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## **FIGHT AGAINST TERRORISM WITHIN THE RULES OF INTERNATIONAL LAW AND CROATIAN LEGISLATIVE RESPONSE**

### **Abstract:**

At the end of the 20th and the beginning of the 21st century terrorism was recognized as one of the most dangerous phenomenon for international community, as well as for the national security of state(s). That period was marked by an expansion of legal norms aimed to the suppression of terroristic activities. It was shown as necessary to develop a system of domestic measures for fighting terrorism, which could be adequately used within the system of global and regional cooperation of states worldwide. The United Nations and regional organizations have become significant players in the global and regional effort to eradicate terrorism.

Nevertheless, there is no internationally accepted definition of terrorism. In practise, the term is used to describe both violence perpetrated by a state, and violence perpetrated by individuals of non-state actors, during the time of armed conflict and the time of peace. It is understood as relating to politically motivated violence perpetrated to cause death or injury to civilian, with the aim of intimidating a wider audience. These (internationally described) elements are largely reflected in national laws.

The legal framework against terrorism of the Republic of Croatia – the newest member of the European Union – includes relevant international and regional documents and provisions of national legislation. At national level Croatia uses wide-ranging legislation in order to cover different aspects of suppression of terrorism. Activities in the field of criminal law within the frame of Croatian Criminal Code are especially important. The Criminal Code sets out the offenses that criminalize various forms of terrorism. Besides the criminal offense of terrorism, financing of terrorism and terrorist association, in Croatian substantive criminal legislation the offenses of public provocation to terrorism, recruitment for terrorism and training for terrorism are also integrated. With the adoption of these criminal offenses the national criminal legislation was completely harmonized with relevant international and regional documents.

### **Keywords:**

fight against terrorism, international law, Croatia

*“Nothing can justify terrorism. No grievance or no cause can justify terrorist acts. But terrorism thrives when conflicts continue to simmer, or where rights are systematically violated, or where discrimination is institutionalized, or where there are few prospects of a secure and stable livelihood. Our shared challenge is to ensure that terrorists do not find fertile ground to promote hate and intolerance.”*

UN Secretary-General Ban Ki-Moon, June 11, 2014

## 1. Introduction

At the end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century terrorism was recognized as one of the most dangerous phenomenon for international community, as well as for the national security of state(s). That period was marked by an expansion of range of measures aimed to the suppression of terrorist activities, both by international community and single states. Legal measures are just a part of those accepted and implemented. Without any doubt – there are many spheres that have no lesser role on this field, such as an education, culture, media, etc. It was shown as necessary to develop the complete system of domestic measures for fight against terrorism, which could be adequately used within the system of global and regional cooperation of states worldwide. The United Nations (UN), its General Assembly and Security Council, as well as the regional organizations have become significant players in the global and regional efforts to eradicate terrorism.

In its essential – terrorism is a pure violence. It kills, erodes the quality of life, prevents or jeopardizes the enjoyment of human rights, endangers democracy, weakens the economy, polarizes the political scene... and invites the revenge. (Diaz-Paniagua, 2008, p. 40) Terrorism is not common act of violence, impulsive and unthinking performance; it is methodical and serious form of rational criminality. Terrorists always know what they. Their performances are always deliberate and directed to provoke the sense of fear and insecurity; (Derenčinović, 2002, p. 3) they create a state of terror in the general public, a group of persons or particular persons for political purposes, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them. (Measures to eliminate international terrorism, 1994, para. 3) In (too) many cases civilian victims are inanimate, nameless and usually randomly chosen; as regards of terrorists they are considered as “transmitters” through which they send their “messages”.

With time, the word “terrorism” began to take a legal life of its own. Nevertheless, terrorism is not a simple challenge to deal with. This is partially connected with various manifestations of crime itself, which have been changing through the years and comprise existence of many forms. As Derenčinović emphasized – from nationalist, ethnocentric, left-orientated terrorist organisations of Marxist and Lenin type, which were mostly suppressed in last decades, to the groups which invoke certain religious tenets in order to justify their actions. However, such religious rationalisations may be evaluated as pseudo-religious, as they are based on consciously false interpretations of some religious

texts. (Derenčinović, 2003, p. 942-943) One could agree that lately the cause of concern has been the growing number of such pseudo-religious terrorist groups.

Terrorism is now the subject of criminalization and so requires a legal definition of what constitutes terrorism. And although, by its nature, it could be concluded that successful counterterrorism law and policy depends on definition, there is no internationally accepted single and binding definition of terrorism; it remains the most serious obstacle in any discussion of an act itself.

In practise, the term is defined by numerous, so-called "sectoral" counter-terrorism documents that specify and criminalize various types of terrorist activities. In general, the term is used to describe both violence perpetrated by a state, and violence perpetrated by individuals of non-state actors, during the time of armed conflict and the time of peace. It is understood as relating to politically motivated violence perpetrated to cause death or injury to civilian, with the aim of intimidating a wider audience.

Besides symbolic functions of criminalization, counter terrorism documents are intended to facilitate judicial and police cooperation for the prosecution of persons accused of committing terrorist acts. (Diaz-Paniagua, 2008, p. 42) Such prosecution and investigation falls within the competence of particular state(s), because currently no international court exists with global competence to investigate and prosecute terrorism itself. Consequently, domestic police carries out the investigation and state alone must accuse those who perpetrated offences described as terrorist acts.

The Republic of Croatia has an integral approach to the prevention and suppression of terrorism. Its legal framework in fighting against terrorism includes, besides of relevant international and regional documents, also provisions of national legislation, which shall be elaborated hereinafter. At international level the Republic of Croatia is an active member of the Global Anti-Terrorism Coalition.

Special place among the national anti-terrorist measures belongs to the norms of criminal law, which will be especially elaborated in this paper. The Croatian Criminal Code sets out the offenses that criminalize various forms of terrorism. Besides the criminal offense of terrorism, financing of terrorism and terrorist association, in Croatian substantive criminal legislation were also integrated criminal offenses of public provocation to terrorism, recruitment for terrorism and training for terrorism. With the adoption of these criminal offenses the national criminal legislation was harmonized with relevant international and regional documents.

Furthermore, it is important to mention that after the events of September 11<sup>th</sup>, 2001, the Croatian Government had established an Interagency Working Group for Monitoring Implementation of the UN Security Council Resolution 1373 and had taken steps for harmonizing its legislation with the requirements of that resolution. Also, it continues to support all actions undertaken pursuant to relevant resolutions of the Security Council, with the aim of suppressing and preventing terrorism.

Also, at the beginning of 2002 the Croatian Parliament adopted the National Security Strategy. The National Strategy especially highlights the prevention and suppression of terrorism and the active contribution of the Republic of Croatia to the anti-terrorist coalition as one of the national security priorities. Most importantly, in November 2008 the

Government of the Republic of Croatia introduced another strategic document, viz. National Strategy for the Prevention and Suppression of Terrorism, with the aim of establishing the systemic prerequisites for the fight against terrorism.

In order to implement this Strategy, Croatia adopted the Action Plan on Prevention and Suppression of Terrorism (2011) which defines in detail roles of all relevant national institutions in the prevention and suppression of terrorism and contains specific operational protocols and procedures. During the preparation of Action Plan the experiences of the Republic of Croatia with regard to terrorism were taken into account.

Although (and luckily) Croatian experiences in the field of fighting terrorism on its soil has been quite modest, as shall be explained hereinafter, one could say that after the attacks in New York, Madrid and London all modern democracies can be considered as potential targets of unexpected terrorist attacks, and the need for efficient legislative framework and cooperation among states in this field should be additionally emphasized.

## **2. Terrorism in the Focus of International Law**

### **2.1. How to Define Terrorism?**

Terrorism is currently one of the most interesting phenomenon of modern age and societies, especially in the era after the 9/11 attacks. And although not invented by that tragedy, interest of many actors was increased and developed in the period of last thirteen years.

As mentioned before – terrorism is not an easy battle to fight against. As emphasized by Geoffrey Levitt, the search for a legal definition of terrorism in some ways resembles the quest for the Holy Grail: periodically, eager souls set out, full of purpose, energy and self-confidence, to succeed where so many others before have tried and failed. (Levitt, 1986, p. 97) The truth is that terrorism has been variously described by many. As Cohen concluded, the number of definitions given to terrorism might directly correspond to the number of people asked. (Cohen, 2012, p. 229) Ganor refers to the number of 109 definitions of terrorism by early 1980s proposed by researchers and experts in the field, security professionals, NGOs, countries, politicians, etc. Only consensus these individuals have reached is that it might be impossible (or even unnecessary) to adopt international, widely accepted definition. (Ganor, 2011, p. 19)

One of the principal difficulties lies in the fundamental values which are at stake in the acceptance or rejection of terror inspiring violence as mean of accomplishing a given goal. (Bassiouni, 1988, xv) As Ganor confirmed – this is a manifestation of well-known *cliché* – “one man’s terrorist is another man’s hero”. (Ganor, 2011, p. 19) Obviously, a lot depends on whose point of view is being represented, bearing in mind that the term, as well as the manifestation of terrorism is usually connected with significant political and emotional charge. That is why that search may well be a futile and unnecessary effort.

Nowadays, on one side, we witness a growing interests on the issue by individuals, states, unions, the UN, a creation of international (and national) committees focused on the various questions connected to terrorism. On the other, unfortunate conclusion is inevitable – international community is still unable to agree upon the single, comprehensive definition of the phenomenon itself; all attempts on agreeing a one

globally accepted and comprehensive definition has proved so far impossible; governments are still reluctant to articulate all-encompassing, criminal law definition. As Diaz-Paniagua emphasized – human rights law and criminal law principles require that the legal definition of a crime be precise enough that both the courts and the public know whether a certain conduct is lawful or not. An ambiguous definition would be dangerous for individuals, who would not know how to behave. It also could cause confusion for the courts, which would not have clear norms to apply, and it could lead to arbitrariness by both the police and prosecution. At the international level such definition could cause conflict among the states that would not know whether a concrete situation falls within the scope of the treaty or not. For an international criminal law definition to be useful it is not enough to just capture the core elements of the crime; it has to provide clear answers to the test cases and to the borderline situations. (Diaz-Paniagua, 2008, p. 49)

Although in the aftermath of the 9/11 attacks Abi-Saab predicted that the shock of recognition produced by that tragedy has created a new situation and provided the psychological mobilisation of overcoming the obstacles to reaching a generally acceptable definition (Abi-Saab, 2004, p. xxi), the current state of affairs with respect to defining terrorism has not changed a great deal. Cohen emphasizes that most individual states have their own domestic definitions in national legislation; the UN Security Council has adopted resolutions some of which describe terrorism, but do not provide a clear definition of it; existing regional and international conventions exhibit definitions with a certain scenario in mind. (Cohen, 2012, p. 231) International community adopted a series of “sectoral” conventions that define and criminalize various types of terrorist activities. Therefore, to some extent, one can conclude that the international community has managed to work around the lack of a comprehensive definition through the adoption of various international treaties, Security Council resolutions and UN protocols.

This diversity notwithstanding, most of the definitions of terrorism address the same core elements. By Cohen, these are: a) the use or threat of use of violence; b) the act is indiscriminate in that the immediate victims are chosen randomly and are not the ultimate audience of the act; c) the violence is intentionally targeted towards civilians as opposed to combatant forces; and finally, the purpose of the act is to compel a government or an organization to perform or abstain from performing a certain action. (Cohen, 2012, p. 229) Also, most of the counter-terrorism treaties contain dispositions concerning the protection of human rights. In O'Donnell's opinion, such dispositions are of three kinds: a) general provisions indicating that the obligations set forth in the treaty are without prejudice to other international obligations of the state party; b) provisions concerning the right of accused or detained persons to due process, c) provisions establishing conditions regarding extradition and the transfer of prisoners. (O'Donnell, 2006, p. 858)

One could agree that inability to reach consensus on the definition of terrorism reflects an ideological split and a reluctance of certain states to conform to the outlook and agenda of politically powerful nations. On the other hand, because most definitions include common core elements, such as a condemnation of the purposeful killing of civilians, the lack of international consensus can be viewed primarily as reflecting concern not over just the parameters of the definition, but the legal effects of falling within that definition. (Setty, 2011, p. 10, 11)

Thereby, in the era of growing interests on fighting and (wishfully) suppressing terrorism, and with the lack of universally accepted definition – how can we define (or even recognize) actions considered to create acts of terrorism? Which elements do we seek for to fight against? Many international documents have all used the same or similar formula; they follow a similar legal technique to identify the main elements of the crimes. They stated which acts are unlawful and declared for whom those actions are prohibited. They also characterized the wrongful action by reference to the means used, the target, and expected or actual results. In addition, each definition contains a threshold based on the level of intention.

For example, International Convention for the Suppression of Terrorist Bombings refers to “an offence within the meaning of this Convention“ if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause: a) death or serious bodily injury or b) extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss. (International Convention for the Suppression of Terrorist Bombings, 1997, Art. 2)

International Convention for the Suppression of Acts of Nuclear Terrorism also refers to an „offence within the meaning of this Convention“ if that person unlawfully and intentionally: a) possesses radioactive material or makes or possesses a device with the intent to cause: (i) death or serious bodily injury or (ii) substantial damage to property or to the environment; b) uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material with the intent to: (i) cause death or serious bodily injury; or (ii) cause substantial damage to property or to the environment; or (iii) compel a natural or legal person, an international organization or a State to do or refrain from doing an act. (International Convention for the Suppression of Acts of Nuclear Terrorism, 2005, Art. 2)

One of the widely accepted definitions was included in the Convention for the suppression of financing the terrorism. Terrorism is defined as any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. (Convention for the suppression of financing the terrorism, 1999, Art. 2(1)(b)) In Cohen's opinion, this definition is both practical and appropriate. Its language allows its application to contemporary threats, such as terrorism by non-state actors (in addition to state terrorism) and cyber-terrorism. It was recognized by a vast majority of states and included in Security Council Resolution 1373 (Cohen, 2012, p. 257) By Roach, this definition dropped the problematic focus on political crimes that invited states to define terrorism as a crime in their own political interest, and, on the other hand, to refuse to extradite those charged with terrorism on the basis that terrorism was a political crime. (Roach, 2011, p. 26) This is in conformity with Diaz-Paniagua's view that the concept of terrorism is more than a technical-legal definition of a discrete type of criminal activity. It is highly charged weapon of political argument that actors use to influence decision-making and to challenge each other's behaviour. (Diaz-Paniagua, 2008, p. 48)

The General Assembly is currently working toward the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism convention. Its Draft defines list of offences “within the meaning of the present Convention... 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“. That list includes following acts: 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 system s referred to under the b) and resulting or likely to result in major economic loss. (Draft Comprehensive Convention against International Terrorism, Art. 2)

In Gioia’s opinion, all Conventions adopted by the UN between 1963 and 2005 shares three principal characteristics: a) they all adopted an “operational definition” of a specific type of terrorist act that was defined without reference to the underlying political or ideological purpose or motivation of the perpetrator of the act – this reflected a consensus that there were some acts that were such a serious threat to the interests of all that they could not be justified by reference to such motives; b) they all focused on actions by non-State actors (individuals and organisations) and the State was seen as an active ally in the struggle against terrorism – the question of the State itself as terrorist actor was left largely to one side; and c) they all adopted a criminal law enforcement model to address the problem, under which States would cooperate in the apprehension and prosecution of those alleged to have committed these crimes. (Gioia, 2006, p. 4)

In Diaz-Paniagua’s opinion, the definition of the offense in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society’s condemnation of the forbidden acts. Secondly, it facilitates agreement. Since states tend to be reluctant to undertake stringent obligations in matters related to the exercise of their domestic jurisdiction, a precise definition of a crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogenous application of the treaty’s obligations on judicial and police cooperation. This function is of particular importance in extradition matters, because, to grant an extradition, most legal systems require that the crime can be punishable in both states, requested and requesting one. Forth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts described and defined in the treaty in conformity with their human rights obligations. The principle of *nullum crimen sine lege* requires, in particular that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts. (Diaz-Paniagua, 2008, p. 46, 47)

But, there are no uniform rules and principles to punish the various participants in criminal activities in international law. Each legal system has its own definition and guiding principles regarding the responsibility of co-perpetrators, accomplices, instigators and participants in a criminal enterprise. Some countries make no distinctions between participant and perpetrator of the main offence. Their legislation does not define as separate crimes each separate form of participation. Consequently, in those countries, all participants are criminally liable for the commission of the main offence. Other countries do make a distinction between the criminal responsibility of the perpetrator and that of the participant. Consequently, their legal systems define the main offences separately from



the various forms of participation. Thus, during the negotiation of the counter-terrorism treaty, the formulation of the provision on the criminal participation acceptable to all was a major challenge. (Diaz-Paniagua, 2008, p. 52, 53)

## **2.2. Legal Framework – International Treaties Concerning Terrorism**

After the 2<sup>nd</sup> world war many states confronted activities that could be described as terrorism. As the response, the international community encouraged the state negotiation in order to adopt a series of treaties concerning specific types of terrorist act, including the obligations of states with regard to such activities. They prohibit certain particular activities and lay down rules geared toward the punishment of individuals by national jurisdiction, but – in Bianchi's opinion – with general perception that the response of international law to terrorism was always belated and therefore ineffective. That is because some of the relevant treaties had been adopted in the aftermath of terrorist attacks. (Bianchi, 2004, p. 494)

Nevertheless, in Diaz-Paniagua's opinion, the negotiation of multilateral counter-terrorism treaties has three distinct advantages: a) the moral, political and legal impact – as evidence of the existence of a generally accepted legal principle or *opinio juris* – of the whole international community declaring in the single act that a particular conduct is a terrorist crime is far greater than an impact of many separate, bilateral agreements stating the same; b) the conclusion of multilateral treaty reduces the transaction costs of negotiations. Each state, rather than having to negotiate and ratify thousands of bilateral treaties, can simplify the whole process into a single ratification. c) by introducing standard rules, a single multilateral treaty reduces the transaction cost of the legal regime itself. Additionally, for those states that lack formal diplomatic relations, adoption of multilateral treaty can be the only viable form of agreeing to cooperate against terrorism. (Diaz-Paniagua, 2008, p. 45)

In relation to *opinion juris* element, there are also critical views pointed that terrorism conventions were “norm creating,” but are unlikely to satisfy this heightened state practice requirement. (Young, 2006, p. 65) In Cohen's opinion, this observation is still valid. While the International Convention for the Suppression of the Financing of Terrorism enjoys a large number of state parties (186) to meet the “state practice” requirement of customary international law, the second element, *opinio juris* is harder to satisfy. The fact is that the overwhelming majority of state parties joined the convention only after the terrorist attack of 9/11 because UN Security Council Resolution 1373 required them to do so. Thus, the motives behind the signing of the convention could be attributed to the legal obligation on states to comply with Security Council resolutions adopted under Chapter VII of the UN Charter, rather than to a sense of obligation to suppress the financing of terrorism as defined in this convention. (Cohen, 2012, p. 235)

However, existing framework has already produces a fairly consistent pattern of rules applicable to terrorist activities, which – by the widespread adoption – created at least a ground for developing international customary law.

In last decades thirteen multilateral conventions with regard to the terrorism were adopted:<sup>1</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, UN General Assembly, 1973; International Convention against the Taking of Hostages, UN General Assembly, 1979; Convention on the Physical Protection of Nuclear Material, Vienna, 1980; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1991; International Convention for the Suppression of Terrorist Bombings, UN General Assembly, 1997; International Convention for the Suppression of the Financing of Terrorism, UN General Assembly, 1999; International Convention for the Suppression of Acts of Nuclear Terrorism New York, UN General Assembly, 2005.

There are also several conventions on suppressing terrorism adopted in regional level, for example: Arab Convention on the Suppression of Terrorism, Cairo, 1998; Convention of the Organization of the Islamic Conference on Combating International Terrorism, Ouagadougou, 1999; European Convention on the Suppression of Terrorism, Strasbourg, 1977; OAS (Organisation of American States) Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, Washington, D.C., 1971; OAU (Organization of African Unity) Convention on the Prevention and Combating of Terrorism, adopted at Algiers, 1999; SAARC (South Asian Association for Regional Cooperation) Regional Convention on Suppression of Terrorism, Kathmandu, 1987; Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, Minsk, 1999; Convention on the Prevention of Terrorism, Strasbourg, 2005; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Strasbourg, 2008.

These treaties define nearly fifty offences, including some ten crimes against civil aviation, some sixteen crimes against shipping or continental platforms, a dozen crimes against the person, seven crimes involving the use, possession or threatened use of “bombs” or nuclear materials, and two crimes concerning the financing of terrorism. There is a tendency to consider these treaties as establishing a sort of evolving code of terrorist offences.

The principal obligation set forth in the international treaties against terrorism is to incorporate the crimes defined in the treaty in question into the domestic criminal law, and to make them punishable by sentences that reflect the gravity of the offence. The states parties to these treaties also agree to participate in the construction of “universal jurisdiction” over these offences, that is, to take the necessary measures to give their

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<sup>1</sup> Retrieved from: [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml)

courts very broad jurisdiction over the offences in question, including jurisdiction based on territoriality, jurisdiction based on the nationality of the offender and the victims and, according to most of these treaties, jurisdiction based on the mere presence of a suspect in the territory of the state. In addition, they accept the obligation either to extradite any suspected offenders found in their territory or to begin criminal proceedings against them. In order to facilitate extradition these treaties invariably provide that the offences in question shall not be considered political offences, which are not extraditable under most treaties on extradition. In addition, these treaties require various types of cooperation among the states parties, ranging from cooperation in preventing terrorist acts to cooperation in the investigation and prosecution of the relevant offences. (O'Donnell, 2006, p. 857, 858)

With regard to Republic of Croatia and before mentioned international agreements and conventions, it is necessary to emphasize that Croatia has ratified all the UN counter-terrorism conventions and protocols. At the regional level Croatia had ratified: the Council of Europe Convention on the Suppression of Terrorism (1977) with Protocol (2003), the Council of Europe Convention on the Prevention of Terrorism (2005) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2008). In the process of alignment of Croatian legislation with the legal norms of the European Union, Croatia has achieved complete harmonization with the Framework Council Decision on Combating Terrorism of June 2002, Framework Decision on the European Arrest Warrant and other documents of EU's counter-terrorism *acquis*. (Pedić, 2012, p. 57-80)

### **2.3. The Role of the UN – Efforts and Achievements**

The truth is that the UN General Assembly has condemned terrorist acts decades ago, by expressing conviction that the suppression of acts of international terrorism is an essential element for the maintenance of international peace and security and that those responsible for acts of international terrorism must be brought to justice. Methods and practices of terrorism as a criminal acts intended or calculated to provoke a state of terror, constitute a grave violation of the purposes and principles of the UN, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society. (Measures to eliminate international terrorism, 1994, paras. 3, 4) In Roach's opinion, this was the start of a criminal law approach that would be based on the idea that no motive or cause could justify violence. (Roach, 2011, p. 26)

Notwithstanding the fact that terrorism constitutes a serious threat to the core values of the UN, critics write that its response to terrorism has been tentative, halting, and even ambivalent. There are doubts existing about its capacity to rise up to the challenge alongside a realization that no viable multilateral alternative exists for dealing with terrorism. Furthermore, lack of common agreement on the legality and legitimacy of counter-terrorist measures carried out unilaterally or in groups without the backing of the UN bodies. (The U.N. Counter-Terrorism Committee: An Institutional Analysis, 2007, p. 2)

The call for a broad counter-terrorism approach may be interpreted as advocacy of engaging multiple structures in the problem area. The plurality of political and functional organs and their complementary concerns in the UN were such that counter-terrorism could not be a responsibility of one organ alone, as the Security Council appeared to be since 9/11 attacks. Taking into account that terrorism is described as a threat to peace and security, the Security Council primary role for maintaining international peace and security have to be additionally emphasized in this field. At the same time, its work is often criticized because the five permanent members have the power of veto, which enabling them to prevent the adoption of any substantive draft resolution.

The simple truth – in Bianchi's opinion – is that the Security Council is subject to the fluctuations of international politics, when decision making process is concerned. If no consensus can be achieved (particularly between its permanent members) its purported function to maintain international peace and security cannot be discharged, and its intentions – however good – are doomed to failure. The fact that Security Council resolutions can make the object of different interpretations depending on political interest is no novelty in the practice of the UN. (Bianchi, 2004, p. 503)

During the cold war era, the Security Council was often deadlocked by the vetoes, but – in Roach's opinion – it has now emerged as a more powerful force. It could apply sanctions against states or individuals. This has led to some concern that the Security Council can act as an executive without the judicial, legislative, and civil society checks, present in most democracies. The Security Council has acted quickly and often secretly as an executive body that can list terrorists and require states to comply with assets freezes and travel bans. At the same time, this organ has also acted as legislator in the sense of imposing permanent and general obligations on states, most notably in Resolution 1373, with respect to terrorism and terrorism financing, and Resolution 1540, with respect to preventing terrorists from gaining access to weapons of mass destruction. (Roach, 2011, p. 23)

Even the United States have started the “war against terrorism” after the 9/11 attacks, lead that war as it sees fit, and perhaps only take advice from “friendly” nations, without accepting binding activities from a multilateral institution, and even such situation provokes the conclusion that it is unlikely for Security Council to play a significant role in responding to single terrorist acts, its role should not be diminished. In Fassbender's opinion, its work is essential and promising in the area of the prevention of terrorism. The Security Council must identify and aim at solving certain problems and conflicts which are fertile soil terrorist activities. (Fassbender, 2004, p. 84, 85)

Even before 9/11 attacks UN Security Council has done some actions in an attempt to deal with the terrorism, acting under Chapter VII of the UN Charter. Its attention to terrorist threats increased markedly in the post-cold war era, with sanctions being imposed in this period against Libya (1992), Sudan (1996), and the Taliban regime in Afghanistan. A precursor to the intensification of its counter-terrorism before 2001 was the adoption of several resolutions, in which the Council urged countries to work together to prevent and suppress all terrorist acts. For example, Resolution 1267(1999) imposed mandatory financial and aviation sanctions on members of the Taliban regime in Afghanistan as a result of the sanctuary they offered to Osama bin Laden and his associates.

On its basis (unless the Council has previously decided that the Taliban has fully complied with the obligation to turn over Osama bin Laden to appropriate authorities), UN Security Council urged all States to impose following measures: a) deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need; and b) freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need. (Security Council Resolution 1267/99, paras. 2-4)

Taking this direction, by the same resolution UN Security Council decided to establish a Committee of consisting of all the members of the Council. Its purpose was determined as to undertake some specific tasks and to report on its work to the Council with its observations and recommendations. These tasks includes those: a) to seek from all States further information regarding the action taken by them with a view to effectively implementing the measures that has to be taken; b) to consider information brought to its attention by States concerning violations and to recommend appropriate measures in response thereto; c) to make periodic reports to the Security Council, but also to examine reports submitted by states, etc. At the Security Council's request, the Secretary-General appointed an Analytical Support and Sanctions Monitoring Team to assist the Committee. The Team comprises experts in counter-terrorism and related legal issues, arms embargoes, travel bans and terrorist financing.

In Foot's opinion, the primary task of the 1267 Committee has been to target "individuals, groups, undertakings or entities associated with Al-Qaeda or the Taliban, or those controlled by their associates." Names appear on a consolidated list as a result of information provided by one or more member states. Current members of the Security Council have sole power to review the justification for adding a name. Once a name is on the sanctions list, all states are expected to report on the steps they have taken to comply with Resolution 1267, as well as with subsequent related resolutions. (Foot, 2007, p. 493)

This Committee is one of three subsidiary bodies established by the Security Council that deal with terrorism related issues. The other two committees are the 1540 Committee, which obtains the task of monitoring Member States' compliance with the Security Council Resolution 1540, which calls on States to prevent non-State actors (including terrorist groups) from accessing weapons of mass destruction, and the Counter-Terrorism Committee established by the Security Council Resolution 1373. The three Committees and their expert groups coordinate their work and cooperate closely and the Committees' Chairmen also brief the Security Council on the activities of the Committees in joint meetings, when possible. The Council in a subsequent resolutions urged Member States to take action against groups and organizations engaged in terrorist activities that were not subject to the 1267 Committee's review.

In the aftermath of the 9/11 attacks, by adoption of a Resolution 1373(2001), the Security Council has started a new era in international relations. By recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress the financing and preparation of any acts of terrorism, this resolution demanded from all states under binding provisions of Chapter VII of the Charter to take legal and administrative measures to provide any form of support to entities or persons involved in terrorist acts, to freeze financial sources of terrorists and their entities, and to criminalize direct and indirect involvement in acts of terrorism for punishment. States are also encouraged to cooperate with other states by exchanging information in accordance with international and domestic law, respecting thereat international standards of human rights, and to cooperate on administrative and judicial matters, through bilateral and multilateral arrangements and become parties as soon as possible to the relevant international conventions and protocols relating to terrorism. (Security Council Resolution 1373)

This significant resolution imposed sweeping legal obligations on UN member states. It created an unprecedented campaign of non-military, cooperative law enforcement measures to combat global terrorist threats. (Foot, 2007, p. 494) The truth is there is no rule in customary international law which obliges states to cooperate in providing each other police and judicial cooperation in criminal matters. In the absence of international treaty or domestic rules, such cooperation depends purely on the reciprocity and courtesy. While customary law in this regard seems to be changing, due both to recent developments in the area of international crimes and mandatory decisions of the Security Council requiring cooperation against terrorism, the adoption of new treaties is practically the only means to ensure that states actually cooperated among themselves to fight this crime. (Diaz-Paniagua, 2008, p. 44)

Fassbender emphasized that the call for international cooperation in the fight against terrorism is not simply the call of a few idealists. In his opinion – multilateralism has effectively come to govern most aspects of the life of nations. It is a truism that the entire environment of states and nations today is characterized by trans-border processes and actions. Even the most powerful state cannot isolate a certain aspect of its life from this environment. Today, no state can guarantee its security only by unilateral means and actions. International cooperation, open discussion and joint action are indispensable, no matter which international body of forum are entitled to coordinate it. (Fassbender, 2004, p. 84, 85, 102)

Coordination requires that international norms are properly incorporated into domestic legal system, and once they are incorporated they need to be interpreted and enforced consistently with the international legal standards from which they emanate. The proliferation of normative standards, of a varying nature and scope of application, is evidence of the general will of the international community. No state objects to the need to comply with relevant Security Council resolutions, to bring terrorists to justice, and to hold states accountable for their support to terrorist activities. Nor is any state against the need to eradicate the financing of terrorism. What is most needed is consensus on how anti-terror normative policies should be implemented. (Bianchi, 2004, p. 529)

Special achievement of the Resolution 1373 is before-mentioned establishment of the Counter-Terrorism Committee (CTC). It is comprised of all fifteen members of the

Security Council. Guided by Security Council resolutions 1373 (2001) and 1624 (2005), the CTC works to bolster the ability of UN member states to prevent terrorist acts both within their borders and across regions. It was set up to monitor state implementation of these obligations, primarily through state provision of reports on the legislative and executive actions they were undertaking. Reports of (all UN) member states were made public.

The mandates of the 1267 and 1373 Committees overlap in some key areas. Both have had expert groups associated with them, groups that have some autonomy as a result of their specialist and professional knowledge. These expert groups are required to report regularly to the Committees on their findings and to make specific recommendations. Additionally, both Committees are supposed to be as transparent as possible and to take decisions on the basis of consensus (e.g. and with respect to 1267, when it comes to listing or de-listing names or agreeing to state visits). The Committees agreed that they would share more information and report jointly (together with the 1540 Committee) to plenary sessions of the Security Council. However, in other respects, the two Committees vary considerably. Whereas 1267 seeks to identify and impose constraints on named terrorists, 1373 seeks to institute a set of global standards with the objectives of preventing and deterring terrorism, as well as finding and prosecuting terrorists. In Foot's opinion, the approach adopted in the two resolutions is also different. Resolution 1267 involves coercive measures that seek to punish or compel changes in the behaviour of the groups or individuals listed. Resolution 1373 does not list targets but concentrates primarily on enabling activities by acting as a "switchboard" in order to put states in touch with those organizations and states which can provide training, information, and practical advice. Predominantly, CTC came to be seen as a technical body, working with, rather than against, states and international, regional, and sub-regional bodies to enhance capacities in the fight against terrorism. Experts suggest that this may be one key reason why states have been more willing to submit reports to the 1373 Committee than to 1267. (Foot, 2007, p. 495, 496)

To assist the 1373 Committee's work, the Security Council adopted Resolution 1535(2004), which called for the setting up of a Counter Terrorism Committee Executive Directorate (CTED) to monitor the implementation of Resolution 1373 and to facilitate the provision of technical assistance to Member states. In short, the work of the CTC and CTED comprises: a) country visits – at their request, to monitor progress, as well as to evaluate the nature and level of technical assistance a given country may need in order to implement Resolution 1373 (2001); b) technical assistance – to help connect countries to available technical, financial, regulatory and legislative assistance programmes, as well as to potential donors; c) country reports – to provide a comprehensive snapshot of the counter-terrorism situation in each country and serve as a tool for dialogue between the Committee and Member States; d) best practices – to encourage countries to apply known best practices, codes and standards, taking into account their own circumstances and needs; and e) special meetings – to develop closer ties with relevant international, regional and sub-regional organizations, and to help avoid duplication of effort and waste of resources through better coordination.

In Bianchi's opinion, by way of Resolution 1373 the Security Council took up a quasi-legislative role by imposing on States a number of obligations. Furthermore, by qualifying terrorism as threat to international peace and security, the Security Council has given

further political momentum to the consideration of terrorism as a global risk affecting the responsibility (and the powers) of the Council under the Charter. (Bianchi, 2004, p. 498) This approach does not represent something new, because Security Council already has taken law-making steps in the past (the establishment of the ICTY and the ICTR, for example).

The effect of Resolution 1373, by Setty, was immediate and profound. (Setty, 2011, p. 13) Countries facing serious national security threats face the same threshold questions of how to define terrorism and the implications of those definitions. Even countries that generally treated acts of terrorism as ordinary criminal matters were moved to define terrorism, if only to comply with Resolution 1373's mandate that countries provide details of their counterterrorism programs. Some nations simply indicated that they were implementing Resolution 1373 with no definitional parameters. Other nations declined to define terrorism, but indicated that they were complying with international treaties and other obligations that mandated counterterrorism efforts. Other countries relied upon the definitions of terrorism under domestic law to submit reports back to the Counter Terrorism Committee – these reports do not actually offer a definition of terrorism, but detail the robust counterterrorism efforts being made by the government. (Setty, 2011, p. 4, 5, 14). Croatia supports the last approach.

In the 2005 World Summit Outcome, world leaders rededicated themselves to strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security. Vital contribution in combating terrorism is regional and bilateral cooperation, particularly at the practical level of law enforcement cooperation and technical exchange. They recognized that international cooperation to fight terrorism must be conducted in conformity with international law States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law. Furthermore, states should refrain from organizing, financing, encouraging, providing training for or otherwise supporting terrorist activities and to take appropriate measures to ensure that their territories are not used for such activities. (World Summit Outcome, 2005, paras. 81-91)

In 2005, the Secretary General established a Counter-Terrorism Implementation Task Force (CTITF). The Task Force consists of 34 international entities which by virtue of their work have, has a stake in multilateral counter-terrorism efforts<sup>2</sup>. Each entity makes contributions consistent with its own mandate. CTITF was endorsed by the General Assembly through the UN Global Counter-Terrorism Strategy, which was adopted by consensus in 2006. The primary responsibility for its implementation rests with member states. The mandate of the CTITF is to enhance coordination and coherence of counter-terrorism efforts of the UN system (to consider to become parties to the existing international conventions against terrorism; to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism; to implement all Security Council resolutions related to international terrorism and to cooperate fully with the counter-terrorism subsidiary bodies of the Security Council in the fulfilment of their

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<sup>2</sup> The list of international entities is available at: <http://www.un.org/en/terrorism/ctif/entities.shtml>



tasks, recognizing that many States continue to require assistance in implementing these resolutions, etc.). (The UN Global Counter-Terrorism Strategy, 2006)

While fighting terrorism is considered to be a long-standing effort, international community should focus on several tasks that have to be fulfilled. First of them should be a strengthening efforts on conclusion producing a comprehensive convention against terrorism. Such document could therefore establish (more) efficient network of international cooperation in preventing, suppressing and effectively prosecuting the newly defined crime of terrorism. One could agree with the former UN Secretary General Kofi Annan, who emphasized that our strategy against terrorism must be comprehensive and should be based on five pillars: 1) it must aim at dissuading people from resorting to terrorism or supporting it; 2) it must deny terrorists access to funds and materials; 3) it must deter States from sponsoring terrorism; 4) it must develop State capacity to defeat terrorism; and 5) it must defend human rights. (Kofi Annan, In Larger Freedom, 2005, para. 88)

This entails the creation of the institutional arrangements necessary for the effective management and implementation of rules. Abi-Saab suggested International Criminal Court (ICC) as a prime example of such an institution, after its jurisdiction is being extended to cover the crime of terrorism once its elements are clearly defined. Countries that want to strengthen the role of international law in fighting terrorism should support the ICC, rather than working to undermine it. (Abi-Saab, 2004, p. xxi)

But, nowadays, the ICC may be able to prosecute terrorist acts only if they fall within the crimes under its jurisdiction (aggression, genocide, war crimes and crimes against humanity), and does not have a jurisdiction over a distinct crime of terrorism. This was no accident of Rome Conference in 1998, but rather the expressing the reluctance of the majority states parties to include the crime of terrorism into the Rome Statute. Not even in the Review Conference held in Kampala, Uganda in 2010 – the crime of terrorism was not mentioned even once. One of the obvious obstacles was the lack of a clear and universally accepted definition of the crime. There was also a general impression that, unlike the crimes under the jurisdiction of the ICC, which represented the crimes of greatest concern to the international community – terrorism (still) does not rise to this level of international concern. However, in Cohen's opinion, examining the way in which the international community as a whole and states individually have addressed terrorism can lead to the conclusion that nowadays terrorists are as *hostis humani generi* as perpetrators of core crimes under the jurisdiction of the ICC. (Cohen, 2012, p. 224, 225)

This conclusion is amplified by the Security Council affirmation(s) that acts of international terrorism constitute threats to international peace and security.

### **3. Croatian Substantive Criminal Law Response to Terrorism**

Outside of events during the Homeland War (1991-1995) when many incidents that were part of the aggression on the Republic of Croatia were considered as terrorist acts, Croatia does not have much experience regarding terrorism. As the first case of terrorism is considered the brutal murder of 12 employees of Hidroelektra Company in 1993 in Algeria, which was performed by the Algerian Armed Islamic Group (*al-Jama'ah al-Islamiyah al-Musallaha*). The last act of terrorism occurred in front of the police

headquarters in Rijeka in 1995. The car-bomb attack was perpetrated by the Egyptian Islamic Group (*al-Gama'at-Islamiyya*) as an act of revenge after the Croatian police had captured and extradited their leader to the United States. On that occasion 29 people were injured, whereas the attacker was killed (Action Plan on Prevention and Suppression of Terrorism, 2011, p. 4).

As mentioned in Introduction of this paper, special place among the national anti-terrorist measures belongs to the norms of criminal law. The first document in which terrorism was mentioned and defined at the national level was Criminal Code. After its independence Croatia has adopted the criminal legislation of former Yugoslavia and from the 1991 to 1997 two criminal acts were in force in Croatia, viz. Criminal Code (hereinafter: CC'93) and Basic Criminal Code (hereinafter: Basic CC).

The CC'93 stipulates that the act of any person who with an aim of endangering the constitutional order or the security of the Republic of Croatia, causes an explosion, fire or performs another generally dangerous act or commits some other act of violence, thus causing a feeling of personal insecurity among citizens is considered a criminal offense of terrorism (Art. 236). International terrorism was defined in Basic CC (Art. 135 para. 1). The perpetrator of this criminal offense is any person who with intent to harm a foreign state, liberation movement or an international organization, kidnaps a person or commits some other act of violence, causes an explosion or fire, or by some general dangerous act or device endangers the lives of people and property of considerable values.

Apart from these criminal offenses, Basic CC prescribes a number of criminal offenses by means of which various forms of international terrorist activities are incriminated such as Endangering the safety of internationally protected persons (Art. 136), taking of hostages (Art. 137), misuse of nuclear materials (Arts. 199 and 200), hijacking an aircraft (Art. 191), endangering the safety of international air traffic and maritime navigation (Art. 192). Additionally, criminal offenses of terrorist activities against the Republic of Croatia were regulated by means of special code, Act on Criminal Offenses of Subversive and Terrorist Activities against the State Sovereignty and territorial Unity of the Republic of Croatia.

In October 1997, the penal legislation in the Republic of Croatia was modified and the new, unified Criminal Code (hereinafter: CC'97) was adopted. This Criminal Code also recognises criminal offense of terrorism (now referred to as anti-state terrorism, Art. 141) and international terrorism (Art. 169), definitions of which are almost identical to the ones from the former criminal codes. Despite certain amendments, CC'97 still has incriminated various forms of international terrorist activities, such as Endangering the safety of internationally protected persons (Art. 170), taking of hostages (Art. 171), misuse of nuclear materials (Art. 172), hijacking an aircraft or a ship (Art. 179) and endangering the safety of international air traffic and maritime navigation (Art. 181).

After the events of 11 September 2001 the United Nations and European Union had strongly increased adoption of documents as regards the prevention and suppression of terrorism-related criminal offenses. The most important documents which have influenced the Croatian substantive criminal law are: Security Council Resolution 1373 (2001) which required states to enact legislation to prevent and suppress the financing of terrorist acts (for critical approach of the Resolution 1373 see, Roach, 2011, p. 32-33, Derenčinović, 2005, p. 70), Security Council Resolution 1624 (2005) called upon all states to adopt such measures as may be necessary and appropriate and in accordance with their

obligations under international law to prohibit by law incitement to commit a terrorist act or acts (Roach, 2011, p. 55-59), Council of Europe Convention on the Prevention of Terrorism and before mentioned Council Framework Decision on Combating Terrorism. With an aim of incorporating requirements from relevant international documents into the Croatian substantive criminal legislation the Croatian Parliament adopted a set of important amendments to the CC'97 in 2004, 2006 and 2008, especially as regards the counter-terrorism provisions. Previous articles on anti-state terrorism and international terrorism have been merged in one article named 'terrorism' and new offenses have been introduced: Public Instigation to Terrorism (Art. 169a), Recruitment and Training for Terrorism (Art. 169b) and Financing of terrorism as a part of criminal offense Association for the Purpose of Committing Criminal Offenses against the Values Protected by International Law (Art. 187a para. 2).

Finally, the new Criminal Code (CC'11) was adopted in 2011 and it entered into force on January 1<sup>st</sup>, 2013. CC'11 further improved previous amendments and introduced important changes with regard to counter-terrorism provisions. Moreover, it is also in line with documents of the United Nations, EU *acquis communautaire*, the Council of Europe's conventions, legal standards of the European Court for Human Rights and other international documents as well as the best practices of other comparatively relevant legislations (Turkalj, 2012, p. 79-108). Articles in CC'11 that incriminate terrorism are: Terrorism (Art. 97), Financing of Terrorism (Art. 98), Public instigation of terrorism (Art. 99), Recruitment for terrorism (Art. 100), Training for terrorism (Art. 101) and Terrorist Association (Art. 102). In accordance with Art. 103, preparing criminal offenses of terrorism (Art. 97) is considered a separate criminal offense. This provision provides punishment for all preparatory actions leading to commission of a crime of terrorism.

### **3.1. Terrorism**

Constitutive element of the crime of terrorism is a terrorist action objective. It has to seriously intimidate a population or compel a state or an international organisation to do or to abstain from doing an act or seriously destabilize or destroy the fundamental constitutional, political, economic or social structures of a state or an international organisation. Acts of committing the criminal offense are specifically mentioned in Art. 97 para. 1 and they include the following:

1. attack upon a person's life which may cause death;
2. attack upon the physical integrity of a person;
3. kidnapping or hostage taking;
4. causing destruction to a state or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the epicontinental shelf, a public place or private property, which is likely to endanger human life or result in major economic loss;
5. hijacking an aircraft, vessel or other means of public or goods transport;
6. manufacturing, possessing, acquiring, transporting, supplying or using weapons, explosives or nuclear, biological or chemical weapons as well as doing research into and developing nuclear, biological or chemical weapons;

7. releasing dangerous substances, or causing fires, explosions or floods, the effect of which is to endanger human life;
8. interfering with or disrupting the supply of water, electricity or any other fundamental natural resource, the effect of which is to endanger human life; or
9. possessing or using radioactive substances or manufacturing, possessing or using a device for the activation, dispersal or emission of radioactive material or ionising radiation, using or causing damage to a nuclear facility resulting in the release of radioactive materials or the danger thereof, or requesting, by using force or threats, radioactive materials, a device for activating, dispersing or emitting radioactive materials or a nuclear facility.

Such actions may constitute ordinary crimes (for example, bodily injury, serious bodily injury, endangerment of life and property by a generally dangerous act or means, etc.), but their goal and their nature must be such that could seriously harm a state or an international organization whereby they are transformed into a criminal act of terrorism (Munivrana Vajda, 2013, p. 28). The perpetrator of terrorism shall be punished by imprisonment from three to fifteen years. Imprisonment from six months to 5 years is foreseen for those perpetrators who threaten to commit one of the criminal offenses listed above (Art. 97 para. 2). An aggravated form of terrorism is provided in paras. 3 and 4. Para. 3 prescribes extensive destruction and the death of one or more persons as aggravated circumstances and punishable by imprisonment not less than five years. According to para. 4 the punishment by imprisonment for not less than ten years or by long-term imprisonment shall be imposed on a perpetrator who intentionally kills one or more persons.

### **3.2. Financing of Terrorism**

Based on the adopted international obligations under UN Security Council Resolution 1373, the International Convention for the Suppression of the Financing of Terrorism, and the Council Framework Decision 2002 the Republic of Croatia has incriminated the financing of terrorism and terrorist operations. The accumulation of financial resources is the main prerequisite for the preparation of terrorist actions. Therefore the financing of terrorism is a high priority problem that has to be resolved. Croatia has adopted extensive legal basis with the aim to prevent the financing of terrorism. The responsibility for the prevention of money laundering and terrorist financing in the Republic of Croatia does not lie with one institution but with a system which determines the roles of the participants, their interaction and cooperation. It consists of preventions bodies (banks, housing savings banks, exchange offices, insurance companies, brokers, lawyers, public notaries, tax advisors, Office for Money Laundering Prevention as the central analytics service etc.), supervisory bodies (the Financial Inspectorate, the Tax Administration, the Croatian National Bank, the Croatian Financial Services Supervisory Agency) and criminal prosecution authorities (the police, the state attorney's office and the judiciary). Anti-Money Laundering Law entered into force on 1 November 1997. The enactment of this Act and the establishment of the Office for the Prevention of Money Laundering as an

autonomous and independent Financial Intelligence Unit within the Ministry of Finance set the basis for development of anti-money laundering system.<sup>3</sup>

Terrorism Financing is a criminal offense in the Republic of Croatia from 2004. Art. 187a on Planning Criminal Offenses against Values Protected by International law in para. 2 provides imprisonment from one to five years to any person who procures or collects financial means, being aware that they shall be used in total or partially for the perpetration of the terrorism related criminal offenses. Further amendments to the Criminal Code of 2008 prescribed that the perpetrator of the criminal offence referred to in para. 2 shall be punished irrespective of whether the funds have been used for the purpose of committing the criminal offence and irrespective of whether the act has only been attempted.

In order to fully harmonize the Croatian criminal law with international legal documents, the new Criminal Code has prescribed the financing of terrorism as a separate criminal offense. CC'11 incriminates every providing and collecting of funds for financing terrorism. Punishable are both financing one of terrorism-related criminal offences, and also financing all costs of terrorists and terrorist organizations, for example costs or transport or housing (Turković, Novoselec, Grozdanić et al., 2013, p. 149-150). According to Art. 98 para. 1 CC'11 any person who directly or indirectly provides or collects funds with the intention that they be used or in the knowledge that they will be used, in full or in part, in order to carry out one or more of the criminal offences referred to in Art. 97, Arts. 99-101, Art. 137, Art. 216, paras. 1- 3, Art. 219, Arts. 223-224 and Arts. 352-355 of CC'11 or any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such act is to intimidate a population or to compel a state or an international organisation to do or to abstain from doing an act will be sentenced with imprisonment from one to ten years. Also according to the existing legislation, perpetrator shall be punished irrespective of whether the funds have been fully or partially used for the purpose of committing the criminal offense and irrespective of whether the act has been attempted.

The same punishment is prescribed in para. 2 to any person who directly or indirectly provides or collects funds with the intention that they be used or with the knowledge that they will be used, in full or in part, by terrorists or terrorist associations.

### **3.3. Public Instigation of Terrorism**

Public Instigation of Terrorism is prescribed as separate criminal offence from the adoption of Law on the Amendments of the Criminal Code 2008. Until then the direct provocation to commit any criminal offense fell under the instigation clause. According to Art. 37 para 1 CC'97 *any person who intentionally instigates another to commit a criminal offense shall be punished as if he himself committed it*. In the case of terrorism-related offenses the instigator will be punished even if the perpetrator has not attempted to commit the respective criminal offense. It is important to emphasize that instigation always exerts conclusive influence on a specific person to commit a specific criminal offense. In other words, public provocation in the form of distributing a message to the

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<sup>3</sup> For details see Council of Europe, Committee of experts on terrorism (CODEXTER), Profiles on counter-terrorist capacity, Croatia, p. 11-22.

public with the intent of inciting the commission of a terrorist offense, whatever the content of this message may be, wouldn't fall under the scope of Art. 37 of the CC'97 (Derenčinović, 2010, p. 315-316). From this reason in 2008 Criminal Code was supplemented with a new criminal offence, public instigation to terrorism. According to Art. 169a whoever with intent to commit a criminal offence of terrorism publicly expresses or spreads ideas by which terrorism is directly or indirectly incited and thus causes the danger that this criminal act may be committed shall be punished by imprisonment from one to ten years.

Public provocation was the subject of extensive debate in the Council of Europe Committee of Experts against Terrorism. Due to the fact that the concept of the public provocation has been very closely related to freedom of expression the main concern was how to find an appropriate balance between protection from terrorism and freedom of expression (Derenčinović, 2007, p. 37-40). Provision of Art. 169a was completely in line with Art. 5 of the Council of Europe Convention on Prevention of Terrorism, but new CC'11 adopted some amendments. Pursuant to Art. 99 of the CC'11 any person who publicly expresses or promotes ideas directly or indirectly instigating the commission of a terrorism, financing of terrorism and another criminal offenses which are related to terrorism is responsible for public provocation to terrorism. It includes the following criminal offenses: Kidnapping (Art. 137), Destruction of or Damage to Public-Use Devices (Art. 216), Misuse of Radioactive Substances (Art. 219), Attack on an Aircraft, Vessel or Immovable Platform (Art. 223), Endangering Traffic by a Dangerous Act or Dangerous Means (Art. 224), Murder, Kidnapping or Attack on an Internationally Protected Person (Arts. 352-355) (Munivrana-Vajda, 2013, p. 32-33).

Pursuant to Art. 99 all of the forms and manifestations of encouragement, glorification and apology of terrorism are punishable.

Although provision of art 99 is in line with Art. 5 of the Council of Europe Convention on Prevention of Terrorism and Council Framework Decision 2008, contrary to these documents (and Art. 169a CC'97), CC'11 does not require that the provocation causes a danger that one or more terrorist offenses might be committed. For the prosecution it will suffice to prove that there was the intention to instigate another person to terrorist activities. In other words, the Prosecutor cannot prove that the *actus rea* of the perpetrator acting with the intention to instigate another person to commit a criminal offense caused the danger of the commission of the respective offense. This way, the scope of criminalization of public provocation to commit terrorism-related criminal offenses is extended (compare with Council of Europe Convention on Prevention of Terrorism, Explanatory Report, paras. 99 and 100).

If we keep in mind the fact that the concept of public provocation is very closely related to freedom of expression protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms, it seems that Art. 99 CC'11 does not represent an appropriate balance between the obligation of the state to protect everyone from terrorism and its obligation to protect freedom of expression as the fundamental human right. Due to that fact, some authors consider that the criminal zone of Art. 99 is very broad and that this provision should be interpreted in accordance with its international sources (Munivrana Vajda, 2013, p. 33).

### **3.4. Recruitment for Terrorism**

The criminal offense of recruitment for terrorism is provided in Art. 100 of the CC'11. It foresees the imprisonment from one to ten years for any person who solicits another person to join a terrorist association for the purpose of contributing to the commission of terrorism-related criminal offenses. This provision sets forth that the perpetrator has to act intentionally, but it does not prescribe that the recruited person actually joins a terrorist organization or commits a terrorism-related activity (Munivrana Vajda, 2013, p. 33).

### **3.5. Training for Terrorism**

Any person who provides instructions on the making or use of explosive devices, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, knowing that the skills provided are intended to be used for the purpose of committing any of the terrorism-related criminal offenses is responsible for training for terrorism (Art.101). The punishment prescribed for training for terrorism is imprisonment from one to ten year.

### **3.5. Terrorist Association**

Criminal offenses of terrorism can be regarded as criminal offenses committed by individuals. But if the perpetrator acts as a part of terrorist association, he will be responsible for two criminal offenses, terrorism (or another terrorist-related act) and terrorist association (Art. 102). Namely, terrorist association is regarded as a separate criminal offense. Pursuant to the Art. 102 para. 2 any person who becomes a member of the criminal association or commits an act which he knows contributes to the achievement of the terrorist association's goal is responsible for terrorist association crime. In other words, it is not necessary that the perpetrator becomes a member of a terrorist organization, it suffices that he takes an action he knows that contributes to achieving the goals of terrorist organizations (Munivrana Vajda, 2013, p. 32). An aggravated form of this offense is organizing or conducting terrorist organizations, the aim of which is to commit a terrorism-related criminal offense (Art. 102 para. 1).

When determining the type and measure of punishment, the court shall, starting from the degree of guilt and the purpose of punishment, assess all the circumstances affecting the severity of punishment by type and measure of punishment. It is important to mention that Criminal Code provides the possibility for the court to remit the punishment of an organizer and member of the terrorist association. Namely, pursuant to Art. 102 para. 3 the court may remit the punishment of a person who organizes or conducts terrorist organizations or a person who is a member of the criminal association or commits an act which he knows that contributes to the achievement of the terrorist association's goal in two cases. First, if by uncovering a terrorist association on time, person prevents the perpetration of a terrorism-related criminal offense. Second, if person who is a member of a terrorist association uncovers the association prior to committing, as its member or on its behalf, a terrorism-related criminal offense.

#### 4. Conclusion

A coherent counter-terrorism legal strategy requires a set of various measures which are focused to lead to an eventual eradication of terrorism. It all could start with strengthening international cooperation in the prevention, criminal prosecution and repression of terrorist activities. But, the lack of universally accepted definition inevitable opens the door for potential abuse and limits the effectiveness of both international and domestic law-making efforts to counter terrorist activity. Only by creating and reaffirming internalized values, criminalization of terrorists may serve in the long run. It is clear that the last decade witnessed a transformation of the landscape of national security law and policy, both domestically and internationally. Soon after the 11/9 attacks, the UN Security Council took a bold, novel step in mandating worldwide domestic law making to combat terrorism, despite the seemingly central problem that the UN has not adopted a comprehensive definition of terrorism. (Setty, 2011, p. 3)

The approach upheld by a cross section of countries and also by the UN is that counter-terrorism efforts need to be comprehensive, for the causes of terrorism are deep seated and multifarious. Also, by Cordesman, the attacker sees others as acts of morally justified vengeance. (Cordesman, 2002, p. 2) Today's threats are deeply interconnected, and they feed off of one another. The misery of people caught in unresolved civil conflicts or of populations mired in extreme poverty, for example, may increase their attraction to terrorism, but also a political, social and economic deprivation, denial or delay in exercise of right to self-determination, and foreign occupation, even a resistive response to the process of economic modernization or social change. All these factors lie at the root of terrorism.

The alleged lack of efficacy of the anti-terror treaty regime largely depends on national measures. With the adoption of the criminal offense of terrorism, financing of terrorism, terrorist association, public instigation of terrorism, recruitment for terrorism and training for terrorism, the Republic of Croatia built, at national level, wide-ranging criminal legislation in order to cover different aspects of the suppression of terrorism.

Although the role of criminal law after the 2001 terrorist attacks is partially marginalized and other measures have primacy, for example "the war on terrorism" (Derenčinović, 2007, p. 47-48) criminal law is still an unavoidable instrument in the fight against terrorism. After 2001 most states have changed their criminal law legislation by introducing new criminal offenses. They are directed not only at terrorists but at third parties who may support terrorists. Due to the potentially disastrous consequences of terrorist acts, as well as their unpredictability, the main aim of those new incriminations was to allow earlier states intervention by criminalizing preparatory act in advance of terror attack.

New approach in the fight against terrorism opens a new question about the functional limits of criminal law and highlights the tensions between security and individual freedom. Therefore, during the integration of terrorism-related criminal offences in domestic criminal law it is necessary to find the appropriate balance between protections of state citizens from terrorism and protection of fundamental human rights and freedoms of these citizens. In those contexts it is important not to overuse the criminal law and find clear limits on state power.



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