INTERNATIONAL CRIMINAL LAW AND TERRORISM

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Abstract: Although as old as politics itself, terrorism as an international security problem has not yet received its unique definition. The purpose of this paper is to consider the

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necessity having a generally accepted definition of terrorism in the form of political violence as the basis on which terrorism will find its place in international criminal law. The first part of the paper is dedicated to the general consideration of international criminal law and the International Criminal Court. The second part of the paper examines the existing definitions of terrorism and analyzes terrorism as a crime in international criminal law. Terrorism has long transcended national borders and is no longer a threat only to sovereign states but also to international peace and the security of both the individual and society as a whole. With the expansion of terrorism and increasingly brutal ways of expressing this type of crime, there is a need for even closer international criminal cooperation of sovereign states in the development of legal mechanisms for the prevention and punishment of perpetrators of these criminal acts. By reviewing relevant literature concerning itself with such topics and comparing different understandings of the concept of terrorism from legal, political, and security science sources, we conclude that clarifying the definition of terrorism as an international security problem will, lead to its complete characterization as an international criminal act.

Key words: terrorism, international criminal law, politics, security, crime, International Criminal Court.

Introduction

International criminal law, a relatively young branch of law, represents a very important part of international public law and is significant in the prosecution of perpetrators of crimes at the international level. The main goal of international criminal law is to ensure the international legal order and maintain peace in the world. At its core, international criminal law is a branch of law science which deals with illegal acts that break international regulations endangering international peace and the legal order. Based on these fundamental law concepts, terrorism was recognized as a dangerous security problem of the international community, and, thereby, had to be characterized as an international crime. For a long time, the terrorist acts have crossed the national borders of sovereign states, and these acts of terror needed to be placed under the jurisdiction of a common legal entity, the International Criminal Court. In order to create conditions for effective application of the norms for international criminal law across national borders, it is inevitable that the sovereignty of states will be reduced as the jurisdiction for crimes of international terrorism transfers to supranational institutions, i.e. the International Criminal Court (ICC).

The ICC would act as the primary institution for crimes concerned with terrorism in nature, albeit with certain elements of foreignness. Since terrorism is the most dangerous form of political violence in the modern world, and a great security challenge of today, comprehensive cooperation between states and the gradual establishment of mutual trust is necessary. In the national criminal legislation of most countries, the criminal offenses relating to terrorism are, for the most part, defined using generally accepted international legal documents that those countries have ratified and accepted into their national legislation. International

criminal law is a result of decades of awareness-raising and protection mechanisms. It is based on a large number of agreements, declarations, resolutions, and recommendations which designate certain illicit conduct as crimes and has been adopted at the universal and regional levels.[1] In order to fully determine the jurisdiction of the International Criminal Court for the crime of terrorism, a unique and generally accepted definition of this security problem is necessary.

The lack of a unique definition of terrorism, which would assist with clarification of terrorism as a crime directed against international security, also harms its characterization as a crime in international criminal law. This clarification is necessary in order to reach a full agreement at the international level to declare terrorism an international crime, define the legal instruments of reaction, and include terrorism in the actual jurisdiction of the International Criminal Court. Terrorist acts in all their forms and manifestations are primarily aimed at causing chaos in organized states which follow defined rules of law. In doing so, these acts of violence and terror end up costing human lives, infringe on human rights, attack fundamental freedoms and democracy, threaten the territorial integrity of the state, endanger the security of the state and society, and attempt to destabilize legitimately elected governments.

For a long time, partial and contradictory data from practice and a somewhat sharp ideological contrast in legal doctrine led to the conclusion that a consensus in the international arena did not exist. In recent years, it seems that some factors have changed significantly. For example, the empirical manifestations of terrorism have reached a complexity that clearly shows the limits of the sectoral approach which was initially referred to as an

1. Stojanović, Z., 2012, International Criminal Law, Law book, Belgrade, pp. 15- 17.

overall strategy. Moreover, terrorist acts have reached such a degree of seriousness that the members of the international community and public opinion both realize how costly poorly drafted anti-terrorism strategy can be. Lastly, terrorism has ceased to be a phenomenon confined mainly to certain territories or political questions and has assumed the features of a globalized criminal activity able to reach and hit any state and any population.

All those factors, strictly interlinked with the gradual decrease in importance of the juxtaposition between the fight against terrorism and the pursuit of international values of a different nature, have prepared for the maturing of a different sensitivity amongst the international community, the terms of which deserve a thorough examination. In this context, elements of international practice will be weighed according to the historical context which produced or accompanied them in order to verify the feasibility of the construction of a notion of terrorism shared by the international community.[2] Therefore, the international community must and should take all necessary steps to strengthen cooperation between states through the institutions of international law to prevent terrorism and sanction the crimes of terrorism. To successfully fight terrorism, states must show determination through international cooperation and reach agreements and accept the application of common rules in the prevention of international terrorism. Efforts should be focused primarily on resolving open issues regarding the legal definition of terrorism and the adoption of legal acts that would serve as an effective instrument in the fight against terrorism.

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2. Filippo Di, M., 2008, Terrorist Crimes and International Co-operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes, European Journal of International Law, Vol. 19, No 3, pp. 534-535.

INTERNATIONAL CRIMINAL LAW – GENERAL CONSIDERATIONS

International criminal law is young and the least developed area in the field of international and criminal law, whose development and progress are mostly related to the present. During its development, this branch of law was named inter-state punishment law, inter-state criminal law, or supra-national criminal law.[3] The current system of international criminal law can be derived from three legal sources.

The first source is the principles derived from national criminal jurisdiction. The second is the Conventions on International Crimes. And the third source is derived from separate principles within the national legal system on crimes marked as international crimes. In case of conflict between sources of international criminal law, international agreements of a consensual character have priority in relation to national legislation. This is because, following internationally recognized principles of international law, a country's system of legislation cannot be in contradiction with the international commitments of that country. Nevertheless, one important aspect needs to be acknowledged: the system of international criminal law does not have a central role in its application and enforcement. The whole system of international criminal law, more or less, depends on each state separately because national jurisdiction is a real force for the application of the international criminal framework.

However, with the establishment of the International Criminal Court (ICC) as a permanent body, countries that have ratified the ICC Statute have delegated jurisdiction for certain offenses to the jurisdiction of this tribunal following Article 5 of the ICC Statute. Some

3. Farhad, M., 1996, International Criminal Law, New York, F. Malekian, p. 51.

authors argue that international criminal law does not exist.[4] On the other hand, some argue that international criminal law is a small component of international law.[5] Other authors believe that there is a system of international criminal law, but that it cannot be applied in relations between states. According to the second opinion, in creating international criminal law, it is necessary to harmonize positions between states and, above all, to make joint decisions regarding serious crimes declared by the international community as a whole which would be the first step towards establishing a system of international criminal law[6].

For this group of authors, it is characteristic that they plead the thesis of one international organization (the International Criminal Court) that will have the power to judge in crimes committed in the field of international criminal law and indicate the need for formation of an international police force that will have the power to implement decisions of this organization.[7] Some other views suggest that, although we assume that international criminal law exists, elements, as well as rules, cannot be clearly defined. This opinion further indicates one of the significant difficulties in defining the concept of international criminal law because there is a strong tendency to combine norms of international public law and norms provided by domestic criminal law that have an international character. This process amplifies commitment to building a unique regulation at the international level as soon as possible.

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4. Schwarzenberger, G., 1950, The problem of an international criminal law, Current Legal Problems, Vol. 3, No. 1, p. 263.
5. Glover, A., 1921, International Criminal Law, Journal of Comparative Legislation and International Law, Vol. 3, No. 4, p. 237.
6. Crimes under the jurisdiction of the International Criminal Court, ICC Statute, Article 5, Rome, (17 July 1998) A/CONF.183/9.
7. Bassiouni, Cherif, M., 1985, A Treatise on International Criminal Law: Crimes and punishment, Thomas, New York, Vol. 1, p 93.

One of the reasons is that the legal elements of international criminal law are not solid or have not yet been defined. Still, a lot of work remains around the majority agreement that must be reached in the positions of the states.[8] A major imperfection of the international criminal law system is that it was unable to organize the trial of criminals who violated the norms of international or criminal law committed by a state whenever a State or States so request assistance, failing to do it themselves, in determining the individual responsibility of individuals or when they directly violate the norms in relation to their own behavior. In this case, alternative sanctions still exist and could be applied in punishing those responsible for violating international or criminal law both through material compensation for any damage or in the most drastic form resorting to force and war as the last solution against the "responsible state".[9]

When we talk about the imperfection of a system, we primarily mean the system's inability to try all offenders equally and not selectively and politically inspired, as practice shows, especially in recent years.[10] Starting with the Nuremberg tribunal, which trialed exclusively German Nazi criminals but did not trial war criminals from other countries, and moving up to ICTY, whose role was also heavily defined by asserting pressure on a singular nation, only one nation was on trial for all of the atrocities collectively committed. It is also proven, that as it is international law, the law of sovereign states and as such, it cannot have a certain system of punishment. It can only define certain norms of a general nature, but

8. Even after reaching an agreement, 127 countries signed the ICC Final Act, many issues remained unresolved.
9. Bassiouni, Cherif, M., 1985, p.77.
10. The establishment of the ICTY and ICTR as ad hoc bodies proves the selectivity of the so-called "international community", the cases before these courts clearly show when the so-called Marked by the "international community" as the culprit. In this case, no legal but political arguments are used.

it depends on the state (the act of ratification) whether it will include international laws in its domestic criminal legislation or not.

International criminal law has a general preventive role in controlling the commission of crimes at the international and national levels. The object of legal regulation of international criminal law is a specific act, marked as harmful by the factors that determine the current "world interest," whose protection considers the imposition of criminal sanctions on perpetrators of "harmful acts." Sanctions will be applied by member states of the world community through collective cooperation or actions at the national level.[11] Perpetrators of "harmful acts" are considered individuals who, in their personal name or in their representative capacity, have committed acts that are internationally defined as prohibited and for which certain penalties are given.

In terms of this definition, the international and national legal system must be harmonized and focused on cooperation in this area. Accordingly, one of the important questions that has been asked is: is the individual a subject in the system of international law or not? Following traditional international law, an individual can be neither a subject nor an object of international law. Traditional international law recognizes states, and especially independent states, as the only subjects of this right. At the beginning of the twentieth century, three systems of responsibility emerged. According to the first, as it has already been stated, only states can be the subject of international criminal law. The second understanding speaks of the cumulative responsibility of states and individuals, and the third speaks of modern understandings beginning with the fact that states are

11. Farhad, M., 1996, p. 7.

no longer the only subject of international law. Individuals have also become subject to this right following the changes undergoing the international legal system.[12] The view that an individual may be a subject of international criminal law was also accepted during the establishment of the International Criminal Court.

A person who commits a crime under the jurisdiction of this court shall be criminally liable, except in cases defined by the Statute which relate to the exclusion of criminal liability. Individual responsibility is provided in the case when the person:

a) Commits such a crime, either personally or in cooperation with another person or through another person, regardless of whether the other person is criminally responsible;

b) Orders, demands or causes the commission of such a crime, which occurred or was intended;

c) In order to assist in the commission of such a crime, a person assists, encourages, or in some way otherwise participates in its commission or attempted commission, including also the provision of funds for the commission of a crime;

d) In any other way, contributes to the commission or attempted commission of such a crime by a group of persons with a common goal. Such contribution shall be characterized as intentional if 1. it is committed with the aim of prolonging criminal activity or achieving the goal of that group; committing crimes within the jurisdiction of the Court, or 2. has knowledge of the intent of the group to commit the crime;

12. Wallace, R.M.M., 1997, International Law, London, Sweet and Maxwell, p. 1.

e) In connection with the crime of genocide, directly or publicly encourages others to commit the crime of genocide;

f) Tries to commit such a crime by initiating actions that cause the commission of that crime, but the crime does not occur due to circumstances independent of that person's intentions. However, a person who renounces the intention to commit a crime or otherwise prevents the commission of a crime shall not be punished under this Statute for attempting to commit that crime, if he has completely and voluntarily renounced the commission of that crime.[13]

International criminal law is a system of legal regulations that contain norms of criminal law which have an international character and norms of international public law aimed at punishing or applying other sanctions against persons responsible for violating these norms. The national legal system has a significant role in the system of international criminal law, especially in a situation when such a system is not able to function. In these circumstances, international criminal law can be defined as a link with the national criminal system to prosecute perpetrators as effectively as possible.[14] Therefore, it can be concluded that international criminal law has the following essential characteristics:

a) It is a supranational law or super law;

b) International criminal law deals with an illegal act that violates international regulations;

13. Rome Statute of the International Criminal Court, International Criminal Court, Rome, (17 July 1998) A/CONF.183/9, pp. 17 -18.

14. Farhad, M., 1996, p. 9

c) International regulations which deal with international criminal law are norms of criminal law that have an international character;

d) The international legal order and peace are endangered by violations of the norms and regulations of international criminal law,

e) Norms and regulations of international criminal law are aimed at punishing or applying other sanctions against persons responsible for violating those norms.

International criminal law is also a type of defense against the so-called "Smart crime" and "organized crime" where the narrowness of national legislation to react is used in the territory of another state. The problem with fighting against this type of crime has been solved, among other things, by defining common problems in international unilateral or bilateral agreements and conventions.

ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT

The most important instrument for the functioning of international criminal law in practice is the International Criminal Court. So, it is with the establishment of the International Criminal Court that international criminal law became applicable. One of the most important reasons why international criminal law was not functional and applicable was the lack of will, namely the political engagement of countries on which security and safety in the world largely depend. Despite the fact that they are formally in accordance with the Charter of the United Nations and all states are equal in rights and obligations, some states, specifically permanent members of the Security Council, have greater rights

than others. These states are not only de-facto immune from certain measures that could be applied in a situation to commit a certain internationally sanctioned crime, but they are also legally protected. With the possibility of using the Veto, these states can be sure that any action in case they are indicted will be prevented at the outset.

The International Criminal Court was a "missing link" in the international legal system. The emergence of the institution of the International Criminal Court is connected with the emergence of the tribunal for the trial of war criminals in Nuremberg and Tokyo after the Second World War. These were ad hoc tribunals, set up for specific cases of violations of international law. The root of international criminal law in the future will be precisely the principles and rules created through this experience of trials in the Nuremberg Trials. The trials in Tokyo and Nuremberg were the first to deal with violations of international law. However, in 1993 and 1994, with the advent of ad hoc tribunals for FR Yugoslavia and Rwanda, the first steps were taken to single out international criminal law as a separate branch of international public law.

The start of the war in the former Yugoslavia, as well as the conflict in Rwanda, resulted in the establishment of ad hoc courts for the former Yugoslavia and Rwanda. It can be said that just then a new branch of international public law was created, that is, international criminal law. It has been almost 50 years since the United Nations concluded the need to establish an International Criminal Court. In resolution number 260 of December 9, 1948,[15] the Convention of Prevention and

15. "Throughout history, genocide has inflicted great losses on humanity; international cooperation is necessary to prevent this and similar crimes." Convention on the Prevention and Punishment of the Crime of Genocide, UN General Assembly Resolution A/RES/3/260. (9. December 1948).

Punishment of the Crime of Genocide was adopted.[16] Article I of this Convention characterized genocide as an "international crime" and Article VI states that persons accused of genocide will be tried either by the competent court of the country in whose territory the crime was committed or by the International Criminal Court[17]. In the same resolution, the General Assembly invited the Commission on International Law (ILC) to consider the possibility of establishing an international legal body to try persons accused of genocide.

The following conclusion of the ILC was that the establishment of an international tribunal that can try persons accused of genocide or other crimes of a similar nature is possible and highly desirable. The General Assembly has established a Committee on International Criminal Justice[18] to prepare a proposal for the establishment of a tribunal. The committee prepared a draft of the statute[19] in 1951, which was revised in 1953.[20] A significant moment in the draft statute was that for the first time international criminal law is mentioned as a source of law based on which court proceedings are being conducted.[21]

However, the General Assembly was unable to reach an agreement because there was a problem in defining and

16. Entered 12.01.1951.
17. See Vasilijević, V., 1968, International Criminal Court, (Article VI deals with the jurisdiction of the International Criminal Court), Belgrade, Institute for Criminology Research, p. 32.
18. See Resolution adopted by the General Assembly during the period from 16. December 1950. to 5. November, 1951. 489 (V), Resolution adopted by the General Assembly, Study by the International Law Commission of the Question of an International Criminal Tribunal, A/RES/3/260 B (9. December 1948) and document Annex to the Report of the Committee on International Criminal Justice, UN doc. A/2136 (31. August 1951).
19. Annex to the Report of the Committee on International Criminal Justice, UN doc. A / 2136. (31. August 1951).
20. Report of the 1953 Committee on International Criminal Jurisdiction, UN Doc. A/2645, during the period from 27 July-20 August 1953 (1954).
21. Article 2 of the Draft Statute.

adopting an international criminal code.[22] It was decided to postpone further discussion on this issue until the crime of aggression is defined.[23] After 1953, the issue of establishing an international criminal court was considered periodically. In 1979, the General Assembly sent a request to the UN Human Rights Commission to prepare a draft statute of the International Criminal Court in order to implement the Convention on the Prohibition of Apartheid. In December 1989, Trinidad and Tobago appealed to the General Assembly to establish an international criminal court as a means of preventing the sale and production of drugs and narcotics. Between 1980 and 1990, Trinidad and Tobago were active in promoting the idea of an international criminal court, not only regionally, but also internationally.

The General Assembly requested that the ILC summarize the work on the establishment of the International Criminal Court and to include in its jurisdiction the request of Trinidad and Tobago about the production and distribution of drugs.[24] Today, besides ad hoc courts, we have a permanent International Court of Justice in The Hague which has jurisdiction for cases between states. However, despite being called the International Criminal Court, its jurisdiction is limited to the signatory states. The Court was established by the Rome Statute on July 1, 2002. Without an International criminal court, whose jurisdiction encompasses individual responsibility as

22. See more in Ferencz B.B., 1992, An International Criminal Code and Court, Columbia Jurnal of Transnational Law, New York, Vol. 30, No. 2, pp. 375-382.
23. On April 12, 1974, the UN General Assembly adopted the text of the definition of aggression: General Assembly Resolution 3314 (XXIX), Definition of Aggression, (14 December 1974).
24. See more in Regional Workshop on Mechanism for the Development of International Criminal Justice, 1998, 14-15. May. Port-of Spain, p. 5.

one applicable mechanism, crimes such as genocide or war crimes would go unpunished.

PROBLEMS OF DEFINING TERRORISM

Successfully countering terrorism as a great security challenge of today requires a unique conceptual definition. There is no consensus in the scientific and professional literature which deals with the definition of terrorism. After researching emerging forms of terrorism, the history of its origin, and types of terrorism as a security threat, there does not seem to be a consensus on the definition of terrorism. Because of its complexity as a social phenomenon, the issue of perceiving terrorism must be multidisciplinary. Although several scientific disciplines deal with the definition and characteristics of terrorism from their point of view, this paper primarily focuses on the perception of terrorism as a crime covered by international criminal law.

In Theory of International Relations and Security Studies, there are a large number of definitions and classifications, and yet, there is still no consensus among scientists in the practical valorization of their definitions. Terrorism as a phenomenon has been studied in numerous scientific disciplines in which scientists have tried various theories to support their vision and definition of terrorism. In sociology, political science, philosophy, psychology, legal study, security, and other scientific disciplines, definitions of terrorism are given as a type of deviant social phenomenon, a form of political violence, or a security challenge, etc. However, a comprehensive definition of terrorism has not been achieved yet. Most experts in this field think that the obstacles to the adoption of a single definition are precisely the different approaches to the interpretation of this problem that arises from cultural-religious and socio-political differences. Legal, political

and ideological differences between the creators of certain administrative definitions were a problem in finding a unified position of the international community on the constructive features of the general crime of terrorism.

The existence of a unified position on terrorism's definition would prevent avoiding prosecution of perpetrators by going to a country where it is not or is incriminated in another, narrower, way. The international character of terrorist activities justifies the tendency, which in modern conditions is realized in some regional documents, to look at terrorism as a single criminal law category, regardless of to whom it is directed, who the state of execution is, and who the state is in which the perpetrator is being tried.[25]

There is no agreement in the literature on the time of occurrence and the first manifestations of terrorism. Some authors believe that terrorism as a form of political violence originated when politics itself began, while others believe that it is a much younger phenomenon. When it comes to the origin of the term terrorism, the authors agree unanimously. The word terrorism comes from the French word TERREUR which means fear or horror. Terrorism in the political sense is an act of violence used for political reasons in order to intimidate and ruthlessly break the resistance of the one to whom it is performed.[26] The term was first mentioned in 1789 during the Jacobian dictatorship.

Given that terrorism as a social phenomenon is primarily a political phenomenon, it is quite obvious that its definition is hampered by opposing political interests

25. Bodrožić, I., 2015, Problematic issues of defining terrorism, Security, Vol. 57 No. 3, pp. 174-175.
26. Group of authors, 1975, Political Encyclopedia, Belgrade, Contemporary Administration, p. 1079.

that prevail on the political scene. This raises the point that if one wants to avoid it in this way, there must be the creation of a single definition in order to protect certain political views and interests. In the legal sciences, terrorism is characterized as a social phenomenon with a high level of harm and illegal behavior of individuals and organizations. This position is also accepted from the viewpoint of national criminal legislation of certain countries. At the level of international law, the hijacking will highlight the use of conventions to fight against terrorism — until they have expanded following the problems to be solved and appear locally in a more precise and synthetic way. The technique is the same: the law is adapted to the predominant form of terrorist action at any given time.

The problem facing a 'global' definition is the difficulty in taking special circumstances into account according to the type of action committed (e.g. hijacking), the nature of the victims (e.g. hostage-taking incidents), or the type of method of the terrorist action (e.g. explosives, financing). For all these reasons, the so-called universal conventions are negotiated and signed in specific frameworks depending on the appropriate field (ICAO, IMO, IAEA, or the General Assembly of the United Nations for the cross-disciplinary themes).[27] However, the law determination and definition of terrorism is impossible to determine without a political definition of this term. Political science and law are two disciplines in which the authors must reach a consensus on the definition of the term terrorism, its characteristics as a crime, and the rules of sanctioning.

Some foreign and domestic authors have tried to give as concise and comprehensive definitions of terrorism

27. Sorel, J-M., 2003, Some Questions About the Definition of Terrorism and the Fight Against Its Financing, European Journal of International Law, Vol. 14, No. 2, p. 368.

as possible. Thus, according to Philip Kerber who is one of the most cited authors in this field, terrorism is a symbolic act and as such "can be analyzed like other ways of communication, by analyzing its four components: transmitter (terrorist), independent recipient (target), message (bomb, ambush or other terrorist action) and feedback (reaction of a certain circle of listeners)."[28] According to Simeunovic, terrorism is defined as “a multidimensional political phenomenon that can theoretically be defined as a complex form of organized, group, and less often individual or institutionalized political violence marked by brachial-physical and psychological methods of political struggle, which are usually used in political and economic crises, but rarely in the conditions of created economic and political stability of a society, systematically try to achieve "great goals" in a way inappropriate to the given conditions, first of all to the social situation and historical possibilities of those who practice it as a political strategy".[29]

Using the term terrorism, Radoslav Gacinovic means an "organized use of violence (or threat of violence) by politically motivated perpetrators, who are determined to impose their will on the authorities and citizens by causing fear, anxiety, defeatism and panic." [30] When defining terrorism, it is essential to mention that it is primarily aimed at undermining the political system of the state, that the targets are often civilians, and that terrorists want to achieve the greatest possible response to their actions in the media. Terrorism represents an illegal act of violence directed against a certain state to cause fear or collective damage to fulfill

28. Gaćinović, R., 2008, Phenomenology of Contemporary Terrorism, Military opus, Vol. 60, No. 3, p. 50.
29. Simeunović, D., 2009, Terrorism, Belgrade, Faculty of Law, University of Belgrade, p.78.
30. Gaćinović, R., 2011, Terrorism in Political and Legal Theory, Belgrade, Media Center Defense, p. 72.

a certain political goal. We are speaking of intentional use of force, and terrorism is being used as a manner of fighting for reaching the previously mentioned political goals.[31] One of the difficulties in arriving at a definition of terrorism is its protean nature – it can run from the bomb planted by the single-issue, single activist to the elaborate multifeatured campaign which seeks fundamental political reform in a state or the reformulation of state boundaries.[32] The ways and models of expressing theoretical acts are very diverse, which is another aggravating circumstance for creating this definition. Also, the obstacles related to the definition of the term have their own territorial character.

Misconceptions about terrorism appear because the definitions are exclusively a 'product' of the West or third world countries. New polarizations and political relations, technological achievements, new motivations, and types of violence additionally prevent the adoption of a clear concept of terrorism, which is a condition for an effective fight against terrorism at the international level.[33] Therefore, it is important to stress the four main elements of terrorism: the goal of the activity is always or as a rule of a political nature, no matter whether we are speaking of overthrowing a regime, an incumbent, the secession of a certain territory or a part of it; the use of violence or the threat of use of violence; the victims are, as a rule, innocent citizens or state representatives; the inexistence of a direct link between the terrorist and the victim – that is, the attack is not directed towards the victim or victims personally, but the terrorist act is intended for sending a message to a wider community

31. Trifunović, D., 2007, New forms of terrorism in B&H, doctoral dissertation, Faculty of Security Studies, University of Belgrade, p. 27.

32. Warbrick, C., 2004, The European Response to Terrorism in an Age of Human Rights, European Journal of International Law, Vol. 15, No. 5, p. 1001.

33. Petrović, D., 2020, General characteristics of the basic concept of terrorism, Foreign Legal Life, Vol. 64, No. 4, p. 156.

(state, society, etc.).[34] Although there are differences in the authors' views when trying to define terrorism, what is generally accepted and known is that terrorism is a dangerous social phenomenon that has appeared in various forms throughout history, terrorist targets are increasingly diverse, and the manifestations are more dangerous and brutal.

TERRORISM AS A CRIME IN INTERNATIONAL CRIMINAL LAW

The structure of international criminal law is such that the issue of the crime and its definition occupies a central place. This indicates the existence of a universal interest in combating international crimes. The group of crimes marked as international crimes primarily includes those that fall within the jurisdiction of the International Criminal Court: War crimes, Crimes against humanity, Genocide, and Aggression.[35] In addition to the above, the following are also marked in the category of international crimes: Taking hostages, Terrorism, Crimes against internationally protected persons, Crimes against United Nations officials and associated personnel, Crimes committed by mercenaries, The crime of production and distribution of narcotics, drugs and other psychotropic substances, Crime against cultural heritage, Environmental crime, Illegal use of weapons (Jus in Bello), Enslavement, The Crime of Apartheid, Piracy, Illegal medical experiments, Hijacking of aircraft, Counterfeiting money, Economic espionage and crime, A crime committed by the secret civil service, and others.[36] By reviewing this

34. Trifunović, D., 2007, p. 29.
35. Statute of the International Criminal Court, 1998, International Criminal Court, Rome., Part 2, Article 5 (crime of aggression not yet defined) https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf
36. Bassiouni, Cherif, M., 1987, International Criminal Law, Draft International Criminal Code, Brile, US, Section 49. (Many of the crimes listed are under the jurisdiction of the

classification, it can be concluded that terrorism in the modern and diverse form as we know it today is one of the greatest threats to the security of states and the entire international community. It is, therefore, necessary to engage in the study of terrorism as a criminal offense in international criminal law.

As the international community recognized terrorism as a serious security problem that does not know national borders, it initiated the adoption of numerous international conventions that provided for measures, means, and procedures of the signatory states in preventing and combating various forms of terrorism. By ratifying these conventions, states have undertaken to incorporate criminal law norms relating to liability and criminality for various forms of terrorism into their national legislation.[37] In order to successfully oppose terrorism, the word terrorism must be conceptually defined within the national framework of a country and within the international community. In this way, national and international law are harmonized, and unified and coordinated counter-terrorism is established.

States, through bilateral and multilateral agreements, conventions, and protocols cooperate in detecting and prosecuting perpetrators. Also, cooperation at the level of Interpol and Europol, as important international organizations in the fight against terrorism, is essential. With the strengthening of international terrorism, the cooperation of states in the exchange of information and the implementation of joint preventive and counter-terrorist actions is growing. The security of the international community is significantly endangered by the fact that terrorism is almost always associated with

International Criminal Court, but incorporated into some of the crimes defined in Article 5 of the Statute. E.g torture is part of crimes against humanity, Article 7).

37. Coković, S., Radončić, H., & Terzić, M., 2017, Crime – terrorism, Military opus, Vol. 69, No. 8, p. 381.

money laundering, organized crime, drug smuggling, arms trafficking, and other crimes with an international character. That is why the cooperation of states in the extradition of perpetrators of crimes is necessary. Within the framework of national legislation, the most severe punishments for the crime of terrorism are provided which speaks to the threat it holds for national security.

The definition of terrorism as a crime has a great ongoing impact at the international level. International criminal law as a system of legal regulations on which international criminal cooperation is based, developed differently until the beginning of the XX century. At that point in time it was characterized by auto determinism, namely state sovereignty in modeling its criminal-law protection and by a pronounced influence of international law over national.[38] According to some sources in the literature dealing with this issue, the beginning of the fight against terrorism is related to the assassination of King Alexander in Marseilles in 1934. and the French government's proposal to establish an International Criminal Court.

Not long after that, the League of Nations was adopted by the Convention of the League of Nations for the Prevention of Terrorism. Furthermore, with the adoption of the Geneva Convention on the Prevention and Punishment of Terrorism in 1937, terrorism was defined as a crime directed against the state whose goal and nature are to cause fear in individuals, groups of people, or the public. This provided the first foundation for recognizing terrorism as a criminal offense in international law. Recognizing the importance and complexity of the challenges and threats of terrorism to global security, the United Nations (UN) has sought

38. Bejatović, S., 2010, International criminal law cooperation as an instrument for combating crime, Contemporary tendencies of criminal repression as an instrument for combating crime (conference), Bjeljina, Ministry of Justice of the Republic of Srpska, p 104 – 107.

through decades of action to build effective and preventive legal mechanisms, including a criminal law element based on respect for fundamental human rights and freedoms and the rule of law. The idea of the need for an effective criminal law response to terrorism led to the creation and implementation of a series of documents aimed at preventing terrorist acts.

The documents created by the UN in the field of terrorism are: 1) The Convention for the Suppression of Crimes and Certain Other Acts against the Safety of Air Navigation; 2) Convention for the Suppression of Unlawful Hijacking of Aircraft 3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; 5) International Convention against the Taking of Hostages; 6) Convention on the Physical Protection of Nuclear Material; 7) Amendments to the Convention on the Physical Protection of Nuclear Material; 8) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; 9) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 10) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 11) Protocol for the Suppression of Unlawful Actions against the Safety of Fixed Platforms Located on the Seabed; 12) Protocol in connection with the Protocol for the Suppression of Unlawful Actions against the Safety of Fixed Platforms Located on the Seabed; 13) Convention on the Marking of Plastic Explosives for Detection; 14) International Convention for the Prevention of Terrorist Bombings; 15) International Convention for the Suppression of the Financing of Terrorism; and 16) International Convention for the Suppression of Acts of Nuclear Terrorism.

These sectoral conventions are multilateral international agreements that are legally binding for the signatory states and establish competencies and duties related to internationally incriminated conduct, which are designated as terrorist.[39] The Council of Europe Convention on the Prevention of Terrorism, adopted in 2005, aims to increase the efforts of states in the international community to prevent terrorism and its negative effects on the enjoyment of human rights and freedoms. Within the framework of this Convention, some provisions determine the responsibility of states in the suppression of terrorism, cooperation in apprehending perpetrators, protection of victims, and cooperation in criminal matters of extradition of perpetrators.

Undoubtedly, one of the most important documents in the field of the fight against terrorism is the UN Global Counter-Terrorism Strategy adopted at the UN level. The UN Global Counter-Terrorism Strategy (A/RES/60/288) is a unique global instrument to enhance national, regional, and international counter-terrorism efforts. Through its adoption by consensus in 2006, all UN Member States agreed for the first time to a common strategic and operational approach to fighting terrorism. The Strategy does not only send a clear message that terrorism is unacceptable in all its forms and manifestations, but it also resolves to take practical steps, individually and collectively, to prevent and combat terrorism. Those practical steps include a wide array of measures ranging from strengthening state capacity to counter terrorist threats to better coordinating the UN System's counter-terrorism activities. The UN Global Counter-Terrorism Strategy in

39. Bodrožić, I., 2016, Terrorism as a crime in the documents of international organizations, Science security police, Vol. 21, No. 1, p 205-210.

the form of a resolution and an annexed Plan of Action (A/RES/60/288) is composed of 4 pillars, namely:

a) Addressing the conditions conducive to the spread of terrorism,

b) Measures to prevent and combat terrorism,

c) Measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard,

d) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

The UN General Assembly reviews the UN Global Counter-Terrorism Strategy every two years making it a living document attuned to Member States' counter-terrorism priorities.[40] Cooperation at the international level inevitably introduces changes in domestic legislation, such as changes in investigative measures, monitoring of security stakeholders, wiretapping, etc. Within the UN Global Counter-Terrorism Strategy, there have been defined guidelines in the fight against international terrorism to develop a comprehensive and coordinated action at the international level. It is stated that the Strategy aims to encourage the signatory states, but also other important facets of the international community to support the implementation of the Strategy through the engagement of their available resources.

What is important in the light of international criminal law regulation of terrorism is that the Strategy states that all activities undertaken in the fight against terrorism must be harmonized with international law, the UN Charter,

40. The United Nations Global Counter Terrorism Strategy, Resolution adopted by the General Assembly (8. September 2006) A/RES/60/288.

and relevant international conventions and protocols in this area. According to the Strategy, states must ensure that all measures applied in the fight against international terrorism are in accordance with international law. They should also harmonize the national criminal justice system with the obligations of international law in detecting, prosecuting, and extraditing to justice persons who are perpetrators of terrorist acts.[41] Inspecting the Strategy, it can be concluded that the signatory states have more influence to sanction terrorist acts in their national legislation, but with the acceptance of the rules, which they take from international documents.

CONCLUSION

For the world, to become a safer place for the individual and society, international law must undergo certain changes. The variety of crimes that enter into international criminal law are a consequence of the globalism in which we live today. Changes in international criminal law, as a branch of international public law, are imposed by contemporary security challenges and threats. Crossing national borders in terms of committing crimes inevitably means overcoming national legal legislation. The International Criminal Court, as the main institution for the application of international criminal law, must therefore expand its jurisdiction. This primarily refers to the legal jurisdiction for the crime of terrorism and crimes related to terrorism.

This paper has mentioned the notions of terrorism as a criminal law category at the level of the international community. This speaks in favor of the fact that the international community needs a unified legal reaction in the fight against terrorism both in the preparation of

41. UN doc. A/RES/60/288.

the crime and its implementation since terrorism has long crossed national borders. That is why the international community must actively develop legal instruments to respond to its various forms of manifestation. Terrorism is recognized and acknowledged as a socially dangerous phenomenon and a significant security threat to the individual, society, and the state and must be placed under the actual jurisdiction of a universal international court, the International Criminal Court.

In national criminal legislation, terrorism is recognized as a crime with an international dimension and is mostly criminalized following generally accepted international legal documents. Although there are attempts to reach a consensus on the meaning of the term "terrorism," it still seems that we are far from the generally accepted definition of terrorism and its acceptance in national and international criminal law. This, of course, has a negative effect on the improvement of legal mechanisms in detecting and punishing perpetrators of terrorist acts. Interstate cooperation is an important factor that will influence the terrorists to be brought before the International Criminal Court. On the other hand, terrorism is closely related to politics, so the question arises as to what extent states are ready to cooperate in extraditing terrorists before international legal institutions.

We are witnessing different behavior of states when it comes to their citizens who were connected with terrorism and other crimes with an international character which shows that in certain national criminal legislations more intensive work must be done on the application of norms from signed international documents. This must be taken care of by the main actors on the international scene. Primarily, this refers to the United Nations and the European Union within

which there are real bases to create generally binding legal norms for all countries on the international scene. The fact is that terrorism in all its forms and manifestations represents one of the most serious threats to international peace and security and that there is no state which is immune to terrorism. Therefore, it is a threat to the creation of a global society that is being pursued in the modern world because terrorist acts (preparation, execution) do not know national borders. Success in countering terrorism would be achieved if there was a determination of states to fight against terrorism and the position of the international community was to get control of states that use terrorism to pursue their political interests.

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