

Response to Terrorism - The Use of Force Against International Terrorism

Arsalan Haji AlMizory

College of Law and Politics, Department of Law, Nawroz University, Duhok, Kurdistan Region - Iraq

ABSTRACT

The events of 11 September 2011 overwhelmingly challenged the existing principles of international law, both as the principles of international humanitarian law and as the right of state to use military force. This article assesses the uncertainty about the definition of terrorism, and how international law can provide legal framework by which to state responses to acts of terrorism, whether the acts are committed by organizations or by non-state actors. It scrutinizes the difficulties of applying the rules of international humanitarian law in selecting military objectives when directing attacks against terrorists and in classifying captured fighters. Eventually, it considers whether the right of self-defense extends to military responses to terrorists acts, since most such responses violate the territorial integrity of a state that is not itself directly responsible.

KEY WORDS: Terrorism, International Humanitarian Law, Human Rights law, Geneva Conventions, The use of force in International Relations.

1. INTRODUCTION

The terrorist attack of September 11 has had calamitous effects not only at the human and political level. It is also having shattering consequences for international law and international humanitarian law and human rights law. The attacks has reshaped part of our thinking towards the existing of international order and posed new challenges to international law in general. In the center of this challenge lies the uncertainty about the definition of terrorism, despite voluminous writings devoted to the various aspects of that term in the global context of politics and law. This article comes at a right moment in the debate and the development of State practice concerning the fight against terrorism. The lack of a definition for terrorism, though not stalling the operation of existing treaties in suppressing terrorist acts or activities, does appear to be a conspicuous issue that renders the formation of a unified front problematic, not to mention the need of criminal justice for clarity and certainty (Being, 2006).

Terrorist attacks have usually been defined as serious offences, to be punished under national courts. The various international treaties on the matter oblige the contracting states to engage in judicial corporation for the repression of those offences (Cassese, 2001). Terrorism is considered as an international crime, which has been prohibited by international customary law.

While terrorism is an old phenomenon, today the international community faces a new and more complex variant. The level of the threat is strategic, which is why some have equated this more destructive wave of terrorism with warfare, and argued that efforts to counter this ought to be predicated on the premise that this phenomenon goes beyond just criminality. The defining features of contemporary terrorism are its global nature and its capacity and intent to affect mass casualties. Their transnational character, global reach and easy access to technology have enhanced the lethality and agility of terrorists over the past decade (Walter, 2003). No country is immune from the threat today, which is pervasive, and has both local and global dimensions and manifestations. This new challenge places new responsibilities on the UN and on the international community and requires new capabilities and an integrated approach using all the tools at their command encompassing political, financial, legal and military means.

Today, there is wide consensus among the international

Academic Journal of Nawroz University
(AJNU) Volume 6, No 3(2017), 8 pages
Received 1 February 2017; Accepted 1 April 2017
Regular research paper: Published 16 August 2017
Corresponding author's e-mail: arsalanmizory@yahoo.com
Copyright ©2017 Arsalan Haji AlMizory

This is an open access article distributed under the Creative Commons Attribution License.

community on the need to confront the grave threat posed by terrorism comprehensively. However, disagreements continue on key issues: on a definition of terrorism, on the distinction between terrorist groups and insurgency, and the use of force against civilians by states armed forces in armed conflicts. On the other hand, how terrorism must be confronted from the point of view of international humanitarian law? It is also controversial whether states can use force against terrorists based in another country. The UN Charter does not have a conclusive answer to these questions, but have to be interpreted.

It is clear that the three foundational principles of self-defense (necessity, proportionality and imminence) continue to limit defensive options. In particular, when assessing compliance with imminence, it is not appropriate to simply calculate the time differential between the defensive act and the attack that was about to be launched. The real question is whether the response occurred during the last viable window of opportunity. Furthermore, terrorist attacks should not necessarily be considered in isolation because some may be so related that they represent a 'campaign'. When this is the case, questions of imminence are no longer relevant following the initial attack (Pokernpner, 2002).

Accordingly, what are the international legal issues that could be explored by the International Counter-terrorism? What are the challenges? First, it would be important to look into the application of existing international legal norms, try to define principles of international law applicable to counter-terrorism and define which areas need more exploration and re-enforcement. While there are some grey areas, many others are well defined. It would be counter-productive to jump on new solutions without establishing first what the existing legal framework is.

Detentions, interrogation, prosecution of terrorist suspects are important issues. Obviously, the law enforcement is the appropriate legal framework outside of armed conflicts in places such as Syria or Iraq. This article will try to bring clarity to the limits of armed conflict in the fight against terrorism. When did the Geneva Conventions and International Humanitarian Law come into operation? These questions will be addressed properly.

2. When does the Geneva Conventions Apply?

It is true that the Geneva Conventions apply to 'all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties' (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1952). On the other hand, the third Geneva Convention (III) relative to the Treatment of Prisoners of

War intended to ensure humane treatment for captured legal combatants (Geneva Convention (III) Relative to the Treatment of Prisoners of War, 1949). In addition, Article 84 of the Third Geneva Convention instructs that 'a prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence' (Geneva Convention (III) Relative to the Treatment of Prisoners of War, 1949). Accordingly, the accepted use of a military venue for the trial of war crimes is confirmed by the Geneva Conventions.

It is likely that the phrase 'declared war' in common Article 2 refers only to a formal declaration of war made by a state. Therefore, the so-called 'war on terrorism' was not what was meant by the phrase. The armed conflict between the US and Afghanistan took place when the bombing campaign began in 2001, but no armed conflict between these two states come into existence before then. It is thought however, that this is of theoretical importance only. In addition, it would be strange to argue that the Geneva Conventions can be applied only when the state concerned carried out a military response. The terrorist attack of 11 September did not amount to an armed conflict between the US and Afghanistan, (assuming the responsibility of the latter), 'even though civilian airlines were used as the means of force' (American Bar Association Task Force on Terrorism and the Law Report and Recommendations on Military Commissions, 2002). However, the International Committee of the Red Cross is against such conclusion. First, Pictet has defined the term of armed conflict as 'any differences arising between two states leading to the intervention of armed forces' (Geneva Convention For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1952). It is likely that al Qaeda members were not member of the armed forces of Afghanistan. Secondly, Declaration made upon ratification by the UK of Additional Protocol I in 1998 states that:

"armed conflict" of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes including acts of terrorism whether concerted or in isolation" (Protocol (I) Additional to the Geneva Conventions of 12 August 1949).

Perhaps this Declaration is directed at article (4) and 96(3) of the Additional Protocol I, it draws attention to the distinction to be made between the use of armed force against the armed forces of a state, and force against terrorist groups. There is, therefore, the terrorist attacks of 11 September would have been classified as an armed attack for the purpose of Article 51 of the UN Charter and the right of self-defense that requires the use of the United

States Armed Forces.

3. The Difficulties of Identifying Military Objective

Article 52 of Additional Protocol I defines military objective as those:

Objective which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage' (Protocol (I) Additional to the Geneva Conventions of 12 August 1949, art 52 (2)).

The article reflects customary international law and binding all member states. Although this definition was not included in Additional Protocol II, however, it has subsequently been incorporated into treaty law applicable in non-international armed conflicts, namely Amended Protocol II to the Convention on Certain Conventional Weapons and the Second Protocol to the Hague Convention for the Protection of Cultural Property' (Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects as Amended on 21 December 2001. See also, Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 1(f) International Committee of the Red Cross 2017).

It is true that attacks against military objects controlled by a terrorist group like ISIS would seem to have no difficulty in being assessed as military objectives than any other armed conflict between states. ISIS has been designated a terrorist organization by the United Nations and many individual countries, the terror group already control huge areas in Iraq, Syria, Libya, Egypt and Nigeria and are moving into parts of Asia and East Europe. The barbaric group is using sophisticated military tactics and military airfield with central command center and training camps. In reality, it is said that terrorist military objectives are likely to be any object used by terrorists, whether a cave or a house. However, in attacking terrorist objectives, there is a risk higher than in armed conflict between states, that innocent civilian will be the victim. Therefore, the attacking state needs to take all precautions to protect the civilians in such raids. In 2001, the British Secretary for Defense informed the House of Commons that:

[Every target was approved on advice from the law officers but as a result of the fast-moving nature of military action, legal advice cannot always be given precisely before any particular attack takes place. Therefore, the general practice has always been to ensure that all targets conform to international law and, indeed, national law'] (UK, Parliamentary Debates,

House of Commons, 8 October 2001).

Thus, it can be concluded that, the difference between legal responses to terrorism and a military one is the risk of killing or injuring innocent civilians where the military option is chosen (Rowe, 2002). In addition, under international law it is a war crime to attack intentionally anything is not a legitimate military target. Most buildings used by civilians in peacetime are protected under international law. However, one of the major problems in differentiating legal from illegal act concerns apparently civilian objectives that may have a use by the terrorists. In this regard, Article 52 of Additional Protocol I states that,

"In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house, or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used" (Article 52, Additional Protocol I, 1949).

Thus, although the legitimate categories mentioned in common Article 52(2) regarded in customary law as legitimate targets, attacking forces are still obliged to meet the test of whether predictable harm would be proportional to the military advantage. Yet if the harm is "excessive in relation to the concrete and direct military advantage anticipated," it is a war crime (Rado, 2011).

4. How to Identify Captured Fighters?

International Humanitarian Law (IHL) distinguishes two types of armed conflicts: International and non-international armed conflicts. The identity of parties to a conflict is the main criteria distinguishing the two (Kleffner, 2013, p59).

'An international armed conflict (IAC) exists when one state uses any form of armed force against another. When one state or a multinational coalition uses force on the territory of another state with the latter's consent, it is not a case of IAC'.

'A non-international armed conflict (NIAC) is a situation of regular and intense armed violence between the armed forces of a state and one or more organized armed non-state groups, or between such groups' (Kleffner, 2013).

Thus it seems that International armed conflicts IACs are governed by the four 1949 Geneva Conventions, which are almost universally ratified, whereas Non-international armed conflicts NIACs are governed by Common Article 3 of the 1949 Geneva Conventions.

International armed conflicts IACs are governed by the four 1949 Geneva Conventions, which are almost universally ratified. During armed conflicts, the four Conventions protect people who do not or no longer take part in hostilities. The first protects soldiers that are

wounded and sick on land; the second protects military personnel that are wounded, sick and shipwrecked at sea; the third protects prisoners of war; the fourth protects civilians, including those in occupied territories. If applicable (that is, if relevant states parties have ratified it), the 1977 Additional Protocol I strengthens the protection of victims of IACs and provides rules on the conduct of hostilities. On the other hand, Non-international armed conflicts NIACs are governed by Common Article 3 of the 1949 Geneva Conventions. Covering all NIACs, Common Article 3 requires humane treatment of all persons who are not, or who are no longer, taking an active part in hostilities, and expressly prohibits murder, mutilation, torture, taking of hostages, and unfair trial. The 1977 Additional Protocol II further strengthens the protection of victims of NIACs and provides rules for the conduct of hostilities. Article 1(1) provides a higher threshold of application than Common Article 3. In particular, it requires that insurgents control territory and excludes conflicts that do not involve government forces. Customary international law In addition to treaty law, customary IHL applies to armed conflicts. According to the ICRC 2005 study of customary IHL, most customary IHL rules governing IACs apply also to NIACs (Foreign Fighter Under International Law, 2014).

Accordingly, whether a given situation amounts to a NIAC under IHL is determined by a factual assessment that depends on two factors: the intensity of the armed violence and the organization of the parties to the conflict (International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Tadić*, 1999). It is true that, after the terrorist attacks of 11 September terrorists operating at international level would not have been classified as prisoners of war if captured; since they would not have been member of an origination belong to a Party to the conflict (Geneva Convention III, art 4 A (2), 1949). (On the other hand, the US administration expressly stated that the 'conflict' between 'al-Qaeda and its associated forces and the USA qualifies as a global NIAC (Foreign Fighters under International Law, 2014). In addition, to qualify ISIS fighters as prisoners of war POW under article 4 of Geneva Convention III, they would need to show either that they were members of the armed forces of Iraq or Syria, or that ISIS itself belonged to Iraq or Syria. In this case, they would be qualified to be treated as POW without acquiring such status (Rowe, 2002). Similarly, the US considered those members of al-Qaeda who fought alongside the Taliban armed forces in Afghanistan were not part of these forces; the link with the state was not sufficient to say that al-Qaeda origination belonged to it.

On the other hand, 'mercenary' is set in common Article 47 of the 1977 Additional Protocol I and is defined as:

'as individuals who directly participate in hostilities, but are not nationals of a party to the IAC in question, residents of territory controlled by a party, or members of the armed forces of a party' (Common Article 47 of the 1977 Additional Protocol I).

Accordingly, the definition demonstrates that mercenaries are 'motivated to take part in the hostilities essentially by the desire for private gain' and thereby exclude individuals who are motivated primarily by ideology or religion (Ipsen, 2013). Thus, they are not entitled to combatant or POW status under IHL.

It can be concluded that, the US administration denied POW status to members of the Taliban and al-Qaeda during the military campaign against Taliban regime, making it necessary to clarify whether individuals associated with terrorist groups or involved in acts of terrorism might qualify for POW status (For a general assessment of members of terrorist organisations in relation to Art. 4 of Geneva Convention III, See, *Foreign Fighters under International Law*, 2014). Here, a further problem arises. Article 118 of Geneva Convention III requires prisoners of war to be released and repatriated following the cessation of active hostilities (Article 118 of Geneva Convention III). Thus, it can be suggested that all ISIS and its affiliates captured members should not be entitled to combatant or POW status under IHL. Because tolerating war crimes and crimes against humanity committed by ISIS will rather weakens respect for the rules of international law, which in turn increases the possibility of further conflict. Therefore, it would be impossible to apply International Humanitarian Law and Genève Conventions to today's terrorist groups like ISIS and its affiliates. These groups do not wear military regular uniforms and do not necessarily follow regular military command structure, and eventually they don't have any intention to apply IHL.

5. Response to Terror, The Use of Force and Self-Defence Against Threat from Terrorists

It is true that, the ban on use of force in international relations is widely held to be preemptory in nature, and has often been described as the 'cornerstone' of the modern international system. Article 2(4) of the UN Charter obliges UN members to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations' (Art. 2(4) United Nations Charter UNC). In Articles 42, 43 and Article 51, the Charter recognizes two exceptions to this prohibition: forcible enforcement measures within the framework of the organization's collective security system, and the right of self-defense against armed attacks (Art. 42, 43, and 51 UNC). These provisions lay down an ambitious

regime of rules against force (Tams, 2009). On the other hand, the right of self-defense is not created by the Charter, it is a customary law right of some antiquity and is said to be inherent in the concept of statehood, but the conditions for its exercise are mostly to be found in the provisions of Article 51 of the UNC. Article 51 states that: '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 United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense 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' (Art. 51 UNC).

Today, the question arises as to whether the right of self-defense extends to military responses to terrorist acts. The right was the principal ground on which states relied in order to justify their use of anti-terrorist force (Tams, 2009). Recently, terrorism acquired a clear international dimension; therefore, a response to it has become international as well. The approach changed from regulations by means of international treaties that outlaw specific acts of terrorism to a broader prevention policy led by the Security Council SC. The Contemporary counterterrorism policy framework is a response to the emergence of ISIS and its affiliates and the global terrorism threat they represent (Foreign Fighters under International Law, 2014).

Nevertheless, Article 51 of the UNC states that the right of self-defense arises when 'an armed attack occurs' and most states have, since 1945, been very reluctant to claim a right of anticipatory self-defense (Art. 51 UNC). However, in the aftermath of the events of the rise of ISIS in Northern Iraq and Syria, it is important to ask whether the concept of 'armed attack' in Article 51 is capable of including a terrorist attack. It is true that, the concept of 'armed attack' is used with reference to the employment of regular armed forces by states. However, there is no reason why the term should be so limited. There is no doubt that terrorist acts by a state can constitute an armed attack and justify military response (Greenwood, 2003). On the other hand, in its definition of aggression in 1974, the UN General Assembly included certain types of terrorist activity committed by states. Likewise, the International Court of Justice ICJ in its judgment in the Nicaragua case in 1986 considered that covert military action by a state could be classified as an armed attack if it was sufficient gravity (Nicaragua Case (1986) ICJ Reports 14 at 103, para 102-103). So that, it can be argued that, the level of

violence employed by ISIS and its affiliates undoubtedly reached that level of gravity. Therefore, those gravity attacks been the work of terrorist groups could be classified as an 'armed attack' thereby justify a military response.

Although Article 51 does not define self-defense, the Charter system imposes some limits on the exercise of the right. For instance, the right of self-defense is conditioned on the occurrence of an 'armed attack' against a Member of the UN (Art. 51 UNC). It can be argued that the atrocities of 2014 against Yazides did not constitute an armed attack since they did not involve the use of force by a state. In response, it can be said that this argument fails to distinguish between an armed attack in the sense of Article 51 and aggression in the sense of Articles 1 (1) and 39 of the UN Charter. Article 1 (1) states that:

The Purposes of the United Nations are: 'To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace' (Art. 1(1) UNC). On the other hand, Article 39 states that:

'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security' (Art. 39 UNC).

In a like manner, the attacks on Paris, London and New York engaged individual criminal responsibility, however, state-sponsored terrorism on this scale now also constitute an 'armed attack' (Byers, 2002). In 2001, the Taliban regime was the de facto government in Afghanistan at the relevant time and that the state of Afghanistan bore the responsibility for its actions. At the same time, the state of Afghanistan through the act of Taliban regime had violated international law in permitting Al-Qaeda to operate from its territory (Greenwood, 2003). Therefore, the violation of the sovereignty of that state is legally justified by its aiding terrorism. On the other hand, the ICJ in Nicaragua case held that the relationship between the US and the Contra rebel movement in Nicaragua was not close enough to render the US responsibility for illegal acts committed by the Contras. In that decision, the Court (drawing on the General Assembly's Definition of Aggression) accepted that the jus ad bellum could be violated by 'the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed

force against another state (Nicaragua case, para. 195 and 65).

Thus, it can be demonstrated that aiding and abetting terrorism is equated with an 'armed attack' for legitimizing the use of force in self-defense. Yet for the conduct of irregular forces 'to be attributable to a state, that state had to exercise effective control over the military in question, whereas logistical or other support was insufficient' (Byers, 2002).

In addition, Article 51 stipulates that the right of self-defense exists 'until the Security Council has taken measures necessary to maintain peace and security' (Art. 51 UNC). It can be argued that, the adoption of Resolutions 1368 and 1373 were adopted in direct response to supersede the US right to engage in self-defense against terrorist acts (Security Council Resolution/RES/1368 (2001) Also, Security Council Resolution/RES/1373 (2001). In Security Council Resolutions 1368 and 1373, the Council expressly noted that the attacks of 9/11 had triggered a right of self-defense, but this amounted to a multilateral endorsement of a claim to use force unilaterally, rather than multilateral enforcement action in the sense of Article 42 (Tams, 2009).

Both Resolutions were adopted under Chapter VII of the UNC, and both call upon states to take a range of non-forceful measures to combat terrorism. The Resolutions thus could be seen as constituting 'measures necessary to maintain international peace and security' (Byers, 2002). Another problem relates to the range of target states. It is clear that the entire network of terrorist cells such as ISIS sprawls across many countries. So, may all these countries become the target of armed action? Lastly, it is true that the action taken in self-defense needed to be necessary and proportionate. However, it is difficult to see how the states will go beyond what is necessary, or what is also proportionate in fighting terrorism. This meant that there had to be a temporal link between the measures of self-defense and the attack against which they were directed, sometimes referred to as the requirement of 'immediacy' (Greenwood, 2003).

6. Conclusion

The article explained that, armed conflict and terrorism appear to be linked because both involve violence. The use of force, by a state, against terrorist groups was as such not sufficient to violate the prohibition in Article 2 (4) of the UNC. That prohibition only obliged states not to use force 'in their international relations'. It has shown that the use of force against terrorists based in another state clearly came within the scope of a state's 'international relations', but the indirect way in which Article 2(4) addressed the matter would be relevant to the discussion of exceptions. It also explained that the

extension of the right of self-defense to include action against states actively supporting or harboring terrorists raises difficult issues of evidence and authority. On the other hand, Security Council Resolution 1373 controversially established a general regulatory framework to combat terrorism; however, it did not define terrorism, terrorist acts, or designating particular groups as terrorist (Foreign Fighters under International Law, 2014). In addition, after the rise of ISIS SC adopted Resolution 2170. The Resolution condemned the terrorist acts of ISIS and its violent extremist ideology, and its continued gross, systematic and wide-spread abuses of human right and violations of international humanitarian law IHL, and acting under Chapter VII, imposed three main duties on states. First, it reiterated the obligation set out in Resolution 1373 on the duty to prevent and suppress the financing of terrorism. Since both Islamic State and al-Nusra apparently control oil fields in Syria and Iraq, this includes an obligation to refrain from trading with them.

Second, as mentioned, the Council confirmed that to the 1267 sanctions list might be added 'those recruiting for or participating in the activities of ISIL, ANF [al-Nusra front], and all other individuals, groups undertaking and entities associated with Al-Qaida under the Al-Qaida sanctions regime, including through financing or facilitating, for ISIL or ANF, of travel of foreign terrorist fighters'. At adoption of the resolution, it added to the al-Qaeda sanctions list six individuals linked to Islamic State or al-Nusra.

Third, and most important for this Briefing, the Council condemned recruitment of 'foreign terrorist fighters' by Islamic State, al-Nusra, and other entities associated with al-Qaeda, and required all 'foreign terrorist fighters with ISIL and other terrorist groups' to withdraw. To suppress the recruitment of 'foreign terrorist fighters', states are required to Take national measures to suppress the flow of 'foreign terrorist fighters' to Islamic State, al-Nusra, and others associated with al-Qaeda. Bring to justice 'foreign terrorist fighters' of Islamic State, al-Nusra, and others associated with al-Qaeda. The Council's use of the term 'foreign terrorist fighters' overtly and explicitly associates the fighters with particular groups and with terrorism' (Security Council Resolution 2170, (2014).

Thus, most crimes committed by ISIS and its affiliates can be defined a crime against humanity. The magnitude and extreme gravity of their attacks as well as the fact that they intentionally and systematically targeted innocent civilians can be falling under crimes against humanity, in particular under the subcategories of murder or extermination or other inhuman acts, included in Article 7 of the International Criminal Court ICC Statute. It would thus seem that if this occurs, the notion of self-defense and crime against humanity would be

broadened. Accordingly, once the military campaign to destroy the ISIS has been completed in Iraq, it will then be time to launch an international legal campaign to prosecute the leaders of the terrorist group and their foot soldiers who unleashed crimes against humanity in Iraq and Syria. Accordingly, it is important to pursue prosecutions of the perpetrators of crime against humanity and mass atrocities in Iraq and Syria by the ISIS and its affiliates. There must be no shelter, anywhere in this world, for any perpetrator of mass atrocity crimes. So that, it is crucial to have a legal mechanism to address mass atrocity crimes committed by ISIS in Iraq to bring the perpetrators to justice.

The response to the contemporary fanatic terrorist groups such as ISIS and its affiliates may lead to acceptable legal change in international community only if reasonable and serious measures are taken, as much as possible on a collective basis, which do not collide with the generally accepted principles of international law. Otherwise, the road would be open to the setting in of that chaos in the international community eagerly pursued by terrorists. It is now urgent for international community to update rather than sideline the Geneva conventions, agree upon a definition of 'terrorist act', military objectives and POW. Eventually, it is important to strengthen international cooperation and public awareness of the importance of international law and IHL, consider revising the ICC's Statute explicitly to cover terrorist acts.

REFERENCES

Journal Articles

- Cassese, A. (2001). Terrorism is Also Disrupting some Crucial Legal Categories of International Law. *European Journal of International Law* 993.
- Byers, M. (2002). Terrorism, the Use of Force and International Law after September 11. *International and Comparative Law Quarterly* 401.
- Christian, J. (2009). The Use of Force Against Terrorists. *20 The European Journal of International Law* 2.
- Greenwood, Ch. (2003). International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaeda, and Iraq. *4 San Diego International Law Journal* 7.
- Gaby, R. (2017). Legitimate Military Targets, Crimes of War (2011). Retrieved from <http://www.crimesofwar.org/a-z-guide/legitimate-military-targets/>
- Rowe, P. (2002). Response to Terror, *The New War*. 3 *Melbourne Law Journal* 301.

Conventions and UN Documents

- UN Charter 19 Available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> accessed 10 March 2017
- Geneva Convention (I) For the Amelioration of the Condition of the Wounded and Sick in Armed

Forces in the Field, (International Committee of the Red Cross, 1952) Retrieved from https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-I.pdf

Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1949) Retrieved from <https://ihl-databases.icrc.org/ihl/INTRO/375?OpenDocument>

Protocol (I) Additional to the Geneva Conventions of 12 August 1949 Retrieved from http://www.wipo.int/wipolex/en/other_treaties/details_notes.jsp?treaty_id=281

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects as Amended on 21 December 2001, Retrieved from [http://unog.ch/80256EDD006B8954/\(httpAssets\)/40BDE99D98467348C12571DE0060141E/\\$file/CCW+text.pdf](http://unog.ch/80256EDD006B8954/(httpAssets)/40BDE99D98467348C12571DE0060141E/$file/CCW+text.pdf)

Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 1(f) International Committee of the Red Cross, Retrieved from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule8

Security Council Resolution/RES/ 2170 (2014), Retrieved from <https://www.un.org/press/en/2014/sc11520.doc.htm>

Security Council Resolution/RES/1368 (2001), Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>

Security Council Resolution/RES/1373 (2001), Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>

Books and Chapters in Edited Books

- Bing, J. (2006). *Definition Terrorism in International Law*. Oxford University Press.
- Christian, W. (2003). *Defining Terrorism in National and International Law*. Heidelberg, Springer.
- Dinah, P. (2002). *Terrorism and Human Rights: The Legal Framework*. In *Terrorism and International Law: Challenges and Responses* (Eds). International Institute of Humanitarian Law.
- Ipsen, K. (2013). *Combatants and Non-combatants*. In D. Fleck (Eds). *The Handbook of International Humanitarian Law*. 3rd edn, Oxford University Press.
- Kleffner, J. K. (2013). *Scope of Application of International Humanitarian Law*. In D. Fleck (Eds). *The Handbook of International Humanitarian Law*. 3rd edn, Oxford University Press.

Cases

International Criminal Tribunal for the former

Yugoslavia (ICTY), Prosecutor v. Tadić, Judgment (Trial Chamber) (IT-94-1-T), 7 May 1999, 562
 Nicaragua Case (1986) ICJ Reports 14 at 103

Contributions to collected works: Reports and Generic

American Bar Association Task Force on Terrorism and the Law Report and Recommendations on Military Commissions. (2002). Retrieved from <http://www.americanbar.org/content/dam/aba/migrated/leadership/military.authcheckdam.pdf>
 Foreign Fighter under International Law. (2014). Geneva Academy of International Humanitarian

Law and Human Rights, NO7.
 UK, Parliamentary Debates, House of Commons. (8 October 2001). vol 372, 835. Geoff Hoon, Secretary of State for Defense. Retrieved from https://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo011008/debtext/11008-08.htm#11008-08_spnew12

International Committee of the Red Cross (ICRC). (2011). International Humanitarian Law and the Challenges of Contemporary Armed Conflicts. Report for the 31st Conference of the Red Cross and Red Crescent.