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## **25<sup>th</sup> CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE**

*Sofia (9-10 October 2003)*

- **INTERNATIONAL CO-OPERATION IN THE  
FIGHT AGAINST INTERNATIONAL  
TERRORISM AND IMPLEMENTATION OF  
THE RELEVANT INSTRUMENTS OF THE  
COUNCIL OF EUROPE**
  
- **THE RESPONSE OF THE JUSTICE SYSTEM  
- CIVIL AND CRIMINAL - TO TERRORISM**

*Report presented by the Minister of Justice of  
SERBIA*

**SERBIA AND MONTENEGRO**



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## INTERNATIONAL COOPERATION IN THE FIGHT AGAINST INTERNATIONAL TERRORISM AND IMPLEMENTATION OF INTERNATIONAL LEGAL ACTS –

### Instruments of the Council of Europe and other international instruments

The most recent manifestation of modern terrorism bestow to contemporary society a completely new dimension due to essential changes, which are conditioned by developments in science and technology as well as the different socio-economic, political and historical roots.

By analysing this phenomenon through history, from 1974 when for the first time the notions of terrorism and terror appeared, terrorism is aimed at breaking the resistance of the governing class. Let us remember French writers, especially Gaul Roman, ancient Greeks, and Romans - above all Cicero. Even according to their opinions it can be concluded that terrorism was always in the service of violence against the government and this is confirmed by the contemporary legal and social theories that analyse this issue.

Terrorism, especially international terrorism is constantly expanding and it persistently represents menace of the time we are living in due to its threat to the existence of society, especially democratic society. By assisting dangerous acts of violence in a systematic way to generally provoke fear, fright, defeatism and panic amongst the population in order to reach certain political objectives, terrorism in the modern world becomes more and more present and thus, gains importance from the aspect of taking measures for its prevention and the fight against it. Terrorism in the general sense of the word represents politically motivated intention (*animus terrorandi*).

The international community, especially in the second half of the 20<sup>th</sup> century put great efforts in the legal sense by adopting a series of international documents for fighting international terrorism, which did not have enough basis in the practice, meaning their implementation was never completed.

It is important to mention the following documents:

- Geneva Convention on the Prevention and Punishment of Terrorism from 1937;
- Convention on Crimes and other Acts Committed in the Airplanes, Tokyo, 14 September 1963;
- Convention on Suppression of Illegal Hijacking of Planes, the Hague, 16 December 1970 (the Parliament of SFRY ratified this Convention on 28 June 1972);
- American Convention on Terrorism, Washington, 2 February 1971;
- Convention on Suppression of Illegal Acts Against the Security of Civil Air Transport, Montreal, 23 September 1971 (the Parliament of SFRY ratified this Convention on 28 June 1972);
- Convention on the Prevention and Punishment of Criminal Offences against Persons under International Protection, including diplomatic agents, New York, 14 December 1973 (the Parliament of SFRY ratified this Convention on 25 November 1976);

- European Convention on Suppression of Terrorism, Strasbourg, 27 January 1977 (FRY ratified this Convention on 25 October 2001);
- International Convention on Prevention of Terrorist Bomb Attacks, New York, 15 December 1997 (FRY ratified the Convention on 16 December 2002);
- International Convention on Suppression of Financing of Terrorism, New York, 9 December 1999 (FRY ratified the Convention on 1 July 2002);

The analysis of these documents shows that the main and direct relevant circumstance which represents basis for the application of convention is the “foreign element” – relocating guilty person abroad; that the criminal acts caused effects abroad; that victims are foreign citizens etc. This approach limits the circle of countries that can and should prosecute the perpetrators of terrorist acts, while the protection of international goods is achieved through action of affected countries.

A significant characteristic of these conventions is that they give value free definitions of certain types of criminal acts. Definitions exclude objective elements (description of action), while the subjective elements (motive of a perpetrator) are not taken into account. Thus, the conventions cover criminal acts that can be committed without standard terrorist motives (political motives, provocation of fear). The contracting parties solved the question of criminal prosecution and punishment of perpetrators by adoption of a formula *aut dedere aut adiudicare*. The States in this way preserve the discretion right to evaluate the nature of a criminal act and decide themselves whether they will give permission for the extradition request or they will start a criminal procedure. Anti-terrorist conventions did not introduce an international judicial forum in the international order, competent to trial perpetrators of certain types of terrorist acts and thus the jurisdiction for criminal prosecution remains in the competence of a state. Although, general characteristics of anti-terrorist conventions signed on the global level show certain deficiencies, they demonstrate certain advantages of development of international law in the field of the fight against international terrorism. The international-legal anti-terrorist documents do not precisely oblige states in regard to the forms of fighting international terrorism globally, which needs to be changed in the coming period. A destroyed international security system endangers fundamental citizens’ human rights and freedoms in a way that is contrary to proclaimed policy and democratic aspirations of contemporary society. Science and international politics have to answer the question “how international terrorism should be fought” as soon as possible. In that aim, the world organization must adopt new, more concrete and, for countries, compulsory international legal documents in the fight against international terrorism that would be successfully implemented together with the existing documents. Besides, for successful suppression of international terrorism it is necessary to globally fulfill certain preconditions and they are the following:

- All members of the UN refuse double standards in regard to terrorist organizations, groups and individuals;
- Adoption of a definition of the notion of “terrorism” by consensus on the Session of the General Assembly (the most famous experts from the field of psychology, sociology, military science, international public law and criminology must be engaged in the preparation phase for the definition);
- The definition must become law by adoption of a UN Resolution which will be ratified by all member states and which will oblige all member states to respect it and implement it in practice on their territories;

- Countries which do not respect the adopted Resolution should be sanctioned in same way the aggression or threat of aggression is sanctioned;
- Assistance under the auspices of UN, should be given by more powerful countries to countries which are not in position to independently fight terrorism on its own territory;
- UN should form an expert group which will, in continuity, research in in-depth dimensions of terrorism and terror, clarify their causes and methods of action and not only consequences, which was the case until now. The experts should submit their results to international and national security services.

By taking these measures, the terrorism will not be easily defined, above all because of its motives, objectives and methods. It is very difficult to identify its in-depth dimensions. The determination of all members of UN can bring results. Terrorist activities are sometimes planned for years and last briefly – sometimes it is a matter of seconds (Let us remind of the abduction of Aldo Moro which lasted only 50 minutes).

For the definition of terrorism the following should be taken into account:

- Terrorists are inevitably by their objectives and intentions politically motivated;
- They apply violence or the threat of violence;
- That terrorist activities are geared to long-reaching physiological consequences outside direct victim of the attack and
- They belong to some organization.

Also, for the definition of terrorism, the fact that terrorist request are never realistic or based on law – they are exclusively politically motivated (separatism, release of terrorist from prisons for committed criminal acts) must be taken into account.

Terrorist activities are never supported by a majority and if majority anyhow supports them, then it is not any more a terrorist activity but guerrilla<sup>1</sup> or even massive rebellion. By taking into consideration the mentioned facts the following definition of terrorism is acceptable: “Terrorism represents an organized application of violence by politically motivated individuals or groups which are determined that through fear, threat, defeatism and panic impose its will on governing bodies and citizens”.

Thus, it could be said that contemporary terrorism is a significant challenge to international political relations since it threatens civilization and endangers the highest interests and values of mankind. International terrorism despises every concept of limited field of conflict and does not recognize the neutral zone. It has as its aim to disseminate fear and thus terrify the wider circle of “targeted part of public” which could include opposite ethnic or religious group, one whole country, national government, political parties or the public as a whole. Terrorists believe that it is easy to impose their will on a man in fear and thus base their strategy on this point.

There is no democratic system in the world that, alone, would be able to protect society from the international terrorism. When a political system neglects basic

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<sup>1</sup> Guerrilla is defined by the Geneva Convention of 12.08.1949. (Article 4 and 13) and guerrilla fighters must fulfill conditions from the Article 1 of the Hague Rules of Procedure and they are the following: there is a person responsible for its inferiors, they have a sign of recognition; they carry arms openly and they respect provision of laws of war.

democratic principles and ideas, then there is a danger that whole society will fall into a turbulent condition that will be a fruitful ground for violence and corruption.

Therefore, a new political culture should be established and developed in the world which will reject violent fight for power, repression, conspiracies and terrorism and all this can be achieved by integration of all forces and values which make political system democratic. Bearing in mind the fact that the mankind is overflowing with the wave of violence, it is a long process and very difficult to free of people from violence, especially since the internally motivated terrorist completed their activities by scarifying their lives for the causes and ideas of their political organization. This was proved in many cases from the past: 11 September 2001 in USA; tragedy in Moscow theatre in November 2002; terrorist attacks in Algeria where in the last decade of 20<sup>th</sup> century more than 60 000 people were killed; for the last 13 years terrorist all over the globe 270 hijacked planes in civil air transport when 948 people died and 7479 were kept as hostages during these hijackings. Let us remind of attacks on American military bases all over the world, action of Chechen terrorist, crimes committed by terrorist organizations Al Qaeda, Al Aqsa, Hamas, Islamism Mudjahedins, IRA, ETA, ANA/OVK, OVBMP, ONA...

Although the terrorism in international law is treated as an activity of a natural person who acts individually or in groups, states can also be responsible for terrorist attacks of individuals if they actively help them or tolerate their activities.

The tragedy of 11 September 2001, when the symbols of American political, economic and military power were attacked, when the terrorist proved that no-one is untouchable, oblige us to essentially change attitudes to terrorism globally. The creation of an international anti-terrorist collation is just a first step in the fight against this serious violence. The international anti-terrorist coalition should bring hope to a mankind for peaceful life; further building of democratic processes, without torture, terror and terrorism, a coalition that will maximally limit the field of action of all terrorists on the planet.

If someone was the target of terrorist attacks and that conspiracy was done in cooperation with powerful international services, there was almost no possibility to be saved. Indira and Radjiva Gandhi were protected by the British intelligence service and they were killed; the Egyptian Prime Minister Anver El Sadat did not survive terrorist activities; Mosad protection of Israeli Prime Minister Yitzhak Rabin was in vain. Remember the killing of Kennedy, Aldo Moro, Ulf Palma, Zoran Djindjic, and Anna Lindh. These, and many other examples from the past, warn mankind to put maximal efforts in order to prevent the appearance of new terrorists such as Carlos the Jackal, Abu Nidal, Osama bin Laden, Samil Basajev, Ulrich Maynhoff, Gudrun Enclin, Andreas Bader, Agim Ceku, Ramus Haradinaj, Hasim Taci, Jhidet Becirij...

It should be known that it is always about violence when a person (individual, group, state) becomes a victim, namely when a person is exposed to passing or constant impossibility to live according to personal possibilities, wishes and desires.

In order to better understand the notion of terrorism, one should notice a difference between terror and terrorism and then between the terrorist and criminal act. Terror, unlike terrorism represents a violence of the state and its institutions towards its citizens (terror).



Criminals as terrorists use violence as a means to achieve specific objectives. A criminal who uses the violence as a means to gain money or material assets or kills and hurts specific victims for money, is acting primarily from its selfish (personal) interests – usually material gain. Moreover, unlike terrorism, the act of violence of an ordinary criminal does not have as its objectives the creation of consequences, especially no physiological consequences outside the act itself. Maybe the most significant difference is that the criminal is not interested to make an impact on public opinion; he/she simply wants to run away with the loot. Besides a series of international legal acts for fighting the acts of international terrorism and numerous units against terrorist actions in the world, the roots of international terrorism are still left untouched which is an immense problem and a confirmation that methods which are efficient in the fight against criminals are not efficient against international terrorism. For these reasons, it is very important to differentiate terrorism from crime.

Therefore, in the discussion on terrorism and international law it should be kept in mind the fact that international law determines a relatively coherent legal framework of international actions for fight against the biggest evil of this time. Anti-terrorist conventions represent, besides certain deficiencies, the expression of a will to consolidate national criminal legislation and to, in possible frameworks, intensify international cooperation for punishment of the culpable and for preventative action in suppression of terrorist activities. Thus for terrorism, we can say that it is the “special legal notion” (delictum sui generis) and that its history is closely linked to the history of political crime.

Causes of terrorism can never be objective. When a state endangers the rights of citizens and undertakes terror, citizens usually show resistance by asking for their rights through protests, in a peaceful way.

Determination and elimination of all causes that condition the appearance of terrorism is still practically impossible, since they are numerous, different and unknown. In order to successfully organise anti-terrorist activity, it is necessary to apply, in a complimentary relationship preventive, repressive and military measures by state security bodies.

With the development of democratic relations in the world, it should be expected that repressive measures decline and lose social ratio and justification. If the internal force of society strengthens and society becomes more uniform and stable, consequently the violent behaviours become more an attack on the society as a whole or almost whole society which would be able, due to its homogeneity and coherence to solve and prevent them in painless and unique way with the assistance of modern, equipment and professional units for anti-terrorist actions.

Complexity and specificity of tasks in anti-terrorist combat demands continuity in training, modern equipment and top motivation of special anti-terrorist units in the state security system, as well as the constant training and changing of their specific tactics of action, where the principle of “rapid-energetic and short duration of action” should prevail.

Rapid inclusion in the fight against terrorism in the Balkans is very important for the international community, because it could be said with certainty that terrorism will become the problem of 21st century due to further individualization of a man and its alienation from different reasons as well as due to conflicts, tensions, abuse of power and

non functioning of the rule of law which consequently is a fertile ground for the expansion of all kinds of violence, above all international terrorism.

The terrorist activities and other forms of endangering, should be fought firstly with the state system and society, their strength, quality, vitality, democracy which should be build into the basis of rule of law and with the constant protection of human rights and freedoms. The greatest efforts in Serbia are put into this.

If the democracy is ethnically, economically and organisationally strong and stable, thus it is more responsible for the process of protection of a society. Consequently, the probability of appearance of terrorist attacks diminishes.



