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THE REVIEW OF THE HARMONISATION OF THE CROATIAN CRIMINAL LAW WITH INTERNATIONAL LEGAL DOCUMENTS ON COMBATING TERRORISM¹

1. MANKIND IN THE 21ST CENTURY FACED WITH THE CHALLENGE OF INTERNATIONAL TERRORISM

Terrorism represents a threat to basic principles of international order, shared values of freedom, peace, democracy, human rights, justice and security. It is a global issue affecting everyone, from individuals to states. Terrorist acts in any form, regardless of who committed them, or of their place and time, directly threaten the security and stability of international system at large. (The Report of the Republic of Croatia submitted to the UN Security Council pursuant to para 6 of the Security Council Resolution 1373 (2001) of 28 September 2001). Terrorism is defined as a method for instigating massive anxiety of population by repeated actions of violence, undertaken by individuals or groups for idiosyncratic, criminal or political reasons whereby, unlike with murder (assassination), direct targets of this violence are not the main goals. Direct human victims of this violence are usually randomly or selectively chosen (when it concerns direct symbolic goals) and serve only to transmit a message. Communication based on violence between terrorists, victims and main goals is used in order to manipulate with the main goals, to make them a target of terror, request or attention, depending on whether the primary means used by the organisation are intimidation, coercion or propaganda.

Modern forms of terrorism lead to conclusion that it is a transnational phenomenon and in order to combat it, it is necessary to establish adequate international legal cooperation. This cooperation must be established at both regional and global level, by using as much as possible all norms and instru-

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¹ This article was presented at the "Workshop on the status of ratification and implementation of international legal documents for combating terrorism and the UN Convention Against Transnational Organised Crime and its Protocols" held in Valbandon, 22 – 23 September 2003. Author is grateful to colleagues from the Ministry of Justice for efforts they have made in the translation of this paper.

ments of the existing initiatives, and to avoid at the same time repeating or creating double norms which would make it more difficult to implement international strategy of antiterrorist coalition in national legislations. From numerous international legal documents (some of which are legally binding, while others are merely declaratory) by which global and regional international organisations marked modern terrorism as the largest threat to fundamental rights of men and the achievements of modern civilisation, the Resolution No. 51/210 of the UN General Assembly from 1999, expresses, maybe in more complete and more unambiguous form than other documents, the generally accepted principles among civilised states in the world: "Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed; reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."

2. PHENOMENOLOGY OF MODERN TERRORISM

There is no doubt that terrorism is a **special form of violence** used in time of war, armed conflict or in time of peace. Frequently, a separate terrorist attack may serve as a *casus belli* i.e. a cause of war. In addition, terrorism is a criminal act specified in all global criminal codes and the act of terrorism is incriminated in both time of war and time of peace (see for instance the Hague Conventions from 1907 and the Geneva Convention on the Protection of Victims of War from 1949). Although it represents violence, terrorism is more than that. Terrorism does not imply violence for its own sake, but it is an instrumentalised, targeted violence. Therefore, terrorism is not a typical offence which is usually characterised by impulsiveness, thoughtlessness etc., but a deliberate form of rational crime based on cost-benefit analysis (similar to some other forms of rational crime – for instance organised crime). Terrorists always know what they are doing. Their activities are deliberate and aimed at causing fear, insecurity etc. For terrorism, all victims are innominate, they are not people with names and surnames, but means to whom they convey their political, religious, ideological or other messages. Unlike other criminal offences which endeavour to remain hidden, terrorism seeks public for its confirmation. It is an act of violence intended to influence the public in a psychological way.

Terrorism is a dynamic phenomenon. It changes in space and time which indicates the existence of various profiles of terrorist organisations. Nationalist, ethnocentric, left-orientated terrorist organisations of Marxist and Lenin

type were mostly suppressed in late 20th and early 21st century by activities of terrorist groups which invoked certain religious tenets in order to justify their actions. However, such religious rationalisations may be evaluated as pseudo-religious, as they are based on consciously false interpretations of some religious texts. Lately, the cause of concern has been the growing number of such pseudo-religious terrorist groups. None of international terrorist organisations active in late '60s of the last century was hailed as religious. It mostly concerned left-orientated revolutionary Marxist-Lenin ideological organisations or ethnic-national and separatist groups typical for the period of postcolonial liberation movements. The Iranian revolution from 1979, by which the Islamic Republic was established, led to the creation of the first modern religious terrorist movement. Since then, the number of terrorist organisations hiding behind religious causes is on the rise. The total of 16 such terrorist groups in 1994, and 26 groups in 1995 (almost half of all terrorist groups) were discovered. Means used for terrorist attacks, mostly very destructive, are conditioned and vary according to the dynamics of terrorism and various profiles of terrorist organisations. Particular threat to the system of global security is the so-called biological, ecological and nuclear terrorism. The variety of potential methods and means used by terrorist organisations makes it more difficult to organise the existing resources for combating international terrorism. At the same time, it poses to the international community an imperative to seek better normative and implementation mechanisms intended for combating international terrorism. Although there are numerous varieties in the size, methods, rationalisation techniques of attack, means of attack etc. it is possible to find some common characteristics when it comes to **motives** of terrorist organisations of various profiles, for their actions. However, it is necessary to distinguish rational from psychological and cultural motivation. When planning terrorist attacks, members of a group always take into consideration the means for achieving goals and the goals they wish to accomplish. Cost-benefit analysis will always be based on minimum inputs and maximum outputs. If it is possible to achieve a particular goal by causing lesser degree of risk for the existence and activity of a terrorist group, then terrorists the methods leading to this degree of risk will be used. In the recent past, there have been several terrorist groups which ceased to exist because they poorly evaluated methods and means they used in achieving their goals. In early '70s of the last century, Tupamaros in Uruguay and Montoneros in Argentina wrongly evaluated the negative reaction of people to their terrorist actions and because of that, they did not manage to achieve their goals and ceased to exist. Psychological motivation of terrorists arises from their personal dissatisfaction with their life and from a firm belief that they can only function in this life by belonging to a terrorist organisation. They believe that people outside their group are enemies and because of that, they find it easier to dehumanise the victims of attacks their undertake.

Similarly, they do not have guilty consciousness after the crime is committed and they do not care about their subsequent destiny. It could even be said that the primary factor for their participation in terrorist groups is to belong to a group, and not so much to commit to ideology and goals of that group. Therefore, members of a group cannot accept neither compromise, nor negotiations as they represent a sign of weakness and even treason. This leads to frequent factionalism in terrorist groups in which new splinter groups are more prone to violence. Besides, goals of terrorist groups are in most cases defined in such a way that it is impossible to achieve them. If they come closer to the possibility of achieving their proclaimed goals, terrorist groups are prone to redefine them (such as Basque ETA, many Palestinian radical groups etc.). This is because achieving goals makes their further existence unnecessary, and as they are determined on the basis of belonging to that group (subcultural syndrome), once their goals are achieved, the group might fall apart. In spite of some similarities, **terrorism is not the part of organised crime in traditional sense**. The fact is that there are numerous differences between terrorist and other criminal organisations, all of them with different goals and methods of activities. Terrorism is a type of political crime, and by its definition, it differs from other crimes. In addition, the organisation of terrorist groups is completely different from organised criminal unions. Certain similarities among these entities may exist when it comes to efficient investment of funds in legal activities. There are relations of interaction between terrorist groups and organised crime, notably drug cartels. On the other side, these terrorist groups obtain large amounts of money and their interaction opens new ways for smuggling established by organised crime groups. It may be said that there is some sort of natural alliance between terrorist organisations and organised crime groups. Considering that organised crime groups mostly use corruption so as to infiltrate to the political top of the state, this is more often useful to terrorist organisations than destructive methods of interference into these political cliques. On the other side, organised criminal groups use terrorist campaigns by which they create the so-called “power vacuum”, negate the existence of the rule of law and cause regional instability. Such trend was noticed in the states created by the dissolution of the USSR. In these states, the rise of terrorist groups served to organised crime groups for opening some sort of a front. The real goal of these campaigns was not of political nature, but to create a real anarchic climate of fear and insecurity in which it was very difficult for local bodies of criminal justice to process members of organised crime groups. In spite of what was just said, there are differences in goals and methods of activities of terrorist and organised crime groups. Terrorist groups tend to change the status quo, and use spectacular operations in order to draw the attention of the public. On the other side, organised crime groups are active within the existing social structures, by attempting not to draw the attention of legitimate ruling struc-

tures. However, considering that they work for money, organised crime groups are prepared to offer infrastructure to terrorist organisations for the achievement of their goals, in exchange for money. Such interaction may have two very strong effects that have to be taken into consideration when working out and implementing antiterrorist measures. First of all, this interaction leads to organisational evolution of terrorist groups which implies new approaches of infiltration of outsiders into such groups in order to obtain information on their activities. Besides, this connection indicates the increased danger of terrorist attacks, particularly because of the possibility of using biological weapons which are easier to make when necessary ingredients are available. Phenomenological particularities of modern terrorism indicate that that it is a **multidimensional occurrence** and that **multidisciplinary** approach is needed in order to combat it. Similarly as in other criminal activities with global characteristics, terrorism may not be defeated by applying repressive instruments and methods only. Moreover, overemphasising this element of combating international terrorism may cause unwanted secondary consequences such as the intensification of revengeful actions by terrorist groups and even more explicit threats to the system of global security. Therefore, advantage should be given to the prevention or removal of causes and conditions which generate this phenomenon – the prevention of financing of terrorism, the reduction of differences among developed and developing countries in international community, the educational impact of media messages on the danger and harmfulness of terrorism for basic values of men and community etc.

3. MEASURES RELATED TO COMBATING INTERNATIONAL TERRORISM TAKEN BY THE REPUBLIC OF CROATIA AS A MEMBER OF ANTITERRORIST COALITION

The Republic of Croatia undertook to cooperate with the neighbouring countries, regional organisations, as well as with the United Nations and its members, and notably with the Antiterrorist Committee established for the implementation of the Security Council Resolution 1373 (2001) for a more efficient combating of international crime. The Republic of Croatia is prepared to contribute to the overall international efforts in combating terrorism in accordance with its capacities and taking into consideration its own security and stability. The Republic of Croatia supports actions undertaken to date pursuant to relevant resolutions of the Security Council, notably Resolutions 1268 (1999) and 1373 (2001), as well as the UN Charter, with a goal to suppressing and uprooting of terrorism (Report of the Republic of Croatia submitted to the UN Security Council pursuant to para 6 of the Security Council Resolution 1373 (2001) of 28 September 2001, page 3 of the Croatian text).

As a member of the global antiterrorist initiative, the Republic of Croatia has undertaken the following measures to date:

- On 18 October 2001, the Croatian Parliament's Committee for Internal Policy and National Security and the Foreign Policy Committee adopted conclusions by which they give full support to activities of the Croatian Government in combating all forms and occurrences of terrorism. The Committees requested from the Croatian Parliament to adopt the National Security Strategy as a basic document for raising the level of national security, including an infrastructure for combating terrorism. The establishment of the Council for National Security and Coordination for Combating Terrorism (ibid. page 4 of the Croatian text) was proposed as well;

- Mr. Stjepan Mesić, the President of the Republic of Croatia, in his speech given in Bratislava on 25 September 2001 and at the Regional Conference on Combating Terrorism held in Warsaw in November 2001, proposed fundamental principles for future action of antiterrorist coalition, and clearly expressed the determination of Croatia to actively participate in international antiterrorist efforts (ibid., page 4);

- In his address to the European Conference in Brussels, Mr. Tonino Picula, the Croatian Minister of Foreign Affairs, emphasised the importance of the Security Council Resolution 1373 (2001), by calling it "a globally binding platform against terrorism". At the 56th session of the UN General Assembly in New York, President Mesić and Foreign Minister Picula reiterated the commitment of the Republic of Croatia to global antiterrorist campaign. During the session of the Ministerial Council of the OSCE on 3 December 2001 in Bucharest, Foreign Minister Picula held a speech in which he reiterated the position of the Republic of Croatia with regard to terrorism (ibid., page 4);

- By the decision of the Croatian Government of 22 November 2001, the Interministerial Working Group was established for following up the national implementation of the UN Security Council Resolution 1373 (2001) on combating terrorism. The Chairman of the Working Group was elected who is a representative of the Ministry of Foreign Affairs of the Republic of Croatia, as well as members of the Working Groups among the following Ministries and other bodies of state government: the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice, Administration and Local Self-government, the Ministry of the Economy, the Ministry of Maritime Affairs, Traffic and Telecommunications, the Croatian National Bank, the State Prosecution Office of the Republic of Croatia, and the Ministry of Finance – the Office for the Prevention of Money Laundering. In December 2001, the Working Group prepared, for the Croatian Government, the Report of the Republic of Croatia submitted to the UN Security Council pursuant to para 6 of the Security Council Resolution 1373 (2001) of 28 September 2001.

- In the stabilisation and association process of the Republic of Croatia to the European Union (notably with regard to Article 80 of the Stabilisation and

Association Agreement which governs combating unlawful acts, including terrorism), Croatia considers the possibility of anticipating the existing normative and implementation resolutions at the disposal of the European Union in combating terrorism. This particularly refers to the Framework Decision on Combating Terrorism and the Framework Decision on the European Arrest Warrant;

- By appointing a representative to the expert multidisciplinary Council of Europe Group on International Action against Terrorism (GMT), the Republic of Croatia joined the efforts of European states for modernising the existing normative mechanisms at the disposal to this organisation in combating international terrorism;

- At the bilateral basis, the Republic of Croatia cooperates with other states in discovering and combating of international terrorism (the Ministry of the Interior concluded cooperation agreements on combating terrorism, organised crime and drug abuse with eighteen states /Albania, Austria, Germany, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Greece, Italy, Hungary, Macedonia, Poland, Rumania, Slovakia, Slovenia, Turkey and Ukraine/). As a full member of INTERPOL since 1992, it cooperates with other states through this international police organisation. The Republic of Croatia (the Office for Prevention of Money Laundering) establishes international cooperation in the prevention of money laundering and financing terrorism through the Egmont Group (Financial Intelligence Units of the World);

- The Republic of Croatia has acceded to numerous regional initiatives such as the Central European Initiative (CEI), the South-Eastern Cooperation Initiative (SECI), the Adriatic-Ionian Initiative, the Budapest Process, as well as other international organisations such as the International Organisation for Migration (IOM). One of the reasons for acceding to these initiatives and organisations was to obtain more efficient results in the control of migrations, borders and terrorism. For the same reason, the Republic of Croatia has acceded to the Regional Task Force (RTF) with the basic goal of advancing the police cooperation;

- The Croatian Parliament adopted the Law on the Office for Combating Corruption and Organised Crime (ZUSKOK) which is competent for undertaking actions based on the suspicion that criminal acts of international terrorism were perpetrated;

- The Croatian Parliament adopted the National Security Strategy in which international terrorism, along with organised crime, money laundering and corruption, is emphasised as the main threat to the system of national security;

- On 22 November 2001, the Croatian Government adopted the conclusion on the basis of which all bodies of state administration within its competence are bound to propose amendments to laws and regulations necessary for the implementation of commitments contained in the Resolution 1373 (2001).

Further, all competent bodies undertake to re-examine laws to be adopted by the Croatian Parliament, and propose amendments to secure the full implementation of the Resolution 1373 (2001). This legislative process is underway, and the possibility of adopting amendments to the following draft laws is being reconsidered: the Trade Act, the Law on the Movement and Stay of Aliens, the Police Act, the Criminal Code, the Code on Criminal Procedure, the Law on the Prevention of Money Laundering, the Law on Security Services in the Republic of Croatia, the Defence Act, the Law on Production, Hauling and Trade of Weapons and Military Equipment, the Law on Asylum, the Law on the Protection of Personal Data, the Law on Banks, the Law on Domestic Payment Transactions, the Foreign Exchange Act, the Law on International Legal Aid in Executing International Agreements in Penal Matters and the Law on the Witness Protection Program and the Protection of Persons who Cooperate with the Judiciary;

- The government bodies responsible for the implementation of the Security Council Resolution 1373 (2001) have undertaken measures and activities necessary for the implementation of this resolution (the Customs Administration, the Department for Foreign Exchange Inspectorate, the Office for the Prevention of Money Laundering etc.).

4. INTERNATIONAL AND LEGAL DOCUMENTS ON THE PREVENTION OF INTERNATIONAL TERRORISM AND THE CROATIAN CRIMINAL LAW (chronological review)

4.1. The Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 14 September 1963

Status:

Convention entered into force on 4 December 1969

176 Member States

Republic of Croatia became party to the Convention based on the Declaration of Succession of 5 October 1993 with effects from 8 October 1991

This Convention binds the Member States to incriminate, in their national criminal legislation, such conducts which threaten the safety of flights, persons and property in an aircraft or discipline in an aircraft. The Convention specifies the authority of aircraft commanders, including the possibility of undertaking disciplinary measures towards persons who violate disciplinary regulations while aircraft is still flying. Exceptionally, the commander of an aircraft

has authority to extradite the perpetrator to competent bodies of the Member State at whose territory the aircraft landed, if there is a reasonable doubt that this person has committed, while the aircraft was flying, a serious criminal act punishable according to the law of the state in which the aircraft was registered.

4.2. The Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970

Status:

Convention entered into force on 14 October 1971

176 Member States

Republic of Croatia became party to the Convention based on the Declaration of Succession of 8 June 1993

This Convention sanctions the unlawful seizure of an aircraft, as well as any attempt thereof achieved by force or other forms of intimidation, and the use of unlawful control over aircraft while it is still flying. It binds the Member States to specify the seizure of an aircraft in their national legislation as a criminal act which is severely punished, to provide legal assistance to other Member States and to extradite perpetrators of this criminal act.

4.3. The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 23 September 1971

Status:

Convention entered into force on 26 January 1973

176 Member States

Republic of Croatia became party to the Convention based on the Declaration of Succession of 8 June 1993 with effects from 8 October 1991

This Convention sanctions any violence undertaken with regard to passengers or members of the crew while the aircraft is flying and the threat to safety of flight. It binds the Member States to sanction, in their national legislation, the setting of explosive in an aircraft, as well as its attempt. Other provisions bind the Member States to provide severe punishment in their legislation for threats to the safety of flight, and to regulate the issue related to the extradition of the suspects.

4.4. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, New York, 14 December 1973

Status:

Convention entered into force on 20 February 1977

132 Member States

Republic of Croatia became party to the Convention based on the Declaration of Succession of 12 October 1992

Under this Convention, internationally protected persons are as follows: Chief of State, Minister of Foreign Affairs, and representative or official of a state or international organisation who enjoys special protection against assault pursuant to international law. It binds the Member States to sanction in their national legislation murder, seizure, assault, attack on personal freedom or internationally protected person, or attack against official resources, private accommodation or transportation means of that person. It specifies liability even for the attempt of such acts and it binds the Member States to provide sanctions for perpetrators corresponding to the severity and nature of committed acts.

4.5. The European Convention on the Suppression of Terrorism, ETS 090, Strasbourg, 27 January 1977

Status:

Convention entered into force on 4 August 1978

40 Member States

Republic of Croatia signed the Convention on 7 November 2001, and ratified it on 15 January 2003. It entered into force on 16 April 2003

The European Convention on the Suppression of Terrorism is not an incriminating convention, as it does not contain any provision on the obligation of the Member States to sanction certain conducts in their national legislation as criminal acts. The character of this Convention is supplemental, as it serves as a supplement to the existing conventions of the Council of Europe in the field of criminal law by which international cooperation in criminal matters is established and which facilitates the extradition procedure. Therefore, this Convention is also called a depoliticized convention, as in addition to the rejection of extradition specified in the European Convention on Extradition from 1957, it explicitly states that the requested state may not reject extradition only because it considers the act for which extradition is requested as a political

criminal act. However, such depoliticized character of the Convention is weakened by the possibility of making a reservation to Article 13, which the Croatia, as well as the majority of other Member States used when ratifying the Convention.

In May 1973, the Consultative Assembly of the Council of Europe adopted the Recommendation 703 (1973) on international terrorism which specifies that “international terrorist acts, regardless of their causes, should be punished as serious criminal offences involving the killing, kidnapping or endangering of the lives of innocent people”, and calls the Committee of Ministers to invite the Governments of Member States “to establish a common definition for the notion of “political offence” in order to be able to refute any “political” justification whenever an act of terrorism endangers the life of innocent persons”. In 1977, the European Convention on Suppressing Terrorism was adopted by which a first significant step was made within the Council of Europe to depoliticize terrorism. In the explanation of this Convention, which is, because of its contents also called “Small Convention on Extradition” (as a supplement to the European Convention on Extradition from 1957), as well as a “depoliticized convention”, it was stated that some criminal acts are so odious, both by its methods and its consequences in relation to the motives, that there is no justification to call them or to consider them as political acts and thus disable the extradition procedure. Therefore, the Member States which receive requests for extradition referring to criminal acts related to terrorism, should take into consideration special severity and nature of these criminal acts. Further, if the requested state rejects the request for extradition, it is obliged to forward the matter to national judiciary pursuant to the principle *aut dedere aut judicare*. The Convention from 1977 specifies double regime with regard to assumptions for restricting the notion of political criminal act. Article 1 specifies assumptions under which the requested state may not consider some criminal acts as political criminal when reviewing an extradition request and to reject them exclusively on this ground. The same implies for criminal acts related to political criminal acts (connective acts) or criminal acts committed for political reasons. These are (including the attempt and participation in attempted and completed criminal act):

- criminal acts specified by the Convention for the Suppression of Unlawful Seizure of Aircraft (1970),
- criminal acts specified by the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971),
- severe criminal acts of assaulting a life, physical integrity or internationally protected persons, including diplomatic representatives,
- criminal acts of seizure, taking hostages and wilful seizure of freedom,
- criminal acts committed by the use of bombs, grenades, rockets, automatic weapons or postal parcels if it threatens the safety of people.

Article 2 specifies the so-called optional clause according to which the states, when considering a request for extradition with regard to certain criminal acts, may decide that it involves political criminal acts. Although the Convention is in principle orientated to the waiver of political prerogatives to pure terrorism, it still allows, by provision of Article 13, to restrict and make reserve to Article 1, primarily because of legal or constitutional reasons in the Member States, and also because of differences in political views between these states at the time when the Convention was adopted. In other words, nothing binds the Member States to extradite a person which means that they have a very wide discretion for interpreting what is considered a political criminal act and what is not. In this regard, provision of Article 13, para 1 is only of instructive nature and specifies that a state, when considering a request for extradition and deciding whether it concerns a political criminal act, should take into consideration the circumstances of act indicating its nature, and particularly: that this act created a collective threat to life, physical integrity and freedom of persons, that the persons involved have nothing to do with the motive which stands behind the act or that cruel means were used for committing such a criminal act. Pursuant to Article 13, the majority of the Member States used the possibility of making a reserve to Article 1 by which the character of the Convention was *de facto* restricted, and the extradition continues to depend on subjective interpretations and evaluations of a political criminal act. This is probably one of the reasons why this Convention is very rarely applied as a basis for extradition in procedures between states, although, by its legal force, it is above bilateral agreements on extradition.

4.6. The International Convention Against the Taking of Hostages, New York, 17 December 1979

Status:

Convention entered into force on 3 June 1983

123 Member States

Republic of Croatia is not a party to this Convention

This UN Convention defines the taking of hostages and retaining of a person and the threat of death to this person in order to force a foreign state or international organisation, physical person, legal entity or a group, to do something or not to do it, as an explicit or tacit condition for freeing hostages. Even the attempt to commit this act and participation in committing this criminal act are punishable. The Member States at whose territory the perpetrator keeps the hostages are bound to undertake all measures to facilitate the position of hostages, to secure their liberation and return to their state of domicile. The Member States undertake to incriminate taking of hostages as a criminal act if:

1. it is committed on the territory of that state or on the ship or aircraft registered in that state,
2. if the perpetrator of the act is its citizen, or if the state deems it appropriate, a stateless person who has a domicile in that state,
3. if the victim of the act is its citizen,
4. if the person suspected for committing a criminal act of taking hostages has been found on the territory of that state and has not been extradited to another state.

4.7. The Convention on the Physical Protection of Nuclear Material, 26 October 1979, Vienna

Status:

Convention entered into force on 8 February 1987
88 Member States

On 29 September 1992, the Republic of Croatia deposited the Declaration
of Succession with effects from 8 October 1991

4.8. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

Status:

Convention entered into force on 1 March 1992
Republic of Croatia is not a party to this Convention

This UN Convention from 1988 determines legal liability for endangering international maritime navigation according to the model of liability established for endangering international air navigation. Any unlawful and deliberate control of a ship by force, threat or other forms of intimidation with a goal of perpetrating acts of violence against passengers or members of the crew which threaten the safety of maritime navigation are punishable. Incrimination from Article 3 of the Convention is contained in Article 179 (Seizure of an aircraft or a ship) and Article 181 (Threats to the safety of international air traffic and international navigation) of the Criminal Code.

**4.9. Protocol for the Suppression of Unlawful Acts of Violence
at Airports Serving International Civil Aviation,
Montreal, 24 February 1988**

Status:

Protocol entered into force on 6 August 1989

135 Member States

Republic of Croatia became a party to this Protocol on the basis of the
Declaration of Succession from 8 June 1993, with effects from
8 October 1991

The UN Protocol from 1988. The incrimination from Article 2 of the Protocol is specified in Article 181, para 2 of the Criminal Code (threat to the safety of international air traffic and maritime navigation).

**4.10. The Protocol for the Suppression of Unlawful Acts
Against the Safety of Fixed Platforms Located
on the Continental Shelf**

Republic of Croatia is not a party to this Protocol

The UN Protocol from 1988. The incrimination from Article 2 of the Protocol is covered in Articles 179 and 181 of the Criminal Code (seizure of an aircraft or a ship and threat to the safety of international air traffic and international navigation). The platform from the Protocol may be considered a floating object, as specified in the above mentioned articles (see definition of a floating object in the Maritime Code).

**4.11. The Convention on the Marking of Plastic Explosives
for the Purpose of Detection, Montreal, 1 March 1991**

Status:

Convention entered into force on 21 June 1998

96 Member States

Republic of Croatia is not a party to this Convention

The Convention from 1991 binds the Member States to forbid and prevent within their territory, the elaboration, possession and the transport of unmarked plastic explosives.

4.12. The International Convention for the Suppression of Terrorist Bombing, New York, 15 December 1997

Status:

Convention entered into force on 23 May 2001

99 Member States

Republic of Croatia is not a party to this Convention

The UN Convention from 1997 specifies a regime of universal jurisdiction for unlawful and deliberate use of explosives and other lethal substances at public places for killing or physical harming of people or for causing a large material damage at such places. The attempt, participation or organisation thereof, or instructing others to commit such a criminal act are also punishable. The application of the principle of universal jurisdiction pursuant to Article 3 of the Convention is excluded if the act has been done only on the territory of one state, if the perpetrator and the victim are citizens of that state, if the perpetrator has been arrested on the territory of that state, and no other state has any interest to prosecute him or her.

4.13. The international Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999

Status:

Convention entered into force on 10 April 1992

90 Member States

Republic of Croatia signed the Convention on 11 November 2001

This UN Convention from 1999 requests from the Member States to undertake measures for the prevention and combating direct and indirect unlawful financing of terrorist actions by groups who declare themselves as charitable, and groups involved in unlawful activities such as drug smuggling and trade in weapons. For supporters of terrorist organisations, the Member States undertake to make provision in their legislation of the efficient measures of criminal, civil and administrative law. The Convention provides the mechanisms for identification, freezing and seizure of means from unlawful funds and their distribution among the states whose criteria depend on the circumstances of the case. It has been established that a banking secrecy may not be a basis for rejecting cooperation among the States.

4.14. The Protocol amending the European Convention on the Suppression of Terrorism, ETS No. 190, Strasbourg, 15 May 2003

By this Protocol, a list of criminal acts considered as non-political in case of extradition was extended to all acts incriminated by the UN Conventions from 1973. The Convention is opened for accession to the states which are not members of the Council of Europe, but which have participated in drafting of the Protocol as observers. The Committee of Ministers may decide, based on its own evaluation, to invite non-European states to become parties to the Convention. A simplified mechanism for future amendments to the Convention is provided which enables the list of criminal acts to be extended without initiating a special procedure for adopting a new protocol. Typical discrimination clause was extended and gives the Member States the possibility to reject a request for extradition if there is a risk of death penalty, torture of the suspects or life imprisonment without the possibility of release on probation in the requesting state. In spite of the initial optimism which emphasised the possibility to cancel Article 13 of the Convention and the inability to reject a request for extradition based on the political offence exception, this Article was retained. However, it was modified to some extent so that the assumptions for the application of such exception were restricted: reserve may be made only by states which, at the time of opening the Protocol for signing, were parties to the Convention from 1977. Further, they must explicitly state to which criminal act the exception refers, and reserves are in effect for the period of three years after which they may be renewed for the following period of three years, but only on the basis of explicit statement by the interested state to the Secretary General of the Council of Europe. The principle *aut dedere aut judicare* was strengthened in such a way that the state which rejected a request for extradition is bound to forward the matter to the competent bodies for legal prosecution, and to inform the Council of Europe of the outcome of the prosecution.

5. FINAL REFORM OF THE CROATIAN CRIMINAL LEGISLATION AND INTERNATIONAL TERRORISM

The Croatian Criminal Code contains a number of criminal acts by which various forms of international terrorism are incriminated. These are: international terrorism (Article 169 of the Criminal Code), threat to the safety of internationally protected persons (Article 170), taking of hostages (Article 171), misuse of nuclear materials (Article 172), seizure of an aircraft or ship (Article 179) and the threat to the safety of international air traffic and air navigation (Article 181). However, with a view to full harmonisation of the Croatian legis-

lation with the corresponding international legal documents for combating terrorism, and notably with the *acquis communautaire*, it was necessary to amend some incriminations or to specify new criminal acts in the Criminal Code. This was done in the Law on the Amendments of the Criminal Code (*Official Gazette* of the Republic of Croatia No. 111/2003). These amendments refer to a standard definition of terrorism, association into a terrorist group, the incrimination of preparatory actions preceding a perpetration of terrorist criminal acts, as well as to financing of terrorist activities.

5.1. When it comes to the **definition of terrorism**, the most important legal framework for the Republic of Croatia in the process of harmonisation is certainly the Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164 of 22 June 2002, p. 3). The definition of terrorism, i.e. of a terrorist criminal act from Article 1 of the Framework Decision was wider than the notion of terrorist criminal act contained in Article 169 of the Croatian Criminal Code (international terrorism). This refers both to the subjective element of act (guilt) and to the objective element of act (action). Therefore, the criminal act of international terrorism from Article 169 of the Criminal Code integrated the definition of international terrorism from the Framework Decision, and the threat by perpetrating some of the criminal acts from para 1 was specified.

International terrorism

Article 169

(1) Whoever, with intent to seriously intimidate the population, forces a foreign state or international organisation to do something, or not to do it, or to sustain something, or seriously threatens the fundamental constitutional, political or economic values of a foreign state or international organisation, commits a criminal offence from Articles 170 through to 172, and Articles 179 and 181 of this Act, or causes an explosion or fire or, by some generally dangerous act or device, endangers people or property or kidnaps a person or commits some other act of violence which may seriously harm a foreign state or international organisation, shall be punished by imprisonment for not less than three years.

(2) Whoever threatens to commit a criminal offence from para 1 above, shall be punished by imprisonment of one to five years.

(3) If the perpetrator, in the course of the perpetration of the criminal offence referred to in paragraph 1 of this Article, intentionally murders one or more persons, he or she shall be punished by imprisonment for not less than ten years or with long-term imprisonment.

(4) If, by the criminal offence referred to in paragraph 1 of this Article, the death of one or more persons or extensive destruction is caused, the perpetrator shall be punished by imprisonment for not less than five years.

(5) In order to initiate criminal proceedings for the criminal offence referred to in this Article, an approval from the State Attorney of the Republic of Croatia is required.

5.2. Association into a group for perpetrating terrorist criminal acts.

Until the last amendments of the Criminal Code were made, none of the criminal offences with elements of terrorism specified the perpetration of a criminal act within a group or a criminal organisation. Association for perpetrating criminal acts against the values protected by international law, did not include criminal acts with elements of terrorism, but only criminal acts from Article 156 (genocide), Article 158 (war crimes against the civilian population), Article 159 (war crimes against the wounded and the sick) and Article 160 (war crime against prisoners of war). The amendments from the Criminal code extended the Article 187 to criminal acts with elements of terrorism: international terrorism (Article 169), endangering the safety of internationally protected persons (Article 170), taking of hostages (Article 171), misuse of nuclear materials (Article 172), hijacking of an aircraft or a ship (Article 179) and endangering the safety of international air traffic and maritime navigation (Article 181).

Association for the Purpose of Committing Criminal Offences Against the Values Protected by International Law

Article 187

(1) Whoever organises a group of people or in some other way joins three or more persons in common action for the purpose of committing the criminal offences referred to in Articles 156 through to 160, Articles 169 through to 172, Articles 179 and 181 of this Code, shall be punished by imprisonment of three to fifteen years.

(2) Whoever becomes a member of the group referred to in paragraph 1 of this Article, shall be punished by imprisonment of one to eight years.

(3) The perpetrator of the criminal offence referred to in paragraph 1 of this Article who, by timely uncovering the group, prevents perpetration of the criminal offences referred to in paragraph 1 of this Article shall be punished by imprisonment of six months to three years, but the punishment may also be remitted.

(4) The punishment shall be remitted for a member of the group who uncovers the group prior to having committed the criminal offence referred to in paragraph 1 of this Article.

5.3. Incrimination of preparatory actions for terrorist criminal acts and the interdiction to finance terrorism. The Croatian criminal legislation sanctions preparatory actions only if it is expressly specified by the law. Until the last amendment of the Criminal Code, no sanctions for preparatory actions were specified for any of the mentioned criminal acts with elements of terrorism, nor for financing of terrorism. Therefore, two new criminal acts were introduced into Article 70 of the Law on the Amendments of the Criminal Code, namely: "Preparation of criminal acts against the values protected by international law" where financing of terrorism as a form of preparatory action (Article 187a) was explicitly emphasised, as well as "Subsequent assistance to a perpetrator of a criminal act against the values protected by international law" (Article 187b).

*Preparation of criminal acts against the value
protected by international law*

Article 187a

Whoever supplies or enables means, removes obstacles, provides or secures monetary or other financial means, creates a plan or arranges with others or undertakes another action by which conditions are created for a direct perpetration of a criminal act referred to in Article 156 through to 160, Articles 169 through to 172, and Articles 179 and 181 of this Law, shall be punished by imprisonment of one to eight years.

*Subsequent assistance to the perpetrator of a criminal act
against the values protected by international law*

Article 187b

(1) Whoever hides, give food, clothes, money or otherwise provides for the perpetrator of a criminal act from Articles 156 through to 160, Articles 169 through to 172 and Articles 179 and 181, in order to make more difficult his or her discovery or arrest, shall be punished by imprisonment of six months to three years.

(2) Person whose spouse is a perpetrator of a criminal act, person with whom he or she lives in a common-law marriage, a blood relative in the first line, a brother or a sister, adoptive parent or adoptive child and their spouses or persons with whom they live in a common-law marriage, shall not be punished for criminal act from para 1 above.

6. PROPOSALS FOR THE IMPLEMENTATION OF FURTHER MEASURES

a. Pursuant to the Resolution 1373 of the UN Security Council and the Council Common Position of 27 December 2001 on combating terrorism (OJ L 344 of 28 December 2001, p. 90), by which states are bound to become parties, as soon as possible, to the UN antiterrorist conventions, it is proposed that the Republic of Croatia accedes as soon as possible to the following international conventions and protocols:

- International Convention Against Taking Hostages (UN)
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (UN)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms (UN)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (UN)
- International Convention on Combating Terrorist Bomb Attacks (UN)
- International Convention on Combating Financing of Terrorism, signed on 11 November 2001 (UN), to ratify as soon as possible
- Additional Protocol with the European Convention on Combating Terrorism (Council of Europe)

b. Considering that Croatia accepts the model of non-contractual extradition, in addition to the contractual one, it is proposed to adopt a special Law on Extradition which would include high standards of extradition law specified not only in the European Convention on Combating Terrorism (1977), but also in the European Convention on Extradition (1957) to which the Republic of Croatia is also a party.

c. Although the implementation of the European Arrest Warrant, by which the procedure of extradition is simplified among the EU Member States and which refers to terrorist criminal acts, is not possible until the Republic of Croatia becomes a EU member, it is proposed to conclude bilateral agreements on extradition (which would also refer to persons suspected for terrorist criminal acts). According to the model of the European Arrest Warrant, the procedure of extradition would be thus simplified and more rapid (see the Agreement on Extradition between Spain and Italy which served as a basis for elaborating the Draft Framework Decision on European Arrest Warrant).

d. In the Croatian criminal legislation, legal entities are not liable for criminal acts, but only for minor offences, and also for economic infractions until the new Law on Infractions comes into force. However, the final Draft Law on the Liability of Legal Persons for Criminal Acts provides a criminal liability of legal entities for criminal acts committed by their responsible persons (the so-called derivative liability of legal persons which is based on guilt of respon-

sible persons) and not only for criminal acts with elements of terrorism, but also for a large number of other criminal acts. By probable forthcoming adoption of this Law, the Republic of Croatia would be included in the line of ever growing number of states which specify, in their legislation, criminal liability of legal persons by which legal prerequisites would be created for the prevention of terrorism which is often related to legal forms of association.

Sažetak

PREGLED USKLAĐENOSTI HRVATSKOG KAZNENOG
PRAVA S MEĐUNARODNOPRAVNIM DOKUMENTIMA
O SUZBIJANJU MEĐUNARODNOG TERORIZMA

U radu autor daje pregled relevantnih međunarodnopravnih dokumenata za borbu protiv međunarodnog terorizma (12 konvencija Ujedinjenih naroda i Konvencija za suzbijanje terorizma s Dopunskim protokolom Vijeća Europe) te analizira usklađenost hrvatskog materijalnog kaznenog prava s inkriminacijama sadržanim u tim konvencijama. Razmatra problematiku normativne definicije terorizma, inkriminiranje sudjelovanja u organiziranoj terorističkoj grupi te posebne oblike pripremanja kaznenih djela s elementima terorizma (financiranje terorizma).

PRAZNA str.