# TERRORISM AS AN INTERNATIONAL CORE CRIME WITH ITS OWN "ACTUS REUS" AND "MENS REA"

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**Abstract**

The International Criminal Court, established in 1998 as the first permanent international criminal court has jurisdiction over four international core crimes (i.e. Crimes against Humanity or War Crimes, Genocide, Crimes of Aggression), but as yet not over the crime of terrorism. This article is to make sense of a new definition on Terrorism under its specific actus reus and mens rea. The main goal of this definition is to emancipate the crime of terrorism from other international core crimes before national criminal courts and the International Criminal Court. This rhetoric step strongly will contribute to efficacy of the role of the International Criminal Court to try terrorists under its own jurisdiction for committing the core crime of terrorism. In order to sketch a clear picture of the article, first, a descriptive explanation is laid out, second, a new sense of a definition on terrorism is rendered, and third, a comparative analysis of the crime of terrorism with other international core crimes is conducted to mention how different these crimes are from each other in terms of "actus reus" and "mens rea".

**Contents**

## I. INTRODUCTION

Concurrent with the formation of the societies and authorities, there have always been oppositions directed toward either the authority itself or some norms created by the authority. Sometimes the form of the opposition have been violent and non-peaceful driven by strong beliefs that are backed by whether casuistry or non-casuistry set of rules or such as religious or political rules. "Extremist is a label used for those individuals or groups, who generally resort to violence in order to impose their beliefs, ideology or moral values on others"[1].

Throughout the history, various definitions on terrorism were released based on the specific identity of the perpetrator, whether it were a State entity or a non-state opposition against States. The terminology of such definitions trace back to the concepts of terrorism during of the 1789-99 French revolution and afterwards[2]. During the 1793-74 "Regime de

[1] B. Huma, Extremism and Fundamentalism: Linkages to Terrorism Pakistan's Perspective, International Journal of Humanities and Social Science, Vol. 1 No. 6; June 2011, pp. 242-248, Page. 242
[2] See M. Crenshaw, Terrorism in Context, Penn State University Press, (1995), Page. 77

la terreur" of the French revolution, tens of thousands of people were killed by the "Committee of Public Safety" for reasons of "public safety"[3]. Following the widely accelerated repression, "Thermidorian reaction"[4] group combatting with the committee of the Public Safety, executed several leading members of the revolutionary government triggered by vote of the National Convention. What all of the definitions on terrorism have in common is the creation and inculcation of terror within a population or part of that[5]. In other words, terrorists take up arms, whether in national or international plane, to pursue their beliefs through inculcating a formidable terror.

In today's world of technological booms, terrorists have been armed to the most devastating armament called Weapons of Mass Destruction (WMD) that once launched leaves no moment for deliberation for the victim population since it occurs instantly and overwhelmingly[6]. Simultaneously, national and international communities have tried to control and confront terroristic movements by repelling, quelling or quashing terrorism through the means legally recognized either by statutory or customary international law such as Article 2(4) of the United Nations Charter on the Use of Force or Article (51) of the UN Charter on the inherent right of self-defense..

Recently occurred terroristic attacks such as those conducted by so-called Islamic State, Al-Qaeda or extremist troop of Buddhism killing Muslims in Myanmar, and etc., is indicative of international law's insufficiency and incapability in effectively combatting terrorism. This is why the "two principal issues that arose following 9/11 attacks were first, how could the terrorist attacks and the subsequent responses to those attacks led by the US and its allies be characterized under international law? Second, was existing international law adequate to deal with the threats posed by terrorist organizations like Al-Qaeda or was

[3] See D. Greer, The incidence of the terror during the French Revolution: a statistical interpretation, No. 8, Harvard University Press, (1935)

[4] The Thermidorian Reaction was a coup d'état within the French Revolution against the leaders of the Jacobin Club who had dominated the Committee of Public Safety. Thermidorian Reaction also refers to the remaining period until the National Convention was superseded by the Directory; this is also sometimes called the era of the Thermidorian Convention.

[5] See C. Walter, Terrorism as a Challenger for National and International Law: Security Versus Liberty? Vol. 169. Springer Science & Business Media, Vol. 169, (2004)

[6] See K. Chainoglou, Reconceptualizing Self-Defense in International Law, King's Law Journal /18.1 (2007), pp. 61-94

there a need for new responses?"[7] So, an infrastructural modification over the definitions on terrorism is a preliminary prerequisite in proactively combatting terrorism. In other words, international law and its institutions will not be able to effectively suppress terrorism unless a clear and structured picture and definition of the crime of terrorism is rendered.

## II. TERRORISM, POLITICS, AND INTERNATIONAL LAW

"Terrorism is a complex and highly pervasive global concern which continues to threaten international community"[8]. In making policies on how to define terrorism and how to confront with that, politics has known to have the most predominant effect. This state of affairs has been the aftermath of a school of thought that considers international law subordinated to politics. This becomes much vivid through the words of Dr. Pendas":

> *"Law is a form of politics, not just in the obvious sense that it is based on statutes and treaties created through political processes, but in the more specific sense that trials are political acts; certainly the kinds of war crimes and human rights tribunals under consideration here are deeply and inevitably political. The question is what kind of politics they pursue"*[9].

When the issue comes to politics scholarship on terrorism, one can find no stringent and widely accepted political definition on that. The reason for this is nothing but the fact that Politicians have taken their self-interested political interests into account in defining major concerns of the world such as the crime of terrorism. In the wake of this, more recently, "the concept of War against Terrorism was coined by politicians to justify the use of military force to track down terrorist suspects"[10].

[7] D.R. Rothwell, Anticipatory Self-defense in the Age of International Terrorism, the University of Queensland Law Journal, Vol. 24 (2005), pp. 337-353, Page. 345
[8] J.A. Carberry, Terrorism: A global phenomenon mandating a unified international response, Indiana Journal of Global Legal Studies (1999): 685-719. Page. 685
[9] D. O. Pendas, War Crimes Trials: Between Justice and Politics, Tulsa Law review, (2013), Vol. 49: pp.557-568, p. 558
[10] R. Arnold, the Prosecution of Terrorism as a Crime against Humanity, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, ZaöRV 64 (2004), pp. 979-1000, Page. 979

One of the examples of pretty much politicized definitions on terrorism is the one offered by the US Department of Defense. According to the US Department of Defense, terrorism is "The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological[11]. The definition differentiates lawful violence from unlawful violence or threats of unlawful violence but fails to illuminate what the lawful violence is. Moreover, the definition refers to the "Use of Force" but fails to specify what it means by that; does it refer to article 2 (4) of the UN Charter?, or it makes sense of an autonomous and national definition of the "Use of Force". If the latter is the case, the question is whether such an autonomous definition of the legitimacy of a violent act or threat overrides the rules of international law.

Under the overwhelming influence of political thoughts in defining the phenomena of terrorism, international law and its institutions failed to give an independent, well-ordered definition on terrorism. Some of the examples of incongruent approaches towards terrorism rendered in international law are as follows.

### A. The Special Tribunal for Lebanon

The Special Tribunal for Lebanon has been established with the aim to investigate the February 2005 bombing attack in Beirut that killed the then Prime Minister of Lebanon Rafiq Hariri. The STL is bound by its Statute to define the crime of terrorism which is addressed in its trials under the Lebanese Criminal Code. However, the judges decided to read the Lebanese law in the context of "international obligations undertaken by Lebanon with which, in the absence of very clear language, it is presumed any legislation complies"[12]. So, they have offered a global definition on terrorism that includes the following elements;

> *(i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the*

[11] Department of Defense Dictionary of Military and Associated Terms, Joint Publication, Department of Army and Department of Navy, United States of America, 8 November 2010 (As amended through 15 August 2014), JP1, Page 255

[12] STL, Prosecutor v. Ayyash et al., Case Nor. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, (Feb. 16, 2011), paras. 20, 41.

*intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element*[13].

According to Article 314 of the Lebanese Criminal Code, the prerequisites of a terroristic act are; the perpetrator must intentionally, by taking up the weapons that are "capable of engendering public danger"[14], cause a state of terror. The Lebanese courts took a weapon (tool)-oriented approach into consideration in order to render a much narrower interpretation on the crime of terrorism. By doing so, the scope of the definition was therefore in Lebanese jurisprudence, limited to weapons capable of causing terror. The first concern of the court was the fact that the weapon-oriented definition of terrorism is quite inefficient to meet the transnationality aspects and challenges of globalization. The other critical concern was that the Tribunal lacked interpretation of customary-charter international law in defining the crime of terrorism[15].

Afterwards, Appeals Chamber insisted that the international customary-charter interpretive guideline is of an indispensable importance, and therefore, should be used also in national proceedings. It further maintained that resorting to national criminal provisions before an international tribunal should have some limitations, especially where the application of the national law appears to be unreasonable, or may result in injustice.

### B. Art. 1(1) of the EU-Council Framework Decision of 13 June 2002 on combating terrorism[16] (2002/475/JHA)

According to the approach adopted by the EU Council Framework Decision 2002, a wide range of actions like attacks against physical integrity, kidnapping, releasing dangerous

[13] Id, para. 85
[14] Id, para. 147
[15] Surprisingly enough, the Pre-trial Judge rejected international aspect in defining and prosecuting the crime of terrorism arguing that Lebanese criminal code did not authorize using other sources of law in sketching a holistic definition of the crime of terrorism. But afterwards, it was again refuted by the Appeals Chamber.
[16] Article 1: "Terrorist offences and fundamental rights and principles":
1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of:
- Seriously intimidating a population, or

substances, even researching into biological or chemical weapons and other actions may constitute "actus reus" of the crime of terrorism if these actions result in one of these consequences; seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization. So, the EU Council's approach toward the definition of terrorism is a result-based one. So, based on this decision, a specific result brought about by a specific act of terror is the basic element of the crime of terrorism.

The other important point is that this definition also embraces non-violent terrorism. For instance, conducting research on biological and chemical weapons or Weapons of Mass Destruction, when a perpetrator uses the information gathered by this research for violent acts, is considered as an act of terrorism. In such instances, the researcher is persecuted as a terrorist for aiding and abetting terrorism because he, by his act, provides the know-how of a terroristic movement. So, this definition embraces abettors and perpetrators in a same weight as if their contribution to a terroristic act were of a same effect. Are these acts, in their nature, of an equal criminal weight? Is the assistant as guilty as the violent perpetrator?

- Unduly compelling a Government or international organization to perform or abstain from performing any act, or
- Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization,

These shall be deemed to be terrorist offences:
(a) Attacks upon a person's life which may cause death;
(b) Attacks upon the physical integrity of a person;
(c) Kidnapping or hostage taking;
(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
(e) Seizure of aircraft, ships or other means of public or goods transport;-
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(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
(g) Release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
(h) Interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
(i) Threatening to commit any of the acts listed in (a) to (h).

### C. Article 2 of the International Law Commission Draft for a Comprehensive Convention against International Terrorism

The approach adopted very much reminds the above-stated EU-Council Framework Decision on 13 June 2002. According to this definition, firstly, the crime of terrorism is considered a result-based crime stating; "any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes: …"[17], with the special intent of inculcating fear within a population, or to compel a Government or an international organization to do or to abstain from doing any act. Secondly, the responsibility of the non-violent abettor and the violent perpetrator is not considered of the same criminal weight unlike the EU Council Framework Decision 2002.

Although the ILC's draft has amended the conceptual gap of not differentiating an offender from an abettor in weighing criminal responsibility, but another critique that has yet to be addressed, is the criminal title of each. The crime of terrorism is tried before the International Criminal Court under the title of another international core crimes. This assimilation, as will be discussed in the following paragraphs, lacks the least conceptual backbone. In other words, defining all four definition of the international core crimes together with the crime of terrorism, one can easily find out that any assimilation between terrorism with any of international core crimes is conceptual oversight.

## III. THE CRIME OF TERRORISM

As argued before, in the wake of politicized self-interested interpretations on the crime of terrorism, there has been no universally accepted legal definition of terrorism. So, the main effort of this paper is to resort to core lessons of criminal law on criminal elements of a criminal act (i.e. actus reus and mens rea), and make sense of a tenable concept of the

[17] Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:
(a) Death or serious bodily injury to any person; or
(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or
(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss;
When the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

crime of terrorism. Terrorism may, in its nature, be understood as a kind of an organized crime that directly victimizes the global collectivity of all human-beings for the sake of the terrorist's specific political, ideological or religious targets.

Basically, this paper is to elaborate on the criminal elements of the crime of terrorism. A person or an organization cannot usually be found guilty of a criminal offence unless two elements are evidenced: an actus reus, Latin for guilty act, and mens rea, Latin for guilty mind or the mental attitude[18]. So, "before a person may be convicted of a crime, the prosecution must demonstrate that a certain event or state of affairs forbidden by the criminal law has been caused by the actor's conduct (actus reus), and that this was accompanied by a fault element derived from the wrongdoer's state of mind (mens rea)"[19].

A. **Actus Reus**

"The core element of criminal liability is some form of prohibited conduct. Usually this prohibited conduct is reflected in a wrongful act. Identifying an act is therefore a key task for the prosecution"[20]. This prohibited conduct is called actus reus. Terrorism contains a state of act that succumbs to creation of a formidable sort of terror within a population. So, the crime of terrorism is committed by any kind of tool provided that it brings about a large amount of terror within a population.

The main pillar of the actus reus of the crime of terrorism is that terrorism is a "result-based" crime. The specific result of this crime is the creation of a large amount of terror among a population. So, the actus reus of the crime of terrorism is comprised of the first, committing a crime and second, the specific result arisen aftermath. Given this, both the violent and non-violent terrorism are included and the actus reus of the crime of terrorism embraces both violent and non-violent sort of terrorism. For terrorism, in this viewpoint, is a result-based crime and the weapon or tool used by the perpetrators is not of a determinative importance.

[18] See C. Elliott and F. Quinn, Criminal Law, Pearson Education Publication, 10th Edition, (June 2014)
[19] M.E. Badar, The concept of Mens Rea in international criminal law: The case for a Unified Approach, Bloombury Publishing, (2013), Page. 31
[20] W. Wilson, Criminal Law, University of London Publication, (2013), page. 19

The other important issue is that terrorism can be committed either by rogue states or by state-sponsored troops or by independent terroristic organizations or even individuals. So, the entity of the perpetrator of the crime of terrorism is not of a determinative significance. Besides, no preparatory action can be named a terroristic act unless it makes a large amount of terror. So, any conduction which does not sound a complete act of terrorism, cannot be named as a terroristic act and perhaps can be named an "Attempted" act of terror. "Attempt" occurs when the perpetrator of a criminal act comes very close to carrying out a criminal act and intends to commit it but because of an obstacle out of his intension, cannot conduct the crime completely. In this state of affairs, if the act, in its weight, is tantamount to any other international core crime, it can be attached to that, and if not, it can be named as the attempted crime of terrorism. According to the philosophy of punishing the attempted crime, "the legislature could choose specifically not to proscribe the attempt to commit a crime defined, but in the absence of an explicit statement to that effect, by defining the crime the legislature grants the state the power to punish also for the attempt"[21].

B. **Mens rea**

Mens rea or "guilty mind", marks a central distinguishing feature of criminal law. The criminal liability also needs a particular state of mind of the perpetrator(s), in addition to the specific actus reus[22]. The mens rea of the crime of terrorism is a special "intention to create a large amount of terror". For instance, if a person unintentionally inculcates fear into a society, his or her action, in its nature, can be tried in criminal and civil domestic courts, neither for the crime of terrorism nor for an attempted crime of terrorism, but rather for negligence or for the titles defined in tort law.

It should be borne in mind that "mens rea is defined to exclude negligence, and, of course, the quite innocent conduct that is subjected to strict liability"[23]. So, the concept of criminal intent is completely different from motivation, desire, and belief[24]. In defining mens

[21] See G. Yaffe, Trying, Acting and Attempted Crimes, Journal of Law and Philosophy, ISSN: 0167-5249, Vol. 28, issue. 2, (2009), pp. 109-162, Page. 69

[22] The exception to this rule is a small group of offences known as crimes of strict liability.

[23] J. Hall, General Principles of Criminal Law, the Lawbook Exchange, Ltd, (2005), Page. 3

[24] See B.F. Malle, S.F. Nelson, Judging Mens rea: Tension between Folk-concepts and legal concepts of intentionality, Behavioral Science and the Law, Vol. 21, (2003), pp. 563-580

rea of the crime of terrorism, motivation, desire, and belief have no place of importance[25]. The religious or political extremists have specific motivations and incentives to commit violence in national and international levels, but these are not defined as conceptual context of the mens rea element of the crime of terrorism[26].

## IV. THE INHERENT DISSOCIATION BETWEEN INTERNATIONAL CORE CRIMES AND THE CRIME OF TERRORISM

The only way to prosecute terrorism before ICC is to prosecute it as War Crimes or Crimes against Humanity. If terrorism is attached to War Crimes, according to the wording of the Article (8) of the 1998 Rome Statute, it can only be considered in the context of an armed conflict. If however, Terrorism is addressed under the category of Crimes against Humanity, the ICC will have jurisdiction over the crime of terrorism committed during the peace time. Transparently enough, within this frame, the concept of terrorism is quite uncertain.

### A. **War Crimes**

War crimes is a serious violation (grave breach) of International Humanitarian Law which governs the conductions during an armed conflict[27] (law of war). So, war crimes cannot be occurred unless it is committed in the time of an armed conflict. The resources of the International Humanitarian Law are: The Hague Conventions in 29 July 1899 and 18 October 1907, the 1949 four Geneva Conventions and two attached protocols in 1977.

The evolution of the definition of the War Crimes, in different Ad hoc courts, were diverse. For instance, in the article (3) of the ICJY statute, article (4) Rwanda's statute and article (6) of the Nuremberg statute, a non-exclusive approach was put into force stating that

[25] Many writers has placed importance on motivation which is not acceptable according to the findings of this research. for instance, see J.S. Hudgson and V. Tadros, The impossibility of Defining Terrorism, New Criminal Law Review, Vol. 16, No. 3, Summer 2013, pp. 494-526, p. 499

[26] Evaluating Fundamentalist terror is that of importance in today's international law. There are three main sorts of Fundamentalism. 1st and the most overwhelming one is Fundamentalism derived from various religions, 2nd, Fundamentalism emerging from very different societies and 3rd, derived from different political causes they are associated with. All in all, the term usually has religious connotation and mostly, these obligatory concepts are ordered within religious statutes.

[27] jus in bello

war crimes are the grave breaches of the laws and customs of laws of war[28]. Conversely, the actus reus of the War Crimes have exclusively been stated in the wording of the article (8) of the 1998 Rome Statute which is the mere valid statutory wording of the War Crimes. The other important thing regarding the actus reus of the war crimes is that war crime is a kind of circumstantial crime. The specific circumstance of War Crimes is that this crime could only be perpetrated through period of an armed conflict, whether it be in national or international plane.

The actus reus of the crime of terrorism is different from that of war crimes. The reasons for this purport are the following; first, the crime of terrorism is not a circumstantial crime, rather is it a result-based crime. Second, the actus reus of the crime of terrorism is interpreted non-exclusively and therefore, it even includes non-violent terrorism in case it results in a large amount of terror. Third, War crimes can be perpetrated only by the militants or non-militants which are linked to military groups[29]. This is the approach accepted and conducted by international criminal courts in trying war crimes[30]. Conversely, terrorism can be perpetrated by anyone including, States, non-state troops, individuals and etc.

Furthermore, the mens rea of war crimes is quite different from that of terrorism. The special intention of a war criminal is to commit a grave breach of International Humanitarian Law. Also, war crimes can be conducted in negligence. For instance, if a commander-in-chief is aware of occurring a war crime under his leadership and connives, his action, in its nature, is a war crime. Conversely, terrorism cannot be conducted in negligence. In other words, the special inkling of making a large amount of terror (the mens rea of the crime of terrorism) cannot be put under the concept of negligence.

Because of the aspects stated above, regarding the actus reus and mens rea of war crimes, the inherent dissociation between the crime of terrorism and war crimes is undeniable. Therefore, trying terrorism before ICC under the title of war crimes could result

[28] For instance the article (4) of Rwanda's statute includes: "The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to: …"
[29] See A. Cassese, International Criminal Law, oxford publication, second edition, 2008. p. 82
[30] See K. Kittichaisaree, International Criminal Law, oxford publication, third edition, (2005), p. 133-134

in a much more inefficient, unsystematic, and passive posture of international criminal law in combatting terrorism.

B. **Crimes against Humanity**

Crimes against Humanity was first defined in the 1915 pronouncement among England, Russia and France in condemning the slaughter of Armenian people by Ottoman Empire. After the Second World War, it was recognized as one of the three major international crimes parallel to crimes against peace and war crimes in the Nuremberg and Tokyo international courts. Afterwards, the 1948 Genocide Convention separated the Crimes against Humanity from war crimes, and considered it as an independent core crime since it could be committed within the peace time as well as the conflict time. This separation was for the sake of better protecting Human rights[31]. According to the professor Cassese, the reason in criminalizing the war crimes is reciprocity, but the reason for criminalizing the Crimes against Humanity is protecting Human Rights[32].

The actus reus of the Crimes against Humanity are the ones specified exclusively in the article (7) of the 1998 Rome Statute. Moreover, according to the article (7) of the Rome statute, the actus reus of these crimes are circumstantial. There are two circumstances necessary for calling an action as Crimes against Humanity; first, Crimes against Humanity are the ones conducted in an organized (systematic) and widespread manner, second, they are directed against a civilian population.

The mens rea of the Crimes against Humanity, that is the specific knowledge and awareness of the perpetrator, is unequivocally stated in the article (7) of the Rome statute. So, the awareness and knowledge of the perpetrator that he, by his conduction, commits an organized crime in a widespread manner against a civilian population must be discerned by national or international criminal courts.

[31] See P. Hasan, International Criminal Law, Jungle Publication, 4th edition, (2012), p. 258 (in Persian) Also, see K. Kittichaisaree, International Criminal Law, oxford publication, third edition, (2005)
[32] See A. Cassese, International Criminal Law, oxford publication, second edition, (2008), Page. 99

Some scholars have supported the idea of attaching terrorism to Crimes against Humanity, but they have failed to investigate criminal elements of each[33]. As described above, the actus reus and mens rea of the Crimes against Humanity are pretty much different from those of the crime of terrorism. Therefore, attaching terrorism to crimes against humanity is conceptually untenable.

C. **Genocide**

Genocide has been considered as the most irritant shape of the crimes against humanity. This fact has persuaded international law to consider this crime as an independent core crime based on its specific mens rea. "In 1948, the United Nation's General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) which first defined the crime of Genocide"[34].

According to the article (6) of the 1998 ICC's Rome statute, the actus reus of this crime is enumerated in an exclusive manner. But what makes this crime a distinguished one is the specific mens rea stated in the article (6) of the Rome statute stating; "Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group…"[35]

The actus reus of the crime of Genocide is enumerated exclusively in the wording of the article (6) of the 1998 Rome Statute, while actus reus of the crime of terrorism is, in its nature, a non-exclusive one. Besides, another major difference between terrorism and Genocide is the specific state of mind or mens rea of the perpetrator. The mens rea of the crime of Genocide is the special intension of destroying, in whole or in part, a national, ethnical, racial or religious groups, while the mens rea of the crime of terrorism is the special intension of creating a large amount of terror within a population by any means.

[33] See R. Arnold, The Prosecution of Terrorism as a Crime Against Humanity, ZaöRV 64 (2004), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp. 979-1000
[34] W. D. Rubinstein, Genocide: A History, Pearson Education, 2004, p. 308
[35] Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

D. **The Crime of Aggression**

"In June 2010 in Kampala, Uganda, the States party to the International Criminal Court agreed to make amendments to the Rome Statute and bring the Crime of Aggression to the court's jurisdiction, beginning from 2017"[36]. As described in the Rome Statute amendments, the crime of Aggression is essentially the offense of use of force against another state without justification under international law. Justification of any resort to violence in International Law as a procedure of self-help was called "bellum justum".

There have been debates over the extent to which resorting to "Use of Force", article 2 (4) of the UN Charter is justified, and also, on the issue of Self-defense stated in the article 51 of the UN Charter[37], and narrow and broad interpretations offered by States over the concept of Self-defense[38]. "Article 2(4) of the UN Charter places some limitations on the use of force by States in the everyday conduct of their international relations, without however going so far as to prohibit States from maintaining standing armies for purely defensive purposes"[39]. If a State uses military force, and by doing so aggresses the territorial integrity of another State, without resorting a justificatory mean such as the right of Self-defense, it can be prosecuted for committing the crime of Aggression. This is why "the crime of Aggression is extremely controversial"[40].

The actus resus of the crime of Aggression is the unlawful Use of Force, committed by one State against another State. In the light of this, the perpetrator and also the victim of the crime of Aggression are limited to States. The mens rea of this crime is an intentionally unlawful use of force. Taking into a comparative consideration over the criminal elements of the crime of terrorism and those of the crime of Aggression, one can find out that there is a conceptual dissociation between them. First, the crime of terrorism can be done by any

[36] M.P. Scharf, Universal Jurisdiction and Crime of Aggression, Harvard International Law Journal, Vol, 53. pp. 357-389, p. 358
[37] See L. Van Den Hole, Anticipatory Self-Defense Under International Law, 2002-2004. Int'1 L. Rev, 71. pp.70-106
[38] See N. Ronzitti, The Expanding Law of Self-Defense, Journal of Conflict and Security Law, 11:3, 2006. Published by Oxford University Press, 343-359
[39] D. Rothwell, Anticipatory Self-Defense in the Age of International Terrorism, 2005, 24 U. Queensland L.J. 337-353. Page, 337
[40] M.P. Scharf, Universal Jurisdiction and Crime of Aggression, Harvard International Law Journal, Vol, 53. pp. 357-389, p. 359

type of entity, while the potential perpetrator of the crime of Aggression is merely States. Second, the mens rea of the crime of terrorism is the intention to inculcate fear within a population, while the mens rea of the crime of Aggression is the special intention to encraoch Victim State's territory.

## V. CONCLUSION

The crime of terrorism must be defined on the basis of its own actus reus and mens rea, the same as other international core crimes defined in 1998 Rome Statute of the ICC. The actus reus of the crime of terrorism can be conducted by any means, even in a non-violent manner, but it is basically conditioned to specific result of creating and inculcating a large amount of terror into a population whether in national or international plane. The mens rea of the crime of terrorism is the special intension of making a large amount of terror into a population. Special motivation of fundamentalists or any sort of a terroristic troop is not of a determinative importance in defining the mental element of the crime of terrorism.

If the independent crime of terrorism, with its own actus reus and mens rea, is brought to the jurisdiction of domestic courts as well as International Criminal Court, it will succumb to indispensable benefits; first, defining terrorism as an international core crime would decrease war creation in international community. In detail, without any legally tenable concept of the crime of terrorism, States will continue labelling other States as rogue States. Subsequently, they will find war as the best and requisite response in confronting with terroristic troops or so-called rogue States. Second, separately bringing the crime of terrorism to the ICC's jurisdiction will help national and international laws confront with terrorism in a non-belligerent systematic manner under the core lessons of criminal law. Third, because of the ICC's principle of the complementarity, systematically confronting terrorism under the core lessons of criminal law would promote global uniformity and collectivity in suppression of terrorism to a great degree.