

# The Fight against Terrorism in the Ring of Sovereignty

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## Abstract

Westphalian sovereignty sometimes is a barrier to address the common concerns of the international community. The long-standing problem of definition of terrorism is a clear example. However, states abandoned such conception of sovereignty in response to international terrorism over the last two decades. The main instruments for this change were Security Council resolutions which imposed general far-reaching obligations on all states. While some regard this Council's approach as quasi-legislative and *ultra vires*, according to this article it was a necessary step which gave rise to the integration of states' efforts to confront international terrorism; otherwise, the legal vacuums caused by the lack of agreement on the definition of terrorism would have never been filled.

**Keywords:** international law, international terrorism, states' obligations, states' rights, the Security Council

## 1. Introduction

The concepts of terrorism and sovereignty have both a long history and came both into a new stage in recent era. Terrorism was discussed at the international level for the first time by the League of Nations (Note 1). In that time terrorism was characterized mainly by the political purposes and its activities limited to the domestic areas (Note 2). However, from 1970s terrorism gradually crossed borders (Note 3) and since 1990s it has been utilized by some religious extremists (Note 4). This new wave of terrorism with international and religious features made headline in the first year of the twenty-first century following the September 11 attacks. Such terrorist acts which are now called *international terrorism* increased sharply in recent decades. The Institute for Economics and Peace reported that only ISIL and its affiliates undertook attacks in 26 countries in 2016 (Note 5). This international problem obviously requires proper international instruments. However, this kind of instrument confronts in some cases with a long-standing legal principle, namely the principle of state sovereignty. The concept of sovereignty was created at the turn of the sixteenth century and has been closely associated with the emergence of the modern states in the seventeenth century. Subsequently, it was recognized in international law for granting of independence to states and establishing equality between them. Thus, the existence of this principle is considered crucial for international relations as a legal and political principle. However, this principle has had negative impacts on the function of international law in some cases since under the aegis of this principle states may refuse to cooperate with international community. Consequently, we have witnessed some reciprocal effects between states' rights deduced from this principle and a number of states obligations.

What is the reason for such complexity about the meaning of sovereignty? And how did the principle of sovereignty and states obligations to combat terrorism affect each other? To respond to the former question, I will at first spell out the main function of the principle of state sovereignty. After that I will analyze the effect of this principle on combatting terrorism and consider the rapid alterations in its function which took place as a result of the responses of the international community against Al-Qaida and ISIL.

## 2. Sovereignty in the Context of International Law

The principle of sovereignty can be considered as a dilemma for international law at first sight. According to this principle states have supreme internal authority as well as independence in external scope. It has been recognized in international law as a fundamental principle to regulate international relations. Nevertheless, it has had negative impacts on the function of international law in many fields. States in particular situations refuse to work for common interests of the international community and they invoke explicitly or implicitly the principle of sovereignty for such behavior. Consequently, when it is necessary for states, for example, to enter into a multilateral convention some states may abstain from that on the basis of the principle of state sovereignty. As an additional

example, when a state is requested to adopt or do not adopt a special kind of policy towards its citizens, that state may reject such request in accordance with the principle of sovereignty. This is also the case in fight against terrorism which will be addressed in detail in the succeeding pages. Due to such problems, contemporary international law has an ambivalent attitude towards the concept of sovereignty. If we look at the history of this concept, we will find a notable fluctuation in its position owing to sociopolitical interests of states. States in certain situations have reached a general consensus on the principle of respect for states sovereignty to suppress the danger of aggression and in some other periods they have tried to limit state sovereignty for the same aim.

It was Bodin (1576) who wrote, for the first time, about the sovereignty of states and necessity of this notion for the European nations. Then, Hobbes (1651) put forward the theory of sovereignty which should be made through a social contract. Nevertheless, from one perspective the modern concept of sovereignty has its roots in the Peace of Westphalia (1648) since it established equality between states. The Peace of Westphalia which consists of the peace treaties of Münster and Osnabrück brought the Thirty Years' War to an end. According to Rousseau (1915, p.245) these treaties were the basis of the European political system. While some argued that the Peace of Westphalia established the principle of toleration by recognizing the equality between Catholic and Protestant states (Gross, 1948, p.22) others call these claims as myth and believe that this event "increased the legal scope of external involvement in the Empire and its individual territories" (Milton, 2019, p.217). According to Krasner (1999, p.20) also the non-intervention rule emerged in the late eighteenth century and it is incorrectly attributed to the Peace of Westphalia.

The concept of 'equality of states' was introduced into international law by a legal thinker of the eighteenth century, namely Emer de Vattel (Shaw, 2008, p.26). This novel phrase was in fact a stress on the right of sovereignty but mainly based upon the naturalistic opinion. In the nineteenth century however the doctrine of sovereignty reached its peak under the aegis of the positivist attitudes. Two prominent theorists in this realm were Hegel and Austin. For Hegel sovereignty was an idealistic unity among the all parts of a state (Kain, 2015, p.6). Moreover, he believed that one aspect of sovereignty is state ability to maintain its power against other sovereignty (Nederman, 1987, p. 504). According to Austin also law was based on sovereignty and sovereignty was based on fact (Lindsay, 1923 - 1924). In addition, he suggested that sovereignty was the basis of law while law could not be the basis of sovereignty (Lindsay, 1923 - 1924, p. 238). At the beginning of that century the Congress of Vienna (1814-1815) has been occurred. The European crucial need after Napoleon reign was peace (Webster, 1918, pp.145-146), subsequently the Congress was in fact a step to meet such necessity. The concept of sovereignty at that time found its position in the doctrine of the European balance of power. But, ironically, the anarchy of sovereignty in the guise of national sovereignty for states own interests in the next century led to the two world wars (Fassbender, 2003, pp.119-120). Before the establishment of the United Nations, it was difficult to make a clear distinction between the notions of equality and sovereignty in international relations. The Charter of the United Nations however, suggested the principle of 'sovereign equality' (Note 6) which was an unprecedented combination of these two words. Also, the Charter emphasized the principles such as respect for territorial integrity, political independence and non-intervention (Note 7) which can be considered as a stress on state sovereignty; and at the same time obliged member states to respect for treaty obligations, promote social progress, settle international disputes by peaceful means and so on (Note 8). The United Nations in fact adopted a dualistic attitude for common goods. However, the most important limitation which the United Nations imposed on state sovereignty is invalidating *jus ad bellum* (Fassbender, 2003, p.129). Other international accords which were drafted under the auspices of the United Nations held the Organization's such approach with regard to state sovereignty. For instance, the Friendly Relations Declaration declares that: "All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature" (Note 9).

This kind of new attitude towards the concept of sovereignty was of course as a result of the new time exigencies, most importantly the prevention of warfare, equality of states and freedom of human beings. Following the process of decolonization, the principle of self-determination reaffirmed the doctrine of sovereignty; in this stage not for the dominant powers but for the new emerged states. The Charter of the United Nations referred expressly to the principle of self-determination (Note 10). This principle also drew global attention and subsequently was expressed in the UN different documents. The General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. This Declaration noted the inalienable right of peoples to exercise of their sovereignty (Note 11). The right of self-determination has also been reaffirmed in the succeeding instruments including the 1966 Human Rights Covenants.

Accordingly, we can conclude that the term sovereignty has gradually experienced significant alterations in its function and went beyond its initial meaning over time. It is the reason of some disagreements as regards the status

of this concept in international law. For example, on the one hand this principle has been considered as a legal fiction and compromised ideal in international law (Boas, 2012, p.160) but on the other hand it is argued that sovereignty exists as autonomy even in the current world of international institutions (Cohen, 2010, 278, 279). In my view to solve this dispute we should keep in mind that in the contemporary international law the principle of state sovereignty has a different position. Cohen (2010, p.262) argues that a 'dualistic sovereignty regime' has been emerged in the present era. Krasner (1999, pp.3-4) also divides the term sovereignty into four categories, namely domestic sovereignty, interdependence sovereignty, international legal sovereignty and Westphalian sovereignty. I believe many aforementioned obstacles thrown up by the principle of sovereignty to evolution and implementation of international law result from Westphalian interpretation of sovereignty. This kind of sovereignty "is the right to be left alone, to exclude, to be free from any external meddling or interference" (Slaughter, 2004, p.284). As a result, according to such interpretation of sovereignty sometimes states regard some matters as internal affairs and subsequently infringe certain international regulations, whereas today states live in an interdependent international community and many international legal regulations, such as international human rights law, deal with states practice at the domestic level. To remove the drawbacks of this aspect of sovereignty we should address the main function of this concept. Bear in mind that the emergence of the doctrine of sovereignty was basically the result of emancipation of international relations (Shaw, 2008, p.21); consequently, its primal purpose and function likewise should be considered for peaceful relations of states. In the contemporary era, as a result of the alterations which took place by the UN instruments in the concept of sovereignty, we should add good governance as another purpose for recognition of this principle.

According to Kelsen (1944, p.208) sovereignty of state in international law means that a state is subjected only to international law not to the domestic law of other states. This definition of sovereignty crystallized in the United Nations Charter as well as the instruments which have been created under the aegis of the United Nations, including the principle of responsibility to protect that is the climax of this redefinition of sovereignty. However, a significant phase in which the traditional understanding of the sovereignty of states has been disregarded consciously by states themselves is the fight against international terrorism; although we cannot ignore some ongoing effects of the Westphalian interpretation of sovereignty in global counter-terrorism strategy. I will examine this matter in the succeeding part of this paper.

### **3. The Mutual Effects Between the Obligation of States to Combat Terrorism and the Principle of State Sovereignty**

#### *3.1 Divergence Between States over the Definition of Terrorism*

The Westphalian interpretation of sovereignty can be considered as a barrier to fight against terrorism in many ways. For instance, states may refuse to ratify a multilateral counter terrorism convention and subsequently the regulations of such convention *prima facie* will not be binding on them. Also, it is the internal affair of states that how they combat terrorism domestically. However, the principal problem is still disagreement among states over the definition of terrorism. Indeed, the prolonged problem of defining terrorism is a prominent example which indicates the negative impact of state sovereignty on international counter-terrorism strategy. One of the earliest efforts for defining terrorism is the Convention for the Prevention and Punishment of Terrorism which was drafted by the League of Nations in 1937. It proposed a brief definition which could be enough only for the necessities of that time (Note 12). After that, it was the UN General Assembly Declaration on Measures to Eliminate International Terrorism that in the paragraph 3 suggested a definition (Note 13). It is to be noted that the foundation of the United Nations paved the way to conclusion of several multilateral conventions which intend to address some particular criminal activities in international scope. These sectoral treaties are considered as the international counter terrorism conventions. Nevertheless, amongst these conventions a definition of terrorism can be extracted only from Article 2, paragraph 1, of the Terrorist Financing Convention (Note 14).

Despite all these attempts the lack of a universal accepted definition of terrorism has always been noted as a serious problem; and different scholars attributed this problem to various reasons. According to Saul (2006, p.319) this legal vacuum is due to political and ideological barriers arising from decolonization and the Cold War. It may be said that international community has passed these disputes, but today separating freedom fighters and terrorists in both treaty and customary law is a main root of dispute between states. In certain situations, one activity may be recognized by a state as the exercise of the legal right of self-determination or legitimate opposition against an oppressive regime; but at the same time, it can be considered terrorism from another lens. This disagreement can be easily seen in some regional counter-terrorism conventions. The Organization of African Unity Convention on the Prevention and Combating of Terrorism reaffirmed "legitimate right of peoples for self-determination and independence pursuant to the principles of international law" (Note 15). More importantly, in three other conventions armed struggles, although in accordance with the principles of international law, for the aims of

liberation, self-determination, etc. have been excluded from the terrorist crimes (Note 16). Therefore, it seems that states do not intend to be obliged by a definitive definition of terrorism and prefer to leave some legal vacuums and loopholes. They adopt such approach obviously by virtue of the principle of sovereignty.

### 3.2. *Convergence among States in Combating Al-Qaida and ISIL*

In spite of states' dispute regarding the definition of terrorism, states practice in other parts of the counter-terrorism strategy has rapidly changed to an unprecedented convergence over the last two decades. This transformation has its origins in Security Council resolutions. As a result of the prohibition of threat and use of force in international relations in accordance with the United Nations Charter, states often deny any linkage between themselves and armed non-state groups. Also, as a general principle of international law the activity of private entities is not attributable to states unless proved otherwise. In practice however states take part in the actions of such entities for different purposes. In such cases for holding a state responsible the level of its participation shall be examined. In this regard according to the ILC Articles on State Responsibility (2001) a state shall be responsible for the activity of a non-state actor if it "is in fact acting on the instructions of, or under the direction or control of that state" (Note 17). This Article in fact suggested two situations and in each case the existence of a genuine connection between the author of crime and official system should be investigated (Note 18). One of the classical criteria for this aim is derived from the case of '*Nicaragua v United States*' (1986) in which the International Court of Justice (ICJ) suggested the "effective control" for attributing the conduct of armed non-state actors to states. The Court held the view that:

United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself...for the purpose of attributing to the United States the acts committed by the contras...For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed (Note 19).

As we see ICJ required a high threshold of control as a criterion to establish the responsibility of states. However, some years later the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the '*Tadić Case*' (1999) suggested another yardstick titled "overall control". The Chamber stated that:

The principles of international law concerning the attribution to States of acts performed by private individuals are not based on rigid and uniform criteria...The requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises control over the individuals. The degree of control may, however, vary according to the factual circumstances of each case. The Appeals Chamber fails to see why in each and every circumstance international law should require a high threshold for the test of control (Note 20).

Although the main difference between these two cases lies only in the degree of control not in the kind of control (Värk, 2006, p.189) the latter judgment was actually a notable step which indicated the tendency of international law to impose more limitations on the participation of states in the activity of armed non-state actors. It was, however, the September 11 terrorist attacks which brought the history of both fight against terrorism and the principle of state sovereignty into a new stage and the main role for such transformation was played by the UN Security Council. In the wake of the terrorist attacks of 9/11, Resolution 1368 (2001) was adopted unanimously in which the international terrorism was considered "as a threat to international peace and security" (Note 21). This Resolution stipulates that "those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable" (Note 22). However, the novel approach was Resolution 1373 (2001) because according to many commentators the Council adopted a quasi-legislative attitude in this Resolution (Note 23). Prior to that, the Security Council in each of its resolutions used to impose obligation with regard to a particular case. Resolution 1373 however imposed obligations on all states for an unspecified time without addressing a specific situation.

Some consider this approach as *ultra vires* (Happold, 2003). Happold (2003, pp.600-601) argued that pursuant to the UN Charter only the General Assembly can address generally to the international peace and security issues and the Security Council have to deal with specific cases; but neither the General Assembly nor the Security Council can impose general obligations on states. On the other hand, Rosand (2004) suggests that there are not such limitations in the UN Charter for the function of the Security Council. In my view, the main reason for such dispute arises from some ambiguities in the UN structure and Charter. For instance, while the General Assembly is called as the parliament of the United Nations, its resolutions are principally recommendatory. Also, by referring to the Charter one cannot decisively realize whether the responsibility of the Security Council with regard to the

maintenance of international peace and security is limited to specific situations or not. The pertinent articles suggest opposite conclusions. For example, according to Article 24, paragraph 1, the primary responsibility for the maintenance of international peace and security conferred on the Security Council. One can say that there is not any sign in this Article to limit the Council for acting just in specific situations. On the other hand, it can be argued that the Council shall act just in specific cases pursuant to the principle of state sovereignty since by virtue of paragraph 2 of this Article the Council is under the duty to act in accordance with the purposes and principles of the UN.

Setting aside such theoretical dispute, the infamous 9/11 event necessitated the participation of all states and international binding measures as well; and the most effective international instrument for this aim was the Security Council. The international community in this phase in fact could not stand the disagreement and passivity of states any longer. Meanwhile, for instance, the General Assembly tried to draft a comprehensive convention concerning terrorism, but it failed as a result of the lack of consensus on the definition of terrorism and non-applicability of the term “terrorism” to the activities of states armed forces (Subedi, 2002). In the meantime, the system of states responsibility with regard to terrorism and *Nicaragua* and *Tadić* cases, as the criteria of attribution of responsibility, were considered insufficient (Proulx, 2005, p.643). Therefore, the Security Council’s involvement with a novel approach was necessary to fill such political and legal gaps. Talmon (2005, p.182) referred correctly to the ‘integrity of treaties’ as one of the limitations on legislative function of the Council. It means that when the Security Council intends to act as a legislative body, the regulations of its resolutions should not be in conflict with the international conventions. Resolution 1373 likewise imposed obligations which some of them had previously been declared by, for instance, the 1999 Terrorist Financing Convention. This Convention had been adopted unanimously however only four states had ratified it until that time (Note 24). Hence, the Security Council in this Resolution in fact reflects the will of the majority of states. Otherwise, such resolutions as Szasz (2002, p.905) argued will be just “empty letters” and the Council cannot impose those. Indeed, adoption of Resolution 1373 can be considered as an innovative effort rather than *ultra vires* (Rosand, 2004, pp.561-573; Jane E. Stromseth, 2003, p.45). And more importantly, the consensus between the members of the Security Council in circumstances such as these must be considered as a good event since reflects international harmony against international terrorism. The Security Council in the following resolutions which many of them acted under Chapter VII imposed different obligations on states (Note 25) and in Resolution 1566 (2004) provides implicitly a definition of terrorism (Note 26). The quasi-legislative model however was repeated just in the Resolution 1540 (2004) in the field of non-proliferation of weapons of mass destruction (Note 27).

As a result of complex nature of terrorism in the contemporary era the primary and secondary rules of international law in respect of terrorism remain still in an indeterminate position. Nevertheless, Security Council pertinent resolutions can be considered as a source of broader primary obligations of states. Also, it is argued that since the military actions in Afghanistan enjoyed international support, it gave rise to the formation of the new secondary rules mainly under the title of ‘harboring or supporting’ rule (Jinks, 2003). Although as Alvarez (2003) argued that Resolution 1373, Counter-Terrorism Committee and subsequent military operations are the result of global hegemonic international law which emerged in a process of blending the hegemonic power with law, one cannot ignore the effects of those in the creation of a new paradigm for establishing stricter rules which at the same time were supported by the international community. This trend is empowered after the ISIL invasion of Mosul in 2014 which triggered an exceptional global coalition. Even though Security Council resolutions in respect of ISIL did not enjoy the above-mentioned future of Resolution 1373, they reaffirmed this Resolution (Note 28) and imposed stricter obligations on states. Resolution 2199 (2015) condemned any kind of direct or indirect trade engagement particularly in the field of oil with terrorists (Note 29) and obliged member states to “inform the 1267/1989 Committee within 30 days of the interdiction in their territory of any oil, oil products, modular refineries, and related material being transferred to or from ISIL or ANF” (Note 30). Moreover, Resolution 2368 (2017) under Chapter VII and in a long text imposed more obligations on the member states including asset freeze, travel ban and arms embargo (Note 31). Also, the Security Council adopted a new literature in current resolutions to meet the new necessities (Note 32). The notable change, however, lies in the new rules which target the extremist opinions. In this regard Resolution 2170 (2014) that was adopted under Chapter VII called all states “to counter incitement of terrorist acts motivated by extremism and intolerance perpetrated by individuals or entities associated with ISIL, ANF and Al-Qaida” (Note 33). After that, Resolution 2178 (2014) stipulated that:

Encourages Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned

groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion (Note 34).

In addition, Resolution 2249 (2015) which was adopted unanimously speaks about the danger of “violent extremist ideology” (Note 35). This kind of obligations according to which states have to counter fundamentalist opinions signify the broader obligations of states. In fact, pursuant to the new regulations, in addition to observance of previous rules in the different fields of economic, judiciary etc., states have to apply necessary measures in the fields of culture, religion and so on. It is also interesting to note that according to some scholars from September 11 attacks to ISIL crisis the “unable or unwilling” doctrine emerged as a rule of customary international law. Scharf (2016, pp. 30-31) calls this kind of rapid formation of customary rule as “Grotian Moment” and believes that the practice of the United States in this regard has its roots in the ICJ decision in the 1949 *Corfu Channel Case*. The author also compares this principle with the 1907 Hague Convention (V) according to which the territory of a neutral state should not be used by combatants against others (Ibid, pp. 30-31).

#### 4. Conclusion

The new global counter-terrorism strategy has had significant impact on both internal and external aspects of the sovereignty of states. In fact, as a result of the gradual increase in the obligations of states to fight against terrorism, the concept of sovereignty has experienced an unprecedented alteration. The main role for such alteration has been played by the Security Council. Adoption of resolutions by which far-reaching, general and timeless obligations imposed on all states was in fact an innovative approach to fill the gaps in legal counter-terrorism instrument. This new approach of the Security Council after 9/11, the unprecedented obligations of states arising from pertinent bodies and finally the evolution of the grounds of states responsibility from classic ‘effective control’ criterion to ‘unwilling or unable’ doctrine indicate the tendency of the international community to disregard Westphalian interpretation of the principle of sovereignty for fighting against international terrorism. Accordingly, although state sovereignty has caused the prolonged disagreement of states on the definition of terrorism, strong cooperation of states for acting against international terrorism in the past two decades is a crystallization of convergence of sovereign nations against the violation of international peace and security beyond the restrictions caused by the legal principle of state sovereignty. The traditional understanding of sovereignty has no room in the contemporary era because as it is argued international financial assistance, international human rights law and humanitarian intervention ignore the principle of non-interference (Krasner, 1999, pp.34; Anne-Marie Slaughter, 2004, p. 284). According to this paper the principle of sovereignty has been basically recognized to maintain international peace and security; and a state cannot pose a threat to that aim in the name of state sovereignty. Otherwise, other states can create an international regime under the auspices of their sovereignties in response to such a situation. International cooperation in the fight against terrorism in recent decades was an example of such response.

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## Notes

Note 1. The League of Nations drafted the Convention for the Prevention and Punishment of Terrorism in 1937.

Note 2. For example, the assassination of King Alexander I of Yugoslavia and the French Foreign Minister Louis Barthou on 9 October 1934.

Note 3. For instance, the hijacking of the Japan airlines flight 472 by Japanese Red Army on 28 September 1977.

Note 4. The 1993 bombing of the World Trade Center in New York is a primal instance of this new wave of terrorism.

Note 5. Global Terrorism Index (2017) Institute for Economics and Peace, p.5.

Note 6. See the UN Charter, arts. 2(1) and 78.

Note 7. See the UN Charter, arts. 2(4) and 2(7).

Note 8. See the UN Charter, preamble and art. 2(3).

Note 9. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (A/RES/2625(XXV) 24 October 1970).

Note 10. See the UN Charter, arts. 1(2) and 55.

Note 11. Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960, para.11 (A/RES 1514, 14 December 1960).

Note 12. The Convention in art. 1(2) provides that: “In the present Convention, the expression “acts of terrorism” means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.”

Note 13. Declaration on Measures to Eliminate International Terrorism, (GA Res. 49/60, 9 December 1994), The paragraph 3 stipulates 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 any other nature that may be invoked to justify them.”

Note 14. International Convention for the Suppression of the Financing of Terrorism, adopted 9 December 1999, entered into force 10 April 2002. According to art. 2(1): “Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) 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.”

Note 15. Organization of African Unity Convention on the Prevention and Combating of Terrorism.2002, UNTS, vol. 2219, No. 39464, adopted 14 July 1999, entered into force 6 December 2002. See the introduction.

Note 16. See the Arab Convention on the Suppression of Terrorism, 1998, art. 2 (a), adopted April. 22, 1999, entered into force May.7, 1999; the Convention of the Organization of the Islamic Conference on Combating International Terrorism, 2002, art. 2 (a), adopted July. 1, 1999, entered into force Nov. 7, 2002; and the Convention of the Cooperation Council for the Arab States of the Gulf on Combating Terrorism, 2004, art. 2 (a), adopted May. 4, 2004.

Note 17. See ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), art.8.

Note 18. See Commentaries to the ILC Draft Articles, Article 8, Commentary 1, p. 47.

Note 19. Nicaragua v United States [1986] I.C.J. para.115. Available at <https://www.icj-cij.org/en/case/70/judgments>

Note 20. Prosecutor v Duško Tadić [1999] I.C.T.Y. para.117. Available at <https://www.icty.org/en/case/tadic>

Note 21. See SC Res.1368, UN Doc S/RES 1368, 2001, para.1.

Note 22. Ibid, para.3.

Note 23. See SC Res.1373, UN Doc S/RES 1373, 2001.

Note 24. Botswana, Sri Lanka, the United Kingdom and Uzbekistan.

Note 25. See Security Council Resolutions 1390 (2002); 1455 (2003); 1526 (2004); 1617(2005) and 1735 (2006).

Note 26. See SC Res.1566, UN Doc S/RES 1566, 2004. According to paragraph 3 “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a



population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.”

Note 27. SC Res.1540, UN Doc S/RES 1540 (2004).

Note 28. See SC Res. 2178, UN Doc S/RES 2178 (2014) and SC Res. 2170, UN Doc S/RES 2170 (2014).

Note 29. SC Res. 2199, UN Doc S/RES 2199, 2015, para.1.

Note 30. Ibid, para.12.

Note 31. SC Res. 2368, UN Doc S/RES 2368, 2017.

Note 32. For instance, the term “foreign terrorist fighters” was mentioned in Resolutions 2170 (2014), 2178 (2014), 2249 (2015) and 2368 (2017).

Note 33. SC Res. 2170, UN Doc S/RES 2170, 2014, para. 6.

Note 34. SC Res. 2178, UN Doc S/RES 2178, 2014, para.16.

Note 35. SC Res. 2249, UN Doc S/RES 2249, 2015.

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