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INTERNATIONAL TERRORISM AND ITS IMPACT ON CIVIL
FREEDOMS IN IRAQ AFTER 2003: A CRITICAL ANALYSIS OF
THE RIGHT TO LIFE AND PERSONAL SECURITY

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FREEDOMS IN IRAQ AFTER 2003: A CRITICAL ANALYSIS OF
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MOHAMMED SALMAN MAHMOOD (94859)



A Thesis submitted to the Ghazali Shafie Graduate School of Government in
fulfillment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia

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ABSTRAK

Keganasan merupakan salah satu ancaman terhadap masyarakat antarabangsa, justeru, semua pihak adalah bertanggungjawab melindungi warga mereka. Masyarakat antarabangsa bukan sahaja mempunyai hak, malah kewajipan untuk berbuat demikian. Mereka perlu mengambil langkah yang terbaik untuk memastikan bahawa setiap usaha mengekang keganasan tidak menjadi satu konsep menyeluruh yang boleh digunakan untuk menghalalkan pelanggaran hak asasi manusia. Kebanyakan dokumen perundangan mentakrifkan keganasan sebagai satu system ugutan dan tingkah laku terancang yang ganas yang direka dengan tujuan untuk mewujudkan ketakutan dalam sesebuah masyarakat, demi kepentingan seseorang individu atau kumpulan tertentu, sama ada di pihak penyokong atau penentang demi mencapai cita-cita mereka. Takrifan kepada istilah keganasan adalah tidak jelas, terutamanya sekiranya merujuk Resolusi Pertubuhan Bangsa-Bangsa Bersatu 1373 yang mengutarakan dua maksud keganasan yang berbeza; penganas mengikut konteks sebuah negara mungkin merupakan pejuang kebebasan untuk sebuah negara yang lain dan juga sebaliknya. Kajian ini adalah berkait rapat dengan masalah kurangnya takrifan yang jelas untuk istilah “keganasan antarabangsa” dan “perbuatan keganasan” di dalam Akta Anti-Keganasan Iraq No. 13 tahun 2005, serta kelemahan konvensyen antarabangsa mengenai keganasan, yang telah menimbulkan kesukaran untuk mengguna pakai satu standard yang seragam di peringkat antarabangsa dalam menentang keganasan. Tujuan utama tesis ini juga adalah untuk menganalisa kesan keganasan terhadap kebebasan awam di Iraq selepas tahun 2003 dengan memfokuskan kepada hak untuk hidup serta keselamatan peribadi. Di dalam menganalisa objektif utama tesis ini, salah satu persoalan kajian yang ditimbulkan adalah berkaitan kesan keganasan antarabangsa ke atas kebebasan awam, iaitu, hak untuk hidup dan keselamatan peribadi di Iraq selepas tahun 2003. Kajian ini mengaplikasikan pendekatan kaedah penyelidikan doktrin perundangan dan empirikal. Dapatan tesis telah membawa kepada satu kesimpulan yang menyatakan bahawa keganasan sememangnya memberi kesan terhadap kebebasan awam di Iraq selepas tahun 2003 terutamanya berkaitan hak untuk hidup dan keselamatan peribadi. Sehubungan itu, antara cadangan yang dikemukakan adalah untuk meminda atau memansuhkan Akta Anti-Keganasan Iraq No. 13 tahun 2005 berhubung takrifan istilah “keganasan” dan “perbuatan keganasan”.

Kata kunci: Keganasan, Keganasan Antarabangsa, Kebebasan Awam, Hak Asasi Manusia, Akta Anti-Keganasan Iraq No. 13 tahun 2005.

ABSTRACT

Terrorism is one of the threats against which the international community, above all states, must protect their citizens. They have not only the right but also a duty to do so. States must take the greatest care to ensure that counter-terrorism does not become an all-embracing concept that could be used to justify violations of human rights. Many legal documents define terrorism as an organised system of intimidation with violence behaviour designed to generate fear in a community to accomplish the interests of certain individuals or groups, whether acting for or in opposition. The definition of terrorism is unclear, especially as the UN's 1373 Resolution indicates a dual meaning of terrorism because one country's terrorist can be another country's freedom fighter and vice versa. This thesis revolves around the problems of lack of having a clear definition of the terms "international terrorism" and "terrorist acts" under the Iraqi Anti-Terrorism Act No. 13 of 2005 as well as the weaknesses of the international conventions on terrorism, which has made it difficult internationally to adopt a uniform standard in fighting terrorism. The main objective of this thesis is to analyse the impact of international terrorism on civil freedoms in Iraq after 2003 focusing mainly on the right to life and personal security by examining the Iraqi Anti-Terrorism Act No. 13 of 2005. In analysing the main objective of this thesis, one of the research questions posed is on the impact of international terrorism on civil freedoms that is, the right to life and personal security in Iraq after 2003. The methodologies adopted in this thesis are doctrinal legal research and empirical research approach. Based on the findings, the thesis concludes that the impact of international terrorism on civil freedoms in Iraq after 2003 has indeed affected the right to life and personal security. One of the recommendations put forward based on the findings is that, there is a need to amend/repeal the Iraqi Anti-Terrorism Act No. 13 of 2005 as far as the definitions of "international terrorism" and "terrorist acts" are concerned.

Keywords: Terrorism, International Terrorism, Civil Freedom, Human Rights, Iraqi Anti-Terrorism Act No. 13 of 2005.

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LIST OF ABBREVIATIONS/NOTATIONS/GLOSSARY OF TERMS

ATA	Anti-Terrorism Act
ATCSA	Anti-Terrorism, Crime and Security Act 2001
BIA	Baghdad's International Airport
CIA	Central Intelligence Agency
CSOs	Civil Society Organisations
CTED	Counter-Terrorism Executive Directorate
CTITF	Counter-Terrorism Implementation Task Force
EPL	Egyptian Penal Law
ECHR	European Convention on Human Rights
ECST	European Convention on the Suppression of Terrorism
FSIA	Foreign Sovereign Immunities Act
FCL	French Criminal Law
FATF	Financial Action Task Force
FTA	Free Trade Agreement
GOs	Government Organisations
HRC	Human Rights Chamber
HRC	Human Rights Committee
IAEA	International Atomic Energy Agency
IAEA	International Atomic Energy Administration
IAAE	International Agency for Atomic Energy

ICCPR	International Covenant on Civil and Political Rights
ICC	International Criminal Court
IOs	International Organisations
IROs	International Regional Organisations
ICAO	International Civil Aviation Organisation
ICJ	International Court of Justice
IMO	International Maritime Organisation
ISIS	Islamic State in Iraq and Syria
LCA	Lebanese Criminal Act
NGO	Non-Governmental Organisations
OAS	Organisation of American States
OAU	Organisation of African Unit
OIC	Organisation of the Islamic Conference
HOUNCHR	High Office of the United Nations Commissioner for Human Rights
PCA	Partnership and Cooperation Agreement
SRUNSG	Special Representative of the United Nations Secretary General
SAARC	South Asian Association for Regional Cooperation
TA	Terrorism Act
UN	United Nation
UUM	Universiti Utara Malaysia
UK	United Kingdom

US	United States
UNAMI	United Nations Assistance Mission for Iraq
UDHR	Universal Declaration of Human Rights
UNODC	United Nations Office on Drugs and Crime
WE	Western Europe
WTO	World Trade Organisation
WCO	World Customs Organisation
WMD	Weapons of Mass Destruction



CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The word "terrorism" is derived from the word 'terrore' in Latin language.¹ This word originated from Latin language and has evolved into European languages. Today, it has become a common term that refers to terrorism or international terrorism.² It is important to note that, with the recent growth of violence that has been witnessed from various international events, the aftermaths of terrorist attack do not only affect a particular country but they exceed to other countries as well. Terrorism is a cancer and it is not in the interest of the nations, because it takes away their rights to live freely with security. With the escalation of these acts, various names and definitions have been used to refer to terrorism in many cases as it is characterised by violence, cruelty and oppression of people. Also, terrorism has become a type of crime that poses real threats to the lives of innocent people in the contemporary world.³ This international terrorism has its risk towards a person, institution, global community and civil freedoms.

The history of terrorism has started since the establishment of men's relationship with

¹ Von Foerster, et al., "Doomsday: Friday, 13 November, Ad 2026," *Journal Science* 132, No. 3436. (1960):1291-1295. From: http://www.asc-cybernetics.org/2011/wpcontent/uploads/2011/08/HvF_Doomsday.pdf. (Accessed March 12, 2013).

² Ibid, 1294.

³ Carlton, et al., *International Terrorism and World Security* (London: Croom Helm press, 1975): 13.

terrorist acts.⁴ However, this act of terrorism has evolved over the decades and terrorists have acted differently from each other in terms of the parties responsible, motives, means and methods used in such activities.⁵ In addition, terrorism has grown both quantitatively and qualitatively in terms of its philosophy, tools and objectives.⁶ As a result, it brings about alarming implications to the global state of affairs. This is apparent from the use of advanced military methods that is supported by terrorism with extensive experience. Obviously, this calls for concern from the global community throughout the world.⁷

In addition, international terrorism has not yet been established as an international crime due to its lack of commonly accepted definition. Until today, there is no international agreement as to its definition and statement of pillars despite various decisions made at international conferences, conventions and internal legislations.⁸ This fact continues to elude the international community despite over 70 years of efforts to agree on one definition.⁹ In recent years, international terrorism has taken a new identity from its means of operation that are historically advanced.¹⁰ An intangible movement called Al-Qaeda is viewed to be distinctive from previous terrorist movements due to the extremism of their objective and in the far-flung, co-ordination and ruthless character

⁴ Statistics affirmed that the number of countries that have been terrorist processes and in 1985 reached 60 countries and the destructive effects of terrorism widened from 800 victims between 1968-1975 to between 3-4 thousand victims in the decade between 1975-1985, while it was terrorism aimed real property in the 1970 has become more than 50% of terrorist attacks intended for persons in the 1980 and the means to destruction developed and diverse. Available at: Philippe Rondot, "America and Europe are grown harvested," *Each Magazine Arabs, Paris*, November 22, (1986): 217.

⁵ Ibid, 218.

⁶ Ibid, 219.

⁷ Ibid, 220.

⁸ Othman Ali Hassan, "*International Terrorism and The Legal and Political Manifestations*," (Egypt: Aldar legal books press, 2011): 11.

⁹ Saul Ben, "Defining Terrorism to Protect Human Rights," *Documents de Trabajo Fríde*, No. 20, (2006): 1- 20. From: www.fride.org (Accessed, April 21, 2013).

¹⁰ Roberts Adam, "The War on Terror in Historical Perspective," *Survival: Global Politics and Strategy*, Volume 47, Issue 2, (2005): 101-130. From: <http://www.tandfonline.com/doi/pdf/10.1080/00396330412331342446#.VM8x-2iUdDA>. (Accessed August 11, 2013).

of their operations. There have been numerous bouts of international campaign against international terrorism after the 9/11 terrorist attacks in New York and Washington in 2001. The attacks have resulted in serious mass destruction where more than 5000 lives were victims of terrorist acts which have infringed and violated their rights i.e. the right to life and personal security.¹¹ This has led to the belief that international terrorism is more dangerous than conventional wars.¹²

Following the event of September 11, there had been violations of international conventions and usages, human rights and freedoms, which prompted countries globally to come up with laws to protect civil freedoms. For example, in Iraq, the government has come up with the Iraqi Constitution of 2005 where Article 7 stipulates that the state will fight terrorism in all its forms and this has also prompted the government to come up with the Iraqi Anti-Terrorism Act No. 13 of 2005. Although the government of Iraq had a good intention to come up with the Iraqi Anti-Terrorism Act No. 13 of 2005, the United Nation (UN) has detected a lot of loopholes in this law where terrorism has the potential to affect Iraq's civil freedoms.¹³ Three months after the 9/11 attack, the UN formed a special Committee to help combat terrorism by strengthening the capacities of Member States to prevent terrorist's internal and external attacks. For over twelve years, this Committee has played its role in promoting international cooperation to combat terrorism and impose the third item of Resolution 1373 of 2001.¹⁴

¹¹ Ibid, 104.

¹² Ibid, 105.

¹³ Comparative table regarding the United Nations Security Council Committees established pursuant to Resolutions 1267 (1999), 1373 (2001) and 1540 (2004). From: www.un.org/en/sc/1540/pdf/comparative_table.11May2010.pdf-23k. (Accessed June 10, 2013).

¹⁴ The Security Council Resolution No. 1373 of 2001: A) Notes with concern the close connection between international terrorism and transnational organised crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasises the need to enhance coordination of efforts on national,

Following the efforts made by the Committee, the UN has shown its concern by submitting an anti-terrorism report to the Committee. In this report, one of the issues raised was what terrorism-related legislations have been taken or to be taken into consideration within the framework of the international campaign against terrorism. The initial evaluation of the Chairman of the Committee of the Security Council to combat terrorism over Iraq's application of Resolution 1373/2001 stated that: "Iraq Review Anti-Terrorism Act No. 13 of 2005 and the establishment of a mechanism in domestic law to combat terrorism and to reconsider the unclear law, by proposing accurate provisions and precise definitions of terrorist acts, has intended to clarify what is international terrorism and who are the terrorists. According to the preliminary assessment of this law, there are provisions in most of its Articles that provide wide legal interpretations, and would threaten the civil freedoms in Iraq."¹⁵

From the above statement, looking at Article 7 of the Iraqi Constitution 2005, it could be argued that the Iraqi Anti-Terrorism Act No. 13 of 2005 has far reaching impacts on civil freedoms. This is due to the fact that under this law there are no precise definitions of the terms terrorist acts, terrorism, who are the terrorists, etc. Thus, with all these

sub regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security. B) Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations. C) Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution. D) Directs the Committee to delineate its tasks, submit a work programmer within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General. E) Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter. F) Decides to remain seized of this matter. Ibid. Also see Appendix C (Security Council Resolution No. 1373 of 2001).

¹⁵ Riad Hani Bahar, "Concern of the United Nations from the Iraqi Counter- Terrorism Law Current," *Modern Discussion*, No. 3655, (March 2, 2013). From: <http://www.ahewar.org/debat/showart.asp?aid=297414>. (Accessed June 23, 2013).

problems in mind, the current research has addressed the gravity of international terrorism and its impact on civil freedoms in Iraq focusing mainly on the right to life and personal security.¹⁶ This research is indeed timely since the international community has to address the impact of terrorism i.e. international terrorism on civil freedoms i.e. the right to life and personal security.

All in all, the focus of this research is based on the impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003, as a result of the poorly drafted Iraqi Anti-Terrorism Act No. 13 of 2005 which has failed to provide a clear definition of the terms “international terrorism” and “terrorist acts”. In other words, the research addresses with the law i.e. the Iraqi Anti-Terrorism Act No. 13 of 2005 looking at its impact on civil freedoms i.e. the right to life and personal security in the fight against terrorism both at home and abroad.

1.2 Problem Statement

The problem statement for this research revolves around the Iraqi Anti-Terrorism Act No. 13 of 2005 as well as the international conventions related to international terrorism. The following are the research problems:

1. There is no clear definition of the term "international terrorism" under the Iraqi Anti-Terrorism Act No. 13 of 2005. Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005 does not differentiate between terrorism and international terrorism, yet defines them as: “Every criminal act committed by an individual or an organised

¹⁶ Ali Hadi Hamidi Alchukrawi, “A study in the United Nations conventions to combat international terrorism,” (Babel: University of Babylon press, 2012), 3. From: http://www.uobabylon.edu.iq/uobcoleges/service_showarticle.aspx?fid=7&pubid=3693 (Accessed March 22, 2013).

group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals."¹⁷ Based on Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005, it would suffice to note that the Article has failed to define the term "international terrorism."¹⁸ The same scenario is observed in the International conventions i.e. International Convention for Suppression of Financing of Terrorism 1999, etc. where manifestation of the differences between terrorism and international terrorism was made.¹⁹ It is important to note that Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005 does not give a clear definition of the term "international terrorism" or the concept itself, but it merely describes what terrorism is all about. If there is a clear definition of the term international terrorism in Iraq, then the Iraqi government will have the ability to reduce and counter-terrorism activities without infringing on the right to life and personal security of the Iraqi citizens.

This problem has been further highlighted by the initial evaluation report by the Chairman of the Committee of the Security Council regarding Iraqis application of Resolution 1373/2001 stating that there is an urgent need for Iraq to reconsider this unclear law i.e. in terms of coming up with accurate provisions and precise definitions of international terrorism and terrorist act, etc.

¹⁷ Ibid, 2.

¹⁸ Ibid, 3.

¹⁹ United Nations-Treaty Series 1999, Vol (2178). No. (38349). From: <http://www.Imo.org> (Accessed April 2, 2014).

2. There is no clear definition of the term "terrorist acts" under the Iraqi Anti-Terrorism Act No. 13 of 2005, Article 2 of the Iraqi Anti-Terrorism Act No. 13 of 2005 defines terrorist acts as:
- a) Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which take place in the execution of a terrorist act, individually or collectively organized.
 - b) Work with violence or threat to deliberately sabotage or wreck, ruin or damage buildings or public property, government interests, institutions, state departments, the private sector or public utilities and public places prepared for public use or public meetings for the public or public funds, and an attempt to occupy it or to seize it or expose it to danger or prevent its use for the purpose for which it was prepared with the aim of disrupting the security and stability.
 - c) Anyone who organised, chaired or participated in an armed terrorist gang that practices and plans for terrorism and also contributes and participates in this act.
 - d) Use violence or threat to stir up sectarian strife or civil war or sectarian infighting by arming citizens or by encouraging them to arm themselves and by incitement or funding.
 - e) Assault with firearms army and police offices, volunteer centers, security offices, and assault national military troops or their reinforcement, communication lines or their camps or bases, with a terrorist motive.
 - f) Assault with firearms, with a terrorist motive, embassies and diplomatic entities throughout Iraq as well as all Iraqi institutions, foreign and Arab companies and institutions and governmental and non-governmental and international organizations operating in Iraq in accordance with a valid agreement.

g) Use, with terrorist motives, explosive and incendiary devices designed to kill people, and possess the ability to do so, or to spread fear among the people, either through blowing up or releasing or spreading, or planting or bubby trapping equipment or human bodies, regardless of their forms or through the effect of poisonous chemicals or biological agents or similar radioactive materials or toxins.

h) Kidnap or impede the freedoms of individuals or detain them either for financial blackmailing for political, sectarian, national, religious or racially beneficial purposes that threaten security and national unity and promote terrorism.²⁰ From the descriptions provided above as to what terrorist acts are, it could be argued that the Article has failed to provide a clear and precise definition of the term “terrorist acts.”²¹ However, by the looking at the International Conventions i.e. International Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010, the term “terrorist acts” appears to be given a clear and precise meaning.²²

As a result of the absence of a clear definition of the term terrorist acts under the Iraqi Anti-Terrorism Act No. 13 of 2005, the Iraqi citizens have suffered after 2003 as far as their civil freedoms are concerned i.e. being arrested on the basis of their involvement in terrorist acts, which is not clearly defined under the Iraqi Anti-Terrorism Act No. 13 of 2005. For example, the UN Secretary General in his Third Report in paragraph 6 of Resolution 2061 (2012), mentioned that the Iraqi security

²⁰ Riad Hani Bahar, Concern of the United Nations from the Iraqi, n 15. See Article 2 in the Iraqi Anti-Terrorism Act. No. 13 of 2005. From: [http://www.vertic.org/media/National Legislation/Iraq/IQ Anti-Terrorism Law](http://www.vertic.org/media/National%20Legislation/Iraq/IQ%20Anti-Terrorism%20Law) (Accessed June 11, 2013).

²¹ Riad Hani Bahar, Concern of the United Nations from the Iraqi, n 15.

²² United Nations Action to Counter Terrorism. From: <http://www.un.org/en/terrorism/instruments.shtml> (Accessed, January 2, 2014).

environment had remained volatile.²³ This is because of the political instability and security in the country.

Again, this problem was further highlighted by the initial evaluation report by the Chairman of the Committee of the Security Council regarding Iraqis application of Resolution 1373/2001.

3. The weakness of the international conventions on terrorism. At the moment, there is no comprehensive International Convention at the UN to establish a definition of terrorism, terrorist acts and how to counter-terrorism. Based on this problem statement, member States at the UN have failed to agree on establishing a comprehensive international convention as a result of some member States i.e. the US, Israel, etc., wanted the definition of terrorism to include national liberation movements as well as those fighting for determination. However, Muslim Countries did not agree to include of freedom fighters to form part and parcel of the definition of terrorism.²⁴ For example, in Rome (Italy) on 15 June 1998, in the presence of delegates from 160 countries, 16 international organisations, 5 organisations and specialised agencies, 9 bodies and programs of the UN and 238 non-governmental organisations passed several resolutions as included in the final document (10/183. A/ CONF), and noted in the preamble, that terrorist acts are crimes of dangerous concerns to the international community, but the participants failed to agree on an acceptable definition of this crime.²⁵

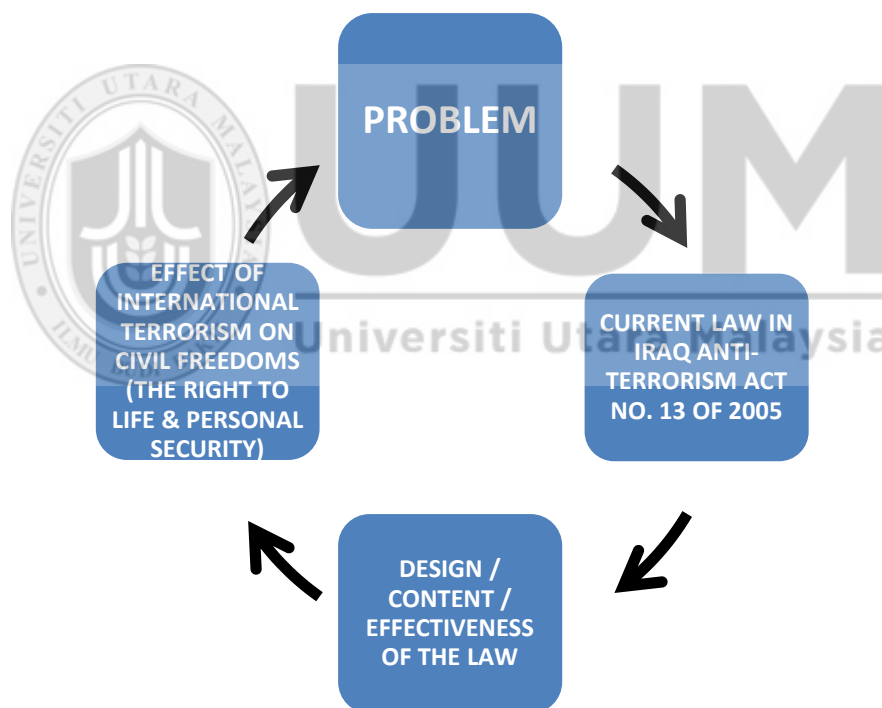
²³ The Third Report of the Secretary-General pursuant to paragraph 6 of Resolution 2061 (2012), Report Security Council (UN), 11 July 2013. From: <http://unami.unmissions.org/LinkClick.aspx?fileticket=Mn7emaLcQ1g%3D&tabid=2837&language=en-US>. (Accessed August 20, 2013).

²⁴ Othman Ali Hassan, International Terrorism and the Legal, n 8, 10-11.

²⁵ Ibid, 12.

This has made it difficult internationally to adopt a uniform standard in fighting terrorism. As a result of this, usually civil freedoms i.e. the right to life and personal security are infringed in the disguise of fighting terrorism. Hence, Iraq as a member of the UN has done by poorly drafting its anti-terrorism law i.e. the Iraqi Anti-Terrorism Act No. 13 of 2005 which has infringed Iraqis civil freedoms i.e. the right to life and personal security as a result of being convicted under a piece of legislative with no clear meaning as to the terms international terrorism and terrorist acts.

1.1 Diagram Illustrating the Problem Statement



1.3 Research Questions

Based on the research problems above, the following are the research questions:

1. What is the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms international terrorism and terrorist acts?

2. What is the impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003?
3. How can civil freedoms in Iraq i.e. the right to life and personal security be protected from acts of international terrorism?

1.4 Research Objectives

The objectives of this study are:

- 1- To study the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms international terrorism and terrorist acts.
- 2- To analyse the impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003.
- 3- To recommend how civil freedoms i.e. the right to life and personal security can be protected from acts of international terrorism.

1.5 Significance of the Study

This research will contribute significantly in the following fields:

1. The results of this study will be useful to the Legislative Authorities, Government Institutions, Non-Governmental Organisations (NGOs), and research centres, in understanding the phenomenon of international terrorism and its impact on civil freedoms, i.e. the right to life and personal security.
2. This study will provide additional information in the areas of international terrorism and civil freedoms to the International Community. This is because the study focuses on the impact of international terrorism on civil freedoms in Iraq after 2003 i.e. the right to life and personal security. For example, the study is expected

to provide information on how the so-called fight against international terrorism affects civil freedoms especially the right to life and personal security.

3. The Academic Community as well as other stockholders; i.e. the Iraq people will most likely benefit from this study. For example, the findings and the recommendations of this study could be used as a source of information by the Academic Community who are interested in the area of international terrorism and its impact on civil freedoms. Furthermore, the Iraq people will be able to know how international terrorism affects their civil freedoms; i.e. the right to life and personal security.

1.6 Research Methodology

Research methodology is a system to find solutions to research problems. The researcher employed both doctrinal and empirical methodologies in the course of this study. Under the research methodology discussion, the discussion has been divided into five parts: research design, research scope, types of data, data collection methods and analysis of data.

1.6.1 Research Design

The study is a doctrinal legal research; i.e. a library-based research. This method was selected as there were numerous issues concerning legal matters i.e. the Iraqi Constitution of 2005 and the Iraqi Anti-Terrorism Act No. 13 of 2005. Therefore, it was imperative to solve it through review, criticism and theoretical analysis and application of the statutes, instruments, conventions, treaties and state practices that establish the principles of international law involved in this study.

Apart from doctrinal legal research, the researcher also adopted an empirical research approach (a qualitative methodology) due to its nature of exploring instead of testing question. Data derived from the face-to-face interview could aid the researcher to have a deeper understanding of individuals' daily activities.²⁶ According to Marshall and Rossman, qualitative methodology is an exploratory study of social phenomenon. It can be characterised as naturalistic, interpretive and increasingly critical in which it encompasses several ways of inquiry.²⁷ This research begins with a research question which leads to a number of methods together direct information in the field. This approach studied phenomenon within the context of its originalities, attempting to interpret data in the way how people consider them. Moreover, this method includes the use and collection of a different data that describe things the way they are, why and how they are, through providing detailed information to help the reader understand the topic of study in rich and revealing ways.²⁸

A number of authors have stated that qualitative researches are naturalistic, thus they combine several methods in order to suit the human aspect of the participant in the study. Besides, it also emphasises on the context, progress and interpretive.²⁹ This research adopted a qualitative method, because of the nature of the study i.e. looking into Constitutions, Laws, Conventions, and at the same time being able to answer the research questions as well as achieve the research objectives of this study.

²⁶ Marshall C & Rossman G, *"Designing Qualitative Research (3rded)"*, (California: SAGE Publication press, 1995): 23.

²⁷ Marshall C & Rossman G, *"Designing Qualitative Research (4thed)"*, (California: SAGE Publication press, 2006), 2.

²⁸ Denzin K & Lincoln Y, *"The sage handbook of qualitative research"*, (California: Sage Publications press, 2005): 485- 499.

²⁹ Rossman G & Rallis S, *"Learning in the field: An introduction to qualitative research"*, (California: SAGE Publication press, 2003): 22.

1.6.2 Research Scope

The scope of this study is limited to international terrorism and its impact on civil freedoms in Iraq after 2003 focusing mainly on the right to life and personal security. This study does not discuss the topic of international terrorism from the Shariah perspective or even make a comparative study between the Shariah position and that of Public International Law position. Hence, the study focuses on the discussion of international terrorism from Public International Law perspective paying attention to the Iraqi Anti-Terrorism Act No. 13 of 2005.

The reason why the researcher opted for these two fundamental rights is because of the special position accorded to these rights under Article 3 of the Universal Declaration of Human Rights (UDHR).³⁰ On the other hand, the time frame of 2003 is chosen by the researcher, because before 2003 no suicide attacks had ever taken place in Iraq under the name of international terrorism.³¹ But, after the United States (US) occupation of Iraq began, the wave of terror sweeping the country had become the order of the day depriving the Iraqis their right to life and personal security.³²

1.6.3 Types of Data

The types of data that the researcher used in this study are:

1.6.3.1 Primary Data

The primary data came from field work using interviews. Interviews are significant in obtaining data. The primary data also included official documents and publications of the Iraqi government rules i.e. the Iraqi Constitution of 2005 and the Iraqi Anti-

³⁰ Article 3 of the Universal Declaration of Human Rights (UDHR) proclaims the right to life liberty and security of person as being essential to the enjoyment of all other rights.

³¹ Kelly & Brian M, "Martyrs in Mesopotamia: The Logic of Suicide Terrorism in Iraq," *CUREJ- College Undergraduate Research Electronic Journal*, (2008): 108.

³² Ibid, 108.

Terrorism Act No. 13 of 2005, rules and principles of International Law i.e. UDHR 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, etc.

1.6.3.2 Secondary Data

The secondary data included written works such as textbooks, theses, unpublished works, articles in journals, magazines, legal diary, and Internet sources.

1.6.4 Data Collection Methods

In this study, the researcher collected both the primary and secondary sources by using the following methods:

1.6.4.1 Library Method

The researcher collected documents from information centres in Iraqi universities and other sources that reflected either individual or organisational points of view. The first source was from legal documents, etc. Then, the researcher proceeded with the second source, which consisted of theses, reports and newspapers, etc. Also, the library method involved the collection of data from secondary data i.e. through journal articles, bulletins, research documents, periodicals and textbooks. Therefore, various libraries and research centers and particularly library of the Iraqi Parliament, Higher Criminal Court Library of the Baghdad City, the law library of Universiti Malaya in Kuala Lumpur, and Sultanah Bahiyah library of Universiti Utara Malaysia (UUM) were visited by the researcher in the process of conducting this research. Simultaneously, the researcher also had access to the Internet for online sources. The search for any information via the Internet acted as an added value to this study. In addition, the researcher also utilised online databases for Journals like Emerald, Science Direct, Proquest, Google Scholar and etc.

1.6.4.2 Interview Method

In order to improve the validity and reliability of the results, the researcher adopted a face-to-face interview in form of semi-structured and open-ended interview as primary source of information of evidence to get a deeper and holistic understanding of experiences, opinions and attitudes of the interviewees.³³ The interview also provided originality to this study. The interviewees were selected based on the following three criteria (a) position, (b) reputation and (c) role in making laws. Interviewees included (1) Academics in Iraq specialising in public international law and (2) Judges from the Ordinary Courts (Criminal Courts) in Iraq, seeking their opinions on international terrorism and its impact on civil freedoms in Iraq after 2003. Academics specialising in public international law were interviewed from 5 Law Colleges out of the total 10 Law Colleges in Iraq. The researcher interviewed 8 Academics from 5 Law Colleges. These Colleges included (Baghdad, Misan, Basrah, Babylon and Dhi-Qar). This was roughly equivalent to 50%, which the researcher believed that the total population of 50% of the Academics specialising in public international law could provide accurate information. Regarding Judges from the Ordinary Courts (Criminal Courts) in all the 18 Iraqi cities, the researcher interviewed 5 Judges in Baghdad City and 4 Judges from West of the Baghdad Babel City since the two cities have experienced a lot of terrorism activities after 2003. This was roughly equivalent to 50% of the total number of Judges of the Ordinary Courts (Criminal Courts) in Iraq, which the researcher believed that the total population of 50% of the Judges from the Ordinary Courts (Criminal Courts) could provide accurate information regarding the impact of international terrorism on civil

³³ Halliru T "Ethno-Religious and Political Conflicts: A study of North-Eastern Region of Nigeria (2000-2007)," (PhD diss., Universiti Utara Malaysia, 2012): 62.

freedoms in Iraq after 2003. By doing so, the researcher was able to generalise the findings of the study.

The nature of the interview was interactive interview, which is defined as "a short term social interaction that involves two strangers with the clear aim of one person deriving information from the other."³⁴

In conducting the interview, the researcher prompted a number of questions and other techniques in order together in depth analysis in terms of penetration, exploration, and explanation on the impact of international terrorism on civil freedoms in Iraq. The interview was seen as generative, because it enabled the researcher to gain relevant information. It is important to note that a face-to-face interview has several advantages. First, it is suitable to explore the respondent's point of view, feelings and perspectives in a shorter time with more depth. Second, face-to-face interviews are good for topics pertaining to perspectives and ideologies. Hence, a face-to-face interview was selected for this study so that it could enable the researcher to explore the information of the interviewees about their feelings, experiences and views. This study would specifically be of interest in what the respondents' information about believing and feeling of the impact of international terrorism on civil freedoms in Iraq i.e. the right to life and personal security. It seeks to form a comfortable environment to discuss issues related to their lives i.e. the relationship between international terrorism and civil freedoms in Iraq after 2003, the risks of terrorism, the violation of the rights to life and personal security. In addition, face-to-face interview depends on many sources of information to give a complete picture that can best represent the diverse community.³⁵

³⁴ Neuman William Lawrence, *Social Research Methods: Qualitative and Quantitative Approaches (7th ed)*, (Wisconsin: University of Wisconsin-White press, 2006): 305.

³⁵ Robson C. *Real world research*, (London: Blackwell press, 2002): 1-33.

In this study, the interview was conducted through the following stages as provided by Creswell:³⁶

Stage One: Arrival. It is important to create a good rapport which is the prerequisite for a successful in-depth interview. It is vital that the researcher helps the participants feel free and at ease. The researcher acted as a host in this stage in order for the interviewees to be confident and relaxed, so as the researcher could discuss with them at length prior to the main interview.

Stage Two: Introducing the research. The researcher informed the participants of the research topic, the purpose of the research and asked them to allow the researcher to record the interview.

Stage Three: Interview. It started with the researcher asking neutral topics i.e. personal details of the interviewee. The information would be beneficial for the other questions. In addition, it is not at the beginning of the interview that the interviewee is aware that his/her role is to “open up” and give full answers. The most important issue is that the questions should be clear and during the interview the researcher will lead the participant through the key themes each subject is explored in depth with a series of follow-up questions and probes.

Stage Four: Ending the Interview. The researcher steered the conversation to an end by giving signals that indicate the end of the interview. This was done five to ten minutes before the end of the interview. It is also pertinent to note that the interviewee had not been left with any unfinished relevant information.

³⁶ Creswell, et al., "The Movement of Mixed Methods Research and the Role of Educators," *South African Journal of Education* 28, No.3 (2008): 321-333.

Stage five: After the Interview. In this stage, the researcher thanked the participants and began to shift the conversation away from the interview by saying something, fairly briefly, about how the interviewee's contributions would help the research. This was the time to answer any question raised by the interviewee during the interview.

During the face-to-face interview in the context of this study, there were three tasks in the data collection process:

-The first task involved obtaining consensus from respondents to engage in the interview through the assistance of some Academics specialising in public international law in Colleges of law in Iraq and Judges in the Ordinary Courts (Criminal Courts) also in Iraq.

-The second task involved the process to identify the key issues, events, categories of the problem and examples where necessary.

-The third task involved the respondents identifying and mentioning some keywords, i.e. counter-terrorism act, international terrorism and terrorists, as most of these words are used in the fights against international terrorism. By understanding the operation of these words in a better way, the respondents were able to provide information on how the fights against international terrorism violate civil freedoms in Iraq i.e. the right to life and personal security.³⁷

1.6.5 Analysis of Data

In this study, the researcher used the following methods in analysing the primary and secondary data collected:

³⁷ Robson C., Real world research, n 35, 3.

1.6.5.1 Analytical Method

In the context of this study, analytical method was used by the researcher to analyse the data collected. Analytical method is a legal theory that draws on the resources of modern analytical philosophy to try to understand the nature of law to study the form and structure of the legal system, problems of legal reasoning and problem definition of law.³⁸ Also, its understanding is "an approach to qualitative data analysis and writing. It is founded on the view that the social world is an interpreted world. Analytic realism rejects the dichotomy of realism/idealism and other conceptual dualisms, as being incompatible with the nature of living experience."³⁹

The researcher used the analytical method, because it could answer the first and third research questions as well as achieve the first and third research objectives. This is because analytical method usually breaks down the problem situation and ascertains what elements composes it and what rules are applicable to each part of the subject and its problem. For example, in the context of this study the researcher was able to know the role of the legislative authority in Iraq and that of the General Assembly at the UN in defining terms international terrorism and terrorist acts, other than knowing how civil freedoms can be protected from acts of international terrorism.

In addition, as data was collected from the semi-structured interview; i.e. (face-to-face interview) it was analysed manually. From the interview, the research opted for this manual analysis of the data collected from the interview due to the fact that the purpose of the semi-structured; i.e. (face-to-face interview) was to supplement those existing

³⁸ Giudice, et al., *"The methodology of legal theory,"* (England: Ashgate Publishing Limited press, 2010), 421-456.

³⁹ Yin R, *Case study research: Design & methods, (2nded)*, (California: SAGE Publication press, 1994): 4.

works in the form of the primary and secondary data dealing with the theme of this study.

1.6.5.2 Historical Method

Apart from using the analytical method to analyse the data collected, the researcher also used historical method. Historical method is defined as "finding, using, and correlating information within primary and secondary sources in order to communicate an understanding of past events."⁴⁰ The trend of information and their references are investigated through a critical review of knowledge, experience and sensitivity to integrate queries. This investigation can be subsequently used for organising documents within historic source repositories and building tools that will enable historians to access the needed information more rapidly and fully.⁴¹

The researcher used the historical method, because it could lead to the second research question being answered as well as the second research objective being achieved. This is because the second research question and the second research objective address the impact of international terrorism on civil freedoms in Iraq after 2003, which calls for a historical approach in analysing the data collected.

1.7 Limitations of the Study

The following are the limitations of this study:

1. Limited resource. In the process of conducting this study, the researcher faced the problem of limited resources since there were only few studies that have been conducted in this area. Although the researcher faced this limitation, the

⁴⁰ Elena, et al., "Historical Research in Archives: User Methodology and Supporting Tools," *International Journal on Digital Libraries* 11, No.1 (2010): 25-36.

⁴¹ Ibid, 33.

researcher was still able to overcome this limitation by conducting interviews in order to get the much needed information.

2. The researcher also faced some difficulties in conducting the interviews due lack of security and stability in Iraq. Despite this limitation, the researcher was able to conduct the interviews in areas that were considered to be a bit safe and stable in Iraq.

1.8 Literature Review

The main purpose of this section of the study is to examine various literatures relating to international terrorism and its impact on civil freedoms. This section has been divided into five parts. The first part dealt with literatures addressing the definition of operational terminologies. The second part, dealt with literatures addressing international instruments on human rights. The third part dealt with literatures addressing the law on international terrorism in Iraq. As for the fourth part, it dealt with literatures addressing the impact of international terrorism on the right to life in Iraq. Finally, the fifth part dealt with literatures addressing the impact of international terrorism on the right to personal security in Iraq.

1.8.1 Definition of Operational Terminologies

Terrorism is a global phenomenon which affects citizens all over the world. In this research, the true meaning of international terrorism, civil freedoms, the right to life as well as the right to personal security and the resulting impacts on the ordinary citizens of Iraq in particular and the world at large have been addressed.

1.8.1.1 International Terrorism

Many scholars have tried to look at the legal definition of international terrorism, but it seems that there is no consensus on the exact meaning of international terrorism. It is important to note that the definition of international terrorism cannot be separated from the problems of terrorism within a given country. For example, Peter wrote about the beginning of terrorism, indicated that the term “terrorism” comes from Latin *terrore* that means “to cause to tremble”, and said that one of the earliest groups cited in the Sicar, was that of zealot religious sector disputes with the Roman rule in Palestine from AD 66 to 73 AD.⁴² When the center ages, a religious sector of Ismailis and Nizari called Assassin's to put very hard efforts to struggle against the Kingdom of Saladin, and in the sixteenth century, a small ‘terrorist’ group in Albania and other regions resisted the armies of the Ottoman Empire. The term ‘terrorism’ was first used in 1795 as a policy to protect the fragile government of the French Republic from counter-revolutionaries.⁴³ However, the “old form of terrorism” was organised like a pyramid, with the leadership at the top, deciding on the overall policy and plans. This was followed by a larger layer of active terrorists who carried out the attacks and were often specialised in certain activities, i.e. bomb-making, assassination or surveillance. On the next stage, there were motivated supporters who provide weapons, communications, transportation, intelligence and safe houses. As to the lower level, were the passive supporters who were committed with their objectives of the terrorist organisation and spreaded their emotional support with technical ideas.⁴⁴

⁴² Peter Waldmann, *"Terrorism-Provokation der Macht,"* (Munich: Gerling Akademie Verlag press, 1998): 99-103.

⁴³ Ibid, 100.

⁴⁴ Ibid, 101.

Furthermore, due to the effects of terrorism at all levels in the form of crimes that threaten people's lives, civil freedom, institutions and the community, nationally and internationally, several definitions including oppressions of people, violence and cruelty, have been presented to refer to terrorism.⁴⁵ However, recently, in the advancement of its means and ways historically, terrorism has got a new identity. Among all previous movements, before the era of Al-Qaeda and now the Islamic State in Iraq and Syria (ISIS), etc., a distinguished one due to their extremism when targeting their objectives and operations, which are far-flung, co-ordinated and ruthless. According to Adam, international terrorism is believed to be more threatening and deadly than any other conventional fights, conflicts or wars.⁴⁶ This was obviously evidenced in the huge damages and the violation of people's rights and lives caused by Al-Qaeda's 9/11 attacks. Consequently, several bouts of international campaigns were initiated following the terrorist attacks of 9/11 in both New York and Washington in 2001. These developments have triggered scholarly interest in terrorism particularly on the subject of international terrorism.⁴⁷

In addition, terrorism has been on the international agenda since 1934, when the League of Nations took the first major step towards outlawing the scourge by discussing a draft convention for the prevention and punishment of terrorism. Although the Convention was eventually adopted in 1937, it never came into force due to the failure of the ratification process.⁴⁸

⁴⁵ Carlton, et al., *International Terrorism and World*, n 3, 13.

⁴⁶ Roberts Adam, "The War on Terror", n 10, 110

⁴⁷ Ibid, 111.

⁴⁸ Fidanci, S, "Definition of terrorism in international law." *The Journal of Turkish Weekly*, (2006). From <http://www.turkishweekly.net/article/103/definition-of-terrorism-in-international-law.html> (Accessed 22 September 2013). Also see: United Nations Action to Counter Terrorism, <http://www.un.org/en/terrorism/instruments.shtml>

Following that, the International Law Commission (ILC) considered terrorism when drafting its 1954 Draft Code of Offences against Peace and Security of Mankind (Part I).⁴⁹ Although the 1954 ILC Draft Code was never formally adopted by the General Assembly or in treaty form, it provided an insight into mid-20th century thinking about terrorism in international law.⁵⁰ Terrorism was explicitly linked to the concept of aggression. Article 2(6) defines an offence ‘against the peace and security of mankind’ of the undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organised activities calculated to carry out terrorist acts in another State, however, it would suffice to note that the offence only covers conduct by those acting for the State, and not the activities of non-State actors. Furthermore, due to insurmountable disagreement about the definition of aggression, the General Assembly postponed further consideration of the 1954 ILC Draft Code until a Special Committee on defining aggression had reported (UNGA res 897 (IX) 1954). As a matter of fact, subsequent attempts to define aggression have eschewed any reference to terrorism and severed the early linkage between these concepts. A (non-exhaustive) General Assembly resolution defining ‘aggression’ in 1974 made no reference to terrorism, nor did the definition in the 1996 ILC Draft Code or in the 1998 Draft Rome Statute. Hence, it is arguable that although the term ‘terrorism’ might seem self-evident, in practice, it is hard to agree upon a legal definition at the international level.⁵¹

⁴⁹ Ben Saul, "Attempts to Define Terrorism in International Law," *Netherlands International Law Review*, Volume 52, No 1, (May 2005): 57- 83. From: http://journals.cambridge.org/abstract_S0165070X05000574. (Accessed November 14, 2014).

⁵⁰ Ibid, 58.

⁵¹ Ibid, 59.

In addition to the above, the final ILC Draft Code (Part II) was adopted in 1996 at ILC, Report on 48th Session 6 May–26 July 1996. While earlier drafts between 1990 and 1995 had included distinct Articles on ‘international terrorism’, a discrete terrorist offence was subsumed by, and recast within, the final Article 20 on ‘war crimes’. The war crime of ‘acts of terrorism’ in Article 20 embodied the simple prohibition in Article 4(2) (d) of the Protocol II at ILC Report on the 48th Session.⁵² However, based on the current study, the researcher discussed the issue of international terrorism in Iraq, because with regard to the Iraqi Anti-Terrorism Act No. 13 of 2005, it does not clearly differentiate between terrorism and international terrorism, unlike in the international perspective where there is a line drawn between terrorism and international terrorism.⁵³ For instance, international terrorism is regarded as a type of terrorism. However, this is not the case under the Iraqi Anti-Terrorism Act No. 13 of 2005.

Spencer, explained the concept of terrorism as being one of the most disputed terms in the social sciences.⁵⁴ The problem of defining the term ‘terrorism’ is well known and has been examined extensively. The author believed that a comprehensive definition of terrorism did not exist and not would it be found in the foreseeable future. He identified 212 different types of definitions on terrorism, which are in practice throughout the world, with 90 of the selected definitions are practiced by institutions and other governments.⁵⁵ In one of the most rigorous attempts to define terrorism, Spencer examined 109 different definitions of international terrorism and identified 22 elements

⁵² Ibid, 60-62.

⁵³ United Nations-Treaty Series 1999, Vol (2178). No. (38349). From: <http://www.Imo.org> (Accessed April 2, 2014).

⁵⁴ Spencer Alexander. "Questioning the Concept of ‘New Terrorism’." *Peace, Conflict and Development*, Issue 8, (January 2006): 1-33. From: www.peacestudiesjournal.org.uk. (Accessed March 11, 2012).

⁵⁵ Ibid, 23.

in these definitions, calculated the frequency of their occurrence, and a consensus was reached on a lengthy definition incorporating most of these elements as follows:

Terrorism is an anxiety inspired method of repeated violent action, employed by semi-clandestine individuals, groups, or state actors, for idiosyncratic, criminal, or political reasons, whereby in contrast to assassination, the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorists (organisation), (imperiled) victims, and the main targets are used to manipulate the minor target (audience), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.⁵⁶

Leonard Weinberg, Ami Pedahzur and Sivan Hirsch Hoefler,⁵⁷ investigated 73 definitions of terrorism cited in 55 Articles in three leading Academic journals on this area, and came to found that "Terrorism is a way to negatively motivated individual tactically or use of force to do violence or involve in violence publically."⁵⁸ From their definition, it would suffice to note that they have emphasised on the use of force to do violence as one of main elements of terrorist acts.

In his report to the UN, Hoffman maintained that terrorism and human rights issues are fraught with political and social consequences. The controversial phrase is "terrorist to one person, freedom fighter to another."⁵⁹ The writer noted in the report the difficulty to distinguish between internal armed conflict and terrorism; he assumed that there was a core meaning of "terrorism," at least with respect to attacks on civilians about which

⁵⁶ Ibid, 25.

⁵⁷ Leonard et al., "The Challenges of Conceptualizing Terrorism," *Terrorism and Political Violence*, Taylor & Francis online Vol. 16, No. 4, (2004): 786.

⁵⁸ Ibid, 787.

⁵⁹ Hoffman Paul. "Human Rights and Terrorism." *Human Rights Quarterly* 26, No. 4, (2004): 932-955. From: http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/human_rights_quarterly/v026/26.4hoffman.pdf. (Accessed July 22, 2013).

there was increasingly very little normative disagreement. This principle lies at the heart of the entire structure of international human rights and humanitarian law and applies regardless of the motives or political objectives of the authors of such acts. As a result, for many of the anti-terrorism measures taken since September 11, 2001, governments have used vague and over-broad definitions of terrorism. Such definitions run the risk of sweeping peaceful, expressive activity into the definition of terrorism and can be the basis for repressive regimes attacking political opponents or other perpetual uses of anti-terrorism campaigns. Such anti-terrorism laws violate the principle of legality and provide a basis for governments to label political opponents or human rights defenders as terrorists.⁶⁰

In a comparative study conducted by Fenwick on the meaning of international terrorism under the Terrorism Act of 2000 (TA), and the Anti-Terrorism, Crime and Security Act of 2001 (ATCSA) in the United Kingdom (UK), she found that the UK government's measures to combat terrorism are draconian. The TA (2000) has defined a terrorist under section 21(2), "as (a) person who is or has been concerned in the commission, preparation or instigation of acts of international terrorism; or (b) as a member of or who belongs to an international terrorist group; or (c) has links with such a group." Under section 21(4), these types of connections exist only when the person supports, involves, facilitates or assists the international terrorist groups. The word 'assists' is broad, but 'supports' is broader still since it could include expressing a favorable opinion about the group. The meaning of 'Terrorism' is provided in Section 1(1) of the TA (2000).⁶¹

⁶⁰ Ibid, 944.

⁶¹ Fenwick, Helen. "The Anti-Terrorism, Crime and Security Act 2001: A Proportionate Response to 11 September?" *The Modern Law Review* 65, No. 5, (2002): 724-762. From: <http://onlinelibrary.wiley>.

The term terrorism is explained in Section 1(1) as: The use of threat, for the purpose of advancing political, religious or ideological cause, of action designed to influence a government, or to intimidate the public or a section of the public, which involves serious violence against any person or serious damage to property, endangers the life of any person, or creates a serious risk to the health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system.⁶²

The above definition was disputed in the UK Parliament as being "fatally flawed." According to the UK Parliament, "it is utterly perplexing that we should apparently be wedded to a definition that threatens to undermine so sweeping civil freedoms and the credibility of governance itself."⁶³ The modification were attempted by the Liberal Democrats, who focused down, but were tremendously defeated by the Labor and Conservative Members of Parliament (with a few exceptions) voting jointly.⁶⁴ The new definition allows many activities, currently covered by the criminal law, to be re-designated as terrorism. The definition now expressly covers threats of serious disruption or damage to computer installations or public utilities. The definition is therefore able to catch a number of direct forms of public protest i.e. the threat to interpersonal property, or a savior risk to safety or from violence that can be elaborated as ideologically, religiously motivated and politically might encourage in the manner to demonstrations and other forms of public protest, together with some industrial issues. Apparently, the new provisions for imprisonment in the 2001 Act are not applicable to all those persons who fall under the definition stated in section 1(1) of the TA (2000), the power to hold the punishment only applies to "suspected international terrorists" who are non-British citizens. Under section 21(5), a 'suspected international

com/doi/10.1111/1468-2230.00405/abstract. (Accessed May 12, 2014).

⁶² Ibid, 725.

⁶³ Ibid, 733.

⁶⁴ Ibid, 734

terrorist' is a person who falls within the definition of terrorism in section 1 of the TA (2000) and who has been certified under section 21 (1).⁶⁵

In this study, the researcher adopted the definition given by ATCSA (2001) because it is a comprehensive definition of international terrorism, which is proportional to the changing concept of the world and increased terrorist attacks, which has influenced the UK government's new legislation to combat terrorism, crime and personal security under the ATCSA (2001). Also, terrorism is a slippery subject and the foregoing comments indicate the complexity of the definitional problem. Perhaps the most that can be hoped for is a sense or feeling for what terrorism is. According to the Minister of Foreign Affairs of the US one would argue that she may have best sensed it when she wrote, "terrorism is, above all, a form of violence."⁶⁶ For the purpose of this study, the subsequent definition has been constructed by the three leading scholars as discussed below have been used as a general guide: "Terrorism is the unlawful use or threatened use of force or violence against individuals to generate fear with the intent of coercing or intimidating governments, societies, or individuals for political, social, or ideological purposes."⁶⁷

Based on the literature on international terrorism above, the researcher submits that there is no comprehensive definition of the term "terrorism" as has been given or agreed upon by member States at the international level regardless of the continuous historical controversy over it as a debated issue implying offence and aggression,

⁶⁵ Ibid, 735.

⁶⁶ Richarad J. Erickson & Lt Col. Usaf, *"Legitimate Use of Military Force against State-Sponsored International Terrorism."* (Alabama: Maxwell Air Force Base, Air University Press, 1989): 1-208. From: www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA421977 (Accessed June 9, 2013).

⁶⁷ Ibid, 24.

particularly during the period preceding and following the terrorist attacks of 9/11. Due to the lack of an International Convention at the UN in providing an established and comprehensive definition of terrorism, it has become difficult or if not, near impossible to fight terrorism both domestically and internationally. Different countries at the international level have different views on the meaning of terrorism. But it must be pointed out that despite the historic controversy over the definition of terrorism, international consensus has gradually emerged condemning terrorist acts as a violation of the "laws of nations."⁶⁸ To overcome the problems we face in the fight against terrorism as a result of the absence of a universally accepted definition, the researcher argues that, although there is no universally accepted definition of terrorism in international law, there is a core definition of terrorism by the Western governments i.e. UK and US or international documents that provides guidance to States which Iraq could perhaps use as a guideline in enacting the new Act on international terrorism or reform the Iraqi Anti-Terrorism Act No. 13 of 2005. By doing so, we could be able to protect civil freedoms i.e. the right to life and personal security of the Iraqi people.

1.8.1.2 Civil freedoms

Ilya Winham⁶⁹ in her work speaks of freedom as a "phenomenon of virtuosity," claiming that this phenomenon is the original, hitherto under-theorised experience of freedom in ancient Greece and Rome and that the idea of freedom began to appear in connection with the will in humans philosophical tradition only after freedom as a phenomenon of virtuosity had in practice disappeared in the late Roman Empire, but

⁶⁸ Hickman & Daniel J. "Terrorism as a Violation of the Law of Nations: Finally Overcoming the Definitional Problem." *Wisconsin International Law Journal* 29, No. 3 (2011): 463.

⁶⁹ Ilya Winham, "Rereading Hannah Arendt's 'What Is Freedom?': Freedom as a Phenomenon of Political Virtuosity," *Theoria: A Journal of Social & Political Theory* 59, No. 131, (2012): 84-106.

not from all human activities in which it continued to exist in a hidden form as the power or 'gift' of humans to begin a new line of action.⁷⁰

Kofi Annan, the former Secretary General of the UN expressed the meaning of civil freedom in a report on 21 March 2005, as being "fundamental to the poor as to the rich, their protection is as important to the security and prosperity of the developed world as it is to that of the developing world. It would be wrong to treat civil freedom as though there was a trade-off to be made between freedom and such aims as security or life. We only weaken our hand in fighting the horrors of extreme poverty or terrorism if in our efforts to do so, we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of civil freedom are vital for both our moral standing and the practical effectiveness of our actions."⁷¹

Daniel maintained that "freedom is to a factor, what air is to fire, that is out it instantly expires."⁷² He argues that, if freed from authoritarian constraints, exploitation of the media and the right to live freely is created by democratisation.⁷³

Furthermore, the international charters related to the civil freedoms i.e. UDHR, as addressed in the Articles, defines the meaning of civil freedoms as: the rights and independence from considerations of citizenship, nation, language, human culture or any other human statuses belongs to each person. However, lacking these rights it is

⁷⁰ Ibid, 86.

⁷¹ Kofi Annan, In Larger Freedom-Towards Development, Security and Human Rights for All-Report of the Secretary-General, in the *CIGI Core Library* (2009):37. From: <http://dspace.cigilibrary.org/jspui/handle/123456789/17698> (Accessed June 4, 2013).

⁷² Byman, Daniel, "Constructing a Democratic Iraq: Challenges and Opportunities," *International Security* 28, No.1, (2003): 47-78.

⁷³ Ibid, 57.

difficult to have other rights and freedoms.⁷⁴ Hence, respect for civil freedoms correlates significantly with other socio political values and patriotism. Crowson reported that rights orientation was positively connected with supporting civil freedoms restrictions in the fight against terrorism.⁷⁵ Additionally, he indicated that support for the restriction of civil freedoms was negatively related to self-direction values, suggesting that a strong desire for personal freedom and autonomy may represent one motivation for insisting on respect for civil freedoms.⁷⁶

The Iraqi Constitution of 2005, consists of 144 Articles. Article 15 outlines that civil and political rights are to be enjoyed by every individual Iraqi, which shows that everyone has the right to life, security and freedom, cannot be deprived of these rights or restrictions except according to law or based on a decision issued by a competent judicial authority. Article 46 provides that: “Restricting or limiting the practice of any of the rights or freedoms stipulated in this Constitution is prohibited, except by a law on the basis that limitation or restriction does not violate the essence of the right or freedom.” Hence, the authorities in the Iraqi government must respect civil freedoms of the persons and not compromise their lives, protect them against any threats from international terrorism by placing a clear legal legislation criminalising terrorist acts and protecting their rights and freedoms, according to international standards of human rights.⁷⁷

⁷⁴ Nedim Ademović, “Bosnia and Herzegovina: The Right to Liberty and Security of the Person through Relevant Case Law,” *Review of Central and East European Law*, Volume 32, (2007): 386-387.

⁷⁵ Crowson Michael, “Authoritarianism. Perceived Threat and Human Rights Attitudes in U.S. Law Students: A Brief Look,” *Individual Differences Research*, No. 5, (2007): 260-666.

⁷⁶ Ibid, 262.

⁷⁷ Othman Majed, *Constitution of the Republic of Iraq for the year 2005 Political analytical study*, (Iraq: University in Sulaimaniya press, 2012): 34–44.

Finally, from what Daniel said, it is vital to note that civil freedoms i.e. the right to life and personal security cannot be treated lightly irrespective of fighting international terrorism. Thus, the meaning of civil freedoms regarding Article (19) (6) of the Iraqi Constitution of 2005 can be defined as the basic criteria necessary for a person to live in dignity.⁷⁸ Hence, in the current study civil freedoms refer to the international standards set out in the international instruments i.e. UDHR, ICCPR, etc.

1.8.1.3 Right to Life

There is no doubt that the right to life is one of the essential foundations of human life and it is important for the development and protection of other human rights. At the end of the World War II, Europe was marked by unsurpassed destruction and human suffering. This harsh experience gave rise to new political efforts especially compromised among the peoples of Europe.⁷⁹ These efforts worked out and the Council of Europe was founded on 5 May 1949 by the Treaty of London. In Article 1 of the Statute of the Council of Europe, its aim has been determined as "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress," and in Article 3 its stated that, in the realisation of its aim "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights, fundamental freedoms, collaborate sincerely and effectively." As indicated, the primary components to implement "a greater unity" are to accept the principles of the rule of law, the enjoyment

⁷⁸ Ibid, 35.

⁷⁹ Nirillah Yamali,. "What Is Meant by State Recognition in International Law." *General Directorate of International Laws and Foreign Affairs*, Turkey, (2009). From: <http://www.justice.gov.tr/e-journal/pdf>. (Accessed June 11, 2013).

of human rights and fundamental freedoms by all persons and collaborate sincerely and effectively.⁸⁰

However, the international law of human rights and civil freedoms i.e. the right to life, in many texts urges countries' commitment, including Iraq to behave in a way that promotes and protects human rights and fundamental freedoms of individuals and groups. Thus, the right to life is an inherent right for all people, regardless their nationality, place of residence, race, color, religion and language. Under any other situations where the Iraqis are all equal in the basic freedoms of indiscrimination, these types of freedoms are interdependent, expressed through international standards and guaranteed by the law in the form of treaties, customary international law, general principles and other sources of international law.⁸¹

Moreover, the Iraqi Constitution of 2005 has provided the protection and the definition of the right to life in Chapter II of the Constitution, especially in the Articles 14, 15, 16, 17 and 19, which state that: Each person has the right to life, security and freedom, and these rights cannot be deprived or restricted except in accordance with the law and based on a decision issued by a competent judicial authority.⁸² In addition, the Iraqi High Commission for Human Rights Act No. 53 of 2008 insists on the right to life for all Iraqi people.⁸³ Finally, according to Bassiouni,⁸⁴ it is important to note that the

⁸⁰ Ibid, 2.

⁸¹ Hassam Abdul Amir, *"The Role of Regional Organizations in the Protection of Human Rights."* (PhD diss., University of Al Mustansiriya, Baghdad, 2004):144.

⁸² Articles 14, until 19, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed, June 8, 2013).

⁸³ Article 4, the Iraqi High Commission for Human Rights Act No. 53 of 2008. From: <http://www.iraq-lg-law.org/>. (Accessed, June 8, 2013).

⁸⁴ Mahmood Bassiouni, "Introduction to the Study of International Humanitarian Law," *Journal of the Ministry of Human Rights in Iraq*, No. 2, (2005): 75.

definition of the right to life is considered as a set of humans' natural rights even if they are found astray, not recognised or violated by some authorities.

1.8.1.4 Right to Personal Security

Some scholars said, in international human rights law, states have obligations to protect, respect and promote the human rights and civil freedoms i.e. the right to personal security of peoples subject to its jurisdiction. In the member states of the Council of Europe, any interference with these rights and freedoms should meet the conditions laid down in the European Convention on Human Rights (ECHR) as interpreted by the ECHR. These obligations continue to exist when states participate in activities of entities with specialised technical mandates.⁸⁵

According to a Human Rights approach i.e. the right to personal security if taken properly, will strengthen the overall human rights compliance with international standards. All 47 Member States of the Council of Europe have undertaken to secure the civil and political rights and freedoms i.e. the right to personal security as provided in the ECHR. The initial and primary responsibility for the protection of the rights set forth in the ECHR lies with the Member States. Any individual claiming to be the victim of a violation of his/ her rights and freedoms by any of the ECHR Contracting States may apply to the ECHR after exhausting domestic courses of action.⁸⁶

⁸⁵ Wolfgang Benedek, Joy Liddicoat & Nico van Eijk. "Comments Relating to Freedom of Expression and Freedom of Association with Regard to new Generic top Level Domains." *Secretariat General, Directorate General Human Rights and Rule of Law Council of Europe*. (2012): 3-9.

⁸⁶ Ibid, 5.

This is stipulated in Article 10 of the ECHR which provides the exercise of these freedoms i.e. the right to personal security, since it carries with it duties and responsibilities, may be subjected to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁸⁷ Also, it is vital to note that the Article 3 of the UDHR defined the right to personal security as being essential to the enjoyment of all other rights.⁸⁸

On the other hand, the Iraqi Constitution of 2005 value the right to personal security by virtue of Article 37 stating that no person may be kept in custody or investigated except according to a judicial decision.⁸⁹ In the same context, it is important to note that the government institutions in Iraq represented by the Council of the High Commission for the protection of human rights and civil freedoms in Iraq under the Iraqi High Commission for Human Rights Act No. 53 of 2008 are mandated to protect civil freedoms i.e. right to personal security before and after the implementation of this Act.⁹⁰

⁸⁷ Ibid, 6.

⁸⁸ Hughes, Glenn. "The Concept of Dignity in the Universal Declaration of Human Rights," *Journal of Religious Ethics* 39, No.1 (2011), 1-24.

⁸⁹ Article 37, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html> (Accessed, June 8, 2013).

⁹⁰ Article 5, the Iraqi High Commission for Human Rights Act No. 53 of 2008. From: <http://www.iraq-lg-law.org/> (Accessed, June 8, 2013).

1.8.2 International Instruments on Human Rights

In the provisions of the UN Charter, UDHR 1948 and ICCPR 1966 include items and directives to enhance the status of international law of human rights in all countries of the world.

In 1948, the UN Conference on Human Rights, in one of its Resolutions, demanded that the General Assembly invited the Secretary-General to study the possibility of adopting new conventions for the protection of civilians and victims of terrorism.⁹¹ The General Assembly was invited to this study, in cooperation with the International Committee of the Red Cross. This convergence manifested in a series of decisions that was adopted by the General Assembly since 1948, including the establishment of the Universal Declaration of Human Rights 1948 and the International Covenants 1966 under the title of "respect for human rights in armed conflict."⁹²

1.8.2.1 Universal Declaration of Human Rights (UDHR) 1948

Historically, the UN was founded in October 1945.⁹³ Eight months later, it established a Commission on Human Rights, which was given the task of producing an international bill of rights. The resulting document of two years of drafting, discussion revision and gradual agreement on the part of members representing eighteen nations with often sharply divergent political viewpoints and traditions, was the Universal Declaration of Human Rights UDHR, ratified on December 10, 1948.⁹⁴ This study has

⁹¹ Mohammed Al Majzoub, *Public International Law*, (Beirut: University of Beirut Arab press, 2010): 895.

⁹² Ibid, 896.

⁹³ Hughes, Glenn. *The Concept of Dignity*, n 88, 3.

⁹⁴ Ibid, 4.

been unique as it provides reorganisation of Human rights at the international level, the UDHR was availed by the UN in 1948 and in its Preamble "it is proclaimed as a common standard of achievement for all peoples and all nations." Article 1 of the UDHR has outlined rights for all human beings to acquire their full potential and to live with freedom. Article 1 explains human freedom as: "All human beings are born free and equal in dignity and rights." It is important to note that the provisions of Article 1 of the UDHR have similar resemblance with Article 29 of the Iraqi Constitution of 2005, which states that:⁹⁵

1. "Everyone has duties to the community in which his free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subjected only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the UN."

In the evaluation of the principles of the UDHR, in relation to the Iraqi Constitution of 2005, Othman said that the Constitution has expressly provided the texts of the Universal Declaration with regards to respect for the rights and civil freedoms.

⁹⁵ Coliver S "International Center against Censorship, Article 19's Law Program Director: The Article 19 Freedom of Expression Manual," *the Bath Press, Midwest edition*, August 20, 1993.

According to Othman, this can be seen from Article 37 of the Iraqi Constitution. He further went on to present three arguments to support his opinion.⁹⁶

Firstly: The Constitution of Iraq provides the following rights:

1. "Human freedom and dignity intact.
2. No one should be arrested or interrogated; only by judicial decision.
3. Prohibits all kinds of psychological and physical torture and inhumane treatment, and does not take any confession, extracted under duress, threat or torture and the injured party to claim compensation for material and moral damage of the injury caused according to the law.

Secondly: The State shall guarantee the protection of the individual from intellectual, political and religious coercion.

Thirdly: Deprives forced work (forced labor), slavery and the slave trade and the trafficking of women and children, and gender trafficking."

The Iraqi Constitution of 2005 has other similar principles to the UDHR. Some other countries i.e. the US, made it clear in their Laws and their Constitution, the principles of the UDHR. In this regard, President Clinton, during the fiftieth anniversary of the adoption of the UDHR, on December 10, 1998 said:

This Declaration is one of the most important documents of the twentieth century, indeed of human history, for it represents the first time men and women sought to articulate the core aspirations of all the [sic] world's people. The authors of the Universal Declaration struggled to understand and harmonize their differing cultural traditions and convictions during a three year debate that culminated

⁹⁶ Othman Majed, Constitution of the Republic of Iraq, n 77, 36.

*in a set of rights recognized by all as transcending national, social, and cultural boundaries.*⁹⁷

From the above statement, it appears that the former president of the US was trying to send a strong message that the provision of the UDHR are of universal application and Member States should not advance arguments i.e. national, social and cultural boundaries to hinder the adoption of the UDHR in its totality.

In an analytical study of the results of the UDHR, Eleanor focused and put emphasis that under international law, many major treaties, ratified by more than 100 countries, could have their origins traced to the UDHR.⁹⁸ They include:

1. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1948.
2. The International Convention on the Elimination of Racial Discrimination 1965.
3. The International Covenant on Economic, Social, and Cultural Rights 1966.
4. The International Covenant on Civil and Political Rights 1966.
5. The Convention on the Elimination of All Forms of Discrimination against Women 1979.
6. The Convention on the Rights of the Child 1989.
7. Prosecution of indicted war criminals by the International Criminal Court, functioning as of 2002.
8. An August 2006 agreement on a draft convention on the rights of the disabled.

⁹⁷ Reinbold, Jenna. "Political Myth and the Sacred Center of Human Rights: The Universal Declaration and the Narrative of "Inherent Human Dignity." *Human Rights Review* 12, No. 2 (2011): 147-171.

⁹⁸ Eleanor Roosevelt "The Universal Declaration of Human Rights at Sixty," *Journal USA Celebrating 60 Years of Human Rights*, (2008): 3-8.

9. Adoption of a Universal Declaration of Indigenous Rights by the UN in September 2007.
10. Reducing or eliminating the death penalty in much of Europe and elsewhere.
11. Giving more attention to how transnational corporations affect human rights.

Furthermore, in terms of international agreement when a state approves and it accepts its legal obligation, people in that state therefore own the rights they might not have totally enjoyed prior to the approval and acceptance of the international agreement. Hence, participants of too many human rights agreements must prepare and submit regular agenda with manifests on their citizen's freedom. All these manifest go to the UN experts, who examine them carefully and suggest where changes are required. Citizens' groups' appreciator presents their own manifest, with more details. Therefore, one of the hopes of the drafters of the UDHR, has been increasingly to make synergy. Citizens have their own speech towards destiny. But still, other international conventions have been restricted from the UDHR.⁹⁹

In the analysis of the principles of the UDHR, Gearon asserted that "the UDHR arose from, or as a direct reaction to, the extreme denigration of freedom by totalitarianism, and the violence brought about by new science and technologies-the industrialisation of death witnessed in Nazi-genocide, carpet-bombing of European cities and the detonation of atomic bombs in Japan. The repressions of totalitarianism and the violence of genocide are foundational motivations behind all modern-day international human rights legislation."¹⁰⁰

⁹⁹ Ibid, 9.

¹⁰⁰ Gearon L, *"Freedom of Expression and Human Rights,"* (Brighton: Sussex Academic Press, 2006):115.

In a comparative study conducted by Yamali,¹⁰¹ he argued that there were regional international conventions related to human rights, with reference to UDHR, so as to protect the rights and civil freedoms of people from international terrorism, including the ECHR. The Member States of the Council of Europe had stated that "considering the UDHR proclaimed by the General Assembly of the UN on 10 December 1948. Being resolved, as the Governments of European Countries, to take the first steps for the collective enforcement of certain rights stated in the Universal Declaration" The impact can be seen in other international instruments on human rights i.e. the American Convention on Human Rights, adopted in 1969.¹⁰²

Furthermore, according to Margaret,¹⁰³ there are numerous international regional human rights conventions, although the resolutions are not binding legal documents, it serves as the normative foundation for any discussion of human rights behavior within the UN and other international human rights institutions. Judging states against the rights enumerated in the Declaration has become broadly accepted as the means through which the international community evaluates the acceptability of state behavior, including for the purpose of imposing international sanctions and the use of force against states that violate human rights and threaten international peace and security.¹⁰⁴

In an analysis of the American Convention on Combating International Terrorism, signed in Washington in 1961, which was based on the respect for human rights by the

¹⁰¹ Nirillah Yamali. What Is Meant by State, n 66, 2.

¹⁰² Ibid, 3.

¹⁰³ Mc-Guinness, Margaret E. "Peace, V. Justice: The Universal Declaration of Human Rights and the Modern Origins of the Debate." *Diplomatic History Oxford Journals* 35, No. 5 (2011): 749-768.

¹⁰⁴ Ibid, 766.

UDHR, it was stated that "the defense of freedom, justice and respect for the basic rights of the announcement the US on the Rights and Duties of Man and the UDHR, must be achieved and protected."¹⁰⁵ Hence, the phenomenon of terrorism has become a matter of intervention in the terms of reference for many of the international and regional organisations, which specialise in maintaining international peace, security and human rights. There is now much effort to focus international attention to resist terrorism through multiple forms of international cooperation.¹⁰⁶

In analysing the UDHR, it is vital to note that the view of Eleanor needs to give some serious thoughts. She said that in order to achieve personal security of citizens, the protection of life must follow the principles laid down in the UDHR since it is the encyclopedia of human rights and civil freedoms. Furthermore, the international conventions relating to human rights also make reference to the UDHR. Hence, it is the obligation of the Member States to protect the civil freedoms of their citizens from terrorist acts or acts of terrorism. Iraq is no exception when it comes to the exercise of this obligation.

1.8.2.2 The International Covenant on Civil and Political Rights (ICCPR) 1966

In order to give a legal basis to the UDHR, the UN came up with the ICCPR in 1966. According to Felice and Willam,¹⁰⁷ they argued that human rights are a product of this particular historical period, and it is playing an efficient role to help getting the rights of innocent. The ICCPR incorporates rights i.e. civil rights and political rights, it is

¹⁰⁵ Ibrahim Sayed Ahmed, *"Look at combating terrorism,"* (Egypt: Modern Library Publishing and Distribution press, 2010): 32.

¹⁰⁶ Ibid, 33.

¹⁰⁷ Felice, William F. "Militarism and Human Rights." *International Affairs* 74, No. 1 (1998): 25-40.

important for nations to avail their human rights in the situation where there is civil or political uncertainty. The aim is to enforce political, civil and social economic environment under law to enable all individuals through group membership to develop a valuable, independent civil society. However, in the new era of economic development, technological transformation and innovations all around have enabled people the protection of facilities and basic human dignity. The term human rights is controlled by agencies i.e. UN High Commissioner for Human Rights, the UN Centre for Human Rights, the United Nation International Children's Emergency Fund UNICEF, the United Nation Development Program UNDP, the World Bank, the International Monetary Fund IMF, etc., because they have the authority to control and provide basic human rights worldwide where there is political or civil instability.¹⁰⁸ It involves the local agencies and regional intergovernmental organisations that would authorise these organisations to consolidate their efforts and establish human right strategies for peace and development.¹⁰⁹

Furthermore, authors like Bai,¹¹⁰ carried out a critical review on ICCPR and found that Article 1 of the ICCPR is discussing more on the special protection of state parties. The current Covenant deals with the ethical values and also ensures all rights within territory of the Member State, subjects to its jurisdiction being recognised by all the Member States. These rights should provide without any discrimination i.e. "race, color, gender, language, religion, political grounds, national or social origin, wealth, birth or other status." This provision is based on non-discrimination and the principle of equality

¹⁰⁸ Ibid, 27.

¹⁰⁹ Ibid, 29.

¹¹⁰ Bai Guimei, *"The International Covenant on Civil and Political Rights and the Chinese Law on the Protection of the Rights of Minority Nationalities."* (PhD diss., China: Peking University Law School press, 2004): 441- 470.

applies to all of the rights in ICCPR. Article 2, also explains "subject to the provision of Article 1, individuals who claim that any of their rights enumerated in the covenant have been violated and who has exhausted all available domestic remedies may submit a written complaint to the Committee on Human Rights for consideration. On the other hand, Article 3 explains that the cornerstone of the declaration, proclaims the right to life liberty and security of human right which is useful to provide the basic rights to peoples."¹¹¹

In a comparative study by Othman on the establishment of the ICCPR, he argued that one of the significant elements for the establishment of democracy was to treat all people equally.¹¹² The civil and political rights have become a compulsory right of every individual and it is provided in the Iraqi Constitution of 2005 in Articles 14 to 21 i.e. Iraqis are treated equally within the jurisdiction, without any discrimination "Gender, race, nationality or origin, color, religion, sect, belief or opinion, or economic or social status." In addition, Article 20 of the Iraqi Constitution mentions that both men and women have the equal right to participate in public affairs and to enjoy political rights, including the right to vote and participate in the election.¹¹³

There are many other examples of countries which have included the provisions of the ICCPR in their Constitutions, other than the Iraqi Constitution. For example, the Constitution of China 1982 in Article 4 provides that "All nationalities in the People's Republic of China are equal, the state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and

¹¹¹ Ibid, 444.

¹¹² Othman Majed, Constitution of the Republic of Iraq, n 77, 38-39.

¹¹³ Ibid, 39.

mutual assistance among all of China's nationalities, discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited."¹¹⁴

ICCPR has added their role in providing advantage to protect human rights, in a spirit of collaboration between states and NGOs. Member States are required to give their vision and mission in a shape of report to the ICCPR to evaluate their efficiency of rights recognition and effectiveness of rights transformation.¹¹⁵ The focus idea is to make sinter institutional efficiency and connection between individual states and the regional Human Rights Committee (HRC).

This report must be submitted by states and it should be addressed to the Secretary General of the UN. The UN Secretary General will check its validity and reliability for further processing. The content of the report should be as per Article 40 of the ICCPR. From the academic point of view, there are two hypotheses which are:¹¹⁶

H1: Article 40(a), which provides the duty of the States to fulfill their reporting obligations.

H2: Article 40(b), which binds the States to submit reports on the measures adopted as well as on the progress made, not only within one year from the entry into force of the ICCPR, but also "there after whenever the Committee so requests."

¹¹⁴ Bai Guimei, the International Covenant on Civil, n 110, 451.

¹¹⁵ Rubagotti, Gianluca. "Non-Governmental Organizations and the Reporting Obligation under the International Covenant on Civil and Political Rights," *Non-State Actors and International Law International Community Law Review* 5, No.1 (2005): 59-76.

¹¹⁶ Ibid, 77.

In the evaluation of the functions of states and non-governmental organisations (Amnesty International) materials to the ICCPR, there are reports submitted by the States to the UN Commission of Human Rights with respect to citizens' rights and fundamental freedoms in accordance with the ICCPR. There the subject was raised in the report of the Human Rights Council of the Socialist Republic of Vietnam: According to the statistics provided by the Supreme People's Court, during the period from 1997 to 2002, 931 people were sentenced to death.¹¹⁷ It is noteworthy that out of 931, only 535 were related to violations of the right to life.¹¹⁸ The concern of Amnesty International is that the charges of crime against national security, which violates specific articles of the ICCPR. The violations can be seen from Articles 6 and 9 of the Covenant provided below:¹¹⁹

A) Article 6 (right to life): although in 1999 the numbers of offenses punishable by death were reduced to 27, this was still a high number and the death penalty was widely applied. This is in contradiction to Article 6 of the ICCPR.

B) Article 9 (liberty and security of person): It would suffice to note that the Vietnamese Penal Code dealing with the offense of "undermining the unity policy" is not in line with Article 9 of the ICCPR, which is on the right to freedom and security of a person. Also, the Vietnamese Penal Code criminalises peaceful political and religious dissent from government policy, this has led to arbitrary arrest, detention and sentencing of those who opposes government policy on a variety of issue. Hence, because of this

¹¹⁷ Razzaque J, *Role of Friends of the Court in the International Courts and Tribunals*, (Columbia: Non-Governmental Organizations in Regional Human Rights Systems, Columbia Human Rights, press, 2002): 170.

¹¹⁸ Ibid, 171.

¹¹⁹ Ibid, 172.

penal provision there have been many abuse cases committed by Vietnamese authorities.

In another comparative research of compliance with the ICCPR, Gianluca stated that Amnesty International has expressed serious concerns about UK Terrorism Act which was enacted in July 2000 and which develops emergency, permanent or temporary precautions and the suggestions to the committee that "the State party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including when applicable, the provisions on derogation contained in Article 4 of the Covenant."¹²⁰

However, it is also acknowledged that the Iraqi Anti-Terrorism Act No. 13 of 2005 has raised controversial and significant concerns by Amnesty International for non-compliance with the Articles of the ICCPR and this was evident in the differences between the Iraqi legislative authority on Article 4 of the Iraqi Anti-Terrorism Act No. 13 of 2005 and its impact on the civil freedoms of the Iraqi citizens:¹²¹

1. Anyone who obligates, as a main perpetrator or a participant any of the terrorist acts as mentioned in Articles 2 and 3 of the Iraqi Ant-Terrorism Act No. 13 of 2005 shall be sentenced to death. In addition, if an individual who provokes, assists, plans, finances and elevates terrorist to commit the crimes mentioned in this Act will face the same punishment or charges as the main committer.
2. Anyone, who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment, shall be sentenced to life imprisonment.

¹²⁰ Rubagotti Gianluca, Non-Governmental Organizations, n 115, 71.

¹²¹ Ibid, 72.

Finally, this is in line with the clarifications of Gianluca on Article 40 of the ICCPR which requires annual reports to the UN either by states or NGOs, because it illustrates the commitment of States to apply the Articles of the ICCPR even if it requires the establishment of new Acts to fight terrorism to save the national security. These Acts must not violate the Articles of the ICCPR, i.e. Article 30 warns that no State, group or person may have the right under the Declaration to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Declaration.

On the basis of the above literature, it is important to note that there are very limited studies which explore these rights i.e. the right to life and personal security for the protection of Iraqi citizens. Also, based on the literature reviewed, the Iraqi government needs to bring its human rights base intimations in front of international law enforcement commissions such as the UN, exactly the same way as how they are practicing in China.¹²²

1.8.3 Law Dealing with International Terrorism in Iraq (Anti-Terrorism Act No. 13 of 2005)

Before addressing the Iraqi Anti-Terrorism Act No. 13 of 2005 as a basic law dealing with international terrorism in Iraq, it is vital to point out that the 9 /11 events and subsequent terrorist attacks in various parts of the world have led to increase awareness and importance of national security to counter terrorism. Countries are required to promote cooperation among nations to agree on the same platform against terrorism.

¹²² Ibid, 41.

Internationally, governments are now concerned about the dangers and casualties on civilian population caused by acts of international terrorism i.e. being a hazard for human beings globally. The UN has passed a resolution on the formation of a special committee to fight against terrorism to strengthen the capacity of its Member States on the prevention of terrorist acts inside and outside. Furthermore, during the past 10 years this committee has made significant contributions in promoting international cooperation to combat terrorism and played an important role in this area and imposed the third item of Resolution 1373 on the countries concerned, including Iraq reporting, which aims on four areas of States terrorism Committee, which are:¹²³

1. What legislation that is concerning terrorism has been taken or to be taken within the model of the international campaign against terrorism?
2. What is the possible action taken or can be taken in this context?
3. What are the other initiatives, if any and by the States concerned to implement the letter and spirit of the Resolution 1373?
4. What are the steps that have been taken or expected to be taken to strengthen international cooperation in the areas covered by the decision?

On the other hand, Raid discussed that the Iraqi Anti-Terrorism Act No. 13 of 2005 has many complications as the UN has reservation over the operation of the Act.¹²⁴ This is due to the fact that the Anti-Terrorism Act No. 13 of 2005 is seen as not in line with other international conventions.¹²⁵

¹²³ Riad Hani Bahar, Concern of the United Nations Law, n 15, 2

¹²⁴ Ibid, 4.

¹²⁵ Ibid, 3.

In a study conducted by Diya on the impacts of the Iraqi Anti-Terrorism Act No.13 of 2005,¹²⁶ he stated that since the entry into force of the Act on the 9th of November 2005, many of the positive and negative feedbacks between supporters and opponents of the Act have been witnessed. The Iraqi government discovered that in dealing with terrorism the law is not much beneficial to the Iraqi people, so they pass a new Bill i.e. the Emergency Line-Bill. With the help of this Bill if it becomes law, the State and law enforcement agencies by all means will be in position to fight terrorism and protect the civil freedoms i.e. the right to life and personal security for the Iraqi citizens. Diya, compared the Iraqi Anti-Terrorism Act No. 13 of 2005 and the Iraqi Penal Code No. 111 of 1969, and found that these two laws can be viewed in two directions:

Firstly, Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005 defines terrorism as:

*Every criminal act committed by an individual or an organised group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.*¹²⁷

In addition, the Iraqi Penal Code No. 111 of 1969 elaborates more accurately by dividing crimes into ordinary crimes and political crimes.¹²⁸ The Iraqi Penal Code No. 111 of 1969 further defines categories of terrorist crimes.¹²⁹

¹²⁶ Diya Al-Tamimi. "The Point of View of the Anti-Terrorism." *Forums Star Times*, (February 13, 2013). From: <http://www.startimes.com/f.aspx?t=32179716/> (Accessed September 10, 2013).

¹²⁷ Iraq Anti-Terrorism Act No. 13 of 2005, the definition "Terrorism" Article 1. From: http://www.vertic.org/me_dia/National_Legislation/Iraq/IQ_Anti-Terrorism_Law (Accessed June 11, 2013).

¹²⁸ See Articles 20 and 21 of the Iraqi Penal Code No. 111 of 1969. From: <http://www.iraq-ig-law.org/en/content/penal-code-no-111-1969-amended> (Accessed June 15, 2013).

¹²⁹ Diya Al-Tamimi, The point of view, n 126, 2. Also see Article (21/a) of the Iraqi Penal Code No. 111 of 1969. From: <http://www.iraq-ig-law.org/en/content/penal-code-no-111-1969-amended> (Accessed June 15, 2013).

Secondly, Article 4 of the Iraqi Anti-Terrorism Act No. 13 of 2005 consists of two paragraphs. The first paragraph provides that death penalty should be imposed on any one who is involved in terrorist activity and the partner or the one who assist the terrorist should be awarded a life time prison. While studying the elements of the terrorist crime, it is vital to note that there are similarities in the elements of the Iraqi Anti-Terrorism Act No. 13 of 2005 and the Iraqi Penal Code No. 111 of 1969.

Article 406 of the Iraqi Penal Code No. 111 of 1969 deals with punishment for murder. According to Article 406, it is important to know the mental condition of the offender, his intention and what were the circumstances when the offender was arrested. If it is proven that the offender's intention was to kill the innocent human beings and his/her mental condition was also normal, the Court can punish the offender with the death penalty.¹³⁰

However, Article 406/a provides that "any person who willfully kills another is punishable by death in the following cases: premeditated murder or surveillance, killing by the use of toxic or explosive, killing for a fee, killing using methods and brutal killing of an employee or costly public service during duty or because of it, killing more than one person and coupling murder a crime." Perhaps in the context of this study, it would be vital to address the issue of clarity according to the Iraqi Penal Code No. 111 of 1969.¹³¹

¹³⁰ See Article 406 of the Iraqi Penal Code No. 111 of 1969. From: <http://www.iraq-ig-law.org/en/content/penal-code-no-111-1969-amended> (Accessed June 15, 2013).

¹³¹ Ibid, 3.

Abbas Al-Bayati who was a Member of the Security and Defence Committee in the Iraqi Parliament, in an interview with Free Radio Iraq in 2013, said that: Article 4 of the Iraqi Anti-Terrorism Act No. 13 of 2005 is very important, however it has some loopholes, because the Judges of Criminal Courts in Iraq, when the show terrorist crime presented front of them, were at a loss either to apply the legal materials to the Iraqi Penal Code No.111 of 1969, which is the most broader or to apply the legal materials of the Iraqi Anti-Terrorism Act No. 13 of 2005.¹³² On the other hand, Dr. Ali from the University of Mustansiriya in Iraq gave his legal expert opinion that Article 4 is effective and it should not be amended or repealed from the Iraqi Anti-Terrorism Act No. 13 of 2005, especially when the Courts are considering the prisoner's death penalty and life imprisonment penalty on the basis of Article 4.¹³³

Finally, it is important to note that the Iraqi Anti-Terrorism Act No. 13 of 2005 should be amended so that it will be in line with international standards i.e. the UN principles, international human rights laws as well as international conventions related to international terrorism. On the other hand, there is also a need to have fair and transparent trials. By doing so, this will help the Courts especially in the process of hearing cases involving death and life imprisonment.¹³⁴

¹³² Baraa Afif. "Renewed controversy about the Iraqi anti-terrorism Act." *Radio Free Iraq*, (2011). From: <http://www.iraqhurr.org/> (Accessed September 17, 2013).

¹³³ Ibid, 2.

¹³⁴ Ariany, Bnar, "The Conflict between Women's Rights and Cultural Practices in Iraq." *The International Journal of Human Rights*, No. 17(4), (2013): 530-566. From: <http://www.tandfonline.com/doi/abs/10.1080/13642987.2013.784492#.VL8oVdKUdOM> (Accessed July 19, 2014).

1.8.4 The Impact of International Terrorism on the Right to Life in Iraq

One of the most raised issues regarding the impact of international terrorism on civil freedoms in Iraq is that of the punishment vanished Spirit (execution). Sarah in her work said that "these latest executions follow a substantial increase in the use of the death penalty. Iraqi Justice Minister Hassan Al-Shimmery announced in mid-March in 2013 that 150 people will be executed in the coming days and at least 50 people were executed in the last month. Also, Iraq executed 129 people in 2012, which was a marked increase from 62 in 2011. Apart from a widespread international outcry towards the recent executions, the government has informed that the execution would continue."¹³⁵ To the researcher, what needs to be addressed in the context of this study is the issue of whether these executions violate the principle of the right to life.

In addition, the international community urged that the death penalty should be removed. It should be imposed only on most serious criminals. It is also urged to have fair trials, embedded with the right of the accused defending himself in an open Court. It is also important not to charge the penalty until and unless the offender is proven guilty and confess guilt. The death penalty which is derived from law and practices in Iraq breach these minimum guarantees, Human Rights watch said around 150 Countries have now abolished the death penalty punishment from their legislature.¹³⁶

¹³⁵ Sarah Leah Whitson. "Iraq: Executions Increased but No Action on Reform Promises to Improve Justice System Followed by Spate of Judicial Killings." *Human Right Watch*, (April 25, 2013). From: <http://www.hrw.org/news/2013/04/25/iraq-executions-surge-no-action-reform> (Accessed August 22, 2013).

¹³⁶ Navi Pilla. "Rampant use of the death penalty in Iraq." *From the UN Office of the High Commissioner for Human Rights Published*. (April 19 2013). From: <http://www.hrw.org/news/2013/04/19/iraq-executions-surge-no-action-reform> (Accessed May 22, 2013).

In a comparative study on Human Rights developments and activities of terrorism in Iraq in 2013 and its impact on the right to life, the Third Report of the UN Secretary General mentioned in paragraph 6 of Resolution 2061 (2012) that the Iraqi security environment remained volatile.¹³⁷ This is because of the political instability in the country. For example, in April 2012, 712 Iraqis were killed and 1,633 wounded, while 1,045 were killed and 2,397 wounded in May 2012, the highest casualty figures were recorded was in March 2008.¹³⁸ In addition, the UN offices in Iraq remain exposed to intermittent indirect fire attacks. On 26 April and 27 May 2012, a Guard Unit accommodation was affected by two attacks and these effected the UN Compound in Kirkuk City.¹³⁹

Terrorist violence continued on civilians in Iraq and according to the Government of Iraq source, 1,704 civilians were martyred and 6,651 were injured in the second half of 2012, resulting to a total of 3,102 martyred and 12,146 injured in 2012.¹⁴⁰ According to the United Nations Assistance Mission for Iraq (UNAMI), 1,892 civilians were martyred and 6,719 were injured in the last six months of 2012, resulting to a total of at least 3,238 civilians who were martyred and 10,379 who were injured.¹⁴¹

These figures mentioned above indicate that the trend of recent years of a reduction in the numbers of civilian casualties has reversed and that the impact of terrorism on civilian looks set to increase in the near future. Terrorists and armed groups continued

¹³⁷ The third Report of the Secretary-General pursuant to paragraph 6 of resolution 2061 (2012), Report Security Council (UN), 11 July 2013. From: <http://unami.unmissions.org/LinkClick.aspx?fileticket=Mn7emaLcQ1g%3D&tabid=2837&language=en-US> (Accessed August 20, 2013).

¹³⁸ Ibid, 2.

¹³⁹ Ibid, 3.

¹⁴⁰ Ariany Bnar. The Conflict between Women's, n 134, 2.

¹⁴¹ Ibid, 3.

to favor asymmetric tactics that deliberately target civilians or were carried out needless of the impact on civilians. Today, Iraq is still witnessing violence and terrorist activities that have aimed mainly at civilians and civilian infrastructure, resulting in innocent loss of life and personal security people casualties.¹⁴²

Looking at the impact of international terrorism on the right to life based on some of the literatures addressed above, it would suffice to note that after 9/11, the International Community has witnessed several deaths of innocent civilians. Not only that, after 2003 Iraq has also witnessed a lot of suicide attacks. In fact, there is a huge difference between readiness to die for a cause but still hopes to get away alive and planning from the start to commit suicide in the course of the attack, as an integral and unavoidable part of the plan. Maybe the extreme concern on implication of the latter is that the chance of deterrence has greatly declined. However, this may not actually represent what is happening on the ground. This is because the committer has nothing to be afraid of.¹⁴³

Finally, the researcher is in agreement with Ibrahim in his research on terrorism where he argued that terrorists have political motivations and supports.¹⁴⁴ Although many may consider it as an internal matter, it has become a life affecting the international community as well as increased impact on human rights and civil freedoms i.e. the right to life and personal security. In fact, the terrorist attacks constitute serious violations of the rules of international humanitarian law, the UDHR of 1948 and their impacts on

¹⁴² Ibid, 4.

¹⁴³ Trajtenberg, Manuel. *Defense R&D Policy in the Anti-Terrorist Era*. National Bureau of Economic Research, 2003. From: <http://www.nber.org/> (Accessed March 23, 2013).

¹⁴⁴ Ibrahim Sayed Ahmed, Look at combating terrorism, n 105, 21.

Iraqi society. As the first step, in order to fight terrorism both at home and abroad, there is a need for increased participation of states to formulate special rules i.e. in terms of laws, legislation, etc., in dealing with threats posed by terrorists. The second step, is to educate people so that later they can take a leading role in enhancing cooperation to counter terrorism. It is also very important for people to fulfill their duties and responsibilities ethically with the help of the media. People awareness can be improved by educating Iraqi citizens and make them aware of the seriousness of global terrorism.¹⁴⁵

1.8.5 The Impact of International Terrorism on the Right to Personal Security in Iraq

Carroll, Patrick, Aaron and Robert argued on individual freedoms as people sometimes respond to threat with self-defense processes that are inconsistent with the ideals of a pluralistic society.¹⁴⁶ This theme is implicit in many of the Articles of the Iraqi Anti-Terrorism Act No. 13 of 2005. Accordingly, it is believed that further work will be done to understand the processes by which people can be buffered from global terrorism threat.¹⁴⁷ The Articles of the Iraqi Anti-Terrorism Act No. 13 of 2005 in this issue also have implications for conditions under which one person's coping response to insecurity can threaten another person's security. At a social level, these implications have consequences. After 9/11, most of the security measures were changed, in addition, security concerns represent a normal part of everyday life.¹⁴⁸

¹⁴⁵ Ibid, 22.

¹⁴⁶ Carroll, et al., "Security in the Aftermath of 9/11." *Basic and Applied Social Psychology* 28, No.4 (2006): 289-290.

¹⁴⁷ Ibid, 291.

¹⁴⁸ Ibid, 292.

Furthermore, some authors¹⁴⁹ have applied the principal component analysis to decompose transnational terrorism during 1970–2007 into common (worldwide) and idiosyncratic (country specific) factors. A common thing which is related to individual countries' transnational terrorist happening, predicate. On the basis of the conventional criterion, Lebanon's transnational terrorism is the most common driver of global transnational terrorist activities. With a conservative criteria, the additional of four countries Iraq, US, UK and Germany as the main countries to elaborate the cross sectional correlation across 106 countries with transnational terrorism.¹⁵⁰ Terrorism is the premeditated threat or use or violation of the law by harming or killing individual or subnational groups.¹⁵¹ They fight to obtain political or social objectives through the intimidation of a large audience. Leaving behind many unrecoverable injuries and victims,¹⁵² terrorist acts are violence with political, social and ideological motives; violent acts without such motives are criminal acts and do not count as terrorism.¹⁵³

The attacks are sponsored by terrorist group's campaign to obtain certain political or social objectives or change in country and likewise these activities are set as terrorist events. Terrorists use many methods of attacks, bombing, hostage taking, assassinations, suicide bombings, arson as well as armed assaults to cajole a government into giving in to their political and social demand in reaction to public pressure.¹⁵⁴

¹⁴⁹ Khusrav, et al., "Common Drivers of Transnational Terrorism: Principal Component Analysis," *Economic Inquiry* 51, No.1 (2013):707-721. From: <http://onlinelibrary.wiley.com/doi/10.1111/j.1465-7295.2012.469.x/full> (Accessed August 11, 2013).

¹⁵⁰ Ibid, 710.

¹⁵¹ Ibid, 712.

¹⁵² Ibid, 713.

¹⁵³ Ibid, 714.

¹⁵⁴ Hoffman Paul, *Human Rights and Terrorism*, n 59, 949.

Hoffman has opined that there is a need for more specific measures in the fight against terrorism, which should comply with international obligations as laid down by the UN. He further stated that: in particular international human rights law, refugee and humanitarian law should be accorded with respect and implemented fully by all the members.¹⁵⁵ Hence, all human beings have the right to life, safety, security and that there should be some anti-terrorism mechanism enforced under the law. Governments around the world have the duty to respect and ensure that these rights are given to their citizens and for that the governments and international bodies need to strategise the implementation of law to have better prevention from terrorism. It is also required to have a modified punishment for acts of mass murder and destruction. Just as the state must prevent human rights violations from occurring within its territory, whether they are dedicated by non-state actors or officials, it should defend and protect those in the premises or borders from terrorism. Recognising the existence and force of universal human rights norms does not mean that international society has entered into a collective suicide pact, placing individual rights invariably over pressing security. Also, the right to personal security is not outright in concept or in reality. No society can be protected completely from those who would use violence to achieve their chosen ends. There will always be the essential balance between liberty and security. Indeed, the development and implementation of international human rights standards and humanitarian law have always been sensitive to the balance between liberty and security.¹⁵⁶

¹⁵⁵ Ibid, 950.

¹⁵⁶ Ibid, 951.

Finally, it is vital to note that Article 51 of the UN Charter allows for individual or collective self-defense and personal security against armed attacks. Therefore, an autocratic or military control to a terrorist act seems acceptable under international law when as a prerequisite, this act amounts to an armed attack in the meaning of the UN Charter. But then, the Security Council presents a range of carefully drafted law enforcement measures to combat international terrorism in a variety of ways. Indeed, the Council in its most recent Resolutions on the problem such as Report 1368 on the attacks of 9/11, Report 1373 on combating terrorism, Report 1377 in 2001 on the declaration on the global effort to fight against terrorism and Report 1456 at the ministerial meeting to fight against terrorism considers international terrorism a threat to international peace and security.¹⁵⁷

1.9 Outline of Chapters

This study has been divided into five chapters. The five chapters are:

Chapter One: Introduction

The introductory chapter discussed the background of the study, problem statement, research questions, research objectives, significance of the study, research methodology, limitations of the study and literature review.

¹⁵⁷ Oberleitner, Gerd. "A Just War against Terror?" *A Journal of Social Justice Peace Review* 16, No.3 (2004): 263-268. From: <http://dx.doi.org/10.1080/1040265042000278487> (Accessed March 23, 2013).

Chapter Two: Defining International Terrorism and Terrorist Acts by the Legislative Authority in Iraq and the General Assembly at the United Nation

In this chapter, the researcher first addressed the legal concept of terrorism and international terrorism, causes of international terrorism in Iraq, aims of terrorist groups in Iraq as well as the role of the legislative authority in Iraq and the General Assembly at the UN in defining the terms international terrorism and terrorist acts. This chapter also discussed the role of the United Nations in reducing the phenomenon of terrorism and the role of the regional organisations as well. This chapter answered the first research question as well as achieved the first research objective.

Chapter Three: The Protection of Civil Freedoms in Iraq

In this chapter, the researcher first addressed the concept of civil freedoms before moving on to address its protection in Iraq and focusing mainly on the right to life and personal security making reference to the Iraqi Constitution of 2005 as well as other international conventions on human rights and the UN Charter. Finally, the conclusion of the chapter was presented. Under this chapter, the researcher answered the second research question as well as achieved the second research objective.

Chapter Four: Results of the Interview

This chapter discussed the results of the interview. In this chapter, the researcher addressed the violations of civil freedoms, the impacts of international terrorism on civil freedoms and international efforts in countering international terrorism. Under this chapter, the researcher answered all the three research questions as well as achieved all the three research objectives.

Chapter Five: Conclusion and Recommendations

In this chapter, the researcher came up with an overall conclusion based on the discussion of the previous chapters as well as suggested some recommendations based on the findings of the study. The chapter also dealt with suggestions for future research. This chapter also addressed the third research objective



CHAPTER TWO

DEFINING INTERNATIONAL TERRORISM AND TERRORIST ACTS BY THE LEGISLATIVE AUTHORITY IN IRAQ AND THE GENERAL ASSEMBLY AT THE UNITED NATION

2.1 Introduction

In this chapter, the researcher first addressed the legal conception of terrorism, the meaning of international terrorism as a kind of terrorism at international perspective, causes of international terrorism in Iraq, aims of terrorist groups in Iraq as well as the role of the legislative authority in Iraq and the General Assembly at the UN in defining the terms "international terrorism" and "terrorist acts." In addition, the researcher discussed the role of both the UN and the regional organisations in reducing the phenomenon of terrorism / international terrorism before turning to the conclusion of the chapter. Under this chapter, the researcher answered the first research question as well as achieved the first research objective.

2.2 Legal Conception of Terrorism

Generally speaking, for hundreds of years "terrorism" has been used as a pejorative term, usually applied to the "other side". This is the world is political descriptor role, its significance as a legal term is more recent.¹

¹ Reuven Yong, "Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and its Influence in Definitions in Domestic Legislation," *Boston College International and Comparative Law Review* 29, no. 1, (2006): 23-103.

Under the legal conception of terrorism, the following are the important issues raised in order to have a better understanding of the concept.

2.2.1 Nature and Concept of Terrorism

The term “terrorism” comes from Latin *terrore* “to cause to tremble”. The term became popularised during the “Reign of Terror” and was carried out by the revolutionary government in France from 1793 to 1794.² In a modern context, it is used widely to refer, mainly to either terrorism or international terrorism.³ The researcher has to bear in mind that with increasing number of violence and attacks in many countries, the effects of terrorism are far profound i.e. targeting not only the country where terrorist acts take place but also other neighboring and even distant countries. This is similar to cancer as a disease. Cancer does not only affect a particular part of the patient’s body, but it spreads to other intact areas as well.

1. The Nature of Terrorism

In its popular understanding the term ‘terrorism’ tends to refer to an act that is wrong, evil, illegitimate, illegal, and a crime. The term has come to be used to describe a wide range of violent, and sometimes not-so violent, conduct especially in the hands of the media since 11 September 2001. Acts characterised as terrorist in nature can occur both in conflict and peace-time. They may constitute crimes in domestic and international law, and they are motivated by a complex matrix of reasons and ideals. Their

² Juergensmeyer, M, “*Terror in the mind of God: The global rise of religious violence.*” (London: University of California Press, 2003): 5.

³ Schmid, A, “The revised academic consensus definition of terrorism.” *Perspectives on Terrorism*, 6(2), (2012): 158-159. From <http://www.terrorismanalysts.com/pt/articles/issues/PTv6i2.pdf> (Accessed 13 August 2013).

characterisation can also depend upon the person or institution using the label and may even change over time. To give two striking examples, the list of most wanted terrorists kept by the United States featured, at one time, Yassir Arafat and Nelson Mandela, both of whom were subsequently awarded the Nobel Peace Prize: evidence that this is a highly political and controversial issue. In the months prior to his death, Yassir Arafat was in again described as a terrorist by the United States Administration.⁴

2. Terrorism and Crime

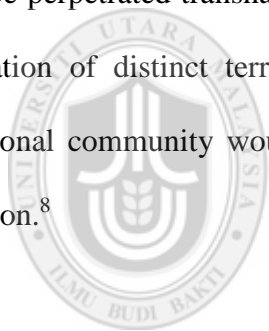
Having regard to the complex nature of terrorism, and the political and popular conceptions held about the term and about those who perpetrate terrorist acts, care must be taken when considering and assessing situations and how they might impact upon the topic. In the context of terrorism and crime, an interesting question might be posed: why talk about terrorism at all? An act of 'terrorism' will, after all, comprise a series of acts which, in and of themselves, constitute various criminal offences. To take an example, a bombing of an Embassy will likely involve the unlawful possession of explosives, the wilful destruction of property and the wilful or reckless injury to or killing of persons. Each element is a criminal offence in most jurisdictions and, as such, is capable of being dealt with by the relevant municipal jurisdiction.⁵

In submissions before the New Zealand Foreign Affairs, Defence and Trade Committee on the Counter-Terrorism Bill 2003, for example, Matthew Palmer argued that there are no good policy grounds to justify a separate, parallel regime of counter-terrorism

⁴ United States Federal Bureau of Investigation. From: <http://www.fbi.gov/wanted/terrorists/fugitives.htm> (Accessed 30 January 2016).

⁵ Matthew Palmer, "Counter-Terrorism Law." *New Zealand Law Journal* 456. (2002): 22.

law.⁶ Having regard to the composite nature of terrorist conduct, there might be some initial attraction to that argument. Why then add to the extant law and why adopt different standards. Some experts would answer this on the basis that the political nature of terrorist acts and the high level of threat that terrorism poses to public safety and public order demand a distinction to be made between terrorism and other criminal acts.⁷ There are, furthermore, crimes that cannot be prosecuted without defining terrorist acts or membership in a terrorist organisation including, for example, the offence of financial support to a terrorist entity, common to Australia, Canada, New Zealand and the United Kingdom, as well as many other nations. Taking a practical enforcement-based approach to the issue, and recognising the trend for many terrorist acts to be perpetrated transnationally rather than exclusively within a single territory, the creation of distinct terrorist offences with common elements throughout the international community would also assist in issues of mutual legal assistance and extradition.⁸



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3. The Ideological Nature of Terrorism

The most important feature of terrorism, distinguishing it from other criminal acts or conduct during armed conflict, is the motivation of terrorists and the codex against which terrorists measure their conduct.⁹ Generally speaking, those perpetrating 'normal' criminal offences do so out of some personal, hedonistic motivation whether that the material rewards of a burglary, the thrill and high of challenging 'the system'

⁶ Ibid, 23.

⁷ Boaz Ganor, "The Counter-Terrorism Puzzle. A Guide for Decision Makers." *New Brunswick: Transaction Publishers*. (2005): 8-9.

⁸ Helen Duffy, "*The 'War on Terror' and the Framework of International Law*." (Cambridge: Cambridge University Press, 2005): 106-115.

⁹ United Nations Global Counter-Terrorism Strategy, UN GAOR, 60th Sess, 99th Plen Mtg, UN Doc A/Res/60/288 (2006), Pillar I, preambular para.

or using drugs, or the desperation of stealing necessities where no alternatives appear to be available. Personal gain is the common feature of criminal conduct, setting aside crimes of passion and those of the mentally insane.¹⁰ In contrast, the primary motivation of terrorists is altruistic, motivated by a higher cause or ideology that is greater than his or her personal impulses or gains. It should be recognised that the individual terrorist may not be motivated in this way, instead acting out of a sense of revenge borne out of the individual's personal or familial experience or perceptions of ill-treatment or humiliation, a matter recognised, for example, implied in the UN Global Counter-Terrorism Strategy.¹¹ It can be generally said, however, that a terrorist (or at least the entity that recruited the individual) will act for the furtherance of an external cause (whether it be a localised secessionist movement or global jihad) and for the benefit this has to both the cause and the people of it. Combined with the honour derived from such conduct in this life, and the rewards in the next, the motivations of a terrorist are far beyond those of an 'ordinary' offender.¹²

Furthermore, the nature of terrorism has become a phenomenon and one of the most serious crimes of international community; whether on individuals, people, governments or states since the beginning of this century, the current terrorist operations are no longer targeting specific people as it was the case previously.¹³ So far, it has become more serious and managed to spread public fear, terror and captured civil freedoms i.e. the right of life and personal security of people and states.¹⁴ The table

¹⁰ Ehud Ilan, "Intelligence Challenges in Counter-Terrorism," (paper presented at the Terrorism's Global Impact Conference, Interdisciplinary Center Herzlyia, 13 September 2005.

¹¹ Alex Conte, "Human Rights in the Prevention and Punishment of Terrorism," *Springer Heidelberg Dordrecht London New York*, (2010): 7-37.

¹² Ibid, 10.

¹³ Osama Al-Alusi, "international responsibility for crimes against the peace and security of mankind," (PhD diss, University of Baghdad, 2006), 51.

¹⁴ Ibid, 52.

below illustrates the fact that the phenomenon of terrorism has spread in both the current and previous century.

Table 2.1

Number of Terrorist Attacks, Victims and Aims of Terrorists.¹⁵

Terrorism	1975	1985	1995	2005
Number of Terrorist attacks	60 Countries	70 Countries	85 Countries	110 Countries
Number Victim of Terrorism in The World	800 Individuals	3000-4000 Individuals	10000 Individuals	22500- 23000 Individuals
Aims Terrorists	95% Estates	50% Peoples	70% Peoples	95% Peoples

Although it is difficult to restrict all cases of terrorism to the international arena, a quick overview on the events describes that half of the terrorist acts from 1990 to 2000 has been committed in Europe. But between 2000 to 2010, there has been a noticeable change in the orientation map of terrorist acts, targeting both the Middle East and North African countries. These attacks have increased dramatically,¹⁶ especially in Iraq,

¹⁵ Khadr Eldahrawi "The Spread of International Terrorism," *international politics Journal*, No. 77 (July 2006): 143-146. Also see: Philippe Rondot, "America and Europe are grown harvested," *Each Magazine Arabs, Paris*, November 22, (1986): 3.

¹⁶ Izz Al-Din Ahmed Galal, *Terrorism and Political Violence*, (Egypt: Freedom Publishing press, 2007): 204-208.

where the beginning of international terrorism operations in the form of suicide attacks started after 2003 with the initiating of attacks on the cities in Iraq by the US Army and Forces.¹⁷ The table below describes the statistical percentage of terrorist acts in the world.

Table 2.2

Statistical Percentages of Terrorist Acts in the World.¹⁸

Dates	Europe	Latin America	North America	Asia	North Africa
Terrorism Attacks between 1990-2000	50%	21%	14%	11%	4%
Terrorism Attacks between 2000-2010	14%	10%	6%	50%	20%

Thus, it is clear from the table above that the terrorist attacks violated many well-established international norms, including intentional attacks on civil freedoms. The right to life and personal security of civilians can be violated by the law of war. Terrorist attacks may even implicate the prohibition on genocide if there is an intent to destroy a

¹⁷ Kelly & Brian M, "Martyrs in Mesopotamia: The Logic of Suicide Terrorism in Iraq," *CUREJ- College Undergraduate Research Electronic Journal*, (2008): 108.

¹⁸ Wilkenson Paul, "Three Questions on Terrorism," *Government and Opposition Journal*, No. 3 (2012): 299.

group of people and thus terrorist attacks may imply a violation of peremptory international norms, and can be considered a crime against humanity. In addition, increasing the perpetrators of those crimes has led to an increase in terrorism at all levels, which has become the most serious threats confronting the international community.¹⁹

4. The Concept of Terrorism

The concept of "Terrorism" has changed over time, because the first appearance was two and half a centuries ago, with the beginning of the French Revolution (1789-1794). This means that, it is stemmed from the European thought, which considered all acts and actions in groups, structured and unstructured, as terrorism. However, the US did not agree on any of its definition in spite of many attempts made to define the term because they want to monopolise the definition against their enemies or against their interests.²⁰ They do not classify any act under terrorism unless it is carried out by a non-governmental organisation. Besides, they also want to monopolise individual affairs with their political nature and exclude the terrorist affairs carried out by their allies i.e. "Israel". However, the non-Western countries argue that national liberation movements' use of terrorist tactics in a struggle for self-determination, should be exempted from condemnation and prohibition. Throughout the 1970 to 1980, the General Assembly at the UN emphasised this motive-based exemption in its terrorism resolutions.²¹ All references to terrorism included a standard qualification that the struggle of people under colonial and alien domination and racist regimes, for the implementation of their

¹⁹ Hickman & Daniel J. "Terrorism as a Violation of the Law of Nations: Finally Overcoming the Definitional Problem." *Wisconsin International Law Journal* 29, No. 3 (2011): 447-483.

²⁰ Saleh Ben Bakr, "Terrorism and International Conventions on Combating Terrorism," (Saudi Arabia: University of Imam Muhammad Ben Saud Islamic press, 2009): 6.

²¹ Ibid, 7-8.

right to self-determination and independence was legitimate and in full accordance with the principles of the international law.

In the same respect, extreme variations are in the views of the states with regard to the legal aspects of terrorism, where no agreement is on the constituent elements of that crime. It seems that there is a deep division in the international community about the definition of terrorism, despite the fact that terrorist acts include a threat to the security, safety and stability of the international community, a serious provocation to the feelings of humanity, conscience of the world and civil freedoms, a factor of tension in the international relations. These necessitate considering these acts as international crimes against the security and safety of humans, but there is still a strong contrast in the views of the members of the international community about the definition of what is meant by terrorism.²²

2.2.2 *Elements of Terrorism*

Despite the absence of a single universal definition of terrorism as mentioned above, it has to be acknowledged that there is an emerging consensus on certain elements regarding the definition of terrorism. Hence, it would suffice to note that two main elements (objective and subjective) seem to be required for the crime of terrorism.²³

The elements are as follows:²⁴

²² Ibid, 9.

²³ Cassese, A. "International criminal law." (Oxford: Oxford University Press, 2003): 22.

²⁴ Walter, C., Voneky, S., Roben, V., & Schorkopf, F. (Eds.). (2004). "Terrorism as a challenge for national and international law: Security versus liberty." (Berlin: Springer press 2004) 1-1483.

1. The Objective Element (Actus Reus)

The acts must constitute a criminal offence under most national legal systems, such as murder, kidnapping, hostage-taking, and bombing. In other words, the actus reus must lie in conduct what is already criminalised under any national body of criminal law. Besides that, they must be aimed at spreading terror by means of violent action directed to a State, the public or particular groups of persons. It is an undeniable fact that this element can be found in almost all definitions of terrorism used in national law.²⁵ Hence, a number of international instruments and national laws provide that the objective pursued by terrorists may be either to spread terror among the population or to compel a government or an international organisation to perform or abstain from performing an act.

2. The Subjective Element (Motives and Intention)

They must be politically, religiously, or ideologically motivated. It cannot be denied that terrorism as an act of violence has been committed by people from all religious and political backgrounds. Hence, terrorism occurs when ideological motivation meets the operational capability. In addition, with regard to the “deductive method” and “inductive method”, on the one hand, the deductive definitions of terrorism have intent elements i.e. the intent element that explicitly mention that the act was intended, on the other hand, the inductive method “relies upon a relatively precise description of the conduct constituting the substantive element and omitting the political intent element that characterised the deductive approach”. In other words, while inductive definitions

²⁵ Mohammed Salman Mahmood and Ahmad Masum, “A Quest for Defining Terrorism in International Law: The Emerging Consensus,” *Journal of International Studies Universiti Utara Malaysia*, Vol. 10, (2014): 77-93.

aim at defining what a terrorist act is, deductive definitions try to answer the broader question of what terrorism is.²⁶ The substantive element almost always refers to the use of violence and force. In a study by Schmidt and Jongman²⁷ it has been found that violence and force appear in 83.5% of the 109 definitions of terrorism, being by far the most recurrent theme. In addition to the above, Dugard considered that an ideal definition of terrorism “should expressly state that motive is irrelevant in determining whether an act of terrorism has been committed”.²⁸ What mattered by then and throughout the 1970s was the nature of the act, and who the targets were. Most scholars have now shifted position on the issue, considering that a workable definition of terrorism should comprise the intent element.²⁹ The absence of the intent element in international conventions is, as mentioned earlier, due to the need to reach consensus. States did not, however, discard deductive definitions of terrorism, as many of them use such definitions at the national level. The question of intent is one of the reasons for which the adoption of a universally recognised definition of terrorism has been stalled for years, despite the UN continuous efforts to elaborate the Comprehensive Convention on International Terrorism since 1996.³⁰

In summary, the researcher strongly believes that it is so vital for the international community i.e. States and Organisations to rise above their own interests, and reach an agreement in the near future about the international definition of terrorism; they have already established one basic principle on which an international definition can be built.

²⁶ Ibid, 87.

²⁷ Schmid, A., and Jongman, A. “*Political terrorism. A new guide to actors, authors, concepts, databases, theories and literature.*” (Amsterdam: North-Holland Publishing Company press 1988).

²⁸ John Dugard, “International terrorism: Problems of definition.” *International Affairs*, 50(1), (1974): 67-81.

²⁹ Mohammed Salman Mahmood and Ahmad Masum, A Quest for Defining Terrorism in International Law, n 20, 87.

³⁰ Ibid, 88

It stipulates that terrorism is a crime against civilians, which in no circumstance can be justified by political, philosophical, ideological, racial, ethnic, religious, or other considerations.

2.2.3 Types of Terrorism

To understand and clarify the types of terrorism phenomenon, the researcher discussed some types of terrorism such as state terrorism, religious terrorism, domestic terrorism and international terrorism, etc.

1. State Terrorism

State terrorism, of which torture can sometimes be a tool, is defined as threats or acts of violence carried out by representatives of the state against civilians to instill fear for political purposes.³¹ According to dominant views in mainstream policy, media and academic circles, state terrorism constitutes the targeting of other democratic states and their allies by non-state groups supplied and controlled by 'rogue' states or elements located in the other state. This is only partially accurate.³²

Furthermore, the parameters of analysis for most terrorism scholars have been dictated by dominant neorealist approaches that tend to accept the benign character of the foreign policies of Northern democratic states, and the US in particular.³³ When such states use force, it is assumed that this is in response to credible threats or as a means of protecting others. Yet as George accurately notes, 'on any reasonable definition of

³¹ Ruth Blakeley, "Bringing the State Back into Terrorism Studies." *European Political Science*, Volume 6, (2007): 228-235.

³² Ibid, 229.

³³ Alexander George. "*Western State Terrorism*," (Cambridge: Polity Press, 1991): 1.

terrorism, taken literally, the United States and its friends are the major supporters, sponsors, and perpetrators of terrorist incidents in the world today'.³⁴ A 'reasonable definition of state terrorism' is offered by leading terrorism expert, Paul³⁵ argues that state terrorism has five main characteristics: Firstly, it is premeditated and aims to create a climate of extreme fear or terror. Secondly, it is directed at a wider audience or target than the immediate victims of the violence. Thirdly, it inherently involves attacks on random and symbolic targets, including civilians. Fourthly, the acts of violence committed are seen by the society in which they occur as extra-normal, in the literal sense that they breach the social norms, thus causing a sense of outrage. Fifthly, terrorism is used to try to influence political behavior for state in some area.³⁶

2. Religious Terrorism

Even though the religious terrorism's immediate objectives are political rather than religious, i.e. al-Qaeda is distinctively an Islamic group. Not only is its chosen constituency a confessional one, but al-Qaeda also uses, and when necessary adapts well-known Islamic religious concepts to motivate its operatives, ranging from conceptions of duty to conceptions of ascetic devotion.³⁷ This is demonstrated with reference to the 'Last Night' document of September 11. The conclusion is that terrorism which can be understood in political terms is susceptible to political remedies. Al-Qaeda is the most famous recent example of an older phenomenon: 'religious terrorism', sometimes called 'sacred terrorism'.³⁸ Religion defines several important

³⁴ Ibid, 2.

³⁵ Paul Wilkinson, (1992) "International Terrorism: New Risks to World Order", in J. Baylis and N. Rengger (eds.) *Dilemmas of World Politics: International Issues in a Changing World*, (London: Clarendon Press, 1992): 228–257.

³⁶ Ibid, 229.

³⁷ Mark Sedgwick, "Al-Qaeda and the Nature of Religious Terrorism." *Terrorism and Political Violence*, Issue 16:4, (2004): 795-814.

³⁸ Bruce Hoffman, "Inside Terrorism". (New York: Columbia University Press, 1998): 5-90.

aspects of al-Qaeda: its ultimate aim (a state or states ruled by its favored form of Islam), the constituency to which it seeks to appeal (the world's Muslims), and the well-known religious concepts which it uses to motivate its operatives (duty, ascetic devotion, and piety).

However, the objectives are almost certainly political rather than religious, just as are those of any other terrorist group, theory places al-Qaeda within the contemporary wave of religious terrorism. On that account, after making a distinction between the religious and political aspects of Islam, it refers to three instances of premodern religious terrorism to establish the difference between ultimate aims and immediate objectives, arguing that while the ultimate aims of religious terrorists are invariably religious, immediate objectives may well be purely political.³⁹

3. Domestic Terrorism

The domestic terrorism is a type of terrorism that can be carried out by very different actors. The features that characterise domestic terrorism, as opposed to other forms of terrorism, are not clearly defined. Most definitions rely on the distinction between the target of violence and the audience target⁴⁰ or on the intent of spreading fear in the population, always with political aims. However, the distinction between the target of violence and the audience target is not specific to domestic terrorism. This is, in fact, is a generic element of all forms of coercion and can be found in many instances of warfare behavior that are not usually regarded as domestic terrorism.⁴¹ For example,

³⁹ Mark Sedgwick, *Al-Qaeda and the Nature of Religious*, n 37, 796.

⁴⁰ Krueger A B. "What Makes a Terrorist? Economics and the Roots of Terrorism." (Princeton UK: Princeton University Press, 2007): 14.

⁴¹ Ignacio Sanchez-Cuenca and Luis de la Calle. "Domestic Terrorism: The Hidden Side of Political Violence." *The Annual Review of Political Science*, Issue 12, (2009): 31–49

the two atomic bombs on Hiroshima and Nagasaki were a pure case of coercion against the Japanese government: the civilians attacked were not the audience target.⁴² Also, the aim of spreading fear is by no means an exclusive feature of domestic terrorism. It is true that domestic terrorism seeks to instill fear, but so do many other types of terrorism.⁴³ Some authors try to be more precise about the nature of domestic terrorism, adding that domestic terrorism is directed against noncombatants or civilians.⁴⁴ The literature on domestic terrorism has been fragmentary, traditionally dominated by case studies that often lack theoretical groundings.⁴⁵

In the same context, regarding the US code 2331 on the definition of domestic terrorism in chapter 133B as: Activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended "to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; to affect the conduct of a government by mass destruction, assassination, or kidnapping;" and (C) occur primarily within the territorial jurisdiction of the United States.⁴⁶

4. International Terrorism

International terrorism has become one of the most serious debated issues, especially because of the pre-events of September the 11th and onwards. What complicated the issue is the recent developments in the world which seems to be a failure of the

⁴² Schelling TC. *Arms and Influence*. (New Haven, CT: Yale University Press, 1966): 17.

⁴³ Kalyvas S. *The Logic of Civil War*. (Cambridge, UK: Cambridge University Press, 2006):10.

⁴⁴ Ignacio Sanchez-Cuenca and Luis de la Calle. Domestic Terrorism, n 41, 41-42.

⁴⁵ Krueger A B. What Makes a Terrorist, n 40, 16.

⁴⁶ The 18 US Code &2331 on the Definition of Domestic Terrorism. From: <https://www.law.cornell.edu/uscode/text/18/2331> (Accessed 30-12-2015).

international community, the law and the international regulation to address and find serious and effective procedures to deal with terrorism both methodologically and scientifically.⁴⁷

Fundamentally, scholars and intellectuals all over the world have differed so much in determining its meaning and setting its concept so far., This is evident by the interview with the two Academics and two Judges⁴⁸ who revealed the different forms of the phenomenon of international terrorism ranging from its meaning, purpose, and cause. In addition, it is difficult to find a specific definition for the term terrorism. Some of them neglected to do a research in the definition of the international terrorism in order to avoid the difficulty of a comprehensive and complete definition. Furthermore, the term terrorism has no specific and agreed-upon legal content. To reach a specific definition of international terrorism is difficult, because it is mainly related to the failure of the international custom to keep pace with new situations, where the international custom originated in the light of the dominant European regulations, which can be generally described as colonial states.

In the same context, regarding the US code 2331 on the definition of international terrorism in chapter 133B as: Activities that (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended "to intimidate or coerce a

⁴⁷ Bruce Hoffman, *"Inside Terrorism"* (Columbia: Columbia University press, 1998): 33-34.

⁴⁸ Interview with Academics: Mohammed Tamah, Academic of Public International Law, College of Law University of Dhi Qar in Iraq, August 30 2014; and Sadiq Zugheir Muhaisen, Academic of Public International Law, College of Law University of Misan in Iraq, September 7 2014; Also, the Judges: Nibras Salman Hamdani, Judge Criminal Court Babylon in Iraq, October 22 2014; and Sameer Fawzy, Judge Criminal Court Baghdad in Iraq, September 27 2014.

civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping;" and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.⁴⁹

On the other hand, the researcher finds that the international terrorism especially in Iraq regarded the Iraqi Anti-Terrorism Act No. 13 of 2005 as related to the international character. However, this is a focused study in this field in all aspects of logistics and suicide attacks due to the following reasons:⁵⁰

1. Different nationalities of the participants involved in the terrorist act.
2. The victim's nationality is different from that of the perpetrator involved in the terrorist act.
3. Preparation or implementation of the crime and the means used are of external nature.
4. The occurrence of the terrorist act against international transportation such as aircraft and ships in countries other than the countries of the crimes' perpetrators.
5. Overcoming the impact of the terrorist act locally or nationally may lead internationally towards another state.

⁴⁹ The 18 US Code &2331 on the Definition of International Terrorism. From: <https://www.law.cornell.edu/uscode/text/18/2331> (Accessed 30-12-2015).

⁵⁰Souheil Hussain Al Fatlawi, "*Terrorism and International Terrorism: A Study in Public International Law*," (Egypt: Prospects for Arab Publishing press, 2008): 167-180.

6. A different place of preparing, planning and processing of the terrorist act.
Preparing and planning is done in a country, but the execution is carried out in another one.
7. The occurrence of the terrorist acts took place at the instigation of a third country or through which the execution is committed.
8. A terrorist group receives assistance, supporting materials or external mental help.
9. The escape of the perpetrators of the terrorist act to another country after the execution of their terrorist operations.
10. Using modern technology when committing international terrorism and influencing people through media.

Thus, all of these reasons make it clear that terrorism in Iraq is of international nature because of the support the terrorist groups receive from other countries. This was mentioned by the Secretary-General of the UN in conferences in "Saudi Arabia" and "Madrid" in 2005 on the fight against international terrorism, which targeted the "Middle East," including Iraq.⁵¹ Therefore, there is a need to agree on a comprehensive international convention on international terrorism to address the causes and means to combat it.⁵² This has obviously increased the vagueness and complexity of the term, but the researcher in this study has summarised a set of definitions of international terrorism at all levels: international, regional and domestic laws as well as these presented by scholars, despite the failure to reach a comprehensive definition on the concept of international terrorism.

⁵¹ Othman Ali Hassan, *"International Terrorism and The Legal and Political Manifestations,"* (Egypt: Aldar legal books press, 2011): 127.

⁵² Ibid, 126.

2.3 Defining International Terrorism by International and National Scholars

Both international and national scholars have tried to come up with the definition of the term “international terrorism” in order to settle the dust of confusion in the fight against terrorism both at home and abroad. The following are some of the definitions:

2.3.1 Defining International Terrorism by International Scholars

Before touching on the definition of international terrorism provided by some of international scholars, it is vital to note that the most important international doctrinal attempts to define international terrorism were carried out by the first international conference to unite the criminal law that took place in "Warsaw", Poland in 1930.⁵³

Thornton explained the international doctrine of international terrorism as: the use of terror to influence the political conduct by means of unusual requiring resorting to threat or violence.⁵⁴ The definition of international terrorism gives special importance to the unusual means (political violence) which is the most important and the most dangerous of that ordinary violence and this unusual nature of the action distinguishes terrorism from other forms of political violence.⁵⁵ It is important to note that the definition of international terrorism by Thornton neither clarifies what is meant by the unusual nature of terrorist act nor controls to differentiate between unusual actions of international terrorism.

⁵³ Mohammed Moanes, *"Terrorism in the Criminal Law,"* (PhD diss University of El Mansoura – Egypt, 2003), 73.

⁵⁴ Thornton, TP, *"Terror as a Weapon of Political Agitation: Internal War,"* (London: Collier Macmillan press, 1999): 73.

⁵⁵ Ibid, 77.

In addition, Wardlaw described international terrorism as: the use of violence or threat by an individual or group operating either in favor of a state, the authority, or against it, where the aim of this work is to create a state of deep concern to the direct victims of terror, forcing the group to meet the political and social demands of the perpetrators of the terrorist act.⁵⁶ Moreover, Wilkinson also explained terrorism as: the extreme violence that is perpetrated in order to reach specific political terrorist aims, sacrificing all the humanitarian and ethical beliefs.⁵⁷

On the same token, some writers i.e. Frank and Lockwood, highlighted the struggle of the terrorist act, stating that: as any action carried out as part of a means of political struggle in order to influence the authority of the state or to acquire this authority or defending it.⁵⁸ This action includes the use of intense violence against innocent people and Muslims.⁵⁹

In summary, these definitions seem to show differences in terms of content as to what would amount to international terrorism. Some scholars focus on the "act of violence," while others focus on the "act of terror," to achieve the political, economic, social or religious aims. The third section focuses on the proportion of reaction to a specific actor i.e. some authors say they cannot attribute terrorism to states, "viewpoint of US" and

⁵⁶ Wardlaw, G, *"Political Terrorism: Theory, Tactics and Countermeasures,"* (London: Cambridge University press, 2002): 16.

⁵⁷ Wilkinson Paul, "Three Questions on Terrorism," *Government and Opposition London Journal*. No. 3, (2000): 292.

⁵⁸ Frank, T.M & Lockwood, B.B, "Preliminary thoughts toward an international convention on terrorism," *American Journal of International Law*. No. 2, (2010): 69-70.

⁵⁹ Ibid, 72.

others say that terrorism cannot be attributed to the national liberation movements because their deeds are not described as a terrorist acts.⁶⁰

2.3.2 Defining International Terrorism by National Scholars

In paying a particular attention at the national level, a number of academic and doctrinal attempts were made to define international terrorism, i.e. Waïled defined international terrorism, according to the perspective of the internal laws as: every illegal act threatening people done by individuals, groups, governments or states to create a state of fear or panic in order to achieve public, political, social and economic objectives.⁶¹ Terrorist acts are considered acts of repression, expansion, occupation and domination of all forms practiced by the colonial regimes, racial discrimination systems and foreign dominations.⁶² According to the writer's view the struggle of people and movements of liberalisation for national self-determination, freedom and independence are not considered terrorist acts.⁶³

On top of that, Professor Abdul Aziz discussed the elements that differentiate international terrorism by stating that:⁶⁴

1. There is no difference between international and internal terrorism in terms of the legal nature of the act, both of which require the use of violent means to

⁶⁰ Ibid, 73.

⁶¹ Mohammed Waïled Abdel Rahim, "*State Terrorism*," (Beirut: Book Thought press, 2001): 72.

⁶² Ibid, 73.

⁶³ Ibid, 74.

⁶⁴ Mukhaimar Abdul Aziz Abdul Hadi, "*International Terrorism and the Study of International Conventions and Resolutions of International Organizations*," (Egypt: Arab Renaissance press, 2008): 75-60.

create a state of terror and panic to a particular person, a particular group of people or the entire society so as to achieve the aims.

2. International terrorism is perpetrated to achieve political, social or ideological objectives.
3. Terrorist attacks perpetrated against the state and its institutions, persons, mission governance, administrations of state affairs or particular groups of the society are all within the scope of international terrorism.
4. All terrorist acts that contain an external or international elements perpetrated by an individual, a group of individuals or the authorities of a particular state and based on the measure, instigate and encourage or assist another country within the scope of international terrorism, as it is happening in Iraq now.

Furthermore, Ahmed Galal analysed the attempts to define the physical and moral of international terrorism which marred some mansions, because of limitation to the physical aspect (actions), the legal aspect (crimes) or the ethical and political one. He thinks that the definition of the optimum of the phenomenon of terrorism must be characterized to do both of the following:⁶⁵

1. Impartiality and objectivity: when the definition should be formulated, it complies not only one point of view but also all internal and international viewpoints and the motives of the commission of the crime that are not included in the definition.
2. Knowledge of different aspects of the phenomenon without neglecting any of them.

⁶⁵ Ahmed Galal Azzedine, "*Terrorism and Political Violence*," (Egypt: Freedom Writers press, 2012): 33-34.

Ahmed Galal concluded that the definition of terrorism was violence organised and connected with a view to create a state of general threat directed to the state or political group perpetrated by an organised group for the purpose of achieving political aims.⁶⁶

Having looked at the definitions of international terrorism from all levels i.e. from the perspective of international and national scholars, it is important to note that the absence of an accurate and uniform definition for international terrorism has led to the expansion of crimes as a result of including some actions that are not considered as a crime. For example, there is some uncertainty concerning the rules of international law of armed violence which is connected with the right of self-determination and the crime of international terrorism, resulting in a discrepancy with the legal rule, known as no crime and punishment except by law, which is a fundamental rule of criminal law in all countries over the world. This casts doubt on the legitimacy of the national liberation movements against colonialism.⁶⁷

2.4 Defining International Terrorism in National Law

According to the recent study of the Center for Human Rights in national laws, around fifty-three states proceeded laws against terrorism, especially in the wake of the UN Security Council Resolution 1373.⁶⁸ The widespread acceptance in domestic law can be an evidence of the development of international norms and general principles of law recognised by civilized nations. Given rise to consensus for the foundation of new

⁶⁶ Ibid, 49.

⁶⁷ Abdul Hussein Shaban, "*Islam and International Terrorism*," (London: Dar Al Hekma press, 2002): 67.

⁶⁸ Said Ibrahim, "*Crimes of Spying in Iraqi Legislation: A Comparative Study*," (PhD diss, University of Baghdad, 2009): 46.

principles,⁶⁹ the following are some examples on the definition of international terrorism in the domestic laws:

In the US, international terrorism was not a separate offense only punishable by itself in federal legislation until a law was passed in 1990 that is, the Anti-Terrorism Act of 1990 (ATA) which provides a civil remedy for the treble damages affecting the American victims of international terrorism. The ATA defines international terrorism as: violent acts intended to intimidate or coerce a civilian population, lists several specific manifestations of terrorism, and recognises secondary liability for material support or financing of terrorism.⁷⁰ Similarly, the Foreign Sovereign Immunities Act (FSIA) has been amended in the US to allow for private suits against state sponsors of terrorist acts, i.e. torture, extrajudicial killing, aircraft hijacking, sabotage, hostage taking and provision of material support for such acts.⁷¹

In this context, after the events of September the 11th, subsequent legislations were passed in the US related to combating the financing of terrorism, which is acts involving the use of violence and endangering human life. These are considered crimes under the laws of the US or any other country, when their aims are to scare people, influence the policy of a government by intimidation or coercion and influence the behavior of the government by massive destruction or acts of kidnapping and assassination.⁷² According to the concept of international terrorism in the US, it is important to note that the definition given by the US can be seen in the US willingness to develop a

⁶⁹ Ibid, 47.

⁷⁰ Ahmed Hussein, *"International Terrorism under International Variables,"* (Beirut: Al-Halaby Legal Publications press, 2005): 38-39.

⁷¹ Ibid, 101.

⁷² www.4law.cornell.edu. (Accessed, February 4, 2014).

definition of international terrorism in a way that shows the enemies of the groups described as being terrorists i.e. (the national liberation movements and the Palestinian resistance movements). These certain groups are considered terrorist not only for America but for the US allies such as Israel. They also do not want their action to be described as a terrorist act unless it is connected with a non-governmental organisations or individuals; their aim is to monopolise affairs with individual political nature and exclude terrorist acts carried out by the state or government organisations.⁷³

As in France, the French Criminal Law (FCL) defines international terrorism No. 1020 of 1986 as: A breach of the law implemented by individuals or organised collectively with the aim to stir up a serious disorder in general system through the threat of intimidation.⁷⁴ Under Article 421 of the FCL, if a terrorist group or the individuals, intentionally, adopt the following acts, they are considered terrorist acts:⁷⁵

1. Crimes against life and the safety of individuals or the crimes of abductions and detention as well as kidnapping of aircraft, ships or any other means of transportation according to what is provided in law.
2. Manufacturing and possession of explosive or deadly means.
3. Possession or transfer of arms and ammunition.
4. Crimes stipulated in Articles 1 and 4 of Act No. 467 of 1972, which prohibits the production, possession, storage or possession of biological or toxic weapons.
5. Crimes of money laundering.

⁷³ Fahd Bin Ibrahim, *"Glimpses of Terrorism in the Modern Era,"* (Saudi Arabia: Saud Al Islamic University press, 2004): 5.

⁷⁴ Barboza. J. "International Criminal Law." *Academic de droit International*. No. 278, (2001): 148.

⁷⁵ Ibid, 149-150.

The Egyptian Penal Law (EPL) No. 97 of 1997 defines international terrorism as: “anyone who uses force or violence or the threat that the offender is doing to implement the project of the crime, the aim of disturbing public order or endanger the safety of the community at risk which doing so would cause harm to people or put their lives in danger or harm to the environment or communications or transportation, money or buildings, or to prevent or impede the exercise of the role of public authorities or institutions acts of worship, or to disable the application or its constitution or regulations.”⁷⁶ By analysing the Egyptian law, it is vital to note that every wrongful act which individually or collectively threatens to breach public order and stability or endanger the safety and security of the society is a terrorist act. It is clear from this that the Egyptian Legislature is interested in putting a specific definition of international terrorism in legal terms and distinguish it from other crimes.⁷⁷

On the other hand, the Lebanese Criminal Act (LCA) defines international terrorism in Article 314 as: all acts which aim to find a case of fear and perpetrated by means such explosive, inflammable materials, toxic products or the holocaust and epidemiological factors or microbial, which would cause public danger.⁷⁸

Hence, by comparing the legal definitions of international terrorism under the regional laws, it is vital to note that these definitions are not comprehensive and adequate. This is because the rule of law requires the definition of a crime to be clear without implying any doubt or interpretation. The common elements between the national definitions of

⁷⁶ Clark Arend, Anthony and Beck Robert, "International Law and the Use of Force Beyond the UN Charter Paradigm," *Journal Routledge London*, (2003):143.

⁷⁷ Ahmed Hussein, *International Terrorism Under*, n 70, 57.

⁷⁸ Barboza. J, *International Criminal Law*, n 74, 148.

international terrorism remain without providing bases at this level.⁷⁹ As stated by the four Academics interviewed, the reasons is in the inability to formulate a workable legal definition for international terrorism stems from its inherent indeterminate, subjective nature as well as non-comprehensive knowledge of different aspects of the phenomenon of international terrorism.⁸⁰

2.5 Defining International Terrorism in International Law

Under this section, reference was made to regional and international conventions in order to get a clear picture of how international terrorism is perceived at regional and international level.

2.5.1 Defining International Terrorism in Regional Conventions

The study made reference to some regional conventions in order for the researcher to develop a holistic approach as to what international terrorism is all about. The following were some of the regional conventions referred to in this study:

1. Council of Europe Convention on the Prevention of Terrorism 2005

Similar regional charters reinforce the development of an international norm in prohibiting terrorism. European countries have ratified several Conventions on the Suppression of Terrorism, "which focus solely on the method of violence ignoring any

⁷⁹ Blakesly & Christopher L, Terrorism Drugs, International Law and the Protection of Human Freedoms," *Transnational Publishers New York*, No. 5 (2007): 41.

⁸⁰ Interviewed with: Yaarb Ahmed Naser, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 14 2014; Ali Jabbar, Academic of Public international law, College of Law University of Basrah in Iraq, September 20 2014; Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014; and Osama al-Abadi, Academic of Public International Law, College of Law University of Baghdad in Iraq, date of interview, October 10 2014.

attempts to justify or exempt conduct based on motives behind the attack."⁸¹ For example, the Organisation of American States, Commonwealth Countries and South Asian States, have all adopted similar conventions to combat terrorism. Even African, Arab and Islamic Countries have recognised a general proscription of terrorism, albeit with exemptions for national liberation movements not affecting their territorial sovereignty, with the important caveat that the pursuit of self-determination be in accordance with principles of international law.⁸²

2. Organisation of American States Convention to Prevent and Punish Acts of Terrorism 1971

At the regional level, agreements did not adopt the Organisation of American States (OAS) comprehensive convention against terrorism, but adopted in 1971 Convention on the Suppression and Punish Terrorist Acts, which took the form of crimes against protected persons.⁸³ However, this did not address the definition of international terrorism and in the same context, it did not provide the European Convention on the Suppression of Terrorism (ECST) definition of terrorism in 1976, but it confined itself as a statement that considers terrorist acts.⁸⁴

3. Arab Convention on the Suppression of Terrorism 1998

On the Arab level, with regard to the regional counter-terrorism cooperation in the framework of perception of many regional countries, including Arab importance to

⁸¹ Debra M. Strauss, "Reaching Out to the International Community: Civil Lawsuits as the Common Ground in the Battle against Terrorism," *International Law Journal*. No. 3 (2009): 307. From: <http://treaties.un.org/doc/db/Terrorism/csienglish.pdf>. <http://treaties.un.org/doc/db/Terrorism/Conv18-english.pdf> (Accessed, February 5, 2014).

⁸² *Ibid*, 308.

⁸³ Ahmed Hussein, *International Terrorism Under*, n 70, 58.

⁸⁴ *Ibid*, 39.

combat this phenomenon, collectively, that individualism will not be an effective confrontation impact. The features and impacts of this cooperation have begun to appear since 1987 until now. The Arab cooperation in fighting against terrorism was more than the level of interior ministers, ministers of journalism and ministers of justice. The first steps were discussion, during the conference of the Islamic Summit five, which was held in Kuwait in January 1987, (the subject of international terrorism) and the difference between international terrorism and the people's struggle for liberation.⁸⁵ Also, the Arab Summit Conference emergency meeting held by the Arab League in Amman in November 1987, discussed the need to clarify the concept of international terrorism, condemned the respective international terrorism in all its forms, but they supported the struggle of people for their liberation and to stand against the colonial powers.⁸⁶ In addition, they supported the struggle of national liberation movements and the right of self-determination issued by the Arab summit conferences.⁸⁷

In this respect, the Committee who met the Arab experts in Tunisia, from August 22 to 24 in 1989 to conceptualise the Arab initial concept of international terrorism, crafted a definition that was more inclusive and clear, stating that terrorism is an act of organised acts of violence or threats of causing panic or panic through acts of murder or assassination or booking hostages or hijacking or bombing of explosives and other, which creates a state of terror and confusion, which is designed to achieve political objectives, whether carried out by the state or a group of individuals against another country or group of individuals, not in cases of the armed struggle of national project

⁸⁵ Mohammed Al-Hussein, "*International Law*," (Saudi Arabia: Saud Al Islamic University press, 2003): 68.

⁸⁶ Ibid, 69.

⁸⁷ Ibid, 70-75.

for liberation and access to the right of self-determination in the face of all forms of domination or forces a colonial or occupied or racist, especially the liberation movements recognised by the UN, the international community and regional organisations to limit its military targets or economic occupier or the enemy, not be contrary to principles of human rights, the struggle to be a liberation movements according to the purposes and principles of the Charter of the UN and others of its decisions relevant.⁸⁸

Based on the above definition, we can say that the Ninth UN Conference on the prevention of crime, which was held in Cairo in April 1998, was one of the most important international gatherings, which saw the action regionally and at the Arab level that addressed that the issue of terrorism has succeeded in the internationalisation of attention to the issue of terrorism, culminating their efforts with success to make terrorism types of an organised crime.⁸⁹

Furthermore, the Arab Convention 1998 illustrated the concept of international terrorism as act of violence or threat, whatever the motives or purposes are adopted in the implementation of the task individually or collectively aiming to spread horror among people, expose their lives or liberty or security to danger, damage the environment, the public or private properties or facilities, occupy or put a national resource at risk.⁹⁰

⁸⁸ Khalid Obeidat, "The Phenomenon of Terrorism." *The Jordanian newspaper Al-Rai* in the number of, (November 2007). 44.

⁸⁹ Saleh Ben Bakr. Terrorism and International, n 20, 7.

⁹⁰ Khalid Obeidat, the Phenomenon of Terrorism, n 88, 15-23.

Hence, the general critical analysis of the definition of terrorism according to the Arab Convention for combating terrorism is that terrorism is a criminal act which is carried out by terror, violence or intense fear in order to achieve a specific aim. This terrorist act may be within the territory of a particular country or outside it, affecting the means of transportation, persons or money or all of them at the same time. However, the distinctive terrorist act is panic or terror and the use of threat or violence yet the armed struggle of people under foreign occupation for their liberation and access self-determination and independence in accordance with the UN Charter and resolutions are not classified under terrorism.⁹¹

2.5.2 Defining International Terrorism in International Conventions

Between 1997 and 2000 an Ad Hoc Committee which was established by the General Assembly in 1996 had successfully drafted the 1997 Terrorist Bombings Convention and the 1999 Terrorist Financing Convention.⁹² The General Assembly also tasked the Committee with drafting a treaty to suppress nuclear terrorism, based on a draft text submitted by Russia in 1997, as subsequently revised. The draft text was influenced by the 1980 Vienna Convention and the 1997 Terrorist Bombings Convention. However, despite their annual discussions, by the end of 2004, agreement had still not been reached on the draft and little progress was made after 1998.⁹³

⁹¹ Mohammed Al-Hussein, *"Terrorism: forms and manifestations, according to the Arab Convention for the fight against terrorism,"* (Saudi Arabia: Saud Al Islamic University press, 2004): 9-10.

⁹² Ben Saul, "Attempts to Define Terrorism in International Law," *Netherlands International Law Review*, Volume 52, No 1, (May 2005): 57- 83. From: http://journals.cambridge.org/abstract_S0165070X05000574. (Accessed November 14, 2014).

⁹³ Ibid, 66.

Perhaps it has to be pointed out that the preamble draft expresses the convention's rationale, stating that 'acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security' and that 'existing multilateral legal provisions do not adequately address those attacks'. It would suffice to note that the convention aims to fill lacunae left by 1980 Vienna Convention, by covering a wider range of 'targets, forms and acts of nuclear terrorism'.⁹⁴ In contrast, the 1980 Vienna Convention is limited only to offences relating to nuclear material while in international transport or in domestic use, storage and transport.⁹⁵

Furthermore, draft Article 2(1) has established objective offences where a person unlawfully and intentionally possesses or uses radioactive material or devices with the intent to cause death or serious bodily injury, or to cause substantial damage to property or the environment. It creates the further offences of using radioactive material or devices, or using or damaging a nuclear facility, with the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act. States must legislate to punish these acts, 'in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons'. It is vital to note that while deriving from a 1994 General Assembly, the definition itself is similar to the 1937 League of Nations Convention definition, the notion of a 'state of terror' is not an element of the offences, nor are the offences described as 'nuclear terrorism' as such.⁹⁶

⁹⁴ Rostow, N, "Before and after: The changed UN response to terrorism since September 11th." *Cornell International Law Journal*, 35, (2002): 475-489.

⁹⁵ Ibid, 477.

⁹⁶ Saul Ben, "Defining Terrorism to Protect Human Rights," *Documents de Trabajo Fríde*, No. 20, (2006): 3. From: <http://fride.org/publication/49/defining-> (Accessed September 11, 2014).

By 2003, the principle unresolved issue of the treaty's scope of application. Draft Article 4 proposes to exclude the 'activities of armed forces during armed conflict' which are 'governed' by International Humanitarian Law (IHL). It further excludes the 'activities' of State military forces 'in the exercise of their official duties, in as much as they are governed by other rules of international law'. Although an identical provision was adopted in the 1997 Terrorist Bombings Convention, some States wanted the Nuclear Terrorism Convention draft to apply to the activities of State armed forces, and/or State-sponsored nuclear terrorism.⁹⁷ This position is understandable given that States are the primary possessors of nuclear material. Some felt that the 1997 provision was ambiguous, while others believed it should take into account the contested legality of the use of nuclear weapons in armed conflict.

Furthermore, the draft preamble of this Convention 2000 condemns 'all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and whomever committed'.⁹⁸ Draft Article 2(1) proposes an offence if a person 'unlawfully and intentionally' causes: 'death or serious bodily injury to any person'; 'serious damage to public or private property'; or 'damage to property, places, facilities, or systems... resulting or likely to result in major economic loss'. The purpose of any such conducts, 'by its nature or context', must be 'to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act'. In other words, the prohibited acts must be motivated by purposes of intimidation or compulsion, but there is no requirement that acts be motivated by political aims or

⁹⁷ Ibid, 2.

⁹⁸ Dumitriu, E, "The EUs definition of terrorism: The council framework decision on combating terrorism." *German Law Journal*, 5(5), (2005): 585-602.

objectives. The treaty proposes to exclude the offences from the political offence exception to extradition.⁹⁹

Based on the above, it appears that unlike the 1997 Terrorist Bombings Convention, the Draft Comprehensive Convention proposes to protect private property as well as public property. It captures a wider range of acts against property than the EU Framework Decision, by referring to ‘serious damage’ rather than ‘extensive destruction’.¹⁰⁰ Furthermore, like the 1997 Terrorist Bombings Convention, the Draft Comprehensive Convention protects only States or international organizations from compulsion, and not the NGOs, political parties, corporations or other social groups.¹⁰¹

The Draft Comprehensive Convention was also met with some resistance. The first resistance being the application of the Convention i.e. whether it should exclude the activities of the ‘parties’ – rather than the ‘armed forces’ during an armed conflict, since reference only to ‘armed forces’ might exclude other participants in armed conflict under IHL, particularly as ‘parties’ are mentioned in the Hague Regulations and the Geneva Conventions. It is important to note that the 1997 Terrorist Bombings Convention excludes the ‘activities of armed forces during an armed conflict’ from that Convention, as well as the activities of State military forces exercising their official duties ‘in as much as they are governed by other rules of international law’. This approach is also followed in the EU Framework Decision.¹⁰² It should be noted that the proposed Article 18 of the Draft Comprehensive Convention was based on 1997

⁹⁹ Ibid, 588.

¹⁰⁰ Ben Saul, Attempts to Define, n 92, 66.

¹⁰¹ Ibid, 65.

¹⁰² Dumitriu, E, The EUs definition of terrorism, n 98, 600.

Terrorist Bombings Convention. However, the 1997 Terrorist Bombings Convention refers to armed forces ‘as understood’ under IHL, but definition in the Draft Comprehensive Convention itself would provide further clarity, particularly concerning application to non-State forces in non-international armed conflicts under Protocol II. Clearly, the reference to the ‘parties’ would be too broad, since it would exclude all State activity in armed conflict – not just military activities – as well as numerous non-State armed groups.

Apart from the disagreement above, the second disagreement was based on whether situations of ‘foreign occupation’ should also be excluded from the Draft Comprehensive Convention, in addition to ‘armed conflict’. This proposal was put forward by OIC proposal to exclude activities of the ‘parties’ and was intended to cover situations where there are no hostilities and IHL may not strictly apply. Politically, it was aimed at excluding non-State violence against Israel in the Palestinian Occupied Territories and against India in Kashmir.¹⁰³ It has been argued that this OIC proposal would ‘eviscerate’ the Convention, by reintroducing a national liberation exception.¹⁰⁴ Other States wanted even more explicit exemptions for self-determination movements. The third disagreement was whether State military forces exercising their official duties should be excluded from the Convention if they were merely ‘governed’ by international law or required to be ‘in conformity’ with it. The OIC proposed that military forces would be liable for terrorism if they were not ‘in conformity’ with international law, including genocide, torture, IHL, or State responsibility. These States felt that the Convention should cover State and State-sponsored terrorism,

¹⁰³ Rostow, N, “Before and after: The changed, n 94, 48.

¹⁰⁴ Halberstam, M, “The evolution of the United Nations position on terrorism: From exempting national liberation movements to criminalizing terrorism wherever and by whomever committed.” *Columbia Journal of Transnational Law*, 41, (2003): 573-582.

notwithstanding the application of existing international law to State conduct. It seems that the OIC proposal lacks balance since the activities of non-State forces are not similarly classified as terrorism if they are not in conformity with international law.¹⁰⁵

Finally, it is unfortunate that despite the widespread of the international condemnation of terrorism, no generally acceptable definition could be agreed upon. It is inevitable to point out that international terrorism was not included for a variety of reasons such as: its legal novelty and lack of prior definition; disagreement about national liberation violence and so forth. At this point, it is important to emphasize that making a single universal definition of international terrorism under international law is extremely difficult since there is always a possibility for the actions of a person or group being described as terrorism (criminal acts) by one side, while the same actions are called as the movement for freedom (political acts) by the other side.¹⁰⁶

2.6 Causes of International Terrorism in Iraq

International terrorism is a complex phenomenon and the interlock of international and internal particularly in Iraq involved the emergence of a number of factors and reasons in the society, where intertwined personal, psychological, cultural, political and economic reasons emerged from the phenomenon of international terrorism to achieve aims of violence and killing. This includes those who desire to get official status in the

¹⁰⁵ Ben Saul, Attempts to Define, n 92, 68.

¹⁰⁶ Fidanci, S, "Definition of terrorism in international law." *The Journal of Turkish Weekly*, (2006). From: <http://www.turkishweekly.net/article/103/definition-of-terrorism-in-international-law.html> (Accessed 22 September 2013).

government by resolving their differences in marginalising others and getting rid of them.¹⁰⁷

However, Mohammed Al Majzoub did not agree on specific reasons for international terrorism, because some reasons seem to consider terrorism as a social phenomenon, which arises under psychological, social, private, political, economic and cultural differences.¹⁰⁸ One of the common reasons which contribute to the production of the phenomenon of terrorism is the social reality. Thus, any treatment to this serious phenomenon requires a thorough knowledge of the most important causes and conditions that allow the existence of this phenomenon and studying it in detail, taking into consideration the traditional division for these reasons (internal and external).¹⁰⁹

As it is noticed below, the researcher has addressed the most important reasons which have aggravated international terrorism in Iraq and impacted civil freedoms i.e. the right to life and personal security of the Iraqi people. These reasons are listed as follows:

2.6.1 Political Causes

Often, political reason is behind most of the terrorist attacks; the fact that the problem of political instability as it is happening now in Iraq. International terrorism is inseparable and tangible in the international community, because it's potentially dangerous impact is clear in the path of political life in Iraq after 2003. Also, terrorist assassinations have continued for the purpose of the abolition of the rival and access to

¹⁰⁷ Mohammed Refaat Ahmed & Saleh Bakr, *"International Terrorism,"* (Egypt: Arab Center for Studies-European press, 2002): 209.

¹⁰⁸ Mohammed Al Majzoub, *"Aircraft Hijacking,"* (Egypt: Research and Studies Institute of the Arab Organization for Education, Culture and Science press, 1998): 198.

¹⁰⁹ Ibid, 199.

political authority. Therefore, it is found that terrorist assassinations are the most prominent factors out-breaking both World Wars I and II.¹¹⁰

Perhaps, the motivations for international terrorism are the right of self-determination of people, rejecting the idea of racial discrimination and violation of human rights. This brought the attention of the world public opinion to the problem or issue of interest led by a group of ethnic groups, who protested against unfairly policies adopted by the state authorities against its citizens. Additionally, the resistance to the occupation as it happened to the US military operations in Iraq from 2003 to 2011, led to terrorist suicide attacks targeting the US forces in Iraqi territory, but after their departure, the destination terror headed completely towards the Iraqi government and people. The aims of these terrorist operations are to force the state authorities to proceed with certain decisions, which are consistent with the interests and political objectives of the perpetrators of the terrorist acts in damaging the interests of a specific country or its people.¹¹¹

Internationally, there is an international policy unilaterally called "New World Order" followed by some of the major countries in the world i.e. the US Supreme Court issued a Resolution date 15-6-1992 which involved giving the right of an executive authority in the kidnapping and detention of suspected international criminal activities without referring to their home countries and being brought to trial in the US Court, whatever the means used to catch the suspects even though their countries did not give the

¹¹⁰ Najib Aqrabi, "The Principle of the Rule of Law and Human Rights and Their Relation to the Problem of Violence and Political Instability," *Arab Coughlan Journal*, No. 5, (2006): 39.

¹¹¹ Abdullah Abdul Jalil Al Hadithi, "International Terrorism in Fact and Law," *Journal of the Iraqi Justice*, No. 34, (2008): 219-220.

approval.¹¹² This new transformation has led to an imbalance in the international political system and resulted in the escalation of many conflicts and terrorism.¹¹³

In this respect, terrorism strategy may be used between two conflicts with unequal militaries, substituting conventional wars, as it is followed by some states, which adopt terrorist acts against other countries due to their inability to confront militarily or in retaliation for some political interests, i.e. Iraq suffers from a wave of international terrorism as a result of a new strategy launched by the regional countries against Iraq after 2003. The new political system clearly reflected political reasons, called the alternative war, which seek to settle scores with another state on the territory of a third country for political aims, i.e. the scene was clear through the intervention of the regional countries in Iraqi affairs in order to hit the US interests in Iraq and restrictions on the civil freedoms of the citizens.¹¹⁴

Furthermore, the low level of political participation, especially for young people in all parts of Iraq and from different classes in taking decisions that affect the lives of citizens including daily life, both within the family, school or residential neighborhood, at work or through active membership in the popular and official organisations had negative consequences.¹¹⁵ Today, young people are far from the political practice in the broad sense. This political practice, when develops produces the ability to express an opinion

¹¹² Sami Abdul Rahman, “*State Terrorism in the Framework of Public International Law*,” (Egypt: Alexandria Knowledge, 2003): 125.

¹¹³ Ibid, 126.

¹¹⁴ Othman Ali Hassan, “*International Terrorism and The Legal and Political Manifestations*,” (Egypt: Aldar legal books press, 2011): 52-53.

¹¹⁵ Ahmed Abu Russians, “*Terrorism, Extremism and Violence in Arab Countries*,” (Egypt: Modern Office press, 2001): 13.

and debate on public or social issues implying the familiarity to accept the opinions of others after analysis, critique and to waive the opinion if persuaded.¹¹⁶

Finally, it is vital to note that the absence of political pluralism, the lack of a degree of freedom of expression and the lack of real trading of authority in Iraq, because of the formation of the new government in Iraq and until now is led by one man of one party over the last three election cycles leading to deprive the political and social forces from expressing real political and rightful practices, ignoring the demands of minorities and suppression of groups who oppose the government policy. All these led to the creation of a suitable environment for violence and terrorism in Iraq, threatening the right to life and personal security of the Iraqi people.¹¹⁷

2.6.2 *Economic Causes*

Previously, terrorism was run by individuals, limited unorganised groups or supported by countries, but now terror has become a global trade way promoted and run by organised networks of individuals, organisations, companies and major institutions, providing expertise in planning, preparing, implementing of kidnapping aircraft, ships and people and the recruitment of terrorists and arms for the management of markets and international crime.¹¹⁸ For example, the "Mafia Gangs" are scattered globally and considered the world's most famous terrorist organisations involve in terrorism and crime.¹¹⁹

¹¹⁶ Ibid, 14.

¹¹⁷ Mohammed Hawari, *"Terrorism: Concept, Causes and Remedies,"* (Saudi Arabia: Saud Al Islamic University press, 2004): 23-24.

¹¹⁸ Abdullah Abdul Jalil Al Hadithi, *International Terrorism in Fact*, n 111, 221.

¹¹⁹ Ibid, 222.

Ultimately, the economic crises affect the lower classes mainly, where they are suffering severely from the deterioration of their living conditions due to the widespread of unemployment and the deterioration of services and the emergence of a layer of rich people who are provocative for the poor. Obviously, half of the population in the world suffers from poverty, one-third lives in misery and 800 million people are malnourished (including 9 million Iraqis living below the poverty line).¹²⁰ More than one billion people live in illiteracy conditions, among them are more than 121 million children mostly girls.¹²¹ In addition, more than a billion and a half people have no access to drinking water and about two billion people are without electricity.¹²² These conditions have created an economic crisis, resulting to an increase in the unemployment rate, inflation and high prices, thus, leading to severe inequality and reflecting the impacts of this serious imbalance on the young people. Consequently, a breeding ground will be created for extremism, providing extremist groups with members, suffering from frustration and lacking a sense of security and hope in the future, to carry out their terrorist operations as a response to their governments' negligence and ignorance.¹²³

Underscoring this issue, because of the economic changes that took place in the Arab countries in the last thirty years and the conditions in Iraq after 2003, movements of migration from the countryside to the city have increased sharply, leading to the spread of slum districts in the cities of Iraq.¹²⁴ These include slum areas high with percentages

¹²⁰ A Report issued by the UN Children's Fund (UNICEF) in 2004. From: <http://www.swmsa.com/modules.php?name=news&file=aeticle&sid=1046>. (Accessed February 21, 2014).

¹²¹ Ibid, 2.

¹²² Gray, Kevin R. "Concerning the Arrest Warrant of 11 April 2000." *Democratic Republic of Congo V. Belgium*, No. 2 (2002): 43. From: www.mondiploar.com (Accessed January 30, 2014).

¹²³ Ibid, 44.

¹²⁴ Mohammed Hawari, *Terrorism: Concept*, n 117, 22.

of people suffering from economic poverty due to the inability of some of those people to adapt to the values of the city, which are different from the values of their rural areas where they come from, because of unemployment especially among young people, these latter were easily attracted by extremist groups to volunteer doing terrorist operations.¹²⁵

However, if the opposite had happened, the state and its people would have been economically prosperous. Thus, the terrorist attacks will target and damage the economy of a particular country, i.e. the destruction of industrial or trading facilities, attacking the airline offices or tourist establishments to stir panic and terror among the people. A good example of the motives of terrorism is what happened in Iraq, where a rocket attacked Baghdad's International Airport (BIA) in 05/02/2014 and resulted in loss of material and death of travelers, thus, looting their right to life and disturbing personal security.¹²⁶ In addition, the economic motivation of the terrorists is their need for financial support to fund their terrorist operations through armed robberies on banks and financial institutions, as shown to be true in the biggest robbery targeted the "Bank of Baghdad" in 10/12/2012. The terrorists stormed the bank, killed the guard, staff and stole about "one million US dollars."¹²⁷

In associating with the evident given earlier, it is important to note that poverty and destitution is not the real or main motive of international terrorism, because terrorism is an extremist criminal racial conduct occurred in societies that live in economic

¹²⁵ Ibid, 23.

¹²⁶ Nickolay Mladenov. Special Representative of the United Nations Secretary-General for Iraq (SRUNSG): *United Nations Assistance Mission for Iraq* (UNAMI) (2014). From: <http://www.unmultimedia.org/tv/unifeed/category/contributing-agency/unami-united-nations-assistance-mission-for-iraq/> (Accessed, February 22, 2014).

¹²⁷ Ahmed Galal Azzedine, *Terrorism and Political*, n 65, 44.

prosperity and adopted by states, its official institutions or rich segments, i.e. Far-Right Groups (neo-Nazis and Klan Alklkos) in Western Europe (WE) and the US.¹²⁸

In order to overcome the economic problem, it is important to note that establishing a war against unemployment and economic disruption and ignorance are not the answers. Each one of these problems is a source of danger to the Iraqi people, robbing their right to life and the loss of personal safety.¹²⁹ Even in a global economy and the principles that came out by the World Trade Organisation (WTO), the GATT Agreement and the Free Trade Agreement (FTA), it is difficult to achieve or contribute to address the tragedy of the people, especially the Iraqi people by bringing prosperity to them under the circumstances and the conditions of inequality. Nonetheless, the International Constitutional, Internal Rules and Principles have to take into account the objective conditions of the Iraqi people in terms of capabilities at all levels in order to become fair and equitable for all, because the difficulty in providing job opportunities for (10,000) graduate students each year from Iraqi universities can be a cause that evoke some to head towards violence and extremism.¹³⁰

2.6.3 Social Causes

International terrorism is a disease of the social ills which seriously affect the society. Social transformations in Iraq after 2003, were accompanied by changes in social structures and institutions, changes in social values, a decline in spiritual values, a widespread sense of injustice, frustration and hatred leading to deviation in behaviors

¹²⁸ Ahmed Hussein, *International Terrorism Under*, n 70, 165.

¹²⁹ Ahmed Shalabi, *Sectarian Strife and Extremism*, (Egypt: Egyptian General Book press, 2003): 6.

¹³⁰ Hussein Tawfiq, *Agreements (WTO/GATT) and Globalization of Intellectual Property*, (Iraq: Salah El Din University press, 2010): 23.

that tend to side to violence, crime and terrorism.¹³¹ There are facts in the Iraqi experience showing that violence and terrorism on the one hand and the deterioration of living and unemployment on the other hand feed off each other, where it is found that the crime in Iraq after 2003 increased by three, but it was much less before 2003 due to the reasons mentioned above.¹³²

Additionally, there is a type of relationship between high population densities. According to the statistics of the Iraqi Planning Ministry for 2006, population census in Iraq was 25 million people, but in 2010 it soared to 34 million people and the increasing phenomenon of crime and international terrorism not only in Iraq, but also in African and Asian Countries is due to the internal migration from the countryside to the city.¹³³ This helped increase civil conflicts, high rates of unemployment, absence of political and social stability, the disparity in income distribution, and basic services and facilities i.e. education, health, housing and electricity. According to the statistics of the Iraqi Planning Ministry for 2013, there are 9 million Iraqis who do not have house.¹³⁴ The size of the population is not evidence of the power of the state at all times, especially if the standard of living declined socially and politically.¹³⁵

Accordingly, the phenomenon of population growth led to conflict over natural resources and wealth. The deterioration of environmental conditions by pollution and population increases complicated the dangerous conflicts; the absence of democracy

¹³¹ Abdul Rahman Mohammed, *"Insanity, Crime and Terrorism,"* (Beirut: University Publishing press, 2004): 252.

¹³² Ibid, 253.

¹³³ Adnan El Sayed Hussein, *"Population Problem and International Peace,"* (United Arab Emirates: Emirates Center for Strategic Studies and Research press, 2007): 10.

¹³⁴ Ibid, 11.

¹³⁵ Ibid, 12.

and the role of Constitutional Institutions feed into political conflicts as it is in the case in Iraq, Syria, Lebanon, Turkey, Sudan, Iran, Cyprus, South Africa, Chibouk Canadian, the Balkan wars after the end of the Cold War.¹³⁶ In addition to social deprivation, the sense of the inability of Iraqi society to assimilate specific categories fully ultimately led to the feeling of alienation and increasing sectarian considerations and extreme racism. These may lead people to the formation of terrorist groups or join groups of suicide to change their bad situation.¹³⁷

Finally, it is vital to note that through the analysis of the social causes which evoke violence, crime and international terrorism, the loss of social organisation in countries suffering from terrorism, especially in Iraq has an impact on crime, because it is found that in primitive and contemporary societies, the stability of the social system was an important factor in adjusting crime.¹³⁸ There are a small number of people who break the law in stable societies unlike members of unstable societies.¹³⁹ Humans are social by nature, but leaving the law means leaving the community and social links. However, strange feeling by some people is believed to be due to marginalisation in life and having no role in the society. Feeling of persecution leads people to the desire to prove themselves devastatingly is the cause for them to join the field of crime and international terrorism. This is what really happens in too many of the terrorist groups in Iraq, who have been marginalised in their own countries and have no role in their

¹³⁶ Kamal Metwali, *"An Invitation to Love against the Violence,"* (Egypt: Egyptian General Book press, 2003): 39-40.

¹³⁷ Ibid, 41.

¹³⁸ Abdul Rahman Mohammed, *"Psychology of Terror,"* (Beirut: Al-Halaby Legal Publications press, 2010): 76.

¹³⁹ Ibid, 77.

communities, therefore, they are motivated towards extremism to prove themselves on the expense of people's right to live in peace.¹⁴⁰

2.6.4 Democratic Causes

The Third World societies have witnessed a tremendous accumulation of facts related to the destruction of democracy, where the political conflict is much like the process of involvement in authority.¹⁴¹ The loss of the institutional system in the authority leadership, the absence of democracy, the lack of people's participation in the political process and giving freedom of opinion and expression lead them to finding other illegal alternatives i.e. violence, extremism and international terrorism.¹⁴²

In this respect, "Jean Laporte" (Head of the International Fight against Terrorism in the US) said that the lack of democracy and the provisions of international and internal law are the most important causes of terrorism in the world, because law has a close relationship with the political, social and economic systems.¹⁴³ The legal rules undertake the task of insuring matters necessary for those systems. However, any kind of imbalance that affects these rules will reflect on the society; hence, the institutions and individuals must follow the law.¹⁴⁴ Also, the jurist in the international law "Rosso" said that allegiance must be to law linked to the social and economic interests and security, but not to people.¹⁴⁵ Injustice, aggression use of force against people

¹⁴⁰ Ibid, 78.

¹⁴¹ Kamran Al Salhi, "*Democracy and The International Community*," (Iraq: Mukrayani Institution Publishing press, 2002): 75.

¹⁴² Ibid, 76.

¹⁴³ Mahdi Gaber Mahdi, "*International Terrorism*," (Iraq: Salahaddin University press, 2008): 10. From: <http://www.annabaa.org/nbanews/u2/203.htm> (Accessed February 7, 2014).

¹⁴⁴ Ibid, 11.

¹⁴⁵ Monther C.R, "Human Rights Violations and International Crimes in Iraq," *Arab Kolan Publications*, No. 80, (2003): 20. From: <http://www.zaqora.4t.com/lehab.htm> (Accessed February 9, 2014).

especially in dictatorial regimes that confiscate rights, freedom and democracy, the absence of constitutional institutions, the loss of freedom of expression and opinion the lack of respect for human rights, civil freedoms and lack of respect for international standards of the right of people and individuals contributed in increasing terrorism, violence and suicide attacks in the world.¹⁴⁶

The principle of the democratic experience, despite the passage of several decades to establish the model of the modern state, in the majority of Arab countries is still new and fragile especially in Iraq, where the enjoyment of democracy after 2003 may be a kind of formality. Perhaps, the most important frameworks of democracy notably are opening legal channels for dialogue and expression. There is no doubt that the loss of true democracy leads to the marginalisation of some groups, socially and politically the exclusion of minorities and opposition groups, creating an atmosphere of feeling of injustice, motivating these groups to engage in a terrorist act.¹⁴⁷

Finally, it is indeed significant that the deficit in dialogue with the younger generations and not allowing them to express themselves and serve their country, makes a lot of the young people victims of this violence, with a growing feeling of extremism among them. Also, violence does not appear in the means of dialogue and reconciliation, democratic legitimacy as well as the pursuit of the governing authority in Iraq to adopt Constitutional reforms, a reservation of human rights and civil freedoms of individuals

¹⁴⁶ Ibid, 21.

¹⁴⁷ Mohammed Hawari, Terrorism: Concept, n 117, 24.

in their right to life and personal security are achieved, then where does violence appear.¹⁴⁸

2.6.5 *Psychological Causes*

Some disorders, including mental imbalance i.e. insane offenders, neurotic offenders, psychopathic offenders, rape and alcoholics; all these, whether genetic or connected with the pressures of a sudden nervousness as a result of previous situations, evoke the individuals to join terrorist acts or groups.¹⁴⁹ The psychological aspects may be the motive behind many of the terrorist activities in Iraq, especially after the process of "Whitening Prisons" launched by the previous regime in 2002, less than a year before the outbreak of war with the US. It has had a negative impact on the Iraqi society and contributed to the growing phenomenon of crime after 2003 which involved killings and terrorism, affecting negatively on people's right to life and personal security.¹⁵⁰

According to Tawalbeh, there are psychological factors that evoke the individuals to follow violence and terrorist act.¹⁵¹ These factors are the instinct aggression in each person to be nearer to terrorist act and ready to join the ranks of terrorist organisations. In addition, the process of "Brain Washing" motivates people forcibly or voluntarily to change their attitudes, creeds, views and behavior, thus removing the old attitudes, adopting the practices of physical and psychological pressures adopted by terrorist groups and extremist parties.¹⁵² According to the psychological perspective of a

¹⁴⁸ Hassan Tawalbeh, "Terrorism and Revolutionary Violence and Armed Struggle," *Magazine Wisdom Baghdad*, No. December 21, 2001, 78.

¹⁴⁹ Abdul Rahman Mohammed, *Insanity, Crime and Terrorism*, n 131, 264.

¹⁵⁰ *Ibid*, 265.

¹⁵¹ Hassan Tawalbeh, *Terrorism and Revolutionary*, n 148, 79.

¹⁵² *Ibid*, 80.

terrorist in identifying the terrorist crime, if the conduct has to be according to the theory of behavioral determinism, there are reasons behind this crime, which are either behavioral or psychological, confirming that for each cause there is necessarily a response.¹⁵³

With regards to this, according to the psychological perspective of a terrorist in Iraq and how his inclinations and instincts are moving towards violence and intimidation, the psychological causes, take place due to the suffering of young people when they graduate from universities, suffering from a vacuum, unemployment and facing difficult living conditions disappointment in getting hope in this life, despair and a feeling of anxiety, depression and loss, have led to the emergence of the phenomenon of violence and extremism. The contradictions experienced by young people lead them to rupture the psychology between the reality of living and a lot of negatives and distractions. These have been reflected in the actions and behavior of young people, moving towards plundering the life and security of the people in Iraq through suicide attacks, led by their desperation in life.¹⁵⁴

Finally, the social environment and the culture of violence existing in society affect mainly the members of the community and help them provide the conditions and elements related to terrorist act, taking into account the multiplicity of different causes of international terrorism, including political, social, economic, psychological, democracy and media causes.¹⁵⁵

¹⁵³ Ibid, 81.

¹⁵⁴ Hamid Mahmood Ismail, *"The Imposition of The Principles of Islam is Not Violent,"* (Egypt: Egyptian General Book press, 2003): 9.

¹⁵⁵ Ibid, 10.

2.6.6 Media and Technological Causes

The industrial revolution occurs in the world depended on technological advances i.e. discovering the secrets of atomic energy, race of military arming, the development of weapons of mass destruction and electronic minds as characterised by a dramatic jump in the field of communication and transportation.¹⁵⁶ In the nineties of the last century, the world has witnessed a revolution in automated computer science, communications and information. The so-called "semi-ground of a small village," occurred as a result of the Internet which has become one of the means by which extremists and terrorists achieve their objectives. For example, websites of social communication like Facebook are used by terrorist groups in Iraq to publish their activities as well as to deliver their aims through the identification of officials in the state, the location of their work and their residence, thus, allowed them to carry out their terrorist operations.¹⁵⁷ Another website called (YouTube) is used by the terrorists to publish their activities i.e. killing, appalling people, producing awe and fear in the hearts of citizens and robbing their right to personal security.¹⁵⁸ All these require the government authorities to get more technical knowledge about criminal activities and try to prevent them from the access or disclosure of the actors.¹⁵⁹

Often, terrorism depends on achieving its objectives on an important element to spread its terror and put it in front of the world public opinion and international organisations to support the issue. If some terrorist groups noticed ignorance of their issue on the part of the public opinion, they would carry out some terrorist operations to attract the

¹⁵⁶ Monther C.R, "*Political Islam and International Terrorism*," (Iraq: Office of Thought and Awareness the Patriotic Union of Kurdistan press, 2004): 58.

¹⁵⁷ Ibid, 59.

¹⁵⁸ Ibid, 58.

¹⁵⁹ Ibid, 60.

attention of the world, attracting the governments and states' attention at the political level.¹⁶⁰ However, some terrorist operations have succeeded by means of media to win the sympathy of public opinion with some of the perpetrators of terrorist acts, i.e. Aircraft hijackings and attacks on embassies, through what is transmitted by the media of detailed reports about the injustice that they are exposed to and the suffering of their people.¹⁶¹

Although developments on the level of technology and media resulted in a large gap in the industries of civil, military and technical service, these gaps resulted in the ease of implementation of international terrorism, characterised by confidentiality and agreement on using top of new technologies, as seen in the nineties of the last century i.e. the Oklahoma bombings the September the 11th in 2001, the Madrid train bombing (Spain) in 2005 and the terrorist attacks in Iraq since 2003 until now.¹⁶²

Obviously, the intentional use of modern technology by terrorist groups in the implementation of crimes stated by the Working Group on Counter-Terrorism at the UN in paragraph (35) in the session (57) of 2002, which reported that it is clear what we have seen on September 11 that intentional use of modern technology, i.e. commercial aircraft as weapons against civilian aims, becomes a possible way for terrorists.¹⁶³ Also, paragraph (3) by the General Manager of International Atomic Energy Agency (IAEA) states that: the fear, caused by the events of September 11, showed that the terrorist operations, that take place on a small scale using these reasons,

¹⁶⁰ Ahmed Galal Azzedine, *Terrorism and Political*, n 65, 151.

¹⁶¹ Mohammed Al Majzoub, *Aircraft Hijacking*, n 108, 201.

¹⁶² Othman Ali Hassan, *International Terrorism and the Legal*, n 114, 62.

¹⁶³ Mubdar Aloes, *"The Impact of Technological Development on Public Freedoms,"* (Egypt: Knowledge Facility in Alexandria press, 2006): 1-5.

will expand their operations to include all the countries in the world causing social unrests, economic consequences and psychological impacts.¹⁶⁴

Hence, the third paragraph of the report on the fight against terrorism confirms that the General Manager of IAEA was aware that the terrorist attacks have expanded targeting Arab countries, including Iraq, depending on Media and Technology developed for the implementation of their crimes. Therefore, the Arab governments have to unite and agree on the need for a comprehensive definition of international terrorism to protect the civil freedoms of the people by using technological progress to confront terrorism and disclose the whereabouts of criminals and their movements. Technological development, evidently may be a negative factor in restricting the freedoms of citizens through oversight and investigation, which constitute a means of violations of people's freedoms.

Internationally, stating the role of the UN of the reasons and motives of international terrorism and the need to find quick solutions, the Security Council adopted its Resolution No. 1456 on January 20, 2003 concerning the problem of international terrorism, which regarded that given the exploitation of the terrorists and their supporters' instability and intolerance to justify their criminal acts, it is necessary to address their business by contributing to the peaceful resolution of conflicts and work to create a climate of mutual tolerance and respect. As stated in the report terrorism cannot be eliminated.¹⁶⁵ According to the UN Charter and international law, however, a comprehensive approach steadily involves the active participation and collaboration

¹⁶⁴ Ibid, 7.

¹⁶⁵ Ahmed Hussein, International Terrorism Under, n 70, 165.

on the part of all countries, including international and regional organisations. The continuing international efforts to prevent the indiscriminate targeting continue to strengthen the campaign against terrorism and address regional disputes. This will contribute to the necessary international cooperation itself to enhance the fight against terrorism on the possible broadest.¹⁶⁶

However, the commitment made at the UN Security Council by the five largest countries, still needs a more realistic look than sticking to it. Also, it has been said that the problem of international terrorism is continuous with respect to the definition that has been omitted up till now. Overall, the three Judges interviewed deeply discussed the reasons to send the persons to terrorist groups in Iraq based on main reasons discussed above. They agreed that the Iraqi government should overcome these reasons and reform the Iraqi institutions to cover and employ the young Iraqis in order to protect civil freedoms i.e. the right to life and personal security.¹⁶⁷

2.7 Aims of Terrorist Groups in Iraq

Under this section, the researcher addressed the aims of terrorist groups in Iraq. The aims of terrorist groups in Iraq can be divided into two and they are:

¹⁶⁶ Ibid, 166.

¹⁶⁷ Interview with: Nibras Salman Hamdani, Judge Criminal Court Babylon in Iraq, October 22 2014; Sameer Fawzy, Judge Criminal Court Baghdad in Iraq, September 27 2014; and Salah Issa Murad, Judge Criminal Court Baghdad in Iraq, October 25 2014.

2.7.1 Direct Aims of Terrorist Groups in Iraq

They are dubbed the direct aims because the objectives declared by terrorist groups, whether structured or unstructured, while carrying out the terrorist operation in Iraq are represented in the following:¹⁶⁸

1. To get money to finance the terrorists activities and recruitment with new individuals. This was announced by a spokesman of Baghdad Operations Brigadier General "Mohsen Al-Janabi," where there were 33 armed robberies on citizens' shops in Baghdad during the period from 1 November to 7 November 2013. These were carried out by terrorist groups represented by qualitative terrorist operations in stealing many of the shops and goldsmiths, plundering the freedom of people's life and stealing their money.¹⁶⁹
2. To release of imprisoned detainees who are either opponents of the government or terrorists previously arrested. The last operation was carried out by terrorist groups to release their groups in the central prison at Abu Ghraib in Baghdad. To facilitate their mission, prison guards helped them on 10 November 2013, where about 100 dangerous terrorists were freed.¹⁷⁰
3. To carry the assassination of the citizens whether open or hidden assassinations. According to the statistics of the Iraqi Ministry of Health in 2012 and 2013, the terrorist groups assassinated 99 Iraqi citizens and officers in the Iraqi army.¹⁷¹
4. To ensure the exit of individuals who implemented the terrorist operations after the completion of the task in order to achieve the last stages that lead to the

¹⁶⁸ Adel Abdel-Jabber, "Terrorism in the Balance of Sharia," (Saudi Arabia: Saud Al Islamic University press, 2006): 26-27.

¹⁶⁹ Brigadier General Mohsen Al-Janabi, "Terrorist Attacks," *Iraqi Newspaper Al-Sabah*, No 2768, November 7, 2013, 5. From: <http://www.alsabaah.iq/>. (Accessed, January 20, 2014).

¹⁷⁰ Iraqi Justice Minister Hassan Al-Shammari, *Iraqi Azzaman Newspaper*, No 4330, November 22, 2013, 4. From: <http://www.azzaman.com/> (Accessed February 10, 2014).

¹⁷¹ Adel Abdel-Jabber, *Terrorism in the Balance*, n 168, 26.

success of the terrorist operations.¹⁷² Means of suicide attacks has evolved while carried out the attacks by terrorists by depending on logistics with the cooperation of some people who are participants in the political process to assist them and bring down the regime or government. One of their distinguished operations was storming the building of the Iraqi Ministry of Justice in 2013 in Baghdad by using bombing explosive devices and 8 suicidal people, killing innocent people and robbing their right to life and personal security. The last suicide bombing targeted the Iraqi Ministry of Foreign building in 5 /2/ 2014, which was one of the largest and most important ministries. About nine o'clock in the morning, one of the suicidal terrorists on a motorcycle tried to enter the security perimeter of the ministry building. He was stopped by a group of the ministry guards at the point of initial control and refused to allow him to enter. Consequently, he blew himself up, where it was the beginning of the official working hours of the employees and customers. This terrorist operation led to the martyrdom of 11 employees and guards, while 10 people were injured.¹⁷³

5. To adopt a demonstrative propaganda of their terrorist operations. After finishing any suicide operations, the terrorist groups publish some photographs and videos documenting these processes on social media websites or through the TV channels to attract the public opinion about their terror objectives, spreading terror and fear among the citizens and looting their right to life peacefully as well as to force the government meets their demands. Based on the interview with five Academics, they brought to light that between 5 June to 22 June 2014, ISIS has broadcasted more than a dozen videos showing

¹⁷² Ibid, 27.

¹⁷³ Iraqi Foreign Ministry, 5/2/2014. From: <http://www.mofa.gov.iq/ab/articles/display.aspx?id=CeFUQYIGrK%3D> (Accessed, February 5, 2014).

beheadings and shootings of horse combat soldiers and police officers in Ninawa and Salah Al-Din provinces as well as apparent targeting of people based on their religion or ethnicity.¹⁷⁴

2.7.2 Indirect Aims of Terrorist Groups in Iraq

They are dubbed the indirect aims because they are not declared by the terrorist groups. However, the terrorist groups seek to achieve what is more important and more significant than the direct aims. The objectives of the indirect aims are explained in the following points:¹⁷⁵

1. To weaken the authority of the government and show its disability, because of its failure in detecting the terrorist operations before they are implemented and the inability to counter the situation resulting from the terrorist attack. There are many terrorist operations in Iraq which the government could not identify before their implementation. According to the statistics of UNAMI, the numbers of those who were killed and wounded in Iraq for the first three months of 2014 are illustrated in the following table:

¹⁷⁴ Interview with: Mohammed Tamah, Academic of Public International Law, College of Law University of Dhi Qar in Iraq, August 30 2014; Sadiq Zugheir Muhaisen, Academic of Public International Law, College of Law University of Misan in Iraq, September 7 2014; Yaarb Ahmed Naser, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 14 2014; Ali Jabbar, Academic of Public international law, College of Law University of Basrah in Iraq, September 20 2014; and Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014.

¹⁷⁵ Hassan Tawalbeh, *Terrorism and Revolutionary*, n 83, 79. Also see: Adel Abdel-Jabber, *Terrorism in the Balance of Sharia*, n 102, 28.

Table 2.3

Statistics Provided by UNAMI of people Killed and Wounded in Iraq in 2014.¹⁷⁶

Date	Iraqi Killed	Iraqi Wounded
January 2014	733	1,229
February 2014	703	1,381
March 2014	609	1,745

2. To get official recognition from the Iraqi government of the existence of international terrorism or get international recognition of the existence of terrorist operations as a result of the declaration of data imposed and broadcasted by terrorist groups. There are many times when the government has stated the presence of armed groups and their names are known, but it did not identify and criminalise them under the Iraqi Anti-Terrorism Act No. 13 of 2005. This prompted those groups to show themselves in front of people on media to satisfy their aims.
3. To Force the state to issue decisions directed against citizens, which may rob their right to life and personal security and restrict their freedom, leading to a loss of confidence in the government due to its inability to protect the security of citizens and eliminate the terrorist organisations altogether. That was the case in Iraq after 2003, when terrorist operations increased, the government imposed a curfew on citizens, preventing them to go out of their homes; a matter that may continue some days making it difficult for people to get their necessary needs and lose their right of personal security; a right approved in Article 27 of the Iraqi Constitution of 2005.

¹⁷⁶ http://www.uniraq.org/index.php?option=com_k2&view=item&id=1595:2014&Itemid=556&lang=en (Accessed April 1, 2014).

4. To create sympathisers of the terrorist groups and work to overthrow the regime to achieve their terrorist purposes. This happened several times in an attempt to overthrow the government in Iraq in 2008 and 2012.
5. One of the most important aims of terrorism is indirectly affecting tourism, the economies of Iraq and security, extending to the foundations of strength and its factors, which the government granted legitimacy, i.e. religion, economy and security.

2.8 The Role of the Iraqi Parliament in Defining International Terrorism and Terrorist Acts

According to the recent study of the Center for Human Rights in domestic laws, it was noted that around most of the states preceded laws against terrorism especially in the wake of September 11/2001. The widespread acceptance in national law has given rise to consensus for the foundation of new principles to counter-terrorism cancer.¹⁷⁷

The statement above by Salah and Refaat reported that the term international terrorism, nowadays, refers to the use of violence to achieve political objectives including all works of individual incidents or attacks, collectively or individually and creating an atmosphere of insecurity.¹⁷⁸ The writers illustrated, according to this concept terrorism acts include hostage-taking, kidnapping people especially (Representatives Diplomats) and killing them, putting explosives or explosive devices in civilians gathering places

¹⁷⁷ Said Ibrahim, Crimes of Spying in Iraqi Legislation, n 68, 47.

¹⁷⁸ Salah Al-Din Amer & Ahmed Refaat, "Popular Armed Resistance of Public International Law," (Egypt: Arab Thought press, 2010): 486-487.

or public transport-similar to what is happening now in Iraq as well as changing the path of the aircraft.¹⁷⁹

In Iraq, before 2005, there had been no law to combat international terrorism, but after the operations started by the US army, terrorist attacks has started to emerge in all Iraqi areas and this has pushed the Iraqi Parliament to legislate a new law to counter-terrorism and at the same time to protect the civil freedoms of the Iraqi people i.e. the right to life and personal security.¹⁸⁰ Then, the Iraqi Anti-Terrorism Act No.13 of 2005, on the 9th of November 2005, under the Iraqi Anti-Terrorism Act No. 13 of 2005, Article 1 has defined terrorism as:¹⁸¹

Every criminal act committed by an individual or an organised group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.

It seems that the text of Article 1, which is not a direct definition of the term or the concept of terrorism, was to describe the group acts constituting terrorist acts.¹⁸² Significantly, the Iraqi legislature should adopt the international principles put forward by the UN Charter and the international conventions related to international terrorism, etc. In addition, some scholars are not in agreement on the utility of the Act. There have been negative and positive comments from supporters and opponents. Part of it is

¹⁷⁹ Ibid, 488.

¹⁸⁰ Ali Hadi Hamidi Alchukrawi, “A study in the United Nations Conventions to Combat International Terrorism,” (Babel: University of Babylon press, 2012), 3. From: http://www.uobabylon.edu.iq/uobcoleges/service_showarticle.aspx?fid=7&pubid=3693. (Accessed March 22, 2013).

¹⁸¹ Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005. See: Appendix A (Iraqi Anti-Terrorism Act No. 13 of 2005).

¹⁸² Said Ibrahim, Crimes of Spying in Iraqi Legislation, n 68, 45.

because the Iraqi government found that the Act No. 13 of 2005 in dealing with international terrorism is not much beneficial to the Iraqi people.¹⁸³

Moreover, looking at the role of the Iraqi Legislative Authority, it would be vital to refer to the sentiment echoed by the head of the Iraqi Parliament Osama Najafi (as he then was) in 2013 regarding the Iraqi Anti-Terrorism Act No. 13 of 2005. Osama Najafi, the Speaker of the House promised to abolish terrorism in Article 4 of the Iraqi Anti-Terrorism Act No. 13 of 2005 through Parliament, considering it as "sword of Damocles" over the necks of Iraqis, stressing that laws will be established to give the Iraqi judiciary full independence while ensuring rights of the state and the citizen as well as respecting human rights referring to the attacks inside prisons to express demonstration on the judiciary.¹⁸⁴ Najafi said at a press conference in Mosul, the attacks that occurred in prison had been corroborated by the judiciary, and officers who arrested citizens without orders. It has been noted that there were a number of officers having ready-made warrants, and they arrested just any name they wanted in a clear violation of human rights and extortion of citizens in detention camps. Najafi also, through the Iraqi parliament, promised to amend the Penal Code and establish laws in order to give the Iraqi judiciary full independence while ensuring rights of the state and the citizen and respect for human rights and civil freedoms. This will lead to the establishment of a society that respects the dignity of citizens and the rule of law. He added "we will cancel Article 4 regarding terrorism, which has become a sword hanging on the necks

¹⁸³ Ali Hadi Hamidi Alchukrawi, A study in the United Nations Conventions, n 180, 4.

¹⁸⁴ The head of the Iraqi Parliament Osama Najafi, (as he then was) in 2013. From: <http://www.bondladyscorner.com/t62137-vision-internationalism-article-4-iraqi-terrorism>. (Accessed, August 15, 2013).

of the people."¹⁸⁵ It is important to note that, there have not been any amendments to the Iraqi Anti-Terrorism Act No. 13 of 2005 until now.¹⁸⁶

Finally, the three Judges interviewed also mentioned that the role of Legislative Authority in Iraq was poor, because of the difficult conditions experienced by Iraq in the increase of terrorist acts as well as the political motives.¹⁸⁷ Hence, the researcher believes that the safest trend is either to amend the current Iraqi Anti-Terrorism Act No. 13 of 2005 or to repeal it, and terrorist crimes should be subject to the common law, which is the Iraqi Penal Code No. 111 of 1969, being a code that includes general rules that apply to all crimes. This would ensure the new terrorist crimes are covered by the Iraqi Penal Code No. 111 of 1969 instead of the Iraqi Anti-Terrorism Act No. 13 of 2005.

2.9 The Role of the General Assembly at the UN in Defining International Terrorism and Terrorist Acts

Reviewing the efforts of the international community in order to eliminate the phenomenon of terrorism, we find that all of the "League of Nations" as mentioned earlier and the current UN representative in the General Assembly and its decisions, did not make any progress about the definition of international terrorism or reach a comprehensive convention on how to confront and control terrorist acts. This is attributed to the big difference in the views of the states with regard to the legal aspects of international terrorism and disagreement on the constituent elements of the crime, the multiplicity of motives to commit the crime, diversity of images and forms of

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Interview with: Khalid Musa, Judge Criminal Court Baghdad in Iraq, September 17 2014; Abdul Hussein Kadhim Abdul Redha, Judge Criminal Court Babylon in Iraq, October 17 2014; and Ali Qassem, Judge and the President Criminal Court Baghdad in Iraq, date of interview, October 13 2014.

terrorist acts, in addition to the different views of both the international criminal law and the national criminal laws of all countries in the phenomenon of international terrorism.¹⁸⁸

Looking back at the history, the Geneva Convention was established by the reign of the League of Nations "to prevent and punish terrorism" in 1937 and the concept of terrorism in Article 211, which inaugurated the standard definition of terrorism as: criminal acts directed against a state, aimed to create and provoke horror among specific individuals or group of persons or the general public. In addition, it included a pluralistic definition of Article 2 related to the terrorism acts, where the following acts are classified under the terrorist acts:¹⁸⁹

1. Intentional act against life, serious injury or loss of freedom of all:
 - A. Heads of state and those who made their jobs, their heirs or successors.
 - B. Spouses of any of the previous categories.
 - C. Organisers of the responsibilities of the people or of the general ranking.
2. Subversion or intentional damage to public property intended for public use and related to the authorities or other contracting.
3. Any intentional act that could put human life at risk.
4. Any attempt to commit an offense within the scope of former acts.
5. Manufacture or possession of weapons, explosives or any other harmful materials with the intent to commit any of the previous acts in any country.

¹⁸⁸ Blishchenko I & Zhdanov N, "*Terrorism and International Law*," (Moscow: University of Moscow press, 2010): 11.

¹⁸⁹ Mohammed Mohiuddin, "*Studies in International Criminal Law*," (Egypt: Cairo University press, 2006): 59-63.

Accordingly, these terrorist acts which came under the Geneva Convention “to prevent and punish terrorism” received much criticism, because the Convention failed to criminalise terrorist act if perpetrated against another country, meaning that the acts perpetrated against the people of other countries are neither protected internationally nor protected by the provisions of this Agreement. However, only a limited agreement was on the suppression of terrorism directed only against the heads of state or those of equivalent status.¹⁹⁰

In this respect, there may never be a comprehensive definition of terrorism. However, there is a widespread agreement on a core definition. Terrorism can be characterised by the two basic elements as suggested by the UN:¹⁹¹

1. The use of illegitimate means, i.e. deliberate targeting of innocent civilians.
2. For a political purpose, most importantly, the legitimacy of the underlying motive is irrelevant to the core definition.

In fact, the UN has essentially adopted this general understanding for a definition of terrorism in recent conventions. For example, the International Convention for the Suppression of the Financing of Terrorism "Financing Convention" definition incorporates specific offenses already outlined in other treaties, i.e. hijacking and hostages, but more importantly it includes a catch-all broad definition of terrorism:

Any other act intended to cause death or serious bodily injury to a civilian and the threat of civil freedoms or violation of their dignity, or to any other person not taking an active part in the hostilities in a

¹⁹⁰ Kamal Hammed, "Means of Combating Terrorism." *International Humanitarian Journal*, No. 20, (2002): 22-25.

¹⁹¹ Kuala Lumpur Declaration on International Terrorism art. 7, Apr. 3, 2002. From: www.oicoci.org/english/conf/ftn/11_extraordinary/declaration.htm; Yousef, 327 F.3d at 106 n.41 (Accessed January 30, 2014).

*situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain.*¹⁹²

It was the US Central Intelligence Agency (CIA), which has adopted in 1980, the definition stating that:

*Terrorism is the threat or use of violence or the use of violence for political purposes by individuals or groups, whether working for a governmental authority list or working against it, when it is the intent of those actions shock, or panic, or amazement, or horror among the target group, which are usually wider than the direct victims of the terrorist act. This may involve terrorist groups seeking to overthrow specific regimes, correct specific grievances, whether nationalism or grievances to of particular groups, or in order to destroy the international system as an end to itself intentional.*¹⁹³

In the Public international law has described terrorism as follows: a range of illegal acts that their sanctity of national laws of most states.¹⁹⁴

Indeed, there is still some uncertainty over what the precise definition of international terrorism should be, i.e. drafters of the International Criminal Court (ICC) statute did not include the crime of terrorism in the treaty due to a perceived lack of consensus for a clear definition and the inability to discern a clear rule of international law to make terrorism a universal crime.¹⁹⁵

Ultimately, there should indeed be a comprehensive agreement to define the international terrorism within the international community in order to condemn any

¹⁹² Hickman & Daniel J. "Terrorism as a Violation of the Law of Nations: Finally Overcoming the Definitional Problem." *Wisconsin International Law Journal* 29, No. 3 (2011): 462-463.

¹⁹³ James Adams, "The Financing of Terrorism." *Journal and Simon Schuster New York* (2006): 13-14.

¹⁹⁴ James Muvak, "Terrorism and Religion in the United States," *Journal the diplomat*. October, (1996): 15.

¹⁹⁵ Hickman & Daniel J, Terrorism as a Violation, n 192, 466.

illegal or unclear conduct under the umbrella of the concept of terrorism. Consensus for a definition framework based on finite conduct is widespread. Certain concrete acts i.e. hijacking or sabotaging of civilian aircraft and vessels, taking hostages, intentional targeting of protected persons, extra-judicial killings and torture clearly violate the international law. Obviously, supporting any of these actions is clearly prohibited under the international law. This fit approach to terrorism helps overcome the definition deadlock by avoiding subjective political motives and focusing on objectives and causes. Based on the three Judges and two Academics interviewed¹⁹⁶ on the role of the general assembly at the UN in defining the terms international terrorism and terrorist acts, they stated that the General Assembly at the UN only issue decisions and recommendations that are non-binding to the Member States in the opposite of the decisions of the Security Council. Hence, it cannot be said to be performing an effective role in terms of defining international terrorism and terrorist acts. The Security Council decisions are all binding. Despite this being the case, these non-binding recommendations may become a base of the international norm of customary law if these recommendations gained approval of the majority of the members of the General Assembly. The most prominent decisions probably taken by the General Assembly for its efforts in the fight against international terrorism in order to protect the right to life and personal security included Resolution No. 49/60 which was passed on December 9, 1994 under the title "Measures to eliminate the international terrorism," that was prepared by the Sixth Committee of the fight against international terrorism. In

¹⁹⁶ Interviewe with Judges: Faisal Salman Abtan, Judge and the President Criminal Court Babylon in Iraq, October 20 2014; Fadhil Radhi, Judge Criminal Court Babylon in Iraq, October 16 2014; and Rahim Ugaili, Judge Criminal Court Baghdad in Iraq, September 29 2014. Also, the two Academics are: Ali Hadi Alchukrawi, Academic of Public International Law, College of Law University of Babylon in Iraq, October 3 2014; and Osama Al-Abadi, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 10 2014.

addition, the General Assembly has persevered to see the resolution be adopted annually by an overwhelming majority.

2.10 The Role of the UN in Reducing the Phenomenon of International Terrorism

The first decade of this century has witnessed a significant shift to help in advancing human security and protect national security interests. This transition has been analysed in depth by other writers i.e. Annan.¹⁹⁷ For both, domestic politics and geopolitical positioning, the movement is more transparent for some countries i.e. the US and UK, than others. This phenomenon reflects a response to global instability.¹⁹⁸ However, this study moves to grounded evidence of the experiences and observations of Government Organisations (GOs) i.e. UN, NGOs and Civil Society Organisations (CSOs), because the development of security agenda is unfolded. However, to help set the terrorist scene, more recent reviews of aid for security are worthy of noting.¹⁹⁹

September 11 gave the UN a dramatic boost to its importance as an International Organisations (IOs). This is not to undermine the significance of the UN before 9/11, but instead, to underscore how much stronger the UN has become internationally after 11 September, 2001. "The UN, as the only universal global body empowered by its 196 Member States to maintain international peace and security, has been at the forefront of this renewed effort to combat the scourge of international terrorism."²⁰⁰ The tone of

¹⁹⁷ Kofi Annan, "Security: the War on Terror and Official Development Assistance." *Southern Perspectives on Reform of the International Development Architecture Ottawa: North-South Institute*. 2007. From: http://www.nsi-ins.ca/english/pdf/Theme_Paper_Three.pdf. (Accessed, March 12, 2014).

¹⁹⁸ Ibid, 13.

¹⁹⁹ Alan Fowler & Kasturi Sen, Embedding the War on Terror: State and Civil Society Relations, *Development and Change International Institute of Social Studies*. No. 41(1) (2010): 1-27.

²⁰⁰ Dhanapala Jayantha. "The United Nations' Response to 9/11." *Terrorism and Political Violence* 17. (2005): 17-23.

the UN has certainly become stronger, whether or not states were parties to other anti-terrorism conventions, they were required not only to freeze assets and deny terrorists safe haven but also to update laws and bring terrorists to justice, improve border security and control traffic in arms, cooperate and exchange information with other states concerning terrorists and provide judicial assistance to other states in criminal proceedings related to international terrorism.²⁰¹

Moreover, the involvement of the UN has greatly increased the legitimacy of the 'war on terror'. Further actions undertaken by the UN, legitimising its role as the international leader against terrorism was evident in the way in which the UN developed its resolutions and recommendations. The UN experience with international matters, previous resolutions, recommendations and agreements worked in the UN favored and allowed it to frame the threat of terrorism as an international matter of concern to all countries.²⁰² This approach ensured that the UN reaction was not of revenge or retribution, but to be expected in a norm-based organisation on legal concepts and values. It also placed the action to be taken in the context of the anti-terrorism conventions already adopted within the UN framework.²⁰³ In 2002, the Secretariat General in the UN developed implementation kits for international counter-terrorism conventions manual for governments, covered 14 multilateral treaties drawn up

²⁰¹ Foot Rosemary, "The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas." *Human Rights Quarterly*, No.29. (2007): 485-514.

²⁰² Neil McCallum. "*The Justification of Anti-Terrorism Legislation In Australia and Canada Between September 17, 2001 and March 31, 2003.*" (PhD diss., Universiti RMIT, Melbourne, Victoria, Australia, 2012), 43-44.

²⁰³ Dhanapala Jayantha, the United Nations' Response, n 200, 18.

between 1963 and 2010 by the UN and other inter-governmental forums.²⁰⁴ The 14 multilateral treaties are:

1. The Tokyo Convention on Offenses and Certain other Acts Committed on Board Aircraft 1963:

The international dimensions of terrorism had been identified prior to World War II. Nonetheless, no agreement could be reached on an acceptable definition or appropriate action and the 1937 Convention on the Prevention and Punishment of Terrorism, adopted by the League of Nations was ratified by a single country (India).²⁰⁵ The issue resurfaced in the late 1950 when private individuals perpetrated an alarming number of incidents endangering civil aviation during transnational flights. These incidents led to the adoption of convention on the subject, namely the 1963 Tokyo Convention on Offenses and Certain other Acts Committed on Board Aircraft entered into force in 1969.²⁰⁶

Accordingly, this Convention applied to acts that threaten the security of aviation. This is stated in Article 13 of the Convention, which deals with the issue of unlawful seizure of aircraft. It expressed obligations and duties of rescuing the aircraft according the international law. In addition, the text of Article 6 imposes measures to control the aircraft in order to protect the security and safety of the aircraft and the people inside it, enabling the commander of the plane of the extradition of the offender person to the

²⁰⁴ Hosein Ian. The Source of Laws: Policy Dynamics in a Digital and Terrorized World. *The Information Society*, No.20 (3). (2004): 187-199.

²⁰⁵ Ilias Bantekas. The International Law of Terrorist Financing. *The American Journal of International Law*, Vol. 97, No. 2. (2003): 315-333. From: <http://www.jstor.org/stable/3100109>. (Accessed April 24, 2013).

²⁰⁶ Ibid, 323.

appropriate authorities.²⁰⁷ Firstly, it does not provide that the seizure of the aircraft and hijacking as crime to be punished. Secondly, the convention does not oblige states, when hijacked plane lands to make a trial for the kidnappers or extradite them to the state or even deliver them to the State that owns the plane.²⁰⁸ Evaluation of this Convention has failed to put legal and technical solutions to address the crime of hijacking.²⁰⁹ Hence, the International Civil Aviation Organisation (ICAO) worked to treat those gaps in the process of unlawful seizure and called for the preparation of a new convention.

2. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970:

This Convention proceeded in reaction to fill the shortage in the previous convention, as the number of signatory 183 Countries, entered into force in 1971. Iraq signed the convention on February 22/1971 and ratified in the same year, the Law No. (137).²¹⁰ The Convention consisted of 14 Articles and explained in the forefront the need to find legal rules to punish the perpetrators' acts of unlawful seizure of aircraft. Article 1 identified the crime of hijacking. Article 2 focused on states' parties to issue strict penalties for these crimes. Article 4 dealt with the states' parties that jurisdiction was established to look into the crime committed against the passengers or staff. Article 6 obliged states parties to the convention of arresting the offenders and handing them to their countries or to take criminal proceedings and prosecution of criminals according

²⁰⁷ Haitham Ahmed. "*Aircraft Hijacking: A Study in the International Law and International Relations.*" (Beirut: Arab Institute for Studies and Publishing press, 2006): 48.

²⁰⁸ Mohammed Al Majzoub, Aircraft Hijacking, n 108, 124.

²⁰⁹ Haitham Ahmed, Aircraft Hijacking, n 207, 50-51.

²¹⁰ Iraqi Official Gazette, No. 204. (September 4, 1971). From: <http://thejusticenews.com/?tag=>. (Accessed, March 30, 2014).

to the courts of jurisdiction. According to Article 7 and finally Article 8, they considered the aircraft kidnapping crimes viable for extradition between countries.²¹¹

The Hague Convention faced some criticisms, perhaps the most important one being that the Convention provided no penalties for countries that tolerate with the application of its provisions at the expense of the Convention. Also, the Convention did not contain any provisions relating to legal protection for the passengers of the hijacked aircraft or take them as hostages or be brought to trial for acts committed previously. Hence, an agreement was signed in Montreal in 1971 for the treatment of those gaps.²¹²

3. The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971:

The main objective of the Convention was to avoid shortages and flaws in the Hague Convention regarding unlawful acts directed towards the aircraft while landing or flying in the air, acts that were directed towards the installations and ground services at airports. It also dealt with the weaknesses of the Tokyo Convention, mentioned earlier.²¹³ Hence, it called ICAO to convene the Montreal Convention in 1971, which was ratified by 187 Countries had become a valid work out in 1973. Iraq had ratified the Convention and became a party to the Convention in 1974.²¹⁴ Article 1 confirmed on any person who commits a crime, if committed intentionally, without the right to any wrongful act or attempts to commit any crime of kidnapping flight or be a partner to the original offender. While Article 3 stipulated claims of the states parties' pledge

²¹¹ Mohamed Mansour. *"Provisions of international law relating to the fight against crimes of an international nature."* (Egypt: recent publications press, 2008): 146.

²¹² Mohammed AL-Majzoub. Aircraft Hijacking, n 44, 125-126.

²¹³ Haitham Ahmed. Aircraft Hijacking, n 207, 71.

²¹⁴ Ilias Bantekas. The International Law, n 205, 316. From: <http://www.unodc.org/unodc/terrorism-Convention-Civil-Aviation.html> (Accessed, April 7, 2014).

to tighten penalties for crimes committed. Article 8 likewise stated the capture of criminals and handed them over or their progress to the Courts.²¹⁵ Thus, the Montreal Convention had addressed all defects that were presented in previous conventions.

4. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic envoys and Punishment 1973:

The General Assembly of the UN adopted this Convention in its Resolution No. 3166 concerning its session (26) of the plenary session No. 2202 on December 14 in 1973.²¹⁶

The Countries that ratified the Convention were 166 and it became effective in 1977 according to Article 17 of the Convention and Iraq ratified the convention in 1978.²¹⁷

Furthermore, Article 1 of the Convention identified the persons who enjoyed diplomatic protection. Article 2 focused on the crimes that were committed on internationally protected persons and the Convention referred its Article 7 that in the case of failure of the state to hand over the offender, because of the crimes provided by the Convention for any reason, it should forward him quickly to the competent authorities to direct the criminal proceedings against him.²¹⁸

5. The International Convention against Taking Hostages 1979:

Most countries in the world found that the crime of kidnapping people and taking them as hostages caused great concern to the international community. On this basis, the Convention had been established by a Resolution of the General Assembly of the UN

²¹⁵Ali Hadi Hamidi Alchukrawi, A study in the United Nations, n 180, 13-14.

²¹⁶ Saleh Al-Zahrani. "Terrorism and the Way to Defeat." *Security Journal-The Saudi Interior Ministry*, No. 58. (2008): 34.

²¹⁷ Ibid, 35.

²¹⁸ Al-Hussein, Terrorism: forms and manifestations, n 48, 29-30. Also see: United Nations Treaty Series 1977, no. (1-15410), Volume (1035), 167-172. From: www.unodc.org/unodc/terrorism/ConventionProtectedPersons.htm (Accessed April 5, 2014).

No. 1461 on December 31st in 1980.²¹⁹ The number of signatory Countries was 164 and it became effective in 1983, where Iraq signed in 1980.²²⁰ Article 1 confirmed that any person who takes another person as a hostage or anyone who initiates or contributes to the action, the offender will be subjected to appropriate penalties, while Article 13 confirmed that no validity in cases where the offense is committed within the territory of one state and the hostage or the offender is of its citizens or a holder of another nationality. These crimes have an international dimension including an external element.²²¹

6. The Convention on the Physical Protection of Nuclear Material and its 1980:

The crimes of nuclear materials represented a concern among countries, which called for a meeting at the headquarters of the International Agency for Atomic Energy (IAAE) in Vienna and the signing of the Convention in 1980 by the Countries Parties 164.²²² Article 2 was on using nuclear materials for peaceful purposes in international nuclear transport and during use and transfer locally. Article 7 of the Convention criminalised some acts which were in contravention of international law and requested the countries who were parties to the Convention to impose severe punishment on these serious crimes. The amendments to the Convention were related to a law requiring the countries to protect nuclear facilities when used for peaceful purposes.²²³

7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1988:

²¹⁹ Ali Hadi Hamidi Alchukrawi, A study in the United Nations, n 180, 17-18.

²²⁰ See: www.Unodc.org/terrorism-convention-host-ages (Accessed, April 8, 2014).

²²¹ Mohammed Al-Hussein. "Private international law-The Study of the General Rules and its Applications in Saudi Arabia." (Saudi Arabia: King Fahd University security press, 2005): 273-274.

²²² Mohammed Ghonaimi. "Law peace in Islam," (Egypt: Knowledge facility press, 2005): 803-807.

²²³ Ali Hadi Hamidi Alchukrawi, A study in the United Nations, n 180, 19-20. From: <http://www.Unodc.Org/unodc/terrorism-Convention-unclear-material.html> (Accessed, April 9, 2014).

This protocol was a supplementary to the Montreal Convention which entered into force in 1989 and the number of Countries Parties was 165, where Iraq ratified the protocol in 1990. Article 2 of the Protocol extended the provisions of the Montreal Convention to include terrorist acts committed in the airports under the ICAO.²²⁴

8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988:

This Convention came into being as a result of the International Conference of Rome for the Suppression of Unlawful Maritime and became effective in 1992, where the number of states parties until 2008 was 150 Countries. The Convention specialised in terrorist acts on board the ships where, according to Article 3 any person who committed terrorist acts or participated with action will be punished with the same original penalty imposed on the offender.²²⁵ Also, adding to the protocol convention in 2005, under the decision of the Diplomatic Conference on the revision of the Convention, which texted on several things, including criminalising the use of ships as devices to carry terrorist acts as well as adopting procedures for inspection of a ship suspected of committing a crime in the framework of the convention.²²⁶

9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988:

This Protocol specialised in terrorist acts on fixed installations at sea and became effective in 1992. The number of Countries Parties which signed the Protocol until 2008 was 138, the Protocol was applied on acts against fixed platforms located on the

²²⁴ Mohammed Refaat Ahmed & Saleh Bakr, International Terrorism, n 107, 65. Also see: <http://www.unodc.org/unodc/terrorism-convention-airports.html> (Accessed, April 9, 2014).

²²⁵ Othman Ali Hassan, International Terrorism and the Legal, n 114, 376.

²²⁶ Ibid, 377. Also see: <http://www.imo.org>. (Accessed, March 22, 2014).

continental shelf which was similar to the system that was put to protect international civil aviation.²²⁷

10. Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991:

The agreement was signed by the countries that participated in the Montreal and Article 13 allowed states to regulate the marking of plastic explosives at any time. The Convention became effective in 1998 and the total number of the signatory Countries by then was 139. In the preamble to the Convention on the Marking of Plastic Explosives, it stated the purpose of detection which contributed to prevent the commission of unlawful acts. Thus, Article 5 focused on the formation of the Technical Committee International of the explosives, but Article 6 evaluated the technical developments related to making explosives and distinguishing them.²²⁸

11. The International Convention for Suppression of Terrorist Bombings 1997:

At that period, the global phenomenon was spreading terrorist bombings and disturbing the international community. The states parties which signed this Convention were 150.²²⁹ The purpose of Article 2 of the Conventions was to find out the perpetrator of the crime. Article 2 provided that:

*Every person who contributes, organises, directs others to commit a crime intentionally and unlawfully, delivers or puts, launches or detonates explosives or other lethal devices inside or against a place of public use, a property belonging to a state or the government or the public transport system with the purpose of losing life of others, causing serious injury or leading to massive destruction.*²³⁰

²²⁷ [http:// www.Unodc.org/unodc/terrorism-Convention-Platforms.html](http://www.Unodc.org/unodc/terrorism-Convention-Platforms.html). (Accessed, January 11, 2014).

²²⁸ Boutros-Ghali, "UN to Counter Terrorism," *International Politics Journal*, No. 27 (1997): 8-13. Also see: [http:// www. Unodc. org/ unodc/ terrorism-Convention- Plastic- explosives.html](http://www.Unodc.org/unodc/terrorism-Convention-Plastic-explosives.html) (Accessed June 21, 2013).

²²⁹ United Nations-Treaty Series 1997, Vol (2149). No. (37517). Also see: <http://www.unodc.org/unodc/terrorism-Convention-terrorist-bombing.html> (Accessed April 10, 2014).

²³⁰ Mohammed Refaat Ahmed & Saleh Bakr, *International Terrorism*. n 107, 66-67.

Hence, the Convention made the crimes stipulated as the same as the criminal offenses under internal laws and penalties commensurate with the seriousness of the crime in question.

12. The International Convention for Suppression of Financing of Terrorism 1999:

The reason of establishing this Convention was to address the serious acts of international terrorism focusing on the financial aspect which the terrorists get, but the international instruments did not expressly address such financing, so it preceded the Convention, which entered into force in 2000 and saw the accession of 156 Countries, stating to establish effective measures to prevent the financing, trial and punish the offenders.²³¹ Article 2 of the Convention stated that:

*The offenders are those who committed or contributed or by any means, directly or indirectly involved in a project unlawfully and willfully, provided or collected money with the aim of using work constituting an offense within the scope of the treaties or caused the death of a civilian or serious wound to force the government or an international organisation to do or to refrain from acts commanded by terrorists.*²³²

13. The International Convention for Suppression of Acts of Nuclear Terrorism 2005:

107 Countries ratified the Convention, which confirmed within its preamble on the acts of nuclear terrorism that could pose a threat to international peace and security.²³³

Article 2 of the Convention revealed that the offender is who “committed a crime, contributed or joined works illegally.” Article 8 of the Convention was on preventing crimes of the state’s parties through the exchange of each effort to take appropriate

²³¹ Mohammed Ghonaimi. Law peace, n 222, 309.

²³² United Nations-Treaty Series 1999, Volume (2178). No. (38349). From: <http://www.Imo.org> (Accessed April 2, 2014).

²³³ Ali Hadi Hamidi Alchukrawi, A study in the United Nations, n 180, 30. Also see: www.un.org/ (Accessed, February 10, 2014).

measures to ensure the protection of radioactive material, taking into account the recommendations and the related tasks of the IAEA.²³⁴

14. The 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (New Civil Aviation Convention):

Two more legal instruments were added in 2010: the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. All this took place in Beijing on 10 September 2010, at the International Conference on Air Law (Diplomatic Conference on Aviation Security). In this respect, entry into force this Convention, in accordance with its Article 21, the Convention should be opened to all States for signature at the headquarters of ICAO in Montréal until it entered into force. States which had signed the Convention might ratify, accept or approve it at any time. States which had not signed it might accede to it at any time. As well as in accordance with its Article 22, the Convention should enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance and approval or accession.²³⁵

The aim of these conventions further criminalised the act of using civil aircraft as a weapon and using dangerous materials to attack aircraft or other targets on the ground.²³⁶ The unlawful transport of biological, chemical and nuclear weapons, their related material becomes punishable under the conventions. Moreover, directors and

²³⁴ Ibid, 31.

²³⁵ United Nations Action to Counter Terrorism. From: <http://www.un.org/en/terrorism/instruments.shtml> (Accessed, January 2, 2014).

²³⁶ Ibid.

organisers of attacks against aircraft and airports will have no safe haven making a threat against civil aviation may also trigger criminal liability.²³⁷

Looking at the international conventions related to terrorism, four Academics interviewed noted that despite the large number of international conventions to combat international terrorism, the task of determining the definition of international terrorism in these international conventions and decisions remains a bone of contention between the international and domestic law.²³⁸ Due to this, the researcher found that the defects of agreements to combat international terrorism are required as a precondition for the classification of terrorist crime in the category of crimes that "crime is punishable in domestic law." States member to the Convention had broad powers in determining whether or not what crimes are considered as terrorist crimes. Explicit obligations of states to punish these crimes in domestic laws have not been imposed. The crime has been transmitted to some related international terrorism or it is considered as terrorist crimes as mentioned in these conventions. But, the Contracting States should estimate the nature of the crime. In accordance with the agreement, it will no longer be the crime of terrorist, yet, its existence in one of the conventions, if legislation of the Member States of the Convention has excluded it.²³⁹

Finally, from what has been analysed and described by the researcher, the defects of the international conventions can be overcome through the conclusion of a

²³⁷ Ibid.

²³⁸ Interview with Academics: Yaarb Ahmed Naser, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 14 2014; Ali Jabbar, Academic of Public international law, College of Law University of Basrah in Iraq, September 20 2014; Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014; Rahim Ugaili, Judge Criminal Court Baghdad in Iraq, September 29 2014; and Khalid Musa, Judge Criminal Court Baghdad in Iraq, September 17 2014.

²³⁹ Ali Hamza, "The Problem of Terrorism," *Journal of Kerbala University, Iraq*, Vol. 4, No. 5, (2007): 382-392.

comprehensive international agreement under the UN umbrella to define the crime of international terrorism as well as terrorist acts and narrow the state authorities in order to criminalise or not criminalise the terrorist acts and this can be determined and installed in the text of a comprehensive international convention. Consequently, the international community can help to overcome the phenomenon of terrorism and protect civil freedoms, particularly the right to life and personal security of the people of the world, including the Iraqi people.

After explaining the role of the UN in the conventions above, it is also pertinent to discuss the role of Security Council in reducing the phenomenon of international terrorism, and perhaps make a comparison with the previous agreements and resolutions of the UN Security Council in order to draw a conclusion as to what has been achieved by this role in reducing the risk of the international terrorism.

2.10.1 The Role of the Security Council in Countering International Terrorism

Prior to 9/11, terrorism issues were predominant matters for the General Assembly and not left only to the Security Council in the UN.²⁴⁰ According to Evans,²⁴¹ the UN resolutions are only as valuable as the paper they are printed on unless there is a united effort by the member nations to see the resolutions enacted into their respective country's legislation. The UN does not have the power to force countries to enact any of its recommendations or resolutions. However, after the Security Council in the UN passed Resolution 1269 in October 1999, it urged stronger efforts and coordination to

²⁴⁰ Phillips Alyssa. "Terrorist Financing Laws Won't Wash: It Ain't Money Laundering." *University of Queensland Law Journal*, No. 23, (2004): 81-101.

²⁴¹ Marika Vicziany, David Wright-Neville & Pete Lentini (Eds.), "Regional Security in the Asia Pacific: 9/11 and After." *Cheltenham Edward Elgar Publishing Limited*. (2004): 30-39.

anti-terrorism in the maintenance of international peace and security, however, terrorist activities continued unabated. Examples included the foiled Millennium bombing targeting an airport in California in 2000.²⁴²

Obviously, since 9/11, the UN particularly the Security Council, has taken the lead in this trend towards multilateral institutionalisation. The Security Council's semi-legislative activities the creation and reinvigoration of subsidiary organs-particularly the establishment of special committees, and the establishment of the office of the ombudsperson.²⁴³ Regional and sub-regional organisations also constituted an important thread in the institutional counter terrorism web as do international bodies, i.e. the International Atomic Energy Administration (IAEA), International Maritime Organisation (IMO), World Customs Organisation (WCO), ICAO as well as the Financial Action Task Force (FATF) and certain specialised UN agencies including the United Nations Office on Drugs and Crime (UNODC). The UN human rights bodies as well as other regional human rights bodies have scrutinised counter-terrorism policies at various levels. In contrast, the role of ICC has been limited to concrete situations if not quasi-non-existent role of ICC.²⁴⁴

The day after 9/11, the Security Council adopted Resolution 1368 in 9/12 of 2001, condemning acts of international terrorism, stating that they were a threat to international peace and stability and effectively allowed for the enactment of Chapter seven of the UN Charter "by using its Chapter seven power, all Member States are

²⁴² Neil McCallum. *The Justification of Anti-Terrorism*, n 202, 46-47.

²⁴³ A. Sambeim, A. du Plessis & M. Polaine. "*Counter-Terrorism Law and Practice: An International Handbook*." (Oxford: Oxford University Press, 2009): 24.

²⁴⁴ Rosand & T. Tardy, "*The inherent difficulties of inter-institutional cooperation in fighting terrorism*, J. Boulden and T. G. Weiss (eds.), *Terrorism and the UN: Before and After September 2001*." (Bloomington: Indiana University Press, 2004): 139.

required to adopt specific measures in circumstances broader than disciplining of a particular rogue state. However, the Security Council was effectively acting as a legislator.”²⁴⁵

The Security Council Resolution 1373,²⁴⁶ cited that the global counter-terrorism strategy has four components: condemnation of discrete terrorist acts, imposition of sanctions, the creation of universally binding counter-terrorism measures and finally capacity-building for counter-terrorism at the national level.²⁴⁷ The Council’s Counter-Terrorism Program effectively commenced with Resolution 1373 and the creation of the Counter-Terrorism Committee. This Committee co-existed with the previously established targeted sanctions regime instituted by Resolution 1267 in 1999 as the 2 principal pillars of the Security Council Counter-Terrorism campaign. The Council’s Counter-Terrorism framework was later complemented by a Non-Proliferation Committee of the 1540 Resolution in 2004 as well as by the 1566 Working Group which was established directly after the terrorist attacks in (Beslan, Russia).²⁴⁸ This working group was given a mandate to expand the 1267 sanctions to other terrorist activities and to consider the possibility of establishing a fund for victims of terrorism. Nonetheless, the working group has not been tremendously successful or productive. The Counter-Terrorism Committee has remained the Security Council’s predominant counter-terrorism organ, assisted by the Counter-Terrorism Executive Directorate (CTED),

²⁴⁵ Phillips Alyssa. Terrorist Financing, n 240, 91.

²⁴⁶ Appendix C (Security Council Resolution 1373 of 2001). Also see: UN Doc. S/RES/1373 (2001), <http://www.un.org/en/terrorism/sc-res.shtml> (Accessed, April 8, 2014).

²⁴⁷ Rosand, E, "Resolution 1373 and the CTC: the Security Council's Capacity-building", in G. Nesi (ed.), *International Cooperation in Counter-Terrorism: The United Nations and Regional Organizations in the Fight against Terrorism*, (Hampshire: Ashgate Publishing press, 2006): 81.

²⁴⁸ A. Bianchi, "Looking ahead: international law's main challenges", in D. Armstrong (ed.), *Routledge Handbook of International Law*, (Abingdon: Routledge press, 2009): 396.

whereas the former 1267 sanctions regime constitutes the most pronounced Security Council measure targeting the concrete terrorist threat posed by Al Qaeda.²⁴⁹

Consequently, the UN began “to treat international terrorism as a form of criminal activity” therefore, in order to combat terrorism internationally, anti-terrorism laws were needed on both the national and international levels. The perfect instrument for the latter by the UN shows that immediately after 9/11 attacks, the US went to the UN to obtain endorsement of its international anti-terrorism agenda. As a result, the US paid its long overdue membership, which totaled about (862 million dollars).²⁵⁰ Commenting the move, Fasulo, et al, stated that: The US sought and received the Security Council’s blessing for several of its security objectives, i.e. legitimacy in invading Iraq. Washington was successful in securing from the UN a renewed inspections regime for Weapons of Mass Destruction (WMD).²⁵¹

As for the role of Iraq in the application of Resolution 1373 of the UN Security Council and a commitment to maintaining human rights and civil freedoms of citizens, it was through issuing the Iraqi Anti-Terrorism Act No. 13 of 2005 to define the meaning of international terrorism and to develop measures to combat it. In 2006 and the years that followed, the Counter-Terrorism Committee of the UN Security Council of Resolution 1373, following the Iraqi government to its vision, reported that: A preliminary assessment of the President of the Security Council Committee for the fight against

²⁴⁹ Larissa Van den Herik & Nico Schrijver, *"The Fragmented International Legal Response to Terrorism, Published in L. van den Herik and N. Schrijver (eds), Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges,"* (Cambridge: Cambridge University Press, 2013). From: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165015 (Accessed, April 1, 2014).

²⁵⁰ Hosein Ian, *the Source of Laws*, n 204, 190.

²⁵¹ Fasulo Linda. *An Insider's Guide to the UN* (2th ed). (London: Yale University Press, 2009): 91.

terrorism on the application of Iraq Resolution 1373/2001, told the UN Security Council that Iraqi government procedures from 2006 until now, did not take any procedures, but merely the formation of committees porticoes in vain,²⁵² and in each of the previous years, the UN Commission confirmed the following terms:

*On Iraq Review Anti-Terrorism Act No.13 of 2005 and the establishment of a mechanism to combat terrorism seriously in domestic law to reconsider the law to get rid of blur, propose accurate provisions and precise definitions of international terrorism and terrorist acts in order not to slip in the future political trials, through a preliminary assessment of this law, it was found that there are loose provisions, especially in Article 4 which allows for wide interpretations and would threaten public freedoms, because the signed law was formulated in a way that allows the trial of every person who contravenes the system.*²⁵³

The following summarises the reapplication of the Iraqi Anti-Terrorism Act No. 13 of 2005 according to requirements of the Security Council of the UN:²⁵⁴

1. Review the Iraqi Anti-Terrorism Act. No. 13 of 2005 and make it in line with the international conventions, especially as there are pilot projects for drafting laws of terrorism as proposed by the UN to all countries or as proposed by the Arab League to the national laws.
2. Encourage Iraq to become a member (join) of international conventions and protocols relating to terrorism; however, it has not yet joined Conventions i.e. these Convention on the Physical Protection of Nuclear Equipment 1980, Suppression Protocol to illicit acts against fixed sidewalks on the Continental Shelf 1988, Signs of Plastic Explosives for the Agreement and Disclosure 1991,

²⁵² Riad Hani Bahar, "Concern of the United Nations from the Iraqi Counter-Terrorism Law Current," *Modern Discussion*, No. 3655, (March 2, 2013). From: <http://www.ahewar.org/debat/show.art.asp?aid=297414> (Accessed June 23, 2013). Also see: <http://www.bondladyscomer.com/t62137-vision-internationalism-article-4-iraqi-terrorism>. (Accessed, June 10, 2013).

²⁵³ Ibid, 4. Also see: <http://www.un.org/en/terrorism/sc-res.shtml>. (Accessed, April 8, 2014).

²⁵⁴ Ibid, 5. Also see: <http://www.un.org/en/terrorism/sc-res.shtml>. (Accessed, April 8, 2014).

International Convention for the Suppression of Terrorist Bombings 1997, International Convention for the Suppression of the Financing of Terrorism 1999, International Convention for the Suppression of Acts of Nuclear Terrorism 2005 and Protocol of 2005, the Convention for the Suppression of Illegal Acts against the Safety of Maritime Transport and Protocol of 2005, the Protocol for the Suppression of Illicit Acts against the Safety of Fixed Sidewalks on the Continental Shelf 1988.

3. Unify intelligence efforts to counter-terrorism and issue legislation to build an effective intelligence apparatus.

Finally, after addressing the role of the UN Security Council in the development of measures to counter-international terrorism, it is equally important to compare the role of the international conventions ratified by the UN and the role of the UN Security Council to reduce the phenomenon of terrorism in order to reach to the following conclusion:

Resolution 1373, which focused on international efforts to counter-international terrorism by targeting the financing of terrorism is very similar to the 1999 UN Convention for the Suppression of the Financing of Terrorism, in fact, both contain the same four main objectives. According to Phillips and Stephens,²⁵⁵ both, the convention 1999 and the Resolution 1373, fail to offer a unified definition of terrorism. Both regarded Resolution 1373 and the Convention 1999 for the Suppression of the Financing of Terrorism as ineffective.²⁵⁶ On the other hand, Stephens sees an indirect

²⁵⁵ Stephes Tim. "International Criminal Law and the Response to International Terrorism." *UNSW Law Journal*, No. 27(2), (2004): 454-481. Also see: Phillips Alyssa. Terrorist Financing Laws, n 240, 84-86.

²⁵⁶ Ibid, 455.

definition in Article 2(1) of the Convention 1999 offering this reasoning: An intention only to kill or injure civilians would not distinguish terrorism from violence is already criminalised under national legal systems. Hence, Article 2(1) adds an additional intention element, designed to incorporate the ‘terror’ dimension of terrorism via the condition that the act must be revealed by its nature or context to be aimed to “intimidate a population” or “compel a government.”²⁵⁷

2.10.2 The Role of UNAMI in Countering International Terrorism in Iraq

The UN has been operating in Iraq since 1955 through a variety of programs.²⁵⁸ Specialised agencies established their offices in Iraq in the early 1990 and other UN entities, i.e. UNAMI after 2003. Since 2007, the UN has progressively increased its presence in Iraq and plans to continue expanding operations throughout the country.²⁵⁹ To date, the UN continues to be present in Iraq to respond to the needs of the Iraqi people and support their efforts to achieve a peaceful and prosperous future by UNAMI.²⁶⁰

Through its Resolution 2110, adopted on 24 July 2013 the Security Council extended the mandate of UNAMI until 31 July 2014.²⁶¹ It also extended the period on request of the Iraqi government. The Mission is mandated “as circumstances permit” and “at the request of the Government of Iraq” to:²⁶²

²⁵⁷ Ibid, 469. Also see: Neil McCallum, the Justification of Anti-Terrorism, n 202, 46-47.

²⁵⁸ Nickola Mladenov, United Nations Assistance, n 61. From: http://www.uniraq.org/index.php?option=com_k2&view=item&id=1595:2014&Itemid=556&lang=ar (Accessed, March 22, 2014).

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Nickolay Mladenov, Ibid. From: http://www.uniraq.org/index.php?option=com_k2&view=item&id=1595:2014&Itemid=556&lang=ar (Accessed, April 8, 2014).

²⁶² Ibid.

1. Advice, support and assist the government of Iraq.
2. Promote, support and facilitate in coordination with the government of Iraq.
3. Also, promote the protection of human rights, civil freedoms, judicial and legal reform in order to strengthen the rule of law in Iraq. i.e. help Iraq in systems, technology, information on terrorists and provide monthly precise reports on the number of victims in Iraq, i.e. the statistics of killed and injured, in March of 2014 across the country reached a total of 609 Iraqis were killed and 1,745 were injured in acts of international terrorism and violence in the following Iraqi Governorates:

Table 2.4

Statistics of Iraqis Killed and Injured in March 2014.²⁶³

Governorate	Iraqi Killed	Iraqi Injured
Baghdad	180	477
Salahuddine	95	205
Babel	63	175
Ninewa	67	83
Diyala	48	64
Anbar	80	448
Anbar (Fallujah)	76	293

As for the role of the mission to assist Iraq regarding the risk of international terrorism, the Special Representative of the United Nations Secretary-General for Iraq (SRUNSG) Nickolay Mladenov, at the opening of the first International Counter-Terrorism

²⁶³ Ibid.

Conference that started on 12-13 of March in 2014 in Baghdad, expressed the UN deepest sympathy with the Iraqi people for the terrible toll that they endure daily.²⁶⁴ He added that moving beyond the national level fight against terrorism can succeed only within the framework of constructive regional and international cooperation.²⁶⁵ Also, he reminded the audience of the establishment in 2005 of the UN Counter-Terrorism Implementation Task Force (CTITF) saying that: “through this task force, the UN can assist Iraq in promoting its ability to contribute to the international effort to counter-terrorism and implement the pillars of the Global Counter-Terrorism Strategy.”²⁶⁶

This has been explained by the researcher under the discussion on the role of regional cooperation to reduce global terrorism. In conclusion, Mladenov assured that the Iraqi people were not alone and that UNAMI and the UN in Iraq would continue to work with them in their election of their representatives, promoting political dialogue and investing its biggest resource to reduce international terrorism.²⁶⁷

As mentioned above, one of the Academic and a Judge interviewed suggested that UNAMI should play a great role in to reducing the phenomenon of international terrorism and help the Iraqi government to counter international terrorism and protect civil freedoms i.e. the right to life and personal security by sending quarterly report to the Iraqi government about the finance of terrorist groups and its aims.²⁶⁸

²⁶⁴ Nickolay Mladenov, United Nations Assistance, n 126. From: <http://www.uniraq.org/index.php?option=comk2&view=item&id=1595:2014&Itemid=556&lang=ar> (Accessed April 14, 2014).

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Interview with: Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014; Also, the Judge is: Salah Issa Murad, Judge Criminal Court Baghdad in Iraq, October 25 2014.

2.11 The Role of the Regional Cooperation to Reduce the Phenomenon of International Terrorism

Many conventions were signed at the regional level to contribute to the suppression and combating acts of international terrorism. The Committee has recommended to the public at the General Assembly of the UN in 1972 in its Resolution No. 34/145 on the report of the Committee 6, paragraph 10: indicated that specialised agencies and regional organisations need to consider taking measures to prevent and fight against international terrorism.²⁶⁹

There are many regional conventions relating directly or indirectly to the fight against international terrorism, but the researcher focuses on the most important efforts in regional cooperation (conventions) by some International Regional Organisations (IROs) to combat the international terrorism:

1. European Convention on the Suppression of Terrorism 1977:

The aim of the establishment of this Convention was to transform the European continent in the seventies of the last century to the scene of the events of the international terrorist perpetrated for political reasons and because of the failure of the European Council to agree on a common definition of terrorism and the establishment of an effective system to prevent and suppress terrorist crimes. Also, all these factors have helped bring about this Convention on January 27 in 1977 and entered into force in 1978 after getting approval from 17 Countries.²⁷⁰

²⁶⁹ Othman Ali Hassan, *International Terrorism and the Legal*, n 114, 377.

²⁷⁰ Mohammed Refaat Ahmed & Saleh Bakr., *International Terrorism*, n 107, 74.

The Convention consisted of a preamble and 16 Articles. The preamble stipulated the objective of the Convention i.e. to take effective measures to confirm not to allow the perpetrators of terrorist acts to escape. Article 2 of the Convention dealt with extradition procedures showed ways to suppress terrorist acts either by extraditing offenders to their home countries or by exposing him to trial in the territory of the state, wherein he has committed the crime. Moreover, Article 8 was on the obligation of states parties to offer cooperation and mutual assistance in criminal matters and procedures related to crimes under the Convention, noted that the Convention amended some texts in 2003.²⁷¹ In addition, that Convention was criticised, because it did not include benefits of the unification of national criminal legislation on combating terrorism.²⁷²

2. Convention of the General Assembly of the Organisation of American States for the Suppression of Terrorist acts 1971:

The aim of the establishment of this convention was to reduce the phenomenon of extorting people in the form of crimes of an international nature. It was called by the Organisation of American States (OAS) to punish and prevent this phenomenon through holding a convention in 1971, which entered into force on October 16 in 1973, and has been approved by 11 Countries. This Convention is considered a good stage to combat international terrorism in the American continent and to develop legal provisions fit with the principles of international law in the definition of the crime of terrorism and punishing the perpetrators.²⁷³

²⁷¹ Salmon Jean. "La Convention Europeene pour la Reepression du Terrorism." *Journal des Tribunaux*. No. 24, (2007):23-33.

²⁷² Ibid, 25.

²⁷³ <http://www.oas.org/xxxjiga/English/docs-end/docsitems/Agre184020-htm>. (Accessed, October 12, 2013).

3. Convention of the Organisation of African Unity to Prevent and Combat Terrorism 1999:

A Convention was held to prevent and combat terrorism by the Organisation of African Unity (OAU) in Algeria dated July 14 in 1999.²⁷⁴ The text of the Charter of the Organisation in Article 3 paragraph 15, denounces all forms of political assassinations and disruptive terrorist activities committed by neighboring African countries or any other countries.²⁷⁵

4. South Asia Countries Convention to Suppress Terrorism 1987:

This Convention was adopted by the Member States of the South Asian Association for Regional Cooperation (SAARC) in Kathmandu on November 4 in 1987 and the Convention entered into force on August 22 in 1988 with the admission of all Countries of the organisation to the Convention, including Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka.²⁷⁶ The aim of this convention was to suppress terrorism committed by terrorist groups in the Member States of the organisation or any other countries.²⁷⁷

5. The Arab Convention for Combating Terrorism 1998:

With regard to Arab cooperation in the field of counter-terrorism, there was a cooperation in combating terrorism in the framework of the perception of many Arab countries of the importance to face this phenomenon collectively and that the individual effort will not be of an effective impact. The features of this cooperation began to

²⁷⁴ Othman Ali Hassan, *International Terrorism and the Legal*, n 114, 378.

²⁷⁵ See: <http://untreaty.un.org/English/Terrorism/oau-e.p.d.f>. (Accessed June 10, 2013).

²⁷⁶ Mohammed Refaat Ahmed & Saleh Bakr, *International Terrorism*, n 107, 117. Also see: <http://untreaty.un.org/English/Terrorism/conv.18.pdf> (Accessed, January 28, 2014).

²⁷⁷ *Ibid*, 128.

emerge in 1993 and then this trend was supported the next year. However, adopting new deep dimensions became more effective through 1995 and 1996.²⁷⁸ The UN Conference 9 on crime prevention, held in Cairo (Egypt) in April 1995, is one of the most important international groupings, which stated that during this conference an Arab action to address the issue of terrorism has succeeded during in attracting the international attention to the issue of terrorism, culminated in their efforts to make terrorism the successful types of organised crime. The Arabs signed the Convention to combat-terrorism in Cairo 1998, which entered into force on 7 May 1999, where Iraq became a Member State of this Convention.²⁷⁹

In this respect, Article 3 provides the following anti-terrorism measures:²⁸⁰

- a) Capture the perpetrators of terrorist crimes and prosecute or extradite them according to the provisions of this convention or bilateral treaties between the two countries in order not to allow them to escape from punishment.
- b) Secure effective protection for workers in the field of criminal justice.
- c) Provide assistance to victims of terrorism.

Article 4 also identifies the foundations of cooperation between the Arab countries to counter-terrorism crimes by exchanging information to facilitate capturing the terrorists, following-up the terrorists and searching for their places as well as exchanging experiences of the Arab countries, which are committed to cooperate with each other to exchange studies and provide available technical assistance for the

²⁷⁸ Saleh Ben Bakr, *Terrorism and International*, n 20, 8.

²⁷⁹ Mahmood Ghanim, *"International Terrorism Legislation and Fight in Democratic Countries."* (Egypt: Dar Science Publishers press, 2001): 20-28. Also see: <http://www.untreaty.un.org/English/Terrorism.asp> (Accessed, February 25, 2014).

²⁸⁰ Mohammed Ghonaimi. *Law peace in Islam*, n 222, 805.

preparation of training programs or training courses in the field of countering-terrorism.²⁸¹

Article 5 of the Convention is on the area of judicial cooperation, which provides:²⁸²

- a) Arab countries' commitment to deliver defendants or convict the terrorist offenses in any Arab country according to the terms of the treaty.
- b) Arab countries' commitment to the subject of (letters rogatory). It was decided that each country may request from other countries to adopt in their territory any judicial action lawsuit arising from terrorist crimes especially in hearing the testimony of witnesses and conducting inspections.
- c) Provide possible assistance between Member States of the convention in the stage of elementary investigation and final investigation till reaching the sentencing.

In addition to the above, at the conclusion of the Convention, it was mentioned that the Arab countries need to increase their activities in the area of advertising to counter the campaigns (international terrorism) against the Islamic world and condemning the practices of terrorist groups.²⁸³

After reviewing the measures provided in these Regional Conventions in terms of countering-terrorism, the researcher has analysed and noted that these conventions could not withstand the increasing international terrorism, because of the impact of international factors on the regional situation and the weak cooperation between the

²⁸¹ Mohammed Al-Hussein Private international law, n 149, 273.

²⁸² Mahmood Ghanim, International Terrorism Legislation, n 204, 22.

²⁸³ <http://www.untreaty.un.org/English/Terrorism.asp> (Accessed, February 25, 2014).

regional organisations of these respective countries making it a daunting task for these regional conventions to achieve their primary objectives, as proposed by the two Academics interviewed that have been.²⁸⁴

2.12 Conclusion

This chapter has presented information about the definition of international terrorism from the perspective of international and national laws, along with reference to the reasons that evoke terrorists to commit violence against the international community, which has robbed people's right to life and personal security especially in Iraq. Also, a clarification of the objectives of direct and indirect terrorist groups in Iraq was presented. These direct and indirect objectives of the terrorist groups could be viewed as a real challenge for democratic countries in the world. Thus, this has prompted the international community to device ways and means to tackle this challenge.

The chapter ends with a review of the role of the legislative authority in Iraq and the General Assembly at the UN in defining the terms "international terrorism" and "terrorist acts" as well as addressing the role of the UN in reducing the phenomenon of international terrorism through multilateral, international and regional conventions as well as peace keeping missions and participation in international cooperation programs.

Under this chapter, the researcher answered the first research question i.e. what is the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining

²⁸⁴ Interview with: Mohammed Tamah, Academic of Public International Law, College of Law University of Dhi Qar in Iraq, August 30 2014; and Sadiq Zugheir Muhaisen, Academic of Public International Law, College of Law University of Misan in Iraq, September 7 2014.

the terms international terrorism and terrorist acts. Also, in this chapter, the researcher achieved the first research objective i.e. to study the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms international terrorism and terrorist acts.



CHAPTER THREE

THE PROTECTION OF CIVIL FREEDOMS IN IRAQ

3.1 Introduction

In this chapter, the researcher first addressed the concept of civil freedoms before moving to address its protection in Iraq and focusing mainly on the right to life and personal security making reference to the Iraqi Constitution of 2005 as well as other international conventions on human rights and the UN Charter. Finally, the conclusion of the chapter was presented. Under this chapter, the researcher answered the second research question as well as achieved the second research objective.

3.2 The Concept of Civil Freedoms

Undoubtedly, civil freedoms is one of the bases of democracy and it is important for the development and protection of other human rights. At the end of the World War II, the world was marked by unsurpassed destruction and human suffering.¹ This harsh experience gave rise to new political efforts, especially for the people suffering from violation of their rights and civil freedoms due to international terrorism. Hence, it is

¹ Mohammed Al Majzoub, "*Public International Law*," (Beirut: University of Beirut Arab press, 2010): 869.

necessary to look into the concept of civil freedoms at the global level as well as in the context of Iraq in order to have a better understanding of the concept.

3.2.1 Global Concept of Civil Freedom

In order to address the global concept of civil freedoms, it is important to make reference to human rights international law which aims at protecting human rights, civil freedoms in times of wars and armed conflicts. It is a branch of public international law, which was established in the past centuries in a form of interim agreements concluded by the disputed parties.² In 1864, it was in the form of international conventions, where the ICRC had defined international humanitarian law as:

*A set of international rules derived from international conventions and usages, aiming at settling the humanitarian problems resulting from international or non-international armed conflict to protect people, property, freedoms and rights threatened by the dangers of the conflict.*³

Consequently, international efforts continued to formulate laws that prevent the attack on the right to life and personal security in the UN Charter. Also, international institutions' efforts continued in the twentieth century to declare the civil freedoms in UN Charter. Thus, the UN Charter in Article 55 as well as the UDHR has defined the right to life and personal security, in addition to other rights provided in the UDHR including the rights of each person. Articles 1 and 2 in UDHR further provide that all people indiscriminately are born free and equal in dignity and rights, thus, these rights are referred to as the basic principles of equality and indiscrimination in the enjoyment of human rights.⁴

² Ibid, 870.

³ Ibid, 871.

⁴ Sabah Sadiq Jafar, *"Human Rights: Documents,"* (Baghdad: Public Law Library press, 2003): 3-37.

In addition, the text of the UDHR in some of the Articles on the civil freedoms, i.e. Article 3 states that: everyone has the right to life and personal security. Article 5 prohibits penalties that affect the dignity of a person, while Article 6 recognises the legal personality of each person, leading to increase public awareness of these rights and the legalisation of the claimants to face those who try to rob these types of freedoms.⁵

It is important to note that there are principles of international law concerning Friendly Relations and Cooperation among States issued in accordance with the UN Charter in 1970 to criminalise the terrorist activities against the state or incitement to commit and emphasise the individual's right to enjoy freedoms without terror.⁶

Moreover, several scholars in international human rights law state that obligations to protect respect and promote human rights and civil freedoms of people are subject to jurisdiction.⁷ The Council of Human Rights and Civil Freedoms the Council of Europe on 5 May 1949 based on the Treaty of London; stated that any interpretation of these rights and freedoms should meet the conditions laid down in the ECHR as interpreted by the European Court of Human Rights.⁸ These obligations continue to exist when states participate in activities of entities with specialised technical mandates.⁹ However, Article 3 of the statute of the Council of Europe States that: each Member of the Council of Europe must accept the principles of law, which ensures persons' enjoyment of

⁵ Khaddar Yassin, "Terrorism and its Impact on the Content of Human Rights," *Journal the rights sixth letter College of Law University of Karbala*, No. 1, (2014): 222-253.

⁶ Ibid, 231.

⁷ Wolfgang Benedek, Joy Liddicoat & Nico van Eijk, etd. "Comments Relating to Freedom of Expression and Freedom of Association with Regard to new Generic top Level Domains," *Secretariat General, Directorate General Human Rights and Rule of Law Council of Europe*, (2012) :3-9.

⁸ Ibid, 4.

⁹ Ibid, 5.

human rights and fundamental civil freedoms within its jurisdiction and collaborate effectively and truthfully. Hence, these constitute the primary components to implement "a greater unity."¹⁰

If the approach of civil freedoms is executed properly, it will strengthen the overall civil freedoms in compliance with the international standards. All the 47 Member States of the Council of Europe have undertaken to secure the civil and political rights and freedoms, i.e., the right to life and personal security provided in the ECHR. The initial and primary responsibility for the protection of the rights and freedoms was set forth in the ECHR by the Member States. Any individual who claims to be the victim of a violation of his/her rights and freedoms by any of the ECHR Contracting States may apply to the ECHR after exhausting domestic courses of action.¹¹

The concept of civil freedoms is stipulated in Article 10 of the ECHR, which provides that the exercise of such freedoms i.e. the right to life and personal security, implies duties and responsibilities and may be subjected to such formalities, conditions, restrictions or penalties. It is also prescribed by law and necessary in a democratic society for the interests of national security, territorial integrity or public safety in order to prevent disorder or crime, protect health, morals, the reputation or rights of others, preventing the disclosure of information received in confidence or maintain the authority and impartiality of the judiciary.¹²

¹⁰ Nirillah Yamali. "What is meant by State Recognition in International Law," *General Directorate of International Laws and Foreign Affairs*, Turkey, (2009): 3.

¹¹ Wolfgang Benedek, Joy Liddicoat & Nico van Eijk, et al., *Comments Relating to Freedom of Expression*, n 7, 4.

¹² Nirillah Yamali, *What is meant by State*, n 10, 2.

Finally, still civil freedoms can be understood as a set of equal rights and demands of all human beings without discrimination as per the UN Charter and other relevant international human rights instruments.

3.2.2 Concept of Civil Freedoms in Iraq

The international law of human rights in many texts urges countries' commitment, including Iraq, to behave in a way that promotes and protects human rights and fundamental freedoms of individuals and groups.¹³ Thus, civil freedoms are an inherent right for all people, regardless of their nationality, place of residence, race, color, religion and language. The Iraqis are all equal in the exercise of these basic freedoms without any form of discrimination and these types of freedoms are interdependent, expressed through international standards and guaranteed by the law in the form of treaties, customary international law, general principles and other sources of international law.¹⁴

Moreover, when civil freedoms which are the basis of life, justice and peace are activated, they would allow the individual and community to fully develop. Also, civil freedoms are based on the perspective of the Iraqi Constitution of 2005, from Articles 14 to 46: where the authority, based on law, enables a person to act in the domain of his interests. Civil freedoms can be defined as: the basic criteria necessary for a person to live in dignity.¹⁵

¹³ Hassam Abdul Amir, *"The Role of Regional Organizations in the Protection of Human Rights."* (PhD diss., University of Al Mustansiriya, Baghdad, 2004):144.

¹⁴ Ibid, 145.

¹⁵ Appendix B (Iraqi Constitution of 2005).

In this aspect, some legal Iraqi scholars have argued that civil freedoms are global characteristics of all humans regardless of nationality, gender, race, color, political opinion, national region, social region or religion, indivisible, fixed for all Iraqis as well as developed and renewable, where it keeps pace with modern developments to include various aspects of life.¹⁶ Additionally, all human beings are free and equal in dignity and rights. Moreover, the definition of civil freedoms imply that the rights are a mix of Constitutional and international law mission to defense a law on a regular basis about human rights against the deviations of the state apparatus and armed group.¹⁷

Accordingly, the importance of rights and freedoms were highlighted in the Iraqi of High Commission for Human Rights Act No. 53 of 2008. These represent the essence of the human and his presence, but lack of civil freedoms and rights through the influence of direct or indirect terrorism in Iraq, making Iraqis unable to exercise their rights and freedoms completely, because of fear, intimidation or killing and threats. This demonstrates the impact of international terrorism to disrupt freedoms through intimidation and killing that drive people to become terrorists and in turn threatens Iraqis' right to life and personal security due to the behavior and actions of terrorist atrocities.¹⁸

3.3 Types of Civil Freedoms in Iraq

Before addressing the types of civil freedoms under the Iraqi Constitution of 2005 as basic rights, it is vital to point out that the right to life and personal security represent

¹⁶ Mahmood Bassiouni, "Introduction to the Study of International Humanitarian Law," *Journal of the Ministry of Human Rights in Iraq*, No. 2, (2005): 76.

¹⁷ Ibid, 77.

¹⁸ Article 3, the Iraqi High Commission for Human Rights Act No. 53 of 2008. <http://www.iraq-ig-law.org/>. (Accessed June 8, 2014).

the most two fundamentals of human rights and civil freedoms. Nowadays, the right to life and personal security constitutes elements of several national and international human rights and civil freedoms Charters. However, fundamental civil freedoms including the right to life and personal security are stipulated in Articles 10(2) and 31 of a charter in the European Union protecting these rights is stipulated in Article 6 of the European Union's Charter of Fundamental Rights. Also, protecting the individual's right to life and personal security is included in Article 9 of the ICCPR and the Optional Protocols thereto in 1966 and 1989 as well as Article 5 of the ECHR.¹⁹

In addition, civil freedom in Iraq has been for a long time in a deplorable situation. The list of freedoms abuses committed in Iraq included what are called supreme rights, the right to life and personal security, which cannot be violated even in time of public emergency, nonetheless, unlike other cases in which human rights and civil freedoms factors were part of the articulated justification for international terrorism intervention in Iraq,²⁰ the researcher addressed civil freedoms, focusing mainly on the right to life and personal security in Iraq after 2003.

3.3.1 Right to Life

Before addressing the right to life as a basic civil freedom or a type of civil freedom in Iraq, it is vital to point out that the right to life as provided in the custom, international convention, the Constitution and laws in Iraq has seen defined by some scholars as the right to life, fixed, natural and basic to humans, and discussing other rights and

¹⁹ Nedim Ademović, "Bosnia and Herzegovina: The Right to Liberty and Security of the Person through Relevant Case Law," *Review of Central and East European Law*, Volume 32, (2007): 381-409.

²⁰ Julie Mertus & Maia Carter Hallward, "The Human Rights Dimensions of War in Iraq: Framework for Peace Studies," *Peace History Society and Peace and Justice Studies Association*, Vol. 30, No.1. January (2005):85-119.

freedoms are useless after losing human life.²¹ Therefore, the responsibility of the Iraqi government is to protect communities and individuals against attacks that threaten the human race, establish laws that achieve the protection and assign penalty for each assault that affects the right to life. However, random terrorist operations in Iraq and unintended objectives result in losing people's lives.²²

In the same context, the Iraqi Constitution of 2005 has provided the protection and the definition of the right to life in Chapter II of the Constitution especially in Articles 14, 15, 16, 17 and 19. For example, Article 15 states that: each person has the right to life, security and freedom, and these rights cannot be deprived or restricted except in accordance with the law and based on a decision issued by a competent judicial authority.²³ In addition, the Iraqi High Commission for Human Rights Act No. 53 of 2008 insists on the right to life for all Iraqi people and protects them against terrorist atrocities. Moreover, Article 4 of the Iraqi High Commission for Human Rights Act No. 53 of 2008 stresses on coordination with the relevant authorities to prepare strategies and mechanisms for joint action to ensure the achievement of its objectives, with the aim of developing the right to life as well as to protect this right and urges the Board of Commissioners in the Iraqi government to join the international conventions related to human rights and civil freedoms.²⁴

Obviously, this demonstrates that terrorist acts represent major violations of the rights and basic recognised civil freedoms, where hostage-taking or detention of people

²¹ Khaddar Yassin, terrorism and its Impact on the Content, n 5, 236.

²² Ibid, 237.

²³ Articles 14, until 19, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed June 8, 2014).

²⁴ Article 4, the Iraqi High Commission for Human Rights Act No. 53 of 2008. From: <http://www.iraq-ig-law.org/>. (Accessed, June 8, 2014).

represents an assault against human rights, personal security and mobility, while the assassination or sabotage attack on the right to life and the safety of body represents a violation of other rights. In contrast, the practice of international terrorism in Iraq against the Iraqi people cannot be justified, under any circumstances i.e. exercising the right to self-determination, which is the highest internationally recognised right. However, this right (self-determination) cannot be greater than the rights of innocent people in life, safety and personal freedom in Iraq.²⁵ Based on above, the three Academics interviewed stated that “The US, with the support of many governments, has waged a war on terrorism since the September 11 attacks. There are many examples of cooperative law enforcement efforts to prevent terrorist acts having an impact on the right to life and to bring suspected perpetrators to justice. The allocation of additional resources and attention to these efforts in light of massive attacks on civilians is understandable. Governments have a wide degree of discretion in identifying threats to national or international security and such discretion is recognised in existing human rights, civil freedoms and humanitarian law.”²⁶

In this respect, the ECHR and the Commission on Human Rights adopted the same direction in the European framework of the European Convention for Human Rights which limits the authorities of states in fighting terrorism and protecting civil freedoms, i.e. identical protection of the right to life and personal security. In Article 5 of the ECHR and Article 9 of the ICCPR, this right is secured institutionally through the Human Rights Chamber for Bosnia and Herzegovina (HRC), which is so-called now

²⁵ Khaddar Yassin, *Terrorism and its Impact on the Content*, n 5, 237.

²⁶ Interview with: Ali Hameed, Academic of Public International Law, College of Law University of Basrah in Iraq, September 20 2014; Ali Hadi Alchukrawi, Academic of Public International Law, College of Law University of Babylon in Iraq, October 3 2014; and Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014.

Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina.²⁷ However, formal incorporation of the mentioned provisions on protection of the right to life and personal security into the legal system of Bosnia and Herzegovina would not be significant if institutional protection of this right had not been effectively established. Namely, more than fifteen years have elapsed since 14 December 1995, the date on which the Dayton Peace Agreement entered into force. During these years, the importance of the jurisprudence of the ECHR is in applying the developed standards of those institutions, where many decisions are adopted interpreting step by step the context of conditions within the country to protect certain rights and freedoms under the Bosnia and Herzegovina Constitution.²⁸

In relating to that, statistics have shown the impact of the devastating terrorist acts on the contents of civil freedoms in Iraq, particularly the right to life. Terrorist attacks which started in Iraq after 2003, targeted the Iraqi people, therefore, the institutions of the state, represented by the Iraqi Human Rights and department of the humanitarian affairs and the UN premises in Iraq announced the victims of international terrorism, where the martyrdom reached more than 70,000 people and 250,000 injured ones by the terrorist attacks since 2004 until 2011.²⁹ Number of deaths in 2008 based on the UNAMI Report is about 6,787 Iraqi civilians who were killed and 20,178 who were injured.³⁰

²⁷ Nedim Ademović, *Bosnia and Herzegovina*, n 19, 384.

²⁸ *Ibid*, 385.

²⁹ Magazine Azzaman International, Issue 4276, August 2 (2012). From: www.yell.com/biz/azzaman-international-ltd-london-1982719/. (Accessed, June 16, 2014).

³⁰ *Ibid*.

Additionally, May 20 2013 was the bloodiest, where 46 terrorist attacks in different parts of the country, among which 19 attacks were in Baghdad, 9 were in Mosul and 6 were in Salahuddin leading to 102 killed civilians and 350 injured people.³¹ However, terrorist violence and its impacts on the right to life continued in Iraq due to the weakness of the Iraqi Anti-Terrorism Act No. 13 of 2005.³²

Table 3.1 Statistics of Iraqis Killed, Wounded or Martyred in 2012 for All Area. ³³

Dates	Killed Iraqis	Wounded Iraqis	Iraqis Civilians Martyred	Iraqis Civilians Injured
1 April, 2012	712	1,633	1,704	6,651
1 May, 2012	1,045	2,397	3,102	12,146
June to December 2012	3,545	4,167	1,892	6,719

The speaker for the UN High Commissioner for Human Rights Navi Pillay issued a statement that strongly condemned the executions since the criminal justice system in Iraq is still not functioning adequately.³⁴ The convictions were based on confessions extracted under torture, bad treatment and weak judiciary during the trial procedures which were not up to the international standards. Also, applying death penalty in these

³¹ A Report on the situation of human rights in Iraq in 2013, *the Human Rights Office of the UN mission to help Iraq (UNAMI) and the Office of the High Commissioner for Human Rights, Baghdad*, (2013): 1-35.

³² Ariany, Bnar, "The Conflict between Women's Rights and Cultural Practices in Iraq." *The International Journal of Human Rights*, No. 17(4), (2013): 530-566. From: <http://www.tandfonline.com/doi/abs/10.1080/13642987.2013.784492#.VL8oVdKUdOM>. (Accessed July 19, 2014).

³³ Ibid, 33.

³⁴ A Report on the situation of human rights in Iraq in 2013, n 31, 3.

circumstances was something unreasonable because any miscarriage of justice and the right to life as a result of the death penalty could not be compensated,³⁵ i.e. the Police Commander of Babylon, west of Iraq, Major General Riad Abdul Amir Kikhany hanged 6 terrorists after 6 hours of conducting a bombing which was carried out on June 4 2014 near Babylon Hospital. They entered the bombed car to the hospital claiming that a patient is in a serious condition. Thus, they carried out the crime leading to the death of children and women. Consequently, the chief police refused to send criminals to the Court stating that he did not want to discuss the matter with the human rights and civil freedoms representatives as long as people's lives in Babylon was threatened.³⁶

Additionally, the Report by the High Commissioner for Human Rights of the UN, Navi Pillay, stated that the terrorist groups in Iraq, the ISIS committed war crimes in Tikrit city by executing 300 men of non-combatants on June 14 2014.³⁷ Also, the Report has declared that executions without trial on particularly military officials, policemen and others, who surrendered or were captured by the terrorist groups in different locations of Tikrit area, can be considered as war crimes.³⁸

On the other hand, the government of Iraq sentenced to death 53 people imprisoned during the first 6 months of 2013 specifically from 14 to 17 March, when 18 prisoners were executed.³⁹ Additionally, 21 prisoners were executed due to the conviction of

³⁵ Ibid, 4.

³⁶ Riad Abdul Amir Kikhany, Channel Direction, June 6, (2014). From: <http://www.aletejahtv.org/live.html>. (Accessed, June 6, 2014).

³⁷ Report United Nations, "ISIS committed war crimes in Iraq in 2014," *Geneva - Reuters, United Nations-Agence France Presse (AFP)*, June 16, (2014). From: <http://www.alarabiya.net/>. (Accessed, June 16, 2014).

³⁸ Ibid.

³⁹ A Report on the situation of human rights in Iraq in 2013, n 31, 2.

committing terrorist acts.⁴⁰ However, the researcher's view supports the reduction of the death penalty declaration according to the Resolution of the General Assembly in the UN 176/67 in 2012. Further, the Iraqi Penal Code No. 111 of 1969 and the Code of Criminal Procedure should be both reviewed in order to abolish death penalty. It is imperative to support the idea of joining the Second Optional Protocol of the ICCPR which aims at abolishing the death penalty, over and above implementing the international standards that provide safeguards for the accused in order to limit the death penalty which guarantee the rights of those who face the death penalty in Iraq as it was shown in the attachment of the Economic and Social Council Resolution in the UN No.50 issued on 25 May, 1984.⁴¹

Finally, it seems that the deliberate targeting or indiscriminate killing of civilians in Iraq is a serious violation of humanitarian law and international human rights law as well as the Iraqi Constitution of 2005 and its laws. Moreover, the impact of international terrorism on Iraqis' right to life cannot be underestimated since it has greatly limited their ability to enjoy human rights and civil freedoms. As a result, through the analyses carried out in the course of this research, the following are some of the contributing factors to the current spate of violence in Iraq:

1. The Iraqi criminal legislation is not very clear on the definition of international terrorism as well as in identifying terrorist acts.
2. The political deadlock between Iraqi political groups.
3. The current conflict in Syria.

⁴⁰ Ibid, 2.

⁴¹ Ibid, 3.

Having pointed out the contributing factors to the current spate of violence in Iraq above, perhaps it is important to note that at the beginning of 2014 around 1 million Iraqi citizens escaped to the northern regions in Iraq towards Kurdistan region and the border regions, because of war between the Iraqi Army and the terrorist groups.⁴² This movement of the Iraqi citizens is an indication of how volatile is the security situation in the country.

3.3.2 Right to Personal Security

Despite the rhetoric of rights and freedoms, a strict hierarchy of value is not antithetical to the vision and spirit of the UDHR and is still observed by countries across the globe. However, regarding the protection and respect of civil freedoms in Iraq, the right to personal security, according to Article 11 of the UDHR is flatly contradicted by those who ordered the execution without trial of suspects whether they were the companions of the killers or not. Each person charged with a penal offence is still innocent until proven guilty based on the law in a public trial where he has all the guarantees necessary for his defense.⁴³ Additionally, Article 37 of the Iraqi Constitution of 2005 provides that arresting or interrogating any person must be based on a judicial decision.⁴⁴

Article 5 of the Iraqi High Commission for Human Rights Act No. 53 of 2008, protects the rights of the Iraqi citizen in terms of personal security through receiving complaints from individuals and civil society organisations in case of violation before and after the entry of this Act into force, keeping the confidentiality of the providers, conducting

⁴² Ibid, 4.

⁴³ Laurie Calhoun, "Human Rights or Just War?," *Peace Review: A Journal of Social Justice*, Copyright Taylor & Francis Group, LLC, No. 24, (2012): 163-170.

⁴⁴ Article 37, Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed June 8, 2014).

preliminary investigations of violations of civil freedoms based on the information and referring cases related to human rights violations to the public prosecution for legal proceedings and inform the Commission of the outcomes. Additionally, the Act insists on visiting prisons, rehabilitation centers, social attitudes and all other places without getting the authorities' permission, meeting with the convicts and detainees, confirming the cases of violation of human rights, civil freedoms and informing the competent authorities to adopt appropriate legal action.⁴⁵

Regardless of the protection accorded to the Iraqi citizens under the Iraqi High Commission for Human Rights Act No. 53 of 2008, UNAMI has received allegations of torture and bad treatment in facilities of detention, which are under the authority of the Iraqi Interior Ministry.⁴⁶ According to UNAMI, using confessions is the only evidence that the Courts can depend on to prove a conviction, the violation of the right to know the charge and cases of arbitrary detention and detainees and prisoners' lack of getting legal advice and appropriate representation of lawyers appointed by the Court.⁴⁷ Furthermore, UNAMI has claimed non-compliance with the procedural safeguards including fair trial standards, particularly those related to detain people under the Iraqi Anti-Terrorism Act No. 13 of 2005 during the investigation process.⁴⁸

The following table represents a statistics of Pretrial Iraqis detainees in four Iraqi ministries till the end of 2013:

⁴⁵ Article 5, the Iraqi High Commission for Human Rights Act No. 53 of 2008. From: <http://www.iraq-lg-law.org/>. (Accessed, June 8, 2014).

⁴⁶ A Report on the Situation of Human Rights in Iraq in 2013, n 31, 5.

⁴⁷ Ibid, 5.

⁴⁸ Ibid, 6.

Table 3.2 Statistics of Pretrial Iraqi Detainees in Iraq from 2013 ⁴⁹

Ministry	Numbers
Ministry of Justice	61844
Ministry of Interior	46016
Ministry of Defense	1618
Ministry of Labor	2348

In spite of the limited medical services and lack of qualified medical staff, equipment and poor sanitary conditions which should be shouldered by the Iraqi Ministry of Health, the prison reform program carried out by the Iraqi Ministry of Justice is still progressing and significant improvements in the material conditions of several facilities are noticed.⁵⁰

The internal security items in Iraq emphasised using intrusive and punitive procedures to get information from terrorists with the aim of protecting Iraqis' right to personal security, therefore, wiretapping a person's phone messages without getting an order from the Court is indispensable and indefinite detention of people suspected of having relations with terrorist groups is necessary to protect our country.⁵¹ Thus, some authors define the right to personal security as protecting all human lives in a way that strengthen both human freedom and human fulfillment.⁵² Obviously, the right to personal security is not limited to the negative aspect of the absence of violent conflict,

⁴⁹ Ibid, 7.

⁵⁰ Ibid, 6.

⁵¹ Daniel McCleary, Meaganl Nalls and Robert Williams, etd. "Types of Patriotism as Primary Predictors of Continuing Support for the Iraq War," *Journal of Political and Military Sociology*, Vol. 37, No. 1, (2009): 84-85.

⁵² Anand. P & Des Gasper, "Guest Editorial: Conceptual Framework and Overview Special Issue on Human Security, Well-Being and Sustainability: Rights, Responsibilities and Priorities," *Journal of International Development, Published online in Wiley Inter Science*, No. 19, (2007): 449-450. From: www.interscience.wiley.com. (Accessed May 28, 2014).

but it involves the positive aspect of providing opportunities for people to build on their strengths and ambitions.⁵³

Undoubtedly, international terrorism has seriously violated human rights and civil freedoms, including Iraqis' right to personal security. On the other hand, international criminal law often bans behaviors that violate values protected by human rights law, without proclaiming those values.⁵⁴ In addition, many resolutions of the UN General Assembly and the Commission on Human Rights assert that international terrorism seriously threatens essential human rights and civil freedoms of the Iraqis, including the right to personal security, civil, political, economic, social and cultural rights. This idea is supported by regional anti-terrorism instruments and the preamble to the UN Draft Comprehensive Terrorism Convention, whereas the UN Special Rapporteur on terrorism observes that it is possible that no single human rights and/or civil freedoms has been exempted from the impact of terrorism in Iraq.⁵⁵ Thus, international terrorism results in general fear leading to situations of intolerance and the prevalence of a sense of imaginary fear, which may weaken the resistance to the measures adopted to fight against terrorism. However, in all cases, this feeling is a reason among many that lead to the limitation of the Iraqis' right to personal security.⁵⁶

Furthermore, the Secretary-General of the UN Ban Ki-moon is gravely concerned by the serious deterioration of the security situation in Mosul, Iraq in the Mid of 2014,

⁵³ Ibid, 4501.

⁵⁴ Saul Ben, "Defining Terrorism to Protect Human Rights," *Documents de Trabajo Fríde*, No. 20, (2006): 2. From: <http://fride.org/publication/49/defining-> (Accessed September 11, 2014).

⁵⁵ Ibid, 3.

⁵⁶ Haider Adham Al Taei, "The Impact of Terrorism on Human Rights," *Journal of Political and international in the College of Law, University of Baghdad*, No. 32, (2010): 143-164.

where thousands of Iraqi civilians were displaced in the then recent violence.⁵⁷ He strongly condemned the terrorist atrocities in Anbar, Baghdad, Diyala, Mosul and Salah Al-Din provinces, which had led to killing and wounding many Iraqi civilians over the past several days.⁵⁸ His profound condolences were also extended to the families of the victims and to the Government of Iraq. Additionally, the Secretary-General recalled that all Member States have an obligation to impose financial sanctions, arms embargo and travel ban on the ISIS under the sanctions regime pursuant to Security Council Resolutions 1267 and 1989.⁵⁹ According to the four Judges interviewed, the means that the international community to protect Iraqis have become a necessity, because of the breadth border of terrorism and because it has exceeded the national boundaries and hence it became recognised that internal efforts did not succeed alone in dealing with this phenomenon of terrorism and its impact on civil freedoms. This indicates the need for an international dimension, especially after the events of September 11 where anti-terrorism has become one of the most important functions of international community, especially after the breadth of its phenomenon, its comprehensiveness, and the increasing number of victims from all countries of the world. The world has lost billions of dollars in which it indicates the enormity of terrorist acts and its deep impact on the right to personal security which aligned with anti-terrorism, became one of the most important functions of the international community. This can be seen especially after the phenomenon of international terrorism evolve in parallel with the modern technological and military developments for most countries of the world due to the fact

⁵⁷ Statement Attributable to the Spokesman for the Secretary-General in UN on Iraq, New York, June 10 (2014). From: <http://www.un.org/sg/statements/index.asp?nid=7765>. (Accessed June 12, 2014).

⁵⁸ Ibid, 1.

⁵⁹ Ibid, 2.

that terrorism contains violence, destruction and threatens all internal values, economic prosperity and personal security.⁶⁰

In this regard, an individual has the right to live in peace and safety in both social and personal life without danger or fear or fright. Actions that affect the personal security of people should be taken based on law, with regards to the procedures and guarantees of the Iraqi Constitution of 2005 and Laws. This represents the essence in fighting against terrorism, because it provides security and safety for all components of the right to life. These interrelated human rights-security, safety and personal security are confirmed by all international conventions, regional and international declarations.⁶¹

Furthermore, the right to personal security included in the introduction to the above mentioned elements, implies the protection of these types of freedoms and preventing international terrorism. Though countries use their powers randomly to combat terrorism, this usage exceeds the limits of the law or transfers into armed conflicts or arming individuals. The West attempted to impose its theory of human rights, freedoms, justice and equality, through the globalisation of human rights by using force, political, economic and even military pressure to export those rights, the contents of these names are still negative.⁶² Moreover, the actions followed by some Western countries seriously violate human rights as represented in confidential information and personal

⁶⁰ Interview with: Faisal Salman Abtan, Judge and the President Criminal Court Babylon in Iraq, October 20 2014; Fadhil Radhi, Judge Criminal Court Babylon in Iraq, October 16 2014; Rahim Ugaili, Judge Criminal Court Baghdad in Iraq, September 29 2014; and Khalid Musa, Judge Criminal Court Baghdad in Iraq, date of interview, September 17 2014.

⁶¹ Andrea Bianchi & Yasmin Naqvi, *"International Humanitarian Law and Terrorism,"* (London: Oxford and Portland Oregon press, 2011): 1-361.

⁶² Thomas J. Biersteker, et al., *"International Law and International Relations,"* (New York: Routledge Taylor & Francis Group press, 2007): 1-144.

security.⁶³ Some major countries in the world, i.e. US, has been found to override human rights and civil freedoms. This has been uncovered in the document of the US National Security section 502 of paragraph (b) of the Decree of the US Foreign Assistance which refers to the right of the US president to violate some of humans' civil freedoms in case of unusual circumstances i.e. international terrorism.⁶⁴

From a different aspect, the Iraqi government and institutions have to provide means and guarantees that protect people's security, personal property and lives against international terrorism. This is stipulated in Article 33 of the Iraqi Constitution of 2005, where each person has the right to personal security and need to live in safe conditions.⁶⁵

In addition to the above, Article 33 indicates dialectic interrelationship between the human right to life and personal security of the Iraqi people. However, the life of a person becomes meaningless when he is chased, subjugated to instability, afraid and subjected to detention or make a statement without legal justification. It is stipulated in the International Bill of Human Rights, Article 9 of the ICCPR provides that each person has the right to liberty and security without being arrested or detained arbitrarily. Also, no one can deprive a person of his liberty except on the basis of law and according to legal procedures.⁶⁶

Finally, in the course of conducting this research, it is essential to observe the major difficulties facing the Government of Iraq in fighting international terrorism. There is

⁶³ Ibid, 23.

⁶⁴ Khaddar Yassin, *Terrorism and its Impact*, n 5, 238-239.

⁶⁵ Article 33, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed June 8, 2014).

⁶⁶ International Law, n 60, 46.

still an urgent need to make greater efforts to deal with the conditions that could lead to the spread of terrorism along with ensuring the provision of suitable care and support for the right to life and personal security of the Iraqi citizens through due legal process.

3.4 Protecting Civil Freedoms in Iraq against International Terrorism

Kofi Annan, the Former Secretary-General of the UN strongly believes that each nation proclaims following the law locally must respect it internationally and each nation that insists on it internationally must enforce it locally.⁶⁷ Obviously, the Millennium Declaration reaffirmed nations' commitment to the laws rules as the significant framework for the advancement of human rights and civil freedoms.⁶⁸ Nonetheless, several governments and individuals continue violating the rule of law with the bad consequences, deadly ones on the weak and vulnerable. In other instances, armed groups and terrorists, who make no pretence of being bound by the rule of law are able to flout it, because our peacemaking institutions and compliance mechanisms are weak. However, the rule of law as a mere concept is not enough, the new laws must be put into place, old ones must be put into practice and our institutions must be better equipped to strengthen the rule of law to protect the civil freedoms i.e. the right to life and personal security.⁶⁹

⁶⁷ Kofi Annan, In Larger Freedom-Towards Development, Security and Human Rights for All-Report of the Secretary-General, in *the CIGI Core Library* (2009):35. From: <http://dspace.cigilibrary.org/jspui/handle/123456789/17698>. (Accessed June 4, 2013).

⁶⁸ Ibid, 36.

⁶⁹ Ibid, 37.

Based on the sentiment echoed by Kofi Annan above, the Iraqi government has shouldered an obligation both under international law together with domestic laws to protect civil freedoms of all Iraqi citizens regardless of race, religion, etc.

3.4.1 International Standards to Protect Civil Freedoms in Iraq

International society believes that they must shoulder the responsibility of protecting civil freedoms and must act on it when necessary.⁷⁰ This responsibility must be shouldered by each individual state, therefore, the Iraq state's primary duty is to protect its people. However, when a national authority is unable or neglect protecting its citizens, the international community has to use diplomatic, humanitarian and other methods to help protect the human rights and civil freedoms.⁷¹ Further, when such methods are ineffective, the Security Council may take an enforcement action under the Charter of the UN.⁷²

Indeed, ever since the adoption of the basics of civil freedoms enunciated in the UDHR, Constitution-makers were inspired to include rights that form the basics in every corner of the world i.e. Iraq is an example. Thus, the right to life and personal security must be the birthright of all Iraqis people, with their achievement and protection must be the main aim of the Iraqi government. As it is stated in Article 46 of the Iraqi Constitution of 2005, exercising rights and freedoms set forth in this Constitution cannot be restricted or identified unless based on law and without prejudice.⁷³

⁷⁰ Ibid, 38.

⁷¹ Ibid, 35.

⁷² Ibid, 36.

⁷³ Article 46, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed June 8, 2014).

Furthermore, in order to protect citizens' civil freedoms, Iraq must exhibit commitment and be involved in the international conventions which call for protection of the right to life and personal security from international terrorism. Similarly, the US stated in a convention on fighting against international terrorism held in Washington in 1961, that the defense of freedom, justice and respect for human rights and civil freedoms of the American Declaration of Human Rights and the UDHR is an international obligation that must be achieved.⁷⁴ Consequently, it could be argued that the phenomenon of international terrorism has become one of the things that fall within the jurisdiction field of many international and regional organisations specialised in the preservation of international peace and security.

The Germany experience in protecting citizens' human rights and civil freedoms against international terrorism is demonstrated through new security measures, i.e. enhancing the airport security, besides increasing the surveillance power of both the military and intelligence agencies.⁷⁵ Also, visa regulations and work permits have been tightened and Islamic charities were either limited or outlawed. The Germany State is confident of its powers gained during its Cold War policing of domestic dissent, protest, and violence to survey, track, arrest, and exclude terrorists in the post-Cold War era.⁷⁶ Consequently, several Germanys were proud that other European countries are adopting the same strategies in combating terrorism. However, Germany legal Counter-

⁷⁴ Ibrahim Sayed Ahmed, *"Look at Combating Terrorism,"* (Egypt: Modern Library Publishing and Distribution press, 2010): 32.

⁷⁵ Mary Nolan, "Pushing the Defensive Wall of the State Forward: Terrorism and Civil Liberties in Germany," *New German Critique* 117, Vol. 39, No. 3, (2012): 109-133.

⁷⁶ Ibid, 110.

Terrorism approach contains deeper infringements against the Constitution to protect the civil freedoms of humans.⁷⁷

In addition to the above, a Germany law professor by the name of Oliver Lepsius argued that citizens' civil freedoms should be limited as a strategy to protect people from international terrorism.⁷⁸ Thus, the association between security and civil freedoms has been basically changed, but this change has not been triggered by the events of September 11, 2001 rather it was part of a continuous development. Obviously, it seems that in Germany, Europe and the US, there is a serious issue related to freedoms, because the right to life and personal security are sacrificed to ensure security.⁷⁹

Regarding the situation in Iraq in terms of protecting civil freedoms against the threat of international terrorism, the role of the EU Council was demonstrated in the decisions adopted in the meeting of the EU Council of Foreign Affairs on 23 June 2014, as follows:

1. The EU's firm commitment to the unity, sovereignty and territorial integrity of Iraq. These three constitute the basic elements for stability and economic development of Iraq and the region. Also, it was confirmed in supporting the Iraqi authority in fighting against terrorism, restoring law and emphasising that security must be accompanied by a sustainable political solution taken by the Government of Iraq, involving all Iraqi leaders and communities in a spirit of national unity. However, when failing to achieve successfully what has been

⁷⁷ Ibid, 111.

⁷⁸ Ibid, 132.

⁷⁹ Ibid, 133.

mentioned, both the conflict and the sectarian division will exaggerate. Additionally, the EU emphasised the significance of respecting civil freedoms and the international humanitarian law and avoiding random use of force while fighting against terrorism. The EU also reminds all statements of the UN Resolutions 1267 and 1989, which imposed sanctions on international terrorism should be applied.⁸⁰

2. The EU fulfills its commitment towards Iraq through strengthening its relationship and looking forward to cooperate with the new government through effective use of the EU-Iraq Partnership and Cooperation Agreement (PCA). Assisting Iraq by the EU is continuous through different fields, i.e. promoting democracy, supporting human rights, establishing good governance and following the law.⁸¹

Additionally, the analysis of some legal studies referred to international conventions, which explicitly confirm imposing restrictions on some civil freedoms while fighting against international terrorism is also remarkable. This is clearly stated in Article 29 paragraph 2 of the UDHR, mentioning that a person's exercise of his rights and freedoms is exposed to limitations to ensure others' freedoms and rights as well as establish justice, public order and public interests in democratic societies.⁸² On the other hand, the opposite is stated in other international conventions, where Article 14 paragraph 2 of the ICCPR states that some fundamental rights and freedoms recognised

⁸⁰ The European Foreign Affairs Council conclusions on Iraq, Luxembourg, 23 June (2014): 1. From: <http://www.consilium.europa.eu/Newsroom>. (Accessed June 23, 2014).

⁸¹ Ibid, 2.

⁸² Hassam Abdul Amir, the Role of Regional Organizations, n 13, 145.

in the public international law, i.e. the right to life and personal security are not allowed to be touched or canceled whatever the circumstances.⁸³

The two Judges interviewed said that: “Civil freedoms of citizens cannot be protected, the cooperation among countries cannot occur, the perpetrators of terrorist crimes in the inner court of countries cannot be prosecuted and the international responsibility of states that support international terrorism cannot be determined without a clear definition of international terrorism and identification of terrorist acts. In addition, Article 51 of the UN Charter stipulates that states have the right of legitimate use and the right of self-defense if it experiences a terrorist attack and aggression that has been identified under the UN General Assembly Resolution 3314 in 1974. Therefore, states have the right to take effective actions against terrorist groups that infringe upon human rights and civil freedoms. These procedures are represented in the international conventions that had established some kind of international cooperation in the fight against international terrorism. In fact, this is what must be done by the Iraqi government to fight against international terrorism and protect the right to life and personal security of the Iraqis, by joining the international conventions relating to international terrorism or the conclusion of an international collaboration between the two states, an example of this, as Iraq did through the visit of Turkish Prime Minister (Oglu) to Iraq on 20 November 2014. The two sides agreed on the need to take several measures on the Turkish side to prevent the international terrorists from entering Iraq across Turkey. In return, Iraq helps the Turkish side by having the economic and oil cooperation through the re-export of oil to Europe via Turkish territory.”⁸⁴

⁸³ Ibid, 146.

⁸⁴ Interview with: Sameer Fawzy, Judge Criminal Court Baghdad in Iraq, September 27 2014; and Salah Issa Murad, Judge Criminal Court Baghdad in Iraq, October 25 2014.

In fact, the current study sees that there should be a kind of balance in the principle of anti-international terrorism and the protection of civil freedoms. This requires the following:⁸⁵

1. Focus on the immoral basis of terrorism and fight it.
2. Fighting international terrorism must not entail killing civilians or deprivation of civil freedoms.
3. Declaration of emergency or martial law must be clarified at the core of the Constitution, including issuing a new rule from the Parliament that regulates emergency cases.

3.4.2 Domestic Standards to Protect Civil Freedoms in Iraq

Criminalising international terrorism internally is achieved through the Iraqi Constitution of 2005 and other related laws including the Iraqi Anti-Terrorism Act No. 13 of 2005. However, when states are lacking laws to anti-international terrorism, they may depend on laws provided in the international conventions and assign specialised regional organisations to deal with the matter of international terrorism.⁸⁶

In this regard, the Iraqi legislative authority had to establish a comprehensive strategy to protect civil freedoms while fighting against international terrorism. This would be in line with the text of the Iraqi Constitution of 2005 by virtue of Article 7 paragraph 2, which provides for a state's based-law commitment to combat all forms of terrorism,

⁸⁵ Khaddar Yassin, terrorism and its Impact on the Content, n 5, 242-243.

⁸⁶ Ibid, 231.

and protect its regions from being a means or a field for terrorist atrocities.⁸⁷ However, it is important to note the analysis of the report, which was issued by the Committee of Counter-Terrorism at the UN stating that the Iraqi Anti-Terrorism Act No. 13 of 2005 was not effective in facing the tremendous attacks as a result of international terrorism. All this was due to the fact that the Iraqi Anti-Terrorism Act No. 13 of 2005 has not clearly defined international terrorism and terrorist acts. Consequently, this has weakened the process of protecting Iraqis' civil freedoms. Noticeably, this gap in the definition of international terrorism and terrorist acts is attributed to the deficiency of international conventions in identifying or describing the terrorists. Additionally, there is no comprehensive international convention at the UN defining clearly the term international terrorism.⁸⁸

On the other hand, the institutions of civil society have had an effective role in the protection of civil freedoms through issuing several 60 documents registered under the UN related to international and regional human rights and civil freedoms.⁸⁹ Necessarily, these institutions have been effective in helping formulate the UDHR, where the principles of this declaration were made known through conferences held by the institutions of civil society.⁹⁰

Internationally, the spread of many civil society institutions with offices in several countries to protect civil freedoms seems clear, i.e. Amnesty International Organisation

⁸⁷ Article 7, the Iraqi Constitution of 2005. From: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>. (Accessed June 8, 2014).

⁸⁸ Khaddar Yassin, terrorism and its Impact on the Content, n 5, 232.

⁸⁹ Amer Abd Ayesh & Adeeb Mohammed Jassim, "The Role of Civil Society Institutions in the Field of Human Rights: A Comparative Study," *Journal of Tikrit University of Science legal and policy in Iraq*, No. 2, (2012): 1-76.

⁹⁰ Ibid, 3.

in 1961 represented one among the most important non-governmental organisations in the field of protecting civil freedoms and defending freedoms against violations committed under the pretext of fighting international terrorism.⁹¹ This organisation confirmed that human rights and civil freedoms are indivisible, because they were establishing its work on the International Bill of Human Rights.⁹² The former Secretary-General of the UN, Kofi Annan, said that it is not allowed for any person to barter counter-terrorism efforts with the protection of human rights and civil freedoms.⁹³

Regionally, other institutions of civil society for protecting civil freedoms are represented by the Arab for Human Rights Organisation, established in 1983 to embody the aspirations of the Arab countries to protect the rights and freedoms of their people.⁹⁴ This organisation has a representative in Iraq, which aims according to Article 1 of the statute of the organisation at respecting and promoting human rights and civil freedoms of all people in the Arab world, based on the contents of the UDHR and the international covenants on human rights, as well defending people against violation of their human rights.⁹⁵ It was clear that the Arab for Human Rights Organisation, which had issued many annual reports and monthly bulletins, had a consultative status with the Economic and Social Council at the UN since 1989 and had been the observer status in the African Commission for Human and Peoples' Rights since 1989 as well as played its active role in protecting civil freedoms in the Arab world especially in Iraq.⁹⁶

⁹¹ Abdul Karim Alwan Khudair. *"Mediator in public international law,"* (Jordan: Cultural House for Publishing and Distribution press, 1997): 137.

⁹² Ibid, 138.

⁹³ Khaddar Yassin, terrorism and its Impact on the Content, n 5, 223.

⁹⁴ Amer Abd Ayesh & Adeeb Mohammed Jassim, The role of civil society institutions, n 89, 51.

⁹⁵ Ibid, 52.

⁹⁶ Ibid, 53.

Based on the internal standards of protecting civil freedoms in Iraq threatened by international terrorism, the role of UNAMI is also of paramount importance in helping the Iraqi government to protect civil freedoms from the danger of international terrorism. This can be seen through the issuing of monthly reports in the form of seminars held to offer advice and tips to the Iraqi government as well as conduct an evaluation of human rights situation in Iraq every 6 months. For example, a national seminar was held on June 8 of 2014, under the title of "Security sector reform in Iraq focusing on finding solutions to sustainable security," utilising this avenue, the Special Representative of the Secretary-General of the UN in Iraq, Nikolay Mladenov, explained the challenges represented by regional tension, terrorism, internal displacement of people and violence, as being faced by the Iraq security should be met in a comprehensive manner.⁹⁷

Mladenov added that this strategy opportunity may have effective impact on the governance of the security sector in Iraq to ensure that the management and oversight of the security sector and security institutions are subject to accountability through democratic civil authorities and procedures.⁹⁸ Further, this represents an opportunity for Iraq to exhibit its commitments to international instruments, i.e. the ICCPR and the Convention against Torture, besides Security Council Resolutions on terrorism, human rights and security sector reform.⁹⁹

⁹⁷ Nickolay Mladenov, Special Representative of the United Nations Secretary-General for Iraq (SRUNSG): United Nations Assistance Mission for Iraq (UNAMI). *"Security sector reform in Iraq and to focus on finding solutions to sustainable security,"* June 8, (2014). From: <http://www.unmultimedia.org/tv/unifeed/category/contributing-agency/unami-united-nations-assistance-mission-for-iraq/>. (Accessed, June 10, 2014).

⁹⁸ Ibid, 2.

⁹⁹ Ibid, 2.

Indeed, while discussing the role of the Iraqi government in protecting civil freedoms of the Iraqi people from the threat of international terrorism, the need for bilateral cooperation between Iraq and other countries is inevitable. For example, such bilateral cooperation exists between Iraq and Azerbaijan based on political and information exchange in the field of anti-terrorism and the protection of civil freedoms. In this field, the Iraqi Prime Minister Mr. Nuri Al-Maliki (as he then was) reported the importance of strengthening Iraq relations through activation of the joint committees, political cooperation and information exchange to counter-terrorism.¹⁰⁰

Similarly, the Minister of Foreign Affairs of Iraq, Mr. Zebari (as he then was), discussed the issue of terrorism and security cooperation between the two countries since 100 fighters from Azerbaijani were in terrorist groups in Syria.¹⁰¹ Necessarily, Iraq was determined to hold an international conference to combat terrorism, yet the issue was exaggerated exceeding the countries of the region to include the world. According to him, they were very confident about constructing a new democratic order and protecting Iraqis' civil freedoms ergo no force can prevent them from achieving that.¹⁰²

Furthermore, due to the increasing number of terrorist attacks on Iraqi citizens and their impact on civil freedoms i.e. the right to life and personal security, the Iraqi government can issue a martial law to protect civil freedoms. This is by virtue of Article 1 of the Iraqi National Act No. 1 of 2004. It enforces that the, the Prime Minister can declare an

¹⁰⁰ Omar Abdel-Latif, "Iraq and Azerbaijan Stress the Exchange of Information to Combat Terrorism," Magazine Al-Sabah Baghdad, No. 3034, February 11, 2013: 1. From: <http://www.alsabaah.iq/>. (Accessed, March 23, 2014).

¹⁰¹ Ibid, 1.

¹⁰² Ibid, 2.

emergency state in any area of Iraq that would expose Iraqi people' lives or safety to a serious danger.¹⁰³

Similarly, three Academics and two judges among these interviewed echoed the sentiment that the war against international terrorism in Iraq involves two main aspects: fighting terrorists at their powerful source and protecting potential targets. The former is a preeminent public good and hence should be supplied by the government, whereas the latter is typically a private or a local public good that carries negative externalities and is far less efficient when fighting terrorism at their source. A key result of the formal analysis is that the government should devote enough resources to the strategy so as to dissuade potential targets from spending on their own security.¹⁰⁴

Finally, Saul's statement about protecting civil freedoms from the threat of international terrorism since serious violence of terrorism is thought to seriously violate human rights is also significant. Hence, a definition of international terrorism must contain elements that reflect this judgment. Obviously, if terrorism violates the right to life and personal security, the definition should prohibit serious violence that causes death or serious bodily injury to a person. The prohibition should also include attacks on public or private facilities with the intention to physically endanger people. Thus, threats to

¹⁰³ Haider Adham Al Taei, *the Impact of Terrorism*, n 56, 155-159.

¹⁰⁴ Interview with Academics: Yaarb Ahmed Naser, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 14 2014; Ali Jabbar, Academic of Public international law, College of Law University of Basrah in Iraq, September 20 2014; and Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014. Also, Judges: Nibras Salman Hamdani, Judge Criminal Court Babylon in Iraq, October 22 2014; and Sameer Fawzy, Judge Criminal Court Baghdad in Iraq, September 27 2014.

commit such acts could constitute an ancillary offence but with lesser penalties rather than considered as terrorist acts.¹⁰⁵

3.5 Conclusion

This chapter has presented information about a brief explanation of the meaning of civil freedoms based on international and national laws i.e. Iraqi laws. The chapter also discussed the types of civil freedoms in Iraq i.e. the right to life and personal security. Additionally, the chapter further addressed how international terrorism has affected the right to life and personal security of the Iraqi citizens. Hence, reference was made to the report provided by UNAMI to show how international terrorism in Iraq is still considered a major threat to the right to life and personal security.

The chapter ended with a review on the protection of civil freedoms from international terrorism in Iraq. Under this part of the discussion, references were made to several international and regional instruments that could be used in the fight against international terrorism. Apart from that, special emphasis was also made to the Iraqi Constitution of 2005 and other related laws i.e. the Iraqi Anti-Terrorism Act No. 13 of 2005, the Iraqi High Commission for Human Rights Act No. 53 of 2008, etc. The chapter also addressed other ways of protecting civil freedoms from international terrorism i.e. the need for participating in international cooperation's, peace keep missions and non-governmental institutions, etc.

¹⁰⁵ Saul Ben, "Defining Terrorism to Protect Human Rights," *Documents de Trabajo Fride*, No. 20, (2006): 13. From: www.fride.org (Accessed, April 21, 2013).

Based on the discussion presented in this chapter, the researcher answered the second research question which states, what is the impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003. At the same time, the second research objective was also achieved that is, to analyse the impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003, was also achieved.



CHAPTER FOUR

RESULTS OF THE INTERVIEW

4.1 Introduction

In this chapter, the researcher addressed the summary of findings from interview of the research. The discussion revolved around the information collected by the researcher from the interview with the Judges from the Ordinary Courts (Criminal Courts) and the Academic staff from the Colleges of Law in Iraq, especially those specialising in public international law, (See: Appendix D-Interview questions), before turning to the conclusion of the chapter. Under this chapter, the researcher answered all the three research questions as well as achieved all the three research objectives.

4.2 Respondents Interviewed

The Semi-Structured interview (face-to-face-interview) comprised of nine Judges from the Ordinary Courts (Criminal Courts) four Judges from Babylon city and five Judges from Baghdad city as well as eight Academics from five Colleges of Law in Iraq specialising in public international law. The five Colleges included (Baghdad, Babylon, Misan, Basrah and Dhi Qar). The researcher believed that the total number of the Judges from the Ordinary Courts (Criminal Courts) and Academics from Colleges of Law in Iraq specialising in public international law could provide accurate information about the impact of international terrorism on civil freedoms in Iraq after 2003. By doing so,

the researcher was able to generalise the findings of the study. The views of the interviewees were relevant in understanding the impact of international terrorism on civil freedoms, especially the right to life and personal security of the Iraqi citizens after 2003. The results of the interview were analysed manually. This involved four major steps starting with review of the data, organising these data, coding and finally interpreting the data from the interview. The researcher opted for this manual analysis of the data collected from the interview due to the fact that the purpose of the semi-structured i.e. (face-to-face-interview) was to supplement the existing works inform of the primary and secondary data dealing with the theme of this study i.e. the impact of international terrorism on the civil freedoms that is the right to life and personal security of the Iraqi citizens after 2003. The following are the interview questions and findings.

Question One: From your experience, what is your opinion on the definitions of international terrorism as well as terrorist acts under the Iraqi Anti-Terrorism Act No. 13 of 2005? Do you think that the definitions provided under the Act are adequate (IQ1)?

The five Academics¹ specialising in public international law viewed that the definition of international terrorism, which is provided in Article 1 of the Iraqi Anti-Terrorism Act No. 13 Act of 2005 has been neither prohibited nor accumulated in which it covers most aspects of international terrorism in Iraq. This is due to several reasons for which

¹ Interview with: Mohammed Tamah, Academic of Public International Law, College of Law University of Dhi Qar in Iraq, August 30 2014; Sadiq Zugheir Muhaisen, Academic of Public International Law, College of Law University of Misan in Iraq, September 7 2014; Ali Hameed, Academic of Public International Law, College of Law University of Basrah in Iraq, September 20 2014; Ali Hadi Alchukrawi, Academic of Public International Law, College of Law University of Babylon in Iraq, October 3 2014; and Osama al-Abadi, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 10 2014.

the phenomenon of international terrorism is changing, evolving and having different forms. In Iraq, there was (Al-Qaeda terrorism) in the past.

Nowadays, there is ISIS which is considered as a summit of extremism. The three Academics specialising in public international law also emphasised that the concept of terrorism has a broad meaning and dangerous impacts, containing many criminal images to implement terrorist plans through various means. There are different aims of terrorism i.e. political, religious, economic, racial and sectarian terrorism.² On the other hand, the two Academics³ specialising in public international law explained that the Iraqi Anti-Terrorism Act No. 13 of 2005 appeared too late, because it came to force in 2005 while terrorism began in 2003 as well as the appearance of terrorist movements in Iraq after 2003 against civilians in general and without distinction. These terrorist movements targeted all state institutions. In addition, the three Academics interviewed pointed out that there is an overlap between the Iraqi Anti-Terrorism Act No. 13 of 2005 and the Iraqi Penal Code No. 111 of 1969, where the concept of terrorist crime overlap with crime or other crimes stipulated in the Penal Code No. 111 of 1969.⁴

Based on the Iraqi Anti-Terrorism Act No. 13 of 2005, Article 1 defines the term terrorism in a very broad manner without addressing exactly the issue of what is a terrorist crime. Hence, terms and description of the acts and actions of a crime had been considered under the concept of terrorism and moved away from the definition of the

² Interviewed with: Yaarb Ahmed Naser, Academic of Public International Law, College of Law University of Baghdad in Iraq, October 14 2014; Ali Jabbar, Academic of Public international law, College of Law University of Basrah in Iraq, September 20 2014; and Mohammed Jabbar Towaih, Academic of Public International Law, College of Law University of Misan in Iraq, September 3 2014.

³ According to two Academics interviewed above, n 1: Ali Hadi Alchukrawi, and Yaarb Ahmed Naser.

⁴ According to three Academics interviewed above, n 1&2: Mohammed Jabbar Towaih, Mohammed Tamah, and Sadiq Zugheir Muhaisen.

crime of terrorism. There must be a new Act on international terrorism in Iraq in order to clearly define international terrorism and protect the civil freedoms of Iraqis, especially the right to life and personal security. For example, international conventions dealing with international terrorism can be used as a benchmark in Iraqi internal laws and made to limit terrorist crime, protect the civil freedoms of citizens and prevent people who are helping others commit these crimes if their sentence is similar to the original offender. According to the five Academics interviewed, international terrorism can be defined as an: illegal use of violence to achieve specific goals and provoke a state of terror and fear among individuals and groups.⁵

Concerning Article 2 of the Iraqi Anti-Terrorism Act No. 13 of 2005 dealing with terrorist acts, the six Academics interviewed agreed that Act No. 13 of 2005 is insufficient to meet the shortfall in determining terrorist acts due to their very viewing that the dispute about the phenomenon of international terrorism as well as the different interests and vision of countries are not the same. The Iraqi Parliament needs to identify terrorist organisations under terrorist acts names. The same six Academics interviewed above, also stated that the legislature should keep pace with the evolution, styles and acts of international terrorism. Further, the law should be amended in a way that it should commensurate with the seriousness and magnitude of terrorist acts affecting civil freedoms, particularly the right to life and personal security. Among most of the Academics interviewed, they suggested that the concept of the acts of terrorism should

⁵ According to five Academics interviewed above, n 1&2: Osama Al-Abadi, Ali Jabbar, Ali Hadi Alchukrawi, Yarb Ahmed Naser, and Ali Hameed.

include criminal means and images that have been used to identify their terrorist targets.⁶

In the same context, the majority of the six Judges of the Iraqi Criminal Courts gave their views in the interview regarding the definition of international terrorism mentioned in Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005. This was done through the failure of the Iraqi legislature to establish a clear and comprehensive definition of international terrorism due to the use of loose words which do not have specific meanings concerning the definition of terrorism.⁷

The whole definition was not coherent or clear. Besides, it had been described as being long and broad. In addition, the three Judges noted that the legislature has omitted to add the definition items that question and punish states which affect the sovereignty of Iraq. However, there was a general consensus among Judges in which terrorist crimes were tackled by Iraqi Penal Code No. 111 of 1969 under sections 167, 200, 203, and 406. Therefore, there is no need to have in place the Iraqi Anti-Terrorism Act No. 13 of 2005. Terrorist crime is addressed under to the Iraqi Penal Code No. 111 of 1969 and described as being thorough, complete and identical law with most of the crimes as well as its conformity with the Islamic law.⁸

⁶ According to six Academics interviewed above, n 1: Ali Hameed, Osama al-Abadi, Mohammed Jabbar Towaih, Mohammed Tamah, Sadiq Zugheir Muhaisen, and Ali Hadi Alchukrawi.

⁷ Interview with: Faisal Salman Abtan, Judge and the President Criminal Court Babylon in Iraq, October 20 2014; Fadhil Radhi, Judge Criminal Court Babylon in Iraq, October 16 2014; Rahim Ugaili, Judge Criminal Court Baghdad in Iraq, September 29 2014; Khalid Musa, Judge Criminal Court Baghdad in Iraq, September 17 2014; Abdul Hussein Kadhim Abdul Redha, Judge Criminal Court Babylon in Iraq, October 17 2014; and Ali Qassem, Judge and the President Criminal Court Baghdad in Iraq, October 13 2014.

⁸ Interview with: Nibras Salman Hamdani, Judge Criminal Court Babylon in Iraq, October 22 2014; Sameer Fawzy, Judge Criminal Court Baghdad in Iraq, September 27 2014; and Salah Issa Murad, Judge Criminal Court Baghdad in Iraq, October 25 2014.

The four Judges indicated their opinions regarding the Iraqi Anti-Terrorism Act No. 13 of 2005 on the issue of lack of clarity in the definition of international terrorism and its protection of civil freedoms. They added that its protection considers almost a few civil freedoms of the persons, particularly the right to life and personal security. Therefore, the Iraqi legislature must avoid this limitations; either put an explanatory supplement to the Iraqi Anti-terrorism Act No. 13 of 2005 and amend this Act itself or has assistance from special committees that belong to the Council of State in the legislation of international terrorism laws.⁹

In the same regard, the two Judges explained the lack of comprehensiveness and integration of Article 1 on the definition of international terrorism, as provided under the Iraqi Anti-terrorism Act No. 13 of 2005. This has led to an embarrassing situation when considering the defendants appearing in Court, because of the overlap between the Iraqi Penal Code No. 111 of 1969 and the Iraqi Anti-terrorism Act No. 13 of 2005.¹⁰ Consequently, the Judge was left with a wide space of interpretation, diligence, and application of legal charges. There is an agreement between the six Judges and the five Academics interviewed at a specific point, a deficit of Article 1 of Act No. 13 of 2005 in the definition of terrorism in which it defines terrorism as (terrorism itself). There is no definition for the terrorist crime at all, either.¹¹ In addition, the four Judges agreed that the definition of international terrorism has to be viewed as: every criminal act

⁹ According to four Judges interviewed above, n 7&8: Nibras Salman Hamdani, Sameer Fawzy, Faisal Salman Abtan, and Fadhil Radhi.

¹⁰ According to two Judges interviewed above, n 7: Rahim Ugaili, And Khalid Musa.

¹¹ According to 6 Judges interviewed, n 7&8 and five Academics interviewed above, n 1&2: The Judges are, Ali Qassem, Faisal Salman Abtan, Sameer Fawzy, Abdul Hussein Kadhim Abdul Redha, Nibras Salman Hamdani, and Salah Issa Murad. As well as, the Academies are: Ali Hameed. Osama Al-Abadi. Mohammed Jabbar Towaih. Mohammed Tamah. Ali Hadi Alchukrawi, And Yaarb Ahmed Naser.

which affects the community even though it lies on an individual instead of considering it a terrorist crime if it is negated by panic and fear.¹²

On the other hand, with respect to Article 2 of the Iraqi Anti-Terrorism Act No. 13 of 2005 in defining terrorist acts, the three Criminal Court Judges in Iraq agreed that terrorist acts were not as comprehensive, either. There were some terrorist acts that were not covered by the Act, i.e. terrorist organisations have not been covered by the Iraqi Anti-Terrorism Act No. 13 of 2005.¹³ The five Judges interviewed mentioned that one of the reasons for the lack of terrorist acts being specified in the Iraqi Anti-Terrorism Act No. 13 of 2005 is due to the new different aspects of the crimes which are characterised as different trends, dimensions, aims and even in ideologies that have plagued Iraq and the world alike.¹⁴ Furthermore, the same five Judges interviewed above, opined that identifying terrorist acts seem to be inadequate under the Iraqi Anti-Terrorism Act No. 13 of 2005. They added that there is an overlap between terrorist acts under the Iraqi Anti-Terrorism Act No. 13 of 2005 and some punitive Articles i.e. (406/a) contained in the Iraqi Penal code No. 111 of 1969.¹⁵

From the interview conducted with the Judges, they seem to rely heavily on the Iraqi Anti-Terrorism Act No.13 of 2005 despite the shortages that afflict this Act concerning the definitions of international terrorism and terrorist acts. In the same thread, the six

¹² According to four Judges interviewed above, n 7&8: Rahim Ugaili, Khalid Musa, Abdul Hussein Kadhim Abdul Redha, and Nibras Salman Hamdani.

¹³ According to three Judges interviewed above, n 7&8: Faisal Salman Abtan, Abdul Hussein Kadhim Abdul Redha, and Sameer Fawzy.

¹⁴ According to five Judges interviewed above, n 7&8: Ali Qassem, Khalid Musa, Rahim Ugaili, Abdul Hussein Kadhim Abdul Redha, and Salah Issa Murad.

¹⁵ Ibid.

Judges opined that terrorist acts have several important purposes that include inflicting damage to public and private property as well as robbing the Iraqi people the right to life and personal security. Hence, terrorist aims have to be connected with very broad ways in reference to three purposes that include:¹⁶

1. The breach of the security situation or the stability and national unity in Iraq.
2. The introduction of horror, fear and panic among the people.
3. The creation of chaos to achieve terrorist purposes.

Finally, based on the views of the three Academics and the three Judges of the Criminal Courts interviewed regarding the definitions of international terrorism and terrorist acts as provided under the Iraqi Anti-Terrorism Act No. 13 of 2005, it would suffice to note that the Iraqi Parliament wanted to have comprehensive definitions of international terrorism and terrorist acts under the Iraqi Anti-Terrorism Act No.13 of 2005, but the Act was ill drafted, as well as the definition of international terrorism is lacking clarity as well as the process of identifying terrorist acts in Iraq has resulted in a significant impact on the Iraqis right to life and personal security. The Iraqi legislature has neglected in giving a comprehensive definition of international terrorism as well as the process of identifying terrorist acts with reference to:

1. Abstraction and objectivity: The legislature must put aside different points of view and the motive of the international terrorism.

¹⁶ According to six Judges interviewed above, n 7&8: Abdul Hussein Kadhim Abdul Redha, Sameer Fawzy, Rahim Ugaili, Khalid Musa, Abdul Hussein Kadhim Abdul Redha, and Salah Issa Murad.

2. The comprehensive knowledge of different aspects of the phenomenon of terror without the omission of any aspect when determining the terrorist acts.¹⁷

Based on the aforementioned points, the researcher provides a definition which could be considered as comprehensive as opposed to the current definition provided under Article 1 of the Iraqi Anti-Terrorist Act No. 13 of 2005. The current study defines international terrorism as: illegal violence that is connected with creating a state of panic, fear and public panic towards persons or property committed by an individual or an organised group in order to achieve specific aims. On the other hand, the definition for the researcher is considered as comprehensive to combat the international terrorism in Iraq.

Question Two: Based on your experience, what is your opinion on the impact of international terrorism on civil freedoms specifically on the right to life and personal security in Iraq after 2003? Do you think that international terrorism has affected civil freedoms i.e. the right to life and personal security in Iraq after 2003 (IQ2)?

The Judges interviewed gave multiple views that showed the magnitude of the impact of international terrorism on civil freedoms in Iraq after 2003, especially on the right to life and personal security. The six Judges¹⁸ of the Criminal Courts in Iraq agreed that there is a realistic impact of terrorism on the right to life and personal security after 2003 on Iraqi citizens. Its impact is notable everywhere. Hence, the Judges on the social

¹⁷ According to three Judges, n 7&8 and three Academics interviewed above, n 1&2, the Judges are, Ali Qassem, Faisal Salman Abtan, and Nibras Salman Hamdani. As well as, the Academies are: Ali Hameed, Osama Al-Abadi, and Yaarb Ahmed Naser.

¹⁸ According to six Judges interviewed by the researcher during the Data Collection process, n 7&8, Faisal Salman Abtan, Abdul Hussein Kadhim Abdul Redha, Salah Issa Murad, Rahim Ugaili, Khalid Musa, and Nibras Salman Hamdani.

level after 2003, found that a large number of innocent Iraqis have died. As for the personal security, the acts of terrorism has left a clear mark in terms of the lack of a sense of adequate security of the community members in order to practice their daily lives as normal citizens. This in turn has affected the availability of employment opportunities in various areas of life. There were many facts experienced by Iraq so far and there was no discrimination of the terrorist attacks without excluding an individual, group or party, most of the Iraqis are experiencing these attacks on a daily basis. Several ministries as well as the Iraqi Judicial Council Supreme in Baghdad experienced several terrorist attacks accompanied by the killing of many reviewers and Judges in 2011, until now and since 2003, one of the Judges stated in the interview that nearly 34 Criminal Courts Judges have been killed in the entire country as a result of terrorist acts.¹⁹

In the same context, the seven Judges interviewed stated that terrorism was not only in a form of killing, but also it has some other forms i.e. panic, fear and destabilising the personal security of all Iraqi society. Thus, the same seven Judges interviewed above, stated that this major international terrorist attacks have affected the civil freedoms, particularly the right to life and personal security due to the following reasons:²⁰

1. The weak application and implementation of law in Iraq i.e. the Iraq Anti-Terrorism Act No. 13 of 2005 is considered as weak in a way that it cannot protect the civil freedoms of Iraqis, because of its weak formations as well as

¹⁹ According to one Judges interviewed by the researcher during the Data Collection process, n 8, Ali Qassem.

²⁰ According to seven Judges interviewed by the researcher during the Data Collection process, n 7&8, Fadhil Radhi, Faisal Salman Abtan, Ali Qassem, Faisal Salman Abtan, Abdul Hussein Kadhim Abdul Redha, Salah Issa Murad, and Nibras Salman Hamdani.

the agencies of anti-terrorism. Thus, terrorism so far has been blowing and violating the right to life and personal security of people in all places in Iraq.

2. The defects of Iraqi Anti-Terrorism Act No. 13 of 2005 are considered as being large. This has led to the worsening of violations of human rights and civil freedoms, particularly the right to life and personal security, so that people have no protection.
3. The judiciary lacks independence, experiences its subjugation and lack of respect for the rights of the accused people. In addition, its involvement in the violations of legitimisation of human rights and civil freedoms, and the collapse of the principles of fair trial, the weakness of the efficiency of the concerned authorities to investigate by using torture as a single tool and to extract confessions under duress. Consequently, the above reasons made Iraqi people lose their right to life as well as their personal security. All of these have led to the daily impact of international terrorism on the life of society and state institutions. There are many great daily incidents in all parts of Iraq to the extent that the number of innocent Iraqi people who die every day ranges from 50 to 100 people.

Obviously, freedoms should be respected, including the right to life and personal security. The idea of respecting freedoms was echoed by one of the Judges interviewed stating that civil freedoms must be protected and questioning people without clear evidence and judicial order should not be tolerated at all.²¹ According to one Judge interviewed, an incident occurred in October 2005 in the province of Basrah city,

²¹ According to one Judge interviewed above, n 7, Nibras Salman Hamdani.

southern part of Iraq, where the Judge was working in the Criminal Basrah Court; a terrorist operation took place in a commercial area and dozens of Iraqis died. Some innocent people were arrested and they confessed that they were involved as a result of torture. The Judge knew that some of them were innocent and therefore their right to life and personal security were violated. This is because of the weakness of the security agencies of the government in implementing the law correctly also due to the authoritative ideological groups in the institutions of the state.²²

Apart from the Judges interviewed, interview was also conducted with Academics by getting their views on the impact of international terrorism on civil freedoms, particularly the right to life and personal security after 2003. Based on the interview, the six Academics agreed that there is a large daily impact of international terrorism on the right to life and personal security after 2003 in Iraq. The same six Academics interviewed above, pointed out that civil freedoms have been broken, personal life has been violated and there has been no longer meaning of life in Iraq.²³ People have been suffering so much after 2003. Terrorism has not been distinguishing sects, it may have targeted everyone. There is a clear impact of international terrorism on the right to life and personal security, i.e. there is an impact on social life. Further, international terrorism has motives and thus kills and abandons any person who does not follow or is not compatible with their terrorist motives. There have been several terrorist operations in the whole of Iraq after 2003. These terrorist acts restricted a large number of people who became apprehensive about traveling, roaming and exercising the daily

²² Ibid.

²³ According to six Academics interviewed by the researcher during the Data Collection process, n 1&2, Mohammed Tamah, Mohammed Jabbar Towaih, Sadiq Zugheir Muhaisen, Ali Hameed, Ali Jabbar, and Ali Hadi Alchukrawi.

work. As a result, these acts have already affected the people's right to life and personal security.²⁴

In the same context, two of the Academics²⁵ interviewed showed that there are many images of direct and indirect impact of international terrorism on civil freedoms. Examples of these images are the reluctance of most law Academics to travel and go to areas where terrorist operations abound in order to participate in conferences, workshops, or have scientific lectures, because they feel unsafe and afraid, besides the case of forced and unforced displacement of cities experienced by some religious and sectarian communities. An example of this is the displacement of the Christian citizens from their areas in Iraq to a place outside Iraq. Other examples are the indiscriminate killings, the targeting of hospitals and places of worship. This means that they are targeting the rights of citizens, particularly the right to life and personal security. The best proof is the existence of large number of orphans, widows and the disabled people. It has been found that there are 3 to 4 terrorist attacks daily in the entire country after 2003. It has been no secret that international terrorism in Iraq did not leave a child, a woman, an old man, a school or all state institutions without targeting them through terrorist operations. As a result, this international terrorism may impact the rights of Iraqis to life and personal security. It may press on Iraqi government to achieve its goals and its illegal demands.

²⁴ Ibid.

²⁵ According to two Academics interviewed by the researcher during the Data Collection process, n 1&2, Yarb Ahmed Naser, and Osama Al-Abadi.

In the same thread, the four Academics²⁶ interviewed pointed out that the problem of balancing between the requirements of protecting Iraqis from international terrorism and maintaining the protection of civil freedoms is one of the concerns of domestic legislation, which must take into account all national and international legislation. However, when the state encounters an exceptional circumstances i.e. terrorist acts, this leads to the restriction of the exercise of the rights and freedoms as well as puts controls on them, or suspend the laws which is recognising these rights in a way that strengthens the complexity of relations between local terrorist organisations to support each other in several areas. These terrorist acts took the feature of organising and cooperating groups to pass to the regional borders and its extension on the international level. Their acts included training on violence, provide weapons and support by money. Consequently, this has led to the acceleration of many governments to develop and issue new laws relating to the fight against international terrorism in which fears of those who defend civil freedoms and human rights of the citizens has been raised which means that terrorism impacts indirectly in restricting and violating the content of those rights and freedoms.

This can be seen through the stages of legislation of the International Anti-Terrorism Acts which followed the stages of eavesdropping, stealing information, suspicion, arresting, detention, restrictions of the freedoms of man, imprisonment, arresting, and awaiting trial where the evidence may not be available.²⁷ To confirm what has been

²⁶ According to four Academics interviewed above, n 1&2, Ali Jabbar, Sadiq Zugheir Muhaisen, Yaarb Ahmed Nasar, and Mohammed Tamah.

²⁷ According to three Judges interviewed, n 7&8 and four Academics interviewed above, n 1&2, the Judges are, Ali Qassem, Salah Issa Murad, and Nibras Salman Hamdani. As well as the Academics are, Ali Jabbar, Sadiq Zugheir Muhaisen, Yaarb Ahmed Naser, and Osama Al-Abadi.

stated by the interviewees previously,²⁸ the research found that the definition of international terrorism under the Iraqi Anti-Terrorism Act No. 13 of 2005 is not clear despite the fact that we have had 14 International Conventions dealing with international terrorism. It is subject to a wide change that can be exploited by the authorities to suppress the rights and freedoms. This increases the risk of accused persons or sues them in the absence of sufficient evidence. Most of the laws, including the Iraqi Anti-Terrorism Act No. 13 of 2005 are considered as being weak whether in terms of form or application in a way that they are unable to provide real guarantees to encounter the rebellion of international terrorism and protect the civil freedoms of Iraqis, especially the right to life and personal security.

Question Three: From your point of view, what is the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms “international terrorism” and “terrorist acts”? Have these two bodies come up with a clear definition of the terms “international terrorism” and “terrorist acts” in order to protect civil freedoms i.e. the right to life and personal security (IQ3)?

In the first part of the question about the role of the Legislative Authority in Iraq in providing a clear definition of the terms "international terrorism" and "terrorist acts" the five Academics interviewed had more views regarding the role of the Legislative Authority in Iraq. They pointed out that the Legislative Authority did not play a real role in the fight against international terrorism i.e. by providing a clear definition of the terms international terrorism and terrorist acts. The reason for that is due to lack of not

²⁸ Ibid.

looking into the concept and the purpose of international terrorism by the legislators in Iraq. Another reason is that the legislators were divided based on their political affiliations. Hence, it is imperative to resort to eligible Academics to help the legislative body overcome these problems. The Academics should be consulted to provide their feedback on any Bill before it is passed to become a law. By doing so, the Iraqi Parliament was in a position to come up with good laws as opposed to the Iraqi Anti-Terrorism Act No. 13 of 2005, but it was ill drafted.²⁹

Furthermore, the three Academics³⁰ interviewed also pointed out that there is a significant lack of Legislative Authority in Iraq in the protection of the right to life and personal security, due to several reasons, including:

1. The Iraqi Anti-Terrorism Act No. 13 of 2005 has deficit of major gaps, omissions, disconnected terminology and some of its Articles have marginalised human rights and civil freedoms.
2. Iraqi legislature has not exercised its new integrated legislation or amendment of the Iraqi law of anti-terrorism.
3. Frequent terrorist acts scattered throughout Iraq harden the job of the legislature to protect the freedoms of all citizens.
4. Finally, after 2003, the Iraqi government established a democratic system and therefore need time to even rebuild the security institution, so that the legislature can follow the evolution of terrorist tactics.

²⁹ According to five Academies interviewed by the researcher during the Data Collection process, n 1&2, Osama Al-Abadi, Ali Hadi Alchukrawi, Ali Hameed, Mohammed Tamah and Sadiq Zugheir Muhaisen.

³⁰ According to three Academies interviewed by the researcher during the Data Collection process, n 1&2, Mohammed Jabbar Towaih, Ali Jabbar, and Yaarb Ahmed Naser.

Furthermore, four of the Academics³¹ interviewed mentioned that with respect to the role of the Legislative Authority especially after 2003, efforts have been made in order to enact laws that serve to combat terrorism appeared in the Iraqi Constitution of 2005 in Article 7. These efforts also helped to establish the Iraqi Anti-Terrorism Act No. 13 of 2005. But, they failed to reach a clear and precise, definition of international terrorism in a way that left the legislature broad authority for executive and judicial authorities of the questioning, processing and punishing the perpetrators of terrorist crimes, besides leaving the general and disconnected terms. This is contrary to the legislature's policy of legislation since the Articles sections of this Act are not open to interpretation. Besides, its meaning should be specific. According to the protection of civil freedoms in the legislature, there was an incomplete work for the protection of civil freedoms especially the right to life and personal security. It has been noted that there are 40 committees of the investigation committees as well as human rights committees in the Iraqi Parliament since 2005. Although the Iraqi Parliament had interrogated 70 of responsible leaders in order to maintain security in Iraq, these efforts of interrogation failed to protect the right to life and personal security for the Iraqi people.³² The Iraqi parliament efforts alone are insufficient to address and combat the phenomenon of international terrorism. There must be a full cooperation of legislative authority, executive and judiciary in order to protect the right to life and personal security of the Iraqis.

³¹ According to four Academics interviewed above, n 1&2, Yaarb Ahmed Naser, Sadiq Zugheir Muhaisen, Ali Hadi Alchukrawi, and Ali Jabbar.

³² According to one Academic interviewed above, n 1, Mohammed Tamah.

In the same context, the four Judges³³ interviewed concerning the role of the legislative authority in terms of developing a specific definition of international terrorism and identifying terrorist acts in order to protect the right to life and personal security for the Iraqi people, shared their opinion regarding this point. According to the Judges above³⁴ interviewed, they mentioned that the legislative authority did not exercise its role in the development of a clear and precise definition of international terrorism as well as in determining terrorist acts in order to protect the right to life and personal security. This is due to several reasons which include:³⁵

1. Weakness of legislative committees in Parliament that initiate laws and therefore cannot develop Anti-Terrorism Acts in an integrated manner of the crime and they therefore cannot protect civil freedoms.
2. The lack of definition in the Iraqi Anti-Terrorism Act No. 13 of 2005 is due to the two authorities i.e. the legislative and the judiciary lacking cooperation in specialised committees in order to develop an integrated Anti-Terrorism Act in a way that it differentiates the Anti-Terrorism Act provided in the Iraqi Constitution through its weakness in the protection of civil freedoms enshrined in the Iraqi Constitution of 2005.
3. It should be noted that four Judges mentioned that the defect of the Legislative Authority is that it began with legislating laws and ignored its supplementary duty which monitors the implementation of these laws through the follow-up of the international Anti-Terrorism agencies in Iraq. The Judges found that the

³³ According to four Judges interviewed by the researcher during the Data Collection above, n 7&8, Nibras Salman Hamdani, Faisal Salman Abtan, Rahim Ugaili, and Sameer Fawzy.

³⁴ Ibid.

³⁵ Ibid.

problem is in the follow-up to the Legislative Authority as well as in the follow up of the implementation of the Iraqi Anti-Terrorist Act No. 13 of 2005.

4. The role of the legislature was not integrated in order to protect the right to life and personal security for the Iraqi people, because of a dispute between the political blocs concerning the concept of terrorism. As a result, consensus is not attainable regarding the substance of terrorism and identifying terrorist acts and the development of the modified integrated the Iraqi Anti-Terrorism Act No. 13 of 2005. This is because of the Members of Parliament who do not represent the people, but rather represent the bloc and their parties to which they belong under its banner. The four Judges interviewed pointed out that motive in the commission of a terrorist act is more political as opposed to a legal requirement.
5. The legislative committees in Parliament are not people with long experience or competence. This in turn has led to the poor drafting of the Iraqi Anti-Terrorism Act No. 13 of 2005 and its Articles being described as having serious shortages in particular Article 1 in developing and providing a clear definition of international terrorism as well as Article 2 relating to terrorist acts.
6. The Act has some gaps due to recent new government after 2003. Therefore, it provided a special Act addressing the new phenomenon that emerged in Iraq after 2003. This phenomenon was tackled by the legislature. Due to its seriousness, its ugly crime, its change of the ways and its methods, this phenomenon makes the role of the legislature lack of protection of Iraqi civil freedoms from the international terrorism. The State Consultative Council of Iraq should benefit from their Judges and involve them in legislative committees in Parliament to stop some poorly worded phrases and terminology in the

expression and pass laws that crimes were not addressed fully including the terrorist crime.

On the other hand, five of the Criminal Court Judges³⁶ interviewed said that the inability of the Iraqi legislature to intervene in reshaping the definition of terrorism and identifying terrorist acts is contrary to the simplest principles of civil freedoms was partly due to the political differences. Further, it failed to formulate real guarantees to prevent civil freedoms violations from taking place under the name of fighting terrorism. The procedures of the judiciary and the investigative authorities described as incorrect and contrary to the Constitution have remained. According to the three Judges³⁷ who were interviewed, they claimed that violations of civil freedoms take place in full view of the Legislative Authority, the Commission of Human Rights and the Iraqi Ministry of Human Rights without lifting a finger.

In addition, two of the Criminal Court Judges³⁸ also mentioned that the weakness of the role of the Legislative Authority had an impact on the civil freedoms of citizens, particularly the right to life and personal security. This is due to the fact that the Judges argued that the Iraqi Anti-Terrorism Act No. 13 of 2005 is a punitive law rather than Anti-Terrorism Act. Therefore, there is a need to have a specific Act to combat international terrorism and no need for a punitive Act, as in the Iraqi Anti-Terrorism Act No. 13 of 2005. The Iraqi Penal code No. 111 of 1969 can be considered as a reference point in combating terrorism. Based on the aforementioned, the Legislative

³⁶ According to five Judges interviewed by the researcher during the Data Collection process, n 7&8, Salah Issa Murad, Ali Qassem, Abdul Hussein Kadhim Abdul Redha, Fadhil Radhi, and Khalid Musa.

³⁷ According to three Judges interviewed above, n 7&8, Nibras Salman Hamdani, Faisal Salman Abtan, and Abdul Hussein Kadhim Abdul Redha.

³⁸ According to two Judges interviewed above, n 7&8, Ali Qassem, and Salah Issa Murad.

Authority must initiate a new Act to combat-international terrorism in which it can fully and clearly define the crime of international terrorism and determine terrorist acts as well as its motives through which Iraqi civil freedoms can be protected.³⁹

As to the second part of the question i.e. the role of the General Assembly at the UN whether it has developed a clear definition of the terms "international terrorism" and "terrorist acts" in order to protect the right to life and personal security of the people of the world, five of the Academics interviewed said that the General Assembly's role has not been clear and their efforts are not integrated at the international level in order to establish a clear definition of international terrorism as well as determining what amounts to terrorist acts. The fact that great countries of the UN, i.e. the US and UK, thinking of their interests and their views on the protection of their subjects only, without considering the seriousness of international terrorism in the rest of the world, including Iraq has made it difficult to reach a consensus on the definitions of these terms.⁴⁰

Similarly, five of the Academics interviewed stated that despite a number of international conventions, i.e. 14 international conventions, dealing with international terrorism passed by the General Assembly at the UN, it was insufficient to combat the seriousness of international terrorism, because the international conventions do not fit with the size, development and methods of terrorism. There is a need to initiate a new

³⁹ According to three Judges interviewed above, n 7&8, Abdul Hussein Kadhim Abdul Redha, Fadhil Radhi, and Sameer Fawzy.

⁴⁰ According to five Academics interviewed by the researcher during the Data Collection process, n 1&2, Mohammed Jabbar Towaih, Sadiq Zugheir Muhaisen, Ali Hameed, Ali Hadi Alchukrawi, and Osama Al-Abadi.

adequate and comprehensive international convention in order to put in place full and comprehensive definitions of international terrorism as well as terrorist acts.⁴¹ On the other hand, two of interviewees from the Academics⁴² stated that the imbalance in the role of the General Assembly at the UN in developing a definition and identification of terrorist acts could be addressed by going back to the Member States of the General Assembly that includes 196 Countries. They added that it is not a flaw in the agencies of the General Assembly due to the clash of the interests of Member States concerning the naming of armed groups. The great countries in the world as well as the European countries, have called for the introduction of national liberation movement and popular factions of self-determination under the title of terrorist groups. However, the third world countries, including Arab States, have also called for the opposite of what has been called by the great countries.

On the other hand, three of the Academics interviewed also argued that the problem to develop a definition of international terrorism as well as to determine terrorist acts based on the UN Charter is not the role of the General Assembly, because the role of the General Assembly is more of a consultative one.⁴³

They further pointed out that the role of the General Assembly was not compulsorily to be based on the UN Charter. Five of the Academics⁴⁴ interviewed stated that some of

⁴¹ According to five Academics interviewed by the researcher during the Data Collection process, n 1&2, Yaarb Ahmed Naser, Ali Jabbar, Mohammed Tamah, Ali Hadi Alchukrawi, and Osama Al-Abadi.

⁴² According to two Academics interviewed above, n 1&2, Mohammed Jabbar Towaih, and Sadiq Zugheir Muhaisen.

⁴³ According to three Academics interviewed above, n 1&2, Ali Hameed, Ali Hadi Alchukrawi, and Ali Jabbar.

⁴⁴ According to five Academics interviewed above, n 1&2, Ali Jabbar, Mohammed Jabbar Towaih, Mohammed Tamah, Ali Hadi Alchukrawi, and Sadiq Zugheir Muhaisen.

the General Assembly resolutions have had a profound impact on the Member States in the General Assembly. Furthermore, the Member States should adhere to the emergence of a compulsory and a customary international base, i.e. the Resolution of liquidation of colonialism No. 1514 in 1960. This Resolution was voted and has won almost unanimity of the Member States of the General Assembly at the UN. It had also earned the feature of commitment and decolonisation that has occurred since that time. The General Assembly's efforts were effective to combat international terrorism through the issue of statements and recommendations that confirm the condemnation of international terrorism through the Committee of International Anti-Terrorism and Human Rights Commissions within the General Assembly at the UN. Its efforts was culminated in 1999 to issue the agreement of the Suppression of Terrorism.

On the other hand, according to the three Judges from the Iraqi Criminal Courts interviewed some of them thought that the General Assembly has issued many decisions and recommendations that are not mandatory for the Member States to follow.⁴⁵ Therefore, the 14 conventions against international terrorism and defining the concept of terrorism have been issued through explicit legal provisions that criminalised terrorist acts. It has been noted that the decisions of the General Assembly were selective in their application to groups and nations that commit various acts of terror.⁴⁶

⁴⁵ According to three Judges interviewed by the researcher during the Data Collection process, n 7&8, Ali Qassem, Abdul Hussein Kadhim Abdul Redha and Fadhil Radhi.

⁴⁶ Ibid.

To summarise the views of both the five Academics and the six Judges of the Criminal Courts interviewed regarding the General Assembly's role in relation to international terrorism, the research found that there is neither a comprehensive definition nor a clear process of identifying terrorist acts that are currently in place. This is due to political reasons rather than legal reasons. The reason behind this is the fact that the Great states may introduce what are consistent with its interests and the inclusion of the actions under the concept of international terrorism, including the national liberation movements and the right of self-determination in accordance with international concept. The international community needs to hold a comprehensive international agreement under the UN umbrella to come up with a comprehensive and complete definition of international terrorism in order to protect the right to life and personal security of the people of the world.⁴⁷

Question Four: From your point of view as an Academic Staff from the College of Law in Iraq, do you think that the international conventions i.e. the International Convention for Suppression of Financing of Terrorism 1999 and the International Convention for Suppression of Acts of Nuclear Terrorism 2005, etc. have combated international terrorism in order to specifically safeguard the right to life and personal security (IQ4)?

⁴⁷According to five Academics interviewed, n 1&2 and six Judges interviewed by the researcher during the Data Collection process, n 7&8, the Academics are, Mohammed Jabbar Towaih, Sadiq Zugheir Muhaisen, Ali Hameed, Ali Hadi Alchukrawi, and Osama Al-Abadi. As well as, the Judges are, Abdul Hussein Kadhim Abdul Redha, Khalid Musa, Nibras Salman Hamdani, Salah Issa Murad, Rahim Ugaili, and Ali Qassem.

In response to the interview question above, the six Academics⁴⁸ interviewed shared their views by saying that many international conventions are solid and strong in terms of legal drafting and good enough but their texts have not been applied by the Member States in totality. However, it is vital to note that the states have agreed to the principle of good faith in accordance with the Vienna Convention on the Law of Treaties when it comes to the implementation of international conventions. Hence, States should make sure that their laws are in line with these international conventions as part of their commitment to the international community. This indicates that the international conventions exist but the imbalance in implementing the items of the convention by the states and cooperation with some countries so that they can protect civil freedoms, particularly the right to life and personal security is seen as the missing link.

On the other hand, two of the Academics⁴⁹ interviewed noted that the international conventions failed to protect civil freedoms and the fight against international terrorism, i.e. the Security Council at the UN issued decisions, including the prohibition of the financing of terrorist organisations, including ISIS, but this seems to be only on paper since the international conventions relating to international terrorism has failed to combat this phenomenon. On the contrary, six of the Academics⁵⁰ interviewed gave a different point of view and thought that the international conventions contribute to the reduction of terrorist acts in the world, provided the Member States agree to apply these

⁴⁸ According to six Academics interviewed by the researcher during the Data Collection process, n 1&2, Sadiq Zugheir Muhaisen, Ali Hameed, Ali Hadi Alchukrawi, Ali Jabbar, Osama Al-Abadi, and Yaarb Ahmed Naser.

⁴⁹ According to two Academics interviewed by the researcher during the Data Collection process, n 2, Mohammed Tamah, and Mohammed Jabbar Towaih.

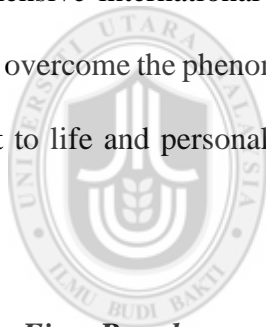
⁵⁰ According to six Academics interviewed above, n 1&2, Yaarb Ahmed Naser. Sadiq Zugheir Muhaisen, Ali Hameed, Ali Hadi Alchukrawi, Ali Jabbar, and Osama Al-Abadi.

conventions. The problem is that the Member States have a lack of commitment as a result of the difference of state interests. Hence, the research found that the will of the states is the highest authority in international law and no one can impose an obligation or an acceptance of a particular convention and there is no higher authority than the authority of the states. It has been found that the Iraqi diplomacy, represented by the Ministry of Foreign Affairs, failed to join most of the international conventions relating to the fight against international terrorism. Since the commitment of the provisions exists in the conventions, the provisions of the conventions can be incorporated into the domestic laws of the Member States and this would indeed benefit the Iraq Parliament in the fight against international terrorism.

In the same thread, five of the Academics⁵¹ interviewed mentioned the ability of the international conventions in combating international terrorism. This is because the texts are quite general and vernacular because of the different views of the Member States in the conventions. The different views and interests between states show no power, because of the will of the states in respecting is the highest international legal authority so far and there is no higher authority than its authority. However, the texts of the fight against international terrorism conventions are appreciated though they are insufficient to combat international terrorism and the protection of civil freedoms. But, it covered part of aspects and specific molecules to combat international terrorism.

⁵¹ According to five Academics interviewed above, n 1&2, Mohammed Tamah, Mohammed Jabbar Towaih, Ali Hameed, Ali Jabbar, and Osama Al-Abadi.

Finally, the research is consistent with the views of the 3 Academics⁵² interviewed that is; in order to reduce the risk of international terrorism the international community needs to initiate a comprehensive international convention addressing this dangerous phenomenon, due to the change of the international ways, methods and support for these armed groups, especially in Iraq, calling for developing a unified definition of international terrorism. The international community needs to establish a comprehensive international convention and their intentions must be good in order to define the concept of international terrorism and terrorist acts in order to fight this cancerous phenomenon and narrow the state authorities in order to criminalise or not criminalise the terrorist acts and this can be determined and installed in the text of a comprehensive international convention. Consequently, the international community can help overcome the phenomenon of terrorism and protect civil freedoms, particularly the right to life and personal security of the people of the world, including the Iraqi people.



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Question Five: Based on your experience as a Judge from the Criminal Court, how can civil freedoms i.e. the right to life and personal security be protected from acts of international terrorism in Iraq after 2003 (IQ5)?

From the interview question above, the research was able to solicit the following answers from six Judges of the Criminal Courts in Iraq:⁵³

⁵² According to three Academics specialising in public international law above, n 1&2, Ali Hadi Alchukrawi, Yaarb Ahmed Naser, and Sadiq Zugheir Muhaisen.

⁵³ According to six Judges interviewed by the researcher during the Data Collection process, n 7&8, Sameer Fawzy, Salah Issa Murad, Khalid Musa, Faisal Salman Abtan, Nibras Salman Hamdani, and Abdul Hussein Kadhim Abdul Redha.

1. The six Judges from the Criminal Courts interviewed gave their opinions about modifying the Iraqi Anti-Terrorism Act No. 13 of 2005, through developing a clear definition of the terms international terrorism and terrorist acts. According to these Judges, there is also a need to differentiate between the texts of the Iraqi Penal Code No. 111 of 1969 and the Iraqi Anti-Terrorist Act No. 13 of 2005. Hence, the Judge plays an important role in deciding which Act applies when an accused person is produced in Court.
2. The executive authority should offer the means necessary to combat international terrorism through the re-structure of agencies of combating terrorism, its required preparation, placing persons with competence in these important agencies, activating the role of intelligence in the detection of the crime scene before its occurrence, arresting up the criminals and restricting the executive authority with institutions that control the exercise of their role for implementing the laws. In addition, the executive institutions should cleanse the inappropriate persons and change the mechanisms that are used in arresting the accused.
3. To amendment of the Iraqi Amnesty Act of 2008, because the Judges found that one of the paragraphs of the Act above, includes amnesty for criminal terrorists, which did not kill people or make a permanent disability. This had led to the inclusion of many of the terrorists in this legal paragraph of the Iraqi Amnesty Act of 2008. Therefore, this legal paragraph affects the reality of the rights and freedoms of individuals in Iraqi society after 2003, especially the right to life and personal security.

4. The citizen's cooperation with the executive authority represented by security agencies and judiciary of the Criminal Courts through the reporting of suspicious cases, the seriousness in the orders regarding arresting of terrorist groups, allowing the security authorities to do their duty by sending offenders to justice to receive their just penalty in order to protect the right to life and personal security for the Iraqi people should be implemented and put in place.
5. The cooperation among the legislative, executive and judicial authorities in order to protect the citizens through the provision of security protections for citizens, people's support to security forces, activate the intelligence agency inside Iraq through its role in the elimination and reduction of international terrorism and spread security awareness among the citizens in order to protect the right to life and personal security of the Iraqis should be part of the agenda in the fight against international terrorism.
6. The reform the assets of the Iraqi Criminal Procedure Act of 1971, increase the efficiency and capacity of the investigative agencies to enable them to detect terrorist crimes in other ways which do not require the defendant's admission, and the imposition of full transparency in the judicial resolutions concerning terrorism and encouraging the popular media and the official censorship.
7. To secure Iraq from the inside through punitive and behavioral laws and human rights in order to protect the civil freedoms of citizens especially the right to life and personal security, through the exchange of ideas and benefit from the experiences of developed countries in the fight against terrorism. To take the advantage of the legal expertise and place it in legislative committees in the order that integrated punitive laws can be provided.

8. To benefit from the experiences of developed countries through the conclusion of a bilateral agreement in order to see the experiences of countries that fight international terrorism and involve legislative and security services in the sessions for learning to fight against the international terrorism in order to protect the civil freedoms of Iraqi citizens through the development of an integrated and comprehensive law for the concept of the international terrorism, identify terrorist acts and modify the legislation. Conferences and workshops can be held, government institutions can be sent to these conferences in order to fight against international terrorism and the protection of civil freedoms for the Iraqis after 2003.

In the same context, as mentioned above concerning the opinions of the three Judges from the Criminal Courts interviewed, the research concludes that in order to protect the civil freedoms of Iraqi citizens after 2003, the Judges have to be independently left to execute their duties without any inter reference from the other organs of the state. Penalties must be applied to criminals and so the execution of the judgment of the criminals in order to be a deterrent to the rest of the criminals and terrorist groups. Institutions of the state also need to be influential organisations of civil society that describe the entities that penetrate the laws and question government agencies that break the laws. There is a need to apply the Constitution and discharge it in legal texts, especially the second chapter of the permanent Iraqi Constitution of 2005 regarding the rights and freedoms so that the right to life and personal security of the Iraqi citizens can be preserved. In addition, one should take advantage of the experiences of the most developed countries to encounter international terrorism, including the US due to what

happened on September 11, 2001. As a result, several resolutions and laws were issued in order to protect the American citizens, especially the right to life and personal security.⁵⁴

To summarise, regarding the fifth interview question about the protection of Iraqi civil freedoms from acts of international terrorism after 2003, the researcher found that the war against international terrorism in Iraq involves two main aspects: fighting terrorists at their powerful source and protecting potential targets. The former is a preeminent public good and hence should be supplied by the government, whereas the latter is typically a private or a local public good that carries negative externalities and is far less efficient than fighting terrorism at their source. A key result of the formal analysis is that the government should devote enough resources to the strategy so as to dissuade potential targets from spending on their own security.

Section Six: From your point of view, what are the viable recommendations that could be adopted in order to protect civil freedoms of the Iraqis especially the right to life and personal security in the fight against international terrorism (IQ6)?

The research explored the opinions of Academics and Judges from the Criminal Courts in Iraq concerning the viable recommendations which can be implemented in order to protect the right to life and personal security from the dangers of international terrorism. Many legislative, legal and even political recommendations were put forward

⁵⁴ According to three Judges interviewed by the researcher during the Data Collection process, n 7&8, Rahim Ugaili, Ali Qassem, and Fadhil Radhi.

by those interviewed. For example, five Judges⁵⁵ recommended that the laws and internal regulations regarding all citizens should be equally applied in a way that suits the size of a terrorist crisis in Iraq. In addition, three Academics⁵⁶ recommended that legal educational programs should be introduced in a way how they address the phenomenon of the international terrorism in Iraq as well as protecting the right to life and personal security for the Iraqi people after 2003. Also, the Judges and Academics interviewed recommended that the Iraqi Anti-Terrorism Act No. 13 of 2005 should be repealed or even amended.

4.3 Conclusion

Based on the results of interview, the answer to the first interview question given by the Judges from the Criminal Courts in Iraq and the Academics echoed the sentiment that Articles 1 and 2 of the Act do not provide clear definitions of international terrorism and terrorists acts. The principal disadvantage of generic definition is also the difficulty and subjectivity of proving motive elements, i.e. an aim to intimidate, compel, or have a political motive.

It is obvious that the Iraqi Parliament did not address the issue of terrorist crime in detail and clearly. The legislative body did not distinguish between terrorist crime and the rest of the crimes, according to the Iraqi Penal Code No. 111 of 1969, either. Based on the opinions of the Iraqi Judges from the Criminal Courts and the Academics specialising in public international law as well as the researcher is view a clear definition, which

⁵⁵ According to five Judges interviewed by the researcher during the Data Collection process, n 7&8, Abdul Hussein Kadhim Abdul Redha, Nibras Salman Hamdani, Ali Qassem, Rahim Ugaili, and Salah Issa Murad.

⁵⁶ According to three Academics interviewed by the researcher during the Data Collection process, n 1&2, Yaarb Ahmed Naser, Ali Hadi Alchukrawi, and Ali Hameed.

may contribute to the development of some common rules for the concept of international terrorism as well as identifying terrorist acts has to be developed.

Due to the same reasons, the answer to the second interview question given by the interviewees showed that there was a significant impact of international terrorism on civil freedoms of the Iraqis after 2003, particularly the right to life and personal security. According to the interviewees, suicide attacks are heard of almost every day, explosions and displacement in all areas of Iraq without discrimination. It has also been mentioned that security institutions should take a critical role and modify the internal system of the anti-terrorism agency in Iraq which could reduce the phenomenon of international terrorism as well as minimise its impact on the right to life and personal security for the Iraqi people after 2003.

Regarding the third interview question, which addressed the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms international terrorism and terrorist acts, based on the views of the Judges from the Criminal Courts and Academics interviewed, the research found that the Iraqi Legislative Authority was instantly prompted to enact the Iraqi Anti-Terrorism Act No. 13 of 2005 due to a number of reasons i.e. the escalation of terrorist operations against the civil freedoms of innocent, civilian citizens and the acts of the sectarian violence as well as the acts of aggression on the infrastructure of the country. This has led to a lack of adequate and comprehensive legislation and therefore the interviewees have called for the need to either amend the Iraqi Anti-Terrorism Act No. 13 of 2005 or to come up

with a new Act in order to protect the civil freedoms of Iraqis from the impact of international terrorism.

Still on the third interview question and based on the opinions of the Judges from the Criminal Courts and the Academics interviewed, there seems to be a consensus that after 11 September 2001, the international community had come closer than ever to securing agreement on generic definition of international terrorism in the Sixth Committee of the General Assembly. Consequently, the definition currently proposed in the Draft Comprehensive Convention has been substantially endorsed in the report of the UN High-Level Panel on Threats, Challenges and Change in late 2004. In 2005, there was a report of the UN Secretary-General on progress towards achieving the Millennium Development aims. While agreement remains to be reached on exceptions if any, to the definition, much of the argument about exceptions is rhetorical or ideological, not substantive. Global implementation and application of international humanitarian law, as enshrined in Protocol 1 of 1977, would help clear a path for consensus on definition and criminalisation of international terrorism.⁵⁷

As to the fourth interview question, the Academics interviewed found that the 14 international conventions have not been implemented in the domestic legislation of the Member States. In other words, the texts of the 14 international conventions have not been incorporated into the national law of the Member States. Besides, the 14

⁵⁷ Ben Saul, "Attempts to Define Terrorism in International Law," *Netherlands International Law Review*, Volume 52, No 1, (May 2005): 57- 83. From: http://journals.cambridge.org/abstract_S0165070X05000574. (Accessed November 14, 2014).

international conventions did not give a comprehensive description of the concept of the international terrorism. Hence, there is a need to convene an international conference at the UN in which the Member States in the General Assembly can call for the need of a comprehensive international convention for the development of a clear definition of international terrorism as well as identifying terrorist acts.

Due to a large number of similar reasons, the answer to the fifth interview question given by the Judges showed that it was necessary to amend the Iraqi Anti-Terrorism Act No. 13 of 2005 or even revoke it altogether. Besides a new legislation should be put in place to clearly define the terms "international terrorism" and "terrorist acts" so that the right to life and personal security of the Iraqis could be protected.

Finally, regarding the sixth interview question, the research concluded that the Judges and Academics interviewed came up with a lot of recommendations ranging from legal and even political in nature, which have been addressed in the last chapter of this thesis.

All in all, this chapter has answered all the three research questions respectively. Apart from answering all the three research questions, the chapter also achieved the three research objectives.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In addressing the impact of international terrorism on the right to life and personal security after 2003 in Iraq as the theme of this study, the thesis responded by coming up with five chapters altogether. Under this fifth chapter, the researcher has achieved the third research objective dealing with the issue of recommendations that could be put forward in order to protect civil freedoms i.e. the right to life and personal security from acts of international terrorism.

The first chapter discussed the background of the study ranging from several issues such as the problem statement, research questions and objectives, significance of the study, research methodology, limitations of the study and literature review.

In the second chapter, the study focused on the concept of international terrorism by referring to most of the legal studies that demonstrate the concept of terrorism. These studies vary from other cases due to the disagreement among scholars specialising in

international law and this has made it difficult or near impossible to develop a specific concept of the phenomenon of terrorism due to various reasons and objectives of the terrorist groups. For the purpose of clarification of the concept of international terrorism, this study looked at the reasons that particularly push the terrorist groups in Iraq to commit such a crime. The reasons presented in this study included historical, political, social, psychological, and economic, etc. Also, this chapter addressed the aims the terrorist groups want to achieve in Iraq. The researcher divided these aims into direct and indirect aims. At the end, a conclusion was drawn that the illegal aims of the terrorist groups were to spread terror and fear among Iraqis, which has robbed them of their right to life and the personal security.

Finally, at the end of the second chapter, the need for international cooperation in order to curb the phenomenon of international terrorism, by way of looking into the role of the UN and regional organisations, was addressed. In addition, the research mentioned that the role of the Security Council and the work of the issuing of several resolutions i.e. Resolution No. 1373 of 2001, should be made known. This resolution is considered as one of the important resolutions in inviting states to come up with domestic legislation to combating-international terrorism and this is what the Iraqi government did though it occurred only in 2005, which is considered late when it passed the Iraqi Anti-Terrorism Act No. 13 of 2005. Despite the flaws of this legislation in failing to come up with a clear and precise definition of the terms "international terrorism" and "terrorist acts," it is still a good step forward in curbing the phenomenon of international terrorism.

Furthermore, Chapter two also addressed the 14 International Conventions dealing with terrorism at the international level, which were passed by the UN General Assembly. It is important to note that although there are large numbers of international conventions, these conventions have not currently put the right solutions to the fight against the methods and new developments of the international terrorist phenomenon. In fact, it is vital to note that the General Assembly at the UN has to exercise its role in the conclusion of a comprehensive international convention that includes developing a clear definition of the international terrorism as well as identifying terrorist acts in order to fight international terrorism effectively.

In the third chapter, the research addressed the legal concept of civil freedoms both at international and local levels especially in Iraq. Hence, the concept of civil freedoms through the UN Charter, the UDHR 1948, ICCPR and ICESCR 1966 and the international conventions of human rights were referred to in the process of addressing the legal concept of civil freedoms. With regard to the concept of civil freedoms in Iraq, the researcher reviewed the Iraqi Constitution of 2005, especially Part 2 of the Constitution under the title "rights and freedoms" from Articles 14 to 46.

In addition, the chapter also reviewed the kinds of civil freedoms in Iraq focusing mainly on two fundamental rights, namely the right to life and personal security. In doing so, the researcher pointed out that the disappearance of one of them leads to the demise of the other rights as provided under Article 3 of the UDHR. It is also important to mention that the two rights are considered important rights in the enjoyment of the other rights.

Furthermore, it is also significant to note that civil freedoms in Iraq has been in a deplorable state for a long time as a result of the violations of the fundamental rights i.e. the right to life and personal security due to acts of international terrorism despite the fact that these rights cannot even be infringed during the emergency period. Under this chapter, the international standards for the protection of civil freedoms in Iraq from the threat of international terrorism was also analysed and it was concluded that there is a need to develop domestic laws that are consistent with the international conventions of human rights in order to protect the right to life and personal security as stated in Article 46 of the Iraqi Constitution of 2005. The chapter also pointed out that there should be some kind of balance in the fight against international terrorism and the protection of civil freedoms. In other words, there is a need to balance these two conflicting interests.

Finally, the chapter highlighted that the protection of civil freedoms in Iraq is weak and the gap in the definition of international terrorism and identifying terrorist acts can be attributed to the lack of international conventions as well as international commitment in identifying or describing who are the terrorists.

In the fourth chapter, the findings of the research was presented based on the review of the primary data as a result of interviewing Academics specialising in public international law and Judges from the Ordinary Courts (Criminal Courts) in Iraq. The interview questions addressed issues relating to the protection of civil freedoms in Iraq from the threats or phenomenon of international terrorism, definitions of "international terrorism" and "terrorist acts" under the Iraqi Anti-Terrorism Act No. 13 of 2005, the

impact of international terrorism on civil freedoms i.e. the right to life and personal security in Iraq after 2003, the role of the Legislative Authority in Iraq and the General Assembly at the UN in defining the terms "international terrorism" and "terrorist acts" as well as the role of the international conventions in combating international terrorism in order to specifically safeguard the right to life and personal security.

All in all, it has been noted that there is definitely no clear definition of the terms "international terrorism" and "terrorist acts" under the Iraqi Anti-Terrorism Act No. 13 of 2005. Not only that, the weakness of the international conventions on international terrorism is significantly incompatible with the terrorist ideas, the techniques and the ways of terrorist attacks. Thus, this has largely affected the civil freedoms of Iraqis after 2003 as a result of terrorist acts. With these being the cases, the next section offered some potential responses to fill the gaps in the form of viable recommendations.

5.2 Recommendations

This section responds to the compatibility and comprehensiveness of the current legislation as well as the principles of fairness and effectiveness. Based on this consequent analysis of international terrorism and its impact on civil freedoms in Iraq after 2003 i.e. the right to life and personal security in the preceding chapters as well as judging from the conclusion, the menace of international terrorism can be reduced through the following legal recommendations and recommendations based on the interviews conducted:

5.2.1 Legal Recommendations

The following recommendations are based on a critical analysis of the primary and secondary data used in the study:

Firstly, there is an urgent need to reform criminal laws, including the Iraqi Anti-Terrorism Act No. 13 of 2005, in order to protect the right to life and personal security of the Iraqi citizens by legislating a new law to combat international terrorism. In the same context, the new law that is to combat-international terrorism should be clear in terms of the definitions of international terrorism and terrorist acts, etc., so that the shortcomings created by the Iraqi Anti-Terrorism Act No. 13 of 2005 could be avoided. Based on the first legal recommendation, it could be argued that it has a close relationship with the third significance of the current study where by the academic community and the Iraqi people could benefit from such a study. For example, this recommendation could be used as a source of information by the academic community who are interested in the area of international terrorism and its impact on civil freedoms.

Furthermore, the research recommends that the protection of the right to life and personal security from the danger of the terrorist operations should be carried out through taking appropriate measures in accordance with the provisions of the Iraqi Penal Codes and the international laws. Thus, to ensure the protection of citizens civil freedoms, we need to have in place a mechanism through which those who plan acts of terrorism or fund these acts have to be deprived of safe places by arresting and sending them to trial. Besides, the need for cooperation in administrative and judicial matters to reduce the commission of the terrorist acts is also deemed vital. In addition, new

international legal legislations should be issued to ensure the protection of people's right to life and personal security from the phenomenon of the international terrorism.

On top of that, the punitive laws should be equally applied to all citizens. The Iraqi Penal Code No. 111 of 1969 could be a reference to punish the accused terrorists, because this is a complete and comprehensive Code concerning all crimes, including the terrorist crime. For example, some Articles for the Iraqi Penal Code No. 111 of 1969 to punish international terrorism i.e. Article 406 (1) Any person who wilfully kills another is punishable by death in the following circumstances: "if such killing is premeditated, if such killing occurs as a result of the use of toxic substances or explosives, if the motive for such killing is base or is in exchange for money or if the offender uses brutal methods in the commission of the offence and if the offender intends to kill two or more people and does so as a result of a single act."

According to international level, anti-violence mechanism must be adopted through achieving social, economic, political and cultural procedures in order to address the causes of terrorism related to poverty and unemployment. Pertaining to the role of the Iraqi legislature, it is recommended that only members of parliament with vast experience in legislation as well as specialised in such a specific field be appointed to be part of the Committees Scrutinising such laws before becoming as Act of coming up with laws which problem of coming up with laws which have been poorly drafted and depriving Iraqis their right to civil freedoms.

Secondly, the research recommends that there should be legal studies regarding the nature of communities and its national, racial and religious formations, before the commencement of issuing the international resolutions to combat terrorism, so as not to lead to adverse actions which would affect the civil freedoms of citizens. Studies regarding the combat of financing international terrorism should be continued. Studies concerning the reasons that motivate people to commit terrorist acts should also be continued in order to eliminate those reasons and intensify penalties over perpetrators other than shorten the legal limit for issuing the resolutions and its distinct, so that those periods cannot be used in the loss of the rights of victims as well as the escape of terrorists from the trial. There is also a need to establish special Courts to tackle the terrorist's activities and to consider the issues of terrorism as urgent issues. Based on the second legal recommendation, it could be linked to the first significance of the current study i.e. the results of this study will be useful to the Legislative Authorities, Government Institutions, Non-Governmental Organisations (NGOs), and research centres, in understanding the phenomenon of international terrorism and its impact on civil freedoms, i.e. the right to life and personal security.

Furthermore, it is also recommended that the results of research and studies in this area should be adopted, consolidated and developed in order to elicit national applied processors in accordance with international legal reality, which is away from political issues in order to achieve the protection of the right to life and personal security of the Iraqis. In addition, the Islamic countries and organisations, especially the Organisation of the Islamic Conference (OIC) should highlight the bright image of Islam, take clear positions against international terrorism, renew the religious thought and the rejection

of murder and provide another image of the Islamic religion based on tolerance, peace and security. Further, the organisations of civil society and systems of democracy should be supported in order to maintain human rights and civil freedoms are these part of the system with the UN and its specialised agencies is order to support the victims of the terrorist attacks.

In addition, the research recommends that the Iraqi government has to take care of social institutions, the role of the environment and the community, the development of justice agencies and combat financial and administrative corruption. The research adds that the Iraqi government has to take care of the development of criminal legislation, the reform of penal institutions, the provision of employment opportunities and the work on confronting the unemployment and poor living standards. This leads to the protection of civil freedoms and prevent the spread of the phenomenon of international terrorism among Iraqi citizens. Also, if the Iraqi government wish to protect civil freedoms, it has to learn from the experiences of the developed countries in the world by making the fight against the international terrorism Acts, function in the interests of society and not to violate the community's rights or its freedoms in order to apply the fight against the international terrorism Act as in the Third World Countries.

Thirdly, under this recommendation, the following points have been put forward in the fight against international terrorism with the hope that if implemented effectively we would be able to protect civil freedoms i.e. the right to life and personal security:

Looking closely, legal sciences may play a significant role in confronting terrorism: first, it plays a critical role in understanding the motivations, the psychological structure and the wider sociological context of terrorists. Second, it plays a major role in dealing with the psychological and socio-economic impacts of the terrorist threat on the targeted population, including the perception of probabilities that in turn influences the motivations to invest in local security. Over and above these two roles, there is also room to encourage research in the behavioral and social sciences aimed at understanding both the enemy and the impacts of the terrorist threat on the targeted population.

Obviously, convening an international convention should be based on a legal reference the UN in order to develop a clear definition of international terrorism as well as identifying terrorist acts. The unwanted political definitions should be avoided by the Member States in a way that the reliable definition should avoid misunderstanding of the concepts of terrorism in domestic criminal laws, since it would inevitably limit the tyranny of the powerful countries, the occupation of others and the inviolability and sovereignty of states. Further, when holding a new convention in the General Assembly at the UN, various issues should be discussed i.e. the principle of extradition or prosecution in order to combat acts of the international terrorism in which these acts were not covered by previous international conventions relating to terrorism. Moreover, the globalisation of the concept of the international terrorism should be avoided in order not to be used by some of the powerful countries that have influential interests, i.e. the US which classified all acts of violence, including anti-occupation and aggression as acts of terrorism. This is contrary to the principles of the UN and its resolutions that

elicit the resistance to the occupation, the right of self-determination, liberation movements and demand of independence from the concept of international terrorism.

Other than that, international conferences should be held under the auspices of the UN to take the international resolutions aiming at clarifying the concept of the international terrorism, its causes and identifying terrorist acts. In addition, there is a need to focus on the principles of Islamic law since they are characterised as part of a system of human rights in fighting international terrorism. Therefore, these principles are characterised as the legislation applied since more than four centuries ago. As a result, this offers a global acceptable view to reject any attempt to link terrorism with any religion.

In addition, at the scope of the international dealing, the research recommends that some methods of fighting international terrorism is to rely on the UN in order to apply the principles of the public international law and international humanitarian law. Another method is to invite Member States in the General Assembly to join the 14 main international conventions regarding terrorism which approve these conventions without reservation for the Suppression of terrorist acts as well as protect Iraqi citizens from the terrorist attacks and bring the perpetrators to justice. Furthermore, the introduction of the crime of the international terrorism, should be processed within the jurisdiction of the International Criminal Tribunal due to the fact that terrorist crime is one of the most serious crimes to the civil freedoms of individuals. The legal framework should be laid in order that the countries affected by the international terrorism, can resort to that Court

or those countries can resort to create regional Criminal Courts to punish the perpetrators of terrorist crimes.

In the same context, the research recommends that states have to support the Resolution of the committee on the fight against international terrorism No. 1267 issued by the Security Council in the fight against international terrorism, as it represents the commitment of states with regard to the international legitimacy. This resolution is considered as fundamental in the treatment of terrorism and its cause's effects on the domestic and international levels.

Regional and international conflicts should be settled through peaceful methods. The causes of these conflicts have to be addressed in order to keep the terrorist organisations away from exploiting these unfair conditions to spread their misguided ideology, other than finding a ground for recruiting the individuals who practice illegal activities. This issue can be resolved through reducing the economic, political, social and technological gap. It can be also overcome through increasing the standard of living of citizens. There is also a need to address the developing countries problems i.e. poverty, lack of enlightenment, dependency and the establishment of an equivalent global economic system based on the rules of the international law and the equivalent international relations in the fight against international terrorism.

Further, there should be a need to establish an international center that specialises in the confrontation and the study of the international terrorism phenomenon to find a continuous convergence among those interested in that crime, in different countries.

There is also a need to establish the link between the theoretical academic work and the field practice in a way that includes multiple disciplines, database, information regarding terrorism which involves numbers and statistics of the victims of the terrorist attacks. In the same thread, the International Interpol Organisation, which includes 179 Member States, should store, analyse and disseminate intelligence information about the suspicious individuals and groups. This organisation should call for convening an international conference under the auspices of the UN in order to take protective measures and surveillance to combat international terrorism.

Moreover, the Iraqi government should urgently restore the elements involved in the commission of terrorist operations to the judicial authority as well as activate the principle of extradition of terrorists in the same way of what has been agreed upon within the European Union's strategy in 2005. This strategy consists of four essential aims in order to fight against international terrorism. These aims are as follows:

1. The first objective is to prevent people from turning to terrorism by tackling the factors or the causes which can lead to radicalisation and recruitment, in Europe and the whole world.
2. The second objective to protect citizens and infrastructure. It is also to reduce vulnerability of attacks in Europe through improving the security of borders, transport and critical infrastructure.
3. The third objective is to pursue and investigate terrorists across EU internal borders and the world to impede planning, travel, and communications in order

to disrupt support networks, stop funding and have access to attack terrorists and bring them to justice.

4. The fourth objective is to prepare Member States in a way that shows solidarity to manage and reduce the consequences of a terrorist attack, through improving capabilities to deal with the victims' consequences, the coordination of the response and needs of victims.

The strategies above, seek to link strands from different policy areas and emphasise close interaction of measures at the Member States in European and on the international level in order to achieve peace in the world. This leads to reduce violence and achieve stability. The emphasis should be on the sovereignty of security alongside the sovereignty of law. Thus, the research recommends that the UN should enhance the ability of states to combat terrorism and corruption as well as paving the way for non-governmental organisations and civil society organisations to work within the framework of the culture of human rights, tolerance and democracy. In addition, the research recommends that there is the need for teaching the subject of the fight against international terrorism in the curriculum in Iraqi universities. Also, scientific seminars should be held in the Interior Ministry's institutions. For this, researchers should be encouraged to study the phenomenon of fighting against international terrorism within all its dimensions.

On the other hand, within the scope of the Arab League, the research recommends that there is a need to create an Arab force to combat-international terrorism in the Arab region, in which this force will be under the auspices of the Secretary-General in the

Arab League. Such a force is similar to the success of European countries to build a strong cooperation between anti-terrorism forces and countries. Further, the Arab League should adopt a consistent policy that does not respond to the demands of terrorists or their threats whatever the threat posed by terrorism on the state.

As to the third legal recommendations, it could be linked to the second significance of the current study i.e. this study will provide additional information in the areas of international terrorism and civil freedoms to the International Community. This is because the study focuses on the impact of international terrorism on civil freedoms in Iraq after 2003 i.e. the right to life and personal security. For example, the study is expected to provide information on how the so-called fight against international terrorism affects civil freedoms especially the right to life and personal security.

5.2.2 Recommendations Based on the Interview

The following recommendations are based on the results of the interview conducted by the Academic Staff in the Colleges of Law in Iraq as well as Judges from the Criminal Courts in Iraq:

5.2.2.1 Academic Staff's Recommendations

From the interview with of the Academics specialising in public international law, the research found that the viable recommendations that could be adopted in order to protect civil freedoms of the Iraqis after 2003 especially the right to life and personal security in the fight against international terrorism are as follows:

At the internal level, the recommendation of the Academics interviewed call for a strong role of the legislative authority in Iraq. For example, the legislative authority should develop a new Act to combat international terrorism bearing in mind that the Iraqi Anti-Terrorism Act No.13 of 2005 was poorly drafted. In other words, there is a need to amend Articles 1, 2 of the Iraqi Anti-Terrorism Act No.13 of 2005.

Furthermore, the Academics interviewed also recommended that the role of the judiciary should be activated, so that a person cannot be arrested under an official order from the judiciary, so as not to violate the right to life and personal security of the Iraqi people, under the pretext of combating international terrorism in Iraq.

Furthermore, the executive agencies that combat terrorism should be restructured, by placing the right person in the right position. The staff of these executive agencies should be sent to developmental courses to learn the seriousness of terrorism. The necessary methods should be established to combat the international terrorism as well as to reduce their arms. Another option is that the legal culture of the staff of the security services should be spread.

On top of that, they also recommended that there should be a cooperation between the educational institutions and civil society organisations, to clarify the seriousness of the phenomenon of terrorism on civil freedoms, particularly the right to life and personal security for all citizens. They suggest that people should be informed of defect that afflicts the Iraqi Anti-Terrorism Act No. 13 of 2005. Further, the role of civil society

organisations should be activated in the supervision, the guidance and the citizens' awareness of the danger of the international terrorism. In the same context, the Iraqi people should be educated through the media as well as exposed to the seriousness of terrorism. Obviously, society should play a significant role in raising the awareness and reducing the dangerous phenomenon, through holding seminars, conferences and spread legal educational programs, in order to educate and inform people about laws.

Further, other recommendations include significant of the revelation of the reasons and aims of the international terrorism, the development of legal curricula and the avoidance the previous issues that have led to extremism and intellectual deviation.

At the external level, the Academics interviewed recommended that they should be actual application of the international conventions in the fight against international terrorism, in order to ensure the protection of civil freedoms, particularly the right to life and personal security. Furthermore, the activation of the role of the General Assembly and the Security Council of the UN and the cancellation of Veto, as it affects the cancellation of some resolutions that concern the community are equally vital in the fight against international terrorism. The role of the International Criminal Court should be activated and its essential system should be amended.

Finally, states have to cooperate together to combat terrorism through inviting the UN for developing a comprehensive international convention to establish a clear definition of the international terrorism as well as identifying the terrorist acts. They also recommended that Iraq should invite and submit a proposal to the Arab League Council,

regarding developing a regional convention among the Islamic States, in order to fight all forms of terrorism, this regional convention should be fully applied. On the other hand, bilateral international convention should be developed with countries that had experiences in the fight against terrorism which could be beneficial to the Iraqi government.

5.2.2.2 Judges Recommendations

From the interview with the Judges of the Criminal Courts in Iraq, the researcher found that viable recommendations that could be adopted in order to protect civil freedoms of the Iraqis after 2003, especially the right to life and personal security in the fight against international terrorism. The viable recommendations are as follows:

Firstly, at the internal level, the recommendations of the Judges in respect to the role of the legislative authority included amending the Iraqi Anti-Terrorism Act No. 13 of 2005 by competent legislative committees, developing a complete and clear definition of international terrorism and identifying terrorist acts in order to protect civil freedoms and fight against international terrorism.

Additionally, the Judges went further and recommended that the Iraqi Anti-Terrorist Act No. 13 of 2005 should be abolished and the Iraqi Penal Code No. 111 of 1969 should be made as the reference for the integrated and comprehensive Code for all crimes, including terrorist crimes.

Other than that, the Iraqi government needs the cooperation of all Iraqi authorities (legislative, executive and judicial) in the protection of civil freedoms of the Iraqi citizens in the context of the fight against international terrorism. The supervisory role of the legislative authority should be activated in a way that the application of laws legislated should be followed.

Moreover, the Judges also recommended that there is a need for the cooperation of the security services with the judiciary in implementing judicial orders and tackling the issue of arresting dangerous accused terrorists and handing them over to the judiciary in order to receive their just punishment.

To add to that, the Judges interviewed also recommended that the executive authority, with regard to the security services, should exercise its role in protecting the citizens from the danger of terrorism, through its application of the laws. The executive authority should also take legal assets in the arrest of the accused person and should be prevented from interfering in the investigation and procedures of chasing terror suspects as well as preventing the Iraqi army from the investigation of terrorism cases. The Courts should be obliged not to condemn the defendant if the evidence is insufficient to prove the crime. On top of that, the Courts should also be obliged to defendants' claims when exposing incidents of torture while in custody.

In the same context, the Judges interviewed explained some of the applicable recommendations. The aim of these recommendations was to purify the Iraqi judiciary from those who were involved in the violations of human rights and civil freedoms,

through the Central Criminal Court. Those who got involved in the violations of human rights and civil freedoms should be questioned for the serious crimes they committed in the name of law, the judiciary and the fight against terrorism. In addition, the judicial awareness of human rights and fair trials should be highly raised. They also recommended that the justice institution should be reformed, a genuine national reconciliation should be achieved and the citizen's right to life and personal security should not be attacked when arresting without a warrant.

In addition, the role of the judicial investigator and the departments of judicial investigation should be activated. The investigation should be turned out of the hand of the Ministry of the Interior (the executive authority) and make it in the hand of the judiciary in order to ensure several items i.e. (the correct information in the investigation, citizens should not be blackmailed and the guarantee of the civil freedoms of citizens). The legal awareness also begins from the level of citizen and continues to the highest person in the state. The absence of legal awareness leads to the commission of the crime as well as the fearless punishment. Thus, crimes are unconsciously committed. In order to develop the legal awareness, scholars and academics should be a reference to benefit from their experiences. The individual citizen should cooperate with the security agencies, in order to protect their rights and freedoms through the role of the media in the detection of terrorist crime. In addition, public awareness of the seriousness of international terrorism should be raised, plus the punishment for defendants who commit crime should be made more severe.

At the external level, the Judges recommended that the role of the Iraqi diplomatic representation is very vital in the fight against international terrorism if we are to protect civil freedoms i.e. the right to life and personal security. The external diplomatic representation should be at the level of responsibility and assume all the commitments to protect Iraqis abroad. This representation should send regular reports to the internal executive agencies in Iraq, about the movement of terrorists and their attitudes towards the planning for the implementation of their crimes.

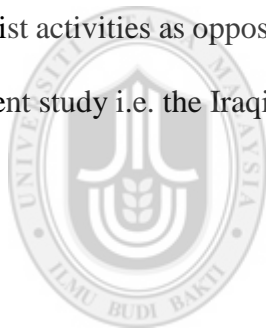
Furthermore, the Judges recommended that the Iraqi Foreign Ministry should play a significant role in holding conferences with countries that support terrorism in Iraq. The Iraqi Foreign Ministry should also set limits for this terrorist crime, through the discontinuation of the economic dealings in a way that involves states that support and fund terrorist attacks.

In the same context, the Judges recommended that comprehensive international conventions should be developed under auspices of the UN in order to protect civil freedoms, through developing a comprehensive and complete definition of the international terrorism. The Member States of the UN should agree on these conventions as well as the need for effective application of the previous conventions regarding the fight against international terrorism. Also, the Iraqi government should be necessarily directed to develop bilateral or regional conventions with regional or developed countries concerning the fight against international terrorism.

5.3 Suggestions for Future Research

Since the focus of the current research dealt with the impact of international terrorism on civil freedoms in Iraq after 2003 concentrating mainly on the poorly drafted Iraqi Anti-Terrorism Act No. 13 of 2005, it is the contention of the researcher that there is still room for future research on the same topic but from a different perspective.

Future research perhaps could focus on the impact of international terrorism in Iraq by adopting a quantitative research approach as opposed to qualitative approach which has been partly used in this current study. Also, the future research could focus on the impact of international terrorism on civil freedoms in Iraq by mainly interesting on acts of terrorist activities as opposed to the weakness of the anti-terrorism legislation like in the current study i.e. the Iraqi Anti-Terrorism Act No. 13 of 2005.



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