Investigating the criminal responsibility of governments for terrorism by studying Jurisprudence and international law

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Abstract

The fight against terrorism is one of the security and human rights issues of nations and governments. This security problem has affected all countries, large and small. The fight against terrorism and terrorist groups and the denial of any support and interaction with them is emphasized by international laws and regulations. Any country that directly or indirectly commits a terrorist crime has criminal and civil liability under international conventions and existing conditions. The purpose of this article is to investigate the criminal responsibility of governments for terrorism as a phenomenon in human rights violations by examining international documents and highlighting the shortcomings in this area. This research has been written by studying books, articles and international documents in the field of criminal responsibility of governments in the phenomenon of terrorism and human rights violations by descriptive and analytical methods. From research, it can be concluded that in international documents, the criminal liability of governments should be seriously pursued in addition to the criminal liability of natural persons who have committed a terrorist crime. Because if this issue is not taken into account, a large number of innocent people will be killed and assassinated, and a lot of damage will be left, as well as world order, peace and security, and hostile and terrorist countries will be acquitted of criminal responsibility.

Keywords: Criminal responsibility, Governments, Mass murder, Terrorism, Human rights

Introduction

Today, the phenomenon of terrorism is one of the human problems that threatens human life and the security of governments and endangers relations between countries. Most countries in the world agree on the fight against terrorism. Therefore, the definition and concept of terrorism at the international and regional level has not yet been precisely explained. International criminal liability is one of the most important and fundamental international legal institutions, the theoretical foundations of which must be established. Talking about the international responsibility of states means discussing an important aspect of the implementation of international law, International responsibility takes on a special place when a clear violation of the norms and fundamental rules of international law threatens the security and future of humanity. This threat can only be eliminated by developing peaceful relations between governments. Regardless of the differences between political, economic, social, and even military and economic systems, members of the international community have realized that there is no more valid and lasting way for the survival of humanity than the development of peaceful relations within the framework of international law. The evolution of the role and form of international responsibility of states cannot be separated from the evolution and development of international law. Until the beginning of the present century, the international responsibility of the government was limited to cases of violation of the rights of foreign nationals and compensation as the only effect of this act. International liability was therefore strongly influenced by the principles of domestic law in this area and resorting to responsibility was often to prevent powerful countries from interfering to protect the profits of citizens. The rules governing liability, regardless of interest, were against small powers. The whole system of international law was limited to the rights of "civilized nations" in which colonialism, the use of force, and the overthrow of the sovereignty of small states were not condemned. Between the two world wars, the right to resort to war was denounced as an expression of national policy and after World War II, the principle of non-threat of force or its use was enshrined

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in the UN Charter, which included war. The "principle of non-threat of force" is now a general rule of international law.

Today, the law of international responsibility is subject to customary rules as well as international judgmental procedure. In criminal liability, if a country commits a terrorist act and violates it, it must compensate the damage, so according to the special conditions of international conventions and regulations, the criminal liability of terrorist countries and terrorist individuals has actually become problematic.

These fundamental principles are referred to as the rules and norms of international law because of their importance to the survival of the international community. Violation of them is generally considered a crime and will provoke a reaction from members of the international community. The international responsibility of the state is no longer merely a commitment to reparation, and its purpose is to establish and enforce the rules accepted by equal governments in the international community, rather than to protect foreign nationals. The new dimensions of the international responsibility of the government and especially the occurrence of the ۱۹۷۹ revolution of the Islamic Republic of Iran and the numerous lawsuits against Iran in the international authorities followed the revolutionary people. This article examines the international responsibility of governments as a result of the actions of individuals and governments. The question now is whether acts contrary to the international law of individuals and terrorism can be attributed to the government as a source of international responsibility? If the answer is no, under what circumstances can such a responsibility be attributed to governments? Is it possible that a group of individuals who, in the form of a revolutionary movement, are committing acts contrary to international law have international responsibility? If so, what is the extent of their responsibility? What are the reasons for the non-criminal responsibility of some countries for genocide? Another question is whether the criminal responsibility of governments for committing the crime of terrorism and countering it is clearly provided for in international documents?

۱. Theoretical foundations of research

۱،۱. The concept of terrorism

Terrorism is one of the ambiguous words in the international arena, which due to the complexity of its concept and examples, we face a kind of "crisis of meaning" in defining and threatening its territory (Eftekhari & Shabestani, ۲۰۱۱:۸). Terrorism is the black word of international law. This is because the word "terrorism" is frequently used in UN documents and in the language of jurists, but there is skepticism about providing a comprehensive definition (Hanjani & farhadnia, ۲۰۱۹, p ۷۳). Assassination is a political phenomenon and has become a school and method by adding the suffix (Ism) (Eftekhari & Shabestani, ۲۰۱۱, p ۹). There are different definitions of terrorism in the dictionary and international law, which are somehow similar.

The true meaning of the word terror in French is fear and terror, and in politics it is the violent and illegal act of governments to intimidate and suppress rivals. Also the violent behavior of pseudo-groups, a military to achieve its political goals can be called an assassination. In addition, assassinations are attributed to political assassination (Ashoori, ۱۹۹٤, pp ۹۸-۹۹). The Dictionary of Political Sciences provides the following definition, "Terror is great fear and dread. Moreover, it has been used as a party or movement that causes terror. Terminologically, it is attributed to great dread which comes about as a result of violence, murder, and blood-shedding by a group, party, or government, who seeks its political goals as well as attainment or preservation of power" (Ahangaran & Madanīzādah, ۲۰۲۱: ۳۷۷; Aghabakhshi, ۲۰۰۰, p ۵۸۳).

In the Dictionary of Social Sciences, Allen Biro considers terror as a mode or feeling of collective fear that is a result of unlimited violence and slaughter (Biro, ۱۹۹٦, p ٤۲٦). The common element of all these definitions and descriptions is fear and dread. In other words, fear, horror, and dread are indispensable parts of terror. So, all in all, terror can be defined as a behavior, individual, group, party, or government that wants to achieve its goal(s) through violence, murder, blood-shedding, and creation of fear and dread (Ahangaran & Madanīzādah, ۲۰۲۱, p ۳۷۷).

۱.۲. Background of governments' responsibility for terrorism in international instruments

Any violation of international law by governments raises the issue of their criminal responsibility. International responsibility is a legal, fundamental and essential mechanism of mutual relations (Ziaee Bigdeli, ۲۰۰٤, p ۳۰٥). International responsibility of states for terrorist acts is one of the challenges in the international community. The first attempt to regulate civil liability dates back to the ۱۹۳۰ Hague Conference on International Law (San Jose Jill & Bigzadeh, ۲۰۰۱, p ۲٥٦) Which failed and was finally ratified in ۲۰۰۱ and has not yet become an international treaty.

There is still no comprehensive convention defining the crime of terrorism. Documents declaring terrorism an international crime include the ۱۹۳۷ UN Convention on the Prevention and Punishment of Terrorism, We can also refer to the sixteen UN conventions on acts that are the crystallization of terrorism and the draft Code of Crimes against Peace and Human Security of ۱۹٥٤ and the Statute of the Lebanese Court (Hanjani & farhadnia, ۲۰۱۹, pp ۷٤-۷٥). The first Convention on Terrorism refers to the ۱۹۳۷ Geneva Convention on the Prevention and Punishment of Terrorism, but it has not yet been implemented (Khabiri & Darbandi, ۲۰۱۲, p۱٥۳); (UN, ۱۹۷۲, pp ۱-۹). In international law, since the formation of the United Nations and the Universal Declaration of Human Rights, governments have had commitments to prevent and combat terrorist acts and to lack support for such acts. Actions such as murder, intimidation of civilians, or organizing and encouraging such actions have always been considered gross violations of human rights and human rights. There is a consensus in international instruments on the need for governments to adhere to the non-organization, incitement or involvement of terrorist acts. The UN Charter has legal precedence over international treaties (Ziaee Bigdeli, ۲۰۰٤, pp ۲٤۷-۲٤۹).

Article ۲, paragraph ٤, of the UN Charter prohibits the indirect threat of coercion and the protection of States against terrorism (Malzahn, ۲۰۰۳, p ۸۷). In ۱۹۷۰, the UN General Assembly issued a Declaration on the Legal Principles of Friendly Relations and Cooperation between States, obliging all governments to refrain from engaging in terrorist activities inside or outside the country. Also, refrain from any material support for terrorist acts and interference in the internal conflicts of countries.

After the terrorist attacks of September ۱۱, ۲۰۰۱, the fight against terrorist financing became the focus of the international community. After that, with the adoption of Resolution ۱۳۷۳, the Committee against Terrorism was established, and many international conventions and counters for the fight against terrorism were ratified.

It should be noted that at the end of World War II, the Nuremberg and Tokyo tribunals were set up by the Allies to try war crimes, and government and military officials were not immune to the consequences of their actions. Following this trend, the UN Security Council continued to establish the International Criminal Tribunal for the former Yugoslavia and Rwanda. Such a procedure was followed by the International Criminal Court, and according to the statute of this court, the officials of crimes, including terrorism, will not have immunity. Theoretical discussion of the criminal responsibility of the state was raised in Article ۱۹ of the draft law of the International Law Commission in ۱۹۷٦, and an important step was taken in the issue of "international crimes of the state". In Article ۱۹ international crime has two conditions: ۱. the blatant violation of obligations relating to the fundamental interests of the international community. ۲. The international community should regard this violation as an international crime.

۲. Investigating the criminal responsibility of governments for terrorism

The relationship of governments with terrorist groups is conceivable in three ways: First, the terrorist group is under the support and control of the government itself. Second, terrorist groups are independent of the state and are indirectly supported by governments. Third, governments are indifferent to terrorist acts in other lands. The criminal liability of governments is enshrined in the first hypothesis for the activities of terrorist groups in the ۲۰۰۱ Hague Convention, and in the second hypothesis there is a legal vacuum that there are ideas for filling these gaps that are not discussed in this article. It is worth noting that the main reason for the drafting of international conventions, of which about ۲۰ conventions on terrorism have been ratified so far, is in response to terrorist groups and their threats, which can to some extent determine the responsibility of governments. Also, the executive guarantee is a violation of international obligations and reduces violence and assassinations against the government.

There is no single procedure for the responsibility of governments for the actions of terrorist groups, and the performance of governments has been more influenced by their political approach (Hanjani & farhadnia, ۲۰۱۹, p ۸۳). Therefore, the issue of criminal responsibility of terrorist and hostile states has always been discussed by the international community and lawyers. The concept of criminal responsibility of government's dates back to World War I, and this issue faces serious challenges. Among these challenges was the complexity of the concept of delinquency of terrorist states without providing a single definition. Also, the lack of an international authority to deal with governments' criminal charges is one of the most important challenges in this area. Although there is criminal and civil liability in international law for wrongdoing and harm to the interests of another country, it is still fraught with ambiguities (Salimi, ۱۹۹۷, p ۱۸). It is worth noting that governments have two responsibilities in the fight against terrorism: ۱. Predicting and preventing the occurrence of crime and damages and ۲. Prosecution and punishment of suspects and perpetrators of terrorist crimes (Azari Aghajari, ۲۰۰۹, p ۱۱٦۸).

Thought criminal responsibility of the state as a legal person, a long time ago been discussed by experts in various forms and the efforts that have been done in this area. But theoretical discussion since the Compilation of Article ١٩ of the International Law Commission concerning the responsibility of the government's plan and the plan problem "the international crime governments" was raised in ١٩٦٧ explicitly on the international stage.

This international document for the first time in Article ١٩, Internationally Wrongful Acts governments has divided into two categories:

A. Category of international crimes **B.** and a category called international tort.

Paragraph ٢ of Article ١٩ does not provide a clear definition of international crime, in general, transnational crime, including illegal acts that violated an important and fundamental commitment that in terms of interests of the international community is essential. Such as sanctions for serious violations of rape, right to self-determination, human rights on a large scale (such as slavery, mass destruction, racial discrimination) and basic provisions to protect the environment (such as extensive pollution of the seas).

This definition is very broad, but it can be said that the Commission, "crimes" equivalent "tort" wrongly has been used. "Tort" is meant legal and civil actions and the responsibility arising from it supervisor to compensation. This plan represents a real idea that legal entities, including state - nation, like the natural person's criminal responsibility, although so far not legally binding aspect.

Statute of the International Criminal Court did not provide a clear definition of the crime and Felony has only limited examples. Article ٢٥ says the Statute will have Jurisdiction that crime of natural persons. According to the Statute the International Criminal Tribunal for the realization of the crime and punish the perpetrators, there is material elements, moral and legal. Committing crimes stipulated in Articles ٦, ٧, ٨ of the Statute, whether personal or organized, has a criminal responsibility. This means that if the offense is the direct orders of presidencies, he is internationally known offender, (Such as the crime of genocide) and indeed, the criminal responsibility of the state.

Whether in court "Nuremberg" and "Tokyo" The court stated that "announced an organization as a criminal does not imply that all members of criminal organizations, also those who have participated directly in the commission of acts contrary to law, are charge (Salimi, ١٩٩٧, p ٢٠٨).

A government that directly or indirectly engages in terrorism and inflicts damage on another person or government will be liable for damages. However, there is disagreement among scholars as to the extent of responsibility and response to this terrorist act, and whether the responsibility lies with the person directing or participating in the terrorist operation or his or her government. There is also disagreement as to whether the government alone is responsible or whether individuals and the government are jointly responsible (Ardabili, ٢٠٠٤, p ١٧٥). Therefore, if the government hires armed groups to commit acts of violence against foreign governments and supports the opposition armed groups in various ways, it will be responsible for its actions (Helmi, ٢٠١٦, p ٦٧). In practice, the criminal responsibility of governments has not been explicitly accepted in the international arena, but efforts have been made in this direction. The main problem in identifying the criminal responsibility of states is the lack of an international authority beyond states. Paragraph ٣ of Article ١٩ of the International Law Commission on International Crimes of the State in ١٩٧٦ lists examples of international crimes, and terrorism can be considered an example of international crime, although it is not explicitly mentioned. Although the crime of terrorism has not been criminalized, the offending governments should still be prosecuted, as they are considered a threat to world peace and security. Also, in paragraph ٤ of Article ١٩, the illegal actions of states are an international misdemeanor and the crime of assassination can be considered as an example of illegal actions. Accordingly, because it is an international offense, the government affected by the assassination has the right to file a civil lawsuit, and the hostile government is obliged to pay a formal apology.

The discussion of doctrine can also create a complementary responsibility for governments on the issue of terrorism. At the ٢٠٠٥ UN Summit, the UN Security Council unanimously adopted Resolution ١٦٧٤ on ٢٨ April ٢٠٠٦ on the protection of civilians in armed conflict[٣], including terrorist acts and armed conflict (Zakerian, ٢٠١٥, p ٣٩). The

[٣] . International and non-international

criminal liability of the offending government that has disrupted the world order can be claimed. In this case, criminal liability will be stricter than civil liability. These criminal responsibilities include the punishment of disarmament, the payment of heavy damages, the economic blockade, and the trial of leaders and statesmen.

The draft law of the International Law Commission in ۲۰۰۱ completely eliminates criminal liability. Today, international terrorism is a blatant crime worldwide. This crime used to be committed by individuals and non-governmental groups, now it can be committed not only by governments and it is more common that these governments need to be held criminally responsible and face an international response (Salimi, ۱۹۹۷, p ۲۷۹).

Regarding the rules of state responsibility in the ۲۰۰۱ draft law of the International Law Commission on the international responsibility of states, it states: "Any transgressive international action of that government requires the international responsibility of that government" (Azari Aghajari, ۲۰۰۹, p ۱۱٦۲).

Of course, resorting to force and unilateral action should not cause global chaos and should be met with action by the international community and its strong reaction. Also, a transnational and international organization should hold the hostile and terrorist government responsible and prosecute. For example, in the assassination of General Soleimani by the United States, other governments and fifteen members of the Security Council remained silent. It can be said that international criminal law has structural flaws and weaknesses and this need is felt. In addition to civil liability, international criminal liability is explicitly reflected in international law in an international legal institution. However, there are still differences of opinion in this regard.

Article ۲۵ of the Statute of the International Criminal Court is undoubtedly one of the most important legal elements for the realization of criminal responsibility of political leaders of states that support terrorism (Spetalinck. et.al, ۲۰۱٤, p ٤٥). This article applies precisely to the support of political leaders of states in terrorism to achieve criminal responsibility. Therefore, the UN Security Council, as the most important international body in the field of world peace and security, can refer the matter to the International Criminal Court for initiation of prosecution (Rahami & Moosavifard, ۲۰۱۷, p ۲۲۹).

In order to establish the criminal responsibility of governments and their leaders, the plan of responsibility under the criminal headings of crimes against humanity and war crimes can also be discussed in Articles ۷ and ۸ of the Statute of the International Criminal Court.

۱,۲. The responsibility of governments in the international community for terrorism

Holding states responsible–the theory (Jorgensen, ۲۰۰٤, p۱۰٥). The crime of states has been addressed by the International Law Commission (ILC) with the enactment of laws relating to "the responsibility of states for international wrongdoing." These are the first steps in drafting a law for this area of international law, and include governmental and judicial practice, as well as customary law. However, these laws do not specifically address crimes committed by governments, but address the responsibilities of governments in general.

The responsibility of a genocidal country for a crime has certain advantages. First, any acts of aggression or human rights crimes or assassinations by governments on a large scale cannot be simply attributed to individuals, especially when they are organized and directed through a command body. Secondly, due to the political immunity of government officials, it is usually impossible to hold individual trials of government officials in power. Consequently, all post World War two tribunals have only dealt with former state officials[٤]. Third, after a war, a country can only make up for some financial compensation. The principles governing the responsibility of states for wrongdoing impose obligations on states, and breach of any of these may give rise to liability. A number of subtle issues of government liability, such as whether fault and damages are essential elements of liability formation, have also been referred to the scope of the Basic Law. The responsibility of the state itself, like any element necessary for fault, is neither explicit nor subjective: the specific nature of the responsibility and the level of guilt required, the specific intent, the negligence

[٤] . Although Slobodan Milosevic was indicted by the ICTY while he was still in power, he was only arrested after he stepped down as president of Yugoslavia.

or the consciously, depend solely on the basic laws. The International Law Commission is not a house of revelation, and its authority, like that of the Court, does not detract from the criticism of the Commission and the Court.

The government is responsible for the actions of individuals, and through Nuremberg Race Laws, the actions of individuals can be attributed to governments. This is a joint responsibility of the government and the aggressor, it affects the responsibility of the government and may not even involve the government in criminal liability, but it will be a lever of pressure to compensate. Countries have in the past been publicly convicted of human rights crimes under international law, and the human rights movement has certainly contributed to this political culture.

However, Security Council resolutions condemn hostile and terrorist governments. Public opinion also focuses on the country's leaders and politicians. Certainly exposing the terrorist and criminal acts of governments, even if focused on political leaders, is itself a form of punishment and it has a significant impact on tourism, trade, the economy, and that in itself is a punishment. UN Security Council resolutions in Chapter ٧ can impose military action and sanctions on a country, and this is a lever of international pressure on the aggressor country and terrorism. Of course, it should be noted that these actions of the Security Council are political and not a judicial action because judicial action against a country is a very long process.
After a crime is committed by a state governed by the rule of law, a distinction must be made between reparation and punishment. If a country is required to pay compensation, it is certainly the reason for the responsibility of the aggressor government.
The motive for punishment, such as municipal law, can be deterrent, while the damage is easier to execute but it is very difficult for a country to determine the punishment. The issue of economic, cultural or political sanctions based on the actions of the UN Charter is a form of punishment. Compensation as punishment is another possibility (Ibid, ٢٠٠٤, p ١١٠). It should be noted that the punishment of any country that commits genocide has its limitations.[٥]

٢,٢. Responsibility of the perpetrators of the assassination: Who is responsible?

International crimes such as terrorism can be summarized as follows: ١. some consider criminal liability to be limited to states and believe that only states commit international crimes. ٢. Some also consider criminal liability to be limited to natural persons, which must be proved on the basis of the principle of guilt. ٣. Some also raise the issue of criminal liability between the government and the individual[٦].

Therefore, it can be said that the crime of assassination consists of two pillars, First, the attributability of the action to the state, which is called the active element, and second, the violation of the international obligation, which is called the thematic element.

For example, in general, the US government's action in sending arms to terrorist groups in Syria based on its interpretation of international peace and security will be considered to create international responsibility for that government; because a state cannot violate the Vienna Convention and its ١٩٦٩ international obligation by invoking its domestic law. In addition to the Convention on the Law of Treaties on the International Liability of States Governments, the United Nations Commission on International Law has also accepted this in international judgmental procedure (Kazeruni, S. M& Tadini, ٢٠١٦, p ١٣٢).

٣. The reason for governments not being responsible for terrorism

Undoubtedly in any legal system, national or international, in violation of a binding commitment caused legal responsibility. Sometimes situations arise where a government, commits an act that is incorrect from the international community, but due to special circumstances will be exempt from responsibility. Unfortunately, the international community in the face of massacres and terror, there is not criminal enforceable and even political and the government shall be absolved from responsibility. Protection of human dignity is the main essence of human rights.

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[٥] . Like in the case of Germany, where the Morgenthau plan, with strong elements of collective
Punishment, was rejected and efforts made to reintegrate the country while still requiring the payment of certain reparations.
[٦] . See: Rahami & Moosavifard, ٢٠١٧:٢٢٩; Hanjani & farhadnia, ٢٠١٩: ٨٣; Shamloo & Mohammadi, ٢٠١٩: ١٥٦-١٦٣.

The most important challenge of modern world due to the issue of human rights issues and problems of violation of fundamental those rights by governments. Factors such as satisfaction, self-defense, force majeure, urgency and necessity or eliminate describes illegitimacy of government action Create barriers to international responsibility of government on the basis of the Wrong. So we can say today ways escape criminal liability for failure to states. But what is the solution.

Unfortunately, the international community in the face of massacres and terror, there is not criminal enforceable and even political and the government shall be absolved from responsibility. Protection of human dignity is the main essence of human rights. Apparently, international customs and the treaties as can be seen, In order to be considered wrong action in international terms there are two essential condition (ie violation and the Improper operation attribution) (Gilbert, ۱۹۹۰, pp ۳٤٥-۳٦۹). But because of the conditions and special circumstances, such as " Counter Measures "[۷], "legitimate defense or Self Defence " [۸], "satisfaction or Consent"[۹] ,"force majeure"[۱۰] , "urgency or Distress "[۱۱] and " Necessity State " [۱۲]cannot be considered responsible for the state commits a wrong action (Mostaqimi, and Tarom sarie, ۱۹۹۹, p ٤۱). Because that the government due to its special conditions and circumstances might be a political entity, Supreme interests of its life is threatened.

Governments affected by terrorist attacks are determined to respond to prevent terrorist attacks. Like Iran's attack on Ain al-Assad base in response to the assassination of General Qassem Soleimani. The war against real armed people, the so-called war on terror, faces many legal and practical problems. However, there is a general view about the principled approach to such attacks, and that is that real armed individuals must be in the territory of one of the states. In other words, these people always carry out such attacks from the territory of governments[۱۳].

۱. The aggrieved State in the use of force against the Host State must legally prove that terrorist attacks can be attributed to the Host State, at least because of their effects, in accordance with international treaty law and customary terrorism (Helmi, ۲۰۱٦, p۵۱). In this case, if they do not prove that the terrorist attack belongs to the host government, the host country will be exempt from criminal liability and if that does not happen, the government, which has been harmed by the assassination, has committed an international offense and will be held accountable.
۲. Can a country legitimately defend itself if it is attacked by a terrorist? In international law, due to the lack of a supranational power and a supranational executive force, legitimate defense is a rule, but a rule that is itself an exception to the rule prohibiting the use of force and sanctions of war (Ziaee Bigdeli, ۲۰۱۵, p۳۳). Recourse to legitimate defense has conditions, including armed attack, necessity, appropriateness, urgency, and observance of the fundamental principles of humanitarian law[۱٤]. Article ۵۱ of the UN Charter states that legitimate defense cannot be invoked without an armed attack. Governments are exempt from criminal liability if legitimate defense is exercised and they cannot be charged with criminal liability.

٤. Adopt legislation for responsible governments and punishment strategy

۱,٤. Adopt legislation for responsible states

The international community needs to pass legislation to hold governments accountable, and the legal commission must draft articles codifying on international custom. The Legal Commission finalized the draft articles [۱۵] at its ۵۳rd session and submitted it to the UN General Assembly. These articles have been accepted and will be useful for the

[۷] . Counter Measures IlC Art. ۲۲.
[۸] . Self Defence, Ilc, Art.۲۱
[۹] . Consent, Ilc, Art.۲۰.
[۱۰] . Forcemajor, IlC, Art.۲۳.
[۱۱] . Distress, IlC, Art.۲٤.
[۱۲] . Necessity State
[۱۳] See: Ziaee Bigdeli, ۲۰۰٤:۳۱۰.

[۱٤] . See: Kadkhodaee &Zarneshan, ۲۰۰۷:۹۳-۹۷.
[۱۵] . (Draft Articles on Responsibility of States for Internationally Wrongful Acts, ۲۰۰۱).

future, and it is about holding terrorists accountable. These articles have been accepted and will be useful for the future, and it is about holding terrorists accountable[١٦].

The Articles address the issues identified earlier, in particular the attribution of conduct of agents of the state[١٧], the question of *ultra vires* actions[١٨] and the violation of peremptory norms[١٩]. These laws specify the consequences of wrongful and immoral acts in the form of seizure and payment of damages, and specify the forms of compensation and payment of damages[٢٠]. The articles define reciprocal actions against a hostile country where they specifically require proportionality[٢١]. The concept of crimes and offenses of governments has been a point of contention and hesitation in the preparation of articles (Jorgensen, ٢٠٠٤, p ١٢٠). In the current form, Chapter III defines *"Serious breaches of obligations under peremptory norms of general international law"*, with Article ٤٠ defining such breach as serious, when it *"involves a gross or systematic failure by the responsible state to fulfil the obligation"*. No matter how much the criminal law covers, the responsibility of governments for crimes is still empty, and the responsibility of governments is in accordance with international law (Wyler, ٢٠٠٢, pp ١١٤٧-١١٦٠). Genocide, apartheid, racism, massacres, the right to self-determination, torture, slavery are interpretations of Article ٤٠ that indicate a violation of the law. These ratified articles are necessary to address the international crimes of criminal states. It has already been argued that the responsibility of governments will be reasonable while maintaining relations. Therefore, some believe that determining the crime that these states and individuals have committed is necessary to attribute those crimes to states[٢٢] (Nollkaemper, ٢٠٠٣, p ٦٢٠). The previous legal case shows how the issue of genocide can be dealt with, namely the *Tadic* case before the Yugoslavia Tribunal, and the *Nicaragua* case before the ICJ (De Hoogh, ٢٠٠١, p١٥٦). It should be noted that the provisions of the Geneva Convention can be invoked in cases of serious violations and armed conflict. Thus, although the responsibility of the Yugoslavia government was not in dispute, it should be condemned.

The Yugoslavia Tribunal, at Appeal level, referred to Nicaragua, a case concerning the support for rebels in the country by the United States. In Nicaragua, the court had to decide whether the acts of the Contras were attributable to the US. The court found against it, in accordance with Article ٤ of the ILC Articles, which defines what an organ of a state is – a test the Contras' organizational link to the US failed to fulfil in the Court's opinion. The Appeals Chamber at the Yugoslavia Tribunal, however, tested the case under the content of Article ٨ of the ILC Articles, which defines "Conduct directed or controlled by a State".

The Article sees attribution of the acts of a person or group of persons as an act of a state "if the person or group…is in fact acting on the instructions of, or under the direction or control of, that state in carrying out the conduct". The Appeal Chamber went further and stated that groups should be judged differently; action ultra vires by a person may not be as attributable as by a group, because "if [the group] is under the overall control of a State, it must perforce engage the responsibility of that State for its activities, whether or not each of them was specifically imposed, requested or directed by the State" (Ibid, ٢٠٠١, p ١٧٠).

٢,٤. Strategy for applying legal punishment in the phenomenon of terrorism

In discussing the fight against terrorism, the concept of counter-terrorism or anti-terrorism should also be addressed and the boundaries of the two should be defined. Therefore, in the face of the phenomenon of terrorism, governments that support terrorism or engage in terrorist acts themselves must be held criminally liable on the basis of international instruments. For example, in the case of the assassination of General Soleimani, the criminal responsibility of the US government must be specified. Terrorism therefore includes a full range of offensive measures to prevent, repel and respond to terrorism, which is the criminal study of the last stage of the fight against terrorism, which gives it a legal aspect. The strategy of legal punishment for terrorist acts emerged from ١٩٩٣ to ٢٠٠٠ in the Third Committee and the

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١٦ . As demonstrated by the interest in the academic literature, for example a whole issue of the European Journal of International Law (Vol. ١٣, No. ٥) has been devoted to the subject.

١٧ . Part One, Chapter II.

١٨ . Article ٧, *"Excess of authority or contravention of instructions".*

١٩ . Part Two, Chapter III, Articles ٤٠ and ٤١.

٢٠ . Part Two, Chapter II.

٢١ . Part Three, Chapter II, Article ٥١.

٢٢. See also note ٥٢; which raises a separate issue that will not be explored here but should be mentioned. There is general agreement that the attribution of the crime of a state official to the state entails the state's obligation to prosecute this individual.

UN Commission on Human Rights. In this strategy, more attention is paid to the violation of basic human rights and the rights of citizens in terms of terrorist acts.

In this way, the criminal act and perpetrators of terrorism are considered, and the discussion of negotiations with terrorists and the governments of the supporters of terrorism is eliminated, and the legal and official approach to the criminal acts of terrorists is on the agenda. The phenomenon of terrorism and the fight against it must be looked at from an international perspective. As Judge Guilaum believes, terrorist acts should be criminalized in all countries.

Accordingly, the rules of international criminal procedure should be reviewed and amended, and the territorial jurisdiction of the courts should be recognized, even when terrorist attacks are carried out by foreign nationals, even if they have taken place abroad. Eventually, the terrorists will be arrested, tried and punished, or returned to their own country for trial (Flori, ۲۰۰۳, p ۲۸۸).

The strategy of imposing legal punishment is not an effective mechanism in the fight against terrorism. In addition, the extradition system is unsatisfactory in practice, and international courts are ineffective in dealing with terrorists. Therefore, the approach of using force can guarantee effective action against international terrorism (Abdullahi, ۲۰۰۹, p ۱۱۷). It is worth noting that the international conventions for the suppression of acts of nuclear terrorism, which were adopted at the General Assembly in ۲۰۰۵. It basically has a strategy of enforcing legal punishment.

Conclusion

The international criminal system has shortcomings and inefficiencies in the fight against terrorism. The international criminal system does not have a clear and comprehensive strategy to deal with the criminal phenomenon of terrorism. The fight against terrorism, which is one of the examples of crimes against humanity and is not dominated by the principle of universal jurisdiction. First, government judicial action must be taken in international institutions, and international law must be passed and approved by all countries. This law should impose punishment on genocidal countries against homeless people. If more states pursue their options through the ICJ, more cases will set precedent for the responsibility of states for crimes under international law. The Nuremberg trials are a case in point for such custom being an even stronger base than a positive law that is not applied. Secondly, a fact-finding commission should be set up, as there is a legal vacuum in this regard. This commission can determine the assignment of responsibility to a country or a neighboring country and by the ICJ and may be less reluctant to speak up against criminal state practice as a consequence. Such combination of forces increases the chance to provide some form of justice to the region, and they may be better for reconciliation than a few high profile cases against individual perpetrators. I find this a very satisfactory version of international justice that would nicely complement the trials of individuals in the ICC. There are tools to establish justice and the responsibility of governments against killing people and assassinating innocent people. But the attitude of countries must change and be supported immediately by the political will of governments. Crimes committed against innocent people can be enforced by international law, and only by punishing those who commit these crimes. In conclusion, we can say that, all factors preclude criminal responsibility a distinctive feature and common and the existence of a country's political, macroeconomic benefits it threatened the status with uncontrollable and non-ordinary.

One of the international criminal measures against terrorism mentioned in international documents is the trial and extradition of criminals. Therefore, it can be concluded that if the universal jurisdiction to try the perpetrators of terrorism is accepted in the international community, the phenomenon of terrorism will be greatly reduced. Because the phenomenon of terrorism and its perpetrators are introduced internationally, and all countries have the criminal authority to prosecute and punish these perpetrators. Therefore, if in international crimes, including assassination, the criminal responsibility of governments in addition to the criminal responsibility of natural persons who commit the crime of assassination is not accepted in international forums, the fight against international crimes and holding governments accountable and punishing terrorists will be fruitless. Another conclusion that can be drawn is that some powerful and large countries, such as the United States, absolve themselves of criminal responsibility for the phenomenon of terrorism through their political exploitation. Therefore, the Permanent International Court of Justice for the Prosecution of Terrorist Crimes prevents this abuse. However, instances of terrorism are not provided for in international resolutions and conventions. Therefore, the International Court of Justice can be a good way to deal with the terrorist acts of governments and individuals. This will be achieved if the countries that are victims of terrorism become members of the Charter and international courts, so that they can file criminal charges in these courts in the event of a terrorist attack. Serious efforts are needed to establish the foundations of governments' criminal responsibility for terrorist crimes, and to oblige hostile countries to pay compensation and prosecute perpetrators of terrorism. Another solution to establish criminal responsibility for the terrorist state is for the host government to

explicitly endorse the actions of individuals as its own. The government's responsibility to support and shelter terrorist groups has not yet been determined, but in practice the host government is responsible and exposes itself to legitimate defense.

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