| Chapter 10 |

International Criminal Law and International Crimes

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ABSTRACT

This paper outlines the underlying concepts, statutory elements, and characteristics of the so-called core international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression) and terrorist crimes. The core international crimes, the act of terrorism, and criminal offenses regarding terrorism are subject to international criminal law. Libraries could be filled with literature on the concept of international criminal law; however, it suffices to refer to the fact that international criminal law is a relatively young area of law that emerged at the boundaries of public international and domestic law. International criminal law cannot be considered a separate branch of law but rather a body of law created by the functional interaction of several branches or areas of law (international, criminal, and constitutional law). This study employs the comparative perspective to address the statutory definitions of the noted crimes and examines the legal way to implement the international requirements by the relevant national laws.

KEYWORDS

international core crimes, terrorism, international criminal law, criminal offenses related to terrorism, European criminal law

1. Introduction

This paper outlines the underlying concepts, statutory elements, and characteristics of the so-called core international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression) and terrorist crimes. Core international crimes and criminal offenses regarding terrorism are subject to international criminal law. Libraries could be filled with literature on the concept of international criminal law.[1] However, it is sufficient here to refer to the fact that international criminal law is a

1 Notably, international criminal law has at least six different meanings: (1) the territorial scope of the municipal criminal law, (2) internationally prescribed municipal criminal law, (3) internationally authorized municipal criminal law, (4) municipal criminal law common to civilized nations, (5) international co-operation in the administration of municipal criminal justice, and (6) the material sense of the word. See in Schwarzenberger, 1965, pp. 3–37.

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relatively young area of law that emerged at the boundaries of public international law and domestic law.[2] International criminal law cannot be considered a separate branch of law but rather a body of law created by the functional interaction of several branches or areas of law (international, criminal, and constitutional law).[3] This study employs the so-called unitary theory that is often used in foreign and Hungarian legal literature and is considered a working concept. According to the theory, the concept of international criminal law comprises two law groups:

(1) *International criminal law in the traditional sense* (so-called transnational criminal law), with provisions that are part of domestic law and contain elements like the institutions of international cooperation in criminal matters, rules of jurisdiction, and recognition of foreign judgments. These rules facilitate the enforcement of a State's claim of criminal law, and the perpetrator will only be prosecuted in a subsequent procedure.

(2) *Penal international law,* with provisions that are part of international law, directly enforced without the application of domestic law. This area of law includes the legal materials of crimes under international law whose perpetration imposes direct criminal liability on the individual, the system of liability for such crimes, the Statutes and other legal norms of the international criminal tribunals, and the tribunals' caselaw. Other characteristics in this field are the erosion of the principle of sovereignty, the demand for establishing a supranational criminal court, and the prevalence of the principle of universality. These rules ensure the effective prosecution of perpetrators of the most serious crimes.[4]

In this paper, 'international criminal law' is used in the latter, narrow sense, and the analysis is limited to the substantive features of the core international crimes and terrorist crimes. Given that there is no accepted definition of international crimes, the first part of this work is devoted to the concept of international crimes. The next four parts discuss the elements and characteristics of the four core international crimes, which are genocide, crimes against humanity, war crimes, and aggression. The final section, without attempting to be comprehensive, gives an overview the international legal instruments elaborated to prevent and punish terrorist acts and the most important elements of criminal offenses related to terrorism.

Given that international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC), are essential to the development and enforcement of substantive norms of international criminal law,[5] the paper takes careful consideration of the provisions of the Statutes of these courts, relevant caselaw of ad hoc tribunals (ICTY, ICTR) and, regarding the crimes related to terrorism, the relevant international legal instruments.

2 Stahn, 2019, p. 8.
3 M. Nyitrai, 2006, p. 15.
4 This working concept of international criminal law is based on the following studies: Nagy, 2004, pp. 105–106; M. Nyitrai, 2006, pp. 16–20; Hollán, 2000, pp. 226–237.
5 Zahar and Sluiter, 2008, p. 4.

Finally, in accordance with the declared purpose of the project, this paper also outlines the common elements and differences in the related domestic legislation of eight Central and Eastern-European countries, Croatia, the Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, and Slovenia.

2. International crimes

International crimes can be divided into different categories. The legal literature has several useful classifications. This paper distinguishes between transnational crimes and crimes under international law (the so-called core international crimes).

a) *Transnational crimes*[6] are serious illegal acts with international impacts that, given the potential circumstances in which they are committed, harm or endanger the interests of more than one State or even the international community as a whole. The criminalization of these crimes is based on an international treaty and requires contracting states to implement legislation for criminal prosecution of these conducts in their domestic legal system. Given that the relevant legislation should be incorporated into domestic law (transnational crimes are also covered by national laws), the liability for such crimes is indirectly based on international law. The primary purpose of the international treaty is to facilitate the prevention and punishment of an act at national levels by applying the institutions of international cooperation in criminal matters. Thus, the principles of 'ordinary jurisdiction' and universality have a role to play.

b) *Crimes under international law* harm or endanger the most fundamental values and interests of the community of nations or, in the most serious cases, the peace and security of mankind. The characterization of these illegal conducts as criminal does not depend on national law but has its direct basis in international law.[7] Such serious crimes are part of and based on international customary law and constitute a violation of a *jus cogens* legal norm.[8] The general principles of international substantive criminal law have been developed by the legal literature in connection with crimes under international law (e.g. the principle of legality, the irrelevance of official capacity, the non-applicability of *statutory limitations, and* the system of grounds for excluding criminal liability).[9] Given that the punishment and prevention of such crimes are in the interest of the international community, the principle of universality must be applied. Further,

6 The United Nations identified several categories of transnational crime: drug trafficking, trafficking in persons, organ trafficking, trafficking in cultural property, counterfeiting, money laundering, terrorist activities, theft of intellectual property, illicit traffic in arms, aircraft hijacking, sea piracy, hijacking on land, insurance fraud, environmental crime, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public officials, and other offences committed by organized criminal groups. See Wilson, 2020, p. 415.

7 Swart, 2004, p. 203.

8 The customary law nature of the crime does not exclude the possibility that it may be regulated by an international treaty (e.g., the crime of genocide). See Werle, 2005, p. 191.

9 See Sántha, 2010, p. 180. Note that crimes under international law are often committed with the complicity or support of a state actor.

if the crime in question constitutes a threat to international peace and security, the UN Security Council has the power to apply the rules set out in Chapter VII of the UN Charter (measures not involving the use of armed force and military operations by air, sea, or land).[10] Finally, as legal history shows, crimes under international law are criminal offenses over which international tribunals have been given jurisdiction.

In the present state of international criminal law, crimes under international law or core international crimes include genocide, crimes against humanity, war crimes, and the crime of aggression. However, the scope of crimes under international law is not closed and may be further expanded in the future by the transformation of a transnational crime into a crime under international law. Some authors extend this list to include torture and international terrorism.[11] Though whether terrorism can be considered a crime under international law remains questionable,[12]we address terrorist crimes in this paper for two reasons: First, the most serious forms of terrorism (e.g. the September 11 attacks), represent a threat to important universal values and endanger international peace and security; moreover, like crimes under international law, they 'shock the consciousness of humanity.' Second, the most serious form of terrorist crimes can fulfill the prerequisites of core international crimes, such as crimes against humanity and war crimes.[13]

3. Genocide

3.1. Short history

Genocide, called 'the crime of crimes'[14] in the legal literature and court practice, is as old as the development of human society. The human race has demonstrated a propensity toward grave acts of violence.[15] History indicates that genocide is an accompanying phenomenon of war and serves as an effective tool to eradicate whole nations or ethnic groups. The crime has a long history, but the term appeared only in the 20th century.[16]Moreover, the term and the first normative definition were only established in the 40s of the last century.[17]

10 Swart, 2004, p. 207.

11 For 'some extreme forms of terrorism (serious acts of State-sponsored or -tolerated international terrorism),' see Cassese, 2003, p. 24.

12 See Ambos and Timmermann, 2004, pp. 24–27.

13 Werle, 2005, p. 27.

14 *Kambanda* (Trial Chamber ICTR-97-23). 16.

15 Jung and King, 2006, p. 3.

16 *Raphael Lempkin* defined 'genocide' first in 1944 to mean 'the coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.' See Lempkin, 2005, p. 79.

17 The Charter of the International Military Tribunal at Nurenberg (IMT) did not classify the crime of genocide as a separate crime. Concerning the extermination of Jews and other ethnic or religious groups, the IMT referred to it as the crime of persecution and, therefore, a crime against humanity.

The first relevant international legal instrument was the Convention on the Prevention and Punishment of Genocide (hereinafter, Genocide Convention). The definition of genocide is provided by Article II of the Convention:

> "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group."[18]

Consequently, the prohibition of genocide was originally based on an international convention, but it is widely known that the law set out in the Convention reflects customary international law, and the norm prohibiting genocide constitutes *ius cogens*.[19]

3.2. The elements of the crime of genocide

The Genocide Convention defines genocide as committing a prohibited act with the intent to destroy a protected group. There are two elements of the crime: the *chapeau* defines the mens rea or mental element ('with intent in whole or in part to destroy a national, ethnical, racial, or religious group) and the actus reus or material element (the list of the prohibited acts). The mens rea of genocide—the special intent or *dolus specialis*—should be distinguished from the mental element of the underlying offenses (e.g. killing or causing serious bodily harm). The most important criterion to distinguish genocide from crimes against humanity is the required special intent that at the same time is the most problematic regarding evidence.

3.2.1. The objective elements of the crime

a) The *'object of the commission'* of genocide is one of the protected groups listed in the definition of the crime. The list of the groups—national, ethnical, racial, and religious—is exhaustive and shall not be expanded.

A national group is defined by the ICTR in *Akayesu* as 'a collection of people who are perceived to share a legal bond based on common citizenship, coupled with

18 See Convention on the Prevention and Punishment of the Crime of Genocide.

19 The definition of genocide in the Convention has been reproduced verbatim in Article 4(2) of the ICTY Statute, Article 2(2) of the ICTR Statute, and Article 6 of the Rome Statute for the International Criminal Court (ICC). The first trials for genocide began in Rwanda in the Rwandan national courts in December 1996 and the *Akayesu*-case decided by the International Criminal Tribunal for Rwanda (ICTR) in 1998 was the first in which an international criminal tribunal interpreted the definition of genocide. At the International Criminal Tribunal for the former Yugoslavia (ICTY), *Radislav Krstic* was the first person to be convicted of genocide in August 2001. See Schabas, 2003, p. 46.

reciprocity of rights and duties.'[20] An ethnic(al) group in the practice of the ICTR is 'a group whose members share a common language *or* culture.'[21] The concept of a racial group is at present somewhat problematic because there is no such thing as race from a biological standpoint,[22] and racial discrimination is prohibited by several international conventions and national constitutions.

Nonetheless, the Rwanda Tribunal adopted the definition that a 'racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.'[23] A religious group as a protected group has not occurred in the practice of the ad hoc tribunals. It can be defined as a group whose members share the same religion or set of spiritual beliefs and faith and traditions of worship. According to the ICTR, the group must be stable and permanent,[24] and a crime was committed if the perpetrator believed that the victim belonged to a protected group.[25]

b) The *conducts (acts) of the crime*—the so-called 'underlying offenses'—are phrased clearly, and usually make a profound interpretation dispensable.

- *Killing members of the group*: Based on historical experiences, killing is the most effective way of physical genocide, which must be interpreted as 'murder' (i.e. an intentional crime that is committed with the intent to cause the death of the victim).
- *Causing serious bodily or mental harm to members of the group*: 'Serious bodily harm' means an injury or illness caused by the perpetrator that takes more than eight days to heal. Serious mental harm is more than minor or temporary impairment of mental faculties.[26]
- *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*: According to the international criminal court practice, the third act of genocide is the method of group annihilation, where the perpetrator does not immediately kill the members of the group but seeks their physical destruction.[27]

20 We criticise this concept because the members of a certain national group (nation) are bound together by the feeling of appurtenance to the national group (nation), the common language, the common culture and, usually, the common area and economic life, not necessarily and primarily by their citizenship.

21 *Akayesu* (Trial Chamber ICTR-96-4). 513.

22 Bassiouni, 2003, p. 25.

23 *Akayesu* (Trial Chamber ICTR-96-4). 514.

24 It means that members usually belong to the group by birth and can usually not change their status as a member. *Akayesu* (Trial Chamber ICTR-96-4). 511.

25 *Bagilishema* (Trial Chamber ICTR-96-4). 65.

26 *Semanza* (Trial Chamber ICTR-97-20). 321. Examples of act causing serious bodily or mental harm include torture, inhumane or degrading treatment, sexual violence like rape, violent interrogations, threats of deaths, and harm that damages health or causes disfigurement or serious injury to members of the targeted group. See Bou, 2013, pp. 649–650.

27 Possible conduct of the so-called 'slow death measures' includes withholding necessities such as food, clothing, shelter and medicine and de facto enslavement through forced labour. See Werle, 2005, p. 201.

- *Imposing measures intended to prevent births within the group*: This act is one form of biological genocide which is construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes, and prohibition of marriages.
- *Forcibly transferring children of the group to another group*: The legally protected value of this form of genocide is the cultural self-identity of the protected group. When transferred to another group, children cannot grow up as part of their group, or they become estranged from their cultural identity.[28]

3.2.2. The subjective elements of genocide

The subjective side of genocide has two components. First, the underlying offenses (e.g. killing) are intentional acts; the perpetrator must be aware of the objective elements of the underlying offenses. Furthermore, they must know the other factual elements of the crime of genocide, e.g. the status of the victim(s).

The other, crucial part of the subjective side of genocide is the additional subjective requirement: the Convention (and the statutes of international tribunals) requires that the accused acted with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.[29] This intent has been referred to by the international criminal court practice as special intent or specific intent[30] (*dolus specialis*) or genocidal intent. The concept of special intent is unknown in the doctrine of Roman-continental legal systems, which usually distinguishes only two types of criminal intent: direct intent (*dolus directus*) and eventual intent (*dolus eventualis*). *Purpose*, however, is a subjective statutory element of certain crimes, which accordingly constitutes an additional subjective requirement. The statutory definition of genocide in the Criminal Codes of relevant countries usually explicitly states the purpose of the perpetrator ('any person who, with an aim to destroy …'). Consequently, genocide is a purposeful crime and can only be committed with direct intent by a principal offender (perpetrator).[31]

The most problematic issue in court practice is to ascertain the content of the knowledge of low-level perpetrators ('foot soldiers'). However, the purpose to destroy

28 Werle, 2005, p. 203 for international conventions defining a child as a person under the age of 18 years.

29 See also Ambos, 2009, p. 834.

30 Special or 'specific intent' is used in the common law to distinguish offences of 'general' intent, which are crimes for which no particular level of intent is set out in the text of infraction. A specific intent offence requires performance of the actus reus but in association with an intent or purpose that goes beyond the mere performance of the act. See Schabas, 2000, p. 218.

31 See Sántha, 2014, pp. 215–232. The situation is different in the case of the accessories (instigators and abettors) given that it is not necessary to commit the crime with the statutory purpose by the accessory. The accessory only has to be aware of the principal offender's purpose.

can be established from the circumstances in the external world, as outlined in *Akayesu*.[32]

4. Crimes against humanity

4.1. Short history

The term crimes against humanity is a relatively new category in international criminal law, though reference was often made in the past to the 'fundamental requirement of humanity' as a value that ideally guides the conduct of states. Crimes against humanity comprise the elimination of fundamental human values and an extremely serious violation of human dignity. Given that the concept of genocide is defined in a widely accepted UN Convention, crimes against humanity have not yet been codified in a treaty of international law. Its statutory definition has appeared in a series of international instruments, sometimes with different meanings, but the prohibition of crimes against humanity can be considered a part of customary international law.

The Charters of the Nuremberg Tribunal and the Tokyo Tribunal addressed crimes against humanity, defined as the commission of serious inhuman criminal offenses, such as murder, extermination, enslavement, and deportation, against civilians during or before the war. The Allied Control Council Law later explicitly mentioned rape as an individual act of crime, and the war nexus requirement was not a necessary part of the definition of crimes; therefore, the crime can also be committed in peacetime.

After World War II, there were trials and convictions by national courts for crimes against humanity [Eichmann (1961); Barbie (1987); Touvier (1994)], and the crime has been included in the Statutes of the ICTY and the ICTR and the Statute of the ICC. Notably, there are some differences in the elements of the crime between the Statute of the ICC and the statutes of the international tribunals. The following analysis is based on the Statute of the ICC and the international case law.

4.2. Statutory elements of the crime

The normative text of the ICC Statute defines crimes against humanity as the commission of specific criminal offenses—the so-called individual acts (e.g. killing and

32 i) The general context of the perpetration of other culpable acts systematically directed against that same group, whether … committed by the same offender or by others; ii) the scale of atrocities committed; iii) the general nature of the atrocities committed in a region or a country; iv) the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups; v) the general political doctrine [that] gave rise to the acts; [and] vi) the repetition of destructive and discriminatory acts; vii) the perpetration of acts [that] violate or [that] the perpetrators themselves consider to violate the very foundation of the group—acts [that] are not in themselves covered by the list … but […] are committed as part of the same pattern of conduct.

extermination)—that become crimes against humanity when they are committed in the course of a widespread or systematic attack against a civilian population.[33]

a) The criminal act must be part of an *attack* against a civilian population. An attack is typically a course of conduct involving the commission of acts of violence and not just a random act of violence. It can exceptionally be conducted without violence, like imposing a system of apartheid.[34] It is challenging to imagine the commission of the crime by a single isolated act; therefore, the ICC Statute states that the attack is understood to mean the multiple commission of individual acts.[35]The definition should be interpreted broadly, as an attack is not limited to the conduct of hostilities but may also encompass situations of mistreatment of persons taking no active part in the hostilities, such as someone in detention.[36]

b) The primary object of the attack is any civilian population. The Commentary to the Geneva Conventions of 1949, applied by the court practice, defines the civilian population as all persons who are civilians as opposed to members of the armed forces and other legitimate combatants. The civilian population refers to a broad range of people, but this does not mean that the entire population of the geographical entity must be subject to the attack.[37] The crimes can be committed against both civilians of the enemies and the state's own population.

c) The attack must be either *widespread or systematic*, thereby excluding isolated and random violent acts.[38] '*Widespread*' may usually include a massive, frequent, and large-scale action directed against a multiplicity of victims.[39] However, a widespread attack can comprise a single act, if a large number of civilians fall victim to it.[40]

The term '*systematic*' signifies the organized nature of acts of violence and the improbability of their random occurrence.[41]The systematic nature of the attack also refers to the existence of the so-called *'policy element,'* namely a previously agreed policy or plan behind the attack. It is not required that the policy be adopted by the government; policies adopted by any organization or group can be sufficient.[42] However, as to whether the policy element is required, there are different approaches in the case law of the international tribunals and legal literature. Categorically, crimes against humanity are usually linked to a state or an entity entitled to exercise

33 See the Article 7(1) of the Statute: 'For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...)'.
34 *Akayesu* (Trial Chamber ICTR-96-4). 581.
35 See the Article 7(2a): 'Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.'
36 *Kunarac* (Trial Chamber IT-96-23&23/1). 416.
37 *Kunarac* (Appeals Chamber IT-96-23&23/1). 90.
38 *Tadic* (Trial Chamber IT-94-1-T). 648.
39 *Akayesu* (Trial Chamber ICTR-96-4). 581.
40 Werle, 2005, p. 225.
41 *Kunarac* (Trial Chamber IT-96-23&23/1). 429.
42 *Kayishema* (Trial Chamber ICTR-95-1). 125–126.

de facto sovereign power in the affected territory,[43] and the ICC Statute also requires the existence of the policy element ('pursuant to or in furtherance of a State or organizational policy').

d) The individual criminal act (e.g. murder) must be *part of the attack,* which refers to the link between the act and the attack. Thus, the act is objectively part of the attack and the perpetrator must be aware of it; however, it is not required for the perpetrator to know all the details of the attack.

e) *The subjective elements*. Crimes against humanity are also intentional crimes; the individual acts must be intentional, and intent must cover the objective elements of the offense. The perpetrator must know the broader criminal context in which his acts occur, must know that there is a widespread or systematic attack on a civilian population, and that their acts comprise part of the attack. The motive of the perpetrator is irrelevant and does not require that the perpetrator be identified with the ideology, policy, or plan in whose name mass crimes were perpetrated.[44]

4.3. Individual acts of crimes against humanity

a) *Killing* is intentionally causing the death of a human being, which can be committed by act or omission.

b) *Extermination* is the killing of persons on a massive scale: a particular population is targeted and its members killed or otherwise subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population.[45]

c) *Enslavement* means the exercise of any or all of the powers attached to the right of ownership over a person. According to court practice, it is usually insufficient just to show that a person was held in captivity; there must be other factors or indicia of enslavement.[46]

d) *Deportation or forcible transfer of population* is defined by the ICC Statute as 'forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.'[47]

e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.* This act is the deprivation of the liberty of an individual arbitrarily; that is, without due process of the law. In that respect, the

43 M. Nyitrai, 2006, p. 192.

44 *Blaskic* (Trial Chamber IT-95-14). 257.

45 *Krstic* (Trial Chamber IT-98-33) 503. According to the Article 7(2b), '"Extermination' includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.'

46 These factors include forced or compulsory labour or service; the control of the victim's movement; measures taken to prevent escape; cruel treatment; forced prostitution or sexual act; and human trafficking. See *Kunarac* (Trial Chamber IT-96-23&23/1). 542.

47 See Article 7(2d). Note that deportation can be a legal act if it is necessary to protect civilians or for compelling military reasons, but civilians must be returned to their home. See Werle, 2005, p. 241.

court must consider whether there was a legal basis for the imprisonment (e.g. the suspicion of a crime) and whether the procedural safeguards were respected during the detention.[48]

f) *Torture* in the caselaw of the Tribunals: (i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental; (ii) the act or omission must be intentional; (iii) the act or omission must aim at obtaining information or a confession, at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or third person.[49]

g) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.*

h) *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender* (as defined in paragraph 3), *or other grounds* that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court. The elements of the crime are: (i) the act or omission with the intent (motive) to discriminate on racial, religious, or political grounds, and (ii) the act or omission denies or infringes upon a fundamental right laid down in international customary or treaty law.[50]

i) *Enforced disappearance of persons* means 'the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period [...];'[51]

j) *The crime of apartheid*. The legislation is based on the 1973 UN Convention on the Suppression and Punishment of the Crime of Apartheid, which defines the crime as certain inhuman acts committed to establish and maintain domination by one racial group of persons over any other racial group of persons and systematically oppressing them (purposeful crime). By comparison, the ICC Statute requires that inhumane acts must be committed 'in the context of an institutionalized regime of systematic oppression and domination.'[52] Consequently, under the Statute, only apartheid at the level of government policy can be considered as a crime against humanity.

48 *Kordic and Cerkez* (Trial Chamber IT-95-14/2). 292–303.

49 *Kunarac* (Appeals Chamber IT-96-23&23/1). 142. Note that the relevant case-law differs as to whether torture requires that the perpetrator is a public official or that torture was committed in the presence of an official. Examples of torture: beatings; prolonged denial of sleep, food, hygiene, or medical assistance; threats to torture, rape, or killing of relatives; and rape and other forms of sexual violence. However, torture shall not include pain or suffering arising only from lawful sanctions.

50 *Naletilic and Martinovic* (Trial Chamber IT-95-17/1) 634. Examples of persecution: collection of civilians to camps; using detained persons as hostages or human shields; destruction or plunder of houses, educational or religious institutions with the requisite discriminatory intent. See in *Kvocka* (Trial Chamber IT-98-30/1). 185–186.

51 See Article 7(2i) of the ICC Statute.

52 See Article 7(2h) of the ICC Statute.

k) *Other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or to mental or physical health*. Such acts are any inhumane acts committed in the course of a widespread or systematic attack against a civilian population that is not included in the previous list of the underlying offenses of crimes against humanity.

5. War crimes

5.1. Introductory remarks

The legal regulation of war crimes[53] has a longer history than, for example, the normative formulation of genocide or crimes against humanity; however, the scope of such offenses remains controversial and the related system of legal sources is rather divergent. Characteristics of war crimes can be summarized as follows:

- The definition of 'war crime' is a generic term that covers different types of illegal acts, as defined by international customary law and international treaties.
- The common feature of such offenses is a serious violation of a rule of international humanitarian law (*ius in bello)* that confers direct criminal responsibility to a natural person under international law.
- War crimes can only be committed during armed conflict.
- Lists of war crimes can be found in international law treaties and international customary law. The first part of the related body of law is the so-called *Hague Law* [Hague Conventions adopted in 1899 and 1907, especially the Convention (IV) respecting the Laws and Customs of War on Land] that focuses on the prohibition of warring parties to use certain means and methods of warfare.

The second part is the so-called *Geneva Law,* the four Geneva Conventions of 1949, and the two Additional Protocols of 1977, the purpose of which is to protect persons not or no longer taking part in hostilities. Importantly, per the First Additional Protocol, *grave breaches* defined in the Conventions and the Protocol *shall be regarded as war crimes*.[54]

- Four Geneva Conventions: (I) for the amelioration of the condition of the wounded and sick in armed forces in the field; (II) for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea;

53 Certain behavior in armed conflict was already forbidden by the belligerent parties in ancient times (e.g., killing prisoners of war, women, and children), but the codification of the relevant rules at the international level only started in the 19th century. In 1856, Declaration Respecting Maritime Law (Paris) restricted wartime practices, followed by the first Geneva Convention in 1864, considered the basis of international humanitarian law, which covered the treatment of sick and wounded soldiers. The peace treaties after World War I ordered the prosecution of the perpetrators of the 'violations of the laws and customs of war'; a small number of German suspects were, finally, convicted to prison. After World War II, the Nuremberg Charter rendered violations of the laws and customs of war punishable as war crimes and provided a non-exhaustive list of potential criminal acts. See e.g. Werle, 2005, pp. 2–8.

54 See Article 85 (5) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

III) relative to the treatment of prisoners of war; (IV) relative to the protection of civilian persons in times of war.
- Two Additional Protocols: (I) relating to the protection of victims of international armed conflicts; (II) relating to the protection of victims of non-international armed conflicts.
- It is also important that the so-called Common Article 3 of the Conventions also contains minimum rules for non-international armed conflicts.

Finally, *the scope of war crimes includes several other criminal acts,* in addition to the grave breaches covered by Geneva Law.[55]

5.2. Common elements of war crimes

a) *The existence of an armed conflict*. In the most general sense, an armed conflict exists whenever there is a resort to armed force or protracted armed violence between different actors (states and non-state actors).[56]

Armed conflicts are traditionally divided into two categories: (1) international armed conflict between two or more states; and (2) non-international armed conflict (civil wars), which occurs in the territory of a state between the armed force of the state and dissident armed forces or other organized armed groups which, under responsible command, exercise control over a part of the state's territory to help them conduct sustained and concerted military operations and implement the II. Additional Protocol.[57] However, it is useful to distinguish a third type called (3) mixed armed conflict, characterized by international and non-international elements; for example when a state intervenes in a civil war on the territory of another state.[58]

b) *The nexus between the armed conflict and the committed crime*. According to the case law of the ICTY, the crime must be closely related to the armed conflict, whether the crimes were committed in the course of fighting or during the takeover of a locality. This does not mean that the crimes must all be committed in the precise geographical region where an armed conflict occurs at a given moment.[59] However, 'the close relationship means [...] the existence of an armed conflict must play a substantial part in the perpetrator's ability to commit it, his decision to commit it, [how] it was committed, or the purpose for which it was committed.'[60]

55 Sources of war crimes law include but not limited to the Hague Convention IV regarding the Laws and Customs of War on Land (1907); the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases and Bacteriological Methods of Warfare (1925); the so-called London Agreement (1945), which contains the Charter of the Nuremberg Tribunal; the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954);and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons that May Be Deemed to Be Excessively Injurious or Have Indiscriminate Effects (1980).
56 Ambos, 2004, p. 264.
57 *Akayesu* (Trial Chamber ICTR-96-4). 622–623.
58 Hoffmann, 2009, pp. 25–42.
59 *Blaskic* (Trial Chamber IT-95-14) 69.
60 *Kunarac* et al. (Appeals Chamber IT-96-23 & IT-96-23/1-A) 58.

c) The *object of the commission and the victim of the crime* in the most general sense is a protected object and person, as defined by the Hague Law and the Geneva Law. *Protected persons,* as per the Geneva Conventions, are those who do not take a direct part in hostilities.[61] Primarily, they include

- Members of armed forces who have laid down their arms and those rendered 'hors de combat' by relevant causes (e.g., wounded and sick members of armed forces in the field and at sea, shipwrecked persons, prisoners of war, and detention).
- Civilian persons taking no active part in the hostilities.
- Members of humanitarian organizations and peacekeeping missions operating per the UN Charter and medical and religious personnel.
- *Protected objects* (protected properties) include civilian installations (which are not military targets); objects indispensable for the survival of the civilian population; cultural properties; religious, educational, artistic, scientific, or charitable buildings; historical monuments; and hospitals.

d) *The perpetrator of war crimes.* War crimes, based on historical experience, are typically committed by combatants (soldiers) against members of the civilian population or enemy soldiers. However, the perpetrators can be civilians (e.g., if an enemy air force pilot is killed) or non-combatants involved in hostilities (e.g., partisans, guerrillas, and mercenaries). Thus, the scope of perpetrators should be defined such that *a war crime can be committed by persons taking part in hostilities (combatants, non-combatants, or even civilians*), provided that the crime is committed *against protected persons*.

e) *The subjective elements*. Given that war crimes are intentional, the crime committed by the perpetrator (e.g., murder, torture, or launching an unlawful attack) must be intentional and their intent must cover the objective elements of the offense. Therefore, they must be aware of the existence of an armed conflict at the time of the commission, that the victim is a protected person, or the object is a protected object.

5.3. Categories of war crimes

The ICC has jurisdiction over 'war crimes,' which can be generic. Thus, to ensure harmony with the principle of *nullum crimen sine lege,* the Statute defines precisely which war crimes in international law are war crimes for the Statute. The taxative list contains 53 criminal offenses.[62]

The Statute narrows its jurisdiction over war crimes given that Article 8(1) provides that 'the Court shall have jurisdiction in respect of war crimes, in particular,

61 Exceptions include war crimes committed using means of warfare prohibited by international humanitarian law, which can be committed against anyone, including combatants.

62 The Statute (Article 8) distinguishes four categories of war crimes: (i) grave breaches under the four 1949 Geneva Conventions; (ii) criminal offenses covers other serious law and custom violations applicable in international armed conflicts; (iii) serious violations of Common Article 3 of the Geneva Conventions (which applies to non-international armed conflicts); (iv) other serious violations of the laws and customs applicable in non-international armed conflicts.

when committed as part of a plan or policy or as part of a large-scale commission of such crimes.' The types of war crimes,[63] in simple terms, can be summarized as follows:

a) *Criminal offense committed against protected persons and objects as defined by the Geneva Law*:

- Willful killing; torture or inhuman treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health. Based on the latter criminal conduct, rape, sexual slavery, forced pregnancy, enforced sterilization and other serious forms of sexual violence are also punishable.
- Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; depriving a prisoner of war or other protected person of the rights of fair and regular trial.
- Unlawful deportation, transfer, or confinement of civilians (or other protected persons), hostage-taking of civilians.
- Extensive destruction and appropriation of property, not justified by military necessity and conducted unlawfully and wantonly.

b) *Using prohibited methods of warfare*, where criminal offenses are not exclusively committed against a protected person:

- Intentionally directing attacks against civilian populations or installations (that are not military targets), attacks against personnel or vehicles involved in a humanitarian assistance or peacekeeping mission, attacking or bombarding towns or villages that are undefended and not a military objective;
- Intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes; historic monuments; and hospitals; and pillaging a town or other places.
- Killing or wounding a combatant who laid down his arms without conditions, declaring that no quarter will be given.
- Compelling the nationals of the hostile party to take part in the operations of war directed against their country.
- Deportation or transfer of the population of the occupied territory;
- Using civilians and other protected persons as human shields.

c) *Using prohibited weapons and means of warfare*, where the criminal offenses are also not exclusively committed against a protected person:

- Employing toxin and toxic weapons, biological weapons, asphyxiating or poison gas, and similar substances.
- Employing bullets that expand or flatten easily in the human body (e.g. using 'dum-dum bullets').
- Employing weapons, projectiles, and materials and methods of warfare that cause superfluous injury, unnecessary suffering, or are inherently indiscriminate

63 The typology was partly based on Cassese's classification, see Cassese, 2003, pp. 88–92.

(e.g., using prohibited mines or weapons causing injuries by shrapnel invisible to x-rays).

d) *Misusing of symbol or insignia protected by international law*:
- Improper use of the Red Cross, the Red Crystal, the Red Crescent, and other similar identifying symbols protected by international law.
- Improper use of a flag, flag of truce, enemy's military insignia and uniform, or distinctive emblems of United Nations and the Geneva Conventions.

e) *Using of child soldiers*:
- conscripting or enlisting children under 15 years into the national armed forces or using them to participate actively in hostilities.

6. The crime of aggression

6.1. Short history

The criminalization of the crime of aggression is directly concerned with the sovereignty of the states; therefore, the statutory definition of the crime and the conditions of the criminal proceedings to be conducted are the most controversial issues of international (criminal) law. The concept of aggression is inseparable from the *ius ad bellum* definition; thus, it is useful to briefly examine the right to resort to war.

Until the end of World War I, resorting to the use of armed force was regarded not as an illegal act but as an acceptable way of settling disputes. Thus, each state was entitled to wage war according to its interests.[64] In 1919, the Covenant of the League of Nations sought to limit the right to resort to war but did not prohibit all forms of war: it distinguished between legitimate (legal) and illegitimate (illegal) wars.[65] An important step toward a comprehensive ban on war was the so-called Kellogg-Briand Pact (1928), where the States Parties renounced war as an instrument of international policy.[66] However, the use of force remained permissible as part of collective measures by the League of Nations, and the parties clarified that the treaty did not limit

64 Werle, 2005, p. 386.

65 War of aggression ('external aggression'), which is directed to the territorial integrity and political independence of any of the Members of the League; *or* a war is waged without judicial settlement; or the report of the Council of the League and a war is waged within three months of the decisions of above forums; *or* a war against Members of the League, which has accepted the decision of the Council is considered an *illegal war.* However, a war waged in compliance with relevant provisions is a *legal war* and a permissible act. See Bibó, 1990.

66 Article I. 'The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.' See Halmosy, 1983, pp. 282–283.

their right to self-defense.[67] Despite many ratifications (63 States in 1939), the lack of a sanction for violation of the provisions of the convention made it inappropriate to prevent the next great war.

Following World War II, the crime of aggression—more precisely, *'crimes against peace,'* was first recognized as a punishable international crime in the Charter of the International Tribunal at Nuremberg (1945), which set up the Nuremberg Tribunal:

> "Article 6: The following acts, or any of them, are crimes [...] within the jurisdiction of the Tribunal for which there shall be individual responsibility: (a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

At the Nuremberg trial, all 22 defendants were charged with crimes against peace, and 12 were convicted of this crime.[68] Therefore, the Nuremberg Charter is the first significant step toward the criminalization of the crime of aggression.

After World War II, the concept of the crime of aggression already existed, but the question of the extent to which the definition meets the requirement of precise legal definition required by the principle of *nullum crimen sine lege* remained. By the adoption of the United Nations Charter in 1945, the general prohibition of war—more precisely the prohibition of the use of force—was declared: as per the 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.'[69] The question of whether a state has used force and, thus, aggression has been committed is a matter for the Security Council to decide.[70]

6.2 The definition of the crime of aggression

Despite the general international prohibition of aggression, several wars of aggression were waged after 1945, which were not followed up with effective sanctions. Therefore, the solution was to adopt a legal instrument (preferably an international convention) containing the statutory definition of the crime of aggression and establish a permanent international criminal court with jurisdiction to prosecute perpetrators of

67 Werle, 2005, pp. 388–389.

68 See Werle, 2005, p. 391. The Charter of the International Tribunal for the Far East (1946) also regulated the crimes against peace and 25 Japanese major war criminals were convicted of this crime at the Tokyo trial.

69 See Article 2(4) of the UN Charter. The Charter allows for the use of force only for individual or collective self-defense or upon authorization by the Security Council.

70 See Article 39 of the UN Charter: 'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or *act of aggression*, and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security'.

this crime. Instead of an international convention, in 1974, the UN General Assembly attempted to define the concept of aggression:

According to Article 1 of the UN General Assembly Resolution 3314 (XXIX), *aggression* is 'the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations (...).' Article III gives a non-exhaustive list of the forms of aggression (*the possible acts of aggression*) as follows:

a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.
b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.
c) The blockade of the ports or coasts of a State by the armed forces of another State.
d) An attack by the armed forces of a State on the land, sea, or air forces or marine and air fleets of another State.
e) The use of armed forces of one State within the territory of another State with the agreement of the receiving State in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.
f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.
g) The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which conduct acts of armed force against another State of such gravity as to amount to the acts listed above or its substantial involvement therein.[71]

Unfortunately, this resolution did not become the basis for an international convention but served as a basis for further work on the definition of aggression, first in the framework of the International Law Commission and later in the framework of the Preparatory Committee responsible for drafting the Statute of the International Criminal Court (ICC).

71 Article 2 notes that the *first use of armed force* by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified given other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity. Further, the noted acts are not exhaustive, and the Security Council may determine that other acts constitute aggression under the provisions of the Charter (Article 4).

6.3. The crime of aggression in the Statute of the ICC

After long preparatory work, the Statute of the International Criminal Court was adopted on 17 July 1998 in Rome and enforced on 1 July 2002. Article 5 (1) (d) of the Statute determines that the ICC has jurisdiction over the crime of aggression; however, the statutory definition of the crime was not included in the Statute.[72] The Kampala Review Conference in 2010 adopted the amendments ('Kampala Amendments') on the crime of aggression.[73]

a) The new Article 8 bis (1) defines *the crime of aggression*:

> 'the planning, preparation, initiation or execution by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of an aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.'

The crime of aggression is an offense that can be committed by a natural person, and the conduct of the crime (the planning, preparation, initiation, or execution of an act of aggression) is inspired by the Nuremberg Charter.

b) An important statutory element of the offense is the *specific offender*. The crime of aggression is a so-called *leadership crime* that can only be committed by 'a person in a position effectively to exercise control over or to direct the political or military action of a State.'[74]

c) The new provision of the Statute[75] defines the concept of *the act of aggression*, which may be committed by a State, as follows: 'the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.'

The provision then lists, in a non-exhaustive manner, the same acts as the UN General Assembly Resolution 3314 (XXIX), which qualify as acts of aggression (see above).[76] Even so, Resolution RC/Res.6 did not enter into force in 2010 because it

72 The explanation was provided by the former Article 5(2), which states that 'The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted (...), defining the crime and setting out the conditions under which the Court shall exercise jurisdiction [regarding] this crime'.

73 Resolution RC/Res.6.

74 Aggression is a crime that can only be committed by the highest political or military leaders, given that the planning, preparation, and execution of armed aggression against another state is conducted at the highest levels of political and military leadership. Arguably, it excludes non-governmental actors such as organized armed groups involved in armed conflicts and private economic actors. See Politi, 2012, pp. 285–286.

75 Article 8 bis (2).

76 Article 8 bis (1) appears to narrow the definition of the act of aggression to acts involving the use of armed force that manifestly violate the UN Charter. Consequently, humanitarian interventions or armed interventions that are not or not manifestly contrary to the provisions of the Charter do not constitute an act of aggression. The explicit exception of humanitarian interventions in the text of the Statute, as proposed by the USA, was ultimately dropped. See Trahan, 2011, p. 78.

required 30 States Parties to ratify the amendments, followed by a vote to activate the crime by at least a two-thirds majority of States Parties after January 1, 2017. Finally, the amendments were enforced on July 17, 2018; it was the first time since the Nuremberg trials that an international tribunal was empowered to prosecute this crime.

There is room for optimism: after decades of debate, the ICC Statute defines the crime of aggression and the act of aggression, and rules on the exercise of jurisdiction of the Court have been adopted. However, such provisions will only be applicable in a very limited scope given a special jurisdictional regime[77] that cannot be triggered like other crimes of the Statute.

7. Implementation of core international crimes into the national laws included in the project

7.1. General remarks

Several possible forms of implementation of core international crimes into domestic law can be distinguished. The simplest method is direct application, as the national legislature argues that rules of core international crimes, as a part of international customary law, can be directly applied domestically without implementing legislation.[78] The second method is modified corporation[79]where the domestic legislator incorporates core international crimes by integrating its substance into the national criminal law systems. Two legislative forms of modified corporation include: (1) adding the statutory definitions of international core crimes to existing criminal codes and (2) adopting a separate act or code on international crimes.[80]

All states examined by the project chose to implement the core international crimes into the special part of their criminal code by defining the statutory definitions of the crimes and applying the basic principles and legal institutions of domestic criminal law to such crimes. Another common solution was to include a separate

77 Without a Security Council referral, the ICC will have jurisdiction only when a State Party commits the crime of aggression against another State Party. The Court's jurisdiction is further narrowed to only those States Parties that have ratified the aggression amendment (presently 43 of the 123 States Parties). States Parties that ratify the aggression amendment can at any time opt out of the aggression jurisdictional regime. See Whiting, 2017.

78 Werle refers to this method as *complete incorporation*, which can also be achieved by *reference* (e.g., reference to the provisions of the ICC or to international customary law in a domestic Act) or *copying* (adopting the offenses verbatim into domestic law). Werle, 2005, pp. 76–77. According to Gellér, regarding war crimes, no further legislative action is necessary if the Geneva Conventions and Additional Protocols are part of the national law. See Gellér, 2009, p. 81. Quotes by Varga, 2012, p. 197.

79 Werle, 2005, p. 77.

80 See, for example, the Code of Crimes against International Law (*Völkerstrafgesetzbuch*) in Germany.

title or chapter(s) in the special part of the criminal code[81] for core international crimes.[82]

7.2. Implementation of genocide

As noted, the Genocide Convention contains the statutory definition of the crime[83]. Given that all examined states have ratified the Convention, it is not surprising that the implementation was achieved by adopting this definition verbatim into their criminal code.

However, notably, in some countries, the scope of protected groups is broader than the Convention. For example, in Slovenia, the legislator included any group if the underlying offenses are committed against the group for political, racial, national, ethnic, cultural, and religious motivations. For example, the Slovak legislator considers the situation where the perpetrator commits the crime in wartime or during an armed conflict or he causes death to several persons as a qualified case.[84] Such broader definitions do not violate international law because national legislators can define their own criminal jurisdiction more broadly.

7.3. Implementation of crimes against humanity

Like genocide, crimes against humanity are included in the criminal codes of all examined states. The definition of the crime under the ICC Statute has already received wide acceptance and is increasingly considered a codification of customary international law. In some states, the statutory definition of the crime mirrors the definition of crimes against humanity in Article 7 of the ICC Statute. This is the situation in Romania, Croatia, and Serbia.

The Slovak legislator used the method of complete incorporation by referring to the provision of the ICC Statute.[85] In other states, there are minor differences in the wording of individual acts[86] or the characteristics of the

81 *Croatia*: Title IX – Crimes against humanity and human dignity; *the Czech Republic*: Chapter XIII – Criminal offencss against humanity, peace and war crimes; *Hungary*: Chapter XIII – Crimes against humanity and Chapter XIV – War crimes; *Poland*: Chapter XVI – Crimes against peace, humanity, and war crimes; *Romania*: Title XII – Crime of genocide, crimes against humanity, and war crimes; *Serbia*: Chapter 34 – Criminal offenses against humanity and other right guaranteed by international law; *Slovakia*: Chapter XII – Criminal offenses against peace and humanity, criminal offences of terrorism, extremism and war crimes; *Slovenia*: Chapter 14 – Crimes against humanity.

82 Varga, 2012, p. 200.

83 Article II.

84 See Article 418(2) of the Slovakian Criminal Code.

85 'Any person who commits an act against civilian population that is deemed to be a crime against humanity under Article 7 of the Rome Statute of the International Criminal Court (...).' See Article 425.

86 For example 'inflicting on the civilian population conditions of life calculated to bring about its physical destruction in whole or in part' instead of 'extermination' in Hungarian Criminal Code.

attack,[87] and the crime of apartheid, as a form of crime against humanity, is treated as a separate crime.[88]

7.4. Implementation of war crimes

Given that the scope of war crimes remains controversial, and the list of these crimes provided by the ICC Statute is rather long and challenging to translate into an ordinary criminal code,[89] the implementation of war crimes is a considerable challenge for the domestic legislator. Given the limits of this paper, the emphasis is only on the following:

The starting point for all examined states during the implementation was the ICC Statute, but the scope of crimes is significantly narrower than in the Statute, and the intention of the legislators to simplify and merge the crimes of the Statute is perceived. However, this intention yielded certain occasions in formulations that eventually left out important crimes.[90]

The analysis of the implementation of such crimes shows that the methods used in war crimes legislation can be the making of literal incorporation of war crimes established in the ICC Statute (e.g. Slovenia) and the categorization of the crimes (other states). The forms of categorization of war crimes include

1. (a) The protection of persons covered by the Geneva Law (war crimes against a person); (b) the protection of property covered by the Geneva Law (war crimes against property); (c) the prohibition of certain methods and means of warfare based on mainly the Hague Law; and (d) the protection of humanitarian missions (Hungary, Serbia, Romania, and Poland).[91]

87 The Slovenian legislator uses the term 'larger systematic attack' instead of the 'widespread or systematic attack,' and 'extensive and systematic attack' can be found in the Criminal Code of the Czech Republic.

88 See Article 144 of the Hungarian Criminal Code ('Apartheid') and Article 402 of the Criminal Code of the Czech Republic ('Apartheid and Discrimination against a Group of People').

89 Varga, 2012, p. 196.

90 Varga, 2012, p. 196.

91 In Hungarian criminal law, the first group includes Assault on Protected Persons, Assault against a War Emissary, Illegal Recruitment, Unlawful Enlistment, the second Assault on Protected Property, War-time looting, the third Command to Liquidate Survivors, Human Shield, Breach of Armistice, Use of Weapons Prohibited by International Convention, Crimes with Internationally Protected Signs and Marks, and the fourth Assault Against a Humanitarian Organization. The Hungarian legislation is a successful adoption of war crimes but, as Varga notes, not perfect. For example, Assault on Protected Persons does not cover the prohibition of starvation of the civilian population and prohibition of inhumane and degrading treatment and punishment. See Varga, 2012, p. 204.The Serbian legislator has implemented war crimes similar to the Hungarian system, though, in the third group, the Unlawful Manufacture, Sale, and Possession of Prohibited Weapons is a separate crime and criminalizes the organizing and the incitement to genocide and war crimes. Chapter II of the Romanian Criminal Code ('War Crimes'), which contains only five crimes, is logical, with a simple structure: War crimes against persons; War crimes against property and other rights; War crimes against humanitarian operations and insignia; Use of forbidden methods in combat operations; Use of forbidden means in combat operations. The Polish Criminal Code does not contain the titles of the criminal

2. (a) War crimes that comprise grave breaches of the Geneva Conventions; (b) other war crimes with mixed character.[92]
3. Selection from the list of ICC-war crimes and incomplete implementation.[93]

The analysis shows that most of the domestic legislations do not distinguish between crimes committed in international or non-international armed conflicts, and the criminal codes of the states provide for the criminal liability of a superior for acts of a subordinate amounting to war crimes.

7.5. Implementation of the crime of aggression

Five states—Croatia, the Czech Republic, Poland, Slovakia, and Slovenia—have ratified the 'Kampala Amendments'[94] and have implemented the crime into their domestic criminal law.[95]The definition of the crime of aggression in the ICC Statute has been reproduced verbatim in the criminal code of Croatia and Slovenia. In the Czech Republic, the legislator has codified the crime with a reference to the provisions of international law.[96] The Polish Criminal Code contains a narrow definition[97] without the statutory elements of the crime ('anyone who initiates or wages a war of aggression') and without providing the notion of 'war of aggression' in the Code.[98]

offenses; thus, the Polish system of war crimes is rather complicated. However, the noted classification is detectable because there are war crimes against protected persons (Article 123–124); attacks on non-military or specially protected objects (Article 122) and crimes against cultural property (Article 125); acts violating the prohibition on the use, production, and distribution of certain weapons and means of warfare (Article 120–121); improper use of the Red Cross and signs protected by international law (Article 126).

92 See, for example, the Croatian Criminal Code, which enlists only five war crimes. The second group comprises the following acts: Infringement of Inviolability of Parlementaires, Abuse of International Emblems, Unjustifiable Delay in the Repatriation of Prisoners of War, and Recruitment of Mercenaries.

93 The Criminal Code of the Czech Republic contains only War Cruelty (Article 412), Persecution of Population (Article 413), and Assault against a Negotiator under Flag of Truce (Article 417) among war crimes against person. The adoption of war crimes committed by improper use of symbols or signs protected by international law (Article 415–416) and by using forbidden methods and means of warfare (Article 411) can be acceptable, but there is only one war crimes against property: Plunder in Combat Area (Article 414). The same criticism applies to the Slovak implementation of war crimes.

94 Information as of February 3, 2022. See Status of Ratification and Implementation of the Kampala Amendments on the Crime of Aggression.

95 Note that, despite the ratification, the Slovak Criminal Code contains only a crime titled 'Endangering Peace' (Article 417), committed by a person who endangers peaceful coexistence among nations by any warmongering, propagating war, or otherwise supporting war propaganda.

96 'Any person in a position effectively to exercise control over or to direct the political or military action of a State who, in contravention of the provisions of international law, (...)' See Article 405a of the Criminal Code.

97 See Article 117(1) of the Criminal Code.

98 The Serbian legislator uses the same implementation method (see Article 386), but this solution is problematic because it does not comply with the principle of legality.

Hungary and Romania have not yet ratified the 'Kampala Amendments,' which is, presumably, why their criminal code does not include the crime of aggression. Although there is no legal obligation to implement the crime into domestic law originating from the ICC Statute, it appears to be justified to codify the crime in the criminal code by using the exact wording of the Statute.

8. Terrorism and criminal offenses related to terrorism

8.1. Historical aspects and the basic international legal background

The criminal legal dimension[99] of counter-terrorism action is based on the fact that terrorism must be regarded as a criminal offense. Its international nature needs the harmonization of the rules of each State. Therefore, the fight against terrorism needs the legal support of international law. However, this approach does not yet consider terrorism to be a so-called international core crime, even if it is closely monitored because of its nature and social implications. Given the basic nature of the criminal legal steps, this dimension addresses the phenomenon within the competence or cooperation of the states, or it responds to acts already committed and tries to strengthen their prevention through sanctions.

If we address the international dimension of the fight against terrorism, we must think in two different ways: The level of the broadest international law defined by the fundamental multilateral conventions and the level of the European Union. Notably, the European integration and its legislation also affect the criminal legal framework of the European Member States. The European Union may have a significant effect on the substantive criminal law of the Member States.

At the level of international law, the first significant stage in the history of terrorism was the so-called *"Belgian Assassination Clause."* The background to this document was the assassination attempt against Emperor Napoleon III by Célestin and Jules Jacquin in 1855. The assassins placed a bomb on the Emperor's train traveling to Tournay. After the attempt, the terrorists fled to Belgium.[100] Although France made several requests for extradition, the Brussels Court of Appeal rejected those requests because the assassination by the Jacquin Brothers was a political offense under a Belgian law passed in 1833. However, under severe political and diplomatic pressure, Article 6 of the Act was amended on 22 May 1856. After this amendment, called the Belgian Assassination Clause, assassinations of the emperor and his family members could not be considered a political offense.[101] However, terrorism has not yet been defined at the international level with the creation of the Clause.

99 In this regard, see United Nations Office on Drugs and Crime, 2009; Tóth, 2017, pp. 43–53; Bartkó, 2010, pp. 57–71; Bartkó, 2011, pp. 155–171.
100 Lammash, 1887, pp. 309–312.
101 Whyngaert, 1980, p. 15.

Between 1927 and 1935, the International Criminal Law Association dealt with international terrorism and its nature and conception and tried to define the phenomenon. The Association also drafted a convention. However, it was not accepted by the member states. The definition of terrorism at the international level was, again, based on an assassination. In 1934, in Marseille, a terrorist attack was committed against Alexander I (King of former Yugoslavia) and French Foreign Minister Barthou. Although the 1937 Convention, drafted by the League of Nations after this attack, was never enforced, it was the first one to seek to summarize the conceptual legal elements of terrorism. The definition includes, for instance, anti-state intent and the incitement of terror among the population.[102]

After World War II, the UN convention system[103] typically responded to newer forms of terrorism, expanding the range of conduct intended to be punished. Furthermore, the international community typically reacted to the sui generis forms of terrorist acts, which expanded the scope of the criminal law answers.

Meanwhile, it is important to emphasize that the individual conventions focused only on the terrorist actions themselves until the beginning of the 21st Century. The need to broaden the criminal steps arose after the terrorist attacks committed on September 11, 2001, against the USA. A claim arose in international politics to '[bring] the criminal lability forward'[104] in this field. Criminal action against terrorism has evolved in legal thinking. The fight against terrorism has become all-encompassing, changing the criminal law responses. The line between war and law enforcement has begun to disappear.[105] The number of legal rules has increased, making it possible to remove persons suspected of terrorism more effectively from society. Substantive criminal law responded to the newer and newer security policy challenges of the world, which aimed to punish acts related to terrorism at an early stage.[106]

102 Braun, 1999, pp. 148–149.

103 For instance, Convention on International Civil Aviation (Chicago, on December 7, 1944); Convention on Offenses and Certain Other Acts committed on Board Aircraft (Tokio, on September 14, 1963); Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, on December 16, 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, on September23, 1971); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (New York, on December 14, 1973); Convention against the Taking of Hostages (New York, on December 17, 1979); Convention on the Physical Protection of Nuclear Material (New York, on March 3, 1980); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, on 10 March 1988); Convention for the Suppression of Terrorist Bombings (New York, on January 19, 1998); Convention for Suppression of Financing Terrorism (New York, on February 25, 2000); Convention for Suppression of Acts of Nuclear Terrorism (New York, on April 13, 2005). We do not aim to address the system of convention defined by the Council of Europe because the Strasbourg Convention (January 27, 1977) and the Warsaw Convention (May16, 2005) contain reference elements of crime concerning the legal concept of terrorist offenses. Therefore, the conceptual system created by the Council of Europe is the same one as the system of the UN conventions.

104 Nagy, 2007, p. 66.

105 Albrecht, 2005, p. 4.

106 Sieber, 2016, p. 15.

Beyond the act of terrorism as a basic statutory definition, to bring 'the criminal lability forward,' the offenses related to terrorist activities have also appeared. The criminalization of these offenses was based on the legal policy consideration, which punished perpetrators suspected of conduct linked to terrorism (e.g. training of terrorists, public provocation to commit a terrorist offense, or traveling for the purpose of terrorism).[107] At the international and European levels, the criminal legal steps have clearly widened over the past decade.

However, the international literature remains divided on whether international terrorism can be considered a crime under international law (international core crime). For our part, we share the view of a group of international lawyers who do not regard the scope of international core crimes as a closed system. This approach defines two groups of international crimes:[108] crimes against the peace and security of humanity and other international crimes. The former can be defined as a set of crimes that threaten the interests and values of the international community, where the criminal liability of an individual is based on international law. Although international law does not yet categorically include international terrorism in this set, there is a shift in this direction.[109] The problem after the 2001 terrorist attacks was precisely that the U.S. wanted to retaliate for its security breaches on an international legal basis. If international terrorism is considered an international crime, criminal law guarantees must be put in place in the fight against it, which is not an easy task using administrative and military tools. The move was illustrated by UN Security Council Resolutions 1368 (2001) and 1373 (2001), which have apostrophized international terrorism as a phenomenon that threatens international peace and security. It is also illustrated by the system of obligations based on the UN resolutions: (1) states are required to take all reasonable steps to prevent acts of terrorism; (2) states are obliged to criminalize the act of terrorism and any other related activities; (3) states shall cooperate with each other and international organizations in the fight against terrorism; and (4) states shall refrain from supporting terrorism in any form.[110]

8.2. The legal framework of the European Union

After the terrorist attacks committed in the USA in 2001, a new legal framework was created by the European Union, based on a framework decision system. The main documents were the Council Framework Decision 2002/475/JHA on combating terrorism and its amending Council Framework Decision 2005/671/JHA. This legal

107 The need to broaden criminal steps in the fight against terrorism was already laid down in the Resolution 2178 (2014) of UN Security Council, where the Council expressed its concern over the growing threat posed by foreign terrorist fighters and required all member states of the UN to ensure that offenses related to this phenomenon are punishable under the national law.

108 Swart, 2004, p. 201.

109 For instance, some countries (whose substantive criminal rules will be analyzed in the Chapter 3) regulate the terrorism among the international core crimes.

110 Becker, 2006, p. 130.

background determined the European fundamental criminal legal steps in the fight against terrorism until 2017. In that year, a new directive[111] was adopted by the European Parliament and the Council, which partly replaced and partly amended the framework decisions (hereinafter, "The Directive"). The Directive promotes common actions by all the Member States of the European Union against new forms of terrorism. The definite aim of the Directive is to broaden the range of criminal offenses in connection with the noted change in thinking but accords with the process of strengthening public and defense instruments in the Member States' response to terrorism.[112]

The Directive is an important legal part of the Union's comprehensive counter-terrorism policy, complemented by other elements, such as the work of EUROPOL and EUROJUST, the various action plans and strategies at the political level, and the control of the Union's external borders.[113] The EU counter-terrorism strategy focuses on four pillars: prevention, protection, pursuit, and response. The first pillar combats radicalization and recruitment of terrorists by identifying methods, propaganda, and any other instruments used by terrorists. The protection pillar focuses on protecting citizens and infrastructures and reducing vulnerability to attacks. The third pillar pursues terrorists across borders. Preparing, managing, and minimizing the consequences of a terrorist attack is the fourth part of the EU's strategy.[114]

The Directive did not change the concept of the act of terrorism, as defined in the previous framework decisions, but broadened the range of conducts punishable under it. Several elements of the crime can be considered as 'offenses related to terrorist activities,' which shows that the EU's criminal policy is part of the international 'flow,' such as public provocation to commit a terrorist offense[115]; recruitment for terrorism[116]; providing and receiving terrorism training[117]; traveling for the purpose of terrorism and organizing or otherwise facilitating traveling for such an act[118]. The obligation on implementing these regulations into the national law is a challenging task for the legislators of the Member States and law enforcement authorities who must apply these new rules.

111 Directive (EU) 2017/541 of the European Parliament and the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ 31.3.2017 L88/6).
112 See Simicskó, 2016, pp. 100–113; Farkas, 2017, pp. 5–20.
113 Murphy, 2014, pp. 168–169.
114 Regarding the details of the strategy see The European Union Counter-Terrorism Strategy – November 30, 2005 (14469/4/05/REV 4). The new Counter-Terrorism Agenda was announced in the EU's Security Union Strategy (Commission Communication on the EU Security Strategy, 24.7.2020. – COM (2020) 605 final.
115 Article 5 of the Directive.
116 Article 6 of the Directive.
117 Articles 7–8 of the Directive.
118 Article 9–10 of the Directive.

The Directive provided an exhaustive list of serious offenses that must be classified by Member States as terrorist offenses in their national law.[119] The common characteristic of these offenses is that they have common aims—so-called "terrorist aims," including the following: seriously intimidating a population; unduly compelling a government or an international organization to perform or abstain from performing any act; and finally, seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization. Thus, the Directive created a complex statutory definition that furnishes content on resource actions and goal actions. Notably, the first category can generally be considered public crimes, and if committed with terrorist intent (as noted above), they can be qualified as an act of terrorism.

Furthermore, the list of activities that must be also punished by the Member States, even if a terrorist offense was not committed, was extended.[120] The Directive prescribed that Member States must take the necessary measures to ensure offenses related to terrorist activities and a terrorist group are punished and must extend the criminal liability to the aiding, abetting, inciting, and attempting of the crimes mentioned.

The Directive determined a deadline to incorporate such rules into the national laws: September 8, 2018.[121] By the end of 2020, most Member States, as per the provi-

119 These acts, which may seriously damage a country or an international organization can be the following (Article 3 paragraph 1 of the Directive): '(a) attacks upon a person's life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage-taking; (d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental self, a public place or private property likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public and goods transport; (f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons; (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life; (h) interfering or disrupting the supply of water, power or any other fundamental natural resource, the effect of which it to endanger of human life; (i) case related to illegal system interference; (j) or threatening to commit any of acts listed in points (a) to (i)'.

120 These criminal offenses are offenses related to a terrorist group and offenses related to terrorist activities.

121 It shall be underlined that there are a lot of legal measures of the EU which clearly show the EU's aim in the fight against terrorism, for example: Regulation (EU) 2021/1149 of the European Parliament and of the Council on establishing the Internal Security Fund – 7 July 2021 (OJ. L 251/94); Regulation (EU) 2021/784 of the European Parliament and of the Council on addressing the dissemination of terrorist content online – 29 April 2021 (OJ. L172/79); Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law – 23 October 2018 (OJ. L284/22); Regulation (EU) 2018/1672 of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No. 1889/2005 – 23 October 2018 (OJ. L284/6); Directive (EU) 2016/681 of the European Parliament and of the Council on the use of passenger name record (PNR) data for prevention, detection, investigation and prosecution of terrorist offences and serious crime – 27 April 2016 (OJ. L119/132).

sions of the Directive, adopted new legislative measures and amended the statutory definition of terrorism in their national law. According to the Commission's report, 23 Member States adopted new legislation, 'while two Member States[122] notified pre-existing legislation in transposition of the Directive.'[123]

In the next chapter, we analyze how the Member States fulfilled this obligation. Our comparative legal view concerns only the countries of interest to this study and the criminal legal steps with special reference to the different forms of regulations. We will not address the liability of the legal persons and the different sanctioning systems of the Member States, with criminal procedural questions like jurisdiction, prosecution, investigative tools, and financing terrorism. Accordingly, the latter topic (financing terrorism) is so diverse that it shall be the basis of another independent research.

8.3. Implementation in the national laws included in the project

8.3.1. The act of terrorism

The Hungarian Criminal Code (hereinafter, Hungarian CC)[124] regulates the statutory definition of the act of terrorism as a complex crime. As noted, a complex crime includes resource actions and goal actions. As for the statutory definition of terrorism, such resource actions are public crimes that can be considered either violent crimes against a person or crimes of public endangerment that involve the use of firearms.[125] These crimes are exhaustively listed by the Hungarian CC[126]. According to this regulation, the terrorist aims may be the following: (a) coerce a government agency, another state, or an intentional body into doing, not doing, or countenancing something; (b) intimidate the general public; (c) conspire to change or disrupt the constitutional, economic, and social order of another state, or disrupt the operation of an international organization.

In contrast to the Hungarian legal solution, the Polish Criminal Code (hereinafter, Polish CC) does not list the so-called resource actions. It does not provide an exhaustive list of crimes whose commission with terrorist intent constitutes an act of terrorism. The Polish CC[127] defines the goal actions following the Directive. Furthermore, the terrorist intent appears in the special part of the Polish CC in other crime definitions to meet the requirements declared by the Directive concerning the offenses related to terrorist activities and a terrorist group. According to the provision, the terrorist aims

122 France and Italy.
123 See Report from the Commission to the European Parliament and the Council based on Article 29(2) of Directive 2017/541 (COM/2021/ 701 final), Point 3.1.
124 Section 314 paragraph (1)–(2) and (4).
125 For example: homicide, violation of personal freedom, kidnapping, criminal misuse of explosives or explosive devices, etc.
126 Section 314 paragraph (1) lists the goal actions or "the terrorist aims," as per the Directive.
127 Article 115 paragraph 20.

are the following: (a) seriously terrorizing many people;[128] (b) compelling a public authority of the Republic of Poland, another state, or an international organization to perform or to omit to perform certain actions; and (c) causing a serious disruption of the political system of the Republic of Poland, of another state or an international organization. These aims are relevant when the public crime committed by the perpetrator with terrorist intent can be punished by a penalty of deprivation of liberty with an upper limit of at least five years. With this legal solution, the Polish legislator aimed to broaden the statutory definition of terrorism.[129]

Like the Hungarian criminal law, the Slovak and Czech Criminal Code (hereinafter, Slovak CC and Czech CC) regard the act of terrorism as a complex crime. The difference between the legal solutions can be found in the regulation of the resource action. As long as the Hungarian CC[130] gives an exhaustive list of the concrete public crimes, the Czech[131] and Slovak CC[132] only describe criminal conducts that can link to a concrete crime in the special part of the Codes.[133] Arguably, the Hungarian solution is better than the ones noted above because it is easier to amend if necessary. As for the Czech and Slovak CCs, the terrorist aims are regulated similarly to the Directive.[134]

The legal construction mentioned above is followed by the Slovenian and Croatian substantive criminal law as well. The Slovenian Criminal Code (hereinafter, Slovenian CC) regulates the statutory definition of terrorism and the other offenses related to terrorist activities in Articles 108 to 111; for the Croatian Criminal Code (hereinafter, Croatian CC), this relates to Articles 97 to 102. Article 108 of the Slovenian CC and Article 97 of the Croatian CC address the concrete statutory definition of terrorism. The form of the regulation is similar to the Czech and Slovak criminal substantive legal solutions because the Codes also declare only the goal actions.[135] However, they

128 Thus, the Polish legislator broadened this aim relative to the Directive because it is about many people. For further analysis see: Michalska-Warias, 2011, p. 160.

129 Gacka, 2017, p. 33.

130 Section 314 paragraph (4).

131 See the Article 419 of the Slovak Criminal Code.

132 See the Article 311 paragraph (1) of the Czech Criminal Code.

133 Hence, for instance, the Hungarian CC regulates (Section 314 paragraph [1]) homicide and battery as concrete public crimes, while the other Codes describe them as performing "an attack threatening human life or health with the intention to cause death or grievous body harm".

134 Intention to impair the constitutional system or defence capabilities of the state; disrupt or destroy the base political, economic, or social structure of the state or an international organization; seriously terrify the population or illegally make the government or other public authority or an international organization to act, omit or tolerate something.

135 These actions are very similar to the Directive's system: (a) in Slovenia –'intention of destroying or severely jeopardising the constitutional, social, or political foundations of Republic Slovenia or other country or international organization; intention of arousing fear among the population, or forcing the Government of the Republic of Slovenia or other country or international organization to perform or stop performing a certain activity; or to perform or threaten to perform one or more" of the acts regulated by the Article 108 paragraph (1); (b) in Croatia – 'aim of seriously intimidating a population; or compelling a government or an international organization to perform or abstain from performing any act; or seriously destabilising or destroying the fundamental constitutional, political, economic or social structures of a state or an international organization".

do not give an exhaustive list of public crimes considered as resource actions; they list exhaustively elements of crimes[136] committed with terrorist intent and can be regarded as acts of terrorism.

However, Serbia is not a member state of the EU and its criminal code regards the act of terrorism also as a complex crime; the regulation is remarkably similar to the Directive. As per Article 391 of the Serbian Criminal Code (hereinafter, Serbian CC), if a perpetrator commits one of the elements of a crime with terrorist intent,[137] it can be qualified as terrorism. The list[138] is similar to the Czech, Slovak, and Slovenian legal solutions.

According to the Directive, Member States shall take the necessary measures to define as a crime the threat to commit any acts listed in Article 3. point 1 and ensure that aiding, abetting, inciting, and attempting an offense referred to in the Article will be punishable under their substantive criminal law. Notably, the Member States and Serbia followed the provisions in their national laws. Most countries within the scope of this study ensured the punishability of attempt, incitement, and aiding and abetting under the general part and partly under the special part of their criminal code,[139] and every Member State was obligated to ensure the punishability of threats as well.[140]

8.3.2. Offenses relating to terrorism and a terrorist group

According to the provisions of the Directive, the Member States shall take the necessary legal steps to ensure that the offenses relating to a terrorist group[141] and terrorist activities[142] will be punishable based on national law. In order to adhere to the space

136 For instance, an assault on life or body or human rights and freedoms; considerable destruction of state or public buildings or representations of foreign states, the transport system, infrastructure, a public place or private property; or taking hostages; or hijacking an aircraft, ship, means of foreign transport or means of public transport; and release of dangerous substances.

137 The intent can be the following: 'seriously threaten the citizens or force Serbia, a foreign country, or international organization to do or not to do something; seriously threaten or violate the fundamental constitutional, political, economic and social structures of Serbia, a foreign country, or international organization".

138 Article 391 paragraph (1) between points 1–8.

139 Articles 30 and 34–35 of the Serbian CC; Articles 34 and 37–38 of the Croatian CC; Articles 34 and 37–39 of the Slovenian CC; Articles 13–16 and 18 of the Polish CC; Section 20–21, Section 24, Section 311 paragraph (4), and Section 312 paragraph (2) of the Czech CC; Section 14 and Section 21 of the Slovak CC; Articles 10–11, 14, and 315 of the Hungarian CC.

140 Article 391 paragraph (2) of the Serbian CC; Article 97 paragraph (2) of the Croatian CC; Article 108 paragraph (1) of the Slovenian CC; Article 115 paragraph (20) of the Polish CC; Section 311 paragraph (2) of the Czech CC; Section 419 paragraph (1) of the Slovak CC; Article 316 of the Hungarian CC.

141 Directing a terrorist group or participating in the activities of a terrorist group.

142 The criminal offences are as follows: public provocation to commit a terrorist offence; recruitment for terrorism; providing and receiving training for terrorism; travelling for the purpose of terrorism; organizing and, otherwise, facilitating travelling for the purpose of terrorism.

limits of our paper, we will summarize in Tables 1 and 2 how the countries analyzed in our paper aim to ensure the punishability of these offenses. The Hungarian solution is noted in the footnote.[143]

Table 1. *How Serbia, Croatia, and Slovenia aim to ensure the punishability of offenses*

Criminal Offense	Serbia	Croatia	Slovenia
Directing a terrorist group	Article 393a of the CC	Article 102 paragraph (1) of the CC	Article 108 paragraph (8) of the CC
Participating in the activities of a terrorist group	Article 393a of the CC	Article 102 paragraph (2) of the CC	Article 108 paragraph (7) of the CC
Public provocation to commit a terrorist offense	Article 391a of the CC	Article 99 of the CC	Article 110 paragraph (1)–(2) of the CC
Recruitment for terrorism	Article 391b paragraph (1) of the CC	Article 100 of the CC	Article 111 paragraph (1) of the CC
Providing and receiving training for terrorism	Article 391b paragraph (2) of the CC – but only regarding providing	Article 101 of the CC – but only regarding providing	Article 111 paragraph (2)–(3) of the CC
Traveling for the purpose of terrorism and other related crimes	It can link, for instance, to a preparation of a concrete crime	It can link, for instance, to the preparation of a concrete crime mentioned above	Article 108a of the CC

Table 2. *How Czech Republic, Slovakia, and Poland aim to ensure the punishability of offenses*

Criminal Offense	Czech Republic	Slovakia	Poland
Directing a terrorist group	Section 311 paragraph (3) a. point of the CC	Section 297 of the CC	Article 258 paragraph (4) of the CC
Participating in the activities of a terrorist group	Section 311 paragraph (2) of the CC	Section 419 paragraph (2) a. point of the CC, or Section 297 of the CC, or Section 129 paragraph (6)–(7) of the CC	Article 258 paragraph (2) of the CC, or Article 165 paragraph (2) of the Code

143 The relevant criminal legal rules are the following: Article 314 paragraph (2) b point; Article 315 paragraph (1)–(2), Article 316/A paragraph (1)–(2); Article 319 paragraph (1); Article 331 paragraph (2).

Criminal Offense	Czech Republic	Slovakia	Poland
Public provocation to commit a terrorist offense	Section 20, Section 311 paragraph (4) of the CC, or Section 311 paragraph (2) – regarding a concrete terrorist offense	Section 419 paragraph (2) c. point of the CC	Article 255a paragraph (1)–(2) of the CC
Recruitment for terrorism	Section 20, Section 311 paragraph (4) of the CC, or Section 311 paragraph (2) – regarding a concrete terrorist offense	Section 419 paragraph (2) d. point of the CC	At most, regarding a concrete terrorist offense, the perpetrator may be punished as an abettor or accomplice
Providing and receiving training for terrorism	Section 20, Section 311 paragraph (4), or Section 311 paragraph (2) of the CC – regarding a concrete terrorist offense	Section 419 paragraph (2) b. point of the CC – only regarding providing	Article 255a paragraph (2) of the CC, or Article 165a paragraph (1) of the CC
Traveling for the purpose of terrorism and related crimes	Section 20, Section 311 paragraph (4), or Section 311 paragraph (2) of the CC – regarding a concrete terrorist offense	Section 419 paragraph (2) e. point of the CC – regarding a concrete terrorist offense	Article 259a of the CC

9. Final remarks

From the comparative analysis, it can be stated that the national laws parsed in our paper meet the international and European requirements. The differences between the substantive criminal legal norms are not perceptible in their content but rather in their legal technical approach. They stem from the criminal traditions of the state. Notably, the national legal systems analyzed are prepared for the international fight against terrorism and can provide citizens with effective legal protection against the perpetrators of terrorist offenses.

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