

THE OBLIGATION TO SUPPRESS TERRORISM AS A MEANS TO PROTECT HUMAN RIGHTS

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Abstract: *Terrorism has a devastating impact on the enjoyment of human rights. The UN Security Council, as the organ responsible for the maintenance of international peace and security, indicates a primary duty of states to protect anyone within their jurisdiction against terrorism. However, a breach of the obligation to suppress terrorism may lead to a situation when individuals bring claims directly against states before international human rights bodies arguing that the states were not able or unwilling to prevent and suppress terrorist acts or didn't take all the necessary measures to prosecute those who had committed terrorist crimes.*

Therefore, the article discusses a legal nature of the obligation to suppress terrorism, reveals its elements and concerns situations when a state can be found in breach of it. It also addresses some jurisdictional problems arising out from extraterritorial application of International Human Rights Law. Finally, the article attempts to define the limits of the obligation to suppress terrorism and to indicate its practical implications for society.

Key words: *terrorism, legal protection of human rights, international human rights bodies, international responsibility, terrorism suppression, obligation to suppress terrorism*

1. Introduction

Terrorism is a significant challenge to international peace and security, national security of states as well as to the enjoyment of individual human rights and freedoms. Despite the fact terrorism is not a new phenomenon it still remains a topical issue today. Unfortunately, the international community is frequently shocked by terrorist acts flagrantly violating a basic principle of humanity. *Actus reus* of this crime may involve abduction and forced internment of children (CNN Library, 2017), mass killing (Al Jazeera News, 2017), hostage-taking of children (Paton Walsh, Beaumont, 2004), torture (Michael, 2017), including torture of women (Malm, 2017), sexual violence as a weapon of terrorism (Leimbach, 2017) etc.

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Modern terrorism not only includes different types of unlawful actions performed by state or non-state actors but it also can be committed in different jurisdictions and conducted during peace time and during military conflict. Moreover, all these actions can result in consequences of different scale and effects. This complex and multifaceted nature of terrorism substantially complicates academic understanding of this phenomenon and, consequently, creates a serious impediment to lawmaking activity. However, it's utterly impossible to develop a comprehensive strategy to counter terrorism without an international treaty of universal character against terrorism which, in particular, might prescribe an agreed definition of terrorism. Nevertheless, consensus on this matter hasn't been achieved yet. Political reason also makes it difficult to develop a universal legal framework against terrorism. A famous statement 'one man's terrorist is another man's freedom fighter' perfectly illustrates the lack of global consensus in the field concerned.

Terrorism is widely being discussed in academic publications. The problem of combating terrorism is more frequently viewed in the context of national criminal law and international criminal law, international security law (Lennon, Walker, 2015). Preventing terrorism is scrutinized in the light of recent developments in criminology.

However, only a few publications specifically concern the effect of terrorism on human rights (Myjer E, 2012; Ramirez, 2012), etc. Moreover, the interrelation between counter terrorism activity and fulfillment of human rights obligations are often seen from the vantage point of an alleged perpetrator whereas the rights of victims are a less topical issue today. The situation in which the rights of victims are disrespected was a special point for a critique of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Rapporteur), Ben Emmerson (UNGA, 2012). Therefore, the victim approach to the problem discussed is of significant academic and practical importance.

As far as terrorism always results in violation of basic human rights, the obligation to suppress terrorism derives not only from international criminal law or national criminal legislation but also international human rights law. Thus, if a state fails to fulfill its obligation to protect human rights through counter-terrorism activity, a victim of terrorism might lodge an appeal with relevant international human rights bodies. Therefore, the primary objective of this article is to reveal the legal nature, the scope and the elements of the obligation to suppress terrorism and to disclose the limits of its practical implementation.

The research attempts to cover three major issues. Its first part makes a theoretical introduction to the human rights approach to the problem of terrorism. It presents a notion of terrorism, explores human rights which can be violated by terrorists, and explains the nature of the obligation to suppress terrorism. The second part of the research addresses the internal element of the obligation concerned. It reveals activities that should be undertaken by a state to prevent and punish those who have committed terrorist acts within state jurisdiction both in peacetime and during military conflict. The last part of the article discusses the external element of the obligation discussed which encompasses a duty to cooperate with other states and intergovernmental organizations to combat terrorism.

2. The Legal Nature of the Obligation to Suppress Terrorism

The notion of terrorism is one of the most debatable categories in contemporary international law. Moreover, the international community still hasn't reached consensus on the comprehensive convention on terrorism (UNGA, 1996). As B. Saul noted 'disagreement about terrorism runs much deeper than technical disputes about drafting; it reflects doctrinal, ideological and jurisprudential arguments about who is entitled to exercise violence, against whom, and for what purposes'.

There are 19 universal international instruments related to the prevention and suppression of different manifestations of international terrorism. However, none of them provides any general definition of terrorism. Some of the elements of terrorism can be inferred from art. 2 (1) of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) (OSCE, 2018). In particular, the ICSFT defines terrorism, *inter alia*, as an 'act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act' (ICSFT, 1999, art.2).

The United Nations (UN) Security Council resolution 1566 (2004), mainly reiterating the approach adopted in the ICSFT, refers to terrorism as 'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism' (UNSC, 2004). So, the UN Security Council Resolution 1566 (2004) limits terrorist acts to those prescribed in the international conventions and protocols relating to terrorism.

Thus, in accordance with contemporary international law, the following features of terrorism can be revealed:

- 1) a terrorist act is a special intent crime. The perpetrator commits it to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.
- 2) a terrorist act can be committed both in peacetime and during military conflict. There is no limitation in international law with regard to the context in which the crime might be committed.
- 3) the criminal effect of a terrorist act is restricted only to 'human harm'(death or serious bodily injury, taking of hostages) and doesn't include any damage to objects.

Despite the fact the UN General Assembly provides some clarifications of the concept of international terrorism in its resolutions (UNGA 1994, UNGA 2000), they are not binding for states. Several recommendations concerning the content of the definition of terrorism were made by the High-level Panel on Threats, Challenges and Change in its

Report 'A more secure world: our shared responsibility', presented in 2004 (UNSG 2004). However, this document is based more on the legal instruments that have been previously discussed rather than proposing a new approach to the problem.

Taking into account the normative effect of the ICSFT as well as the UN Security Council decisions in accordance with art. 25 of the UN Charter, the term 'terrorism' will be used in the present article within the context provided in these documents.

The obligation of states to prevent, prosecute and punish terrorism is commonly recognized in international law. The obligation derives from a state sovereignty which 'implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens'. The UN Security Council persistently stresses that 'Member States have the primary responsibility in countering terrorist acts and violent extremism conducive to terrorism' (United Nations Security Council (UNSC) Res. 2368, 20 July 2017). This principle was also reiterated in the United Nations Global Counter-Terrorism Strategy adopted by the UN General Assembly in its resolution 60/288 of 8 September 2006 (United Nations General Assembly (UNGA) Res. 60/288, 8 September 2006) and was reaffirmed by the Secretary-General in his 8th report to the Security Council on the threat posed by ISIL (Da'esh) to international peace and security of 1 February 2019 (UNSC 2019, p.16-17).

Obligations to suppress terrorism and a broader concept – responsibility to protect – have the same foundation: they both drew inspiration from Francis Deng's idea of 'state sovereignty as a responsibility' (United Nations Office on Genocide Prevention and the Responsibility to Protect). However, it wouldn't be correct to equate them. First of all, obligation to suppress terrorism doesn't depend on the scale and effect of the criminal act. Secondly, a breach of the responsibility to protect leads to a collective response, primarily by the UN Security Council under the UN Charter (1945, 1 UNTS XVI). It means that it's for the UN to decide whether a particular mass violation of human rights has taken place and whether a state is powerless or demonstrates its unwillingness to protect its own citizens in this situation. All this doesn't restrict a right of an individual to seek international protection of his (her) rights in international human rights bodies. At the same time, it's for an international human rights body to decide whether a violation of the responsibility to suppress terrorism has occurred. This power of an international human rights body can be activated only by an individual. The breach of this duty, in general, will not result in the UN Security Council action, unless it is connected with mass atrocities.

The responsibility to suppress terrorism might also be viewed in the light of the due diligence principle. In particular, an 'obligation of vigilance', deriving from the due diligence principle, and the obligation to suppress terrorism encompass a duty not to allow its territory to be used contrary to the rights of other states (Koivurova, 2010). Nevertheless, the term 'suppress' itself goes far beyond preventive measures. Moreover, a state is directly responsible towards its inhabitants for protection against terrorist acts. At the same time the due diligence duty has a broader content, involving both vertical and horizontal relations.

Some sources of the obligation to suppress terrorism can be found in several provisions of international treaty law (the duty to criminalize certain acts in accordance

with antiterrorist conventions) and international customary law (the duty to prevent terrorism in line with the common practice to prevent acts which may lead to 'damage and loss of human life' and, thus, threaten interests of other states - International Court of Justice (ICJ), *The Corfu Channel case (the United Kingdom v Albania)*, Merits, 9 April 1949, I.C. J. Reports 1949, 4, at 23).

The obligation to protect the security and well-being of the citizens and all persons within the jurisdiction of states by taking effective national measures to combat terrorist crimes was mentioned in a set of soft law rules: the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice adopted by the General Assembly Resolution 60/177 of 23 April 2005 (para. 7 of the Appendix), the Effects of terrorism on the enjoyment of all human rights adopted by the Resolution of the Human Rights Council of 23 March 2017 34/8 (para. 9 of the Preamble, para. 6) etc.

The imperative duty of States to protect their citizens against possible terrorist acts is reiterated in numerous manuals dedicated to human rights while countering terrorism: Technical assistance working paper 'Preventing terrorist acts: a criminal justice strategy integrating rule of law standards in implementation of UN anti-terrorism instruments', adopted by the UN Office on Drugs and Crime (UNODC, 2006) and Counter-terrorism legal training curriculum 'Human Rights and Criminal Justice Responses to Terrorism', prepared by the experts of the UNODC 2014, the Council of Europe Guidelines on human rights and the fight against terrorism (Guidelines 2002), the Organization for Security and Co-operation in Europe Manual on Countering Terrorism, Protecting Human Rights (2007) etc.

Therefore, the obligation to suppress terrorism has a dual nature. Firstly, it's regulated by customary norms and can be regarded as one of the components of a general duty of any state, equally arising from its sovereignty. So, the parties of this legal relationship are states and their citizens as well as individuals permanently residing on its territory. Secondly, the obligation to suppress terrorism is directly stipulated in the UN Security Council resolutions, international antiterrorist treaties, and in several provisions of international customary law, that all entail legal relationship between states, as well as between the states and the UN. Hence, the obligation to suppress terrorism has a binary structure that includes internal (actions performed to fulfill the obligation before its citizens) and external elements (actions carried out to accomplish the obligation before the international community).

Negative responsibility implies that the states must not be involved in terrorist activity themselves (Trapp, 2011). The Special Rapporteur in his final report entitled 'Specific human rights issues: New priorities, in particular terrorism and counter-terrorism' stressed that 'all terrorist acts result in violation of human rights, whether committed by States themselves or sub-State actors'. Therefore, 'all States have a duty to promote and carry out national and international policies and practices to eliminate the causes of terrorism and to prevent the occurrence of terrorist acts' (United Nations Economic and Social Council (ECOSOC), *Specific human rights issues: new priorities, in particular terrorism and counter-terrorism* 2004, E/CN.4/Sub.2/2004/47, 11 August 2004, at para. 7).

This encompasses financing of terrorism, justification of any terrorist offences and ordering to commit this kind of atrocities. The UN Security Council resolutions

responding to the Lockerbie tragedy indicate art. 2(4) of the Charter of the UN as the basis for international action in this situation (Evans, 1994). The General Assembly, in its declaration of 24 October 1970, specified that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities on its territory directed towards the commission of such acts, when these acts involve a threat or use of force (UNGA 1970 Res. 2625 (XXV)). This duty was also subsequently reiterated in several resolutions of the UN Security Council (UNSC 1998, Res.1189, UNSV 2001, Res.1373).

Positive responsibility within the context of the obligation to suppress terrorism includes all the activities conducted by a state to criminalize, prevent or stop terrorist acts as well as prosecute those who have committed this crime.

It's generally recognized that terrorism is a phenomenon that should be fought against with traditional criminal law instruments. However, if a terrorist act is regarded as a sum of human rights violation, it is much more important to reflect on those particular rights and freedoms which are threatened by this crime.

Terrorist acts have a devastating impact on the enjoyment of human rights of individuals, such as the right to life, liberty and physical integrity of victims (UNSC 1998, Res.1189, UNSV 2001, Res.1373), security of persons and impedes the full realization of economic, social and cultural rights. The Global Counter-Terrorism Strategy of 8 September 2006 reiterated that 'acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments'(UNSC 1998, Res.1189, UNSV 2001, Res.1373).

Most human rights and freedoms threatened by terrorism are non-derogable, such as right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; freedom from medical or scientific experimentation without consent; freedom from slavery and servitude; freedom of thought, conscience and religion; freedom from discrimination on the ground of race, color, sex, language, religion or social origin; right to inherent dignity (prohibitions against taking of hostages, abductions or unacknowledged detention); right to fair trial; freedom from arbitrary deprivation of liberty; the right of persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person; freedom from collective punishment (Human Rights Committee (HRC), General Comment No. 29: Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11, 31 August 2001, at para. 7). The peremptory norms of international law also prohibit genocide, deportation or forcible transfer of population in the form of forced displacement by expulsion or other coercive means from the area (Human Rights Committee (HRC), General Comment No. 29: Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11, 31 August 2001, at para. 13 (c, d).). It's generally accepted that individuals continue to enjoy fundamental human rights and freedoms during armed conflicts as well (ICRC, 2018).

All these rights are protected by international human rights conventions (Art. 6–9, 12, 17–19, 23 International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS

171; art. 2–5, 8–10, 12, 13 Convention for the Protection of Human Rights and Fundamental Freedoms (ECoHR) 1950, 213 UNTS 221; art. 4–7, 11–13, 17 American Convention on Human Rights (AmCHR) 1969, 1144 UNTC 143; art. 4–6, 8, 9, 12, 18 African Charter on Human and Peoples' Rights (ACHPR) 1981, 1520 UNTC 217; art. 4–6, 8, 9, 12, 18 African Charter on Human and Peoples' Rights 1981, 1520 UNTC 217; art. 5, 8, 13, 17, 26 Arab Charter on Human rights (ArCHR) 2004, (2005) 12 IHRR 893; art. 2–5, 9–11, 13 CIS Convention on Human Rights and Fundamental Freedoms 1995, (1996) 3 IHRR 212).

As far as the obligation to promote universal respect for, and observance of, human rights and fundamental freedoms falls into the category of the *erga omnes* obligation (Human Rights Committee (HRC), General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 29 March 2004, at para. 2) of all the States to ensure human rights through combating terrorism.

All things considered make it possible to see a terrorist act as a sum of violations of individual rights and freedoms granted by a certain international treaty that entail death or serious bodily injury of people, or result in taking hostages, committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act. This approach allows individuals to protect their rights violated by terrorists and neglected by a state before international human rights bodies and, therefore, has a very practical implication. When a state is unable or unwilling to fulfill its obligation to suppress terrorism, a potential victim of terrorist activity can seek an effective remedy through several international human rights protection mechanisms.

At the same time, the very option to seek remedy in a situation of this kind with an international human rights body, raises a question concerning the admissibility of complaints. Since a court or any other human rights body can deal with counter-terrorism claims against states, it's necessary to reveal the essence of the obligation to suppress terrorism and to define all the possible circumstances when a state can be found to be in breach of it.

Human rights treaty bodies currently deal with alleged breaches by those who are accused of terrorist acts or those who are linked to a terrorist group (HRC, *Marlem Carranza Alegre v Peru*, Communication No. 1126/2002, Views, 28 October 2005, CCPR/C/85/D/1126/2002/17, at paras. 2.1–2.9; HRC, *Abdukarim Boimurodov v Tajikistan*, Communication No. 1042/2001, Views, 20 October 2005, CCPR/C/85/D/1042/2001, at paras. 2.1–3; HRC, *Mukhammed Salikh (Salai Madaminov) v Uzbekistan*, Communication No. 1382/2005, Views, CCPR/C/95/D/1382/2005, 30 March 2009, at para. 2.1).

Nevertheless, as it is stated in the General Comment 31 to the ICCPR: 'a failure by a State Party to investigate allegations of violations could itself give rise to a separate breach of the Covenant'. Thus, the Human Rights Committee (HRC) has jurisdiction over the complaints submitted by victims of the violation of this kind, providing that these communications meet all the requirements set forth by the first Optional Protocol to the ICCPR.

However, a practical vision of the problem is gradually being developed by regional international human rights institutions, in particular, by the European Court of Human Rights (ECtHR). In the case of *Tagayeva and Others* the Court introduced a new

approach, recognizing the applicability of human rights protection instruments to the issue of terrorism prevention. Notably, the ECtHR held that that Russia had violated art. 2 (the right to life) of the ECoHR, because it failed to take sufficient steps to stop the 2004 Beslan school siege. A novel aspect of this judgment involves the positive obligation to prevent terrorist attacks in the light of the evidence available to the public authorities of a real and imminent risk to the life of a group of identified people (ECtHR, Chamber, *Tagayeva and Others v. Russia*, Appl. № 26562/07, Judgment, 13 April 2017, at paras. 482–493).

Thus, there is a general obligation of states to suppress terrorism that has a dual legal nature. It arises both from the sovereignty of a state and from the sources of International Public law (the UN Security Council resolutions, international antiterrorist treaties, and several provisions of international customary law). This obligation has a binary structure and contains both internal and external elements, which both encompass negative and positive responsibilities of states.

3. The Internal Element of the Obligation to Suppress Terrorism

The internal element of the obligation to suppress terrorism involves all the spectrum of activities undertaken by a state to prevent and punish those who have committed terrorist acts within their jurisdiction. States are under the obligation to deter incitement of terrorism offences as well. There is no disagreement about a general obligation of states to refrain from taking those actions on the territory of foreign states which could be considered as violations of human rights conventions on its own territory (HRC, *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, Views, CCPR/C/OP/1, 29 July 1981, at para. 12.3). Moreover, states shouldn't allow the use of its territory to commit terrorist offences in foreign states (International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10, 2001, at 65–66). Nevertheless, there is nothing in international law, judicial practice and academic publications establishing that states are obliged to accept foreign intervention to suppress terrorism.

International human rights conventions stipulate their territorial scope of application, defining limits of state authority to ensure human rights and freedoms guaranteed by these treaties.

In accordance with article 2 of the ICCPR 'each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind' (International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171).

Moreover, almost all regional international human rights conventions refer to the obligation to secure human rights and freedoms within state jurisdiction (Art. 1 Convention for the Protection of Human Rights and Fundamental Freedoms (ECoHR) 1950, 213 UNTS 221; art. 1 American Convention on Human Rights (AmCHR) 1969, 1144 UNTC 143). The ACHPR doesn't define any jurisdictional issues being concentrated on the positive duty of respective states to 'recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to

them' (African Charter on Human and Peoples' Rights 1981, 1520 UNTC 217).

International human rights treaties have both territorial and extraterritorial scope of application (Milanovic, 2011). It's commonly recognized that the jurisdiction of States is primarily territorial; but it may sometimes be exercised outside the national territory (Ireland-Piper, 2017).

As N. Wenzel has observed, 'the restriction of the human rights treaties' extraterritorial reach inherent in the term jurisdiction has the aim of introducing a reasonable limit to States' responsibility under the treaties' (Wenzel, 2008).

A wide approach to the issue of the extraterritorial application of international human rights treaties was elaborated by the Inter-American Court of Human Rights (IACHR) in its Advisory opinion on environment and human rights passed on 15 November 2017. In particular, the Court held that the activities that are undertaken within the jurisdiction of a State Party should not deprive another State of the capacity to ensure the enjoyment of human rights under the Convention in its jurisdiction. Moreover, the IACHR added that when cross-border harm affects conventional rights, it is understood that people whose rights have been violated are under the jurisdiction of the State of origin of the harm if there is a causal relationship between the harm originated on its territory and the affectation of the human rights of people outside the territory (Corte Interamericana de Derechos Humanos, *La república de Colombia medio ambiente y derechos humanos*, Opinión consultativa OC-23/17, 15 Noviembre 2017, Series A No.12, at para. 101).

It would be quite problematic to hold a state liable for an alleged breach of its human rights obligations in a part of its territory where it can't exercise authority. For instance, it can happen in a situation of separatist activity. In accordance with art. 10 (2) of the Draft articles on the Responsibility of States for Internationally Wrongful Acts approved by the UN General Assembly in its resolution 56/83 of 2001 'the conduct of a movement, insurrectional or other, which succeeds in establishing a new State in a part of the territory of a pre-existing State or on a territory under its administration shall be considered an act of the new State under international law'. As it's stated in the comment to this article, 'the general principle that the conduct of an insurrectional or other movement is not attributable to the State is premised on the assumption that the structures and organization of the movement are and remain independent of those of the State'.

This question did also arise in the case of *Sargsyan v. Azerbaijan* heard by the ECtHR. The Court made it clear that state responsibility is 'limited to discharging positive obligations. These relate both to measures needed to re-establish control over the territory in question, as an expression of its jurisdiction, and to measures to ensure respect for the applicant's individual rights' (ECtHR, Grand Chamber, *Sargsyan v Azerbaijan*, Appl. No 40167/06, Judgment, 16 June 2015, at para. 131).

However, extraterritorial activity of states during counter-terrorism operations, peacekeeping missions and other types of military actions shifts the understanding of the category 'jurisdiction' to a broader concept. In the absence of clear treaty provisions with regard to the scope of the term 'jurisdiction' concerning the applicability of human rights conventions, the Human Rights Committee, ICJ as well as regional human rights bodies took considerable effort to interpret the limits of extraterritorial jurisdiction.

Criteria were developed for exceptional circumstances that could amount to the extra-territorial exercise of jurisdiction. These standards were mostly summarized in the case of *Jaloud v. the Netherlands* made by the ECtHR (ECtHR, Grand Chamber, *Jaloud v. the Netherlands*, Appl. No 47708/08, Judgment, 20 November 2014, at para. 139.). As the Court stated, general principles on extra-territorial jurisdiction can be applicable by the Court when any existence of state control over the extra-territorial actions has been revealed in a form of:

1) state agent authority and control, when:

- acts of state authorities produce effects outside its own territory (ECtHR, Plenary, *Drozd and Janousek v. France and Spain*, Appl. No. 12747/87, Judgment, 26 June 1992, at para. 91; ECtHR, Chamber, *Loizidou v Turkey (preliminary objections)*, Appl. No 15318/89, Judgment, 23 March 1995, at para. 62; ECtHR, Chamber, *Loizidou v Turkey*, Appl. No 15318/89, Judgment, 18 December 1996, at para. 52; ECtHR, Grand Chamber, *Banković and Others v. Belgium*, Decision as to the admissibility of Application no. 52207/99, 12 December 2001, at paras. 67-70);

- through the consent, invitation or acquiescence of the Government of a foreign state, it exercises all or some of the public powers normally to be exercised by that Government, and these actions can be attributed to it, rather than to the territorial state (ECtHR, Grand Chamber, *Banković and Others v. Belgium*, Decision as to the admissibility of Application no. 52207/99, 12 December 2001, at para 71);

- a victim of a human rights violation is found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter (State IACmHR, *Coard et al. v the United States*, Report No 109/99, Case 10.951, 29 September 1999, at paras. 37, 39, 41, 43; HRC, *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, Views, CCPR/C/13/D/52/1979, 29 July 1981, at para. 12.3; HRC, *Celiberti de Casariego v Uruguay*, Communication No. 56/1979, Views, CCPR/C/13/D/56/1979, 29 July 1981, at para. 10.3; ECtHR, Chamber, *Issa and others v Turkey*, Appl. No. 31821/96, Judgment, 30 March 2005);

2) effective control over an area which is exercised directly, through state armed forces, or through a subordinate local administration (ECtHR, Chamber, *Loizidou v Turkey*, Appl. No 15318/89, Judgment, 18 December 1996, at para. 52; ECtHR, Grand Chamber, *Banković and Others v. Belgium*, Decision as to the admissibility of Application no. 52207/99, 12 December 2001, at para. 70; ECtHR, Grand Chamber, *Cyprus v. Turkey*, Appl. No. 25781/94, Judgment, 10 May 2001, at para. 76; ECtHR, Grand Chamber, *Chiragov and others v Armenia*, Appl. No. 13216/05, Merits, Judgment, 16 June 2015, at para. 186.)

However, as F. Coomans and T. Caminga noted, ‘there is no agreement between supervisory bodies on the applicability of human rights treaties to types of conduct that do not clearly fit in the categories: 1) the effective control over foreign territory criterion; 2) the power and authority over persons by abducting or detaining them on foreign territory criterion.

So, it’s unclear in what situation a state might have extraterritorial jurisdiction over the action of foreign agents abroad when the latter are committing, for example, terrorist acts. The needed degree of control over such agents was developed in the ICJ

decision on *Military and Paramilitary Activities in and against Nicaragua* case. The Court stated that “it would in principle have to be proved that the State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed” (ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment, 27 June 1986, ICJ Reports 1986, at para. 115).

However, the International Criminal Tribunal for the Former Yugoslavia (ICTY) established an absolutely different standard while considering whether the Yugoslav Army exercised control over the Bosnian Serb Force. In the decision of the Appeal chamber in the case of *Tadić* the Tribunal explored that ‘[overall] control manifested itself not only in financial, logistical and other assistance and support, but also, and more importantly, in terms of participation in the general direction, coordination and supervision of the activities and operations of the VRS. This sort of control is sufficient for the purposes of the legal criteria required by international law’ (ICTY, Appeals Chamber, *Prosecutor v Dusko Tadić*, Judgment, 15 July 1999, Case No IT-94-1-A, at para. 156).

Leaving aside all the discussions regarding the jurisprudence of the ICTY in the area concerned, it’s worth pointing out that there is no disagreement that effective control theory is widely accepted and considered as sufficient basis for exercise of extraterritorial jurisdiction.

Taking into consideration the fact that any terrorist act results in violations of human rights and freedom, it’s possible to apply jurisdictional criteria developed in international human rights law to the obligation of states to suppress terrorism.

Thus, the territorial scope of the obligation to suppress terrorism encompasses not only a space within the borders of a particular state, but also a foreign territory where the state concerned exercises an effective control over individuals through state agent authority, or effective control over an area which is exercised directly, through its armed forces, or through a subordinate local administration; or when an individual or groups of individuals act under the direction or effective control of the state.

However, it’s necessary to differentiate between a general obligation to suppress terrorism and the obligation to criminalize terrorist acts in accordance with the international treaties relating to terrorism. The latter derives from counter-terrorism conventions and the respective resolutions of the UN Security Council, whereas the responsibility to suppress terrorism has a dual nature which has been described above. Nevertheless, it’s indisputable that the duty to criminalize terrorist acts is an important component of the obligation to suppress terrorism.

The Human Rights Committee pointed out that the States Parties violate their obligation under art. 2 of the ICCPR when they ‘permit or fail to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities’ (Human Rights Committee (HRC), General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 29 March 2004, at para. 8). Consequently, the ‘states should establish effective facilities and procedures to investigate thoroughly those cases [...]’ (Human Rights Committee (HRC), General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties

to the Covenant, CCPR/C/21/Rev.1/Add. 13, 29 March 2004, at para. 4).

When it comes to positive actions concerning the prevention of terrorism, it is worth analyzing the jurisprudence of the ECtHR. The Human Rights Committee hasn't dealt with cases of this kind. However, almost all its jurisprudence with regard to terrorism involves claims connected with violations of the human rights of individuals accused of terrorist acts.

In the case of *Tagayeva and Others v. Russia* the ECtHR unanimously held that there had been a violation of art. 2 (right to life) of the ECoHR, arising from a failure to take preventive measures with regard to school siege by terrorists. The authorities had been in possession of sufficiently specific information of a planned terrorist attack in the area, linked to an educational institution. Nevertheless, not enough had been done to disrupt the terrorists meeting and preparing; insufficient steps had been taken to prevent them from travelling on the day of the attack; security at the school had not been increased; and neither the school nor the public had been warned of the threat (ECtHR, Chamber, *Tagayeva and Others v. Russia*, Appl. № 26562/07, Judgment, 13 April 2017, at paras. 488-489, 493.).

When providing reasoning for this decision the ECtHR said: 'for the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew or ought to have known of the existence of a real and immediate risk to the life of identified individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk'(ECtHR, Chamber, *Tagayeva and Others v. Russia*, Appl. № 26562/07, Judgment, 13 April 2017, at paras. 492).

On that basis, the standard for a breach of the positive obligation to protect life through preventive measures can be formulated as follows:

- 1) a state had knowledge or ought to have known about a real and immediate threat to life; and it
- 2) failed to take the reasonable preventive measures available in order to avoid, disrupt, deter or minimize the attack.

As a general rule, a counter-terrorism operation is a basic condition to stop a particular terrorist offence. This kind of operation as such may lead to substantial collateral damage. In the case of *Finogenov and others v. Russia* the ECtHR stressed that 'when lethal force is used within a 'policing operation' by the authorities it is difficult to separate the State's negative obligations under the Convention from its positive obligations (ECtHR, Chamber, *Finogenov and others v Russia*, Appl. Nos. 18299/03 and 27311/03, Judgment, 4 June 2012, at para. 208.). In such cases the Court will normally examine whether the police operation was planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken'. It means that any police operation should be carefully planned and carried out with due diligence and respect for human rights.

The ECtHR in the case of *McCann and others v. the United Kingdom* emphasized that it's necessary for force to be used 'strictly proportionate to the aim of protecting persons against unlawful violence' (ECtHR, Grand Chamber, *McCann and others v the*

United Kingdom, Appl. No. 18984/91, Judgment, 27 September 1995, at para. 194). Moreover, the counter-terrorist operation 'should be planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force'.

Counter-terrorism conventions usually provide rules prescribing the duty to prosecute anyone who commits terrorist acts on the territory of the Contracting Parties (Art. 5 Convention for the suppression of unlawful acts against civil aviation 1971, 974 UNTS 177; art. 7 International Convention for the Suppression of the Financing of Terrorism (ICSFT) 1999, 2178 UNTS 197; art. 9 International Convention for the Suppression of Acts of Nuclear Terrorism 2005, 2445 UNTS 89.).

There may be one exception to the general responsibility to prosecute terrorists located on the territory of a state. It concerns the situations when a state is engaged in terrorism itself and, for instance, provides financial support, training, safe havens to terrorists, commits terrorist acts through its agents etc.

The first time the UN Security Council had ever directly indicated a state involvement in terrorism was the *Lockerbie* case, when two Libyan citizens were allegedly related to the bombing of Pan Am Flight 103. The UN Security Council Resolutions 731 and 748, however, insisted on the extradition of the two accused by the USA, Great Britain and France thus not allowing Libya to investigate the case itself (United Nations Security Council (UNSC) Res. 731, 21 January 1992, at para. 2; United Nations Security Council (UNSC) Res. 748, 31 March 1992, at para. 1).

The positive obligation to investigate terrorist acts as well as that of bringing to justice its perpetrators is one of the most important components of the internal element of the obligation to suppress terrorism. It was reiterated in several resolutions of the UN Security Council and General Assembly United Nations Security Council (UNSC) Res. 1373, 28 September 2001, at para. 2, subpara e; United Nations Security Council (UNSC) Res. 1624, 4 September 2005, at para. 7; United Nations Security Council (UNSC) Res. 2368, 20 July 2017, at paras. 17-19; United Nations General Assembly (UNGA) Res. 1618, 4 August 2005, at para. 10; United Nations General).

General Comment 31 to the ICCPR contains very clear provisions on this matter: 'as with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant' (Human Rights Committee (HRC), General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 29 March 2004, at para. 18, subpara 1). Moreover, as it's clarified in the General Comment 20 to the Covenant 'the States Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties and prior legal immunities and indemnities'. The same obligation emanates from the content of regional human right conventions (Art. 1 Convention for the Protection of Human Rights and Fundamental Freedoms (ECoHR) 1950, 213 UNTS 221; art. 1-2 American Convention on Human Rights (AmCHR) 1969, 1144 UNTC 143; art. 1 African Charter on Human and Peoples' Rights 1981, 1520 UNTC 217; art. 2 Arab Charter on Human rights (ArCHR) 2004, (2005) 12 IHRR 893; art. 1 CIS Convention on Human Rights and Fundamental Freedoms 1995, (1996) 3 IHRR 212).

As the experts of the UNODC observed, 'terrorism investigations are resource intensive, often require extensive forensic capabilities and depend upon having

investigative tools capable of penetrating a conspiratorial group. Finding effective means of dealing with terrorists' use of the Internet requires dramatic improvements in the legal structure for international cooperation' (United Nations Office on Drugs and Crime (UNODC), Digest of terrorist cases (2010), at 79). For instance, investigation of the 1989 bombing over Niger of a flight of the airline Union des Transport Airlines required a vast area of desert to be searched and 15 tons of material to be sent to France for analysis.

In the case of *Finogenov and others v. Russia* the ECtHR explored a positive obligation of a procedural character to conduct an effective official investigation when individuals have been killed as a result of the use of force by the authorities. In particular the Court clarified the meaning of the term 'effective investigation' (ECtHR, Chamber, *Finogenov and others v. Russia*, Appl. Nos. 18299/03 and 27311/03, Judgment, 4 June 2012, at para. 270).

As the ECtHR pointed out, in order 'to be effective', an investigation should meet several basic requirements: it should be thorough, expedient and independent; and the materials and conclusions of the investigation should be sufficiently accessible to the relatives of the victims, to the extent to which it does not seriously undermine its efficiency.

Prosecution as well as adjudication falls under the regulation of the international human rights conventions and soft law provisions applicable to the issue such as, for example, paras 12-13 of the Guidelines on the role of prosecutors adopted by the eighth UN Congress on the prevention of crime and the treatment of offenders (27 August to 7 September 1990, Havana, Cuba) (United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Guidelines on the Role of Prosecutors* (1990)).

Successful prosecution is tightly connected with sufficient legal framework on the use of modern information and telecommunication technologies in investigation procedures (electronic surveillance, infiltration into the group of a police agent or the cooperation of a member of the group as a testifying witness etc.) (UNODC 2010).

Last but not least, a requirement to be met by a state, while fulfilling its obligation to suppress terrorism, is that of ensuring a fair trial. As the UN Security Council stressed 'development and maintenance of fair and effective criminal justice systems should be a fundamental basis of any strategy to counter terrorism' (United Nations Security Council (UNSC) Res. 2195, 19 December 2014). It covers all the necessary guarantees set forth by the art. 10 of the Universal Declaration on Human Rights, art. 14 of the ICCPR (International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171.), art. 6 of the ECoHR (Convention for the Protection of Human Rights and Fundamental Freedoms (ECoHR) 1950, 213 UNTS 221), art. 8 of the AmCHR (American Convention on Human Rights 1969, 1144 UNTC 143), art. 7 of the ACHPR (African Charter on Human and Peoples' Rights 1981, 1520 UNTC 217), art. 13 of the ArCHR (Arab Charter on Human rights (ArCHR) 2004, (2005) 12 IHRR 893), art. 6 of the CIS Convention on Human Rights and Fundamental Freedoms (CIS Convention on Human Rights and Fundamental Freedoms 1995, (1996) 3 IHRR 21).

Since the present research particularly addresses the victims' perspective it's also necessary to ensure their rights regarding the judicial process. As T. van Boven points out, these rights include: the right to effective remedies, the right to redress and

reparation (van Boven, 2007).

The context in which a terrorist act is committed can be also a matter for consideration. Actually, it determines the applicable law and, consequently, a possible mechanism for human rights protection (Hampson, 2008).

It's absolutely clear that human rights can't be guaranteed in full during an armed conflict. Moreover, any armed conflict constitutes in itself a gross violation of international humanitarian law. Therefore, the applicability of the human rights law to armed conflict has been the subject of extensive discussions over the last two decades (Lubell, 2005; Doswald-Beck, Vite, 1993).

Terrorist acts committed during armed conflicts fall under the legal framework set forth by the Geneva conventions of 1949 and their additional protocols (Convention relative to the protection of civilian persons in time of war 1949, 75 UNTS 287) (art. 33 of the Fourth Geneva convention, art. 4, 13, 51 of the Additional Protocol I (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) 1977, 1125 UNTS 3) and art. 51 of the Additional Protocol II (Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) 1977, 1125 UNTS 609) and can amount to war crimes (ICC, Trial Chamber VIII, Prosecutor v. Ahmad Al Faqi Al Mahdi, Judgment and Sentence, 27 September 2016, ICC-01/12-01/15), and thus, manifest gross violations of human rights.

There are several theories identifying the relationship between the international humanitarian law and the international human rights law (Hathaway et. al. 2012). However, the ICJ emphasized that the protection of human rights conventions doesn't cease in times of war, except for those provisions from which there may be derogations in a time of national emergency (ICJ, *Legality or Threat of Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, 226, at para. 25). At the same time the Court stated that 'there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the addressed question, the Court will have to take into consideration both these branches of international law, namely the human rights law and, as *lex specialis*, the international humanitarian law' (ICJ, *Legal consequences of the construction of a wall in the occupied Palestinian territory*, Advisory Opinion, 9 July 2004, ICJ. Advisory opinion, ICJ Reports 2004, 136, at para. 106; ICJ, *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December 2005, ICJ Reports 2005, 168, at paras. 216-217).

N. Lubell comments that the international human rights bodies' decisions 'would seem to be limited to violations of human rights contained in the relevant treaty' (Lubell, 2005). However, human rights bodies 'established through UN Charter mechanisms do not have the same treaty restrictions and are therefore more easily able to refer directly to violations of international humanitarian law' (Lubell, 2005, p.743).

It is noteworthy that the ECtHR, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights frequently apply international human rights conventions when it comes to violations of the international humanitarian law (IACmHR,

Abella v. Argentina, Case No. 11.137, Report No. 55/97, 6 December 1997, at paras. 158, 160; IACtHR, *Las Palmeras v. Colombia*, Merits, Judgment, 6 December 2001, Series C No. 90, at para. 24; IACtHR, *Bámaca Velásquez v. Guatemala*, Merits, Judgment, 25 November 2000, Series C No 70, at paras. 208-210; ECtHR, Grand Chamber, *Kononov v. Latvia*, Appl. No 36376/04, Judgment, 17 May 2010, at para. 144).

H.-P. Gasser summed up as follows: 'while international human rights law embraces all situations in which human beings need either protection against the abuse of power or action to guarantee their economic, social, and cultural rights, international humanitarian law deals with the very specific problems arising out of armed conflict' (Gasser, 2015).

4. The External Element of the Obligation to Suppress Terrorism

The external element of the obligation under discussion includes duty to cooperate with international intergovernmental organizations and states to suppress terrorism. However, as such, the external element of the obligation to suppress terrorism emanates from the UN Charter and the UN Security Council resolutions as well as from specific conventions concluded to coordinate international efforts to combat different manifestations of terrorism. Therefore, human rights bodies can't deal with cases on non-cooperation of states to combat terrorism.

Nevertheless, as the UN Security Council stressed 'terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States, and international and regional organizations to impede, impair, isolate and incapacitate the terrorist threat' (UN Security Council Resolutions 2083 (2012), 2195 (2014), 2170 (2014), 2253 (2015), 2322 (2016), 2354 (2017)). Thus, it would have been impossible to fulfill the internal part of the obligation to suppress terrorism without having implemented one's international commitments in the area concerned. The UN Security Council has been calling upon States to become a party, as a matter of urgency, to the relevant international conventions and protocols whether or not they are a party to regional conventions on the matter (United Nations Security Council (UNSC) Res. 1566, 8 October 2004, at para. 4; United Nations Security Council (UNSC) Res. 2129, 17 December 2013, at 4; United Nations Security Council (UNSC) Res. 2322, 12 December 2016, at para. 1).

Taking into consideration the fact that the UN SC clearly defines that 'terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security'(UN Security Council 1373 (2001), 1452 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1624 (2005), 1699 (2006), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), 1989 (2011), 2083 (2012), 2129 (2013), 2133 (2014), 2253 (2015), 2199 (2015), 2322 (2016), 2309 (2016), 2396 (2017), 2395 (2017), 2368 (2017), 2354 (2017)), states are obliged to cooperate with the UN Charter in accordance with art. 2 (5, 6). Moreover, the member states should act in compliance with art. 55-56 of the UN Charter (Charter of the United Nations, 1945, 1 UNTS XVI).

Generally, a duty of states to cooperate with one another to suppress terrorism concerns traditional forms of collaboration in criminal matters: exchange of information,

joint investigative activities, extradition and mutual cooperation in criminal matters. The legal framework for almost all the activities noted before is international, multilateral and bilateral treaties. In civil law countries it can also be the principle of reciprocity.

International rendition of the individuals who allegedly committed terrorist acts is tightly connected with the principle *aut dedere aut judicare* which is considered a normative guarantee from impunity as such. However, as professor T. Stein observed, 'general international law neither imposes the duty on States to extradite common criminals nor does it oblige them to prosecute or punish alleged offenders when extradition fails' (Stein, 2011). Contemporary research conducted by the UN International Law Commission doesn't draw any precise conclusion concerning the legal nature of the principle *aut dedere aut judicare*. The International Law Commission specified that 'an opportunity has yet to arise for the ICJ to determine the customary international law status or otherwise of the obligation to extradite or prosecute' (International Law Commission (ILC), *The obligation to extradite or prosecute (aut dedere aut judicare)* (2014). UN Doc. A/69/10, 2014, at para. 55).

Mutual legal assistance in criminal matters also highly depends on the treaties concluded between the parties concerned. As T.R. Salomon states, 'the rise of terrorism also resulted in a widened scope of mutual legal assistance in criminal matters' (Salomon, 2013). Nonetheless, it may be carried out only on the basis of a treaty or, if appropriate, on the basis of the principle of reciprocity. Thus, one can reach a conclusion that there is no legal obligation under customary international law to provide legal assistance in criminal matters to suppress terrorism so far.

However, acting on the basis of art. 25 of the UN Charter, the UN Security Council has been taking considerable effort to give legal a qualification of terrorism and to enshrine all the necessary measures to prevent and suppress it (United Nations Security Council (UNSC) Res. 1373, 28 September 2001, at paras. 1-2; United Nations Security Council (UNSC) Res. 1566, 8 October 2004, at para. 3). It means that despite the general understanding of the treaty nature, of almost all the state responsibilities to cooperate with international organizations and provide assistance to foreign states to combat terrorism, the UN Security Council created a new legal framework for the external dimension of the obligation to suppress terrorism.

The UN Security Council directly envisaged a duty to cooperate in the fight against terrorism which encompasses: a) early warning to other States by exchange of information (United Nations Security Council (UNSC) Res. 1373, 28 September 2001, at para 2, subpara. b); b) the greatest extent of assistance regarding the criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings (United Nations Security Council (UNSC) Res. 1373, 28 September 2001, at para 2, subpara f; United Nations Security Council (UNSC) Res. 2322, 12 December 2016, at para. 8; United Nations Security Council (UNSC) Res. 2133, 27 January 2014, at para. 5; United Nations Security Council (UNSC) Res. 2368, 20 July 2017, at para. 12); c) full cooperation in the fight against terrorism, especially with those States where or against whose citizens terrorist acts are committed (United Nations Security Council (UNSC) Res. 1566, 8 October 2004, at para. 2.); d) strengthening the security of international

borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures (United Nations Security Council (UNSC) Res. 1624, 4 September 2005, at para. 2); e) to explore ways to exchange relevant information and to cooperate actively in the prevention, protection, mitigation, preparedness, investigation, response to or recovery from terrorist attacks planned or committed against critical infrastructure (United Nations Security Council (UNSC) Res. 2341, 13 February 2017, at para. 4); f) enhance cooperation to deny safe haven to those who finance, plan, support, commit terrorist acts, or provide safe havens (United Nations Security Council (UNSC) Res. 2322, 12 December 2016, at para. 9, subpara d) etc.

The UN Security Council reiterated the obligation of all states under resolution 1373 (2001), to work together urgently and to cooperate and provide support and assistance in efforts to find and bring to justice the perpetrators, organizers and sponsors of this terrorist attack with reference to the terrorist acts in Kenya (2002) - United Nations Security Council (UNSC) Res. 1450, 13 December 2002, at para. 3, Russia (2002) - United Nations Security Council (UNSC) Res. 1440, 24 October 2002, at para. 4, Colombia (2003) - United Nations Security Council (UNSC) Res. 1465, 13 February 2003, at para. 3, Spain (2004)- United Nations Security Council (UNSC) Res. 1530, 11 March, at para 3, Iraq (2005) - United Nations Security Council (UNSC) Res. 1618, 4 August 2005, at para. 7, Great Britain (2005) - United Nations Security Council (UNSC) Res. 1611, 7 July 2005, at para. 3, etc.

The obligation to cooperate within the Interpol is regulated in art. 31 of its Constitution and specifically ensured with the provision of art. 32-33 (General Assembly, Constitution of the ICPO-INTERPOL, I/CONS/GA/1956 (2017), 13 June 1956, as amended on September, 2017). However, the Constitution doesn't address any possible violations of this general duty.

Member-states of regional intergovernmental organizations cooperate through their bodies to combat terrorism. Interestingly, several statutes of such organizations directly include either provisions dedicated to the cooperation in the fight against terrorism (art. 43 (1) of the Treaty on the European Union; art. 222 of the Treaty on the functioning of the European Union; art. 4, 10 of the Charter of the Shanghai Cooperation Organization; art. 4 (o.) of the Constitutive Act of the African Union (2158 UNTS 3); art. 8 of Charter of the Collective Security Treaty Organization (2002, 2235 UNTS 79)), or norms creating specialized bodies to combat terrorism (art. 4, 10 of the Charter of the Shanghai Cooperation Organization).

It is worth noting that unwillingness to cooperate with the bodies of regional intergovernmental organizations to suppress terrorism can lead not only to political condemnation but can also, actually, result in coercive measures taken by the organization against the states that violate these rules (art. 8 of the Statute of the Council of Europe; art. 20 of the Charter of the Collective Security Treaty Organization (2002, 2235 UNTS 79); art 10 of the Statute of the Commonwealth of Independent States (1993, 1819 UNTS 58); art. 23 of the Constitutive Act of the African Union (2000, 2158 UNTS 3); Art. 13 (3) of the Charter of the Shanghai Cooperation Organization (2002, 2896 UNTS 209); art. 7 of the Treaty on the European Union.

Member-states are also expected to comply in good faith with the decisions of the bodies of these organizations. However, most bodies of the regional organizations pass nonbinding acts. It means that it's for member states to define the possible extent of the implementation of such acts. Meanwhile, the Council and the European Parliament of the European Union as well as the Collective Security Council of the Collective Security Treaty Organization can adopt acts which are legally binding for their member states (art. 75, 83 of the Treaty on the functioning of the European Union; art. 12 (3) of the Charter of the Collective Security Treaty Organization).

5. Conclusions

All the aforementioned makes it possible to come to the following conclusions:

1. In the absence of a comprehensive convention on international terrorism, the UN SC has been filling a substantial gap in legal terminology with regard to terrorism as well as introducing specific measures which should be implemented by states to respond to this unprecedented threat to international peace and stability. A terrorist act can be considered a sum of violations of individual rights and freedoms granted by a certain international treaty that entails death or serious bodily injury of people, or results in taking hostages, committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.
2. States are obliged to suppress terrorism and thereby ensure human rights and fundamental freedoms of their population. The obligation to suppress terrorism arises both from the sovereignty of a state and from the sources of International Public law (counter-terrorism conventions, human rights treaties and international customs, legally binding resolutions of the UN Security Council).
3. Basically, the responsibility under discussion is of binary structure and has its external and internal dimensions which encompass negative and positive responsibilities of states. The internal element to suppress terrorism involves the following: a) to deter incitement of terrorist offences; b) due diligence to prevent, punish, investigate or redress the harm caused by terrorists and establish effective facilities and procedures to thoroughly investigate these cases, to establish fair and effective criminal justice systems to prosecute those who committed terrorist acts; c) refrain from taking actions which could be considered terrorist offences on the territory of foreign states; d) shouldn't allow their territory to be used for terrorist purposes; e) refrain from the commission of terrorist acts.

There may be one exception from the general responsibility to prosecute terrorists located on the territory of a state. It concerns the situations when a state itself is engaged in terrorism and, for instance, it provides financial support, training, safe havens to terrorists, commit terrorist acts through its agents, etc.

The external element of the obligation to suppress terrorism encompasses the responsibility to cooperate with international intergovernmental organizations and states to suppress terrorism. It's worth noting that only a possible violation of the

internal part of the obligation to suppress terrorism may give rise to lodging of individual complaints against the state before international human rights bodies since the breaches of obligations deriving from the UN Charter, counter-terrorism conventions don't fall under the jurisdiction of the latter.

4. The territorial scope of the obligation to suppress terrorism encompasses not only a space within the borders of a particular state, but also a foreign territory where the state concerned exercises an effective control over individuals through state agent authority, or effective control over an area which is exercised directly, through its armed forces, or through a subordinate local administration; or when an individual or groups of individuals act under the direction or effective control of the state.
5. Since a terrorist act is regarded as a sum of human rights violations, a victim can seek an effective remedy through international human rights protection mechanisms. Generally, the context of armed conflict, in which a terrorist act is committed, doesn't impair the possibility to hold the State in question accountable for its alleged violation of human rights. However, it mostly concerns those human rights that can't be restricted in a time of emergency and suspended due to the *lex specialis* provisions of the international humanitarian law.

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