “resistance” and “terrorism” to close the door to terrorists not to describe their actions as resistance, as well as close the door to the occupying powers not to describe their pursuit of the resistance as a pursuit of terrorism.
13. Not associate terrorism with any religion, by holding an international conference for all religions, agreeing on the language of dialogue and tolerance, rejecting violence and terrorism, and not inciting others.
14. Inviting Arab countries to ratify the statute of the International Criminal Court, so that they may have an active and influential role in the Assembly of States Parties that govern and organize the management of the International Criminal Court.
15. The necessity of including terrorism in the crimes so that the International Criminal Court can punish a person convicted of committing this crime, which is considered one of the crimes that falls within its jurisdiction, and whose statute described it as the most dangerous crime, and that it raises the concern of the entire international community, and that it threatens peace and security International.
16. State clearly in the statute of the International Criminal Court that the punishment imposed on the perpetrators of crimes that fall within the jurisdiction of the court will not be subject to statute of limitations, in order to fill the gap that could lead to the impunity of the perpetrators of these crimes, especially in cases of escape.

17. Implement mechanisms through which the International Criminal Court can bring the wanted persons to appear before it, such as the International Police "Interpol".
18. Reduce the size of the relationship between the International Court and the Security Council in view of the negative consequences of this relationship, and we propose to cancel Article (16) because its contradictory provisions and undermine the criminal court and the efforts made to create it.
19. Include as an article in the Rome Statute, the right of individuals to initiate criminal proceedings before the International Criminal Court.
20. Fair trial must be ensured international human rights law obligations and interacting with the Counter-Terrorism Committee.
21. The term "terrorist act" should not be used in the context of an armed conflict, except in relation to acts specifically classified as such under international law treaties.
22. Reassuring and defining individual rights and freedoms in a specific system in terrorism cases, so that individual rights are not violated, and those responsible for committing terrorist acts are not impunity, and any person deprived of their liberty should be detained and interrogated outside an appropriate legal framework.
23. Strengthen the role of human rights bodies and the Office of the High Commissioner for Human Rights in particular, in ensuring compliance with
24. Finally, review and revisit international criminal law to cover and include armed groups that cross borders in everything, or in a more appropriate way, so that it becomes the main instrument in dealing with acts of terrorism.

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## DISSERTATIONS

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