

Considering Terrorism As A Crimes Against Humanity: A Victim Centric Approach

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Abstract

Since the time of Nuremberg and Tokyo trials there are three major recognised international crimes; war crimes, genocide and crimes against humanity. For war crimes four Geneva conventions were adopted in 1949. For Genocide an international convention was signed in 1956. However, work of drafting an international convention on crimes against humanity is still 'in progress' at the level of international law commission. In 2019 August, International law commission has come out with all draft articles crimes against humanity. Definition of crimes against humanity has continuously evolved from Nuremberg to International Criminal Court. But international law commission has lost this opportunity to further develop this definition. The commission should have added terrorist activities as a new component in the definition of crimes against humanity. Though the commission has given a logic of practicality behind borrowing its definition from the Rome Statute. Nonetheless an academic scrutiny is called for at this moment to analyse whether terrorism or terrorist activities can satisfy all the threshold requirements for being considered as crimes against humanity. If it is so considered what purpose it will serve. Other than introduction this research paper has three parts. First part deals with the nature and definition of crimes against humanity, second part deals with various jurisprudential aspects of terrorism and its nature. Third part is focused on various similarities and difference among terrorism and crimes against humanity.

Kew Words: Crimes against humanity, The Hague convention, The Rome Statute, terrorism, principle of complementarity, universal jurisdiction.

1. Introduction

International Law Commission is drafting a proposed international convention on crimes against humanity. In August 2019 the commission has finished its process of drafting the articles of proposed convention. Now it will be analysed by the sixth committee of United

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Nations Organisation.¹ If sixth committee gives a positive review then U.N. General Assembly will adopt it. And after that all ratifying States are supposed to legislate same or nearly similar law on the prevention of crimes against humanity in their respective national legal systems. The convention has covered both substantive and procedural aspects to propose a workable regime for the prevention of crimes against humanity in international and national legal regimes. But for the sake of bringing harmony in the statute of International Criminal Court and various national regimes International Law Commission did not choose to improve the definition of crimes against humanity, any further. However, the Commission has well explained its viewpoint on this issue and it is a practical approach, but an academic evaluation is always desirable whether the current definition of crimes against humanity is complete. Are there any other serious international crimes that qualify as crimes against humanity? The definition of crime against humanity has developed over the time according to the experiences of humanity. It shows there is still a scope of development in the definition of crimes against humanity. Moreover, 'law' in itself is a dynamic concept, which changes to serve the needs of the changing societies. Various academicians and Statesmen have considered, terrorism as a crime against humanity. It is pertinent to discuss whether terrorism qualifies the minimum threshold limit for being considered as a crime against humanity or not? For that is pertinent to understand the meaning and scope of crimes against humanity and terrorism one by one.

2. What is crime against humanity?

"Crime against humanity" as a legal concept and international crime has two basic aspects. First, these crimes are so heinous that these are crimes against very spirit of being human; they shock the collective consciousness of entire mankind. Second, due to extreme ugly an inhuman nature of the crimes these crimes, entire human society at global level feels aggrieved and, hence, becomes interested in its punishment.² Second, the crime is so heinous that it is an attack not just upon the immediate victims, but also against whole humanity, and hence the entire community of humankind has an interest in its punishment.³ International Criminal Tribunal of Yugoslavia in *Prosecutor v. Erdemovic* has noted as under in

"Whilst rules proscribing war crimes address the criminal conduct of a perpetrator towards an immediate protected object, rules proscribing "crimes against humanity" address the perpetrator's conduct not only towards the immediate victim but also towards the whole of humankind ...

¹ United Nations Organisation's legal committee with the representation of legal members from all States is known as 'sixth committee'.

² (Hannah Arendt characterized the Holocaust as a "new crime, the "crime against humanity" — in the sense of a crime 'against human status,' or against the very nature of mankind." H. Arendt, Eichmann in Jerusalem: A Report on the Banality of Evil, at 268 (Viking Press, 1965).)

³ First Report of Special Rapporteur on "crimes against humanity".

Because of their heinousness and magnitude they constitute egregious attacks on human dignity, on the very notion of humaneness. They consequently affect, or should affect, each and every member of mankind, whatever his or her nationality, ethnic group and location.”⁴

In ancient times only India had the examples like Mahabharata, where humane methods of war were followed. However at the world level we find such example only in the modern history, when a crucial step to reduce the ferociousness of wars was taken at the Hague conventions of 1899 followed by 1907, where in article 47 of regulations provided in annexure, proscribed attack on civilian populations. But these provisions remained just on paper and in both World Wars numerous war crimes and “crimes against humanity” were committed. During World War I, highly dehumanizing atrocities were committed by the Turkish ruling establishment, against its own population who were “Armenian Christian” ethnically. Finally, in historic event of Nuremberg trials and Tokyo trials perpetrators of “crimes against humanity” were prosecuted. This concept developed over the past century through adhoc tribunals of Yugoslavia and Rwanda. International Law Commission also presented a draft statute for making an “international criminal court”.

But since Nuremberg to Rwanda all, the international criminal tribunals were set up as mechanisms for ex-post facto prosecutions. There was great demand that there should be an international criminal court with prospective jurisdiction. Only a prospective court can get more acceptability from the international community. Another demand was for framing a comprehensive definition of the crime, with all the modern standards of international law. Since international consciousness regarding human rights and humanitarian laws, was much developed till 1998, hence the definition was also much comprehensive on these aspects. After long deliberations held in the meetings of plenipotentiaries, known as Rome conferences, an extensive prospective code was adopted. This criminal code is known as the Rome Statute of International Criminal Court. Article 7 (1) of the Rome Statute provides definition of “crimes against humanity” as under:

“Article 7: crimes against humanity

1. For the purpose of this Statute, crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation*

⁴ *Prosecutor v. Erdemović*, Appeals Chamber, Judgment, ICTY Case No. IT-96-22-A, para. 21 (Oct. 7, 1997).

of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;”

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.⁵

This definition of “crime against humanity” has slowly evolved from the Nuremberg to the Rome. Initially the concept of “crime against humanity” was attached to the situation of war.⁶ Later on, it was thought that only a state power could commit “crimes against humanity”, that too against its own people.⁷ Currently it is understood as a “wide spread or systematic attack against any civilian population”.⁸ In drafting process of this definition many kinds of interests were involved. The representatives of sovereign States and many international institutions and NGOs prepared Rome Statute, as an international criminal jurisdiction of prospective nature. Activists wanted to make this definition of the “crimes against humanity” as more and more comprehensive to cover maximum types abuses related to human rights and humanitarian laws. On the other hand representatives of various States wanted to add maximum safeguards in this definition, because as a prospective definition this could apply on their own State authorities also. Hence there was a perfect mix of new kinds of culpabilities and new safeguards as compared to the previous definitions. For example chapeau requirements in article 7 (1) have introduced one new condition i.e. “with knowledge of the attack”. It was not there in any of the previous tribunals.

At the same time may new offences were added in this definition. In the category of crimes against women, other than rape in sub clause (g) of article 7 some new sexual offences against women were also added in the definition, in addition to rape, such as; enforced prostitution, forced pregnancy and enforced sterilization. This sub-clause carved out a new niche to consider other sexual offences also as “crimes against humanity”, by adding a phrase at the end i.e. ‘any other form of sexual violence of comparable gravity’.

⁵ The Rome Statute of International Criminal Court.

⁶ International Military Tribunal (Nuremberg), 1945.

Available at: [https:// history.state.gov/milestones/1945-1952/nuremberg](https://history.state.gov/milestones/1945-1952/nuremberg).

⁷ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1994).

⁸ Rome Statute of International Criminal Court, (1998).

Other new offences added in this definition were enforced disappearance and crime of apartheid etc. In early 1990s apartheid got defeated in South Africa, and its inclusion in the definition of the Rome Statute shows that till 1998, it had well-grounded in the international law as a presumptive norm, from whom no derogation was possible. Similarly, prevention of enforced disappearance had also got firm acceptability in international law till then.⁹

Article 7 in clauses (2) and (3) provided comprehensive explanations of all contents of “crime against humanity” as used in article 7 (1). This was actually one more method for providing safeguard against expensive judicial interpretations. Article 7 (2) provided further qualification for the requirement of ‘widespread’ and ‘systematic’. Many activist and NGOs were very happy when ‘or’ as a disjunctive word was added between the requirements of ‘widespread’ and ‘systematic’, and made them ‘widespread or systematic’. Any one of the two were required to raise culpability. But article 7 (2) (a) while explaining the meaning of term ‘attack’ provided that attack means multiple commissions of the crimes narrated in article 7 (1), in pursuance of a State of organisational policy. This requirement of ‘policy’, effectively eliminated the disjunctive effect provided by the term ‘or’, which was much hailed by human rights activist in the Rome conference. Because a systematic attack is always a policy driven attack. However, a widespread attack might or might not be policy guided. But this straight away requirement of policy for both kinds of attacks had actually made it almost two sides of the same coin.

Nonetheless, article 7 (2) (a), has introduced a scope of *at par* culpability of State and non-State organisations. Means it was accepted that anti-State groups could also commit the “crimes against humanity”. Both, state and non-state groups could commit “crimes against humanity”.¹⁰ Therefore, any individual attack by individual person cannot be “crime against humanity”. However, if individual had the knowledge that there is a widespread or systematic attack against the civilian population, and he wanted to take the benefit of the circumstances to commit some crimes at personal level, then that individual is also criminally liable, because he has wanted to make his crime as a part of the undergoing widespread or systematic attack. However, this definition of “crimes against humanity” is a victim centric definition.¹¹ It is least concerned about the nature of the perpetrator organisation. Here focus is on ‘civilian population’.

⁹ Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), I.C.J. Reports 2012, p. 422, at para. 99; Al-Adsani v. United Kingdom, E.Ct.H.R., Judgment, App. No. 35763/97, para. 61 (2001).

¹⁰ Ibid.

¹¹ Frédéric Mégret, “Victims before the International Criminal Court: A New Model of Criminal Justice?” *VCRD*, 5 Feb. 21, 2017. Available at: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p6.html>.

Above mentioned definition of crimes against humanity quite extensive. It includes torture, forced disappearance and apartheid also. Still, some major crimes like terrorism and human trafficking etc., which are considered as crimes against humanity in common parlance, are not covered under the current definition. If terrorism were also defined with victim centric approach, then the elements of international crime of terrorism and “crime against humanity” overlap each other. In both the crimes innocent people are victims, just because they do not agree with the political or politico-religious ideology of the perpetrators. In order to compare and understand the nature of terrorism and “crime against humanity”, it is pertinent to trace the historical evolution of terrorism. Tracing history of terrorism from victim oriented point of view, and not from perpetrator’s inspirational or motivational aspect, would be quite helpful to highlight that there might be a difference of quantitative degree of terrorism and crimes against humanity, but not of the qualitative criminality.

3. Understanding intricacies of terrorism

Terrorism is a worldwide problem. Almost all the States have faced problem of terrorism in variety of methods. However, there is a worldwide conflict in definitions of terrorism, but all the States agree that terrorism is an international problem, and no State can fight it alone. In essence, terrorism is a political struggle in which civilian population is attacked to get political discounts from the powerful governments. In history, we can find many examples of terrorism, but this crime was defined as ‘terrorism’ as such only in the twentieth century. In order to understand the essence of terrorist activities, a study from historical point of view is very important.

4. A brief history of terrorism

According to contemporary understanding terrorism is an unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims. However, the term terrorism in historical times appeared in late 18th century, and its connotations as per the perpetrators have varied. State as well as anti-State or non-State powers have accused of terrorism at different times. Starting from 18th century France, trajectory of terrorism is as under:

4.1 Reign of Terror in France

In modern history terror as a term refereeing to political violence was first time used to describe the brutal regime of Maximilien Robespierre's Jacobin club in France. It was an era of mass executions by the so-called revolutionaries. Anybody suspected of opposing revolution or the methods used by Jacobians was put to the guillotines.¹² In this thirteen-

¹² Albert Soboul, “The Sans-culottes; the Popular Movement and Revolutionary Government, 1793–1794”, 24 (Garden City, N.Y.: Anchor Books, 1972).
Available at: <https://fsu.digital.flvc.org/islandora/object/fsu:182029/datastream/PDF/view>.

month long regime starting from June 1793, several thousands of people were awarded death sentences in France.¹³ Contemporary French philosopher Francois-Noel Babeuf used the term *terroriste*, to describe this atrocious regime. From there the words ‘terrorist’ and ‘terrorism’ slowly evolved.¹⁴ Robespierre’s ‘Reign of Terror’ was an example of use of excessive force to retain political dominance by an anti-State group, which succeeded to get hold of the State power.

4.2 *The Irish Fenian*

“Fenian brotherhood” was a violent movement of Irish people, against the British political domination, started in mid-nineteenth century. This violent movement continued even in twentieth century as “Irish brotherhood”, or the “Irish Republican army”. Primarily it was an insurgency and revolt, which aimed at attacking symbols of British power, but occasionally used terrorist acts also and targeted common people. Mainly Roman Catholic people inhabited region of Ireland but even then they derived the initial name of their movement from pre-Christian mythical warriors, called Fenians.¹⁵

4.3 *Palestinian Terrorism*

In 1917, during World War I Britain through, “Balfour Declaration” declared Palestine as a natural homeland for the Jews.¹⁶ Palestine then a part of Ottoman Empire had a small Jewish minority, which was around one-sixth of total population. From then Palestinian opposition to Jewish immigrants started which led to many serious riots and eventually resulted in making of a separate Jewish State. Rather than ending the conflict, it intensified the Palestinian opposition to Israel. In Arab-Israel war of 1948, attack by Arab countries on Israel proved to be counterproductive. Since then several Palestinian terrorist groups emerged. Among them PLO (Palestinian Liberation Organization), Fatah and Hamas were major players. Their acts of terrorism against Israel continued for several decades, finally PLO, officially renounced violence in 1988.¹⁷ However, Hamas is continuously engaged in rocket attacks on Israel. Terrorist attacks of Hamas and Fatah are targeted against Israeli State as well as innocent Israeli people.¹⁸

¹³ Id at 24, 30, 31, 52.

¹⁴ Lawrence W. Reed, “Francois-Noel Babeuf: The Marxist Before Marx” *Foundation for Economic Education* June 11, 2019. Available at: <https://fee.org/articles/francois-noel-babeuf-the-marxist-before-marx/>

¹⁵ Michael Burleigh, *Blood And Rage: A Cultural History Of Terrorism* 6 (Harper Collins Ebooks, 1st Edn, London, 2010).

¹⁶ Mark Levene, “The Balfour Declaration: A Case of Mistaken Identity” 54-77, *HER* Vol. 107, No. 422 (Jan., 1992).

Available at: <https://www.jstor.org/stable/pdf/575676.pdf>.

¹⁷ Prince James, “PLO, officially renounced violence in 1988” 25 *Stan. J. Int'l L.* 681 (1989).

Available at: <https://heinonline.org/HOL/Page?handle=hein.journals/stanit25&id=691&collection=journals&index=>

¹⁸ Eli Berman “Hamas, Taliban And The Jewish Underground: An Economist’s View Of Radical Religious Militias” Working Paper, National Bureau Of Economic Research 1050 Massachusetts Avenue Cambridge, (Sep. 2003).

4.4 *Neo Fascist Terrorism in Europe*

After the World War II, Europe has seen an influx of Asian and African immigrants. Against this slowly changing demography of Europe, several small racist groups have emerged. These groups have launched some fierce terrorist attacks especially on foreign merchants and foreigners in Europe.¹⁹

4.5 *Political Terrorism in South Asia*

In South Asian region, India has seen two major terrorist movements; Punjab terrorism and Kashmir terrorism. Both of these were Pakistan sponsored terrorist movements. It was an example where State of Pakistan was involved in terrorism against India, through non-State terrorist organizations. Both these terrorist movements were against the State as well as religious minorities of the region. Killing of innocent Hindu population in Punjab and Kashmir was a strategy to inflict fear among the minorities and enforce their exodus. Political violence in North-East India and Naxal violence is mainly in the nature of small-scale insurgency, which has used violence against innocent civilian targets also.

4.6 *Tamil Tigers: The deadly terrorists of Sri Lanka*

LTTE (“Liberation Tigers of *Tamil Elam*”) was another major terrorist group of South Asian region, which continued to launch violent attack on innocent Sri Lankan Sinhala population, on deviant Sri Lankan Tamils and as well as on “rival Tamil Liberation groups”.

4.7 *Radical Islamic Terrorism*

Islam has many schools of thought and many interpretations. Out of these, some are radical, such as Wahhabism and Salafism, and call for violence against non-Muslim political regimes. During anti-colonial struggle of Asia and Middle East, radical Islamic groups spread its roots in the form of a Muslim youth organization- Muslim Brotherhood. Which eventually became a breeding ground for radical Islamic terrorist groups.²⁰ However, “Muslim Brotherhood” *per se* cannot be termed as a terrorist organization, but terrorist organizations like *Al-Qaida* and *Daish* commonly known as “ISIS” (“Islamic State of Iraq and Syria”), have recruited many of their cadres from “Muslim Brotherhood”.²¹

Available at: <https://www.nber.org/papers/w10004.pdf>

¹⁹ 1988 Cannes and Nice attacks, 1992 Copenhagen bombing, 1999 London nail bombings, Charlottesville car attack, Murder of Jo Cox, Los Angeles Jewish Community Center shooting, 2006 Moscow market bombing, 2011 Norway attacks, Overland Park Jewish Community Center shooting.

²⁰ Counter Extremism Project, The Muslim Brotherhood’s Ties to ISIS and al-Qaeda (June 2017). Available at: https://www.counterextremism.com/sites/default/files/Muslim%20Brotherhood%20Ties%20to%20ISIS%20and%20AQ_061617.pdf

²¹ Ibid.

Both “*Al-Qaida*” and “ISIS” use terrorist methods of killing innocent people. Notorious 9/11 attack on “World Trade Towers” in USA (“United States of America”) was the biggest example, when terrorists killed around 3000 innocent civilians.²² ISIS is even more deadly terrorist organization. It has captured large territories in Iraq where several thousand innocent, civilians have been murdered, thousands of Yazidi women have been mass raped, enslaved, transported and sold in markets like animals.²³ Radical Islamic terrorist organization such as *Boko Haram* are also targeting innocent civilians in Africa.²⁴ Their aim is to destabilize every non-Islamic government and establish a rule of Islam all over the world.²⁵ Radical Islamic terrorism is different from the political terrorism. Terrorist groups of Ireland or Sri Lanka were using violence to achieve political motives with in a particular geographical area, and were willing to compromise if they were allowed to get political hold of the geographical territory in question. However, radical Islamic terrorism with politico-religious connotations is not seeking any compromise, it has only two options for every non-Muslim regime i.e. either submit or die.²⁶ This type of terrorism is certainly a crime against whole humanity.

This is not an exhaustive account of terrorist organizations of the world. Nevertheless, this discussion underlines that almost all the terrorist organizations of the world are involved, in attacks on innocent civilians. They might be attacking symbols of State power also, but ‘systematic attack’ on ‘civilian population’ is invariably part of their strategy. To understand real nature of terrorism, it is necessary that its ideological and jurisprudential roots are analysed.

5. A Jurisprudential Scrutiny in the Genesis of Terrorism

Problem with treating terrorism as crime against humanity is lack of unanimity at world level. Some State like Pakistan are using terrorism as their State policy. They try to justify terrorism as a political struggle. It is important that the roots of terrorism should be analysed from a philosophical and jurisprudential angle. So that various attempts to justify terrorism are academically countered. Since terrorism is a violent political struggle against the State, hence it is pertinent to discuss the origin of terrorism, beginning from the social contract theory itself. Hobbes the first eminent philosopher of social contract theory, while describing his hypothesis of Man’s transition from a forest dwelling free

²² Quintan Wiktorowicz and John Kaltner “Killing In The Name Of Islam: Al-Qaeda’s Justification For September 11” *MEPR* Vol. X Summer 2nd (2003).

Available at: <https://www.mepc.org/journal/killing-name-islam-al-qaedas-justification-september-11>

²³ Ariel I. Ahram, “Sexual Violence and the Making of ISIS” 57-78 *Survival*, vol. 57 no. 3 (June–July 2015).

²⁴ Monica Mark, “Boko Haram’s ‘deadliest massacre’: 2,000 feared dead in Nigeria” *The Guardian* Jan. 10, 2015.

Available at: <https://www.theguardian.com/world/2015/jan/09/boko-haram-deadliest-massacre-baga-nigeria>

²⁵ Roman Loimeier, “Boko Haram: The Development of a Militant Religious Movement in Nigeria” 137-155, *Africa Spectrum* Vol. 47, No. 2/3 (2012)

Available at: https://www.jstor.org/stable/23350455?seq=1#metadata_info_tab_contents

²⁶ John L. Esposito, “Islam and Political Violence” 1067-1081 *Religions*, Vol. 6 Issue 3 (2015).

Man to a political Man under a State system headed by a king, proposed that people have surrendered their all rights to the State in the lieu of protection of their life and property. Hobbes' theory of social contract had no provision either for people's personal liberties or for change of the political superior if he does not perform his duty, assumed under the 'social contract'.²⁷ John Locke's theory of social contract was one-step ahead of Hobbes' as much as it propounded that people had not surrendered all their rights to the State. Only political rights were surrendered, but people had kept their civil liberties with themselves. According to Locke, the king had a duty to protect civil liberties of the people along with their life and personal properties.²⁸ Both these theories were incomplete as these were silent with regard to the justification of unpopular political regimes. In medieval Europe, people had become conscious about their rights after the renaissance period. Due to this, there was an unrest among the subjects of various European States against such kings. Kings, who were not taking care of their people, became unpopular. In the year, 1688 AD there was a political coup against the King James II of England, famously know as glorious revolution.²⁹ Similarly, French revolution was also a result of king's inability and unwillingness to protect people's rights.³⁰ Kings used to treat the kingdoms as their personal properties rather than considering it a pious duty to protect the people. Some decades before French Revolution, many scholars had propounded the idea of people's rights. Rousseau was one such French scholar, who proposed that people have a right to change the regime, if the king is not able to protect, life, liberty and property of the citizens.³¹

However, holders of political power have always a tendency to retain it to themselves forever. It was same situation in England during the reign of King James II; as well as in France during the regime of Louis XVI; where kings used violence to crush any popular effort challenging their political legitimacy. This shows that political struggle is inherent in the idea of modern State system. Overthrowing an unpopular regime with help of neighbouring States was one of the commonly used methods of regime change in ancient and medieval times.

In the twentieth century, States have become more powerful by the advent of highly efficient weapons, and innumerable economic resources at their disposal. Nevertheless,

²⁷ Thomas Hobbes, *Leviathan: Or the Matter, Form and Power of a common-wealth Ecclesiastical and Civil* (Yale University Press, Connecticut, 2010). Available at <https://archive.org/details/hobbessleviathan00hobbuoft>

²⁸ Daudi Mwita Nyamaka, *Social Contract Theory of John Locke (1632 to 1704) in the Contemporary World* (June 2011) Available at <http://works.bepress.com/cgi/viewcontent.cgi?article=1009&context=dmnyamaka>.

²⁹ Lois G. Schworer, "Propaganda in the Revolution of 1688-89" 843-874 *AHR* Vol. 82, No. 4 (1977). Available at: <https://www.jstor.org/stable/1865115>

³⁰ Benjamin Nathans, "Habermas's "Public Sphere" in the Era of the French Revolution" 620-644 *FHS* Vol. 16, No. 3 (Spring, 1990). Available at: <https://www.jstor.org/stable/286491>

³¹ Jean Jacques Rousseau, *The Social Contract, Or Principles of Political Right* (Paris April, 1762) Available at <http://www.constitution.org/jjr/socon.htm>.

at the same time democracy as a form of government has been largely accepted all over the world. Regime change of unpopular rulers has become easy. It is right to say that social contract theory propounded by Rousseau was possible only in a democracy; and in modern times by periodic elections, people are changing regimes. Though in many parts of the world kingdoms and autocratic rulers still exist, but in majority States, people have been empowered by democracies. Now people decide the fate of rulers by the power of vote rather than the power of weapons. After the end of World War II, the world has seen a phase of exercising right to self-determination, by the erstwhile colonies of Asia and Africa.³² By the end of twentieth century, the phase of political formations and reformation of new nation States has been almost over. Ideally, now world should be ruled with peace and stability. Existence or sovereignty of States should not depend on the use of force. Other than external threats, there should not be any internal violent threat to the political authority of the State, as people could change governments periodically with the power of vote.

However, medieval tendencies of capturing political power by force or retaining the political authority with violence are still present. Those who cannot win the hearts of majority voters, they often try to carve out a separate political entity for themselves, by the use of violence.

There are many different terms to denote the use of violence against a State for acquiring political power; such as revolt, coup, insurgency and terrorism. All these terms signify use of violence, from the political subjects against their own State, and not by the adversary States. It is pertinent to analyse the difference between the legal meanings of these terms, according to *Black's Law dictionary*.

1. **Revolt:** Revolt is a term, which can be used against a violent as well as non-violent disobedience and opposition to the established authority of any kind. Revolt might be against any political or non-political authority both.³³
2. **Coup or Coup d'état:** Coup is a sudden and violent change of political power.³⁴ In common parlance also, coup is a sudden and violent seizure of power by the use of military force; and this term is used in this aspect only.
3. **Insurgency:** Insurgency is as an act of internal armed hostility against an established government for political reasons.³⁵

³² Anthony Whelan, "Self-Determination and Decolonisation: Foundations for the Future" *ISIA* 25-51 Vol. 3, No. 4 (1992).

³³ Merriam Webster's Dictionary. Available at: <https://www.merriam-webster.com/dictionary/revolt>

³⁴ Bryan A. Garner-Black's Law Dictionary 355 (7th Edn., West Group 1999).

³⁵ Id at 811.

4. **Terrorism:** According to Black's Law dictionary terrorism is use or threat of use of violence to intimidate or cause panic, esp. as a means of affecting political conduct of people or a State.³⁶

Terrorism in common parlance is understood to be a politically motivated violence against the innocent citizens of a State, in order to get political concessions, by inflicting a sense of terror among the citizens and decision making officials of the State. It is a kind of extortion, not for money, but for political power. What makes terrorism different from the insurgency is the use of violence against the innocent people. Insurgents use violence against the State machinery, whereas terrorists use violence against the State as well as people of the State.

Insurgency is a militia driven violent movement against the people's government and its symbols. Insurgents use fighting irregular warfare as much as they attack government forces suddenly. They deny response time to the government forces. With less response time, government forces have to bear some causality, but even then, they repel insurgent's attacks. In this process, insurgents also have to bear causalities. However, terrorists target non-combatant innocent citizens, who cannot retaliate. Hence, for a terrorist organization in a terrorist attack, targeted civilian causality can be maximum and easy to achieve, that too with no immediate risk for the terrorists. Generally, terrorists get enough time to run away. In a democratic setups terrorists, inflict a feeling of continuous terror among the people, so that they can compel the government to provide them some political concessions. It is interesting to know that international community is well aware about the threat of terrorism and adopted a number of international instruments related to various types of terrorist activities, but even then due to considerations of international politics it has so far evaded all the efforts to carve out a universal definition of terrorism. It is apposite to analyse some prominent international instruments related to terrorism, which are hereunder.

6. Analysis of types of terrorist activities recognised by international law

International community has recognised many terrorist activities as international crimes. There are good number of international treaty instruments against those crimes. Study of these treaties and related crimes is important to analyse whether these crimes in common parlance as terrorist activities or not? Whether these crimes fall under any category of crimes listed in the definition of crimes against humanity? Whether victim of such international crimes fall under the term 'any civilian population', as mentioned in the definition of crime against humanity? Whether a series of multiple acts centrally planned or centrally conceived can be termed as a widespread or systematic attack? For this, an analysis of various international instruments covering terrorist activities is necessary.

³⁶ Id at 1484.

Some of these treaties as mentioned on the website of United Nations Office of Counter Terrorism are as under:

6.1 Instruments regarding civil aviation³⁷

“1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft

- Authorizes the aircraft commander to impose reasonable measures, including restraint, on any person he or she has reason to believe has committed or is about to commit such an act, where necessary to protect the safety of the aircraft; and
- Requires contracting States to take custody of offenders and to return control of the aircraft to the lawful commander.”³⁸

“2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft

- Makes it an offence for any person on board an aircraft in flight to "unlawfully, by force or threat thereof, or any other form of intimidation, [to] seize or exercise control of that aircraft" or to attempt to do so;
- Requires parties to the convention to make hijackings punishable by "severe penalties"
- Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution; and
- Requires parties to assist each other in connection with criminal proceedings brought under the Convention.”³⁹

“3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

- Makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of the aircraft; to place an explosive device on an aircraft; to attempt such acts; or to be an accomplice of a person who performs or attempts to perform such acts;
- Requires parties to the Convention to make offences punishable by "severe penalties"; and
- Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution.”⁴⁰

“4. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation

³⁷ United Nations Office of Counter Terrorism.

Available at: <http://www.un.org/en/counterterrorism/legalinstruments.shtml>

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

- Criminalizes the act of using civil aircraft as a weapon to cause death, injury or damage;
- Criminalizes the act of using civil aircraft to discharge biological, chemical and nuclear (BCN) weapons or similar substances to cause death, injury or damage, or the act of using such substances to attack civil aircraft;
- Criminalizes the act of unlawful transport of BCN weapons or certain related material;
- A cyber attack on air navigation facilities constitutes an offence;
- A threat to commit an offence may be an offence by itself, if the threat is credible.
- Conspiracy to commit an offence, or its equivalence, is punishable.”⁴¹

“7. 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft

- Supplements the Convention for the Suppression of Unlawful Seizure of Aircraft by expanding its scope to cover different forms of aircraft hijackings, including through modern technological means;
- Incorporates the provisions of Beijing Convention relating to a threat or conspiracy to commit an offence.”⁴²

“1979 International Convention against the Taking of Hostages”⁴³

"Any person who **seizes or detains and threatens to kill, to injure, or to continue to detain another person** in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this Convention".⁴⁴

“Instrument Regarding Terrorist Bombings”

“17. 1997 International Convention for the Suppression of Terrorist Bombings

Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.”⁴⁵

Analysing above-mentioned universal instruments on various aspects of terrorism, it is evident that focus is to counter the use of violence against the non-combatant and civilian

⁴¹ Ibid.

⁴² Ibid.

⁴³ International Convention Against the Taking of Hostages, G.A. Res. 146 (XXXIV), U.N. GAOR, 34th Sess., Supp. No. 46, at 245, U.N. Doc. A/34/46 (1979), entered into force June 3, 1983.

⁴⁴ Ibid.

⁴⁵ Supra Note 44.

targets. But still there is no consensus among world powers, on the definition of terrorism. This confusion is mainly due to the stress on motives of perpetrators. However, from victim-oriented approach defining terrorism might become easy. As there is, a consensus that terrorism is politically motivated killing of civilians, an international covenant against terrorism should be drafted from victim-oriented perspective.

However, at the level of United Nations Organization (UNO), there are three important declarations on international terrorism:

1. "Declaration on Measures to eliminate international terrorism, 1994."⁴⁶
2. "Declaration to supplement the 1994 declaration on Measures to eliminate international terrorism, 1996."⁴⁷
3. "The United nations Global Counter- terrorism strategy, 2006."⁴⁸

Other than these three, there are around 20 resolutions of UNSC (United Nations Security Council). These resolutions have been passed from time to time by the UNSC, in order to respond to the contemporary situations related to terrorism. These resolutions are very important to understand the trend of UNSC resolutions with regard to terrorism. Some of these UNSC resolutions are, as thus:

1. "Resolution 1373 (2001) Establishment of Counter terrorism Committee (C.C.) threats to international Peace and security caused by terrorist acts",
2. "Resolution 1377 (2001) —Ministerial declaration on the global effort to combat terrorism",
3. "Resolution 1390 (2002) —the situation in Afghanistan",
4. "Resolution 1452 (2002) — threats to international peace and security caused by terrorist acts",
5. "Resolution 1455 (2003) — threats to international peace and security caused by terrorist acts",
6. "Resolution 1456 (2003) —declaration of the Ministers for Foreign affairs on the issue of combating terrorism",
7. "Resolution 1526 (2004) — threats to international peace and security caused by terrorist acts",
8. "Resolution 1535 (2004) — establishment of the executive directorate Counter-terrorism Cmt. (CTED)",
9. "Resolution 1540 (2004) — Non-proliferation of weapons of mass destruction",
10. "Resolution 1566 (2004) — establishment of a working group to consider measures to be imposed upon individuals, groups or entities other than those designated by the I-Qaida Taliban sanctions Committee",
11. "Resolution 1617 (2005) — threats to international peace and security caused by terrorist acts",
12. "Resolution 1624 (2005) —Prohibition of incitement to Commit terrorist acts",

⁴⁶ Available at: <http://legal.un.org>.

⁴⁷ Ibid.

⁴⁸ Ibid.

13. "Resolution 1735 (2006) — threats to international peace and security caused by terrorist acts".

Similarly, there are 16 regional treaty instruments, and most of these are directly referring to terrorism. Though, there might not be any unanimity on the definition of the terrorism at the world level, but at regional level States have achieved consensus on the working definition of the terrorism. It shows that at regional level due to similarity in the national interests and national threats States can come on one page, but at international level due to conflict of interests and international politics States could not achieve required consensus to develop a universally accepted definition of terrorism or international terrorism. Some important regional instruments against terrorism are as under.⁴⁹

6.2 Regional Instruments Resolving to Curb Terrorism

1. "Organization of American states Convention to Prevent and Punish the acts of terrorism taking the Form of Crimes against Persons and Related extortion that are of International Significance, 1971".
2. "European Convention on the suppression of terrorism, as amended by its Protocol, 1977".
3. "South Asian association for Regional Cooperation (RC) Regional Convention on suppression of terrorism, 1987".
4. "The Arab Convention on the suppression of terrorism, 1998".
5. "Treaty on Cooperation among the states Members of the Commonwealth of independent states in combating terrorism, 1999".
6. "Convention of the organization of the Islamic Conference on combating international terrorism, 1999".
7. "Organization of African Unity (U) Convention on the Prevention and Combating of terrorism, 1999".
8. "Shanghai Convention against terrorism, separatism and extremism, 2001".
9. "Inter- American Convention against terrorism, 2002".
10. "Additional Protocol to the RC Regional Convention on suppression of terrorism, 2004".
11. "Convention of the Cooperation Council for the Arab states of the Gulf on combating terrorism, 2004".
12. "Protocol to the organization of the African Union Convention on the Prevention and Combating of terrorism, 2004".
13. "Additional Protocol on Combating terrorism to the agreement among the Governments of the Black sea economic Cooperation organization Participating states on Cooperation in Combating Crime, in particular in its organized Forms, 2004".
14. "Council of Europe Convention on the Prevention of terrorism, 2005".

⁴⁹ United Nations, International Instruments related to the Prevention and Suppression of International Terrorism, New York 2008.

15. "Council of Europe Convention on Laundering, search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of terrorism, 2005."⁵⁰

16. Association of Southeast Asian nations, Convention on Counter-terrorism, 2007.

It shows that states are clearer on the definition of terrorism when they are dealing with it at the national level or the regional levels⁵¹ For example article 2 of Arab Convention against terrorism defines it as under:

*"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 jeopardize a national resources."*⁵²

Similarly, Convention of the Organization of the Islamic Conference on Combating International Terrorism in its article 2 has defined terrorism in following words:

*"Terrorism means any act of violence or threat thereof **notwithstanding its motives** or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States."*⁵³

The Shanghai Convention on combating terrorism, separatism and extremism, in its article 1 has defined terrorism as under:

"1) "terrorism": a) any deed recognized as a crime in one of the treaties listed in the Annex to the present Convention (hereinafter referred to as Annex), and as it is defined in this treaty; b) any other deed aimed at causing death of any civil person or of any other person not taking active part in hostilities in the situation of an armed conflict, or causing him a serious bodily injury, and causing a considerable material damage to any material object, as well as the organization, the planning of such a deed, assistance in its commitment, incitement to it, when the purpose of such deed due to its character or nature, consists in

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² The Arab Convention on the suppression of terrorism, 1998.

⁵³ Organization of the Islamic Conference (OIC), Convention of the Organisation of the Islamic Conference on Combating International Terrorism, 1 July 1999, Annex to Resolution No: 59/26-P.

intimidation of the population, breaching the public security or forcing state authorities or an international organization to commit any action or refrain from its commitment.”⁵⁴

However, while drafting universal covenant against terrorism states could not agree on the definition of terrorism. Even in international covenant against terrorist bombing the term, terrorism has not been properly defined. Hence, it shows that states are willing to fight terrorism, when it affects them directly, originating from their own domestic jurisdictions, or from the land of neighbouring countries but, at the same time states are willing to reserve the right to support terrorism in other countries. However, in modern world with the increase of human rights, common citizens are no more ‘political inferiors’. In such environment governments are increasingly adopting people centric approaches in various fields of governance. If in the field of combatting terrorism a victim centric approach is adopted then, fight against terrorism will become principally transparent and more effective.

7. Victim Centric Approach for Understanding Terrorism

The common civilian population, who might be or might not be politically active, suffers loss of life and property without any fault of their own. In recent past, the world has seen some big terrorist groups such as Al-Qaida, who killed thousands of people in New York on 9/11.⁵⁵ Killing people is not the only crime committed by the terrorists against innocent civilians; there are other crimes also such as mass rapes, sexual slavery and forced marriages etc. Boko Haram, a terrorist organization in Africa kidnapped many school-girls; raped them for several months and then forcefully married them to some of their terrorists.⁵⁶ Similarly, ISIS the deadly terrorist group captured vast territories in Iraq and Syria. Where they established a reign of terror. Many innocent non-combatant civilians were killed; women were raped, and pushed into sexual slavery. There were incidents when the captive Yazidi women were sold in the open markets by ISIS terrorists.⁵⁷ It is clear from the discussion that terrorism is ‘a use of violence against civilian population, for political motives’.

8. State Terrorism

On the other hand, in many States after losing in democratic elections, the ruling powers had tried to continue illegally, merely with the use of ‘blood and iron’ policy. This kind

⁵⁴ Regional Treaties, Agreements, Declarations and Related, Shanghai Convention on Combating Terrorism, Separatism and Extremism, 15 June 2001, available at: <http://www.refworld.org/docid/49f5d9f92.html> [accessed 3 November 2018]

⁵⁵ Quintan Wiktorowicz and John Kaltner “Killing In The Name Of Islam: Al-Qaeda’s Justification For September 11” *MEPR* Vol. X Summer 2nd (2003). Available at: <https://www.mepc.org/journal/killing-name-islam-al-qaedas-justification-september-11>

⁵⁶ Dionne Searcey, “Kidnapped as Schoolgirls by Boko Haram: Here They Are Now” *The New York Times* Apr.11, 2018. Available at: <https://www.nytimes.com/interactive/2018/04/11/world/africa/nigeria-boko-haram-girls.html>

⁵⁷ Ariel I. Ahram, “Sexual Violence and the Making of ISIS” 57-78 *Survival*, vol. 57 no. 3 (June–July 2015).

of unjustified use of State power to crush people's democratic mandate is just a form of State terrorism. In order to retain political power, West Pakistani rulers started mass atrocities on the civilian population in Bangladesh.⁵⁸ Similar acts were committed against the civilian population in Germany, during World War II.⁵⁹ In Yugoslavia, also violence was used against civilians by the outgoing regimes. In Rwanda too 'government supported militia' attacked innocent civilian population. In international law, the concept of crimes against humanity has developed to refer this kind of State atrocities. International criminal tribunals of Nuremberg and Tokyo prosecuted and convicted many perpetrators for committing crime against humanity.⁶⁰ ⁶¹ Before analysing whether terrorism should be treated as a crimes against humanity or not it is pertinent to discuss various particulars of concept of crime against humanity

9. Similarities and Differences in Terrorism and Crimes against Humanity

The concept of crime against humanity is also a situation where the perpetrators have launched a wide spread and systematic attack against a civilian population. If entire debate of crimes against humanity and terrorism is viewed from the perspective of victimisation of civilian population, then it is clearly noticeable that, terrorism and crime against humanity are overlapping concepts. According to general understanding, a rogue State commits crime against humanity against its own people, or against the civilian population of the overrun territories. Therefore, initially in Nuremberg charter the concept of crime against humanity was connected with the 'situation of war'.⁶² In the statute of Yugoslavia tribunal concept of crime against humanity was extended to attack on civilian population even during the non-international conflicts.⁶³ Further, in the statute of Rwandan tribunal concept of crime against humanity was delinked form the requirement of war or conflict.⁶⁴ Just an attack against a civilian population was enough. In the Rome, statute of international criminal court the concept of crime against humanity was further elaborated. A detailed list of crimes was drafted, which included, murder, rape, sexual

⁵⁸ Q. C. Niall Macdermot, "Crimes Against Humanity in Bangladesh" 476-484 *The International Lawyer*, Vol. 7, 2 (Apr. 1973). Available at: <https://www.jstor.org/stable/pdf/40704788.pdf>

⁵⁹ Steven T. Catz, "The Holocaust in Historical Context, Volume 1: The Holocaust and Mass Death Before the Modern Age" (New York: Oxford University Press, 1994).

⁶⁰ International Military Tribunal (Nuremberg), 1945. available at: <https://history.State.gov/milestones/1945-1952/nuremberg>.

⁶¹ International Military Tribunal for the Far East, 1946. available at: <http://lib.law.virginia.edu/imtfe/tribunal>.

⁶² Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, (1945).

⁶³ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1994).

⁶⁴ Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994. (hereinafter referred to as "The International Tribunal for Rwanda").

slavery or slavery, forced transportation etc.⁶⁵ But crime of terrorism was not added in the concept of crime against humanity. Dr. Roberta Arnold, Legal adviser, Swiss Dept. of Defence in Laws of Armed Conflict Section, in her article has analysed the scope of prosecuting terrorism as a crime against humanity. She has reached to a conclusion that all the acts of terrorists can be prosecuted under the offence of crime against humanity, if they qualify the thresh hold of being widespread or systematic.⁶⁶She argues that when acts of terrorism can be prosecuted under the crime against humanity, then there is no need of adding terrorism as a separate offence in the list of crimes within the scope of crimes against humanity.

International criminal court has started prosecution against some notorious heads of governments such as Laurent Gbagbo and Jean Pierre Bemba etc., for committing crimes against humanity against civilian populations of their own States.⁶⁷ Nevertheless, there are examples when the insurgents like Germaine Katanga, have committed crimes against humanity, and international criminal court, has prosecuted and convicted them.⁶⁸ This fact that insurgents can be prosecuted for crime against humanity has strengthened the proposition of Dr. Roberta Arnold; when insurgents and terrorists can be prosecuted for crime against humanity then there is no need of adding terrorism as a specific offence in the components of crime against humanity.

But this idea leads to a situation where a terrorist group has launched a single attack on the civilian population, but still it cannot be prosecuted under the head of crime against humanity. Or a terrorist organization is periodically launching lone wolf attacks or suicide attacks against civilian infrastructure facilities, such as destruction of bridges, railways stations, bombing of school buildings and parks etc., in order to inflict sense of fear and sorrow among the civilian population. But they cannot be prosecuted for committing crimes against humanity, if there are no killings associated to these acts. Or if, only once terrorists have killed few people by bombing or indiscriminate firing; then they are just destroying the public utility buildings; and citizens are under continuous fear of death in any possible terrorist attack. Then this act of keeping entire population under regular trauma and fear is also a kind of crime against humanity. People feel their lives are vulnerable and they are at the mercy of the terrorists. However, in such a scenario terrorists in the event of arrest or surrender will only be prosecuted for the offences of destroying public property or few murders. The sense of fear, which they wanted to generate among the surviving civilian population, was successfully generated, but still they cannot be guilty of crime against humanity. If unwanted use of excessive power by

⁶⁵The Rome Statute of the International Criminal Court, 1998. Available at: http://www.the-icc-cpi.int/EN_Menus/the-ICC/Pages/default.aspx.

⁶⁶Roberta Arnold, "The Prosecution of Terrorism as a Crime against Humanity" *MPICPLIL* (2004).

⁶⁷The Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/13.

⁶⁸The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06.

the armed forces can be regarded as terrorism and hence a war crime, then why the same act of terrorism cannot be an act of crime against humanity, when committed by terrorist in a non-conflict situations.

Crime against humanity when committed by the State power is generally mentioned as an act of State terrorism. In general, various political leaders also refer terrorism as a crime against humanity. It shows that terrorism and crime against humanity are generally referring to the same kind of acts of mass atrocities against the civilian population. Then what purpose will be served by adding the offence of terrorism under the head of crime against humanity. The terrorism, as an idea *per se* is an act, which will definitely lead to physical or mental attack on the people. Adding terrorism in the list of crime under the head of crime against humanity will bring the acts of bombing public or private properties or destroying religious or cultural buildings under the scope of international prosecution. In 2017, international criminal court has sentenced *Al Mahdi* under the head of war crimes for destroying religious buildings of Timbuctoo.⁶⁹ It was possible because in the Rome Statute, definition of war crimes has been extended to non-international conflicts also. Nonetheless, if terrorist attacks and their engagement in hostilities with the government of Mali were not of such a level which could be termed as non-international conflict. And Mr. *AL Mahdi* would have destroyed the same thousand year old mausoleums, which are considered as world heritage, by terrorist bombings as a lone wolf attack to kill the soul of inhabitants of Timbuctoo and to inflict a sense of fear among them, then Mr. *Al Mahdi* could not have been convicted by the ICC. As the act would not have qualified as war crimes and it would not have come under the head of crime against humanity, whereas it was an act which generated sense of grievance not only in the people of Timbuctoo or Mali, rather in the whole international community.

Analysing current definition of crime against humanity, it becomes clear that attack against a civilian population, should not be always in the nature of murder. It can be in the nature of “extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender; enforced disappearance of persons; the crime of apartheid”.⁷⁰

If apartheid and torture against a civilian population can be crime against humanity, then why keeping a whole community in a continuous fear of injury or death cannot be a crime

⁶⁹ *The Prosecutor v. Ahmad Al -Faqi Al- Mahdi* ICC-01/12-01/15.

⁷⁰ Article 7, The Rome Statute of the International Criminal Court, 1998. Available at: http://www.the ICC-cpi.int/EN_Menus/the ICC/Pages/default.aspx.

against humanity. Moreover, there are several terrorist tactics, such as destroying public infrastructure, taking hostages or hijacking etc., which cannot be prosecuted under any of the existing counts of crimes against humanity. In such a scenario, it will be useful if terrorism or terrorist activities as a separate offence are added in the components of crime against humanity.

Second opposition to this idea comes from those quarters who consider terrorists as freedom fighters, or who count use of force by the State against insurgents as an act of State terrorism. But this is the most weak argument, because concept of crime against humanity is not concerned with the status of the perpetrator or his motivation. Perpetrators of crime against humanity can be both State or non-State groups or individuals. Focus in the concept of crime against humanity is on the victims. If civilian population or non-combatants are victims then the act can qualify as a crime against humanity. From this angle, terrorism can qualify as crime against humanity because, in the acts of terrorism, targeted lot is always civilian population. Hence, terrorism can qualify as an independent head of crime against humanity.

If international community treats terrorism and terrorist activities as crime against humanity, it will open the doors of principle of complementarity and concept of universal jurisdiction. Then one State would be able to investigate and prosecute fugitive terrorists of any other State. This situation will be diametrically opposite to the present situation when terrorists of one State are getting safe heavens in other States, as they are treated as political asylum seekers.⁷¹ In a situation like Mumbai attacks of 26/11, treating terrorism as crime against humanity will make investigation and prosecution possible. Because in the example of Mumbai attacks Pakistan, due to its policy, is unwilling to investigate and prosecute those terrorists who are perpetrators of this attack. Even after lot of international pressure Pakistan is pursuing a sham investigation in the matter.⁷² On the other hand India is unable to investigate and prosecute the perpetrators of Mumbai attack as evidences and terrorists both are present in other criminal jurisdiction. In such a scenario, principle of complementarity will allow international criminal court to investigate and prosecute the perpetrators of Mumbai terrorist attacks. Treating terrorism as a crime against humanity will strengthen international community's fight against terrorism.

So, for possible impact of universal jurisdiction and principle of complementarity on the international terrorism has not been sufficiently discussed in legal academics. But there

⁷¹ Dorothee, and Niemann, Arne The Europeanisation of German asylum policy and the "Germanisation" of European asylum policy: the case of the "safe third country" concept. In: UNSPECIFIED, Montreal, Canada. (Unpublished) (2007). <http://aei.pitt.edu/8006/1/post-d-08g.pdf>

⁷² PTI, "India gives Pakistan 11th dossier on Mumbai attacks" The Times of India, June 18, 2010. Available at: <http://timesofindia.indiatimes.com/india/Indiagives-Pakistan-11th-dossier-on-Mumbai-attacks/articleshow/6064070.cms>.

are certain important questions which should be brainstormed upon while considering terrorism and terrorist activities as crimes against humanity. If terrorism is added as a specific offence in the definition of crime against humanity then whether it will have to qualify the threshold limit of widespread or systematic attacks against the civilian population? Or the concept of crime against humanity will be further modified to accommodate the offence of terrorism? If yes then in such a scenario, what kind of modifications will be required? The concept of crime against humanity has changed a lot to accommodate the dynamic nature of human brutality in last 75 years. Moreover, there is still no universally accepted covenant on crime against humanity. It is in the phase of evolution. Hence, it is pertinent to discuss this idea of terrorism as crime against humanity, from an intense legal and jurisprudential aspect, rather than emotive rhetoric. Terrorism is a serious offence against whole humanity, but still it is used as a label of political accusations. There is a need to chalk out common standpoints of international community on the concept of terrorism and the crime against humanity, and to identify the overlapping areas in both concepts. So, that the terrorism could be treated as a crime against humanity.

10. Conclusion

Crimes against humanity is such a concept which is victim centric. If there is an attack, with knowledge, against any civilian population, pursuant to organisational policy of any State or organisation, then that is considered as a crime against humanity. Whereas terrorism is also an offence which is in the nature of an attack against a civilian population, for getting political discounts from the government of the concerned State. However, terrorism most of the time has been discussed from the angle of perpetrator's motive, and generally it is tried to be confused with other kinds of political movements. Due to this perpetrator centric approach, so far, international community could not draft a universal definition of terrorism. This entire politics of keeping terrorism as a nebulous and ambiguous offence, can be perhaps understood in the backdrop of the fact that terrorism itself is an offence which is committed with political aims. But if terrorism is explained from the victim centric point of view, then all the ambiguities evaporate, because it is clearly in the nature of a systematic attack against the civilian population. Terrorism is always pursuant to organisational policy to instil, a systematic terror in the minds of the innocent civilians. Therefore always with knowledge as well as intention. In twentieth first century the world has witnessed several hundred of terrorist attacks. Now its high time to consider terrorism as a crime against humanity, applying victim centric approach. So, that terrorism is met with a more effective response in the terms of investigation as well as prosecution, applying principles of complementarity and universal jurisdiction.