

# Is Terrorism an International Crime?

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## Abstract

*Lately, we are witnessing an attempt to define terrorism and sanction it proactively. Unfortunately, the interest of international bodies is limited to the condemnation of the acts of terrorism and, at most, to the provision of obligations upon the states to cooperate with each other in order to investigate such crimes, avoiding any mention of an individual criminal liability in international law.*

*The lack of a general definition of terrorist offences could have consequences for the international cooperation in criminal matters in this area. Terrorist offences are international crimes and their perpetration could lead to criminal liability for crimes against humanity before an international jurisdiction, be it the International Criminal Court or an International Court against Terrorism.*

**Keywords:** Terrorism, International Criminal Court, International Court against Terrorism, legal person

## 1. Terrorism – Concept, Perspectives and Consequences

As stated in all UN documents, terrorism, “in all its forms and manifestations, is one of the most serious threats to the peace and security of states,”<sup>2</sup> but, nevertheless, one has failed to coagulate the agreement of states in drafting a global convention to define and punish this crime.

This message was reiterated in the UN General Assembly Resolution of December 9<sup>th</sup> 1994, according to which “acts, methods and practices of terrorism constitute a serious violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society”<sup>3</sup>.

The European Convention on the Suppression of Terrorism, adopted in Strasbourg, in 1997<sup>4</sup>, under the auspices of the Council of Europe, lists only the international conventions by which the signatory states undertake the obligation to incriminate in their national law the crimes within them, stating that they will not be considered political crimes, crimes related to a political crime or crimes inspired by political purposes.

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<sup>2</sup> Resolution No. 1566/2004, adopted by the UN Security Council [2004], Official Journal No. 49 /2010.

<sup>3</sup> Resolution No. 49/60/1994, Measures to eliminate international terrorism, para. I (20), adopted by the General Assembly [1994].

<sup>4</sup> Adopted in Strasbourg [1997], Official Journal No. 34/1997.

The International Convention on the Suppression of the Financing of Terrorism, adopted under the auspices of the UN, in 1999<sup>5</sup>, indirectly defines terrorist offenses as those acts defined in one of the treaties listed in the annex thereto<sup>6</sup>, as well as “any other 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”<sup>7</sup>.

The member states of the Council of Europe, through the Convention on the Prevention of Terrorism, signed in Warsaw, in 2005<sup>8</sup>, define terrorism “as any of the offenses falling within the scope of one of the annexed treaties”<sup>9</sup>.

In a recent European Parliament directive, acts of terrorism have been characterized as “one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, and enjoyment of human rights and fundamental freedoms on which the Union is founded”<sup>10</sup>.

In Romanian criminal law, terrorism is defined as “those actions, inactions, as well as threats that represent a public danger, affect life, bodily integrity or human health, material factors, international relations of states, national or international security, are politically, religiously or ideologically motivated and are committed for the purpose of intimidating the population or a segment of the population, by producing a strong psychological impact or illegitimately forcing a public authority or international organization to fulfil, not to fulfil or to refrain from fulfilling a certain act or the serious destabilization or destruction of the fundamental, constitutional political structures”<sup>11</sup>.

The acts of terrorism are transnational if they are committed on the territory of at least two states; are committed on the territory of a state, but part of their planning, training, management or control takes place on the territory of another state; are committed on the territory of a state, but involve a terrorist entity which carries out

<sup>5</sup> Official Journal No. 852/2002.

<sup>6</sup> Convention for the Suppression of Illicit Capture of Aircraft [The Hague, 1970]; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [Montreal, 1971].

Convention on the Prevention and Punishment of Crimes against International Protected Persons, Including Diplomatic Agents, adopted by the United Nations General Assembly [1973]; International Convention against the Taking of Hostages, adopted by the United Nations General Assembly [1979]; International Convention on the Physical Protection of Nuclear Material [Vienna, 1980]; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Complementary to the Convention for the Suppression of Unlawful Acts against Civil Aviation Security [Montreal, 1988]; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation [Rome, 1988]; Protocol for the Suppression of Unlawful Acts against the Security of Fixed Platforms Located on the Continental Shelf [Rome, 1988]; International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly [1997].

<sup>7</sup> Article 2 point 1 letter (b), International Convention on the Suppression of the Financing of Terrorism.

<sup>8</sup> Official Journal No. 949/2006.

<sup>9</sup> To the annexed treaties indicated in note 4, this Convention adds two other treaties: the International Convention on the Suppression of the Financing of Terrorism [New York, 1999], and the International Convention on the Suppression of Acts of Nuclear Terrorism [New York, 2005].

<sup>10</sup> Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, para. (2).

<sup>11</sup> Art. 1 of Law no. 535/2004 on preventing and combating terrorism, Official Journal No. 1161/2004.

activities on the territory of another state, are committed on the territory of a state, but have substantial effects on the territory of another state<sup>12</sup>.

Terrorist offences can be sanctioned based on the principle of the universality of criminal law, called the principle of universal repression or of the universality of the right to punish, if a crime has been committed outside the country, the offender is a foreigner or stateless person residing abroad, the act constitutes a criminal offense for which the Romanian state has assumed the obligation to repress it under an international treaty, regardless of whether or not it is provided by the criminal law of the state on whose territory it was committed and the perpetrator to be voluntarily on the territory of Romania<sup>13</sup>.

The notion of “international crime”, in a broad interpretation (*lato sensu*), includes all crimes which have an element of extraneousness, either regarding the place of their perpetration, or the person of the perpetrator, regardless of the rule that regulates them<sup>14</sup>.

In a narrow sense (*stricto sensu*), international crimes (offenses) are only those acts that are within the jurisdiction of international criminal tribunals, as a result of their regulation by the Statute of Tribunals.

The difference between treaty-based crimes and ‘true’ or core international/supranational crimes is that “*the treaty-based crimes can only be enforced by states at the domestic level, while true international crimes create a proper, international, individual criminal responsibility*”<sup>15</sup>. Thus, by recognizing this form of responsibility, the individual was removed from the tutelage of the state, becoming the recipient of international legal rules.

Vespasian V. Pella defined the international crime as “an action or inaction sanctioned by a punishment pronounced and executed on behalf of the community of states”<sup>16</sup>.

International crimes are acts that undermine the common values of all states, recognized as such internationally, “acts on which the general conviction has been formed that they must be criminally punished”<sup>17</sup>.

Article 1 of the Statute of the International Criminal Court, referring to the jurisdiction of the Court, without using the term “international crimes”, considers these acts as “the most serious crimes” and which have an “international resonance”.

By limiting the jurisdiction of the International Criminal Court to crimes of genocide, crimes against humanity, war crimes and aggression, the traditional system of repression of the international humanitarian law is strengthened; according to this system, the responsibility for the application of punishment rests with the states, its jurisdiction having a subsidiary role to the national one<sup>18</sup>.

<sup>12</sup> *Ibid*, Art. 3.

<sup>13</sup> Article 11 of the Romanian Criminal Code.

<sup>14</sup> Caracciolo, I., *Dal diritto penale internazionale al diritto internazionale penale*, Editoriale Scientifica, Napoli, 2000, p. 129 ff.

<sup>15</sup> Ambos, K.; Timmermann, A., *Terrorism and Customary International Law*, in: Ben Saul (ed.), *Research handbook on international law and terrorism*, Elgar, 2014, pp. 23-24.

<sup>16</sup> Pella, V.V., *Criminalitatea colectivă a statelor și dreptul penal al viitorului*, (translated by A. Ciucă, A. Gentimir, R. Boca), Ed. Hamangiu, Bucharest, 2017, p. 263.

<sup>17</sup> Mantovani, F., *Diritto penale*, Cedam, Milano, 2001, p. 986.

<sup>18</sup> Much, C., *The International Criminal Court (ICC) and terrorism as an international crime*, Michigan State Journal of International Law, Vol. 14, No. 1, 2006, p. 133.

Proposals to include the crime of terrorism within the jurisdiction of the Court have been formulated by several states ever since the drafting of the project of Statute of the International Criminal Court, the discussion being resumed at the 2010 Kampala Conference on the revision of the Statute of Rome of the International Criminal Court, but without any success.

The International Criminal Court may exercise its jurisdiction over natural persons for the most serious crimes. Consequently, the jurisdiction of the International Criminal Court was not envisaged as having a limited nature, but with the possibility of being extended to other crimes as well.

For example, terrorist offenses under international conventions for the protection of persons on board ships, aircraft, airports etc. are indisputably international crimes and we consider that they could be considered crimes against humanity in accordance with Article 1 of the Statute, because they represent a systematic attack launched against a civilian population and aware of this attack.

In the practice of the International Criminal Tribunal for Rwanda<sup>19</sup>, it was noted that, in order to be considered systematic, the attack must have been planned. Terrorist attacks are indisputably planned acts, often supposing the involvement of sophisticated logistics, ranging from financing actions and procuring the means to carry out actions, to actually planning them. The same court mentions the fact that the author must not have participated in drawing up the plan, but it is enough for him/her to be aware of the general context, respectively of his/her involvement in such context<sup>20</sup>.

In the Karemera case<sup>21</sup>, the International Criminal Tribunal for Rwanda states that the perpetrator of an attack against the civilian population must be aware of the fact that his/her acts are an integral part of the attack, yet, without the necessity of any form of adherence from their part to the purpose or objectives of the generalized or systematic attack.

The non-inclusion of the crime of terrorism in the jurisdiction of the International Criminal Court was motivated by the lack of a generally accepted definition of this crime. The opponents of the idea of including terrorism within the jurisdiction of the International Criminal Court have said that caution is needed in analyzing the terrorist phenomenon, as terrorism is often an "invective used by states to demonize political opponents, certain groups or states"<sup>22</sup>. The inclusion of terrorism within the jurisdiction of the Court would politicize the institution, which is not desirable.

The international relevance of the crime of terrorism lies in the manner in which it is committed and in its effects. The purpose of each terrorist act, committed both in times of peace and in times of war, is to spread terror among the civilian population, regardless of the motive of the act: political, ideological, philosophical, religious etc. The psychological impact of this crime on the population is long-lasting and causes a long-lasting state of insecurity and constant threat.

By through the non-inclusion of terrorism in the category of serious crimes within the competence of the International Criminal Court, not only the social values

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<sup>19</sup> ICTR, *Trial Chamber I*, Prosecutor vs. Aloys Simba, Case no. ICTR-2001-76-T, December 13<sup>th</sup> 2005, para. (421).

<sup>20</sup> *Ibid.*

<sup>21</sup> ICTR, *Trial Chamber III*, Prosecutor vs. Edouard Karemera, Matthieu Ndirumpatse, Case no. ICTR-98-44-T, February 2<sup>nd</sup> 2012, para. (1675).

<sup>22</sup> Much, C., *op. cit.*, note 17, p. 133.

protected by the incrimination of this crime are disregarded, but also the effect that these crimes have on the civilian population. The lack of reaction of the international community might be interpreted by terrorist groups as an inability to repress the phenomenon. The mere national criminal reaction to an international phenomenon could consolidate and create a favorable environment for the development of terrorist organizations, which, knowing the political and repressive mechanism of the state, also know its shortcomings.

On the other hand, in the absence of an international benchmark, the definition and interpretation of the concept of “terrorism” by each state individually would give rise to major discrepancies at the national level, since any form of violence could be classified as terrorist and any form of repression as appropriate<sup>23</sup>.

We cannot deny, however, the fact that this crime involves the international community, but, above all, it implies a different approach from the latter towards this crime, with the consequence of affecting democratic principles.

In terms of the fundamental principles of criminal law, there is an extension of the scope of actions which bear individual criminal liability, by sanctioning the preparatory acts or mere participation in such an organization, with or without the intention to participate in the perpetration of the crime-purpose of the terrorist organization.

## 2. International Court Against Terrorism

Romania, alongside Spain and the Netherlands, have proposed the establishment of an International Court against Terrorism<sup>24</sup>. The proposal was made in the context of the rejection of the proposal to include terrorism within the jurisdiction of the International Criminal Court.

In Romania’s opinion, terrorism must be combated by coherent and adequate international repressive means, through a coordinated cooperation of the states, as in the case of the crimes falling within the competence of the International Criminal Court and which infringe the same social values. The approach is legal, as long as the crime of terrorism undermines international peace and security.

The establishment of the International Court against Terrorism could be subsumed under the will of the members of the UN General Assembly, which should adopt an international treaty to that effect. For the sake of efficiency, the idea that the International Court against Terrorism could be established by means of a Security Council Resolution, under Chapter VII of the UN Charter, was also circulated in the same proposal. The establishment procedure would not be a new one, as long as all *ad hoc* criminal tribunals have been established by means of Security Council Resolutions.

Moreover, the establishment of *ad hoc* criminal tribunals by means of UN Security Council Resolutions represents the explicit evidence of the political will of the United Nations to identify and hold accountable those individuals guilty of international crimes.

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<sup>23</sup> Mariani, L., *Le molteplici possibili definizioni di terrorismo e terrorismo internazionale* (2<sup>nd</sup> part), *Cammino Diritto*, No. 1, 2019, p. 17.

<sup>24</sup> [www.mae.ro](http://www.mae.ro), [Accessed 29 March 2020].

The institution, and, respectively, its Statute, could be configured on the basis of an agreement among several states, thus avoiding the criticisms regarding the legitimacy and impartiality of the institution, formulated against the *ad hoc* criminal tribunals previously established.

The Special Tribunal for Lebanon was the first international jurisdiction established by means of a UN Security Council Resolution<sup>25</sup>, competent to decide upon the crime of terrorism.

The establishment of the Special Tribunal for Lebanon has brought the crime of terrorism back into the attention of the international community, “crystallizing, in customary law, the crime of terrorism as an international crime”<sup>26</sup>.

### **2.1. Jurisdiction of the International Court Against Terrorism**

One of the fundamental reasons for proposing the establishment of a new body to prosecute the crime of terrorism, distinct from the International Criminal Court, is linked to the relatively small number of states that have ratified the Statute of the International Criminal Court.

According to the provisions of Article 12 of the Statute of the International Criminal Court, the Court may exercise its jurisdiction if one or more of the states involved in the conflict are parties to this Statute or have accepted the jurisdiction of the Court. Given these conditions, the jurisdiction of the Court is relatively restricted and conditioned by the quality of state party to the Statute or by the recognition of the competence of this institution for a certain act.

Beyond the small number of states whose citizens can be prosecuted by the Court, in the case of the crime of aggression, the jurisdiction of the Court suffers a double restriction. The Court may exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a state party, unless that state party has previously declared that it does not accept such jurisdiction by lodging an express declaration<sup>27</sup>. In respect of a state that is not a party to the Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that state's nationals or on its territory<sup>28</sup>.

The jurisdiction of the International Criminal Court in relation to the crime of aggression is, at the same time, subject to a determination from the Security Council. According to Article 15 *bis* para. (6), the prosecutor, before proceeding with an investigation, has the obligation to first ascertain whether the Security Council has made a determination of an act of aggression committed by the state concerned. In such case, the intervention of the Court is subsumed by the UN Security Council, the proceeding of the investigation being based on the latter's decision.

The establishment of a body separate from the International Criminal Court could attract states which have not ratified the Statute of the International Criminal Court, UN members such as the US or Arab states. Many of the states involved in or targeted

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<sup>25</sup> The Special Tribunal for Lebanon was established by the UN Security Council Resolution no. 1757 of May 30<sup>th</sup> 2007, in order to put on trial the persons responsible for committing the attack of February 14<sup>th</sup> 2005 in the Lebanese capital, Beirut.

<sup>26</sup> Cataleta, M. S., *Le Tribunal spécial pour le Liban et le respect des droits de l'homme*, L'Harmattan, Torino, 2012, p. 30.

<sup>27</sup> Article 15 *bis* point (4), ICC Statute.

<sup>28</sup> Article 16 *bis* point (4), ICC Statute.

by terrorist acts have not ratified the Statute of the Court, so, even if the International Criminal Court could prosecute the crime of terrorism, the acts committed on their territory could not be prosecuted by this institution.

Another reason for the establishment of the International Court against Terrorism would be the possibility to prosecute all acts of terrorism. The international community has not reached a consensus regarding the definition of the crime of terrorism. This is also the main reason for which this crime could not be tried by the International Criminal Court. The non-inclusion of terrorism in the Statute of the Court was motivated, mainly, by the lack of a generally assumed definition of this crime, but also by the impossibility of defining it, given the multifaceted nature of this phenomenon.

On the other hand, it is almost impossible to define a sprawling and speculative phenomenon such as terrorism. The phrases used in defining terrorism, such as “any criminal act” (criminal/unlawful under which law?), “spreading fear”, and “political purpose”, are so complex and so difficult to circumscribe to a particular sphere of incidence that any attempt in defining terrorism would defeat the principle of *lex certa*<sup>29</sup>.

Most of the time, terrorist acts are used to overthrow the system of values of a state. However, in domestic political struggles, governments often label any act of violence committed by opponents as “terrorism”, while the latter, in turn, declare themselves to be victims of the terrorist methods used by the government in power<sup>30</sup>.

Professor Cassese, referring to the material element, classified the crimes of terrorism into three categories: *Sub-category of Crimes against Humanity, Sub-category of War Crimes and Discrete International Crime in Time of Peace*<sup>31</sup>. The latter category includes less serious acts, which have some connection with terrorism, but which cannot be classified as international crimes.

The definition of terrorism in time of peace is consolidated in customary law<sup>32</sup>. The differences concern the definition of acts of terrorism committed in time of war. In fact, the acts of terrorism committed in time of peace can be included in the category of crimes against humanity. Those which cannot be included in this category are singular, politicized, racist or religious acts, which cannot be classified as serious crimes. This was, in fact, the response of several states to the request to include terrorism within the jurisdiction of the Court.

In another opinion<sup>33</sup>, terrorism has been categorized as state terrorism or non-state terrorism.

State terrorism involves the use of force by one state against another state, while non-state terrorism involves a manifestation of violence by a non-state body. The distinction is no longer relevant, given the fact that the International Criminal Court prosecutes the crime of aggression.

<sup>29</sup> Ambos, K.; Timmermann, A., *op. cit.*, note 14, p. 35.

<sup>30</sup> Orza, D. S., *Terorismul și drepturile omului*, in: *Studii și cercetări juridice europene*, Universul Juridic, Bucharest, 2018, p. 616.

<sup>31</sup> Cassese, A., *The Multifaceted Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice*, No. 4, 2006, p. 938 ff.

<sup>32</sup> *Ibid*, p. 933.

<sup>33</sup> Todeschini, V., *Ripensare il terrorismo nel diritto internazionale Una ricerca sul concetto giuridico di terrorismo internazionale di Stato*, *Jura Gentium*, No. 1, 2013, p. 18 ff.

The jurisdiction of the International Court against Terrorism should be complementary to national criminal jurisdictions. The International Court against Terrorism should intervene, in the same way as the International Criminal Court, only when a state has no will or founds itself in a real inability to complete the investigation or the prosecution or has decided not to prosecute the person concerned.

The International Court of against Terrorism would be a complementary institution, but its jurisdiction would be rather subsidiary, as long as it could intervene only when a state has no will or founds itself in a real inability to prosecute a person suspected of having committed international crimes.

In the event of a conflict of jurisdiction between the International Criminal Court and the International Court against Terrorism, the jurisdiction of the International Court against Terrorism would be subsidiary.

## ***2.2. Liability of the Legal Person for the Crime of Terrorism***

Despite the fact that history has emphasized the role of legal persons in committing international crimes, the liability of the legal person has been recognized as a general principle only at the doctrinal level<sup>34</sup>. The liability of legal persons was included in the draft Statute of the International Criminal Court, but the regulation did not receive the final vote of the state parties<sup>35</sup>.

The will of the states to combat the international criminal phenomenon and the recognition of the right of interference of international bodies within the issue of states remains debatable, as long as the sanctioning of the perpetrators of international crimes is limited to individuals only, and not legal entities or even states. The regulation of the criminal liability of the legal person and of the state in international law is imperative in the case of the crime of terrorism.

Most of the terrorist acts perpetrated so far have been committed by legal entities that have acted upon the initiative or with the consent of the state. Terrorist acts are largely financed by companies, non-governmental organizations or other forms of association with legal personality.

The phrase "terrorist organization", used in all the definitions of the crime of terrorism, whether national or international, refers to the notion of "organization" and the action of organizing serious crimes, among those listed in the same definitions.

As a result, many legislative interventions have been legitimized by reference to the notion of "group crime", following the legal regime specific to the fight against terrorism.

Terrorism is "a strategy by which several people united within an organization use different forms of violence in accomplishing certain claims"<sup>36</sup>.

Due to their complexity, terrorist acts, in today's society, can no longer be committed by a small group and require a level of training and coordination at the

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<sup>34</sup> Konaté, D., *La Cour pénale internationale, Entre nécessité de justice et impératif de paix*, L'Harmattan, Paris, 2018, p. 150: "At present, the doctrine is the one that confers consciousness to the legal persons by supporting the reality of their existence".

<sup>35</sup> United Nations General Assembly, Preparatory Committee for the Establishment of an International Criminal Court, Draft Statute, A/AC.249/1998/L.13, February 4<sup>th</sup> 1998, Article 17, § 5: "The Court shall also have jurisdiction over legal persons, with the exception of states, when the crimes committed were committed on behalf of such legal persons or by their agencies or representatives".

<sup>36</sup> Mocanu, R. I., *Fenomenul terorist. Analiza legislației anti-teroriste române*, Universul Juridic, Bucharest, 2013, p. 27.



level of an organisation. In itself, the terrorist act has a complexity that can no longer be managed by individuals.

Consequently, the need to identify and hold accountable organizations for terrorist acts planned and committed by means of their members appears to be necessary.

The activities of terrorist groups are as dynamic as possible and oriented depending on the social context, so that, in recent years, terrorist groups have reoriented and invested in the main sectors of activity, such as the economy, real estate, pharmaceuticals, media or non-governmental organizations.

In the lack of a regulation on the liability of the legal person or the state, any international institution, either the International Criminal Court or the International Court against Terrorism would be ineffective, as they could convict only a part of the perpetrators of the crime of terrorism, namely individuals only.

Given these antecedents, in order to defend the values of human dignity, the maintenance of international peace and security, it is necessary to sanction those who commit international crimes, regardless of whether they are natural or legal persons.

The exclusive jurisdiction of national courts in the case of legal persons would be likely to jeopardize the prosecution for international crimes. This would allow a state or some organizations to act by means of entities, be they companies, NGOs or paramilitary groups.

According to Romania's proposal, the International Court against Terrorism should have a jurisdiction complementary to national criminal courts.

The International Court against Terrorism should intervene, in the same way as the International Criminal Court, only when a state has no will or founds itself in a real inability to complete the investigation or the prosecution or has decided not to prosecute the person concerned.

In this situation, if the International Court against Terrorism could ask the states to relinquish the persons under their jurisdiction and prosecute the crime of terrorism committed by them, why could it not prosecute, for the same acts, also the legal persons involved, as long as most signatory states regulate the liability of the legal person? Otherwise, as regards legal persons, the jurisdiction of national courts does not have priority, but is singular, and the principle of complementarity, provided for in the Statute, would be ineffective.

The establishment of the liability of the legal person is also necessary in order to provide a coherent response to all international crimes, especially in the case of terrorism, being difficult to imagine how for the same act a natural person would be prosecuted by the International Court against Terrorism, and a legal person by the national courts. The prosecution by different courts of the same act would give rise not only to sanctioning inconsistencies, but also to discrepancies regarding the establishment of the guilty acts, which should be avoided.

In the case of the crime of terrorism, it is almost impossible to establish an individual liability without ruling on the responsibility of the state or an organization. Terrorist acts are nothing more than a projection of the will of an organization, a projection which is realised by the individuals who participate directly in the actions against the civilian population.

The liability of the legal person thus follows a consequentialist model, which justifies retributivism where there is a potential harm to society as a whole.

### 3. Conclusions

Terrorism is, beyond any doubt, an international crime. The lack of reaction of international bodies and the lack of cohesion of the states are prone to encourage this transnational phenomenon. The establishment of the International Court against Terrorism would send an important political signal to combat this phenomenon, not only through technical and military means, but also through firm and coherent legal repressive means.

Many conventions define terrorist acts as actions that can “result in the most serious consequences and threaten international peace and security”<sup>37</sup> and that “have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation”<sup>38</sup>.

The lack of reaction from the international community would not only encourage the terrorist phenomenon, but could imply that terrorism is not (yet) recognized as an international crime in itself, which would be in clear contradiction to everything previously stipulated in all conventions, UN resolutions or treaties adopted regarding this crime.

The victim of an international crime is not a natural person, but the international community and, as a consequence, the holder of the action *jus puniendi* should not be the state, but a body acting on behalf of the international community. Therefore, the establishment of an international body to repress this crime is imperative. Divergences of opinion on the definition of terrorism could be overcome in the context in which the intention of the international community is to protect the fundamental values and interests of the community.

Some of the terrorist acts can be included in the category of crimes against humanity, but there are also facts which, due to their nature and manner of perpetration, cannot be classified as serious and, therefore, cannot be judged by the International Criminal Court. It is almost impossible to set a threshold and predict which of the terrorist acts are serious and which are less serious. However, it is also impossible for the International Criminal Court to prosecute all terrorist acts. As a result, the establishment of an International Court against Terrorism seems to be the only viable solution at this time for prosecuting the crime of terrorism.

Delaying the decision to set up an international body aimed to hold accountable those responsible for committing this crime does nothing but trivialize the fight against this phenomenon. In doing so, states respond individually, in their own fashion and, of course, transitorily, to exceptional situations which should normally be combated firmly and promptly through international efforts.

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<sup>37</sup> Preamble to the International Convention on the Suppression of Acts of Nuclear Terrorism [New York, 2005], Official Journal No. 847/2006.

<sup>38</sup> Preamble to the Council of Europe Convention on the Prevention of Terrorism [Warsaw, 2005], Official Journal No. 9449/2006.

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