

Status of Terrorism in International Criminal Court

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ABSTRACT

Although the International Criminal Court has not yet inserted the terrorism as a crime in its statute and although this debate of the competence of the International Criminal Court for addressing the terrorism crimes has ignored, however, the ICC can consider the terrorism within its jurisdiction. Because most committed crimes by the terrorists are the crimes that stipulated explicitly in the statute of the ICC. Most terrorists, especially international terrorists commit crimes such as genocide, crime against humanity and war crimes. These crimes are the same crimes that the ICC has persecuted so far and the international terrorism commits them, although in the form of terrorism. Although the ICC statute has not addressed the terrorism issue, but the International Criminal Court can prosecute the terrorists who commit such crimes, in such situations, the International Criminal Court can obtain the jurisdiction for prosecuting the terrorism. Although it is possible that, the ICC does not deal with the terrorism as the terrorism, because, the terrorism has a specific definition and the constituent elements and could be different with the stipulated crimes in the ICC in terms of nature and the constituent elements.

Key words: Terrorism, International Terrorism, the International Criminal Court (ICC), International Crimes

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INTRODUCTION

Countries always consider themselves obliged to deal with international crimes. Some crimes have been criminalized in international arena throughout the history and some other decriminalized during a period of time. Some of the crimes are so decent among the nations that will lead to instigating the sensitivity of countries if someone or a country dares to commit them and all people oblige themselves to treat it. Lawyers and legislators have always tried to criminalize serious crimes in international arena in order to prevent the courts from a state of indifference and not responding to such crimes. Among all the crimes, terrorism is a well-known crime that entangles the world throughout the history. Showing strong and weak points, this crime indicates that countries should deal with it seriously and comprehensively. Having been broadly posed among politicians, legal and international communities in the 21st century, terrorism changed into a crisis for countries and the whole world and has reached to its peak nowadays. Attacks waged in September 2001 imposed the States the duty to criminalize terrorism and played a crucial role in globalization of contractual commitments and covenants caused by international and regional anti-terrorism conventions. Although it has a very long history, we can generalize its presentation to the early years of 21st century as a crisis. However, it has been regarded as the most serious issue for the world.

Countries have always felt a sense of need to found and establish an International Criminal Court to investigate international crimes and most serious crimes. The above need has been met by establishing International Criminal Court to some extent. This Court, in its turn, has Charter and administrative organization that face limitation to treat all crimes. It has jurisdiction to trial only four kinds of crimes. Terrorism, especially international terrorism, is an international crime whose offenders sometimes commit felonies in different forms. International terrorists often commit crimes that is included in the crimes for which the above Court has jurisdiction, because under the label of terrorism, they commit the

same crimes stipulated in the Charter of the Court. Now, we should examine the status of terrorism in the Charter; a crime that has different shapes and forms and emerges each time in a new form.

2) Definition of terrorism

Terrorism has been extracted from the origin of the word "terror" meaning fear and dread (Alizadeh, 1998, pp. 512-3). Encyclopedia of politics defined terror as: "Terror means fear and threaten in philology." Terror is extracted from French language and its meaning is common in Persian language as political murder by means of a weapon. The word terrorism is connected to cruelty, hard-heartedness, fear and dread (Jalali, 2005, p. 51). The word "terrorism" entered Persian language from French and is originated from "terrs" meaning fear (AbrandAbadi, 2012, pp. 1997). Terror means fear and terrorism means creating dread. The above definition is one of the best definitions we can present for it (Azemayeh, 2004, p. 51).

1-Idiomatic concept of terrorism

Many definitions have been proposed for terrorism. About 109 different definitions of terrorism have been set forth for the word "terrorism". In spite of all attempts accomplished to define terrorism – whether its legal or lawful one – some researchers compared proposing a definition for terrorism to a holy cup (Kargari, 2011, p. 20). Nevertheless, the author of the present article will pose some definitions for terrorism as follows:

A convention for prevention and campaign against terrorism has been prepared in 1937 under the supervision of League of Nations but the States have not approved it. The above convention defines terrorism as: "Criminal conducts against a State so that its nature or aim is to create fear among specific individuals, a group of persons or common people" (Hbibzadeh, 2005, p. 4). Another definition goes as: "Creating fear among a mass or a group of people to break their resistance, establish a system or political process based on such a fear through the use of serious and violent actions (Abrand Abadi, 2012, p. 1598). Other definitions presented for terrorism are mainly about fear to reach a special aim. The considerable and important point here is the distinction of terrorism and international terrorism, because international terrorism can be posed as an international crime.

2-1- Difference between terrorism (as a general concept) and international terrorism

After having presented a brief explanation about terrorism, we should now observe what the features of international terrorism are. Importance of this issue is arisen from this fact that international terrorism is an international crime and is included in the relative serious crimes. International terrorism is a branch or kind of terrorism that is different with terrorism in terms of constituent elements, motive and aims. What is more highlighted in determining and defining international terrorism are the aim, method and motive of committing terrorist conducts. The reason is that here the conduct of the perpetrator of murder is not due to a private enmity or a victim's special situation such as a president or a prime minister and the like.

The crime of international terrorism has three basic elements:

a) Such a conduct should be regarded crime in most of legal systems of the world (such as battery and assault, murder, abduction, hostage taking, arson and the like);

b) Aim of commission of the considered conduct should be dissemination of terror (that is fear and dread) through violent actions or threaten to violence against a State or people or common people and/or a special group of individuals;

c) Motive of the action should be political, religious or any other ideological motive, specifically, it should not be something personal (Kassasse, 1978, p. 153). The above arguments are enough about distinctive features of terrorism and international terrorism but we may define international terrorism as follow: Every intentional criminal conduct against a group of individuals or property, as a group or organization and trans-boundary or leadership or guidance or encouragement of it in order to disseminate fear and dread with a special impersonal motivation with the use of military machinery. After a brief study of philological and idiomatic concept of terrorism, we are going to deal with the main discussion about terrorism in International Criminal Court.

3-International Criminal Court campaigning against terrorism

International Criminal Court is an international judicial forum that is independent and permanent. It has been established with the aim of fair investigation of the most serious crimes, also known as global crimes. The Court has an independent Charter that has described and determined crimes for which the Court has jurisdiction to investigate, and has dealt with procedure of crimes, jurisdiction of the Court, general principles of criminal law, structure and administration of the Court and punishment. The fact is that international community and those who are active in international area have always felt a need for establishing a permanent international court to campaign against international and serious crimes. This need and idea refers back at least to the 13th century. Therefore, there has always been a need for a transnational forum to campaign against international crimes but a similar body like the existing Court

and transnational jurisdiction refers back to 1474 and the trial of Peter Von Hagenbach for commission of crimes that are today called crimes against humanity (Jafari, 2011, p. 87).

The idea of foundation of an international court to fight against international crimes has accompanied with ups and downs thorough history. The need for formation of such a court emerged with a serious need and such a need sometimes has reduced. International community has forgotten calamities of World War I and ignored ways for fighting against those kinds of problems such as establishing an international court. Two important events have awakened international community in 1934 and thought about campaigning against the origins of such global difficulties. These events included terror of King Alexander of Yugoslavia and then French foreign minister Louis Bartoin October 9, 1934 in Marcy, France. As a result of the attempts of the State of France, League of Nations adopted Convention for the Prevention and Punishment of Terrorism in 1937 (Jafari, 2011, p. 92). The above document has never been executed. From that time on until the approval of Charter of the International Criminal Court in 1998, international community has faced events and mishaps that helped the establishment of International Criminal Court very much. The above events are those that happened in some of the countries that caused formation of temporary courts. Finally, Charter of the Court has been approved in July 17, 1998; it came into effect in 2002 and started its activity in 2003.

Two questions are posed here: How has terrorism been investigated in International Criminal Court and can it be tried based on the provisions of the above Court? We should say that if terrorist conducts, especially international terrorism, are committed in the framework of crimes stipulated in the Charter of the above Court, the Court has judicial jurisdiction to investigate under the special circumstances. Crimes against humanity are one category of the crimes that International Criminal Court has jurisdiction to investigate. Article 7 of the Charter of the above Court has dealt with it. International terrorist actions such as those carried out by ISIS (or so-called Islamic State of Daesh) in peacetime (after capturing a region) and are broadly committed against civilians to reach their terrorist aims – i.e. creating fear and dread – can be included in the jurisdiction of the above Court to investigate. The issue of terrorism was so important that a decision has been made to pay attention to it in reviewing the Charter in 2010 but it was ignored. Here are the reasons presented by member States of the Court that the terrorism is not directly categorized as crimes for which International Criminal Court has jurisdiction to investigate:

(i) The most important reason and barrier was lack of clear and globally accepted definition about what is known as terrorism. Specifically, member States have no consent about the proposed definition of terrorism in the Draft of the Charter (Cohen, 2012, p. 224);

(ii) Another reason that terrorism was not included in the Rome Statute of the International Criminal Court 1998 was this belief that three inherent crimes were referred to in the Court – i.e. war crimes, crimes against humanity and genocide – were proposed as the most serious concern of international community and terrorism has not yet reached at this level of concern (Cohen, 2012, p. 224);

(iii) Member States intended to prevent crimes to be investigated by the Court from increasing and their related problems from growing (Cohen, 2012, p. 225);

(iv) Inserting terrorism in the Statute would prevent it from being adopted Rome Statute of the International Criminal Court 1998 (Cohen, 2012, p. 226);

(v) Some member States questioned inserting terrorism in the Rome Statute, because a system of cooperation to campaign against terrorism as a contractual crime has already been emerged (Cohen, 2012, p. 227);

(iv) An argue that holds since terrorism was a critical political term, if the Court intended to investigate terrorist cases and legal actions, it would inevitably have to enter politics; so, it would harm legitimacy and validity of the Court as an independent judicial forum (Cohen, 2012, p. 227).

International Law Commission has proposed a suggestion to insert another category of crimes in the framework of crimes that were in the Court's jurisdiction in 1994. Treaty crimes that were proposed included terrorism, drug trafficking, Apartheid, and serious breach of the Four Geneva Conventions of 1949. Lack of consensus prevented terrorism from entering the judicial framework of the Court (Namamyam, 2011, p. 59). Despite of what was mentioned and as we will observe, International Criminal Court can investigate and punish terrorism. Reactions increased about international crimes through the formation of International Criminal Court and terrorism will not be ignored and cannot evade justice any more. Although terrorism was not included in the proposed crimes of the Statute, we can trial and punish it according to the Court Statute and in its framework to some extent even if the crime committed does not carry the label of terrorism. This reaction is, *per se*, one of existing approaches against terrorism in international area.

After ignorance of criminalization of terrorism in reviewing the Court Statute in 2010, some lawyers' opinions indicated that we could investigate it according to the provisions of International Criminal Court and insert it into its jurisdiction. This viewpoint, in its turn, was accompanied by advocates and opponents

whose opinions will be presented later on in this article.

4-Review the pros and cons of terrorism under the jurisdiction of the Court

4-1 examination of the supporters results

4-1-1-Advantages of including terrorism in the jurisdiction of the Court

Including terrorism in the jurisdiction of the Court makes small, weak and incapable countries can fight against terrorism by the help of the Court. Countries that are economically weak will face difficulty when dealing with terrorism and do not have enough ability to fight against it. From this perspective, with all its capacities and equipments, the Court is the best choice to campaign against terrorism. If International Criminal Court gains jurisdiction to investigate terrorist crimes, small countries would get rid of extravagance economic load (Banchik, 2003, p. 9).

Countries that are weak in their sovereignty can remove this defect in dealing with terrorism by the help of the Court. Based on ancillary jurisdiction in the Statute, the Court will apply its jurisdiction when a member State is not able to trial the offender or offenders and/or it does not intend to do so. This is the case for weak countries that are not able to encounter and investigate terrorism or countries with tyranny regimes that have unfair judicial systems.

Emphasizing on impartiality of the judges of International Criminal Court is another advantage of this forum with which Article 36 of the Statute has dealt. Since selecting the judges are subject to the terms and conditions that the Statute includes, such special circumstances are considered to hold a fair trial and far from any discrimination. In addition, it indicates a fair encounter with the offenders. Impartiality of the Court has great effects on persecution of terrorists. This feature may prevent terrorists from getting access to a safe haven in countries that do not have valid trial systems or does not extradite offenders due to political reasons or do not easily intend to sue them (Banchik, 2003, p. 10).

4-1-2- Considering terrorism as an independent crime

Clearly, there has not yet been any comprehensive consensus in international arena on definition and constituent elements of terrorism. What exist about this are either in the framework of UN Conventions or regional or continental conventions and lawyers' opinions in this field. The last case has a direct effect on states and international and government organizations. Pondering on such conventions and definitions, we can say that almost all of the countries of the world agree that terrorism is accompanied with a malignant intention; that is to threaten and to frighten. Although States have not reached an agreement about definition of terrorism as an independent crime, there is no criminal reaction against terrorism as an independent crime according to international public law. Most of the researchers believe that the above argument is the case (Namamyian, 2011, p. 66).

If we accept that terrorism is an independent crime and intend to separate it from other international crimes, we cannot study it based on provisions of International Criminal Court. The reason is that with a special definition of terrorism and accepting an independent entity for it, terrorism will get out of jurisdiction of the Court. In addition, in that case, terrorism will be in conflict with Articles 5 and 22 that indicate the jurisdiction of the Court is limited to stipulated crimes and the principle that holds there is no crime except in accordance with the law – i.e. *sine lege*. Nevertheless, if we pay attention to terrorists' conducts in commission of terrorist crimes, regardless of label and definition of terrorism, we can include it in the jurisdiction of the Court.

A high ranking board's report indicated that all forms of terrorism are forbidden and prohibited by one of international anti-terrorist conventions, international customary law, the Four Geneva Conventions of 1949 or Rome Statute 1998. Accordingly, when offenders of terrorist conducts are sued due to special manifestations of terrorism rather than its independency, such a prosecution for the committed crime is criminally justifiable (Namamyian, 2011, p. 68). However, if we pay attention to special examples of terrorism and remove the label of terrorism from a committed conduct, we can argue that International Criminal Court can investigate such crimes under the same culpably label stipulated in Article 5 of the Charter of the Court. Therefore, attempt to enter terrorism based on the Charter of the Court is, technically speaking, negative proposition because of its subject being non-existing – i.e. *ab initio*. Hence, the idea of entering terrorism based on the jurisdiction of the Court faces some limitations.

4-1-3- Encountering terrorism as genocide

Genocide is the first stipulated crime in Charter of the Court with which Article 6 has dealt. According to the above Article, stipulated crimes should be committed with the intention of demolishing all or a part of a group of a national, tribal, ethnic or religious group. As it is observed, Article 6 refers to a specific malice that is, in fact, the distinctive feature of genocide with other crimes considered in the Charter – i.e. the intention of demolishing all or a part of mentioned groups.

This study refers to the intention of terrorist conducts regarded in conventions and doctrines. As previously mentioned, specific malice in terrorist actions is to threaten and to frighten people. Continental and regional conventions have repeatedly referred to this issue. In other words, terrorists

carried out criminal conducts such as murder, despoil, demolition, abduction, and other criminal actions like these. We can scarcely consider the aim of terrorist actions to demolish victim groups. Conversely, terrorism uses murder and physical damage as means to reach other aims and these are not its ultimate aims (Cohen, 2012, p. 241).

States' practice, municipal laws and related conventions all have a consensus about criminal intent or *mensrea*. In addition to necessary *actusreus* of a crime that causes terrorism (such as serious physical harm, murder, abduction, arson, demolishing private and public property, etc.), a special intent – i.e. dissemination of fear and dread among people – is necessary for a crime to be committed (Kassesse, 2008, p. 159). Regarding the above argument, terrorism as genocide cannot be categorized in the crimes for which the Court has jurisdiction to investigate. In other words, with respect to existing definitions, since specific malice of terrorism and genocide in the Court are two different things, we cannot examine terrorism as genocide in the Court at all even if terrorists commit genocide. The reason is that the Charter of the Court stipulated that specific malice in genocide is to demolish mentioned groups while specific malice in terrorism is to threaten and to frighten.

4-1-4- Encountering terrorism as war crime

Some international documents have categorized terrorism especially as war crime. As an instance, Clause I of Article 33 of Geneva Convention expressly states: "Collective crimes or all standards of threat and fear or terrorism are forbidden." Moreover, Clause II of Article 51 of Additional Protocol to the Four Geneva Conventions of 1994 holds: "Violent measures or threaten to violence whose main aim is to disseminate fear and dread among the population of civilians are forbidden." (Namamyian, 2011, p. 69). Regarding to this fact that terrorism and terrorist measures are clearly expressed and have a similarity feature – i.e. to threaten and to frighten. In addition, Geneva Convention clearly considered terrorist measures with the intent to threaten and to frighten too. With regard of the two above arguments, it seems that we can categorize terrorist measures in wartime in measures stipulated in Clause I of Article 8 and considered them war crimes. In principle, if each of the terrorist measures is taken in armed conflict against civilians, it can be counted a war crime and categorized in the jurisdiction of the Court.

Besides, when special examples of terrorism contain elements of war crime; to demonstrate, they are committed in an armed conflict or in connection to it, can be categorized in the following international documents:

- a) Article 4 of Statute of the International Criminal Tribunal for Rwanda 2010 (on the breach of common Article 3 of the Four Geneva Conventions of 1994 and the second Additional Protocol);
- b) Articles 2 and 3 of Statute of the International Criminal Tribunal for former Yugoslavia 1993 (on gross violation of the Four Geneva Conventions of 1994 and breach of provisions or custom of the war);
- c) Article 8 of Charter of the International Criminal Court 1998 (Namamyian, 2011, p. 69).

For an accomplished conduct to be included in war crimes counted in Article 8, it should be committed in an armed conflict. Hence, criminal actions that are not committed in wartime will not be counted war crimes. Likewise, the last phrase of Clause I of Article 8 holds: "The Court will enjoy jurisdiction to examine war crimes especially when they are committed in the framework of a program or a policy or in a broadly area of mentioned crimes." In the above part of the Article, the word "especially" has been used for emphasis and is not a provision to apply the competency of this Article. Consequently, the following sentence is not apparently right: "Committed measures should be taken in the framework of a public program or policy. This provision indicates *mensrea* of the crime and awareness to the effects of committed measures." (Namamyian, 2011, p. 70). As such, "broadly" or the need to be broad or extended is not a feature based on which the actions are considered criminal actions in this Article, because the adverb "especially" is used to emphasize and it does not indicate circumstances of the crime. As an instance, if terrorists commit hostage taking during wartime with a State and it is not broad or extended, it can be counted war crime.

4-1-5- Dealing with terrorism as a crime against humanity

International Criminal Court does not have jurisdiction to trial terrorism at the present time, but it does not mean that the Court does not have judicial jurisdiction to prosecute offenders of terrorist crimes. If we can say that terrorism is defined in the framework of anti-human crimes counted in Article 7 of the Charter of International Criminal Court and it is a crime for which the Court has especially judicial jurisdiction indirectly, it is inferred that the Court has judicial jurisdiction for terrorism (Namamyian, 2011, p. 71).

Among all existing inherent crimes that are under the Court's jurisdiction, crime against humanity needs the fewest legal changes so that terrorism can be put under the Court's jurisdiction. Many legal scholars believe that terrorism can be tried as a crime against humanity according to Article 7 of the Rome Statute of the International Criminal Court 1998 and the barrier related to the definition of terrorism can be removed in this way (Cohen, 2012, p. 242). The Court has dealt with crime against humanity in Article 7

of the Statute. In general, according to the above Article, for a crime to be considered as a crime against humanity, criminal actions should be:

- 1-committed in peacetime;
- 2-broad or extended;
- 3- organized;
- 4-committed against every kind of civilian population;
- 5-committed to develop a policy.

Knowledge and awareness of the offender should be attained in the above cases of “4 and 5”; (the above two last cases). To enumerate, the offender should have knowledge that the crime they commit was against civilian population. As a result, if the offender was ignorant that the committed crime was against civilians, it would not counted as a crime against humanity. Likewise, offender’s knowledge should be about developing and following a policy. To explain, the offender should follow and intend to develop the aims of a state or organization.

It seems that among all terms and conditions of crimes against humanity, two elements of commission in peacetime and developing a broad organized attack are the basic terms for considering a crime as such crimes. As Article 7 indicates, a crime should be a part of a broad or organized attack, when studying terrorism, we should bear into mind that offenders of terrorism – especially those of international terrorism – commit their criminal actions to develop their aims. As previously mentioned, their aim is to threaten people. Therefore, terrorists commit war crimes with a part of a broad attack against civilian population to threaten them and it is apparently adaptable to one of the terms counted in the above Article. Consequently, we should prove that terrorist actions are committed alongside a broad and organized attack in order to be regarded as crime against humanity when other terms and conditions are met.

International terrorism has organization and centrality. To enumerate, it has organizational mechanism, a center of command and administrative hierarchy. If one of the members of a terrorist organization commits criminal actions considered in Article 7 and commit those conducts based on the commands and aims of that organization, it will be regarded as crime against humanity when other terms and conditions are met. This is an issue that seems not to be the case in a personal terrorism, because in such a situation, organizational crime is irrelevant and terrorist actions are not committed alongside the aims of a special organization. Many of terrorist behaviors led to commission of criminal actions that are considered crime against humanity based on Article 7. Hence, the concept of crime against humanity may contain terrorist conducts committed in peacetime. That was the case in most of the situations (Cohen, 2012, p. 243).

Moreover, criminal behaviors committed by terrorists should be broad that does not have a clear criterion. However, one can infer whether a crime is broad through the circumstances of the committed crime. As an instance, a terrorist conduct was committed during the attacks of September 11 but the consequences and the crimes were very broad and extended. Since a single attack took the lives of many victims; so, it can be regarded as broad. From this perspective, attack of September 11 can be regarded crime against humanity (Banchik, 2003, p. 13. The first reason to categorize terrorism as a crime against humanity is that it is a special crime. In this regard, two Clauses of Article 7 would be enough. This Article first counted some crimes that can be stipulated as crimes against humanity if they are a part of a broad or organized attack against every civilian population with the offender’s knowledge. Based on Clause I of Article 7, criminal conducts mentioned in this Article may be included in terrorist measures (Fernandez de Casadevente, 2005, p. 5).

4-2-Examination of the opponents’ reasons about categorizing terrorism in the Court’s jurisdiction

As it was explained, discussion over including terrorism in the Court’s jurisdiction is a challenging one. Opponents’ opinions are important in this regard. Generally, we can refer to the followings when rejecting terrorism based on the Court’s provisions:

- 1-Crimes mentioned in Article 5 of the Charter are limitative and include only those that are mentioned by the Court. Hence, they do not include other defined crimes in international criminal law;
- 2- Clause II of Article 22 of Charter holds: “Definition of a crime should be interpreted narrowly and should not be expanded by inference. In case of ambiguity, definition of a crime is interpreted in the interest of the person who is the subject of investigation, prosecution or conviction.” Based on the above Clause, we cannot broadly interpret crimes stipulated in Article 5. We can neither extend their scope, nor interpret them so that they include other crimes;
- 3- The history of Rome Statute 1998 showed that discussion over terrorism in this case was aborted and it was not essentially categorized in the Court’s jurisdiction.

Rome Conference of Diplomatic Agents held in 1998 issued a declaration indicating that a Review Conference of Rome Statute should specially review terrorism according to the list of crimes stipulated in

the judicial jurisdiction of International Criminal Court. This issue showed arguably that terrorist actions should not be included in the area of the Charter (Namamyian, 2011, p. 74);

4- One of the criteria and standards of criminalization in the Rome Statute 1998 was the graveness and seriousness of the crimes; an issue that is expressly mentioned in the preamble of the Charter. Preamble states that the Court intends to apply its jurisdiction to crimes regarded as the most serious crimes of international community. Preamble has repeated this criterion two times showing the sensitivity of the Charter to prove the existence of the above criterion against global reactions (Jafari, 2011, p. 168);

5- Terrorism has not yet been included in the most serious and decent crimes in international area in the time of approval of the Court's Charter. This is one the reasons to which opponents invoke. Some of the opponents are emphasizing on this idea up to now. Crimes against humanity and war crimes have been codified based on international customary law in the Charter while genocide has been included in the same Charter according to an international treaty. Other crimes in the international area that lack such criteria (to be based on customary law or a treaty) have not yet put in the Court's jurisdiction. The reason seems to be that such crimes have become limited for the whole international community due to additional standards such as their being grave and heart-breaking (Norberg, 2010, p. 16s).

Some of the opponents have taken a step forward and considered terrorist conducts (and not terrorism itself) out of the Court's jurisdiction. To the author of the present research, it is important to amend the Charter of the International Criminal Court with stipulation of provisions related to terrorist crimes. Existing Rome Statute 1998 has many defects in terms of prosecution of terrorist crimes. It should be borne into mind that terrorism is a separate category and entitles very strict independent prosecution and investigation. Hence, International Criminal Court cannot sue terrorists for crimes against humanity or war crime according to crimes stipulated in the present Charter (Banchik, 2003, p. 18).

Regardless of all mentioned reasons, it is important to note that if we are to include terrorism in the Court's jurisdiction due to criminal conduct (special criminal behaviors) rather than existing concept and definition of terrorism based on conventions and doctrines, the committed behavior will not be treated as terrorism any more. In this case, instead of a committed behavior, crimes stipulated in Article 5 of the Charter will be treated. Consequently, regardless of existing definitions of terrorism, it is a fruitless attempt to include terrorism according to the special committed behavior in the Charter that may be equal to the crimes determined by the Charter. Hence, we can conclude that terrorism with a special concept and according to the defined jurisdiction cannot be investigated in the Court although it can be tried in the framework of crimes stipulated by the Court. In this case, we cannot call it terrorism any more. Subsequently, to include terrorism in the Court's jurisdiction, the Charter should be amended and terrorism should be defined as a new crime in it. Although there are some reasons not to include terrorism in the Court's jurisdiction, even if it is included in the Court's jurisdiction regardless of its label and in the framework of crimes counted by the Court, there will be a favorable reaction to suppress this crime. Finally, it is important to pay attention to the direct opinion of the International Criminal Court regarding jurisdiction to try terrorism based on its Charter: "International Criminal Court has jurisdiction to trial genocide, crime against humanity and war crime. The Court may be able to sue terrorist measures only if such conducts are included in the stipulated crimes." (International Criminal Court).

CONCLUSIONS AND RECOMMENDATIONS

As a permanent international court, International Criminal Court enjoys jurisdiction to examine international crimes that are included in the most heinous and gravest international crimes. The Court has an independent Charter that mentioned international crimes and their procedure. According to the Charter, the Court has jurisdiction to investigate four international crimes and other international crimes are out of its jurisdiction. Although terrorism has not been counted in the Court's jurisdiction, since international terrorism emerges in every time with different forms, it can be included in the Court's jurisdiction to some extent. To enumerate, international terrorism often commit different kinds of international crimes that are mostly the same crimes regarded by International Criminal Court. We should state that the Court encounters with the label of terrorism, because there is no definition and no label for terrorism in the Court's Charter and it only deals with four international crimes. Nevertheless, this reaction, in its turn, can turn into an important outcome. Hence, if international terrorism commits a crime; as an example, crime against humanity – that is mostly the case – this international crime can be tried by International Criminal Court although with a label rather than terrorism.

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