

## TERRORISM AND RADICALISM IN THE 21<sup>ST</sup> CENTURY AS A CRIME AGAINST HUMANITY UNDER THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

Aulia Rosa Nasution S.H., M.Hum.

### ABSTRACT

*Terror acts has become a worldwide phenomenon in the 21<sup>st</sup> century and it has becoming one of the most essential global issues since the incidents of 9/11 which has threatened and endangered the peace and security of mankind. The terror attack perpetrated in the United States on September 11, 2001, was a “defining event” in the history of international terror which affects the characteristics of terror activity in the international arena in particular, and international relations in general, in an extraordinary and fundamental manner. The purpose of this study is to analyze the acts of terrorism and radicalism in the 21st century as a crime against humanity under the jurisdiction of the International Criminal Court (ICC). This study will shows that terror acts is not only an ordinary crime but it its constitute a crime against humanity. Terror acts always conducted systematically, widespread, and organized by the state actor and non state actors. Although there is no connection between terror acts and a crime against humanity, but terror acts always contains the element of a crime against humanity such as murder, torture, extermination, and other inhumane acts which is deliberately committed as a part of a widespread or systematic attack or individual attack against any civilian population. Violent acts by non-state groups against general population for political purposes which conducted as a part of widespread or systematic , can amount to a crime against humanity. The legal efforts to prosecute the crime of terrorism as a crime against humanity under the jurisdiction of the International Criminal Court can be done by including the crime of terrorism under the Rome Statute of the International Criminal Court as a part of a crime against humanity.*

**Keywords:** *Terrorism, Crimes Against Humanity, Jurisdiction, Radicalism, International Criminal Court*

## 1. INTRODUCTION

### 1.1. The Definitions of Terrorism

Terrorism has emerged as one of the top security challenges in the 21<sup>st</sup> century. Countries around the world are engaged in unprecedented efforts to counter terrorism. Terrorism is the most widely accepted contemporary usage of the term, is fundamentally and inherently political. It is also ineluctably about power, the pursuit of power, the acquisition of power, and the use of power to achieve political change. Terrorism is thus violence or equally important, the threat of violence, used and directed in pursuit of, or in service of, a political aim.<sup>1</sup>

To understand terrorism in the contemporary context, it is important to recognize that terrorism is generally considered as a ‘tool’ or ‘tactic’, not an ideology or philosophy. This “tool” can be used as part of a larger political or military campaign, such as an insurgency.<sup>2</sup> For example, when Al Qaeda conducted the 9/11 attacks, it was using the “tool” of terrorism to achieve the larger purposes of diminishing American political influence in the Middle East among other objectives. Terror is the tool with which Bin-Laden and his people aspire to make their vision a reality. Since the nineties, Afghan alumni have been involved in the majority of large-scale terr attacks all over the world. This terror system included the perpetration of terror attacks and mass killings.<sup>3</sup>

Paul J. Smith explains that terrorism is the “systematic use of coercive intimidation, usually to service political ends”.<sup>4</sup> Gus Martin said that terrorism internationally condemned as the unlawful use and the manifestation of political nature.<sup>5</sup> Terrorism also used as an instrument of State control. For example: Bismark “terrorized” Prussia by using the army as a means of social control; NAZI Germany imposed reign of terror across Europe and Allied air forces resorted to ‘terror bombing’ in the Second World War, and Stalin ruled Russia by terror”. Gradually terrorism also came to refer to non - State practices. In the late

<sup>1</sup> Bruce Hoffman, *Inside Terrorism*, Columbia University Press, p.3 (2006)

<sup>2</sup> Paul J. Smith, *The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century*, M.E. Sharpe, New York, Chapter 1, pp. 8 (2008)

<sup>3</sup> Yoram Schweitzer & Shaul Shay, *The Globalization of Terror, The Challenge of Al- Qaida and the Response of the International Community*, Transaction Publishers, P. 4, (2003)

<sup>4</sup> Paul J. Smith, *Ibid.*

<sup>5</sup> Gus Martin, *Understanding Terrorism, Challenges, Perspectives and Issues*, SAGE Publications, Washington D.C., 4<sup>th</sup> edition, p. 22 ,(2013)

nineteenth century, revolutionaries and anarchists in tsarist Russia were commonly known as 'terrorist'. The Bolshevik seizure of power is often described as revolutionary terror and communists embraced terrorism as a means of class struggle.

The word "terrorism" itself was adopted from the French word '*terreur*' which was derived from the Latin word '*terrere*' means (to frighten). The word '*terreur*' began to be commonly used in France during the French Revolution during a period known as the Reign of Terror (1793-1794). During this period, Maximilien Robespierre used the Revolutionary Committee of Public Safety to institute terror throughout France. The Committee pursued, investigated and arrested individuals who disagreed with, or even appeared less than enthusiastic about its policies. This reign of terror has great impact which over 300,000 to 400,000 civilians were arrested on generally unsubstantiated political charges under "the Law of Suspects" and up to 40,000 were executed, without any trial. The guillotine was commonly used as the execution method, in part because of the broad public spectacle that was generated.<sup>6</sup>

There are so many definitions of terrorism but there is no universally accepted definition of terrorism until now, even the United Nations agencies haven't succeeded in making the official definition of terrorism. According to the Black Law Dictionary, terrorism is defined as the use of threat of violence to intimidate or cause panic, especially as a means of affecting political conduct.<sup>7</sup> In the Oxford English Dictionary, terrorism is defined as a system of terror: 1. Government by intimidation as directed and carried out by the party in power in France during the revolution of 1789-94; the system of "Terror", 2. A policy intended to strike with terror those against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized.<sup>8</sup>

Many international experts in terrorism, defining terrorism with different perspectives. Noam Chomsky explains that the term of terrorism began to be used in the end of the 18<sup>th</sup> century, particularly which shows the actions of violence from the ruling government in order to ensure that the people will obey the government. In other words, the term of terrorism refers to coercion from the ruling government.<sup>9</sup> Brian Jenkins said that terrorism is the unlawful use of force which is designed to achieve the political purposes.<sup>10</sup> From those definitions, we can identify the main components of terrorism. First, the use of unlawful force. Second, the actors which are led by state actors or non-state actors. Third, using unconventional methods. Fourth, committed the attack to the civilian population and targeting the military objects. Fifth, the act of terrorism aimed to influence the audience.<sup>11</sup>

One of the great controversies and challenges in the study of terrorism is the issue of definition. It is a well-known fact that currently the international community does not subscribe to a single definition of terrorism. The U.S. Federal Bureau of Investigation defines terrorism as the "unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives".<sup>12</sup>

Meanwhile, the Department of Homeland Security (DHS) under Section 2 of the Homeland Security Act of 2002 defines terrorism as any activity that – (A) involves an act that- (i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (B) appears to be intended- (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion or to (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.<sup>13</sup> The U.S. Department of Defense (DoD) defines terrorism as "the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological."<sup>14</sup>

Historically, the definition of terrorism is compiled in many international conventions of terrorism. In article 1 paragraph 2 of the international convention from the League of Nations, 1937 which stated that terrorism is the criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general

---

<sup>6</sup> Paul J. Smith, *Op.cit.*, p.8

<sup>7</sup> Bryan A. Gardner, Editor in chief. *Black's Law Dictionary*, Seventh Edition, Paul St. Minim, pp. 1484, (1999)

<sup>8</sup> *The Oxford English Dictionary*, Compact Edition (Oxford : Oxford University Press, 1971). p. 3268, col. 216

<sup>9</sup> *Op.cit.*

<sup>10</sup> Gus Martin, *Op.cit.*, hal. 37

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

<sup>12</sup> Paul J. Smith, *Op.cit.*, p. 10

<sup>13</sup> *Security Act of 2002*, Public Law 107-296, 107<sup>th</sup> Congress, Department of Homeland Security (2002), Accessed September 9, 2016, [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

<sup>14</sup> "Terrorism", United States Army Combined Arms Center, accessed September 19, 2017, <http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=29533>

public.<sup>15</sup> In the article 2 paragraph 1 of the draft comprehensive convention on International Terrorism, terrorism defined as follows;

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally causes; (a) death or serious bodily injury to any person; or (b) serious damage to public or private property; including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.<sup>16</sup>

From those definitions, we can identify the main component of terrorism. First, the use of unlawful force. Second, the actors which led by state actors or non state actors. Third, acts of terrorism is using the unconventional methods. Forth, committed the attack to the civilian population and targeting the military objects. Fifth, the act of terrorism aimed to influence the audiens.

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

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility: (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.<sup>17</sup>

The definition of terrorism in the UK Legislation is contained in the Terrorism Act (2000) stated that terrorism as: The use or threat of action where the action falls within subsection (2) , if it a) involves serious violence against a person; b) involves serious damages to property; c) endangers a person's life, other than that of the person committing the action, d) creates a serious risk to the health or safety of the public or a section of the public; or e) is designed seriously to interfere with or seriously to disrupt an electronic system. Terrorism also means (b) the use or threat which is designed to influence the government or to intimidate the public or a section of the public and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.<sup>18</sup>

The definition of terrorism has been stated also in other twelve international conventions of terrorism. On the other hand, the UN Security Council has issued four UN Resolution which related to international terrorism. The UN Security Council Resolution No. 1368 which issued at September 2001 and UN Security Resolution No. 1373 issued at October 15<sup>th</sup>, 2002 , has insisted all countries to make action to respon the terrorist attacks. The UN Security Council Resolution No. 1373 and No. 1438 also expressed condolences and deep sympathy for the government and the people of Indonesia , for all victims and its family and insisted many countries in the world to fight against terrorism and called the entire nations to work together to help Indonesia in finding and prosecuting the perpetrators of terrorism to justice.

## **1.2. State Terrorism and Non-State Terrorism**

Terrorism can be classified into two types. The first type is State Terrorism or State Sponsored Terrorism, and the second type is a Non-State Terrorism. State Terrorism is a use of terror by a government as an instrument to subjugate other party to achieve governments purposes. State Terrorism oftenly occurred in the authoritarian and repressive government. In other words, this kind of authoritarian and repressive government always using terror as their instrument to intimidate anyone against their policies. State Sponsored Terrorism can be transformed into transnational crime if a country commits acts of terror against other countries by giving assistance, protection, financing plan, and facilitating terrorist group to other countries.

For example, State Terrorism in Adolf Hitler authoritarian regime in Germany and Joseph Stalin totalitarian government in Uni Soviet which commits many acts of terror like kidnapping, punishing, torturing, and executing many innocent civilian which make a lot of people terrified. On the other hand, Non-State Terrorism is a terror used by non-State actor by individual or certain group of people against the people or government with any motives behind. For example, the terrorist group of Bali Bombing which was led by Imam Samudera, the terrorist group of Noordin M. Top from Jemaah Islamiyah, the terrorist Group of Santoso

---

<sup>15</sup> *League of Nation of Convention for the Prevention and Punishment of Terrorism*, Council on foreign relations, <http://www.cfr.org/terrorism-and-the-law/league-nations-convention-prevention-punishment-terrorism/p24778>, retrieved in August, 29, 2016

<sup>16</sup> Alexandra V. Orlova (2005) "*Umbrellas*" or "*Building Blocks*"?: *Defining International Terrorism And Transnational Organized Crime in International Law*, Houston Journal of International Law, P.271

<sup>17</sup> *International Convention for the Suppression of Terrorist Bombings*, New York, 15 December 1997, [https://www.unodc.org/documents/treaties/Special/1997 International Convention for the Suppression of Terrorist.pdf](https://www.unodc.org/documents/treaties/Special/1997_International_Convention_for_the_Suppression_of_Terrorist.pdf), retrieved on 31 July 2018

<sup>18</sup> *UK Terrorism Act 2000*, [www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga\\_20000011\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga_20000011_en.pdf), retrieved on 31 July 2018

which commits many acts of terrorism in Sulawesi, and also the terrorist group of Abu Sayyaf who commits murder and hostages in the south areas of Philippine.

R. Tackrah describes the differences between State Terror and Terrorism. State Terror means a terror practiced by a government in office appears as law enforcement and it is directed against the opposition, while terrorism on the other hand implies open defiance of the law and is the means whereby an opposition aims to demoralize government authority. Meanwhile Jerrold Post defines State Terror as “the state turning its resources such as police, judiciary, military, secret police etc. against its own citizenry. For example when Saddam Hussein used nerve gas against his own Kurdish citizens, this was example of state chemical and biological weapons terrorism.<sup>19</sup>

Other examples of state terror in the form of political pogroms and ethnic cleansing campaigns orchestrated by a state include the Turkish- sanctioned policy implemented between 1915 and 1916 to slaughter more than 650.000 ethnic Armenian. State terrorism also occurred during the period leading up to World War II between 1933 and 1945, where NAZI Germany pursued a policy of persecuting and systematically exterminating nearly 6.5 million Jews and others including “asocials” like Gypsies, homosexuals the handicapped, the mentally ill and Soviet Prisoners.<sup>20</sup>

On the other hand, agitational terror which is generally associated with individual who are interested in disrupting the existing order so that they might ascend to political power themselves, would always apply to non-State actors.<sup>21</sup> Non-State Terrorism is a terror used by non-State actor by individual or certain group of people against the people or government with any motives behind. For example, in early 20<sup>th</sup> century, one of the famous leader of Russia, Vladimir Lenin eschewed agitational terrorism. He was extremely suspicious of using terror tactics to achieve political goals. In later years, Joseph Stalin would take a State terror where hundreds of thousands of bodies, as the result of Soviet terror have been discovered in practically every Soviet city, including the center of Moscow.<sup>22</sup> Another example of non-state terrorism also committed by the terrorist group of Bali Bombing which led by Imam Samudera, the terrorist group of Noordin M. Top from Jemaah Islamiyah, the terrorist Group of Santoso which commits many acts of terrorism in Sulawesi, and also the terrorist group of Abu Sayyaf who commits murder and hostages in the south areas of Philippine.

### **1.3 Perspectives of Terrorism**

Terrorists deliberately cloak themselves in the terminology of military jargon. They consciously portray themselves as bona fide (freedom) fighters, if not soldiers who are entitled to treatment as prisoners of war (POWs) if captured and therefore should not be prosecuted as common criminals in ordinary courts If law.<sup>23</sup> Terrorist organizations almost without exception now regularly select names for themselves not with the word “terrorism” but in any of its forms such as: a) freedom and liberation movements (e.g., the National Liberation Front, the Popular Front for the Liberation of Palestine, Freedom for the Basque Homeland); b) armies or other military organizational structures (e.g. the National Military Organization, the Popular Liberation Army, the Fifth Battalion of the Liberation Army); c) Actual self defence movements (e.g. the Afrikaner Resistance Movement, the Jewish Defence Organizations); d) Righteous vengeance (e.g. the Organization for the Oppressed on Earth, the Justice Commandos of the Armenian Genocide, the Palestinian Revenge Association)<sup>24</sup>

The terrorist will always argue that it is society or the government or the socio-economic “system” and its laws that are the real “terrorist” and more over that if it were not for this oppression, he would not have felt the need to defend either himself or the population he claims to represent. In the book of Invisible Armies, written by Sheikh Muhammad Hussein Fadlallah, the spiritual leader of the Lebanese terrorist group responsible for Anderson’s kidnapping, he explains that they don’t see themselves as terrorist but as Mujahideen or holy warriors who fights holy war for the people. The Hezbollah also considered their movements as resistance movements.<sup>25</sup> One of the famous quote of terrorism is “one person’s terrorist is another person’s freedom fighter” which applied for terrorist groups, movements or individuals. Terrorist never consider themselves as the “bad guys” in their struggle for what they would define as freedom. They might admit that they have been forced by a powerful and ruthless opponent to adopt terrorist methods, but they see themselves as freedom fighters or in the case of radical Islamist, as obedient servants of God. Benefactors of terrorist always live with clean hands because they present their clients as freedom fighter.<sup>26</sup>

Terrorism must be recognized as its very core as being a form of political activity. Terrorist use criminal methods to pursue political objectives. This analysis is important because a lot of debates within governments on whether to treat terrorism as a crime or as a form of a warfare. Terrorism can be prosecuted on the basis of its constituent acts such as murder, destruction of property and so on but it has political nature which distinguish it from any ordinary crimes or regular street crime or organized

<sup>19</sup> Paul J. Smith, *The Terrorism Ahead..Op.cit.*, p.9

<sup>20</sup> Paul J. Smith, *Op.cit.*, p. 10

<sup>21</sup> Paul J. Smith, *Op.cit.*, p. 9

<sup>22</sup> *Ibid.*

<sup>23</sup> Bruce Hoffman, *Op.cit.*, p. 26

<sup>24</sup> *Op.cit.*, p.22

<sup>25</sup> *Op.cit.*, p. 23

<sup>26</sup> Gus Martin, *Op.cit.*, p. 42

crime. Some experts considered acts of terror as a warfare because of its method of carrying on politics by other means by using violence. However, there is one major difference between war and terrorism. War is considered legitimate, while terrorism is considered illegitimate. This is why the best analysis concedes that terrorism falls somewhere in the middle of the spectrum between war and crime.<sup>27</sup>

Terrorists also conducted some actions such as; taken civilians as hostages and in some instances then brutally executed them (e.g., Daniel Pearl, an American journalist who were kidnapped and beheaded by radical Islamic terrorist in Pakistan and Iraq); similarly, abused and murdered, kidnapped military officers even when they were serving on UN- Sponsored peacekeeping or truce supervisory missions (e.g., the American Marine Lieutenant Colonel William Higgins, the commander of a UN truce-monitoring detachment, who was abducted by Lebanese Shi'a terrorist in 1989 and subsequently hanged); undertaken reprisals against wholly innocent civilians, often in countries far removed from the terrorists ostensible "theater of operation", this disdaining any concept of neutral states or the rights of citizens of neutral countries (e.g, the brutal 1986 machine-gun and hand-grenade attack on Turkish Jewish worshippers at an Istanbul Synagogues carried out by the Palestinian Abu Nidal Organization (ANO) in retaliation for a recent Israeli raid on a guerilla base in southern Lebanon; and repeatedly attacked embassies and other diplomatic installations (e.g., the bombings of the U.S. embassies in Nairobi and Dar es Salaam in 1998) as well as deliberately targeting diplomats and other accredited representatives.<sup>28</sup>

By distinguishing terrorist from other types of criminals and irregular fighters from other forms of crime and irregular warfare, terrorism consists of essential elements such as; a) inelectably political in aims and motives; b) violent or threatens violence; c) designed to have far reaching psychological repercussions beyond the immediate victim or target; d) conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated, or inspired by the ideological aims for example of some existent terrorist movement and / or its leaders; and e) perpetrated by a subnational group or nonstate entity.<sup>29</sup>

## 2. Terrorism and Radicalism as a Global Phenomenon in the 21<sup>st</sup> Century

### 2.1. The concept of Radicalism

Radicalism can be interpreted as a religious thought or attitude which can be characterized by intolerance, unwilling to respect the opinions and beliefs of others and the revolutionary attitude which tends to use violence to achieve their goals.<sup>30</sup> In general, radicalism arise from narrow, fanatical or rigid understanding . These groups feels that they are the most correct, while other groups considered heretical or even considered to be infidels which can be fought by violence acts.<sup>31</sup>

Radicalism in the Islamic history was first conducted by the Khawarij movement during the reign of Caliph Ali bin Abi Talib who wanted a radical change in the Islamic government at that time. In order to achieve its objectives, the entire Khawarij group used violeces act that caused fear among the Muslims at that time that resulted in many wars during the time of Khulafaur Rashidin, Bani Abbashiyah and also the next Caliphate.<sup>32</sup>

In the history of mankind, including Muslims, radicalism always appear in thought and movement. The radicalism of thought is based on the beliefs about values, ideas and wisdom which is possessed by someone who considered themselves as the righteous and others is wrong.<sup>33</sup> Radicalism of thought usually characterized by the personality of someone who is very closed, difficult to interact with others and just communicate with his own group. Radical groups doesn't accept other figures than they have. They don't want to understand the diversity of opinions from everyone, and always want to unite their different views into their own opinions, and even impose his will on others. While the radicalism of action and movements is characterized by the extreme action that must be done to change a desired state.<sup>34</sup>

The Islamic radical movement can grow so fast and develop well because of some factors as following ; 1) the existence of groups outside the Islamic group who have particular interest and benefit from the emergence of radical Islamic groups.; 2) the social, political and economic problems within the Islamic countries which can not be solved properly; 3) the radical Islamic movement has transnational characteristic.<sup>35</sup>

---

<sup>27</sup> Paul J. Smith, *Op.cit.*, P. 12

<sup>28</sup> Bruce Hoffman, *Op.cit.*, p. 27

<sup>29</sup> Bruce Hoffman, *Op.cit.*, P.40

<sup>30</sup> Obsatar Sinaga dkk, *Terorisme Kanan Indonesia*, Elex Media Komputindo, Kompas Gramedia, hal. 8 (2018)

<sup>31</sup> Obsatar Sinaga, *Op.cit.*, hal. 8

<sup>32</sup> Obsatar Sinaga, *Op.cit.*, hal. 9

<sup>33</sup> Achmad Jainuri, *Radikalisme dan Terorisme , Akar Ideologi dan Tuntutan Aksi*, Intrans Publishing, Malang , hal. 4 (2016)

<sup>34</sup> *Ibid.*

<sup>35</sup> Achmad Jainuri, *Op.cit.*, p. 50

First, the outbreak of radical Islamic movements in the world is because of the scenario of groups that have interest and benefit from the existence of Islamic radical movement. In some places, radical Islamic movements are deliberately formed by interest groups to face the extremities of other radical groups. Anwar Sadat, the Egyptian President who ruled from 1970 to 1981 after President Abdul Nasser was a prominent figure who sponsored the establishment of a network of Jamaah Islamiyah groups to compensate for the leftist group which was dominated by professionals and students. Within this group of Jamaah Islamiyah then emerged other radical factions such as Takwir wal Hijrah and Jihad Islami which until now still a group of important opposition group in Egypt.<sup>36</sup>

Secondly, the Islamic radical movement always show fanaticism and intolerance towards other groups. They see themselves as the most correct group in the eyes of god. This radical groups tend to view themselves not as part of the majority Muslim group but as the guardians of the truth of Islam. But the facts show that the modern radical Islamic movement represents a minority group in the Muslim world which has been influenced by a significant political atmosphere in most of the region.

In some Muslim countries, there is a legitimacy crisis rooted in the failure of political elites and Muslim intellectuals to replace secular political ideologies. The crisis of political legitimacy is triggered by the failure of governments in various Islamic regions in fulfilling the promise of development and social justice. Many factors such as the inability of the elite, inflation, high population growth rates, the absence of economic development programs that benefit the public, the absence of effective mechanisms in the countries of the Middle East region for balanced economic development and equitable income distribution. The emergence of social, political and economic problems in Muslim countries fertilizes the growth of discontent without any settlement and even more severe which resulted in the growing strong radical Islamic movement.<sup>37</sup>

Third, the transnational radical Islamic movements occurred in almost every place in Muslim society. The issue of identity is very prominent in the minority countries and the majority of the population is Muslim. Radicalism is a phenomenon which occurred in every place, and not only arises in certain regions. Radical Islamic movements are local, and appear in religious, social, cultural and political phenomenon. Radical Islamic movements do not refer to any single doctrine, group or movement but point to certain characteristics of a number of doctrines, groups and movements but it refer to certain characteristics of numbers of doctrines, groups and movements. This radical movements is defined as the extrem group orientation of the rise of Modern Islam.<sup>38</sup> Modern radical Islamic movements arise because of two factors. First, to overcome the decline of religious morals in people's lives. Secondly to respond to Western influence in the political, social, and cultural life of Muslim societies.<sup>39</sup>

## 2.2. The rise of Radical Islamic Movement

Toward the end of the twentieth century, Muslim and Arabic terrorism become the most prominent component of world terrorism.<sup>40</sup> Its origins were in the emergence of the revivalist movements promoting a return to fundamentalist Islam and those of its protagonists who wanted to impose their aims by force. Such movements appeared in several countries; in the Arabian Peninsula it took the form of Wahhabism, the teaching spread by an eighteenth century sect that was little noticed at that time.<sup>41</sup> On the Indian subcontinent, terrorism was connected with the desire to strengthen the identity of the muslim minority to the Hindu majority. The founders of Pakistan had been secular politicians but on the fringes of their movement, religious extremists were active. As time went by, they became more prominent.<sup>42</sup>

Islamic fundamentalism is one form or another had always been present, just as in Christianity and Judaism there had been fundamentalist trends all along. It preached that one should adhere very closely to the Qur'an; that Allah was the only true lord, the only God worthy of obedience and true worship; and that one should believe in the uniqueness of the Prophet Muhammad. This basic tenets were common to every Muslim. What was really new was the conviction of the Salafis that they were Islam, not just one of several factions; that state and society should be based on the principles of the religious law, the Sharia, and not on secular law; and that this aim could be achieved most likely only by violence.<sup>43</sup> The new Islamic fundamentalism also emphasis on jihad (holy war), even though its exact meaning was not always made clear. Many fundamentalist also believed in the necessity to reestablish the Khilafah (the unity of politics and religious rule) which had vanished with the break-up of the Ottoman Empire after World War I.<sup>44</sup>

---

<sup>36</sup> Achmad Jainuri, *Op.cit.*, p. 51

<sup>37</sup> Achmad Jainuri, *Op.cit.*, p. 57

<sup>38</sup> Achmad Jainuri, *Op.cit.*, p. 59

<sup>39</sup> *Ibid.*

<sup>40</sup> Walter Laquaer, *No End To War : Terrorism in The Twentieth First Century*, The Continuum International Publishing Group Inc., New York, p.30, (2004)

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Walter Laquaer, *Op.cit.*, p.31

<sup>44</sup> *Ibid.*

The rise of radical Islamic movements began to rise in the year of 1979, when the Iranian revolution marked the striking success of radical Shiite Islamism where its influence was both direct, as with Hezbollah in Lebanon and indirect, facilitating the rise of suicide bombings by the traditional glorification of martyrdom. This tradition also inspired the radical Sunni Islamists of Hamas, Al – Qaeda and others. The soviet intervention in Afghanistan in 1979 was seized upon by Washington as the perfect opportunity to inflict upon the USSR the same kind of defeat that the United States had suffered in Vietnam.<sup>45</sup>

The radical Islamic movements exist and act at various levels of intensity and violence in all muslim countries in order to topple regimes and establish Islamic states according to the spirit of the Sharia, and to achieve independence for Muslim minorities in states identified with other cultures (Russia, China, the Philippines , Serbia, India and more). Radical Islam is therefore involved in struggles against foreign cultures on four levels: a) deposing “secular” regimes and replacing them with Islamic regimes in Muslim states; b) The struggle of Muslim minorities to achieve independence and establish independent Islamic state; c) The struggle against ethnic cultural minorities demanding autonomy or independence from Muslim states; d) The struggle against foreign cultures , particularly Western culture, at friction and contact points with the Islamic culture.<sup>46</sup>

The United States with the financing of Saudi Arabia, and the collaboration of Pakistan, which provided logistical support, safe haven and training centers, gave telling assistance to the Afghan resistance fighters. Radical Islamists from the Middle East and other Muslim regions began to pour in from the very onset of the war to participate in the jihad in any number of ways.<sup>47</sup>

The roots of Islamic Fundamentalism are varied from religion to religion and from country to country. In Egypt, and other Middle Eastern countries, it was the general dissatisfaction with the prevailing state of affairs, the imperfections of politics and society and fear of and resistance against Western ideological and material influences.<sup>48</sup> Islamic Fundamentalism utilizes a variety of means and tools to achieve its goals from education, information , economic aid and spiritual welfare to political sabotage, terror and war. Radical Islamic elements count three countries whose regimes can be characterized as Fundamentalist Islamic: Iran, Afghanistan and Sudan , as well as scores of Fundamental Islamic movements and organizations active throughout the Muslim world. The Fundamentalist Islamic states serve as a source of inspiration, encouragement, finance and support for the radical Islamic movements, and they act through their own channels and also via these organizations to export the Islamic revolution, the product of their school of thought and to wage battle against foreign cultures, particularly the western culture.<sup>49</sup>

The victory of the Islamic Mujahidin in Afghanistan and the Soviet Union’s defeat in the theater of war were conceived as an Islamic victory in Islamic circles. The collapse of the Soviet Union and the disintegration of Communist Ideology created an ideological and political vacuum, which opened an historical “window of opportunity” for Islamic circles. Communism and Socialism which constituted an ideological basis for the majority of secular regimes in Muslim states, crumpled and left an ideological vacuum that radical Islam aspires to fill.<sup>50</sup>

Terrorism became truly global for the first time in history in the 1990s as local conflicts turned into a worldwide campaign. The war in Afghanistan had lasted for about ten years; radical Islamists, flush with enthusiasm, thought that it might take only another decade to overthrow the present Arab and Muslim governments and yet another few years to defeat America and the West.<sup>51</sup> Underlying the new globalization of terrorism was the concept of jihad; in its present form, this was a loose federation of terrorist groups that had developed in the 1970s and 1980s . These decades were not a good time for Muslim and above all, Arab radicals.

The Arab countries such as Libya and Syria were ruled by military dictators and attempts to establish truly Islamic regimes. The overthrow of the Shah and the coming of the power of Ayatollah Khomeini and his supporters also happened in Iran. Iran was the most active country at the time as far as the export of violent religion and terrorism was concerned. Then, with the outbreak of the war in the Afghanistan, a new window of opportunity suddenly opened up, and militants from all over the Muslim world were not slow to make use of it.<sup>52</sup>

Osama bin Laden was not raised or educated in religious Islamic seminaries but actually studied engineering at a prestigious university in Saudi Arabia. His radical worldview was formulated through the perusal and study of the writings of radical Islamic philosophers during his years in Afghanistan in the framework of the jihad against the Soviets. His main source of influence was the Palestinian Sheikh Abdullah Azzam, the principal ideologist and main formulator of the perception of jihad in Afghanistan,

---

<sup>45</sup> Gerard Chaliand and Arnaud Blin, *The History of Terrorism*, University of California Press, p. 221, (2007)

<sup>46</sup> Yoram Schweitzer & Shaul Shay, *Op.cit.*, P.20

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

<sup>48</sup> Walter Laquaer , *Op.cit.*, p. 31

<sup>49</sup> Yoram & Shaul Shay, *Op.cit.*, p.20

<sup>50</sup> *Ibid.*

<sup>51</sup> Walter Laquaer *Op.cit.*,p.49

<sup>52</sup> Walter Laquaer , *Op.cit.*, p.50

who originated from the village of Silat-al Hartiya in the Jenin district. Azam held the ultimate responsibility for formulating the perceptions of the “Global Jihad”.<sup>53</sup>

The first ideologist and organizer of this new jihad arising out of Afghanistan was Abullah Azzam, a cleric born in Palestine where he studied agriculture before receiving an Islamic education in Syria and Egypt. He also received a doctorate in Islamic law. He held a lecturership at a Saudi University but his heart was not in an academic career; while in Egypt he had become a radical Islamist partly, apparently, under the influence of the brother of SayedQutb. Azzam wanted to dedicate his life to jihad, which he considered the duty of every Muslim.<sup>54</sup>

Though he had participated in the war of 1967 against Israel, Azzam was not primarily a military leader even though he took part in military actions but an intellectual and certainly a political leader with a vision. He was a man of boundless energy who traveled near and far trying to mobilize the young generation all over the Muslim world to join in the armed struggle against the infidels and to establish Khilafah, God’s rule on earth. The liberation of Afghanistan was not the aim but just the first step in the coming jihad. The real aim was to restore to Muslim rule all the territories that had once been theirs, from Southern Spain to the Philippines, Central Asia, India, parts of Europe and Africa.<sup>55</sup>

Undoubtedly, Azzam contributed significantly to the conversion of the war in Afghanistan into a global Islamic issue, a symbol of the Islamic struggle against alien cultures and to the placing of the jihad in the forefront of Islamic activity against its adversaries. The Jihad was conceived as the main tool with which to achieve victory for Islam and to establish the divine government on this earth. He became a symbol and leader of the jihad organizations and radical Islamic circles worldwide and his impact on the Global Jihad movement lasted beyond his lifetime. His actions and concepts influenced the development of numerous phenomena and processes in radical Islam as follows: i) The establishment of an Islamic “international” organization on the basis of the recruitment of volunteers from all over the Islamic world on behalf of the jihad in Afghanistan.;ii) The creation of an international network of Islamic terror cells supported by radical Islamic movements throughout the world;iii) The triumph of the Mujahidin in Afghanistan created an aura and ethos of bravery around the Muslim fighters and serves as a source of inspiration for Muslims around the globe; iv) The creation of an extensive cadre of Islamic fighters imbued with a sense of mission and combat experience was created. These fighters became the vanguard in struggles between the radical Islam and its foes.<sup>56</sup>

### 3. TERRORISM AS A CRIME AGAINST HUMANITY

#### 3.1. The Definition of a Crime Against Humanity

The term of a crime against humanity was first recognized in the joint declaration between France, United Kingdom and Russia on 24<sup>th</sup> of May, 1915. This declaration was intended to condemn the Turkish atrocities which occurred during the war against Armenians in Turkey. This massacre of Armenia’s population known as a ‘crime against humanity and civilization’.<sup>57</sup> Crime against humanity was known for the first time in the London Charter of the International Military Tribunal, 1915, which resulted in the Nuremberg Trial that prosecuted the German NAZI war criminals. In Article 6 (c) of the Nuremberg Charter, crime against humanity is defined as follows:

“(c) Crimes against humanity: Namely murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”<sup>58</sup>

In the Judgment of the International Military Tribunal for the Trial of German Major War Criminals it was also stated that the Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

Crimes against humanity have also been described in the Control Council Law number 10 which explained that crimes against humanity include: atrocities and offenses, including but not limited to murder, rape or other inhuman deed directed against

<sup>53</sup> Yoram & Shaul Shay, *Op.cit.*, p.22

<sup>54</sup> Walter Laquaer, *Op.cit.*, p.51

<sup>55</sup> *Ibid.*

<sup>56</sup> Yoram & Shaul Shay, *Op.cit.*, p. 24

<sup>57</sup> Suparman Marzuki, *Pengadilan HAM Indonesia Melanggengkan Impunity*, Erlangga: Jakarta, hal. 44 (2012)

<sup>58</sup> *The Charter and Judgement of Nuremberg Trial*, [www.cininas.lt/wpcontent/uploads/2015/06/1949\\_UN\\_ILC\\_N\\_statuto\\_koment.pdf](http://www.cininas.lt/wpcontent/uploads/2015/06/1949_UN_ILC_N_statuto_koment.pdf), retrieved on 31 July 2018



civilians or persecution on the basis of political, race or religion either violates or does not violate the domestic law of the country in which it occurs.<sup>59</sup>

The term of crime against humanity can also be found in the Statute of International Criminal Tribunal for Eks- Yugoslavia (ICTY) which is defined in the article 5 as following:

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population; (a) murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecution on political, racial and religious grounds; (i) Other inhumane acts.<sup>60</sup>

Crime against humanity also stated in the Article 3 of the International Criminal Tribunal for Rwanda (ICTR) as following:

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of widespread or systematic attack against any civilian population on national political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecution on political, racial and religious grounds; (I) Other inhumane acts.<sup>61</sup>

Crimes against humanity completely and clearly stated in the Statute of the International Criminal Court (ICC) which known as the Rome Statute, 1998. In the article 7 of the Statute, crime against humanity defined as any of the following :

Crimes against humanity means any following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>62</sup>

Crimes Against Humanity can occur in times of peace, as well as during internal wars and international wars . Thus, from the formulation of Article 7 we can see that the Rome Statute of 1998 already contained the basics of an act or acts that qualify as crimes against humanity which condemned by the international community as a ‘Crime against Human Civilization’ (*Hostis Humanis Generis*).

### 3.2. The Element of Crimes Against Humanity

What distinguishes a crime against humanity from an ordinary crime (or from other international crimes) is the requirement that it must have been committed in the context of a ‘widespread or systematic attack against a civilian population’.<sup>63</sup> The element of crimes against humanity can be divided into five sub-elements as following: (1) an attack; (2) a link or nexus between the acts of the accused and the attack; (3) the attack is directed against any civilian population; (4) the attack is ‘widespread or systematic’ and (5) the perpetrator has the appropriate *mens rea*.<sup>64</sup>

#### 3.2.1. The Attack

An ‘attack’ for the purpose of crimes against humanity is a course of conduct involving the commission of acts of violence. The acts committed in the course of the attack (and which actually constitute that attack) can vary extensively both in gravity and in nature. The concept of ‘attack’ and the concept of ‘armed conflict’ are distinct and independent, and an ‘attack’ does not even require the use of armed force on the part of the attacker although it generally does in practice.<sup>65</sup> This distinction is a logical

<sup>59</sup> Council Control No. 10, *Punishment of Person Guilty of War Crimes, Crimes Against Peace and Humanity*, December 20, 1945, 3 Official Gazette Control Council for Germany 50-55 (1946) <http://hrlibrary.umn.edu/instree/ccno10.htm>, retrieved on 31 July 2018

<sup>60</sup> *Updated Statute of the International Criminal Tribunal for the Former of Yugoslavia*, [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf), retrieved on 31 July 2018

<sup>61</sup> *Statute of the International Criminal Tribunal for Rwanda*, [http://legal.un.org/avl/pdf/ha/ictr\\_EF.pdf](http://legal.un.org/avl/pdf/ha/ictr_EF.pdf), retrieved on 31 July 2018

<sup>62</sup> *Rome Statute of International Criminal Court*, Article 7, [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm), retrieved by 31 July 2018

<sup>63</sup> Guenael Mettraux, *International Crimes and the Ad Hoc Tribunals*, Oxford University Press, , p. 155 (2005).

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

consequence of the fact that under customary international law, crimes against humanity may be committed independently of an armed conflict. Even if it were to occur in the context of an armed conflict, the attack could precede, outlast, or run parallel to the armed conflict.<sup>66</sup>

An 'attack' carries a different meaning in the context of a crime against humanity than in the context of the laws of war. Unlike the case in the laws of war, an attack for the purpose of the definition of crimes against humanity is not limited to the conduct of hostilities but also covers the mistreatment of persons taking no active part in hostilities. The attack, need not be directed at the enemy but it may also be directed against any civilian population, including any part of the attacking state's own population.<sup>67</sup>

### 3.2.2. Nexus between the acts of the accused and the Attack

Not all crimes committed during the attack constitute crimes against humanity or to count as a crime against humanity, a crime must form part of that attack. This nexus requirement between the acts of the accused and the attack may be subdivided into two elements as following: (i) the commission of an act which by its nature or consequences is liable to have the effect of furthering the attack; (ii) knowledge on the part of the accused that there is an attack on the civilian population and that his act is part of the attack.<sup>68</sup>

The first condition of that the acts of the accused must be objectively part of the attack in that, by their nature or consequences, they are liable to have the effect of furthering the attack. The perpetrator need not have committed a series of crimes for his acts to be part of the attack, but a single act is sufficient in principle. Neither is it necessary that there be many victims involved. For example, the killing of a Bosnian Muslim by Croat nationalists in Geneva in 1993, or the killing of a Jew by local fascists in Bolivia during the second World War would not qualify as a crime against humanity because the act would be too far removed from the core of the attack to be said to constitute a part thereof.<sup>69</sup>

### 3.2.3. Any Civilian Population as the Primary Object of the Attack

The third element requires that the attack be 'directed against any civilian population'. Taken as whole, this phrase further emphasizes the element of scale already apparent in the 'attack' requirement discussed above. First, the phrase 'directed against' requires that the civilian population be the primary object of the attack, not just an incidental victim of the attack. This requirement further ensures that the alleged crime generally will not be one particular act but, instead, part of a course of criminal conduct.<sup>70</sup> Under the customary International Law, it is the overall attack, not the perpetrator's individual act, that must be shown to be directed against the civilian population.

Secondly, the term 'any' means that crimes against humanity can be committed against members of any civilian population regardless of their nationality, ethnicity or any other distinguishing feature, whether they are of the same nationality as the perpetrator or of a different nationality or whether they are stateless, a crime against humanity could therefore in principle be committed against a state's own population if that state participates in the attack.<sup>71</sup>

Thirdly, the inclusion of the expression 'civilian population' resulted from the desire to exclude isolated or random acts from the scope of crime against humanity. However, the term 'population' does not mean that the entire population of the geographical entity which the attack is taking place must be subject to the attack. It is sufficient to establish that the scale, methods, or resources involved demonstrate that the attack was indeed directed at the civilian population generally or indiscriminately rather than at some selected members of that population. For example, the killing of only a select group of civilians – a number of political opponents to the regime – could not be regarded, in principle, as a crime against humanity where in such a case no 'population' can be said to have been attacked. Numerically, a large number of victims may be indicative that the population itself was being attacked and this number will be evidentially relevant to determine whether the attack might be regarded as either 'widespread' or 'systematic'. A 'population' may be defined as a sizeable group of people who possess some distinctive features that mark them as targets of the attack.<sup>72</sup>

### 3.2.4. Widespread or Systematic Character of the Attack

The attack is not only characterized by its target (the civilian population) but also by its scale – the widespread nature of the attack or by its systematicity – the systematic nature of the attack. The adjective 'widespread' refers to large scale nature of the attack and the number of victims. The attack may be widespread due to the cumulative effect of a series of acts, or, it has been suggested, due to the effect of a single act of extraordinary magnitude. Meanwhile, the adjective 'systematic' refers to the organized nature of the acts of violence and the improbability of their random occurrence. A 'widespread' attack targeting a

---

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Ibid.*

large number of victims generally reflects patterns of similar abuses and often relies on some form of planning or organization. Likewise, a 'systematic' attack frequently has the potential, purpose or effect of reaching many people. The following factors might be considered, when establishing whether the attack was indeed widespread or systematic: (i) the number of criminal acts; (ii) the existence of criminal patterns; (iii) the logistics and financial resources involved; (iv) the number of victims; (v) the existence of public statements or political views underpinning the events; (vi) the existence of a plan or policy targeting a specific group of individual; (vii) the means and methods used in the attack; (viii) the inescapability of the attack; (ix) the foreseeability of the criminal occurrence; (x) the involvement of political or military authorities; (xi) temporally and geographically repeated and coordinated military operations which all led to the same result or consequences; (xii) alteration of the ethnic, religious or racial composition of the population; (xiii) the establishment and implementation of autonomous political or military structures at any level of authority in a given territory; (xiv) adoption of various discriminatory measures

### 3.2.5. Requisite State of Mind or Mens Rea

In addition to proving intent to commit the underlying offences, the perpetrator must know that there is an attack on the civilian population and that his acts comprise part of the attack, or he must at least take the risk that his acts are part of the attack. It suffices that, through the function he willingly accepted, he knowingly took the risk of participating in the implementation of that attack. The accused need not know the specific details of the attack nor does he need to know that his acts are directed against the targeted population; it is the attack, not the acts of the accused, which must be directed against the target population and the accused need only know that his acts are part thereof.<sup>73</sup>

## 3.3. THE CAPABILITY TO PROSECUTE TERRORISM UNDER THE INTERNATIONAL CRIMINAL COURT JURISDICTION

### 3.3.1. The Establishment of the International Criminal Court as a Legal Response for the Serious International Crimes

On 17 July 1998, 120 states adopted a statute in Rome – known as the Rome Statute of the International Criminal Court (The Rome Statute) – establishing the International Criminal Court (ICC). For the first time in the history of humankind, States decided to accept the jurisdiction of a permanent international criminal court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals after entry into force of the Rome Statute on 1 July 2002.<sup>74</sup> The International Criminal Court is a permanent international court that was established on July 17, 1998 by the Rome Statute in 1998, which was passed through voting by 148 countries, of which 120 countries voted in favor, 7 opposed and 21 countries abstained including Indonesia. Among the 7 countries who opposed are United States, China and Iraq. More than 108 countries have ratified the Rome Statute of 1998. The ICC is an international court that initiated by the United Nations, which is located in Den Haag, Netherlands. There are around 15 to 20 judges from various nations who carry out their duty.

The Rome Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court. On the same day and in accordance with Article 125, the Statute was opened for signature in Rome until 17 October 1998 and then in New York, at the United Nations Headquarters, until 31 December 2000. The ICC was created by a treaty, which means that it has a different legal basis than the existing *ad hoc* International Criminal Tribunal.<sup>75</sup>

The establishment of the ICC is the culmination of decades of discussion by governments and academic commentators concerning the need for a permanent judicial body representing the legal systems of the world to conduct trials of individuals who are accused of the most serious crimes of concern to the international community as a whole.<sup>76</sup> The International Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction

---

<sup>73</sup> *Ibid.*

<sup>74</sup> *Understanding the International Criminal Court*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>, retrieved on 1 August 2018

<sup>75</sup> Miroslav Baros, *The Establishment of the International Criminal Court: Institutionalising Expedience?*, *Hertfordshire Law Journal*, 1 (1), p. 58, [https://www.herts.ac.uk/\\_data/assets/pdf\\_file/0007/38626/HLJ\\_V1I1\\_Baros.pdf](https://www.herts.ac.uk/_data/assets/pdf_file/0007/38626/HLJ_V1I1_Baros.pdf), retrieved on 1 August 2018

<sup>76</sup> Peter J. Wertheim, *Should Grave International Crimes of Terrorism be Included in the Jurisdiction of the International Criminal Court? Policy and Society*, 22:2, 1-21, [ps://www.tandfonline.com/doi/pdf/10.1016/S1449-4035\(03\)70017-4?needAccess=true](https://www.tandfonline.com/doi/pdf/10.1016/S1449-4035(03)70017-4?needAccess=true), retrieved on 1 August 2018

over those responsible for international crimes. The International Criminal Court can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.<sup>77</sup>

One of the goals of the establishment of the International Criminal Court is to achieve a universal respect for human rights and fundamental freedoms of the human race throughout the world with several objectives as following: (1) to achieve justice for all, (2) to end Impunity, (3) to help end the conflict; (4) to remedy the deficiencies of Ad Hoc tribunal; (5) to take over national criminal justice; (6) to deter future war criminal.

According to the Article 5 of Rome Statute, the ICC will have jurisdiction with respect to the crime of genocide, war crimes and crimes against humanity. In the Article 7 of the Statute is a recognition that a crime against humanity may be committed not only in a war but in peacetime as well. From an international criminal law perspective, a crime against humanity is a category of international crimes punishable under international criminal law. This position is derived from the general legal framework classifying crimes in relation to either the subject or object as is even the case in domestic law, where there are classifications of crime against persons, crime against property, crime against public order and hence like crime against humanity.<sup>78</sup>

### 3.3.2. The Inclusion of Terrorism Under the Jurisdiction of the International Criminal Court

Since the tragedy of 9/11, many facts have shown that acts of terrorism which is conducted by terrorist groups whether organized by a state actor or non state actors, contains elements of crime against humanity. The acts of terrorism which has been regulated under the UN Conventions consist of acts as following: hostage taking, hijacking, maritime sabotage, attacks at airports, attacks against diplomats and government officials, attacks against UN Peacekeepers, use of bombs or biological, chemical, or nuclear materials and providing financial support to terrorist organizations. The main question is whether the International Criminal Court can prosecute terrorist acts as a crime against humanity into its jurisdiction?

According to the opinion which explained by Aviv Cohen, the ICC is still not being used for this. The establishment of the ICC and its governing document (the Rome Statute) does not include terrorism within its jurisdiction.<sup>79</sup> Under the Rome Statute, the ICC does not have jurisdiction over acts of terrorism as a distinct offence. This situation is no accident rather than the express intention of the majority of State Parties to the Rome Conference which rejected the inclusion of terrorism in the Rome Statute.<sup>80</sup>

According to Peter J. Wertheim, he explained that other crimes that were considered for inclusion within the *ratione materiae* jurisdiction of the International Criminal Court were drug trafficking, terrorism and crimes against UN and associated personnel. When it became clear that some States were unalterably opposed to the broadening of the Court's jurisdiction to include drug trafficking and terrorism, the Rome conference decided to omit them so as to eliminate a potential area of major disagreement and ensure that the Statute would be adopted within the time available. Thus, although both UN General Assembly (UNGA) and UN Security Council (UNSC) have repeatedly condemned international terrorism and more recently have characterized this phenomenon as "one of the most serious threats to international peace and security", international terrorism does not appear in the Article 5 of the Statute "as the most serious crimes of concern to the international community as a whole".<sup>81</sup>

In 1994 the United Nations General Assembly recognised that terrorism was 'criminal and unjustifiable'. The Convention for the Suppression of the Financing of Terrorism was signed in 1999, provide the first common definition of terrorism. Article 2 (1) (b) refers to "terrorism" as an act intended to cause death or serious bodily injury to a civilian, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act. However, United Nations Security Council resolution (UNSC) 1368 (2001) categorized terrorism as a 'threat to international peace and security'.

<sup>77</sup> *Understanding the International Criminal Court*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>, retrieved on 1 August 2018

<sup>78</sup> Briand Dube, *Understanding the content of Crime Against Humanity: Tracing Its Historical Evolution from the Nuremberg Charter to the Rome Statute*, African Journal of Political Science and International Relations, Vol. 9 (5), pp.181-189, 2015, [www.academicjournals.org/journal/AJPSIR/article-full-text-pdf/1F5005E52765](http://www.academicjournals.org/journal/AJPSIR/article-full-text-pdf/1F5005E52765), retrieved on 1 August 2018

<sup>79</sup> Aviv Cohen, *Prosecuting Terrorist at the International Criminal Court: Reevaluating an Unused Legal Tool to Combat Terrorism*, Michigan State International Law Review, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1080&context=ilr>, retrieved on 1 August 2018

<sup>80</sup> Aviv Cohen, *Op.cit.*, p. 223

<sup>81</sup> Peter J. Wertheim, *Op.cit.*, p. 2

From those explanation, we can understand and analyze what are the obstacles for terrorism to be prosecuted under the International Criminal Court. The first reason and the the foremost obstacle to the inclusion of terrorism in the Rome Statute was the lack of a clear and universally accepted definition of what constitutes terrorism. At the present time there is no universally definitions of “terrorism”. Dozens of definitions have been attempted over the last thirty years but a consensus about an appropriate definition remains elusive . Several States which participating in the Preparatory Committee “were of the view that international terrorism should not be included within the jurisdiction of the International Criminal Court because there was no general definition of the crime and elaborating such a definition would substantially delay the establishment of the court”.<sup>82</sup>

Contrary to this argument , the effort to provide the definition of terrorism has been done. In 1998, the Preparatory Committee proposed a definition of terrorism in the Draft Statute and Draft Final Act presented to the Rome Conference. Unfortunately, the idea of giving the International Criminal Court jurisdiction of terrorism was met with argument that the jurisdiction of the Court should be limited to the core crimes under general international law ( which stated in the Article 5 such as war crimes, crimes against humanity and genocide) to avoid any question of individual criminal responsibilities resulting from a State not being a party to the relevant legal instrument , to facilitate the acceptance of the jurisdiction of the Court by the States that were not parties to particular treaties, to facilitate the functioning of the court by obviating the need for complex State consent requirements or jurisdictional mechanism for different categories of crimes and to avoid overburdening the limited financial and personnel resources of the Court by trivializing its role and functions.<sup>83</sup>

In contrast, an argument has been put forward that the lack of acceptable definition should not stand in the way of employing a workable definition and move along with the prosecution of terrorists in the International Criminal Court. One commentator has even suggested defining terrorism in a “transitional format” until a universally agreed definition will be achieved. The issue of definition was and remains the most serious obstacle in any discussion of terrorism, and the current discussion is no exception. However, since July of 1998, there have been some developments in the road towards finding a universally accepted definition of terrorism.<sup>84</sup>

The second reasons for States reluctance to include the terrorism under the Rome Statute was the notion that the three core crimes which is war crimes, crimes against humanity and genocide, represented the crimes of greatest concern to the international community and terrorism does not rise to this level of international concern.<sup>85</sup> However, examining the way in which the international community as a whole and States individually have addressed terrorism can lead to the conclusion that nowadays terrorist are as hostis humanic generis as war criminals or perpetrators of genocide or crime against humanity. For instance, comparing the status of the Genocide Convention to that of the Terrorism Financing Convention shows that while the former has forty-one signatories and 141 parties; the latter has 132 signatories and 173 parties. In addition, the Security Council has affirmed that acts of international terrorism constitute threats to international peace and security.<sup>86</sup>

Even on a more basic level, the notion of an international crime originated with piracy. Piracy hampered transnational trade and was in the common interest of every country to criminalize. Since piracy occurred on the high seas, no one state could assert the responsibility to combat piracy, and an international cooperation was necessary. Thus, it developed through state practice to be an international crime. While terrorist acts occur within territorial boundaries, there can be an analogy between piracy and terrorism: terrorist acts were initially considered as “mere” treaty crimes, but as they became more international in nature and carried more disastrous results, they generated a need for an international cooperation to combat them and were the subject of growing international condemnation. Thus, this development has led some commentators to argue that terrorist acts have advanced to be regarded as international crimes.<sup>87</sup>

The third reason for rejecting the inclusion of terrorism in the Rome Statute was the desire to avoid overburdening the ICC and the need for a gravity threshold. The counter argument to this claim is that the fear from a work overload of the court is not unique to terrorism and has already been addressed in the Rome Statute itself. The drafters of the Rome Statute knew that the ICC should be reserved for a special class of the most atrocious acts, and they have put some safety valves in the text to accomplish that. These built-in mechanisms will ensure that the ICC will have jurisdiction over the most severe terrorist acts just like it has jurisdiction over the most severe crimes against humanity or any of the other crimes.<sup>88</sup>

Article 1 of the Rome Statute set forth clearly that the ICC will exercise jurisdiction only for the “most serious crimes of international concern.”Article 5, which specifies crimes within the jurisdiction of the ICC, reiterates this language. In addition, the principle of complementarity, according to which the ICC will defer to national jurisdictions, was designed to prevent an

---

82 Peter J. Wertheim, *Op.cit.*, p. 3

83 Peter J. Wertheim, *Op.cit.*, p.5

84 Aviv Cohen, *Op.cit.*, p. 224

85 Aviv Cohen, *Op.cit.*, p. 224

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

overload of cases in the international court system while the national courts have more direct access to evidence and manpower.<sup>89</sup>

The fourth argument against the initial inclusion of terrorism in the Rome Statute was that such an inclusion would impede the acceptance of the Rome Statute. This concern is irrelevant today because the Rome Statute did, in fact, come into force and currently has 114 member states. However, similar concerns may rise with respect to the acceptance of a new crime of terrorism. As will be elaborated ahead, any amendment to the Rome Statute does not apply automatically to all the states parties but rather applies only to those states parties that have ratified it specifically.<sup>90</sup>

A fifth argument is based on a more practical level; some states questioned the need to include terrorism in the Rome Statute because, as a treaty crime, there was already in place a system of international cooperation to deal with it. While it may be true that the counter-terrorism conventions attempt to create a regime of "extradite or prosecute" between their member states and ensure the cooperation between them, this is not a good enough reason to deny ICC jurisdiction. For instance, genocide, an undisputed core crime, was also under the regime of an international treaty already in place in 1948. In addition, most of the war crimes under the Rome Statute were already dealt with in the Geneva Conventions.

This argument asserts that terrorism has a solid basis as a treaty crime to be dealt with on the international level. This is the exact opposite of the argument made earlier, namely, that terrorism is not a well-established crime compared to the other core crimes. The fact of the matter is that the existing legal instruments to deal with what the international community perceives as a criminal conduct are simply irrelevant when determining whether a crime should be included in the Rome Statute. The purpose of including an international crime in the Rome Statute is to generate ICC jurisdiction over it, not to fill a vacuum in international law where there is no existing regime to suppress a certain crime. And even if it did, it is not at all clear that the current counter-terrorism regime created by these conventions is successful enough to justify not creating ICC jurisdiction over terrorism as an additional tool.

Based on the explanation above, it can be seen that the crime of terrorism is still not generally accepted as a serious crime which threatened the humankind as well as core crimes under the ICC jurisdiction. But if we see in various terrorism incidents, many terror acts are conducted with inhumane acts such as murdering, kidnapping and etc. For example, the incident of September 11 attacks occurred when the airplane hijacked by the terrorist group. The September 11 attacks were a series of four coordinated terrorist attacks by the Islamic terrorist group al-Qaeda against the United States which killed 2,996 people, injured over 6,000 others, and caused at least \$10 billion in infrastructure and property damage. Additional people died of 9/11-related cancer and respiratory diseases in the months and years following the attacks.

The largest terrorist attack in history, 9/11 took the lives of approximately three thousand people when nineteen terrorists belonging to the terrorist organization Al-Qaeda took over four commercial flights in the United States. The attack was furthered by anti-American sentiments among Muslim extremist groups opposing American involvement in the Middle East. Less than a month after the attack, the United States led coalition forces into Afghanistan where the architect of the attack, Osama Bin-Laden, was supposedly hiding. Almost ten years later, Bin-Laden was killed in Pakistan during an operation of an elite unit of the U.S. Armed Forces.<sup>91</sup>

Events like the September 11<sup>th</sup> attacks could be prosecuted under the jurisdiction of the International Criminal Court which based on the Article 7 (1) (a) as following:

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: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The event of September 11 attacks already contains the element of crime against humanity such as murdering, extermination, deportation, persecution, and other inhumane acts that causing suffering or serious injury to body or mental or physical health. The September 11 attacks were multiple and coordinated, causing the death of thousands of people in furtherance of Al Qaeda's terrorist policy against the United States. This attacks were conducted in systematic way and widespread, directed at civilians and committed under the state or organizational policy.

---

89 *Ibid.*

90 *Ibid.*

91 Aviv Cohen, *Op.cit.*, p.222

Another example of terrorist events to be used as an example is the Pan-Am flight 103 bombing. On the evening of December 21, 1988, Pan-Am flight 103 was on their route from London to New York when it exploded over Lockerbie, Scotland. Including all the people on board the flight as well as people on the ground, the total number of casualties was 270 from over twenty different countries. Investigation of the attack discovered the involvement and responsibility of the Libyan government. International sanctions on Libya led by the United Nations followed in 1992 and 1994, as well as an embargo on arms and certain oil supplies. These sanctions were suspended in 1999 after Libya surrendered two suspects to stand trial in Scotland. In 2003, Libya officially took responsibility for the attack and began paying reparations to the families of the victims.<sup>92</sup>

The Lockerbie incident causing a great number of death and it was grave as underlined by the UN Security Council in four Resolutions as the worldwide persistence of acts of international terrorism in all its forms, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and jeopardise the security of States, also conducted in systematic way and widespread that may be prosecuted under the heading of crimes against humanity.<sup>93</sup>

Another example of terrorist attacks is the hijackings perpetrated by several Palestinian movements in the 1970s-1980s which often led to the death of several civilians, and the suicide bombing attacks which became the phenomenon in 2000, may form part a widespread and systematic attack and amount to crimes against humanity. The attacks, on an Israeli owned hotel on November 28, 2002 in Mombasa (Kenya) in which three Israelis died and the car bomb attack in Kuta, Bali which caused 200 people were killed, all form part of one widespread and systematic attack in furtherance of Al Qaeda's terrorist policy.<sup>94</sup>

From these three examples we could see that several individual acts which taking place at very different and distant times but based on the same policy and committed by the same group, form part of an overall widespread and systematic attack, thereby constituting a crime against humanity. Another elements inside terror acts that relevant to the Article 7 (1)(k) which bans "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" refers to the perpetrator who inflicted great suffering or serious injury to body or to mental or physical health by means of an inhumane acts. Article 7(1) (k) was intended as an open provision to encompass all inhumane acts which are impossible to list comprehensively.

#### 4. Conclusion

Based on the explanation above, that are several things that can be concluded as following: first, the acts of terrorism which committed as part of a widespread or systematic attack, against a civilian population and in furtherance of a policy of a State or Non State actor or International organization, constitute a crime against humanity, although a nexus with the war is not required and everyone can be a perpetrator. The advantages of prosecuting terrorism as a crime against humanity are numerous, for example, the offences can be committed by anyone on the basis of either a governmental or non governmental policy. Thus, both State and non-State terrorism is addressed. Another advantage is that there is no need for the existence of a conflict. Thus, all categories of terrorism may be covered under this heading, whether they occurred in wartime or in peacetime.

Second, the acts of terrorism might not be prosecuted under the ICC Jurisdiction because it doesn't fulfill the requirements of the core crimes under the Article 5 of Rome Statute such as warcrimes, crimes against humanity and genocides, but many facts has shown that the acts of terror are closely related to the elements of crime against humanity, even its committed as a part of a systematic and widespread attacks and directed to civilian where this elements are an absolute requirement of a crime against humanity so that terrorism could be prosecuted under the Rome Statute.

Third, before the establishment of the ICC, many efforts has been done to include the terrorism into the jurisdiction of the ICC. Although these efforts is hampered by the wishes of countries that doesn't want to be tried based on the individual criminal responsibility, this efforts is commendable which can be used as a reference for the international community that terrorism is a potential crime which can be prosecuted under the ICC jurisdiction on the basis of humanity and the protection of human rights and this crime has same level as war crimes, genocide and crimes against humanity.

Fourth, although there are definition of terrorism that can be accepted universally around many countries until now, the absence of terrorism definition does not impede the international law enforcement and criminal justice authorities from its capabilities to prosecute the terrorist under the ICC. In fact, it's a challenge for the international community and law enforcement to be able to formulate terrorism more clearly so it doesn't generate so much interpretation.

Fifth, the inclusion of terrorism under the ICC jurisdiction still can be done if countries have a strong will to amend the Rome Statute. The procedure to amend the Rome Statute can be utilized in any time by diplomatic lobbying for promoting the idea of a crime of terrorism, getting support from the State Parties of Rome Statute, making official proposal for amendment of Rome Statute and it will need a strong political and diplomatic efforts to make such amendment possible. This efforts are very

---

<sup>92</sup> *Ibid.*

<sup>93</sup> Roberta Arnold, *The ICC As A New Instrument For Repressing Terrorism*, Transnational Publishers New York, 2004, p. 264

<sup>94</sup> Roberta Arnold, *Op.cit.*, p. 265

significant because the ICC as part of the international criminal law instrument playing a key role in the effort to make terrorism became one of the most internationally proscribed crimes to bring justice and the world peace for humankind.

## REFERENCE

- Achmad Jainuri, "Radikalisme dan Terorisme, Akar Ideologi dan Tuntutan Aksi", Intrans Publishing, Malang, 2016
- Alexandra V. Orlova, "Umbrellas" or "Building Blocks"?: Defining International Terrorism And Transnational Organized Crime in International Law, Houston Journal of International Law, 2005
- Aviv Cohen, "Prosecuting Terrorist at the International Criminal Court: Reevaluating an Unused Legal Tool to Combat Terrorism", Michigan State International Law Review, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1080&context=ilr>, retrieved on 1 August 2018
- Briand Dube, "Understanding the content of Crime Against Humanity, : Tracing Its Historical Evolution from the Nuremberg Charter to the Rome Statute", African Journal of Political Science and International Relations, Vol. 9 (5), 2015, [www.academicjournals.org/journal/AJPSIR/article-full-text-pdf/1F5005E52765](http://www.academicjournals.org/journal/AJPSIR/article-full-text-pdf/1F5005E52765), retrieved on 1 August 2018
- Bruce Hoffman, "Inside Terrorism", Columbia University Press, 2006
- Bryan A. Gardner, Editor in chief. "Black's Law Dictionary", Seventh Edition, Paul St. Minim, 1999
- "Council Control No. 10, Punishment of Person Guilty of War Crimes, Crimes Against Peace and Humanity", December 20, 1945, 3 Official Gazette Control Council for Germany 50-55 (1946) <http://hrlibrary.umn.edu/instreet/ccno10.htm>, retrieved on 31 July 2018
- Gerard Chaliand and Arnaud Blin, "The History of Terrorism", University of California Press, 2007
- Gus Martin, "Understanding Terrorism, Challenges, Perspectives and Issues", SAGE Publications, Washington D.C., 4<sup>th</sup> edition, 2013
- Guenael Mettraux, "International Crimes and the Ad Hoc Tribunals", Oxford University Press, 2005
- "Homeland Security Act of 2002", Public Law 107-296, 107<sup>th</sup> Congress, Departemet of Homeland Security (2002), retrieved on September 9 2016, [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf), retrieved on 31 July 2018
- "International Convention for the Suppression of Terrorist Bombings", New York, 15 December 1997, [https://www.unodc.org/documents/treaties/Special/1997 International Convention for the Suppression of Terrorist.pdf](https://www.unodc.org/documents/treaties/Special/1997%20International%20Convention%20for%20the%20Suppression%20of%20Terrorist.pdf), retrieved on 31 July 2018
- "League of Nation of Convention for the Prevention and Punishment of Terrorism", Council on foreign relations, <http://www.cfr.org/terrorism-and-the-law/league-nations-convention-prevention-punishment-terrorism/p24778>, retrieved in August, 29, 2016
- Miroslav Baros, "The Establishment of the International Criminal Court : Institutionalising Expedience?", Herdfordshire Law Journal, 1 (1), 58 [https://www.herts.ac.uk/\\_data/assets/pdf\\_file/0007/38626/HLJ\\_V111\\_Baros.pdf](https://www.herts.ac.uk/_data/assets/pdf_file/0007/38626/HLJ_V111_Baros.pdf), retrieved in 1 August 2018
- Obsatar Sinaga dkk, "Terorisme Kanan Indonesia", Elex Media Komputindo, Kompas Gramedia, 2018
- Paul J. Smith, "The Terrorism Ahead Confronting Transnational Violence in the Twenty First Century", M.E. Sharpe, New York, 2008
- Suparman Marzuki, "Pengadilan HAM Indonesia Melanggengkan Impunity", Erlangga: Jakarta, 2012
- Peter J. Wertheim, "Should Grave International Crimes of Terrorism be Inculded in the Jurisdiction of the International Criminal Court? Policy and Society", 22:2,1-21, [ps://www.tandfonline.com/doi/pdf/10.1016/S1449-4035\(03\)70017-4?needAccess=true](https://www.tandfonline.com/doi/pdf/10.1016/S1449-4035(03)70017-4?needAccess=true), retrieved on 1 August 2018
- Roberta Arnold, "The ICC As A New Instrument For Repressing Terrorism", Transnational Publishers New York, 2004



- "Rome Statute of International Criminal Court", Article 7, [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm), retrieved by 31 July 2018
- "Statute of the International Criminal Tribunal for Rwanda", [http://legal.un.org/avl/pdf/ha/ictr\\_EF.pdf](http://legal.un.org/avl/pdf/ha/ictr_EF.pdf), retrieved on 31 July 2018
- "Terrorism", United States Army Combined Armes Center, accessed September 19, 2017, <http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=29533>
- "Terrorism Act 2000", [www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga\\_20000011\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga_20000011_en.pdf), retrieved on 31 July 2018
- "The Oxford English Dictionary", Compact Edition (Oxford : Oxford University Press, 1971). p. 3268, col. 216
- "The Charter and Judgement of Nuremberg Trial", [www.cininas.lt/wpcontent/uploads/2015/06/1949\\_UN\\_ILC\\_N\\_statuto\\_koment.pdf](http://www.cininas.lt/wpcontent/uploads/2015/06/1949_UN_ILC_N_statuto_koment.pdf), retrieved by 31 July 2018
- "Updated Statute of the International Criminal Tribunal for the Former of Yugoslavia", [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf), retrieved on 31 July 2018
- "Understanding the International Criminal Court", <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf> , retrieved on 1 August 2018
- "Understanding the International Criminal Court", <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf> , retrieved on 1 August 2018
- Walter Laquaer , "No End To War : Terrorism in The Twentieth First Century", The Continuum International Publishing Group Inc., New York, 2004
- Yoram Schweitzer & Shaul Shay, "The Globalization of Terror, The Challenge of Al- Qaida and the Response of the International Community", Transaction Publishers

Aulia Rosa Nasution S.H., M.Hum.  
Postgraduate Lecturer of International Law and Human Rights  
University of Medan Area,  
Medan - North Sumatera, Indonesia, 20112  
Email: [Nasution82auliarosa@gmail.com](mailto:Nasution82auliarosa@gmail.com)