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Terrorism as Core International Crimes:

The Case of *Foreign Terrorist Fighter (FTF)* of *Islamic State of Iraq and Syria (ISIS)*

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ABSTRACT

Since it had established a caliphate in 2014, Islamic State of Iraq and Syria (ISIS) continued to threaten the international peace and security by attacking and killing civilians. ISIS foreign terrorist fighters (FTFs) are ISIS members who have combat functions. Although it is a serious crime, terrorism has not yet been recognized as a stand-alone core international crimes according to customary international law. The fact that ISIS is referred to as a terrorist group, not a state-entity, has also raised a question of whether ISIS FTFs can only be prosecuted for committing terrorism related offences. This paper argues that terrorism acts by ISIS FTFs can fit the element of the existing core international crimes such as crimes against humanity, war crimes and genocide. To this end, this paper elaborates the most common offences committed by ISIS FTFs and analyses element of each of core international crimes. This paper concludes that ISIS FTFs should be held liable for those core international crimes and prosecuted before national and international criminal court accordingly.

Keywords: *Core International Crime, Foreign Terrorist Fighter, International Law, ISIS, Terrorism*

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Terrorism as Core International Crimes: The Case of Foreign Terrorist Fighter (FTF) of Islamic State of Iraq and Syria (ISIS)

A. INTRODUCTION

Terrorism is not a new phenomenon in the world. Terrorist acts have existed since the end of the 19th century.³ Until now, there are at least 13 active terrorist groups which threaten the world peace and security. The 13 terrorist groups include: (1) the Abu Sayyaf Group; (2) Islamic State of Iraq and Syria (ISIS); (3) *Jamaah Islamiyah* (JI); (4) *Jabhat Al-Nusra*; (5) *Al-Qaeda*; (6) *Al Qaeda – Qaeda* in the Arabian Peninsula (AQSA); (7) *Al-Shabaab*; (8) Boko Haram; (9) National Democratic Front of Bodoland (NDFB); (10) the Taliban; (11) *Thehrik E-Taliban* Pakistan; (12) Uighur Separatist Groups; and (13) Baluchistan Separatist Group.⁴ Among those 13 groups, ISIS, Al-Qaeda, and Boko Haram are the most dangerous ones and ISIS considered as the most dangerous one since it has territory, weapon system and network, so the recruitment of its members can be carried out massively throughout Europe, Africa, Australia, and Asia..⁵

The existence of ISIS has attracted the the international community's attention since it is often poses various threats to world peace and security through various radical actions. This is reinforced by the UN Security Council Resolution 2249 (2015) which expressly states that ISIS is a terrorist organization that can threaten world peace and security.⁶ The various radical actions carried out by ISIS are one of the efforts to achieve their goal of establishing an Islamic State in Iraq and Syria. Therefore, they often commit the propaganda and incite the

Muslims in various States to commit jihad and take part in the effort to establish an Islamic State.

According to the International Center for the Study of Radicalization (ICSR), there are 41,490 foreigners who have joined ISIS (consisting of 77 percent of men, 11 percent of women, and 11 percent of children).⁷ In 2018, ISIS was responsible for 1,328 deaths which decreased significantly from previous years (69 percent from 2017 and 85 percent from 2016).⁸ Although it has decreased in terms of activity and the number of fatalities, in fact, the impact of ISIS' actions is still felt today. This is due to ISIS' ability to build structure and capacity by recruiting personnel from various States and also commit heavy attacks with the intensity of a protracted conflict.

Looking at the various cases of crimes committed by ISIS, Author be sure that the crimes committed by ISIS are not only terrorism crimes but leveled up of becoming core international crimes. Therefore, this article will discuss in detail and prove that the crimes of terrorism committed by ISIS could be categorized as genocide, crimes against humanity, and war crimes.

B. TERRORISM AS A DISCRETE INTERNATIONAL CRIME

There is no internationally recognized definition of terrorism. At least until now, there are more than 100 definitions of terrorism in the various literatures.⁹ The absence of terrorism universal definition has an impact on the difficulty of

³ Ma'ruf Amin, *Melawan Terorisme dengan Iman*, Jakarta: Tim Penanggulangan Terorisme, 2007, at. 50.

⁴ See Sri Yunarto, Angel Damayanti, dan Indah Novitasari, *Ancaman dan Strategi Penanggulangan Terorisme di Dunia dan Indonesia*, Jakarta: CV Muti Inovasi Mandiri (MIM), 2017, at 31-79.

⁵ Author, "The 3 Most Dangerous Terrorist Organizations", *Investopedia*, <https://www.investopedia.com/articles/investing/032615/3-most-dangerous-terrorist-organizations.asp>, accessed on 19th of February 2021.

⁶ UN Security Council Resolution 2249 (2015), S/Res/2249 (2015), at. 2. This resolution was adopted at the 7565th Security Council Meeting on 20 November 2015.

⁷ Britanny Brown, "Where Will Islamic State Detainees End Up?", *Council on Foreign Relations*, 2019, <https://www.cfr.org/in-brief/where-will-islamic-state-detainees-end>, accessed on 8th of November 2020.

⁸ Institute for Economics and Peace, *Global Terrorism Index 2019: Measuring the Impact of Terrorism*, Sydney, 2019, at. 16.

⁹ Anne Aly, *Terrorism: Historical and Contemporary Issues*, in Andrea Suci Varera, "Konstruksi Berita Media Massa CNN terhadap ISIS sebagai Transnational Organized Crime", *JOM FISIP*, Vol. 4, No. 1, 2017, at. 9.

prosecuting and punishing this crime. However, at the national level, there are practices to define terrorism acts, for example:

1. United States Federal Bureau of Investigation (FBI)

Violent, criminal acts committed by individuals and/or groups who are inspired by, or associated with, designated foreign terrorist organizations or nations (state-sponsored).¹⁰

2. Black's Law Dictionary

The use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct.¹¹

3. The Arab Convention on the Suppression of Terrorism 1998

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardise a national resources.¹²

4. *Undang-Undang Republik Indonesia Nomor 5 Tahun 2018 tentang Perubahan atas Undang-Undang Nomor 15 Tahun 2013 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme menjadi Undang-Undang*

Perbuatan yang menggunakan kekerasan atau ancaman kekerasan yang menimbulkan suasana teror atau rasa takut secara meluas, yang dapat menimbulkan korban yang bersifat massal, dan/atau menimbulkan kerusakan atau kehancuran terhadap objek vital yang strategis, lingkungan hidup, fasilitas publik, atau fasilitas internasional dengan motif ideologi, politik, atau gangguan keamanan (Acts that use violence or threats of violence that create an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological motives, political, or security disruption).

The main obstacle in formulating this definition is because of the prolonged debate regarding terrorism and freedom fighters. Those who are considered terrorists by one party may be freedom fighters by another. According to Schabas, terrorism is more accurately regarded as a motive rather than a physical or mental element of a crime and terrorism is not part of the definition of a crime.¹³

Although there is no universal definition of terrorism, the practice of international law shows that there are similarities in elements of terrorism that regulated by several Conventions and State practices, such as:¹⁴

1. The act is a criminal act in the national law of the country;
2. Have a transnational character, which mean actions and impacts do not only involve one State;

¹⁰ United States Federal Bureau of Investigation (FBI), "Terrorism", <https://www.fbi.gov/investigate/terrorism>, accessed on 11th of June 2021.

¹¹ Black's Law Dictionary 1484, 7th Edition, 1999.

¹² Article 1 paragraph (2) of The Arab Convention for the Suppression of Terrorism 1998. Available at: https://www.unodc.org/images/tldb/conv_arab_terrorism.en.pdf.

¹³ William Schabas, *An Introduction to International Criminal Court*, 4th ed, UK: Cambridge University Press, 2011, at 97.

¹⁴ Antonio Cassese, *International Criminal Law*, Oxford: Oxford University Press, 2008, at 177

3. The act is committed with the aim of forcing a State or international organization to do or not to do something;
4. The act is committed by spreading terror to the civilian population or attacking State or private institutions or their representatives;
5. The motivation of the attack is not for personal gain but for ideological reasons or political aspirations.

The most compelling reason why terrorism crimes (or other crimes such as drug trafficking) are not included in the category of 'core crimes' is because these crimes do not pose a threat to lasting impunity because they can still be effectively enforced through national laws. Terrorism still categorized as crimes against the State, so it still can be effectively enforced before national court.

This is different if compared to crimes under the jurisdiction of the ICC which are categorized as 'the most serious crimes' or 'core crimes'. These crimes are considered extraordinary not only because of their scale and impact but because of the involvement of the state, either directly or indirectly. As a result, these crimes are left unpunished because national courts that have jurisdiction over the crime are reluctant to prosecute their own leader. This does not happen in the case of 'State-sponsored' terrorism crimes involving the State. Ideally, although it has an international dimension, this dimension is more than the need for cooperation between States, not because of the unwillingness (unwilling/unable) of the State to prosecute it. Although in terrorism there are often failures of the State in prosecuting the perpetrators, the cause is more than the failure of the State to carry out mutual legal assistance or extradition with the other States.

C. CORE INTERNATIONAL CRIME

Based on the judgment of the war crimes tribunal in America (*Hostages Case*), international crimes are defined as follows:

*"An international crime is such an act **universally recognized** as a criminal which is considered a **grave matter** of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state, that would have control over it under normal circumstances."*

In fact, there is no universally agreed upon specific characteristic of the concept of international crime. However, when referring to the statement above, several important points can be taken regarding the elements of a crime that can be categorized as an international crime: (1) the crime is universally recognized; (2) The crimes that committed are considered as serious problem for the international community. This serious problem for the international community then urges these crimes to be prosecuted regardless of the nationality of the perpetrator or victim, and the area in which the crime was committed. In principle, the international criminal courts established after World War II are expected to be able to prosecute more or less similar types of crimes, such as: war crimes, crimes against humanity, genocide, and crimes of aggression, although the terms of crimes are different. International Military Tribunal (IMT) Nuremberg and Tokyo use the term "major war criminals"¹⁵ while International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda use the term "serious violations".¹⁶ The world's first permanent International Criminal Court (ICC), the ICC, uses the term

¹⁵ Article 6 of Nuremberg Charter 1945.

¹⁶ Article 1 of ICTY Statute 1993 and Article 1 of ICTR Statute 1994.

'the most serious crimes'. The Rome Statute as the basis for the establishment of the ICC is still the only multilateral agreement that comprehensively regulates these types of international crimes, although this does not mean that international crimes are only limited to what is regulated in Article 5 of the Rome Statute.¹⁷

The types of crimes under the jurisdiction of the ICC above are termed tribunal crimes. However, some scholars choose to use the term 'pure international crimes' or core crimes.¹⁸ Pure international crimes if compared to crimes with other transnational dimensions, are fundamentally considered to best fulfill the 'international' character in the actual meaning so that they are 'worthy' of being criminalized internationally (international crimes proper). Pure international crimes are also defined crimes against the international community as a whole, while other international crimes are termed crimes against the state. According to Cassese there are two elements that make international crimes 'proper', namely the existence of acts committed by State organs or individual individuals either (a) in connection with armed conflicts (both international and non-international) or, when there is no armed conflict, (b) have a political or ideological dimension or at least relate (either directly or indirectly) to the behavior of power holders of either state or organized non-State groups.¹⁹ Thus, the development of international criminal law shows that 'pure' international crimes include crimes that have been under the jurisdiction of the International Criminal

Court both ad-hoc and permanent since World War II, such as war crimes, crimes against humanity, genocide and crimes of aggression which are also known as tribunal crimes or core international crime.

1. Genocide

The term genocide was first coined by Raphael Lemkin in the winter of 1942 and later this term inspired the United Nations to forbid this crime.²⁰ Regulations regarding the crime of genocide can be found in the 1948 Genocide Convention, ICTY Statute, ICTR Statute, Rome Statute of the 1998 International Criminal Court (hereinafter referred to as the "1998 Rome Statute"). In Article 2 of the 1948 Genocide Convention, the crime of genocide is described as follows:

"Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group"

And the actions that can be punished are as follows:

*"(a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide."*²¹

People who commit the crime of genocide with the details of the crime

¹⁷ Article 5 paragraph (1) of *The 1998 Rome Statute of the International Criminal Court* regulate that: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole..."

¹⁸ David Luban, "Fairness to Rightness : Jurisdiction, Legality, and The Legitimacy of International Criminal Law" in Samantha Beson dan John Tasioulas (ed), *The Philosophy of International Law*, United States: Oxford University Press, 2010, at 572.

¹⁹ Antonio Cassese, *Supra Note 12*, at 53-54.

²⁰ Douglas Irvin Erickson, *Raphael Lemkin and the Concept of Genocide*, Philadelphia: University of Pennsylvania Press, 2017, at 1.

²¹ Article 3 of 1948 Genocide Convention.

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as listed above are required to be punished, whether the act was committed by a constitutionally responsible rulers, public official, or private individual.²² Thus, the status of an offender who is a public official or a ruler cannot be used as a reason for that person to obtain legal immunity from his individual criminal responsibility.²³

The definition of genocide in the 1948 Genocide Convention was later adopted into the ICTY Statute and the ICTR Statute so that the contents of the regulations related to genocide contain the same aims and objectives. Finally, in the 1998 Rome Statute, it is explained that genocide falls within the jurisdiction of the ICC along with other crimes which are considered as “the most serious crimes of concern to the international community as a whole”, such as crimes against humanity, war crimes, and aggression.²⁴

The three main elements that must be proven in the crime of genocide are:

1. *acts committed with intent to destroy (specialis dollus);*
2. *in whole or in part;*
3. *a national, ethnic, racial, or religious group.*²⁵

Regarding sentencing, both the ICTY Statute, the ICTR, and the 1998 Rome Statute, implicitly rule out the possibility of a death sentence for the perpetrators of the crime of genocide and three other core international crimes.

2. Crime Against Humanity

Crimes against humanity were first entered into positive international law through the Nuremberg Charter. The Nuremberg Charter states as follows:

“...Crimes against humanity: namely murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”²⁶

Then, the ICTY Statute and ICTR Statute also included crimes against humanity in their Statutes with the following definitions:

Statute ICTY	Statute ICTR
<i>“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions</i>	<i>“The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f)</i>

²² Article 4 of 1948 Genocide Convention.

²³ Another regulation that related to this can also be found in the IMT Nuremberg Charter.

²⁴ International Criminal Court, “Understanding the International Criminal Court”, at 3, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>, accessed on 11th of June 2021.

²⁵ ICRC, “Key Elements of International Crimes”, October 2017, [file:///C:/Users/angel/Downloads/handout_10_-_key_elements_of_international_crimes%20\(1\).pdf](file:///C:/Users/angel/Downloads/handout_10_-_key_elements_of_international_crimes%20(1).pdf), accessed on 28th of June 2021.

²⁶ *Charter of the International Military Tribunal, Annex to the Agreement for the Prosecution and Punishment of the Major War Crimes of the European Axis (London Agreement)*, 8 August 1945.

<i>on political, racial and religious grounds; (i) other inhumane acts.”²⁷</i>	<i>Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts.”²⁸</i>
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From the two Statutes above, it can be seen that the ICTR Statute contains elements of "widespread" and "systematic" attacks. These two conditions are difficult to fulfill if there is no direct or indirect state intervention. In addition, in both the ICTY Statute and the ICTR Statute there is an element "directed at the civilian population". This element is the distinguishing element between war crimes and crimes against humanity because the 'civilians' in this case are those who have the same nationality with the perpetrators.²⁹ In short, the main elements that must be met from crimes against humanity are "directed against any civilian population" and "widespread" or "systematic attacks".

3. War Crime

The 1949 Geneva Conventions use the term grave breaches of International Humanitarian Law (IHL) for war crimes to show that in war there are both ordinary and serious violations. Article 147 of Geneva Convention IV 1949 concerning the Protection of Civilian Persons in Time of War uses the term "grave breaches" to define war crimes:

"Grave breaches ...shall be those involving any of the following acts, if

committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".³⁰

The main requirement of war crimes is that they occur during situations of armed conflict (international or non-international) and the target or victim of this crime is a protected person.³¹ The Geneva Conventions explain that the protected person in war are wounded, sick and prisoners of war³² as well as enemy civilians.³³ This means that not all attacks on civilians, even though they are affected in war, will be categorized as war crimes. This crime has also been under the jurisdiction of the International Court of Justice since the Nuremberg Court to the ICC.

The reason behind criminalizing a serious violation of the laws of war is the need to ensure respect for the basic principles of humanity in war situations, namely the protection of those who do not take part or are active in combat and limit the ways and methods of fighting by threatening criminal sanctions so as to reduce suffering caused by war.

²⁷ Article 5 of ICTY Statute 1993. Available at: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

²⁸ Article 3 of ICTR Statute 1994. Available at: https://legal.un.org/avl/pdf/ha/ictr_EF.pdf.

²⁹ A comprehensive definition of crimes against humanity can be found in Article 7 of the Rome Statute where the boundaries of 'widespread' or 'systematic' and 'civilian population' can be seen in the 'Elements of Crimes' of the Rome Statute.

³⁰ Article 147 of Geneva Convention IV 1949 concerning the Protection of Civilian Persons in Time of War.

³¹ Ameka C. Anaedozie, *Africans at Home and in the United States: One People, One Problem, One Destiny*, London: The Rowman & Littlefield Publishing Group, Inc., 2021, at 2.

³² See Geneva Convention III 1949.

³³ See Geneva Convention IV 1949.

D. GENERAL OVERVIEW OF FTF AND ISIS FTF VIOLATIONS

The existence of FTF is not a new phenomenon. The existence of the FTF is predicted to have existed since the late 18th century at the time of many Civil Wars.³⁴ Now, the involvement of the FTF in an armed conflict tends to be caused by religious issues (jihad). They went to war in a conflict with which they had no direct connection other than religious affinity.³⁵

1. Definition of FTF

Due to the fact that ISIS criminal actions are getting serious and has resulted to hundred of victims and has threaten world peace and security, the UN Security Council Resolution 2178 issued in 2014 defines FTF as follows:

*“individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict”.*³⁶

In addition to the definition of UN Security Council Resolution 2178, there is another definitions related to FTF:

*“an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship”.*³⁷

Several studies have also found the fact that FTFs do not only come from people who voluntarily make themselves into FTFs but there are also paid soldiers and employees of private companies engaged in the military or security sector who are usually recruited by the State/Government.³⁸

2. ISIS FTFs Crimes against Yazidis

On August 3, 2014, the ISIS FTFs committed an attack on the Yazidis who live in the Sinjar region, an area in northwestern Iraq.³⁹ The Yazidis are an ethno-religious minority group in Iraq.⁴⁰ They also adhere to Yazidism, which is a monotheistic religion that combines elements of Islam, Christianity, Zoroastrianism, and Judaism.⁴¹ The ISIS FTFs arrested around 1.200 men, women, and children who in the next two days were asked to renounce their religion to embrace Islam.⁴² When most of the Yazidi men refused the order, they were all taken blindfolded about 500 meters outside the village, and upon arrival at their destination, they were lined up, filmed, and shot.⁴³

³⁴ David Malet, “What does the evidence tell us about the impact of foreign fighter on home-grown radicalization?”, <https://www.radicalisationresearch.org/debate/malet-foreign-fighters-home-grown-radicalization>, accessed on 26th of March 2021.

³⁵ Thomas Hegghammer, “The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad”, *International Security*, Vol. 35, No. 3, 2011, at 53.

³⁶ See UN Security Council Resolution 2178 (2014), para. 9. The existence of this resolution strengthens the evidence that the UN Security Council condemns the systematic and widespread gross violations of human rights committed by ISIS, the Al-Nusra Front, and Al-Qaeda. The existence of this Resolution also compels all UN member States to prosecute anyone who travels abroad with the intention of joining or training with a terrorist organization as “serious criminal offenses”. In addition, this resolution also encourages UN member States to criminalize fundraising or recruiting for terrorist organizations.

³⁷ Geneva Academy of International Humanitarian Law and Human Rights, *Academy Briefing No. 7 – Foreign Fighters under International Law*, 2014, at 3.

³⁸ United Nations Security Council (UNSC), *Report of the Analytical Support and Sanctions Monitoring Team on Foreign Terrorist Fighters* (S/2015/358), para. 29.

³⁹ Jewish World Watch, “Iraq (The Yazidis)”, <https://www.jww.org/conflict-areas/iraq-yazidis/>, accessed on 17th of July 2020.

⁴⁰ Dave van Zoonen dan Khogir Wirya, *The Yazidis Perceptions of Reconciliation and Conflict*, Erbil: Middle East Research Institute, 2017, at 4.

⁴¹ *Ibid.*

⁴² Rochdi Mohan Nazala, “ISIS, Genocide, and A Thick Description of Power”, *Jurnal Transformasi Global*, Vol. 6, No. 2, 2019, at 101.

⁴³ *Ibid.*

According to Amnesty International's report, ISIS FTFs entered Solagh, a village east of the city of Sinjar and entered a house and took out about 30 people. The ISIS FTFs separated the women and children into the back of a truck, then forced the nine men and boys to walk to a nearby riverbed, ordered them to kneel and then shot them in the back.⁴⁴ There are also reports that a larger killing was committed against Yazidi men in the village of Qani where ISIS FTFs executed at least 80 men.⁴⁵

The forced conversion by ISIS is another indication that the source of ISIS violence against Yazidis is based on religious considerations. A few days later on August 11, 2014, ISIS again committed mass killings. That time, more than 700 men and boys in the village of Kocho were executed for refusing to convert to Islam.⁴⁶ Prior to the execution, it was reported that ISIS commanders reportedly scolded the Yazidi men and boys for their reluctance to convert to Islam and alleged that they intended to continue living in the pre-Islamic or *jahiliyyah* period.⁴⁷ On 15 August 2014, ISIS FTFs again killed around 80 Yazidis in Kojo, south of Sinjar.⁴⁸

ISIS is trying hard to destroy the Yazidis, by killing men and boys, kidnapping thousands of women and children.⁴⁹ Young boys are indoctrinated and forced to fight alongside ISIS, while nine-year-old girls are enslaved and sold as "goods" belonging to ISIS fighters.⁵⁰ Yazidi women and girls suffered sexual violence under the slavery system, they were beaten, and forced to work.⁵¹ 11 women and 9 girls interviewed by Human Rights Watch (HRW) stated that they had fled between September 2014 and January 2015.⁵² They said that they had been raped several times by several ISIS fighters.⁵³ Nearly all of them said they were sold and forced into marriage or given as "gifts" to other ISIS fighters. The women and girls also witnessed other captives being mistreated.⁵⁴

3. ISIS FTFs Crimes against Protected Person

Based on data from the *Stanford Center for International Security and Cooperation* (CISAC)⁵⁵ and various other sources, the following are some of the

⁴⁴ Amnesty International, "Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Iraq", 2014, at 7.

⁴⁵ Human Rights Council, "They came to destroy": ISIS Crimes Against the Yazidis", June 15, 2016, document: A/HRC/32/CRP.2, at 9.

⁴⁶ Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups", March 13, 2015, document: A/HRC/28/18, at 6.

⁴⁷ Jahiliyyah is an Islamic concept that refers to the period of time and conditions in Arabia before the advent of Islam or is often translated as the 'Age of Ignorance'. See Valeria Cetorelli and Sareta Ashraph, "A Demographic Documentation of ISIS's Attack on the Yazidi Village of Kocho", LSE Middle East Center Reports, 2019, at 10.

⁴⁸ Anna Coren dan Chelsea J. Carter, "Report: US airstrike carried out as part of Iraqi effort to retake Mosul Dam", *CNN World*, 14 Agustus 2014,

<https://edition.cnn.com/2014/08/15/world/meast/iraq-crisis/index.html>, accessed on 28th of June 2021; See also Katie Zavatski, "ISIS Just Killed 80 More Yazidis in an Iraqi Village", *New York*, 15 Agustus 2014, <https://nymag.com/intelligencer/2014/08/isis-killed-80-yazidis-in-iraqi-village.html>, accessed on 28th of June 2021.

⁴⁹ Reliefweb, "Without Justice and Recognition the Genocide by ISIS Continues", *Reliefweb*, 17 Juli 2020, <https://reliefweb.int/report/iraq/without-justice-and-recognition-genocide-isis-continues>, accessed on 22nd May 2021.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² HRW, "Iraq: ISIS Escapees Describe Systematic Rape", *Human Rights Watch*, 14 April 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>, accessed on 22nd of May 2021.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Stanford CISAC, "The Islamic State", https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state#text_block_12420, accessed on 28th of June 2021.

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attacks carried out by ISIS in Iraq and Syria:

Period of Attack	Target	Number of Victims
August 2014	Al-Sheitaat Tribe in Deir al-Zor Province, Syria	More than 700 people died
29 October 2014	Sunni tribe, Abu Nimr in Anbar Province, Western Iraq	Around 300 people died
15 May 2015	Civilian population in Anbar Province, Western Iraq	More than 500 people died
July 2015	Shi'a Market in Khan Bani Saad, Iraq	130 people died ⁵⁶
December 2015	3 explosions in hospital, market, and residential complex in Tel Tamer City area, Syria	Approximately 50 people died and 80 people were wounded ⁵⁷
	3 bombing at restaurants in Al-Qamishli, Syria	16 people died and more than 30 were wounded ⁵⁸
21 February 2016	Alawite civilians in al-Zahra neighborhood, Syria	Around 150 dead ⁵⁹
	Sayyidah Zaynab Mosque	83 people died ⁶⁰

	(The mosque believed to be the tomb of the Prophet Muhammad's granddaughter)	
July 2016	Karrada District, Baghdad	More than 250 people died ⁶¹
15 January 2018	Tayran Square, Baghdad, Iraq	38 people died and 105 people wounded.
21 January 2021	A crowded market, east of Baghdad, Iraq	32 people died and 110 people wounded.

In 2017, the Head of the State Intelligence Agency of the Republic of Indonesia, Budi Gunawan, stated that ISIS has built a global network where they form network cells in various countries (not only in Iraq and Syria) that are ready to carry out attacks in various targeted places.⁶² The ISIS FTFs modus operandi in committed attacks in various regions or countries is the same and repeated, such as shootings, suicide bombings, crashing with vehicles, attacks with sharp weapons, as well as raids or ambushes.⁶³

E. TERRORISM AS A CORE INTERNATIONAL CRIME

In the previous sub-chapter, the author has explained theories or general overview regarding terrorism and core international

⁵⁶ Mustafa Salim, "At least 130 are dead in Iraq after a massive bomb attack", *Washington Post*, 18 July 2015, https://www.washingtonpost.com/world/at-least-130-dead-in-iraq-after-massive-bomb-attack/2015/07/18/01798182-74b9-4388-a2ed-ccc7fd54976d_story.html, accessed on 28th of June 2021.

⁵⁷ Reuters Staff, "Islamic State truck bombs kill up to 60 people in Syrian town: Kurd", *Reuters*, 11 December 2015, <https://www.reuters.com/article/us-mideast-crisis-syria-northeast-idUSKBN0TUONS20151211>, accessed on 28th of June 2021.

⁵⁸ Brian Rohan, "At least 16 killed in restaurant bombings in northern Syrian City", 31 December 2015, *CTV News*, <https://www.ctvnews.ca/world/at-least-16-killed-in-restaurant-bombings-in-northern-syrian-city-1.2719117>, accessed on 28th of June 2021.

⁵⁹ France 24, "IS group claims deadly bombings in Homs, Damascus", *France 24*, 21 February 2016, <https://www.france24.com/en/20160221-syria-bombings-homs-damascus-ceasefire>, accessed on 28th of June 2021.

⁶⁰ Aljazeera, "ISIL car bomb attacks kill 129 in Damascus and Homs", *Aljazeera*, 22 February 2016, <https://www.aljazeera.com/news/2016/2/22/isil-car-bomb-attacks-kill-129-in-damascus-and-homs>, accessed on 28th of June 2021.

⁶¹ Sarah Almkhtar dan Derek Watkins, "Major Islamic State Attacks in Baghdad", *The New York Times*, 30 May 2017, <https://www.nytimes.com/interactive/2016/05/18/world/middleeast/baghdad-attacks-isis-map.html>, accessed on 28th of June 2021.

⁶² Nathacia Suhendra, "Teror ISIS di Dunia", *Kata Data*, 2 June 2017, <https://katadata.co.id/ariayudhistira/infografik/5e9a56564954d/teror-isis-di-dunia>, accessed on 24th of May 2021.

⁶³ *Ibid.*

crimes. Although terrorist acts are not yet recognized as stand-alone core international crimes it does not necessarily free from including in the core international crimes. Author will analyze and prove whether the terrorism crimes committed by the ISIS FTFs are included in the core international crimes.

1. Terrorism as Genocide

In analyzing whether the actions taken against the Yazidi Tribe by ISIS FTFs include genocide or not, it is necessary to first prove the 3 main elements of the crime of genocide as described previously, such as:

- a) Victims are one of 4 protected groups: national, ethnic, religion, and racial;
- b) Act committed with intent to destroy;
- c) In whole or in part.

The Yazidis are included in 4 protected groups because they are an ethno-religion minority group in Iraq. One of the goals of ISIS attacking the Yazidis is to force them to renounce their religion and convert to Islam. Thus, the first element is proved. Another thing to prove is *actus reus* and *mens rea*. The *actus reus* of genocide is stated in Article 6 of the Rome Statute. The fulfillment of the *actus reus* committed by the ISIS FTF as regulated in the Rome Statute is as follows:

Elements of the Rome Statute	ISIS FTFs <i>Actus Reus</i>
Article 6 (a) <i>killing members of the groups</i>	The cruel killing of the Yazidis for the purpose of religion forced conversion.
Article 6 (b) <i>causing serious bodily or mental harm to members of the group</i>	Kidnapping of thousands of women and girls to be enslaved, tortured, forced

Article 6 (c) <i>deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part</i>	labor, and even raped. ⁶⁴
Article 6 (d) <i>Imposing measures intended to prevent births within the group</i>	Apart from being forced to become sex slaves at the ISIS FTF, Yazidi women are also forced to abort their children.
Article 6 (e) <i>forcibly transferring children of the group to another group</i>	Yazidi children who were forcibly abducted were taken to a different location from the Yazidi man or woman and isolated separately. Yazidi children are indoctrinated to become ISIS soldiers and live far from the group.

Based on the description of ISIS FTFs *actus reus* above, it is very convincing that the actions of the ISIS FTFs against the Yazidis are genocide. However, after *actus reus*, it is necessary to further analyze the *mens rea*. Proof of *mens rea* is not an easy thing. Based on Article 30 of the Rome Statute, *mens rea* consists of two

⁶⁴ According to UN Col Syria, ICJ jurisprudence stipulates that Yazidi women and girls "are subjected to large-scale organized sexual violence that occurs in the context of their sexual slavery" which also creates living conditions in the group capable of bringing about physical destruction in whole or in part. See Col Syria - They Came to Destroy, para. 139; Republic of Croatia v. Republic of Serbia, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Judgment, 3 February 2015, paras. 362-364.

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components: (1) knowledge threshold; and (2) specific intent.⁶⁵ Knowledge means awareness of the circumstances or consequences/risks of the actions taken by the defendant, not just negligence.⁶⁶ The crime of genocide carried out by the ISIS FTFs is certainly not an omission. They are certainly aware of their actions which will certainly cause suffering for the Yazidi people. This is reinforced by the relationship between knowledge and specific intent. Important aspects of a specific intent are “to destroy” and “in whole or in part”. This element is fulfilled when most of the group is targeted and destroyed.⁶⁷ In addition, this element of *mens rea* is fulfilled when there is repetition act and targeted at the same group. The attacks and killings of Yazidis by the ISIS FTFs can be said to fulfill this element. This is due to the repetition act, August 3, 2014 in Sinjar, August 11, 2014 in Kocho, and August 15, 2014 in Kojo, south of Sinjar, with the same target, the Yazidis who refuse to embrace Islam.

With the fulfillment of the *actus reus* and *mens rea* elements as described above, it is clear that the acts of terror committed by the ISIS FTF are not only terrorism crimes but have leveled up to core international crime, namely genocide.

2. Terrorism as Crime against Humanity

To prove that the acts of terrorism committed by the ISIS FTF are included in the category of crimes against humanity, there are several main elements that must be met, such as directed against any civilian population and widespread or systematic. The word “or” can be interpreted that there is no need to prove both, just one of “widespread” or “systematic”.

The ISIS FTF has committed many attacks in various areas in Iraq and Syria. The majority of their attacks were bombings, including suicide bombings. The targets of the attack were not enemy military objects, but markets, restaurants, houses of worship, and civilian houses which were objects of the civilian population. Therefore, the element of “directed against any civilian population” has been fulfilled.

Furthermore, what needs to be proven is the “widespread” or “systematic” element as stated in Article 7 of the Rome Statute. In practice, the majority of perpetrators of crimes against humanity are state actors. This is often the cause if the perpetrators are not state actor then the crime cannot be categorized as a crime against humanity. However, in its development, non-state actors can also commit crimes against humanity as long as the elements of these crimes are fulfilled.⁶⁸ The element that often

⁶⁵ Article 30 of the Rome Statute states that:

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly

⁶⁶ Vanderbilt Law School, “Yazidi Genocide Opinion”, Executive Summary Vanderbilt Law School, hlm. 7, https://law.vanderbilt.edu/academics/academic-programs/international-legal-studies/Yazidi_Genocide_Opinion_KRG_4.15.pdf, accessed on 17th of June 2021.

⁶⁷ Claus Kreß, “The International Court of Justice and the Elements of the Crime of Genocide”, *European Journal of International Law*, Vol. 18, No.619, at 627.

⁶⁸ For example, ICTY and ICC have succeeded in prosecuting non-state actors who have committed crimes against humanity. The ICTY indicted Zoran Zigic, a taxi driver (a civilian) who was employed on a short-term contract as a backup logistics provider at the Keater camp. He was sentenced to 25 years in prison

requires state involvement is the systematic element because it requires evidence of state policies that led to the occurrence of the crime. Therefore, the author will show that the crimes committed by ISIS can fulfill these elements and structurally ISIS can be categorized as a state-like entity.

In determining whether a group is categorized as an organized armed group or not, the Pre-Trial Chamber of the ICC has determined a number of factors that must be considered, such as: (1) have a hierarchy and is under a responsible command; (2) have the tools or facilities to commit attacks on the civilian population; (3) having control or controlling part of the territory of a State; (4) the main objective of the crime is the civilian population; (5) state explicitly or implicitly their intention to attack the civilian population.⁶⁹

In relation to ISIS, it can be proven that ISIS has met these criteria. ISIS is an armed group that has a hierarchy and is under a responsible command with a leader named Abu Ibrahim al-Hashimi

al-Qurashi.⁷⁰ In 2016, ISIS claimed that it had 14 ministries and 5 departments that were responsible for dealing with remote provinces, community and tribal relations, research, immigration, and issues related to deceased or captured members. Whereas in 2020, ISIS claims that they still have 5 ministries and 1 department responsible for remote provincial administration and immigration affairs. Thus, ISIS has fulfilled the consideration as an armed group that has a hierarchy and is under a responsible command. In addition to having a hierarchy, ISIS as an organized armed group can also be seen from the various attacks and their success in controlling various areas in Iraq and Syria. The systematic element reflects the existence of a certain pattern or method that is organized thoroughly and uses a fixed pattern. Some of the evidence that ISIS released to the public stated that its attacks were committed in accordance with ISIS policies.⁷¹

The next element, "widespread" can be proven through: (1) the massive number of victims; (2) repeatedly or frequently; (3) the action is on a large scale; and (4) committed collectively and has serious consequences. Based on data from the United Nations, in the two years 2014-2015, ISIS managed to kill 18,802 civilians in Iraq, 36,245 people were wounded, and about 3 million people were displaced due to ISIS violence in Iraq.⁷² Even according to

for the crime of persecution on political, racial or religious grounds; crimes against humanity; and war crimes. The ICC charged Dominic Ongwen, a Ugandan Rebel Commander, to 25 years in prison for committing war crimes and crimes against humanity including murder, rape, torture and slavery.

See Human Rights Watch, *Genocide, War Crimes, and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, New York: Human Rights Watch, 2004, at 34; IRMCT, "Dario Kordic and Zoran Zigic Transferred to Austria to Serve their Prison Sentences", Press Release, 9 Juni 2006, <https://www.icty.org/en/press/dario-kordic-and-zoran-zigic-transferred-austria-serve-their-prison-sentences>; ICC, "Dominic Ongwen sentenced to 25 years of imprisonment", Press Release, 6 Mei 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1590>; Javira Ssebwami, "ICC Conviction of LRA commander provides overdue justice for victims of decades-long campaign of abuses", *UG Standard*, 4 Februari 2021.

⁶⁹ Situation in the Republic of Kenya, ICC-01/09-19, *Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, 31 March 2010, para 93. Available at: https://www.icc-cpi.int/CourtRecords/CR2010_02399.PDF.

⁷⁰ Feras Kilani, "A Caliph Without a Caliphate: The Biography of ISIS's New Leader", *Newlines Magazine*, 15 April 2021, <https://newlinesmag.com/reportage/a-caliph-without-a-caliphate-the-biography-of-isis-new-leader/>, accessed on 28th of June 2021.

⁷¹ For more detailed information on the timeline and ISIS claims for attacks on civilians, See Wilson Center, "Timeline: the Rise, Spread, and Fall of the Islamic State", October 2019, <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>, accessed on 21st of June 2021.

⁷² United Nations, "Staggering civilian death toll in Iraq", *UN News*, 19 January 2016, <https://news.un.org/en/story/2016/01/520312->

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the Iraq Body Count, the civilian death toll in Iraq due to ISIS attacks until 2018 reached 68,260 people.⁷³ Meanwhile, based on data from the Syrian Network for Human Rights (SNHR), until 2018 there were around 4,889 civilians who died as a result of ISIS attacks in Syria.⁷⁴ Based on the number of attacks and the number of victims, it has been proven that the attacks by ISIS were committed repeatedly, the number of victims was massive, the attacks were on a large scale and of course serious consequences.

3. Terrorism as War Crime

An act of terror directed at those who are not active in war, in this case the civilian population, is clearly a serious violation of IHL or a war crime. Article 33 of Geneva Convention IV 1949,⁷⁵ Article 51 paragraph (2) of Additional Protocol I 1977,⁷⁶ Article 4 paragraph (2) and 13 paragraph (2) of Additional Protocol II 1977⁷⁷ clearly

prohibit acts of terror against the civilian population. In addition, acts of terror against civilians also violate Article 3 of the Common Articles of the 1949 Geneva Conventions which were in force at the time of Non-International Armed Conflict (NIAC).⁷⁸

The Rome Statute does not criminalize the crime of terrorism as a core international crime. This is because the terrorism is still controversial at the time of armed conflict. However, there is still disagreement over whether the definition may also be applied in time of armed conflict, the issue in dispute being in particular whether acts performed by "freedom fighter" in wars of national liberation may (or should) constitute an exception to the definition. As a consequences of disagreement on terrorism in armed conflict, States have so far been unable to lay down a general definition of the whole phenomenon of terrorism in a general treaty.

Then, what is the difference between a terrorist and a freedom fighter? Distinguishing a terrorist and a freedom fighter is not an easy thing and sometimes it depends on which point of view it is seen. What to one person is terrorism may be an act of courage and patriotism in the pursuit of freedom or independence according to another.

[staggering-civilian-death-toll-iraq-un-report](#), accessed on 28th of June 2021.

⁷³ BBC News, "Islamic State and the crisis in Iraq and Syria in maps", *BBC News*, 28 March 2018, <https://www.bbc.com/news/world-middle-east-27838034>, accessed on 28th of June 2021.

⁷⁴ SNHR, "Civilian Death Toll in Syria from March 2011 to September 2018", *SNHR*, October 2018, <http://sn4hr.org/blog/2018/09/24/civilian-death-toll/>, accessed on 28th of June 2021.

⁷⁵ Article 33 of Geneva Convention IV 1949 states that: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."

⁷⁶ Article 51 paragraph (2) of Additional Protocol I 1977 states that: "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

⁷⁷ Article 4 paragraph (2) of Additional Protocol II 1977 states that: "... the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatments such as torture, mutilation or any form of corporal punishment;

b) collective punishments;

c) taking of hostages;

d) acts of terrorism;

e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

f) slavery and the slave trade in all their forms;

g) pillage;

h) threats to commit any of the foregoing acts.

Article 13 paragraph (2) of Additional Protocol II 1977 states that:

"The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

⁷⁸ See Article 3 Common Article of Geneva Convention 1949.

Terrorism is a method used by individuals or groups to achieve certain goals regardless of the norms that exist in society and most of these actions affect the rights of other individuals. In short, terrorism can be considered as an act of violence against society for ideological reasons. The terrorists tend to think of themselves as freedom fighters who carry out the mission of fighting for independence and justice for themselves or their groups. Freedom fighters are often identified with terrorism because of their similar pattern of violence. However, in achieving their goal of being free and independent, freedom fighters do not only use violence but also rely on their political expertise (soft power). Freedom fighter uses both paths that can be taken, both soft power and hard power.⁷⁹ Freedom fighters also distinguish between civilians and the military, as much as possible they avoid injuring or killing civilians that are not related to their interests.

This is confirmed by a recent study in *The Economist* which states that *"violent resistance to authority is often justified: not a few of today's presidents and prime ministers were yesterday's freedom fighter, but it also makes the point that the distinction between freedom fighters and terrorists is to be found in the targets struck."*⁸⁰ From this statement, it can be seen that what the

differences between terrorists and freedom fighters in armed conflicts is their target. Freedom fighters attack military targets, although often non-combatants or civilians are killed, but this is because they are close to military targets. In contrast, terrorists deliberately attack non-combatants including civilians.

The attacks deliberately committed by ISIS targeting civilians or non-combatants certainly make ISIS FTFs more accurately labeled as terrorists than freedom fighters. ISIS' desire to be free and independent to establish an Islamic state or caliphate is at first glance seen as a freedom fighter who is fighting for independence. However, the way ISIS pursues its goals by carrying out targeted attacks on protected persons has certainly deviated from the freedom fighter. The killing of protected persons in the ISIS attack was not because they were near military headquarters or targets, but rather the attacks were aimed at locations where civilians were. Once again it should be emphasized that here it is not the method that is at issue but the target.⁸¹ If the target of the terrorism is a protected person, then the terror act can be categorized as a war crime. So, it is not merely acts of terrorism that are categorized as war crimes, but acts of terrorism that attack protected persons are categorized as war crimes.

A report from the Independent International Commission of Inquiry on the Syrian Arab Republic (UN Col Syria)⁸²

⁷⁹ According to Joseph Nye, the strength of a freedom fighter consists of hard power and soft power. Hard power consists of military and economic power, resting on the ability to provide threats or inducements to get others to do what they want. While soft power, a more subtle way, aims to make one's goals and values attractive to others so that they choose to do what they want with political expertise.

See Marine Folscher, "The Soft Power of Populist Politics: A Case Study of the Economic Freedom Fighter in the South African Context", Thesis for Master of Arts at Stellenbosch University, March 2019, p. 4.

⁸⁰ L.F.E. Goldie, "Profile of a Terrorist: Distinguishing Freedom Fighter from Terrorists", *Syracuse Journal of International Law and Commerce*, Vol. 14, No. 2, 1987, at 127.

⁸¹ If in an armed conflict an act of terrorism is committed against enemy soldiers or enemy property, this is permitted under the IHL, but if it has targeted a protected person, then it is a violation of IHL.

⁸² Independent International Commission of Inquiry on the Syrian Arab Republic, <https://www.ohchr.org/EN/HRBodies/HRC/IIICISyria/Pages/Documentation.aspx>, accessed on 20th of June 2021. Second report of the Special Adviser and Head of the United Nations Investigative Team to Promote

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states that ISIS has harmed and targeted its violence against civilians and people who are not active in fighting in the areas they control.⁸³ They have committed war crimes including murder, extrajudicial executions, mutilation, enforced disappearances, rape, hostage taking, torture, forced pregnancy and recruiting children to fight and attack protected objects, forced displacement of civilians and other serious violations.⁸⁴ Those detained by ISIS were continuously beaten, whipped, and electrocuted. ISIS also kidnaps and sexually enslaves women and children.⁸⁵ According to the UN Col Syria report, ISIS commanders deliberately committed these war crimes with the intention of attacking protected persons and realizing their status as civilians or people who are not active in war.⁸⁶

F. CONCLUSION

Crimes committed by ISIS in Iraq and Syria are not just ordinary acts of terrorism, but also can be categorised as core international crimes such as genocide, crimes against humanity, and war crimes. The opinion that ISIS is a freedom fighter who is justified in carrying out attacks on the country due to an armed conflict situation so that it is excluded from war crimes cannot be justified because the target of the ISIS FTF attack is not the headquarters/military facility or enemy soldiers who are actively fighting, but the protected person who unrelated to their goal of independence as freedom fighters.

The fact that ISIS is not a state does not necessarily exclude it from committing crimes against humanity because there are already several international court practices, such as the ICTY and the ICC, which can prosecute non-state actors. Although of all the core crimes, proving the crime of genocide is considered the most difficult, but in the case of the Yazidi tribe, ISIS' actions have fulfilled the main elements of the crime of genocide, such as: (1) special intent to destroy; (2) in whole or in part; (3) targeted at 4 protected groups (nationality, ethnicity, race, and religion).

Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, March 2019, para. 13.

Available at: https://www.unitad.un.org/sites/www.unitad.un.org/files/general/17.05.2019_0.pdf

⁸³ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 14 February 2014, at 1.

Available at: <https://undocs.org/A/HRC/25/65>

⁸⁴ *Ibid.*

⁸⁵ Genocide Network Secretariat, "The prosecution at national level of sexual and gender-based violence (SGBV) committed by the Islamic State in Iraq and the Levant (ISIL)", *Eurojust*, July 2017, at 24.

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⁸⁶ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014. Accessed from https://reliefweb.int/sites/reliefweb.int/files/resources/HRC_CRP_ISIS_14Nov2014.pdf

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