

Establishing an International Court against Terrorism

I. Background

Throughout the last decades, terrorism has been a growing concern and persistent topic on the international agenda, as one of the most serious threats to international peace and security. Since 2001 (11 September), the United Nations Security Council¹ has repeatedly voiced its concerns regarding terrorism. The large support for the resolutions recently adopted by the Security Council encourages us to believe that it is the proper moment for the international community to act decisively in the fight against terrorism, including through more effective legal tools.

Efforts in this direction are not new. They concerned both the drawing up of a comprehensive convention on terrorism and the establishment of an international criminal court for the prosecution of terrorist crimes². Proposals related to crimes of terrorism were presented in the context of establishing the International Criminal Court: article 5 of the 1998 *Draft Rome Statute* contained three terrorism-related offences; the proposal was put again forward by the Netherlands in 2009, while preparing for the *Conference for the Revision of the ICC Statute*. Developments could also be noted in the context of the establishment of the *Special Tribunal for Lebanon*³.

II. Attempts to draw up a comprehensive convention on terrorism

Several attempts to draw up a comprehensive convention on terrorism have been made within the United Nations and its predecessor, the League of Nations. The *Ad-Hoc Committee* mandated by UNGA to begin ‘consideration with a view to the elaboration of a comprehensive convention on international terrorism’ (Resolution 54/110) has not yet reached a final outcome.

However, nineteen universal legal instruments regulating specific aspects of terrorism have been adopted so far in areas as varied as: *air security, maritime security, the financing of terrorism, the use of certain types of weapons, or the protection of certain types of persons*. A number of international treaties also exists at a regional level⁴.

III. Towards an *International Court against Terrorism* (“ICT”)

Romania and Spain have launched the idea of having an instrument – *a treaty or a UN resolution* – aiming at including the crime of terrorism within the jurisdiction of an international court to be set up – the *International Court against Terrorism* (“ICT”).

The proposal is based on the *fundamental idea that terrorism should be fought with the tools of law*, in particular *international criminal law*. Currently, the anti-terrorist activities are conducted on the following levels: first, an approach based on a “security” paradigm, implying specific activities and operations; second, an approach based on national criminal law enforcement and international cooperation in criminal matters. The creation of an instrument based on international criminal law would reinforce the idea that response to a global threat, as terrorism is, requires multilateral action, based on law.

¹ UNSC Resolutions 2161 (2014), 217 (2014), 2178 (2014), 2199 (2015).

² Within the League of Nations, in 1937, the *Convention on the Punishment and Prevention of Terrorism* and the *Convention for the Creation of an International Criminal Court* were adopted, based on a draft prepared by the Romanian lawyer Vespasian Pella. The conventions, although signed by 24 States, never came into force.

³ In an interlocutory decision of 16 February 2011 of its Appeals Chamber, the Special Tribunal acknowledged the existence of a customary international law rule according to which the crime of terrorism would include the intention to commit an act (*dolus*), the special intention to spread fear and constrain the authorities (*dolus specialis*), as well as the concrete performance of the act and its transnational character.

⁴ The 1998 *Arab Convention on the Suppression of Terrorism* (within the League of Arab States), the 2002 *Inter-American Convention against Terrorism* (within the Organization of American States), the Council of Europe *Convention 196 on the Prevention of Terrorism* (Warsaw, 2005).

IV. Objectives

The implementation of the general objective of fighting terrorism through international criminal law brings into attention a number of possible options. Romania and Spain have analysed ideas and options related to the creation of a specific international jurisdiction to sanction terrorism. Some of the questions this analytical exercise raised and on which an exchange of views is thought to be useful concern “How to overcome the lack of a globally agreed definition of terrorism?”, “How a new Court will look like?”, “How to make such a Court effective in terms of properly sanctioning the authors of the crime of terrorism (i.e. ensure the cooperation of States in executing arrest warrants or provide the Court with the necessary evidence)?”, “How to create such a Court?”, “What would be its relation with the International Criminal Court?”

The debate should be enlarged as much as possible. The event aims at opening a discussion on the different possible options, on the arguments in favour of such options and on the challenges raised by them.

The debate is also meant to discuss the added value that a future International Court against Terrorism might have: would it consolidate the “*rule of law based*” *approach of the fight against terrorism*? Would it have a dissuasive effect? Would it consolidate the national criminal law and enforcement systems?

Participants are welcome to express thoughts on the general objective of the initiative and on the possible ways that might be envisaged for its implementation.