

Chapter 80

Jus in Bello and the Acts of Terrorism: A Study

Mohammad Saidul Islam

Department of Law, International Islamic University Chittagong, Chittagong, Bangladesh

ABSTRACT

Terrorism is a big threat to international peace and security. The rapid and substantial development of terrorist groups across the globe has highly complicated the application and implementation of the international humanitarian law. People have been facing this heinous violent act from time immemorial, but recently it has increased enormously. This study presents the legal and conceptual reasoning and justifications of the act of terrorism as an armed conflict. It also examines whether it is an international armed conflict or non-international armed conflict where the international humanitarian law can be applied.

INTRODUCTION

The development of science and technology and the simultaneous evolution of various non-State actors have significantly changed the features of the weapon systems and strategies of warfare. Now many new means and methods of warfare namely cyberattacks, terrorism, drone, automated weapons have entered into the armed conflict. Terrorism effects not only on the individual but often it has a grave impact on the life of a nation. The armed attacks by the non-State actors across the globe are substantially liable for most of the contemporary armed conflicts either international or non-international in nature

The victim States, to combat those terrorist groups, are recently using many technologically developed weapons which were absent in the last decade of the 20th century. These terrorist attacks and counter-attacks by the new weapons are fully vitiating the main purpose of IHL.

Terrorism is not a new phenomenon. From time immemorial to date people has been facing this violent act. Recently a large-scale act of terrorism has entered into the armed conflicts. In 2016 nearly

DOI: 10.4018/978-1-7998-2466-4.ch080

daily terror attacks have held all over the world from France to the United States to Iraq and everywhere in between (Dorell, 2016). The severity of these acts of terrorisms in most of the cases crosses the level of armed conflict. These frequent terrorist attacks have enforced the world communities to take initiatives to eradicate terrorism. As part of these efforts, plenty of international and regional conventions have already been adopted, and numerous international organisations are taking continuous measures in this regard. These initiatives lack the proper definition of terrorism and application of IHL in the terrorism and counter-terrorism. This study is an initiative to explore the problem regarding the application of IHL in the terrorist attacks.

THE CONCEPT OF TERRORISM

The killing of Jean-Louis Barthou, French Statesman and King Alexander of Yugoslavia in 1934, and many other incidents of terrorism at the beginning of 19th century inspired the League of Nations to frame a convention defining Terrorism- the Convention for the Prevention and Punishment of Terrorism (CPPT) 1937 (Maogoto and Mac Carrick, 2010: 6). The CPPT defined terrorism as “criminal acts directed against a State and intended or calculated to create a State of terror in the minds of particular persons, or a group of persons or the general public (Art.1.2, CPPT).” This courageous initiative to define terrorism by CPPT never came into force but it paved a platform for future discussion on terrorism by the United Nations and other regional and international organisations from legal and political perspective (Ruperez, 2006: 2). Yet this lack of universally accepted definition of terrorism created a hurdle to take a strong and unified stance against the terrorism (Setty, 2011: 7) and this convention could not play any effective role to reducing terrorism and counter-terrorism leading to gradual increase of terrorist attacks and the modern terrorism largely came into being after the Second World War (Roser, Nagdy and Ritchie, 2018).

The decolonization and liberation of most of the fighting States, after the establishment of the United Nations in 1945, contributed to reduce the terror violence in the world but in the 1970s, new ethnic groups and ideologically motivated groups came into existence with big tension for peace-loving countries. These groups engaged in the armed conflicts with governments or State and started to use terror violence against civilians or other protected persons and objects with a view to achieving their goals. For example, random aircraft hijacking, e.g., some 121 aircrafts were hijacked for the period from January 1948 through the beginning of September 1969 (Evans, 1969: 697), again kidnapping and assassination of nine Israeli athletes by the Black September terrorists from the Munich Olympic Games in 1972 (Combs, 2012: 27), and hijacking the Air France Flight in 1976 (Francis, 1982: 32).

In response to these massive assassinations, kidnappings, attacks on the mass gathered civilians, aircrafts hijacking, suicide bombings, the international community reacted against it with the adoption of a series of global and regional conventions. Twelve international conventions on terrorism were adopted under the auspices of the United Nations and its specialised agencies, i.e., “Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963”, “Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970”. Not surprisingly, there are also nine regional conventions which are more successful to define the term “terrorism” in comparison to universal conventions, for example, “Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance,” “SAARC Regional Convention on Suppression of Terrorism, 4 November 1987” and others. These sufficient numbers of regional and international conventions could not give a comprehensive definition of terrorism.

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