UDC 343.98 ISSN 0354-8872

ACADEMY OF CRIMINALISTIC AND POLICE STUDIES, BELGRADE – THE REPUBLIC OF SERBIA
KRIMINALISTIČKO-POLICIJSKA AKADEMIJA, BEOGRAD – REPUBLIKA SRBIJA

NBP

JOURNAL OF CRIMINALISTICS AND LAW
ŽURNAL ZA KRIMINALISTIKU I PRAVO

KRIMINALISTIČKO-POLICIJSKA AKADEMIJA
Beograd, 2010

PUBLISHER
Academy of Criminalistic and Police Studies, Belgrade, 196 Cara Dušana Street – Zemun

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THE USE OF FORCE AND TERRORISM

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Abstract: The author explores the main features of international public law – the use of force and the right to self-defence in the light of terrorist acts. The main point is that terrorism itself is not the international public law notion. A huge number of treaties and norms regulating terrorism in terms of international public law regulate cooperation among states in suppression and sanctions of terrorist acts. If an armed attack occurs creating a terrorist attack, a state can apply its right to self-defence only if these acts can be attributed to a state, either as acts of states *de jure* or *de facto* organs.
Key words: the use of force, the right to self-defence, armed attack, terrorist act, state responsibility, attribution of acts to a state.

Contemporary international legal order is built on the norms prohibiting the use of force (Tams, 2009). These norms emerged from the classical *jus ad bellum*, changing its character in the essence (Condoreli, Naqvi, 2004; Schmitt, 2007; Pejic, 2007). While in the classical international law the use of force was the usual manner of communication between states, regulating just the pattern of commencing the war, nowadays the use of force is generally prohibited, allowing its use exceptionally.

The use of force is formulated as the principle, as the set of norms, both treaty and customary and as the unifying value of the international community (Cassese, 1986; Gray, 2008). The Charter of the United Nations embodies it in all its functions and presents general normative framework regulating the use of force[1]. The United Nations, as the subject of international law and international relations,

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[1] The Use of Force and the role of the UN in it has been under deliberation at the International Court of Justice on several occasions; in the case concerning Armed Activities on the Territory of Congo (the Democratic Republic of Congo v. Uganda) it is stated that the "prohibition against the use of force is a cornerstone of the United Nations Charter" and concluded that "Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down", all other cases are in the recourse to the Security Council, Judgment, par. 148; see also other cases instituted from the Democratic Republic of Congo against Burundi and Rwanda on armed activities, cases instituted from Yugoslavia/Serbia and Montenegro against the United States of America and other members of NATO on Legality of Use of Force, cases Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. the United States), Case concerning Oil Platforms (the Islamic Republic of Iran v. the United States of America)

was created with primary task to preserve international peace and security. The task, goal and aim of the UN are all created on the common value of liberty and freedom. Thus, the use of force and its exceptions should be understood in this manner.

Rules regulating the use of force, in the UN Charter as well as in the customary law[2], are addressing the states (Gazzini, 2005). The general presumption was that the use of force, either lawful or unlawful, would be only states' prerogative. Exceptionally, it could be manifested on behalf of non-state actors, for example in internal wars or revolutions, in liberation movements during state-creation process, occupying contemporary position of the subject of the international law. Nowadays, possibility to use force is not only in the hands of states or liberation movements, but also in the hands of some other non-state actors, promoting the issue of understanding and applying the norms on the use of force.

Terrorism is nowadays recognized by the international community as the prevailing threat to peace and security[3]. Yet, terrorism as a phenomenon is not new. Legal concept of terrorism is well known both within the international and national laws, with all of its following obstacles and issues on definition and elements (Bianchi, 2004; Maogoto, 2005). The new element is the magnitude of force that terrorists can achieve and use. And that is where we come to the subject of this paper – is it possible to use the force against terrorists? At the end, answer does come out as YES or NO. However, finding out which one is correct requires a great deal of deliberation.

At the beginning of the analysis it is useful to make an overview of the existing international law norms regulating the use of force. The principle of the use of force, when speaking of it in terms of character of norms, is created as the prohibition, i.e. obligation not to undertake an action. General prohibition of the use of force is articulated within the Article 2 of the UN Charter:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

As such, it presents treaty law norm, regardless of the character and significance of the treaty in question. Besides, it is prohibited by the norms of customary law[4]. In the hierarchy of international norms this prohibition is the integral part of *corpus* of *jus cogens* norms, giving it raise to the highest level of importance and leaving no possibilities of derogation. From this point of view it addresses only states, or members of the UN, imposing the obligation not to use the force against the other state. It is not addressing to non-state actors, since international law basically regulates relations among states.

[2] See Case Concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), Application 28 July 1986, par.27

[3] The most significant Security Council resolutions qualifying terrorism as a threat to peace and security are Resolutions 1368 of 12 . 9. 2001 and 1373 of 28. 9. 2001, following the attacks in New York, USA, 11. 9. 2001.

[4] Relation between customary law norms and treaty norms on the use of force has been under deliberation at the International Court of Justice in the Case Concerning Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, par. 392, 421,422, www.icj-cij.org

Still, force can be used lawfully, thus creating the exceptions to the general prohibition. In the UN system force can be used as the collective military enforcement action taken or authorized by the UN Security Council according to the concept of collective security regulated in Chapter VII of the Charter (Svarc D., 2008). States individually or collectively can also use force lawfully when defending themselves according to the right to self-defense.

For the force to be used lawfully there are certain conditions to be met. When used by the Security Council it should be conducted by the threat to peace, breach of peace or act of aggression, all of them titled as such by the Council itself (Santori V., 2006). When used by virtue of the right to self–defense, it is either according to the UN Charter or to the customary law norm regulating the principle of self-defense. In the UN Charter self–defense is defined in the Article 51 as the right. It proclaims:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

In corpus of the customary law, principle of self-defense is broader than Article 51 of the UN Charter (Gazzini T., 2005). In its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice stated:

"Furthermore, the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defense, in accordance with Article 51 of the Charter, when its survival is at stake" (par. 226)

Self-defense is thus recognized as the fundamental right, the inherent right and as such it certainly implies concept of jus naturale (Dinstein Y., 2004). Notwithstanding present understanding and significance of jus natural, it still reminds us that some concepts cannot be changed but formulated in different patterns of reaction. As an inherent right of every state, it relies on its main characteristic, element and principle – sovereignty (Dinstein Y. 2004). In that sense a state is the one and the only holder of the right to decide when its survival is under threat and to decide on response. Normative framework of the UN Charter defined within the cited Article 51 is narrower (Shaw M. 2003). That means that state has the right to use the force as self-defense only when armed attack occurs and until the Security Council takes over adequate measures. Still, there is no simple legal formula on the armed attack.

It is repeatedly stressed that Article 51 should be read in the conjunction with Article 2(4) (Dinstein Y., 2004; Gazzini T., 2005)[5]. Yet, there are some important discrepancies between them, leaving room to interpretation. The same can be

[5] Gazzini points that application of Article 51 should be understood as the failure of the Security Council and is denial of Article 2(4)

stressed for the right of self-defense and its relation with the collective measures applied by the Security Council. While, the Security Council is the authoritative body to decide whether there is threat to peace, breach of peace or act of aggression and according to that decision the Council decides on adequate measure, state applying right to self-defense can do that only when an armed attack occurs.

The other element, subject to which the rule addresses, is not unified. We can state that prohibition to use force as the principle addresses the states posing prohibition on them, regulating thus the relation between them. It is clear that prohibition is regulating inter-state relations. The principle of self-defense and the right of self-defense is not formulated (in clear and precise words) towards the attacking party. A state can be endangered and armed attacked by entities other than states, possessing the power to threat and attack.

Lack of the definition and a very important element in the construction of the right to self-defense can be misleading towards the conclusion that the right of self-defense is extensive, grounding it only on the attack character. On the contrary, the formula of the right of self-defense is restrictive. It is confined with the character of attack and it is only temporary right, applicable until overtaken by the Security Council, essentially framed with the prohibition on the use of force. The right of self-defence is additionally and indirectly framed with the role of the Security Council. It is not framed only in terms of *temporis*, but also in terms of *materiae* in words "the measures necessary to maintain international peace and security". Self-defence can be thus invoked only when a state is endangered in terms of international law and international relations.

If we agree on this interpretation, then the rules on the use of force and self-defence do form consistent unity.

An armed attack, the expression that is used when speaking of the right to self-defense, can also be named aggression. In fact, from the point of terminology it is legally better suited than the descriptive expression of armed attack.[6] Yet, there are essential differences between an armed attack and aggression that in the outcome may influence the right of self-defense.

Subsequently, we find ourselves posing the question – what is aggression? In terms of the right of self-defense it should not be treated according to the precise definition typical for criminal law. It should be circumscribed in a functional way building functional right of self-defense. This means, that if there is an act endangering existence of a state, as an entity, as a subject, the inherent right to survival is emerged and it invokes right to self-defense.

Obviously the previous does not present an operative legal formula. The definition of aggression exists, adopted by the UN General Assembly, in a form of resolution[7]. It is the formula that should be followed when reasoning whether an attack presents aggression or not. Still, it is not a binding definition, either for

[6] Analyzing the scope of an armed attack, Gazzini relies on the stand of the International Court of Justice stating "that the definition of armed attack can be found only in the customary law", Gazzini T., op. cit., p.119.

[7] UN General Assembly Resolution 3314-XXIX, from December 14, 1974.

Security Council or for the states, leaving the room to other acts to be titled as acts of aggression.

"The crux of the issue, therefore, is not who fired the first shot but who embarked upon an apparently irreversible course of action, thereby crossing the legal Rubicon" – let me use the wording of Professor Dinstein (Dinstein Y., 2004). Besides the use of force which is the evidence *prima facie* of aggression, aggression bears in itself meaning, *ratio* and purpose. The armed attack manifesting the aggression is undertaken on behalf of a state as a political entity towards the other state as a political entity (Rowling B.V.A, 1986). It is undertaken with a purpose of influencing either territorial integrity, provoking territorial reorganization – whether occupying it in whole or in part, or in provoking territorial reorganization such as secession – or in influencing the independence and sovereignty of a state. Aggression thus should be understood as a specific method of political manifestation of states goals, plans and interests towards the other state.

In summary, an armed attack or let us say aggression is the ground for invoking the right of self-defense. It should be understood as the manifestation of politics, interests and goals of the subject of international law in the sphere of international relations.

When reasoning on whether force, as the collective enforcement measure or the right to self-defense, can be used against terrorists the problems may arise following the understanding and definition of terrorism (Barrado C.M.D., 2008). Since this paper is not a study of terrorism itself, but of the issues on possibilities to use force i.e. self-defense against terrorists, there will be no analysis on definition, elements or other details following this phenomenon. However, from the operative side of analysis some key points on terrorism should be outlined.(Cryer R., 2008).

There is no doubt that phenomenon of terrorism has been legally circumscribed from many different angles, resulted in plethora of conventions dedicated to certain aspects of terrorism. Yet, none of them has come near enough to the unifying and overall definition of terrorism, except the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on December 9, 1999. (Stojanovic P.C., Palevic M , 2010). As for the subject of this Convention and the number of State-parties[8] this convention is marked as the "corner-stone of the struggle against terrorism".(Gioia A., 2005).

Article 2 of this Convention, in "two-steps approach" defines terrorism in terms of (1) treaties brought before this one (and "*listed in the annex*") and (2) 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".

Recognizing the need to regulate terrorism in the overall approach, the UN has been working on the draft of the Comprehensive Convention on International

[8] The Convention has 132 signatories, 171 parties; among Permanent Members of the United Nations Security Council only China is not the state-party.

Terrorism[9]. Overall approach presumes an overall definition. The definition that has been created follows the guiding line of the previously cited definition. It states:

"1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- Death or serious bodily injury to any person; or
- Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."

General approach and constitutive elements of both definitions thus would be in terms of a crime and criminal responsibility of an individual thereto. In other words, the definition as proposed does not cover the possible scenario of state`s involvement in terrorist acts. It also underlines *ratio* of terrorist act – influencing a state to do or abstain from doing an act by intimidating the population. Thus, it bears a political dimension, it has its impact on the main international subject, it is emerging as a unifying international issue and yet it is not, by definition, an institute of international law.

The reasons and prevailing factors for such an approach are described differently – from political deals to legal philosophy of criminal law which does not embrace criminal responsibility of a state. From the point of view of the author of this article and the theory followed, the proposed definition does cover the main elements of the phenomenon of terrorism, as we mainly recognized it. From the different angle, this statement brings us to the conclusion that terrorism should not be understood as a notion of international public law (Higgins R ., 1997). As such, it cannot be undertaken by states, but only by private persons and groups of persons, i.e. terrorist groups. As the outcome, responsibility and sanction should be found elsewhere, but not in the rules of international law.

The influence of states on terrorists, their role in terrorist's activities and the fact that states can be true organizers of terrorist acts are recognized and formulated in the expression – "state-sponsored terrorism". (Dupuy P.M., 2010). This expression is not rules-grounded or norm-governed expression, but rather theory grounded, politically motivated, underlining the potential role of a state in terrorist acts.(Becker T. 2006). From the legal point of view, there are no rules that would support such a combination of incompatible notions (Smith S.E., 2003).

At this point, for the sake of truth it must be stressed that there have been attempts to include state element in undertaking of terrorist acts. It can be traced in

[9] Work of the UN General Assembly on this issue has been conducted by the General Assembly`s Sixth (Legal) Committee and the General Assembly *Ad-hoc* committee on terrorism, established by the Resolution 51/210 of 17 December 1996. Current negotiations have reached a deadlock. Under the terms of the UN General Assembly Resolution 64/118 Measures to Eliminate International Terrorism adopted on December 16, 2009, the *Ad-hoc* Committee shall continue its work on the draft on the Comprehensive Convention on International Terrorism.

the General Assembly`s resolutions, where the involvement of states in terrorism, either indirect or direct, has been recognized. One of the most famous is the Declaration on Measures to Eliminate International Terrorism, within the Resolution 49/60 brought on December 9, 1994. In the paragraph II it is stated:

"4. States, guided by the purposes and principles of the Charter of the United Nations and other relevant rules of international law, must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts".

Continuing, the Declaration lists methods of cooperation between states in prevention, suppression and combating the terrorism. But, unlike the all sectoral conventions and customary law it also clearly addresses to states in words:

"5. States must…

– … refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and take appropriate practical measures to ensure that their respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens;"

The Declaration itself is not legally binding, but it is important as the evidence of joint conscience. Maybe even more important, it is also evidence of the joint failure to create rules that would regulate this aspect of terrorism.

If we recognize that the term "state-sponsored terrorism" is aimed to mark those situations, the examples when a state is indirectly taking part in terrorist acts, then the state should be included in the frame of notion, be recognized as an element of the definition (Smith, 2003). As mentioned earlier, terrorism is not the legal institute of international public law. Thus, there is no such institute as the terrorist act or terrorism supported, tolerated or organized by a state. Basically, the expression "state-sponsored terrorism" when titled in terms of international law should be adjusted either to aggression or to some other international crime as an *actus reus* (Cassese, 2006). If a state takes part in terrorist acts, these acts cannot be called terrorist acts anymore, as they are not terrorism, but aggression, crimes against humanity (Arnold, 2006) or probably some other international law institute.

The importance of this issue is not only theoretical. It is of essential importance to decide what is covered by the term terrorism (Cassese, 2001). This is not only the matter of precise legal definition, but of the general approach. The stand taken on this issue would lead us to the concept of responsibility and lawful reaction/sanction, to the possibility to invoke the right of self-defense and to use force against terrorists (Salcedo, 2009).

From the present point of view, there are two possible scenarios. If we preserve the concept of "state-sponsored terrorism" then the responsibility for terrorist acts would be applied on the state itself by means of rules of attribution. The concept of attribution itself is controversial, complicated and still not sufficiently profiled. As for the examples relating to terrorist acts with the attempts

to attribute them to the state, they are not encouraging at all. For an act undertaken by a formally non-state actor to be attributed to a state, we can rely on the Draft Convention of State Responsibility for Internationally Wrongful Acts.[10] However much more important and influential is the statement of the International Court of Justice in the Judgment of the famous Nicaragua Case, when rules on attribution have been crystallized. The Court has formulated concept of "effective control over military and paramilitary operations" that should be exercised by a state for a purpose of attribution. This example is not encouraging either from the point of attribution or from the point of importing the concept of terrorism into international law. It suggests also that at the moment there is no all-in-one formula covering all possible situations, but instead the issues of attribution should be assessed on a case-by-case basis.

Scenario no. 2 would keep us within the framework of existing norms, applying them on the same situation titled differently. If terrorist acts occur with the obvious indicators that state is conducting them, these acts should not be treated either as terrorism or state-sponsored terrorism, but (most probably) as an armed attack or aggression. In that case Article 51 of the UN Charter as well as the customary rule on self-defense would be fully applicable. This example assumes that the attack is of the character leading to "the crossing over the legal Rubicon". That means that state in question has by no means intent to suppress terrorists' activities and use of force conceives as the attack and not as the self-defence (Garcia, 2009). The shortcoming of this, from the point of view of the most favourable version of international law, is in its manifestation. Terrorism in its notion contains specific techniques, which other hostile military activities usually do not employ. In the manner of expression lies the difficulty of referring to that attack as the armed attack, giving the ground for application of the right of self-defence. Until now, state practices show that states are not willing to encourage employment of the right of self-defence to the terrorist acts qualified as military or armed attacks. The real need *to bring into accord* terrorist hit-and-run tactics with the support of state, has been addressed many times. It has also given birth to various theories, such as the theory of necessity and proportionality, theory of "functional argument" (Tams, 2009) or the theory of "accumulation of events" (Gazzini, 2005)[11] or accumulation doctrine. None of them became operative or legally accepted, leaving thus reaction of states to the terrorist acts/armed attacks on the case-by-case basis.

Scenario no. 3 is purely theoretical since there is no hint in reality that compromise and deal on these elements could be reached in foreseeable future. According to this scenario state`s involvement in terrorist acts, should be included as in the definition itself, with the position of constitutive element, giving it meaning and position of the international law institute, leading to the direct responsibility of

[10]After several decades of deliberation the ILC has formulated the last version of the Convention in 2001. This version is cited in this paper.

[11]This theory has been elaborated by Israel since 1950, and is used as the ground for the use of force in numerous occasions grounding it on Article 51 of the UN Charter.

a state and directly to applying the right to self-defense or other form of reaction/sanction towards the state conducting terrorist acts.

In order to legally justify armed activity undertaken by virtue of the right to self-defense, a state should not be defending itself from terrorist`s armed attack. The attacked state should rely on the fact that terrorist acts are undertaken on behalf of a state and as such invoke the right to self-defense. If a terrorist attack occurs, from the territory of another state, when that state does not organize or support terrorist group, the attacked state could not invoke its right to self-defense. Still, it can use force.

States can use "anti-terrorist force" (Tams, 2009) on the territory of the other state, with purpose to neutralize terrorist groups, with the consent of that state or in alliance with it. In this example though, it would not be self-defense in the sense of the right to self-defense when armed attacked, but cooperation between states in suppressing terrorism.

The real threat that is posed for states by terrorists and the level of gravity of terrorist attacks has influenced international community, but unfortunately not simultaneously. Today, we have plenty of norms treating terrorism, yet none comprehensively defining it on the international level nor creating the system of reactions to it or measures/sanctions that can be applied.

There is one important mark of international norms governing terrorism that has to be stressed. Plethora of norms concerning terrorism, huge majority of them contained in sectoral conventions, address to states and they are created among states giving them character of international law norms (Elagab, Elagab, 2007). *Meritum* of all of these norms, hence, is not in regulating inter-state relations, but in their mutual agreement on steps that are to be taken as on terrorism in order to prevent and suppress it (San Jose, 2009). Vast majority of the international law norms are thus creating duties on state parties for the convention to be fulfilled within their national law – criminal (concerning either readjustments in their criminal code, definitions of crimes, elements of crimes, or obligations concerning prevention and sanction of certain types of terrorist acts), banking law, production of weapons, explosions, security issues, etc.

Another important part of them is regulating cooperation among states in mutual efforts of suppressing terrorism within their borders. Cooperation among states in combating terrorism is generally in terms of exchanging information about terrorist groups and their activities, in cooperation on revealing them and exchanging of evidence, in cooperation in terms of extradition, etc. (Proulx, 2005). When it comes to the use of force against terrorists there are no rules, that field is not regulated. It thus brings the analysis into the sphere of general international law institutes.

In other words, states were not creating norms on terrorism *vis-à-vis* one another, which resulted in the previously drawn conclusion that terrorism itself is not the notion of international law.

In conclusion, as it was stipulated previously in the text, a clear positive or negative answer on the use of force and self-defence against terrorist attacks will be formulated. In simple formulas it would be structured as follows:

- A state can apply the right of self-defence against terrorist acts, amounting to arm attack, if those acts are committed on behalf of the state either according to the terms of the attribution or according to the shift of those acts to the international law institute;
- A state can use force against terrorists (either individuals or groups) on the territory of another state, with that states consent and as a part of assistance or mutual combat against terrorists. According to this scenario, a state using the "anti-terrorist force" would not be in the breach of the general prohibition on the use of force.

Besides these two formulas – simple and self-understanding, but yet very narrow and restrictive, there are some vague loopholes that cannot be covered by them. For example – can the Security Council directly use force against terrorists? What if a state from whose territory terrorist attacks occur does not want armed force cooperation with the other (attacked) state? Does it place "anti-terrorist force cooperation" into the breach of prohibition on the use of force?

As far as the first question is concerned, legally speaking the Security Council is equipped with broader rights as to the reaction on crisis in international community and wrongful attitude manifested by states. When a terrorist act occurs the Security Council is authorized to decide on the character of the act and its influence on the international peace and security (Laborde, DeFeo, 2006). Using its prerogatives the Security Council can, under Article 41 of the UN Charter, decide on measures and invite the UN Members to apply them. In the attitude towards the Security Council resolution, a state can manifest its attitude toward the terrorist act taken from its territory. As far as the use of force is under observation, a simple answer would also come out as positive, again with the same assumptions on state involvement in the terrorist attack (Carnero, 2009). Not only is the Security Council authorized to use force against terrorists, but it should hold the leading role in it, in the sense of collective security system and Article 24 of the Charter[12]. Also, in the pure logical sense of reasoning, if it is stated that a state can apply the right of self-defence to a terrorist attack, the right that is framed within the Security Council`s prerogatives, it is self-understanding that the SC holds the same rights (Fassbender, 2004). The ground for rethinking on the Security Council`s prerogatives thus does not lay on the black-lettered law, but on its practice. The Security Council has been very active in addressing the issues of terrorism and conclusions on urge to regulate this area in precise manner. On the other hand, it remained quite passive. So far, the Security Council has not authorized the use of force as a military sanction against terrorists. Yet, states have been active and force that has been used titled as the right of self-defence. The Security Council did not either follow them in their efforts of defending or apply a measure towards them as for the breach of a prohibition not to use force.

As for the other question, this is not a typical example of loophole or paralysis of law, but more a fact-dependent distribution of constitutive elements of a case

[12] Article 23: 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

(Bassiouni, 1988). The attitude of a state whose territory has been used for organizing and conducting terrorist acts can be one of the elements in the process of attribution. On the other hand, the principle of sovereignty does allow a state to refuse forceful cooperation from the other states, without referring to substantial involvement.

By this example, we do come to the end of the topic. The right of self-defence is restrictive and it does not come in straight forward application on the acts of terrorism.

In terms of comparison, the right of self-defence is weaker than the principle of sovereignty. If misused, it can be qualified as the breach of prohibition on the use of force. It would then lead to application of the right of self-defence *vice versa*. Thus, it can create a closed circle. Ban of force does not prohibit use of force against terrorists as such; it applies in international relations between states. However, the use of force against terrorists based in another country can be treated as an armed attack.

From the point of view of real needs and events in the contemporary world, this outcome of the analysis is not satisfactory. The lack of regulations is evident, as well as the inability of the international community to find an acceptable approach. In order to regulate a response of the international community and states unilaterally to acts of terrorism, either supported by a state or not, the priority is an agreement on definition, i.e. if it includes the state as a constitutive element, which would *ipso facto* conduct issues on responsibility of state, as well as the issue of sanctions.

Ratio of the International law requires the connection with substantive international law, with principles of international law and inclusion of terrorism into the system of international law. Terrorism guided only in criminal law terms and exclusively as the crime is not adequate for the international law system. It leaves a huge and very important area of contemporary relations legally uncovered, imprecise and thus easy for misuse. As for the final conclusion and also as a task *pro futuro* finalizing of comprehensive convention or creation of customary norms would be the best way to adjust the real needs to the legal framework.

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UPOTREBA SILE I TERORIZAM

Rezime

Članak je posvećen proučavanju mesta terorizma u sistemu međunarodnog javnog prava, s posebnim osvrtom na upotrebu sile i prava na samoodbranu. Autor konstrukciju gradi na stavu da terorizam nije institut međunarodnog javnog prava, tj. da su odnosi između subjekata međunarodnog javnog prava

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