PREFACE

We are proud to present the ‘Proceeding Book’ for the 1st European Conference in Technology and Society (EuroTecS-2013) which were organized by International University of Sarajevo (IUS), in cooperation with the Sakarya University (http://www.sakarya.edu.tr) on 27-28 June 2013 at IUS. We had around 150 participants from more than 12 different countries in this conference.

The aim of this conference was to bring together technological and social research in an interdisciplinary perspective. The conference was held in a special city with multicultural, historical background with natural beauties nearby and EuroTecS offers a rich social program.

**Major Scientific Areas are:**
- Technology and Engineering
- Society, Politics and International Relations
- Economics and Management Science
- Information Management and Society
- Computing and Communication

*Special Guest was Mr. Nihat Ergun, current Minister of Science, Industry and Technology.*

*Keynote Speaker: Mr. Selçuk I. Güçeri, currently Bernard Gordon Dean of Engineering at Worcester Polytechnic Institute.*

*Keynote Speaker: Dr. Josef Poeschl is from Vienna Institute for International Economic Studie*

In this framework, we are really grateful to all whose supports were with us throughout the conference strongly. Firstly to Rector Prof. Dr. Ozer Cinar (International University of Sarajevo), Rector Prof. Dr. Muzaffer Elmas (Sakarya University), Prof. Dr. Fehim Findik (IUS FENS Dean) and Prof. Dr. Orhan Torkul (Sakarya University IE Dept. Chair) for their contribution and encouragement and then to all members of scientific and organizing committee

With the wishes that the conference became helpful to this discipline and all concerned people in both national and international level.

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TERRORISM: TOWARDS INTERNATIONAL CRIME, OR NOT?

On definitional rebuses, current incumbency, futile proposals, and vexed judicial decision towards bottom line without tracing inference

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Abstract:
International legal domain in terrorism issues is trending conformably from conceiving terrorism as ordinary crime towards positioning terrorism as international crime. So far, International Criminal Court has jurisdiction with respect to the genocide, crimes against humanity, war crimes, and aggression. Following Netherlands’ proposal on including crime of terrorism in the Rome Statute of the ICC, in conclusion, jurisdiction of the ICC in relation to the crime of terrorism has not been accepted. Accordingly, crime of terrorism remains more often handled at national level rather than international. However, in 2011 the Appeals Chamber of the Special Tribunal for Lebanon rendered judgment that included its jurisdiction over the crime of terrorism. Consequently, the matter of discussion is oriented towards potential and limitations in positioning terrorism as international crime; arguments pro and contra for expanding the International Criminal Court’s jurisdiction over crime of terrorism; as well as legal implications, especially intersection of international and national law with regard to crime of terrorism.

Keywords: terrorism, international crime, International Criminal Court, Netherlands’ proposal, Special Tribunal for Lebanon

INTRODUCTORY REMARKS

Retrospectively, appearance of terrorism dates far back to the antic times. Continually and frequently, it has been originating resurgence of different legal, political, and social alterations. In the interim, terrorism prospectively developed into being part of daily international agenda. Theory of international law identifies key determinants of terrorism, e.g. concept, classification, elements, actors, causes, motives, goals, methods, instruments, manifestations, effects etc. but international community yet lacks universal and comprehensive definition of terrorism and same way comprehensive international document on prevention, punishment and combat terrorism. The first attempt of defining terrorism in international law is tied to the 1937 Convention for the Prevention and Punishment of Terrorism under favor of the League of Nations that never entered into force. Subsequently, by auspice of the United Nations, there have existed different efforts to adopt international documents that would contain definition of terrorism as well as defining international legal instruments and mechanisms for combating terrorism. Analogously,


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the same situation applies at the regional level.\textsuperscript{134} Despite these efforts, activities undertaken showed to be more or less efficient, because they were usually reduced to definitions that differ from case to case, taking into account that terrorism relates to individual norms in international law and, for instance refer to individual acts of terrorism such as hostage taking, aircraft hijacking, vessel safety, sabotage, espionage, use of chemical and biological weapons, etc.\textsuperscript{135} Certain authors suggest that “some states have resisted efforts to define terrorism for more principled reasons – for instance, because defining terrorism in a certain way would jeopardize other international public policy interests such as political freedom, asylum, or human rights. (…) Having no definition of terrorism is better than having a definition which criminalizes legitimate politics or dissolves freedoms” (Saul, 2012). It turns out to be that definition of terrorism reflects interests of those who are defining it, and in most cases is defined by each actor individually, in its own way. In such a manner, lack of definition reflects for instance, on terrorist vs. freedom-fighter dichotomy.

As it would seem, international legal domain in terrorism issues is trending conformably from conceiving terrorism as ordinary crime towards positioning terrorism as international crime\textsuperscript{136}. So far, International Criminal Court has jurisdiction with respect to the genocide, crimes against humanity, war crimes, and crime of aggression that constitute international crimes. Even though terrorism does not constitute discrete crime, just the same, some terrorist acts might qualify under international crimes, but only if elements of these crimes are met. Following Netherlands’ proposal on including crime of terrorism in the Statute of the ICC, in conclusion, jurisdiction of the ICC in relation to the crime of terrorism has not been accepted. Accordingly, crime of terrorism remains more often handled at national level rather than international. However, in 2011 the Appeals Chamber of the Special Tribunal for Lebanon rendered judgment that included its jurisdiction over the crime of terrorism. Owing to the fact that this judgment is considered highly controversial, it is disputable whether customary international law definition of terrorism could exist on its virtue. At this point there are no satisfactory evidence for this. Although there is justified rationale behind defining terrorism, there are still too many variations between international treaties and national legislation in addressing this issue, horizontally and vertically applied. Terrorism might constitute international

crime if its acts would not be bundled within one state and if it would concern international community as a whole. Consequently, the matter of discussion must be oriented towards potential and limitations in positioning terrorism as international crime; arguments pro and contra for expanding the ICC’s jurisdiction over crime of terrorism; as well as legal implications, especially intersection of international and national law with regard to crime of terrorism. On the strength of this, it will be possible to imply and signify prospective guidelines and solutions with respect to given issues.

STATUS OF TERRORISM UNDER THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court (ICC) is the first permanent international criminal court established to prosecute perpetrators of the most serious international crimes. Based on a treaty, it is regulated through the Statute for the International Criminal Court. Namely, in July 1998 Diplomatic Conference of the United Nations adopted Statute for the International Criminal Court. This was final step toward creating permanent international tribunal, after World War II processes in Nuremberg and Tokyo, which would have jurisdiction over the most severe international crimes. The Statute of the International Criminal Court came into force on 2 July 2002 after being ratified by 60 states. Anyhow, the International Criminal Court is not part of the United Nations system, therefore often referred to be independent institution. The jurisdiction of the Court is limited to the most serious crimes relevant to international community, referred to as international crimes: genocide, crimes against humanity, war crimes and crime of aggression.

Even though terrorism, along with other criminal acts of similar nature, has been discussed at the time that the Statute of the International Criminal Court has been drafted, it did not get included in a Statute together with abovementioned crimes. Schaack and Sly argue that drafters articulated several reasons for eventually excluding these crimes from the Statute altogether: (1) terrorism has no universally accepted definition; (2) terrorism was not considered to be one of ‘the most serious crimes of international concern’; (3) at the time, terrorism was not clearly recognized as a crime under customary international law; (4) including crimes of terrorism would unnecessarily politicize the International Criminal Court; and (5) there are alternative domestic venues for terrorism prosecutions such that establishing international jurisdiction would be unnecessary or duplicative (2008). In contempt of excluding crime of terrorism from the Statute of the International Criminal Court, there are imminent considerations that terrorism falls under jurisdiction of the Court whereas it, to some extent, corresponds to international crimes included in the Statute. Taking into consideration fashion of manifestation of terrorist acts, it might be considerably important to explore whether they can constitute acts that are considered to be violations of the Statute of the International Criminal Court provisions with regard to genocide, crimes against humanity, war crimes and crime of aggression. Fiona de Londras affirms significance of bringing terrorism under international criminal law in three ways. Primarily, she argues that there is no need to always create new types of crimes in response to terrorist activity as if such activities usually constitute acts that can be prosecuted under existing legal framework. Secondly, categorizing terrorist activity under existing legal framework facilitates apprehension and prosecution of persons indicted. Thirdly, if state(s) for any reason fail to prosecute, then the International Criminal Court may overtake complementary role (de Londras, 2010). Anyway, even though the International Criminal Court has jurisdiction over genocide, crimes against humanity, war crimes, and crime of aggression, after all, the Court might be able to prosecute acts of terrorism, if they would fall within any of these categories. Accordingly, it is useful to analyze statutory provisions related to crimes under the International Criminal Court jurisdiction and acts of terrorism that might fall under these provisions.

Genocide

In terms of the Statute of the International Criminal Court, genocide refers to any the acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c)

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137 Sometimes abbreviated as ICC for the purpose of differentiating from other institutions and organizations with the same abbreviation.


139 As of 1 May 2013, the International Criminal Court has been joined by 122 states. For detailed overview on establishment and chronology of the International Criminal Court please refer to the Statute of the International Criminal Court and Court's official web site: www.icc-cpi.int.

140 The International Criminal Court and the United Nations signed the Relationship Agreement between the United Nations and the International Criminal Court on 4 October 2004 that defines relationship between these two institutions.

141 On jurisdiction, admissibility, applicable law, composition of the Court and other relevant issues of interest in detail, please refer to the Statute of the International Criminal Court.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. For certain act to be considered as genocide, there must be act of genocide as well as special intent concurrently included. Therefore there is unlikelihood that terrorism might fall under genocide provisions in the Statute. Generality of scholars that address these issues dismiss this possibility. Even so, there is very few authors that argue differently. For instance, Cassese argues that actus reus of the crime of terrorism implies that terrorist act must constitute criminal offence under most legal systems; must aim at spreading terror by means of the threat or use violent action among the public or particular groups of persons; and must be politically, ideologically or religiously motivated. As for mens rea, Cassese argues that there must be special intent, that is, to spread terror among the population. But at the same time, Cassese argues that perpetrator does not attack specific person, on account of, for instance, gender, age, nationality (Cassese, 2004). Disregarding Cassese's arguments is possible in several ways. For instance, one could consider terrorism over genocide in terms that even though terrorist attack might be directed towards one of the protected groups (national, ethnical, racial or religious), does not necessarily have to be complied with it. On the other hand, it would be very hard to demonstrate that spreading terror among population and performing pressure towards government establishes special intent in relation to special intent for committing genocide.

**Crimes against humanity**

Crimes against humanity are considered to be such crimes, whose conduct violates "humaneness", offending important principles of law to the degree that it concerns international community; has 'repercussions beyond international frontiers'; or 'exceeds in magnitude savagery any limits tolerated by modern civilization" (Blakesely, 2007). Within the scope of Statute, crimes against humanity are considered to be any of the acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, namely: (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, 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. As one part of the problem, it is often argued that the difficulty of placing terrorism under crimes against humanity is in the requirement related to "widespread and systematic attack" as if in many cases, terrorism constitutes as isolated incident or part of surge of incidents and not necessarily centrally instituted (de Londras, 2010). Of the other part, as it is argued at the Rome Conference, terrorism is by definition attack directed against civilian population, which would constitute the jurisdictional requirements for prosecution in the Court as a crime against humanity. Although questionable, Cassese argues that even though provisions of the International Criminal Court include only acts committed against civilians, terrorist acts might target even military personnel and infrastructure for customary international law has a broader scope of application then provisions of international treaty law (Cassese, 2004). Finally, as referred to causing great suffering, or serious injury to body or mental or physical health terrorism could clearly qualify for purposes of the Court jurisdiction as a crime against humanity (Van der Vyver, 2010). Taking into account terrorist act per se, it seems that it could be considered as certain act under crimes against humanity acts stated in Statute of the International Criminal Court. Attempts have been already made to include terrorism under the International Criminal Court jurisdiction, specifically under the crimes against humanity, with or without particular naming terrorism. As Boister points out, certainly, eventual conviction would be not of terrorism, but crimes against humanity. Therefore it would be only partly satisfactory and may serve as an intermediate solution (Boister, 2010).

**War crimes**

War crimes are under jurisdiction of the Court in particular when committed as part of plan or policy or as part of a large-scale commission of such crimes. Under the Statute, war crimes by way of example include:

1. Grave breaches of the Geneva Conventions of 12 August 1949, in terms of acts against persons or property protected under the
provisions of the relevant Geneva Convention. 143

2. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law. 144

3. In the case of an armed conflict not of an international character, any of the acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause. 145 This provision applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

4. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law. 146

Evidently, in terms of the Statute, terrorism has to be considered pursuant to a large scale commission of exhaustive list of war crimes enumerated in the Statute. On a basis of that, one must conclude that certain terrorist act(s) might constitute war crimes in

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143 Namely: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages.

144 Namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii) Conscription or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xiii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; etc. Article 8 of the Statute of the International Criminal Court is exhaustive in enumeration of 26 offences under this particular section.

145 Namely: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

146 Namely: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii) Conscription or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict; (xiii) Employing poison or poisoned weapons; (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
some cases. Therefore war crimes create the finest connection with act(s) of terrorism. Considering that war crimes become important in terms differentiating international and non-international conflicts, some authors mention numerous examples of positioning terrorist acts under war crimes defined in the Statute. For instance, Antonio Cassese mentions that Article 33(1) of the Fourth Geneva Convention of 1949 prohibits acts of terrorism committed against civilians eligible for the status of “protected persons”, whether they are perpetrated by the armed forces of a belligerent against persons who find themselves in the belligerent’s territory or in an occupied territory. Similarly, according to the Article 4(2)(d) of the Second Additional Protocol of 1977, acts of terrorism against civilians or persons that have ceased to take part in the conflict are prohibited in internal armed conflicts, irrespective of the party to the conflict that uses terrorist methods (Cassese, 2004).

Crime of aggression

For the purpose of this Statute, crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. Act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall qualify as an act of aggression: (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) The blockade of the ports or coasts of a State by the armed forces of another State; (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; (g) 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 of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Short contention on positioning terrorism within the International Criminal Court jurisdiction

Certain difficulties in broadening jurisdiction of the International Criminal Court over treaty crimes that are relative to crime of terrorism have been identified by different authors. So to say, Boister includes following reasons: ambiguous definition, insufficient gravity, divergent treaty obligations, opinion that treaty crimes are not international crimes, that there is no international community interest, practical problems and political consequences (2009). Therefore, it is worth of exploring possibilities of integrating crime of terrorism under the International Criminal Court's statutory provisions. For instance, Creegan identifies arguments pro et contra integrating crime of terrorism into the International Criminal Court. Arguments in favor of inclusion correlate to judicial economy and normative jurisdiction of the International Criminal Court, while arguments against correlate to political and practical considerations (2011). Finally, political considerations are the most pronounced, from the drafting of the Statute period onwards, especially when it comes to terrorist vs. freedom fighter dichotomy. Therefore, there is imminent fear of political implications if investigation and prosecution of the crime of terrorism would occur before International Criminal Court. Anyway, some authors are of an opinion that bringing terrorism under international judicial body is of high importance. Maloney-Dunn identifies five reasons to do so: “First, treating terrorism as an international crime would help de-legitimize war as the only, best, or requisite response to terrorist threats and acts. Second, criminal investigations and prosecutions provide a systemic, corrective, non-belligerent alternative, although by no means the sole or sufficient one, to anti-terrorism military and political repression by governments. Third, providing redress for terrorist crimes through an international judicial branch would help check and balance executive and legislative branches wherein the
margins of abuse of power and majoritarian discrimination against the other tend to be higher. Fourth, subjecting the crime of terrorism to International Criminal Court jurisdiction would help standardize national laws on terrorist crimes due to the Rome Statute’s principles of complementarity, jurisdiction, and admissibility, which promote uniformity and specificity to a greater degree than the obligations of states under customary international law and United Nations resolutions to enact domestic laws, no matter how disparate, proscribing terrorism. Finally, victims of terrorism deserve rights equal to those that victims of other crimes of serious concern to the international community enjoy, as a matter of human rights, justice, and reconciliation, including the opportunity for reparations” (2010). On the other hand, there are sporadic claims that terrorism was deliberately omitted from the International Criminal Court jurisdiction. Reason for this opinion is quite simple to explain. International Law Commission that was drafting the Statute of the International Criminal Court omitted to define crimes that were to be prosecuted considering that crimes defined by international treaties in force, along with crimes included in the Draft Code of Crimes Against the Peace and Security of Mankind (which was also in the process of drafting) and crimes considered part of customary international law, should comprise the subject matter jurisdiction of the International Criminal Court (Van der Vyver, 2010). Anyhow, it seems that rules that have been laid down in the International Criminal Court Statute are set in a manner to pertinently preclude regulation of acts of terrorism and evidently extenuate rationale behind having no comprehensive, universally accepted definition of terrorism. And, as Carberry notices, the International Criminal Court should not be limited to these designated crimes, which presumably qualify as serious, but rather the should serve as a forum for any international crime. Crimes, such as terrorism or narcotics trafficking, represent just two examples of the wide variety of criminal activities that are of growing concern. To be an effective tribunal, the International Criminal Court needs flexibility and versatility to respond to the diverse nature of crimes facing the international community. Otherwise, the International Criminal Court runs the risk of becoming another inadequate remedy, similar to the extradition based system, by severely limiting its jurisdiction (Carberry, 1999).

THE NETHERLANDS’ FUTILE PROPOSAL
The First Review Conference of the Statute of the International Criminal Court took place in 2010. At that time, the Netherlands was at the standpoint that the time has come to consider inclusion of the crime of terrorism in the list of crimes under the International Criminal Court jurisdiction. Therefore, the Netherlands submitted Proposal for the inclusion of the crime of terrorism in the Rome Statute arguing that terrorism is one of the biggest and most challenging threats the world is facing in the twenty-first century, as well as that terrorist acts, not depending on persons, places, forms, methods or motives, are serious crimes of concern to the international community. At the same time, the Netherlands stated that there is all too often impunity for acts of terrorism in cases where states appear unwilling or unable to investigate and prosecute such crimes. Therefore the Netherlands revoked for a greater role of the International Criminal Court within rationale that the Court has been established to prosecute the most serious crimes of concern to the international community. Taking into consideration that there is absence of a generally acceptable definition of terrorism, the Netherlands proposed to use the same approach as has been accepted for the crime of aggression, i.e. the inclusion of the crime of terrorism in the list of crimes laid down in the Statute while at the same time postponing the exercise of jurisdiction over this crime until a definition and conditions for the exercise of jurisdiction have been agreed upon.

Some authors state that uplift in advocating expanding the International Criminal Court’s jurisdiction over crime of terrorism has increased significantly after 9/11 (Boister, 2009). Irrespective to this, there is common understanding that the inclusion of a crime of terrorism per se within the Statute on this basis would send a clear message of the international criminality of terrorist activity, but would not enable prosecutions under the Statute until this type of offence is more clearly defined. Given that terrorist activity can already be prosecuted within the established international criminal law offences and that there is at least arguably a customary international crime of terrorism, inclusion of this nature is likely to be primarily symbolic but may, in the future, result in a clearly expressed crime of terrorism per se within the Statute (de Londras, 2010). In the end, even delegations manifested support for the proposal, it seemed that proposal was anticipated, and to early submit as for many parties considered that comprehensive and universally accepted definition of terrorism is prerequisite. Therefore, advancement has been trapped by the fact that there is no general understanding upon definition of terrorism. In this manner, problem of definition reflects and battles against inclusion of terrorism under the International Criminal Court jurisdiction.

149 Proposal for the inclusion of the crime of terrorism in the Rome Statute (the Netherlands) C.N.723.2009.TREATIES-5.
AGITATIONS ON SPECIAL TRIBUNAL FOR LEBANON’S INTERLOCUTORY DECISION

Special Tribunal for Lebanon is the latest hybrid tribunal within international justice system whose work started in 2009.\(^{150}\) Question of establishing the Special Tribunal for Lebanon\(^{151}\) rose after assassination of the former Prime Minister of Lebanon Rafiq Hariri in February 2005 and is related to the latest international justice instrument to be adopted by the United Nations Security Council, the Statute of the Special Tribunal for Lebanon. United Nations Security Council established International Independent Investigation Commission to help Lebanese government in fact finding and fact affirming. Acting under Chapter VII of the Charter, the Council established the Special Tribunal for Lebanon by virtue of an agreement with the government of Lebanon (Shaw, 2008).\(^{152}\) Runge states that the Special Tribunal for Lebanon has two characteristics unique in the scheme of international criminal tribunals. It is the first international criminal tribunal with its stated purpose being the prosecution of crimes of terrorism. Secondly, the tribunal’s application of Lebanese domestic law as to the definitions of the crime of terrorism is one-of-a-kind, making the subject matter jurisdiction reliant totally on domestic law at a tribunal of international character groundbreaking (2012).

What puts the Special Tribunal for Lebanon in a spotlight within the meaning of terrorism is that on 16 February 2011, the Appeals Chamber of the Special Tribunal for Lebanon carried out unanimous ruling in its Interlocutory decision on the applicable law\(^{153}\) as a response to a number of questions propounded by the Pre-trial judge. These questions are summed up in Headnote of the Interlocutory decision and relate to: whether the Tribunal should apply international law in defining the crime of terrorism; whether the Tribunal should interpret the elements of the crimes of intentional homicide and attempted homicide under both Lebanese domestic and international law; whether the Tribunal should interpret the elements of conspiracy under both Lebanese domestic and international law; modes of liability for crimes prosecuted before the Tribunal (in particular perpetration and co-perpetration), whether the Tribunal should apply Lebanese domestic or international law or both; whether the Tribunal should apply Lebanese or international law to the regulation of cumulative charging and plurality of offences.

In its answer, the Appeals Chamber 1) held that terrorism had crystallized to form a distinct international crime under customary international law and 2) in light of international law, disagreed with the narrow scope of the Lebanese interpretation of its terrorism provision (Ventura: 2011). Evaluating it as highly disputable, as well as criticizing judge presiding, that happened to be Antonio Cassese, already known and also previously mentioned for his disputable standpoints in terms of terrorism as international crime, many scholars accentuate disagreement with the Appeals Chamber decision stating, for instance that “the Appeals Chamber entered uncharted and highly contested waters: customary international law on terrorism” (Ventura: 2011). Some are even going further in evaluation stating that “a close analysis of the sources relied upon by Appeals Chambers demonstrates that its conclusion was mistaken: there is no customary international Crime of transnational terrorism”\(^{154}\) (Saul, 2013).

Regardless of several issues addressed by the Appeals Chamber, it seems that the most important issue is the one related to definition of terrorism. Even though the Special Tribunal for Lebanon holds jurisdiction over those who are responsible for assassination of former Prime Minister Rafiq Hariri but also over persons responsible for offenses that took place between 1 October 2004 and 12 December 2005 in Lebanon, the Appeals Chamber held that it was entitled to interpret domestic law along with international law. Therefore, although the Special Tribunal for Lebanon does not have jurisdiction over international crimes whereas its jurisdiction is consummately based on Lebanese law and has no grounds to embrace international legal norms in this issue, Appeals Chamber however

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151 Acting in part under Chapter VII of the UN Charter, the Security Council established the Special Tribunal for Lebanon as of 10 June 2007 by 2007 Security Council Resolution 1757. Annexed to the Resolution was the Statute of Special Tribunal for Lebanon.


153 Interlocutory decision on the applicable law: terrorism, conspiracy, homicide, perpetration, cumulative charging (16 February 2011) STL-II-01/1.

154 In contrast to the definition of international crimes, the criminalization of conduct classified as transnational crimes emerges from the concerns of individual states regarding their “political, social and economic interests” and “assertions about the harm caused to these interests.” For instance, money laundering is seen as a crime that erodes the financial institutions, depresses economic growth, facilitates corruption, and increases economic instability, while drug trafficking threatens public safety, economic productivity, public health, professional advancement and education, and public institutions. (Nagle, 2010)
insisted on applying international law beyond complementing non-existence of domestic legal norms. In the end, the Appeals Chamber declared that the customary international law definition of terrorism comprises following elements of terrorism: (1) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, etc.), or threatening such an act; (2) the intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (3) when the act involves a transnational element.

Trouble here is that “the Appeals Chamber identified international crime of transnational terrorism in peacetime, in interpreting the scope of domestic terrorism offences under Lebanese law” (Saul, 2013) in terms of also promoting opinion that “prohibition of terrorist acts in time of armed conflict is considered to be emerging” (Ventura, 2011) taking into consideration numerous international documents that have been comprehensively accepted. After listing numerous international and regional treaties, national laws, judicial decisions from various national courts 155, the Appeals Chamber took a stand that wrongness of terrorism has already been encompassed into international crimes. Also, „in terms of applicability of customary international law in Lebanon, the Appeals Chamber clearly stipulated that a ‘transnational element’ was a necessary component for acts to meet its definition of terrorism as an international crime. And by the Chamber’s own account, a transnational element is part of the definition of international terrorism” (Ventura, 2011).

And, this is considered to be the most controversial aspect of the Appeals Chamber’s decision, because it invoked various supposedly converging material sources to support its contention that there now exists a customary international crime of transnational terrorism: anti-terrorist treaties, numerous national laws, judicial decisions from various national courts (Saul, 2011).

Along with mentioned scholars, others also question the role of international law in terms of determining whether if it is directly applicable or just interpretative aid, as well as analyzing Lebanese terrorism definition. Approach to the process of legal interpretation is concluded to be questionable in the manner it has been done by the Appeals Chamber (Ambos, 2011). Others are openly stating that “by recognizing a definition of terrorism in customary law, the Special Tribunal neatly side-stepped almost a century of legal deadlocks in (ongoing) treaty negotiations and debates in bodies such as the UN General Assembly and Security Council” whereas a “close analysis of relevant treaties, United Nations resolutions, national laws and national judicial decisions confirms the near-universal scholarly consensus that there does not yet exist a customary law crime of terrorism as defined by the Tribunal”. (Saul, 2012).

It is surely striking that the Special Tribunal for Lebanon indicated existence of international crime of transnational terrorism. However, there are also different, more positive and alleviating opinions on the work of the Special Tribunal for Lebanon that needs to be taken into account. For instance, Runge is stating that the tribunal could serve as a model for future terrorism prosecutions at the ad hoc level, which is to be sufficient model for terrorism prosecutions in the future. Consequently, prosecution of terrorism is actually considered to be the strongest positive aspect of the Special Tribunal for Lebanon along with domestic law application that is required where there is no uniform international standard for a definition of terrorism (2012). In the end, it has to be emphasized that gravity of the Appeals Chamber opinion goes far further than the case that was held before it, for it the first time ever that international judicial body acknowledged definition of terrorism in international law.

**BOTTOM LINE?**

In the face of issues subjective to defining terrorism in international law, reputedly jurisdiction under which act(s) of terrorism can be investigated and prosecuted exists within the scope of international law. Although, it needs to be pointed out, without designating the term „terrorism”. Within the limits of myriad of adopted international and regional documents, as well as municipal legal acts, act(s) of

terrorism have been recognized and pronounced unlawful. Until comprehensive and universally accepted definition of terrorism is adopted, it strikes that terrorism as a discrete crime will not be identified and acknowledged. Without this precondition, revision of the Statute of the International Criminal Court is unpromising. The same stalemate dwells in a matter of customary international law. Many states annotate that terrorism should be characterized as international crime and included within the jurisdiction of the International Criminal Court. This is shown through the example of the Netherlands Proposal for the inclusion of the crime of terrorism in the Rome Statute which, in the end, was not accepted. Yet, observing and responding towards terrorism as international crime, stays an open issue. So far, terrorism qualifies as a crime under the International Criminal Court’s jurisdiction to some extent within existing international crimes under the Statute of the International Criminal Court. Under the plea of ending indemnity in cases of terrorism and for the purpose of positioning terrorism as an international crime Special Tribunal for Lebanon faced setback and preponderant condemnation after the Interlocutory decision on the applicable law. It stands to sense that derivation and positioning of terrorism as international crime could be deducted from manifold of international, regional, municipal provisions. Regardless of wrangle created by Special Tribunal for Lebanon based on alluding existence of customary international crime of transnational terrorism by virtue of overlapping international, regional and municipal legal sources, its decision is still momentous and incremental. Being the first international court that acknowledged and affirmed definition of terrorism in international law, surely represents assisting step towards comprehensive and universally accepted definition of terrorism in international law.

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