

POTENTIAL OF PROSECUTING TERRORISM BASED ON THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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Article	Abstract
Keywords: Aggression; Crimes Against humanity; ICC; Terrorism; Warcrimes DOI: 10.28946/scls.v3i1.4784	<p>Terrorism can take many forms, making it particularly challenging to combat. The International Criminal Court (ICC) has been given a prominent role in the fight against terrorism but due to several reasons, the work of the board encounters obstacles. The aim of the research is to demonstrate whether the International Criminal Court (ICC) effectively fights against international terrorism. During the research, an explanatory research method was used, and with the results obtained, the analyze can be conluded that there are several obstacles facing the ICC in the fight against terrorism, the solution of which will take a long time, and the effectiveness of the ICC depends to a large extent on the fact that the missing great powers also join the Statute. Until this happens, the effectiveness of the ICC's activities can be questioned.</p>

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A. INTRODUCTION

Terrorism has accompanied the development of humanity for a very long time. Regardless of the era, different countries and nations have always tried to combat the threat of terrorism, even by using the law. The fight against terrorism soon transcended the status of an internal affair of individual states, which in the 20th century led to the creation of international conventions, and by the 21st century, states were also acting in the form of international military coalitions to combat terrorist organisations and movements that were also dangerous at global level.

The International Criminal Court (ICC) has been given a prominent role in the fight against terrorism, but the lack of a clear definition of terrorism to date has made effective action against terrorism very difficult. However, the Court is able to act to prosecute the perpetrators of terrorism through other criminal offences in the ICC Statute.

The following questions can be asked in relation to the above statements: what causes the difficulties in defining terrorism? What other criminal offences are used by the ICC to combat terrorism? What are the requirements for the ICC to act?

I will try to answer these questions in this publication and try to give a clearer picture of the ICC's activities in this area.

B. RESEARCH METHODOLOGY

During my research, I used an explanatory research method, providing a precise description of the problems associated with defining terrorism and explaining terrorism as a phenomenon, while also attempting to precisely define the ICC's fight against terrorism. To this end, I used domestic and international journals and specialist books and conducted basic research.

C. RESULT AND DISCUSSION

1. Problems with the Definition of Terrorism

Before I go into the ICC's activities in more detail, I think it is necessary to clarify why the fight against terrorism is difficult, through the conceptual problem of terrorism. Terrorism itself is a Latin term (*terrere/derrere*) meaning to frighten, to deter.¹ During the 20th century, several attempts were made to develop a concept of terrorism, but the conventions on the subject either did not enter into force or failed due to opposition from certain countries or did not provide a concept that met all the needs.²

There were several problems behind all this:

On the one hand, terrorism can take many forms (e.g. individual terrorism, state terrorism, etc.), so defining a concept that encompasses all its forms would be too abstract and would be detrimental to its practical application. A further problem is to distinguish certain forms of terrorist offences from certain offences linked to organised crime (e.g. easily linked to trafficking in human beings or drugs). Also, the definition of an act as a terrorist act could necessarily include subjective elements, leading to highly interest-based definitions (for example, the fact that terrorists themselves identify themselves as either freedom fighters or resistance fighters is inherently problematic).³

As a consequence, specific, concrete acts were named for the purpose of criminalising terrorism, rather than a single manifestation of terrorist acts. For example, conventions have been drawn up on hijacking, terrorist acts against persons protected by international law, hostage-taking, terrorist acts against maritime transport, terrorist acts by bombings and terrorist financing.⁴

In defining the term, however, we should not forget that different authors have chosen different variations of different conceptual elements in defining terrorism. Public international law and domestic law are heavily influenced by politics, partly for this reason there is no consensus on the definition of the elements of terrorism. As an example, 109 different definitions of terrorism have been developed over the past decades.⁵

At the same time, there are aspects of terrorism that can be examined to get a clearer picture of what it is:

One of its characteristics is that terrorism itself is a so-called "chameleon-like" crime, i.e. it can be included in several criminal categories (e.g. it can be included in the categories of war crimes and/or crimes against humanity). It all depends on the circumstances in which the terrorist acts were committed.⁶

¹ Katalin Siska, *The Basic Issues of International Law in the Theory and History of International Relations* (Debrecen: Debreceni University Press, 2010), 59.

² Antonio Cassese, *International Criminal Law, International Criminal Law* (Oxford: Oxford University Press, 2003), 120.

³ Újvári Emese, "International Terrorism and the Fight against International Terrorism" 5 (4) (2008), <https://doi.org/https://ojs.lib.unideb.hu/DJM/article/view/6281>.

⁴ Cassese, *Int. Crim. Law*, 120-21.

⁵ Attila Gyűrű, "The Concept of Terrorism in International Law," n.d., 120, <https://core.ac.uk/download/pdf/158846853.pdf>.

⁶ *Ibid.*, 125.

Another trademark is "victim impersonation". This means that in terrorist attacks, the perpetrators, in most cases, attack their victims randomly. What matters to the perpetrator is that the victim is killed, injured, feels threatened, or at least cornered, rather than their gender and age, and thus functions as a tool to achieve the perpetrator's political, religious and/or ideological goals.⁷

It also includes the use or threat of violence to intimidate a section or a whole of society, to achieve religious, political or ideological aims, and acts specifically directed against the safety and security of civilians (but may also be directed against military or official persons).⁸

Finally, another general characteristic is that terrorist acts are often linked to international or national armed conflicts, or the scale of the terrorist acts has the characteristics of crimes against humanity, or state actors are involved and these acts extend beyond state borders, thus endangering the security of other states.⁹

All of this makes the fight against terrorism very difficult, for the reasons outlined above.

In the next chapter, taking into account the above findings, I will briefly discuss the categories of crimes that can be included in the definition of terrorism and that fall within the jurisdiction of the ICC under the ICC Statute.

2. The Classification of Terrorism from the Point of View of International Criminal Substantive Law

a. Terrorism as a war crime

The Fourth Geneva Convention of 1949 (Article 33(1)) was the first international convention to treat terrorist acts as war crimes. The Convention prohibits all acts of terrorism committed against civilians or persons with protected status, whether or not committed by armed forces against protected persons who are prisoners in enemy or occupied territory. Similarly, acts committed by civilians fighting alongside enemy troops or acts committed by civilians or organised armed groups against occupying forces are prohibited.¹⁰

This includes acts that constitute attacks or threats against civilians or civilian objects, or acts that are intended to intimidate civilians. The essential element is that the unlawful acts must be aimed at instilling fear in the civilian population and civilian populations.¹¹

b. Terrorism as a crime against humanity

Terrorist acts are crimes against humanity if they meet certain specific requirements, namely:

- 1) the acts are part of a large-scale or systematic attack against a civilian population, and
- 2) offenders are aware that their actions are part of a general or systematic pattern of behaviour.

In these cases, terrorist acts take the form of other crimes, such as murder, destruction, torture, rape, persecution or other acts of inhuman behaviour. These acts must also be directed against the civilian population.¹²

c. Terrorism as a distinct international crime

This includes acts which:

- 1) crossing borders

⁷ Ibid.

⁸ Gábor Mészáros, "Constitution in Crisis" - the Dimensions of the Management of Special Situations up to the Day of the Adoption of the Fundamental Law" 2 (2017): 128, https://jura.ajk.pte.hu/JURA_2017_2.pdf.

⁹ Cassese, *Int. Crim. Law*, 125–26.

¹⁰ Ibid., 126.

¹¹ Ibid., 127.

¹² Ibid., 128.

- 2) include offences that are punishable in most national jurisdictions (e.g. murder, kidnapping, torture)
- 3) aim to create fear through threats or acts of violence against specific groups or the population as a whole.
- 4) must be committed for political, religious or ideological reasons.
- 5) In these cases, the victims of terrorism can be civilians, military personnel or officials.¹³

d. Is terrorism crime under the international law or a transnational crime?

In the last decade, the legal literature - for the reasons listed in Chapter C - has been grappling with the question whether terrorism, or more precisely transnational terrorism that crosses state borders, can be classified as a crime under international law proper or as a purely transnational crime.¹⁴ The distinction is not at all apparent, since *crimes under international law* are offences which are criminalised by international law i.e. the basis for criminalisation is not domestic law but international law¹⁵ - states are therefore under an obligation under international law to criminalise and prosecute them and a further criterion is the offence's nature as a threat to the common interests of the international community. By contrast, transnational crimes, as the mirror translation of the term implies, are transnational crimes, the reason for acting at the international level is that they violate peaceful relations between states and their transnational dimension requires the international community to cooperate seriously. International terrorism is classically include in this latter category of crimes, but when we talk about international crime and cross-border deviance, we must necessarily bear in mind an aspect which, at least in our view, is a guiding principle for the assessment of crimes under international law.¹⁶

1. The international character of a given offence is manifested at least at two levels: on the one hand, the gravity of the offence is such that it threatens the entire international community, and the prosecution of such offences therefore derives from the force of international law;
2. on the other hand, the criminality of the offence derives from domestic law, but thanks to globalisation and other factors, the plot does not remain within the borders of a particular state, but transcends them. In this way, it can be said that international crimes in the broader sense include not only crimes based on international law proper, but also so-called "internationalising" crimes, where the perpetrators resort to the most fundamental source of international law, the international treaty in order to act more effectively and to eliminate or minimise the threat to the international community.¹⁷

3. The Creation of the International Criminal Court

A small number of medieval (e.g. the von Hangebach tribunal) and modern precedents, and later the experience of the international military tribunals in Nuremberg and Tokyo after

¹³ Ibid., 128–30.

¹⁴ Fiona de Loundras, "Terrorism as an International Crime", *Routledge Handbook of International Criminal Law, Enforcing International Law Norms Against Terrorism* (London: Routledge, 2014), 169–72, <https://doi.org/10.5040/9781472563057.CH-010>.

¹⁵ Marcello Di Filippo, "Terrorist Crimes and International Co-Operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes," *European Journal of International Law* 19, no. 3 (2008): 548–52, <https://doi.org/10.1093/ejil/chn027>.

¹⁶ Nafiu Ahmed, "The Effect of Globalization: Terrorism and International Crime," *IOSR Journal of Business and Management (IOSR-JBM)*. e-ISSN 18, no. 11 (2016): 43–45, <https://doi.org/10.9790/487X-1811034349>.

¹⁷ Mira Banchik, "The International Criminal Court & Terrorism," 2003, 6–9, <https://www.bradford.ac.uk/library/library-resources/journal-of-peace-conflict-and-development/ICC-and-Terrorism.pdf>.

the Second World War, and the international tribunals that punished the perpetrators of the atrocities of the South Slavic wars and the Rwandan massacres in the 1990s, led nations to adopt the Statute establishing the International Criminal Court.¹⁸

The final text of the Statute, submitted and revised by the International Law Commission, was adopted in 1998 by 120 of the 127 participating States. The minimum number of ratifications required for entry into force was 60, which was achieved on 1 July 2002.

The jurisdiction of the International Criminal Court is complementary, i.e. it only complements national criminal jurisdiction, but does not take precedence over the proceedings of national criminal courts. It can only be invoked if the national court fails to act for some reason. The International Criminal Court works in close cooperation with the United Nations (but is not the main organ of the International Criminal Court), the rules of which are laid down in a separate agreement with the International Criminal Court.¹⁹

The extension of the ICC's jurisdiction to punish the perpetrators of drug trafficking or international terrorism met with such fierce opposition that States preferred to sacrifice them, and only in the Final Act of the Conference did they hint that, after the entry into force of the Rome Statute, the Assembly of States Parties might consider at a later date whether it would not be appropriate to extend the ICC's jurisdiction to these crimes.²⁰

Today, therefore, the concept of international crime can be illustrated by two concentric circles, which can be broadened in scope. Most international crimes are covered by the Rome Statute. The procedural prerogatives of international criminal justice are exercised for the benefit of both States and the International Criminal Court. It is the principle of complementary jurisdiction, the so-called principle of complementarity, which allows States Parties to the ICC to decide who is competent to prosecute a particular crime, the ICC or the States.²¹

Certain crimes (such as drug trafficking, international terrorism) are not included in the Rome Statute, but this in no way diminishes the rights of States to exercise their criminal jurisdiction to act to punish them, on the basis of the international conventions they have adopted on the subject. There are also already examples of crimes not covered by the Rome Statute being dealt with by other international courts or so-called hybrid courts, such as the Special Tribunal for Lebanon for the assassination of former Lebanese Prime Minister Rafik Hariri by terrorists.²²

The scope of international crimes is therefore certainly and obviously wider than what is covered by the Rome Statute. However, it can hardly be denied that the vast majority of international crimes - and the most important ones - are covered. The list can be extended, but the Rome Statute, focusing on procedural matters, does not contain any substantive legal precondition for the inclusion of new crimes. Given the realities and the conventions of international diplomatic practice, this is likely to be the case if there is a quasi-consensus on the significance of the act and the need for retaliation.²³

¹⁸ Péter Kovács, "International Criminal Arbitration" in András JAKAB - Balázs FEKETE (Eds.): Internet Encyclopedia of Law," 2018, https://real.mtak.hu/83275/1/nemzetkozi_buntetobiraskodas_u.pdf.

¹⁹ Siska Katalin, "International Law," *Győr: UNIVERSITA-GYŐR Nonprofit Kft*, 2023, 327.

²⁰ Kovács, "International Criminal Arbitration" in András JAKAB - Balázs FEKETE (Eds.): Internet Encyclopedia of Law."

²¹ Ben Saul, "The Legal Relationship between Terrorism and Transnational Crime," *Sydney Law School Research Paper No. 17/37* Vol. 17, N, no. No. 3 pp. 417-452 (2017): 177, <https://doi.org/10.2139/ssrn.1699568>.

²² Yassin El-ayouty and I Introduction, "International Terrorism under the Law," *LISA Journal of International & Comparative Law* 5:486 (1999): 491-949, <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1228&context=ilsajournal/>.

²³ Marina Aksenova, "Conceptualizing Terrorism: International Offence or Domestic Governance Tool?," *Journal of Conflict and Security Law* 20, no. 2 (2015): 278-83, <https://doi.org/10.1093/jcsl/krv002>.

4. Potential For Terrorism Prosecutions Under The Icc Statute

The Statute of the International Criminal Court (ICC) does not specifically include terrorism, but as I mentioned in the first chapter, terrorist acts can be included in several criminal categories.

Under the Statute, in order to be brought before the ICC, an accused person must meet several criteria. There are three jurisdictional requirements and three admissibility requirements. The three jurisdictional requirements are:

- a. subject matter jurisdiction (which acts constitute criminal offences)
- b. territorial or personal jurisdiction (where the offences were committed or by whom)
- c. temporal jurisdiction (when the offences were committed).²⁴

a. The jurisdictions

1) Subject matter jurisdiction

Article 5 of the Statute defines the crimes of grave concern to the international community to which the ICC's jurisdiction is limited, which are detailed in Articles 6 to 8.²⁵ These include:

- a) genocide - the total or partial destruction of members of a targeted national, ethnic, racial or religious group, e.g. by creating living conditions for members of the group that result in the total or partial physical destruction of the group²⁶
- b) Crimes against humanity - deliberately committed as part of a widespread or systematic attack against a civilian population, e.g. murder²⁷
- c) war crimes - depending on whether you are talking about an international or non-international conflict, 74 crimes are covered, but the most serious ones are punishable under the 1949 Geneva Convention, such as hostage-taking²⁸
- d) the crime of aggression.

The crime of aggression is an interesting case. According to paragraph 2 of the Explanatory Memorandum to the Statute (as opposed to the three elements mentioned above), the scope of aggression and its elements are not addressed in the Statute, as the drafters of the document have defined it as a future task and have stressed that the result of this will be binding only on States Parties that accept the addendum.²⁹ This was amended at the ICC's first review conference in Kampala. The amendment stipulated that the ICC can only exercise jurisdiction over the crime of aggression after two jurisdictional filters have been met:

- a) if the amendment enters into force in all 30 Member States and
- b) if, on or after 1 January 2017, the Member States, the assemblies of the Member States have voted to allow the Court of Justice to exercise jurisdiction.³⁰

After the amendment, the crime of aggression was defined as "the planning, preparation, initiation or execution by a person in a position to exercise effective control or direction over a

²⁴ Sándor Szemesi, "The Institution of the International Criminal Court in International Law," n.d., 6–14, <https://dea.lib.unideb.hu/server/api/core/bitstreams/f698f840-883c-4cbb-a2cf-471a7d733bb3/content>.

²⁵ *Rome Statute of the International Criminal Court*, n.d., Article 5, <https://www.parlament.hu/irom37/4490/4490.htm>.

²⁶ *Ibid.*, Article 6.

²⁷ *Ibid.*, Article 7.

²⁸ *Ibid.*, Article 8.

²⁹ Péter Kovács, *Introduction to the Case Law of the International Criminal Court*, In. *Introduction to the Introduction to the International Criminal Court Legal Monographs* 14. Ed. by Balázs Schanda (Budapest: Pázmány Press, 2020), 141.

³⁰ "Resolutions and Declarations Adopted by the Review Conference, Resolution 6," 2010, https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/OR/RC-11-Part.II-ENG.pdf.

State, political or military action, of an act of aggression in its nature, gravity and degree, which constitutes a grave breach of the Charter of the United Nations."³¹

The Statute defines the crime of aggression as occurring "when a State uses armed force in violation of the territorial sovereignty of another State acts of aggression against the integrity or political independence of a State or in any other manner inconsistent with the Charter of the United Nations."³² It adopts United Nations General Assembly Resolution 3314 as a list of the facts of aggression, e.g. a state commits aggression against another state if it annexes one of its territories.³³

2) Territorial or individual jurisdiction requirements

An individual can only be prosecuted if:

- a) the offence was committed within the ICC's territorial jurisdiction, or
- b) a national of a State that falls within the territorial jurisdiction of the ICC commits a crime.³⁴

3) Territorial jurisdiction

The territorial jurisdiction of the ICC includes the territories, registered ship and registered aircraft of States which:

- a) members of the Statute or
- b) have accepted the jurisdiction of the ICC and have submitted a declaration to this effect to the Court.³⁵

4) Personal jurisdiction

It covers all natural persons, regardless of where they reside or where the offence was committed, if they are nationals:

- a) a Member State which has accepted the Statute, or
- b) a country that has accepted the jurisdiction of the Court of Justice by accepting a declaration.³⁶

5) Temporal jurisdiction

It extends to offenders who committed the crimes after the entry into force of the Statute, i.e. from 1 July 2002, and jurisdiction also extends to States that acceded to the Convention after the entry into force, but the ICC Statute may exercise jurisdiction over crimes committed after the entry into force of the Statute in that State.³⁷

b. The admissibility requirements

In the area of admissibility, three conditions must be met in order to open an investigation:

- 1) the prosecutor general must have a prima facie case for believing that an offence within the jurisdiction of the Court has been or is being committed in order to open an investigation,
- 2) the investigation must comply with the principle of complementarity and

³¹ "Review Conference on the Rome Statute of the International Criminal Court" (Kampala, Uganda, 2010), [https://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/p7_ta\(2010\)0185_/p7_ta\(2010\)0185_hu.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/p7_ta(2010)0185_/p7_ta(2010)0185_hu.pdf).

³² "Charter of the United Nations," in Article 39, 1956, Art. 39, <https://net.jogtar.hu/jogszabaly?docid=95600001.tv>.

³³ *Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX)*, n.d., Article 3. (a), <http://hrlibrary.umn.edu/instreet/GAres3314.html>.

³⁴ *Rome Statute of the International Criminal Court*, Article 12(2)(a)-(b).

³⁵ Sándor Szemesi, "The Institution of the International Criminal Court in International Law," 11.

³⁶ *Rome Statute of the International Criminal Court*, Article 25(1)-(3).

³⁷ *Ibid.*, Article 11(1)-(2).

3) the investigation must serve the principles of justice.³⁸

a. The principle of complementarity

The principle of complementarity means that the Court of Justice will only bring proceedings against an individual if the state concerned cannot or does not want to act on the case. For this reason, if there is a national investigation into the offences in question, the Court will not prosecute the case in question, irrespective of the outcome of the proceedings before the national court. If the national proceedings were lawful but the investigation was concluded without a criminal charge being brought, or if the accused has been acquitted by the court, the Court may not bring criminal proceedings against the person in question.³⁹

b. The severity

The Court of Justice initiates proceedings when the offence is serious enough to justify its intervention.⁴⁰

c. The administration of justice

The Prosecutor General does not open an investigation if, taking into account the gravity of the offence and the interests of the victims, there are reasonable grounds to believe that an investigation would not be in the interests of justice. Alternatively, if an investigation has already been opened, and important evidence has been obtained to support the indictment, and there is no reasonable doubt as to the suspicion, the prosecutor general must decide whether an indictment, taking into account all the circumstances, would serve the interests of justice.⁴¹

5. Attempts To Extend The Statute's Jurisdiction

As you can see, the ICC's subject-matter jurisdiction includes criminal acts that seriously undermine the security of mankind, which does not cover all crimes, but certainly the most important ones.

Relatedly, there is no specific mention of apartheid, drug trafficking or even terrorism in the Statute. However, this does not mean that, in the light of the crimes not included in the Rome Statute, States Parties cannot take action within their own criminal jurisdiction to punish these crimes, on the basis of the provisions of the international conventions they have adopted on the same subject.

It is important to note that states consider that punishing the overwhelming proportion of international crimes is sufficient for national prosecution. In the case of fugitives, in order to prevent them from evading prosecution, States have extended their criminal jurisdiction to offences committed outside their territory through various conventions. In the case of terrorism, for example, this is possible through the aforementioned conventions governing specific manifestation of terrorism, which apply the principle of "aut dedere, aut judicare" ("either surrender or be punished").⁴²

At the time of the adoption of the Statute, there was strong opposition to the inclusion of terrorism in the ICC's jurisdiction, due to the specific nature of terrorism (e.g. support for

³⁸ Ibid., Article 18(1)-(3).

³⁹ Sándor Szemesi, "The Institution of the International Criminal Court in International Law," 11-12.

⁴⁰ *Rome Statute of the International Criminal Court*, Article 17(1)(d).

⁴¹ Ibid., Article 53(2)(c).

⁴² Péter Kovács, "Introduction to the Case Law of the International Criminal Court," in *In. Introduction to the Introduction to the International Criminal Court., Legal Monographs 14. Ed. by Balázs* (Budapest: Pázmány Press, 2020).

various resistance movements). However, the Final Act of the Statute left open the possibility of a later inclusion.

The list of Statutes, as I mentioned, can be extended. It does not contain any substantive legal conditions in this area, but focuses on procedural issues when introducing new offences. In the light of international diplomatic practice, this is most likely to be the case where there is unanimity as to the significance of the offence and the retaliation for it.

The concept of terrorism has not yet been included in the Statute, but it can be included in the Statute for the crimes falling within its jurisdiction, in particular war crimes, crimes against humanity and aggression, and it is possible to punish the perpetrators of terrorist acts within the framework of these crimes.

However, there are also examples of crimes not covered by the Statute being dealt with by other international courts or mixed (hybrid) courts, such as the Special Tribunal for Lebanon for the assassination of Lebanese Prime Minister Rafik Hariri.⁴³

6. The Special Tribunal For Lebanon

The Special Tribunal for Lebanon was established following an agreement between the Lebanese Government and the United Nations following the terrorist bombing of Lebanese Prime Minister Rafik Hariri and twenty-one other victims on 14 February 2005.

The Lebanese government suspects that the suspected perpetrators of the terrorist act were Lebanese citizens who fled to Syria after the attack and most likely came from there.

It was established in The Hague in 2007 at the request of the Lebanese government, following a UN Security Council resolution.

The Special Tribunal is composed of a panel of eleven judges, consisting of a preparatory chamber (with one international judge), a trial chamber (with one Lebanese and two international judges, and one international and one Lebanese associate judge), and an appeals chamber (with two Lebanese and three international judges). The Lebanese judges are appointed by the UN Secretary-General from a list drawn up by the Lebanese Judicial Council, and the international judges are proposed by UN member states. Their term of office is three years, renewable.⁴⁴

Life imprisonment or imprisonment for a fixed term is possible, taking into account the Lebanese Code and the relevant Lebanese case law of the Lebanese judiciary.

Syria is not cooperating with the panel, so the proceedings are taking place in absentia.

In the first-instance verdict, delivered on 18 August 2020, the first defendant, Salim Ayyash, was found guilty and Hassam Habib Merthi, Hussein Hassan Oneissi and Assad Hassan Sabra were acquitted.⁴⁵

7. CONCLUSIONS

As can be seen, a more effective fight against ICC terrorism would certainly require the creation of a single definition of terrorism. One of the biggest obstacles to date is whether the various resistance movements qualify as terrorist organisations. Several states support resistance groups fighting on the territory of other states, which seek to destabilise the state in question, thus implementing state terrorism. This means that a terrorist organisation carries out attacks with the knowledge, authorisation, assistance or commission of a state. They aim to achieve their goals by destroying individuals or groups considered dangerous by the state, destabilising other states or changing the balance of power in those states.

⁴³ Kovács, *Introduction to the Case Law of the International Criminal Court*, 29-31.

⁴⁴ *Ibid.*, 42.

⁴⁵ *Ibid.*, 43.

Closely related to this, the ICC Statute has not been ratified by prominent members of the UN Security Council such as the United States, Russia and China. They themselves support movements and armed organisations whose legitimacy is questionable, and in the course of conflicts the soldiers of these states may commit acts that constitute international crimes, even when the military intervention itself was lawful (e.g. self-defence). Their delay in acceding to the Convention provides an excuse for other states not to accede to it. All this makes it difficult for states to cooperate with the ICC without fear of being sanctioned by the Court for failing to comply with their obligations to the ICC.

The ICC would provide a more efficient and impartial forum for conducting terrorism-related proceedings than nation-state courts. It would have stronger international legal safeguards to ensure that the freedoms of the accused are not violated and would be able to act on their behalf in cases involving multiple States. More importantly, it would send a message to the international community that it condemns and punishes the perpetrators of terrorist acts.

To sum up, a more effective definition of terrorism and the accession of states with serious powers to the ICC Statute would be essential for the ICC to function more efficiently, thus enhancing cooperation to make the fight against terrorism as an international crime even more effective.

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