

Abstract

Terrorism as a crime under international law

The purpose of this thesis is to assess the possibility of prosecuting terrorist attacks as crimes under international law and analyse the feasibility of their prosecution before the International Criminal Court. The reason for this research is twofold. First, compared to the international academic scene, Czech research related to this topic is relatively sparse. Second, the international terrorism has grown into a massive issue of international significance and its global aspects leave the traditional national judicial mechanisms somewhat lacking with regards to the efficiency in its prosecution. The author has therefore attempted to examine the possibility of using the only permanent global judicial body available in today's world, the International Criminal Court.

The thesis is composed of six chapters, each of them dealing with different aspects of prosecuting the terrorism as an international crime. Chapter One is introductory and defines basic thoughts upon which this thesis builds. It also presents the structure of the thesis with regards to possible issues which may arise during its course. It also explains the reasons for said research as described in the first paragraph of this abstract.

Chapter Two is concerned with the term terror and terrorism. The first part serves as a brief historical overview of how this term came into existence and how it evolved throughout the history from its first mention during the French Revolution to its modern understanding. The second part of this chapter presents various definitions found in contemporary treaties, both global and regional. In conclusion, this chapter chooses a definition of terrorism based on the International Convention for the Suppression of the Financing of Terrorism, as this definition comes from a global treaty which is now in power. It has also become one of the secondary aims of this thesis to assess the possible shortcomings of said definition with regards to its practical use as a measure of determining which relevant clauses of the Rome Statute of International Criminal Court might be used for prosecuting terrorist attacks.

Chapter Three is concerned with the term crimes under international law. In its first part, a brief historical overview as to which crimes constituted a crime under international law, is made. Next, all of the contemporary crimes under international law are briefly presented. Special emphasis is put on contemporary trends of individual crimes being separated from their respective crime categories for reasons of their gravity, as shown on the crime of genocide and potentially the crime

of torture. In the end, a brief attempt at examining the peremptory norms of international law and their relations to crime under international law is made.

Chapter Four concentrates on contemporary counter-terrorism legal framework. The thirteen global anti-terrorism treaties are briefly presented, after which their structure and particulars are examined. Special attention is devoted to extradition under said treaties. The second part focuses on the weaknesses of said framework citing the Lockerbie case, albeit a single instance, where such occurrences took place, as a possible precedent and therefore a weakening influence on the current global anti-terrorism treaty instrument framework.

Chapter five attempts to ascertain whether terrorism constitutes a crime under international law. Citing opinions from the drawing sessions of Rome Statute as well as the revision conference sessions, and citing several national judicial decisions, a conclusion is reached that the terrorism itself does not constitute a crime under international law for reason of absence of a universally acknowledged definition. It is also noted that the gravity and despicability of this crime is widely recognized and pending a universally recognized definition, this widely accepted opinion could lead to a possible future inclusion of terrorism among crimes under international law. The second part of this chapter focuses on the question whether the crime of terrorism could be brought before the International Criminal Court, notwithstanding its absence from the Rome Statute. An example of prosecuting crimes not specifically included in the statutes of ad-hoc tribunals is made with regards to rape in the *Furundzija* case. With regards to including crimes not necessarily universally recognized as core crimes, crime of apartheid, previously condemned by the Convention on the Suppression and Punishment of the Crime of Apartheid is mentioned. It is true that this convention condemns apartheid as crime against humanity, it is however also true this fact is stated by a treaty. Its inclusion into the Rome Statute has most definitely confirmed its status as a Crime under international law, although its status as a „core crime“ is still a bit unclear, which makes apartheid a good example of how even crimes that do not necessarily constitute core crimes may find its way in the relevant statute. Upon confirming that other crimes than those specifically listed in the Rome statute under the condition that they fulfil the necessary elements, this thesis further proceeds to compare the aforementioned definition of terrorism with the provisions of the Rome Statute.

First the war crimes are compared to the terrorism. This part specifically mentions the requirement of an armed conflict and the nexus of the crime to said conflict. Also, the specific requirements as to who might be the perpetrator of such crime are mentioned as well as the questions of protected persons under international humanitarian law. It is concluded that the

aforementioned requirements present a hindrance to prosecuting contemporarily most frequent forms of terrorism. However, most of the war crime provisions could provide basis for terrorism prosecution if conditions of both war crime provisions and the terrorism definition are fulfilled.

Second, crimes against humanity were subjected to the same process. The absence of the armed conflict requirement is noted. However, the crimes against humanity call for an attack against any civilian population, thereby limiting the possible scope of victims unnecessarily. The term „widespread or systematic attack“ is also examined with regards as to what constitutes such attack. Also, the specific provision for „other crimes“ similar in their character to those already in the Rome Statute is notable for its usability for terror prosecution. It is concluded that notwithstanding the somewhat limiting scope of victims, the crimes against humanity are probably the most suitable category of crimes under international law for prosecuting terrorism.

Next, the crime of genocide is also examined. The absence of limitations regarding victims is noted. It is however also stated that genocide can only be committed against one of groups specifically cited in the Rome statute, including racial, national and ethnic. The special requirement of genocidal intent is also examined, concluding, that the intent of terrorism is to spread terror, which helps the terrorists influence the object of the terrorizing to act or omit action as per the terrorist demand. The genocidal intent could therefore very seldom be a primary driving force behind a terrorist attack. The crime of genocide is thus largely unsuited for prosecuting terrorism.

Finally, the crime of aggression, a crime only recently defined in the Rome statute is examined. This crime is very much connected to being state perpetrated or perpetrated by persons able to influence the political processes of a country to reach its objectives. But, being a largely state-based crime, it is unsuited for prosecution of terrorism.

Conclusions are drawn in Chapter Six. The main aim of the thesis is to examine the possibility of prosecuting the terrorist attacks before the International Criminal Court. The hypotheses, that this indeed is possible has been reached. The most suitable category for such prosecution would most probably be the crimes against humanity. The secondary aim of examining the possible shortcomings of the definition of terrorism given in this thesis was met as well. It was found that the aforementioned definition is strict with regards to conducts previously tried as crimes under international law. The definition itself includes only acts with aim to kill or maim the victim or victims, whereas there are other means of inducing terror in order to force the victims to do the terrorists' bidding. Mainly, acts of state terror would remain unpunished, should this definition be

used as the universally recognized one, which is not the case. For the purpose of this thesis, which is mostly concerned with the non-state-actors terrorism, the definition mostly served its purpose. The author further suggests that further research into the relations between state and non-state terrorism in view of recent legal and actual developments be made with particular emphasis on the changing nature and role of state terrorism in contemporary world.

Klíčová slova: terorismus, zločiny podle mezinárodního práva, mezinárodní trestní soud

Keywords: terrorism, crimes under international law, International Criminal Court.