

## TERRORISM AND THE NECESSITY OF ESTABLISHING AN INTERNATIONAL COUNTER-TERRORISM COURT

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*Abstract: At present, terrorism is an atrocious crime with various causes, becoming widely spread worldwide. The causes of terrorism and its correct identification and knowledge are particularly important aspects for the elaboration of those methods of fighting against this extremely serious phenomenon and for reducing the number of its negative effects such as number of victims, negative consequences at social, economic or political level. In what concerns the fight against terrorism, it also takes place at the international level and includes warfare information technology, media, psychological, cultural, etc. elements. This fight against terrorism must be continuous, all over the world and approached from several perspectives such as: diplomatic, military, political, psychological and informational. Concerned with the fulfillment of the general objective of the war against terrorism of the international community, which is given by ensuring that climate of security at national and international level for the states that form it and their populations and of protection against this scourge, the Romanian diplomatic representatives advanced in 2015 the international community's proposal to create an International Counter-Terrorism Court, as an international judicial body capable of making a real contribution to this necessary fight.*

*This study presents the issues related to the concern of the international community to combat terrorism and the possible establishment of an international judicial body with competence in sanctioning terrorism crimes, starting from the proposals made in this regard by Romania and Spain.*

*Keywords: terrorism, international community, war, international counter-terrorism court*

### I. Definition of terrorism & its effects

At present, there is no unitary definition at world level given to terrorism. Alex Schmid, the Dutch specialist in terrorism, has analyzed the contents of 109 definitions given to the phenomenon, identifying on this occasion among the basic elements of defining it the political reasons, the usage of violence, force and threat, the fighting and tactical methods, the psychological consequences and anticipated reactions, the discrepancies between victims and objectives<sup>1</sup>. It was considered that the impediment to finding a unitary definition of this serious phenomenon is given by the extremely different positions of persons, organizations or its interpretations, as well as by its complexity.<sup>2</sup> For example, within the League of Nations, the terrorism was defined as being represented by all criminal actions oriented against a state or planned or achieved

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<sup>1</sup> <https://ro.wikipedia.org/wiki/Terrorism>

<sup>2</sup> Idem

in order to produce a state of terror in the mind of certain persons, of a group of persons or of the general public<sup>3</sup>.

In the US Federal Code, the terrorism is defined as the illegal use of force and violence against persons or property in order to intimidate or punish a government, the civilian population, or a segment of the population, made in order to achieve political or social objectives<sup>4</sup>.

In the Great Britain, The Terrorism Act enacted in 2001 defines this phenomenon as including any use of violence and threats to achieve certain political, ideological or religious objectives, as well as destabilization or serious intrusion into the functioning of an electronic system, as well as threat to use firearms or explosives that do not aim at influencing the government or forming a state of terror<sup>5</sup>.

All of these definitions have been criticized, as some are flawed, others are erroneously based only on certain ways of manifestation, or they allow governments to manifest possible abuses.

At EU level, there is also a definition for the phenomenon we are referring to, in Directive no. 2017/541 on Combating Terrorism. According to the legal provisions of this Directive, terrorism offenses are those acts committed for the purpose of: seriously intimidating a population, or illegally forcing a government or an international organization to carry out or refrain from carrying out an act or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization<sup>6</sup>.

By analyzing the causes of terrorism, we identified as the most common the following: obtaining pecuniary benefits and not only, the intention to spread certain messages ("redeeming" terrorism), religious fanaticism, the fight for emancipation and peace, undermining the authority of the state. The causes of terrorism and their correct identification and knowledge are particularly important aspects for the elaboration of those methods of fighting against this extremely serious phenomenon and for reducing the number of its negative effects such as the number of victims, the negative consequences in social, economic or political plan.

As for the consequences of terrorism, it is proven that the first victims are the people, the citizens. They may suffer, as the case may be, from the terrorist act itself or from the response of the authorities and state bodies to it, or from the secondary economic consequences.

It was concluded<sup>7</sup> that the effects of terrorism can be represented by:

- total fulfillment of political goals,
- partial fulfillment of political goals
- continuation of the period of violence
- starting a war

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<sup>3</sup> Idem.

<sup>4</sup> Idem

<sup>5</sup> The Terrorism Act of Great Britain, 2000

<sup>6</sup> Directive (EU) 2017/541 on Combating Terrorism

<sup>7</sup> <https://ro.wikipedia.org/wiki/Terrorism>

- limiting individual freedoms or installing a dictatorship
- secondary economic consequences

The Serbian professor Vajim Dimitrevič said that “some origins of terrorism can be deplorable - racism, colonialism, human rights’ violation - if we take into account the fact that terrorists as a whole come from frustrated minorities”<sup>8</sup>.

The substantive analysis of terrorism has led to the highlighting of several possible causes, determined by the current stage of evolution of human society, such as: various social differences outlined in various states and arising from internal circumstances related to political, economic, religious, nationalist, racist, xenophobe, separatist aspects, political and military disputes in various parts of the world, and especially in connection with the struggle for power sustained even by criminal or terrorist organizations and the growing and continuous spread of Islamic conservatism<sup>9</sup>.

Other favoring causes of terrorism are: the power void or the incomplete organization of institutions with a role in preventing and fighting against serious crime; the scale of the organized crime phenomenon and its increasing overlap with terrorist acts; the lack of coordination at global, regional or zonal level of the ways to fight terrorism; political issues such as interference in the internal affairs of states, increased activities of extremist, fascist and neo-fascist organizations, poverty and all kinds of frustrations, bureaucracy, corruption, arms smuggling, radioactive and explosive materials and drug trafficking, as well as high unemployment in some states<sup>10</sup>.

Last but not least, an important factor favoring terrorism is the development of new technology which, among other real benefits for humanity, also supports good communication, collaboration and organization of terrorists<sup>11</sup>.

## II. The fight at international community level against terrorism

The war on terror has started after September 2001 and includes information technology, media, psychological, cultural etc. warfare elements. This fight against terrorism must be continuous, all over the world and approached from several perspectives such as: diplomatic, military, political, psychological and informational. We believe that the cooperation of the states that make up the international community, as well as the effective involvement of the international institutions and bodies that have competences for this purpose, is necessary for the development of an antiterrorism war with real effects, in order to combat and fight against the present dangers caused by the spread of terrorism.

<sup>8</sup> Vajim Dimitrevič, *Rescue de politique internationale*, m.886, Paris,1987, p.20

<sup>9</sup> Mirela Atanasiu, Lucian Stăncilă, *Terorismul - răul din urmă a începutului de secol / Terrorism – the last evil of the beginning of the century*, Ed. Universității Naționale de Apărare Carol I / *Publishing House of the National Defense University, Carol I*, 2014, p.46

<sup>10</sup> Idem, p.48

<sup>11</sup> According to the National Strategy for the Prevention and Countering of Terrorism, Romanian Intelligence Service, Bucharest 2002, p.2

In order to make the international fight against terrorism more effective, the entire international community must be involved and adopt fair resolutions, which can be put into practice even by coercion when necessary.

It was appreciated that it is necessary to find several solutions, some direct and radical - even violent, which will remove the evil entirely, and others indirect - represented by strategies to reduce the differences and disharmony between social and international relations and thus to improve of the population status<sup>12</sup>.

The fight of states against terrorism is manifested both domestically - nationally and internationally. At the national level, several states, confused by the extreme force and by the spread of terrorist attacks, have adopted laws defining such extremely serious crimes and banning some organizations. Such laws also restricted civil rights and guarantees of fundamental human rights. The first states to adopt such legislation were the United States, Great Britain and France. They have taken legal measures to combat terrorist attacks and defend the population and institutions. For example, the US law named "Patriot Act" has given special powers to the Police and Intelligence Service, allowing searches without prior warrant, checking correspondence and wiretapping, arresting, isolating and deporting suspects. Subsequently to this piece of legislation, it was agreed to take fingerprints and to photograph all foreigners visiting the US by another legal provision passed in 2004 - when the U.S. Visit program came into force.

Great Britain has passed an anti-terrorism law admitting the detention without indictment or trial of any foreigner suspected of posing a threat to state sovereignty.

However, terrorism has proven to be a danger that cannot be qualified as internal or external, as it has an international character, given that terrorist groups can have in their structure both foreign and local citizens, who carry out activities in various periods of time and, as the case may be, on the territory of a state or outside it.

At the international level, it has been concluded that terrorism is currently a disaster that, through its effects, endangers both people's lives and the security of states, the global security, generating profound and long-term effects on the ideals of today's human society. As a result of these conclusions, it is estimated that, globally, terrorism is a danger to which we must respond in a continuous solidarity both nationally and internationally. This solidarity must be manifested through common, well-thought-out and inflexible actions to combat and fight against this serious phenomenon<sup>13</sup>.

It was appreciated that for the success of the international fight against terrorism, three conditions must be met: international solidarity, political commitment and firmness of action<sup>14</sup>.

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<sup>12</sup> Mirela Atanasiu, Lucian Stăncilă, *Terorismul - răul din urmă a începutului de secol / Terrorism – the last evil of the beginning of the century*, Ed. Universității Naționale de Apărare Carol I / Publishing House of the National Defense University, Carol I, 2014, p.98

<sup>13</sup> *Mankind is at a crossroads in terms of its future: either we cooperate in the fight against terrorism, or the future will be bleak, and this threat will persist throughout the 21<sup>st</sup> century and perhaps beyond*, Argumenti Fackti, Moscow, 14<sup>th</sup> March 2002.

<sup>14</sup> Lucian Stăncilă, *Dimensiunea militară a operației antiteroriste / The military dimension of the antiterrorist operation*, Ed. Universității de Apărare Carol I / Publishing House of the National Defense University, Carol I, Bucharest 2006, p.18

During this war, it was appreciated that the states that make up the international community must bring their contribution differently - some may come with diplomatic support, while others may contribute financially, and others may bring military and logistical support<sup>15</sup>.

The international community has a virulent reaction to the spread of the consequences of terrorism, addressing a dynamic offensive tactic to prevent global and regional terrorism. Thus, it is desired to achieve the politico-military objectives of the antiterrorism war, which is given by stopping any terrorist attacks against the citizens and the interests of the states, simultaneously with the creation of a much safer international environment.

At international level, the procedure for combating terrorism aims at carrying out multilateral actions in four directions: 1. dismantling terrorist organizations and groups as a whole by attacking their sanctuaries and headquarters; 2. banning their funding, in various ways, by some organizations and states; 3. reducing or even eliminating those factors favoring the emergence and development of terrorism (such as poverty, corruption, drug trafficking, arms smuggling, organized crime etc.); 4. intensifying measures to defend the states and the citizens in any way<sup>16</sup>.

The objectives for achieving these goals were decided to be<sup>17</sup> represented by: 1. Detecting terrorists, the organizations from which they come and the activities of those organizations, 2. The total defeat of terrorism at world level, by carrying out activities at diplomatic, political, informational, military, economic-financial level etc. 3. Prohibition of financial and logistical support for terrorists and their hosting, 4. Maintaining an increased degree of responsibility in the fight against terrorism - obligation established by UN Security Council Resolution no. 1373 for all the states of the world. This objective can be achieved through methods such as: banning the financing of terrorist actions by compatriots, restricting terrorists' access to funds, not allowing the hosting of terrorist organizations on the territory of states. 5. International support for the fight against terrorism by forming a global alliance of powerful states.

### III. Proposal to create an International Counter-Terrorism Court

The general purpose of the war of the international community against terrorism is to ensure a climate of security at national and international level for the states and populations that establish it and to protect it against this scourge; this purpose is achieved by capturing or / or annihilating all those persons who are members of criminal organizations or groups carrying out terrorist acts.

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<sup>15</sup> Visarion Neagoe, Adriana Crăciunescu, *Forța militară în războiul împotriva terorismului internațional, în Lumea 2005 (Studii strategice și de securitate) / The military force in the war against international terrorism, in the World 2005 (Strategic and security studies)*, Ed. Centrului Tehnico-Editorial al Armatei / Publishing House of the Technical-Editorial Center of the Army, Bucharest 2005, p.202

<sup>16</sup> Mirela Atanasiu, Lucian Stăncilă, *Terorismul - răul din urmă a începutului de secol / Terrorism – the last evil of the beginning of the century*, Ed. Universității Naționale de Apărare Carol I / Publishing House of the National Defense University, Carol I, 2014, p.105

<sup>17</sup> Idem

We believe that, just being concerned with the fulfillment of this objective, the Romanian diplomatic representatives submitted in 2015 to the international community the proposal to create an International Counter-Terrorism Court<sup>18</sup>. The head of the Romanian diplomacy underlined that this initiative is based on two important ideas, namely: on one hand, the terrorism must be prevented by law, and on the other hand, the response the international society must have to the actions and forms of terrorism must be clear and categorical. Highlighting these aspects, his Lordship also stressed that Romania submits this proposal with the purpose of creating an international criminal court with a preventive, intimidating role and for replacing, if necessary, the role of national authorities in cases where they are overcome by the situation or they lack the will to investigate and prosecute terrorist acts. Through this court, it is hoped that, using the best possible methods of international law, the prevention of terrorism acts will be succeeded<sup>19</sup>.

This initiative is a Romanian-Spanish one, which was submitted to the UN member states of the Security Council and to the states in the southern neighborhood.

With regard to the jurisdiction and functioning of this Court, it is intended to have a subsidiary or complementary jurisdiction to national courts, following to judge only those cases which the State or States with competence in judging the perpetrators of a terrorist crime will not or cannot perform actions to solve such crimes. It is hoped that such an International Court will be an international body with jurisdiction over acts of terrorism, to prevent them, to discourage attempts at such acts and to punish those terrorist crimes.

Romania's proposal has received support from important personalities at the international level, who have realized that this Court, once established, could really contribute to the efficiency of the fight against terrorism. Thus, the head of the International Law Division of the Ministry of Foreign Affairs of Spain stressed that, in the opinion of this state, the establishment of such a Court is realistic and legally practicable.

Jordan has shown its full support for this initiative<sup>20</sup>. The Coalition for the International Criminal Court including 2,500 civil society organizations from more than 150 states, through the voice of the Regional Coordinator for Europe, has shown its support for Romania's initiative, one of the reasons being that currently the International Criminal Court does not have jurisdiction in the field of terrorism crimes and that the current International Criminal Court must strengthen its jurisdiction in the field of war crimes and of the war those against humanity and genocide<sup>21</sup>.

The support enjoyed by Romania's initiative to create an International Counter-Terrorism Court was also based on the realities that: terrorism is an extensive manifestation with a very rapid development, which requires urgent and concrete reactions at the international level; the means used by states to combat this phenomenon are insufficient at present, as are the forms of international cooperation in

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<sup>18</sup> On the date of 9<sup>th</sup> February 2015, during the work session on "Terrorism instigation"; [caleaeuropeana.ro](http://caleaeuropeana.ro)

<sup>19</sup> [caleaeuropeana.ro](http://caleaeuropeana.ro), *curtea-internationala-pentru-combaterea-terorismului*; 3.09.2015

<sup>20</sup> Idem

<sup>21</sup> Idem

this field; at present, there is no international way to act against a state that does not intend to cooperate internationally with other states to fight terrorism, and at the national level it does not create that institutional apparatus capable of this fight; new ideas and instruments are imposed at both national and international level and are correlated with the stage of evolution of society; it is necessary to find a means based on the norms of international criminal law to fill the gap that exists between the national plan of activity of states - based on domestic criminal norms - and that of international cooperation, which also has its limitations; at present, the crime of terrorism does not fall within the competence of any international criminal court.

At international level, it is appreciated that this Court, if established, will have the capacity to complement the efforts made in the fight against terrorism<sup>22</sup>.

### Conclusions

It is proven that terrorism is at present an atrocious crime that has become widespread throughout the world. In the first months of 2016 alone, 256 acts of terrorism had been registered globally<sup>23</sup>. In 2019, 436 people were arrested on suspicion of committing crimes related to jihadist terrorism. The arrests took place in 15 countries. Most were recorded in France (202), followed by Spain, Austria and Germany (between 32 and 56), Italy, Denmark and the Netherlands (between 18 and 27 arrests). This figure is lower than in the previous year, when a total of 511 people were arrested<sup>24</sup>. For this reason, it is absolutely necessary to show a real reaction of the entire international society against this scourge, which will protect the lives of citizens, the freedom and state sovereignty.

The proposal of Romania and Spain to establish an International Counter-Terrorism Court is intended to support and facilitate the fight of the international community against any form of terrorism, by the fact that this international court would become the judicial body through which the perpetrators of such crimes could be sanctioned. It is hoped that through the instruments for the establishment of this Court, a global definition to this international crime – the terrorism – will be given successfully.

We believe that this proposal is welcome, given that a judicial body with competence in solving and sanctioning acts of terrorism is not established at present. At the same time, we believe that it can be perceived as a response to the request addressed to all states, in the Madrid Declaration of 28<sup>th</sup> July 2015, in the Ministerial Conference following the special meeting of the Counter-Terrorism Committee of the UN Security Council. This called on states to propose creative ideas and new approaches to the development of the legal instruments to further counter terrorism, in accordance with international law<sup>25</sup>.

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<sup>22</sup> [mediafax.ro/politic/romania-si-spania-reiau-discutiile-privind-infiintarea-curtii-internationale-impotriva-terorismului-16700918/21.08.2017](http://mediafax.ro/politic/romania-si-spania-reiau-discutiile-privind-infiintarea-curtii-internationale-impotriva-terorismului-16700918/21.08.2017)

<sup>23</sup> [contributor.ro/dreptul-de-a-nu-ne-teme-si-curtea-internationala-impotriva-terorismului](http://contributor.ro/dreptul-de-a-nu-ne-teme-si-curtea-internationala-impotriva-terorismului), 15.04.2016

<sup>24</sup> <https://www.europarl.europa.eu/news/ro/headlines/security/20180703STO07125/terorismul-in-ue-atacuri-teroriste-decese-si-arestari-in-2019>

<sup>25</sup> Idem

Although the proposal of Romania and Spain, to which we referred in the present study, is extremely good and it was well received by the representatives of the international community, we still find that even six years after its launch, no further steps have been taken to create an International Counter-Terrorism Court. This was not done, although the proposal was accompanied by issues related to the organization and jurisdiction that could be attributed to such a Court<sup>26</sup>. Thus, this Court was expected to adjudicate only in those cases where the State or States competent in the trial of the perpetrators of a terrorist crime would not or could not take measures to sanction the crimes committed. The Court could also have become competent when a State, on its own initiative, wished to refer a case of terrorism to it, or when several States would have jurisdiction to prosecute and trial the perpetrators of a terrorist act, in which case the referral by those States to the Court would avoid the negative effects of this conflict of national competences. At the same time, as in the case of the International Criminal Court, it was appreciated as beneficial for the UN Security Council to send cases of terrorism to the Court. In the proposed view, the jurisdiction of the Court would be complementary or subsidiary to the jurisdiction of the current International Criminal Court, should a terrorist act have the constitutive elements of a crime already under the jurisdiction of the International Criminal Court.

With regard to the Court's *subject-matter* jurisdiction, it was proposed to include the crime of terrorism defined under international law - both common law and international jurisprudence - based on the definitions given in the 19 UN conventions already adopted in this field, which regulates issues specific to terrorism in sectors such as aviation security, maritime security, terrorist financing, the use of certain types of weapons, the protection of certain categories of persons.

In what concerns the *ratione personae* competence, similarly to other international criminal jurisdictions, it would apply to natural persons who have attained the age of 18 at the time of perpetrating the act, regardless of their political, military or any other position they hold.

The *ratione temporis* competence would be limited to acts committed after the creation of the Court, so it would be non-retroactive, as in the case of the International Criminal Court.

As for the *ratione loci* competence, it would be desired to be, ideally, universal, as terrorism is not limited to one place. For this reason, we rightly believe that it is necessary to create such a Court with global jurisdiction. The universal character of the Court would not allow the emergence of safe havens for terrorist acts.

As a way of establishing this Court, a multilateral treaty such as the Statute of the Court, negotiated and concluded by as many states as possible, was considered to be the most appropriate in terms of legitimacy, and a proposal was adopted for a UN Security Council resolution.

Regarding the organization chart of the future Court, it was proposed to include a number of 11 or 15 judges chosen from persons with high moral probity, known for

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<sup>26</sup> <https://www.contributors.ro/dreptul-de-a-nu-ne-teme-%C8%99i-curtea-internationala-impotriva-terorismului/>

their impartiality and integrity, and with recognized competence in the field of international law or criminal law, taking into account the principles of equal geographical representation, representation of the world's major legal systems and equal representation of men and women<sup>27</sup>. It would also be desired to include a Prosecutor's Office, and, as far as possible, a Defense Office (based on the model of special criminal courts for Sierra Leone and Lebanon), a Court's Registry Service, and, as an innovation, a "multinational police or security force" within the Prosecutor's Office, to act as a complementary instrument in the situation where a state could not or would not want to cooperate on the evidence and information related to the accused<sup>28</sup>.

We would like to believe that this lack of fulfilment of the proposed establishment of an international judicial body capable of supporting the fight against horrific forms of terrorist crime is not due to indifference on the part of the international community's competent representatives or, moreover, due to an ignorance of the danger to which the entire human society worldwide is exposed every day, but, in the absence of logical justifications for these delays, unfortunately, anyone can interpret anything ...

### **Bibliographical references:**

Mirela Atanasiu, Lucian Stăncilă, *Terorismul - răul din urmă a începutului de secol / / Terrorism - the last evil of the beginning of the century*, Ed. Universității Naționale de Apărare Carol I / *Publishing House of the National Defense University, Carol I*, 2014

Vajim Dimitrevič, *Rescue de politique internationale*, m.886, Paris,1987

Lucian Stăncilă, *Dimensiunea militară a operației antiteroriste / The military dimension of the antiterrorist operation*, Ed. Universității de Apărare Carol I / *Publishing House of the National Defense University, Carol I*, Bucharest, 2006

Visarion Neagoe, Adriana Crăciunescu, *Forța militară în războiul împotriva terorismului internațional, în Lumea 2005 (Studii strategice și de securitate) / The military force in the war against international terrorism, in the World 2005 (Strategic and security studies)*, Ed. Centrului Tehnico-Editorial al Armatei / *Publishing House of the Technical-Editorial Center of the Army, Bucharest*, 2005

### **Other sources:**

Directive (UE) 2017/541 on Combating Terrorism

According to the National Strategy for the Prevention and Countering of Terrorism, Romanian Intelligence Service, Bucharest 2002

<https://ro.wikipedia.org/wiki/Terrorism>

<https://www.contributors.ro/dreptul-de-a-nu-ne-teme-%C8%99i-curtea-internationala-impotriva-terorismului/>

[mediafax.ro/politic/romania-si-spania-reiau-discutiile-privind-infiintarea-curtii-internationale-impotriva-terorismului-16700918/21.08.2017](https://mediafax.ro/politic/romania-si-spania-reiau-discutiile-privind-infiintarea-curtii-internationale-impotriva-terorismului-16700918/21.08.2017)

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<sup>27</sup> Idem

<sup>28</sup> Idem

contributors.ro/dreptul-de-a-nu-ne-teme-si-curtea-internationala-impotriva-terorismului,  
15.04.2016

<https://www.europarl.europa.eu/news/ro/headlines/security/20180703STO07125/terorismul-in-ue-atacuri-teroriste-decese-si-arestari-in-2019>

caleaeuropeana.ro, curtea-internationala-pentru-combaterea-terorismului-; 3.09.2015