Applicable laws during South-East European Countries' counter-terrorist efforts

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Abstract.
International terrorism is a serious threat to the regional security in South East Europe. Although the applicability of law during the counter-terrorist efforts is essential to NATO and Euro-Atlantic efforts in the fight against terrorism this subject has not been addressed appropriately by the SEE countries. The article provides a general overview of the applicable laws that South East European Countries must consider in their counter-terrorist efforts. It explains what laws apply during domestic and international counter-terrorist efforts and operations.

Key words: Southeast European Countries, Terrorism, Interantional Law, International law of armed conflict, International Law of Human rights

Introduction

International terrorism represents a serious threat to the regional security in South East Europe (SEE). The geopolitical dynamics in the region along with the complex history create a unique environment for the groups and individuals that practice violent religiously motivated terrorist activities. These groups and individuals are either related directly to terrorist groups such as ISIS (IS) or are affiliated with their activities and agenda. The fight against these groups and individuals have proved to be very difficult and demanding. Unlike the conventional approaches in the fight against terrorism during the Cold War, fight against modern terrorism requires a whole of a government approach. This approach must be synchronized and tailored based on the specific local environment and dynamics and global anti-terrorist trends. One of the important element of these efforts is legitimacy that the counter-terrorist forces (agents) must maintain during their efforts. Applicability of adequate laws, therefore remains important segment in the overall counter-terrorist (CT) efforts of the Southeast European (SEE) Countries.

For the purpose of this debate, the term Southeast European (SEE) Countries in the article will refer to both NATO (Albania, Bulgaria, Croatia, Slovenia) Countries and PfP Countries (Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia). The term counter terrorist (CT) efforts will refer to all activities (including operations on the ground practice by the military and security forces) that SEE Countries' authorities should and will undertake to counter terrorism in SEE.

The article will first address contemporary concerns related to applicability of law in SEE Countries' CT efforts. Then, we will address applicable laws during the domestic counter-terrorist efforts in SEE. Finally, the article will address the applicable laws to South East European Countries' counter-terrorist operations that amount to an armed conflict

1. On law and counter-terrorism in the region of South East Europe

Global terrorism practiced by groups and individuals with violent radical religious motivations threatens the region of SEE. The processes such as globalization,[1] migration,[2] violent ethnic conflicts in the former Yugoslavia,[3] along with the geographic position and demographic characteristics of the region[4] have created a unique environment for modern terrorist activities and agenda. Following the political decisions to embrace Euro-Atlantic integrations and with that, the Euro-Atlantic values[5], most of the SEE Countries have utilized Euro-Atlantic CT policies. Consequently, almost all SEE Countries have experienced some of the challenges that global counter-terrorism coalition has experienced since its inception.[6]

Among others, one of the challenges that SEE Countries face come from the applicability of law during counter-terrorist activities. Although the response to terrorism from legal aspect has evolved after 9/11 attacks, this topic has been vaguely addressed by the SEE legal and professional community. Instead of having proactive and uniquely regional debates, discussions and researches on this matter, the debates about the applicability of law during the counter-terrorist activities was periodic, on the margins of some events or embedded under the broader counter-terrorist training, seminars and similar types of Western-led activities.

As a result, the applicability of law during the SEE Countries' counter-terrorist activities is reactive and based on Western designed defaults. However, this should not be understood in a way that there are errors with applying these defaults as a framework. Rather, the argument here is that the legal response to modern terrorism must encounter SEE regional characteristics and specifics that reflects regional dynamics under the Euro-Atlantic frame of approach. This means that while legal approaches to CT activities are based on the SEE academic and professional advice and preserve and reflects the SEE reality (culture, history, experience of the civil- military professionals and the overall regional administrations), they should be designed under Euro-Atlantic values platforms, i.e., respect of the democracy, international law, human rights law, justice, constitutional order etc.[7]

For example, responding to the trend of the so-called foreign fighter phenomenon that has immersed in the SEE region, some Countries both NATO (Albania,[8] Bulgaria[9]) and PfP (Bosnia[10], Macedonia[11] and Serbia [12]), have brought laws that focus on punishment in the context of prevention. These measures as a reflective policy have also been supported by some of the Western NATO Allies.[13] The real challenge, however, stems from the argument that combating modern terrorism requires a greater level of sensitivity in the approach. The former is especially important since modern terrorist agenda breeds and feeds its support from the official government policies' mistakes. In fact, if the regional Countries implement the above-mentioned laws the penalties if any, would come from the evidence collected by the third party and not by the government officials (public prosecutors *per se*). None of the regional Countries have resources, nor troops on the ground to secure regular

investigation and evidence gathering process which is required under the democratic (Euro-Atlantic based constitutional orders). Arguably, the only choice in this situation would be exchange of information or judicial cooperation and support. Considering the recent Macedonian involvement in similar support to counter-terrorist allied effort, i.e., the so called "*El Masri case*",[14] this type of cooperation could be dangerous if not legally considered.

Furthermore, although many humanitarian aid groups (of course not all of them) have lost their legitimacy it would be very difficult for the prosecutors to build their case and for the jury to bring the decision that could not be seen as questionable, especially for those who agitate against the governments in favor of radicalization. In this light, legitimacy has been identified as crucial in building effective counter-terrorist efforts against modern terrorism. Bosnia is the only country from the region that have practiced this law but, the results are not promising.[15]

Applicability of different bodies of law during the CT actions and efforts is an additional challenge for the SEE Countries. Unlike the US, that in most of its CT efforts relies on International Law Of Armed Conflict (ILOAC), almost all of the European NATO coalition partners (and this is relevant to the SEE Countries) have different views about the applicability of law in the initial CT effort. These divisions that had immersed in early stages of CT efforts in Afghanistan and in Iraq have arguably affected the overall coalition success in CT efforts. Some of them, like the "*El Masri Case*" have even caused legal consequences.[16]

Therefore, the importance of understanding the applicability of law in counter-terrorist activities is unequivocally important for the SEE Countries.

2. Applicability of law during the counter-terrorist activities: relevance for the South-East European Countries

The relevance of the applicable law during the SEE Countries' CT effort is undisputable. Even though the so-called "Global war on terror"[17] efforts are on the decline (since NATO and international community engagement in Afghanistan are in a different phase, and Operation Iraqi Freedom has finished), the global terrorist threat is still present. The war in Syria and the wave of freedom fighters effect, the consequences of the migration crisis and the effect of the homegrown terrorism are some of the new forms through which global terrorism threatens the SEE societies. Instead of focusing on coalition efforts and military response, these new forms of manifestation of the existing threat urge SEE Countries to employ other mechanisms, laws and consequently agencies and institutions. Put differently, the new forms through which global terrorism threaten SEE societies require a shift in the applicability of the law. Instead of the International Law of Armed Conflict, most of the CT efforts require applicability of the constitutional law, criminal law, human rights law and other legislations related to the use of technology and internet, and the social and economic stability and prosperity.

Broadly speaking the law can be defined as a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. Generally, there are two bodies of law, international law, and domestic laws. The International law represents the body of rules governing relations between States and organizations that they have founded.

The legislature is the key source of law in a domestic legal system. It is the institution vested with law-making power that binds all subjects within the given sovereign territory. The law is absolute in its reach. In all of the SEE Countries' legal

systems, the legislature (the Parliament) has a monopoly of power to make laws. The domestic law in SEE Countries is hierarchical, authoritative, facilitative and top-down. However, the international law differs from the domestic laws.

Unlike domestic law, there is no legislature in the international law. Put differently, there is no single institution with centralized or binding law-making authority. The key sources of international law are coined within the International Court of Justice Statute.[18] According to the Article 38 of the ICJ Statute the sources of International law are:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[19]

An overview of the counter-terrorist efforts in general from the legal aspect dictates that the response has evolved over the time. Prior to 9/11 terrorist attacks terrorism was treated as a criminal act. After the 9/11 terrorist attacks nevertheless, the response to terrorism from the legal aspect was generally as an act of war. Recent responses to global terrorist threats that come from groups and individuals that practice violent religious extremism (such as ISIS), as we have mentioned previously, require applicability of both domestic (constitutional, criminal and human rights law) and international law. Giving that all of the SEE Countries (defined in this debate) have participated in the global coalition against terrorism we will look closely into the laws applicable to both situations i.e., during the domestic and international (coalition) CT efforts.

3. Applicable laws during the domestic counter terrorist efforts in SEE

All of the CT efforts inside the boundaries of the SEE Countries should be conducted under the domestic laws. This means that the constitutional law, and more narrowly, the balance between public safety and individual rights set forth in national SEE Countries' criminal laws design the perimeter of these Countries domestic CT efforts. The response to terrorism as a criminal act on domestic soil and the balance between public safety and individual rights during these responses in SEE Countries are regulated by the international community. While the response to terrorism as an act of crime is regulated by the efforts to prevent terrorist acts, the balance between public safety and individual rights is entrenched in the International human rights law.

Since 1963, the international community has elaborated 19 international legal instruments to prevent terrorist acts. Those instruments were developed under the auspices of the United Nations and the International Atomic Energy Agency (IAEA), and are open to participation by all Member States.[20] All SEE Countries are parties to these legal instruments.

The principal obligation set forth in the international treaties against terrorism is to criminalize terrorist activities defined in the treaties. These treaties obliged SEE Countries to incorporate the crimes defined in the treaty into the domestic criminal law, and to make them punishable by sentences that reflect the offence. The SEE Countries have also agreed to participate in the construction of the ''universal jurisdiction'' over these offences. The exercise of universal jurisdiction is commonly authorized, or even

required, by an international convention to which the SEE Countries are party.[21] This means that SEE Countries have obliged to take the necessary measures to give their courts very broad jurisdiction over the terrorist offences prescribed by the signed conventions.[22] Furthermore, SEE Countries have accept the obligation of the principle *aut dedere aut judicare* (either to extradite any suspected terrorist offenders from their territory or to begin criminal proceedings against them).[23] This, nonetheless, should not be understood in the terms of the origins of this principle coined by Grocius, i.e. *aut dedere aut punnire*.[24] The prosecution instead of punishment is the obligation that SEE Countries have as the alternative to extradition in order to reflect better the possibility that an alleged offender may be found not guilty.[25]

SEE Countries are also obliged to practice various types of cooperation during the domestic CT efforts. The cooperation that SEE Countries are required to participate ranges from cooperation in preventing terrorist acts to cooperation in the investigation and prosecution of the relevant offences. Most of these treaties also contain dispositions concerning the protection of human rights. Such dispositions are of three kinds: general provisions indicating that the obligations set forth in the treaty are without prejudice to other international obligations of the state party; provisions concerning the right of accused or detained persons to due process, and provisions establishing conditions regarding extradition and the transfer of prisoners.[26] Regardless of these provisions during the domestic CT efforts SEE Countries are obliged to ensure the protection of the individual rights and thus, to generate the balance to the need for public safety and security and avoid reckless and severe decisions and treatments.

The obligations for SEE states to protect individual rights and to avoid state repressions and abuses in any forms in the name of public safety during the domestic CT efforts also come from the core sources of International Human Rights Law (IHRL). This body of law is built by sources such as: The Universal Declaration of Human Rights (UDHR),[27] International Covenant on Civil and Political Rights (ICCPR) 1966/1976 [28] and International covenant on economic social and cultural rights (ICESC) 1966/1976.[29] A large set of authoritative and influential sources that interpret or elaborate existing documents and agreements related to IHRL[30] and important statements of non-official expert bodies[31] are also important for the SEE states during their domestic CT efforts.

4. Applicable laws to South East European Countries' counter-terrorist operations amount to an armed conflict

As we mentioned above after the 9/11 terrorist attacks response to terrorism from legal aspect has shifted from treating terrorism as an act of crime to treating the terrorism as an act of war. The conclusion for such a thesis stems from the fact that after the 9/11 terrorist attacks the United Nations Security Council (UNSC) has recognized that United States has the right to response to these terrorist attacks in self-defense under the Article 51 of the United Nations (UN) Charter.[32] In other words, the UNSC authorized the US to use military force. On the evening of 12 September 2001, less than 24 hours after the attacks, and for the first time in NATO's history, the Allies invoked the principle of Article 5.[33] Then NATO Secretary General Lord Robertson subsequently informed the Secretary-General of the United Nations of the Alliance's decision.[34] However, the US did not stop there. Felt threaten by Iraqi regime at that

time, US has launched a campaign against Saddam Hussein's regime under the auspices of the Global War on terror.

The importance of the former is that all of the SEE have participated in these efforts (Afghanistan and some in Iraq). Regardless of the shockwaves that these decisions and efforts caused in the legal community[35] from the legal practice SEE Countries should consider the applicability of the International Law of Armed Conflict (ILOAC) during the international military CT efforts. ILOAC will apply to the SEE Countries' military efforts whenever there is an armed conflict between two or more parties. Put differently, ILOAC applies to SEE Countries' CT operations if these "operations" are committed in the context of armed conflict or amount to an armed conflict.

SEE Countries should consider *ius ad bellum* and *ius in bello* principles and standards during the CT military coalition efforts. The *ius ad bellum* – principles and standards are part of the ILOAC and regulate the law on the use of force or the right to start the combat military operations in accordance with the rules of law. The *ius in bello* principles and standards are also part of the ILOAC and apply to SEE Countries' CT military operations once when the threshold to response with military force is met. Precisely, if the criteria set forth under the *ius ad bellum* are met.

4.1. The ius ad bellum principles applicable to SEE Courtiers' CT efforts

Principles and standards that constitute the *ius ad bellum* framework applicable to SEE Countries' CT operations were coined by the customary international law and the UN Charter.[36] There are five principles that were distilled over the time and that build the modern *ius ad bellum* criteria. These principles are: proper authority, just cause (right intention), the probability of success, proportionality, and last resort.

Briefly, the principle of right authority requires that SEE Countries can resort to using of force in CT operations (i.e., waging war) in a just manner only if these actions are waged by a legitimate authority. Such authority is rooted in the notion of state sovereignty.[37] The principle of just cause (also known as a right intention) requires that if SEE Countries resort to using military force in the CT operations the aim of these military operations must not be to pursue narrowly defined national interests. Rather the end-state of these efforts should be the re-establishment of a just peace. The principle of success emphasizes that mass violence must not be undertaken by SEE Countries in their CT efforts if it is unlikely for the respected Country(s)' authorities to secure the just cause.[38] Furthermore, the SEE Countries' authorities must ensure that if they decide to undertake military CT efforts or operations the actions of the respected Countries' military must be sure that during these operations aims of the just war are achievable.[39] The principle of proportionality obliged SEE Countries that if they decide to use military force during the CT efforts violence used in these operations (efforts) must be proportional to the attack suffered.[40] The principle of last resort (also known as "necessity") stipulates that SEE Countries must exhaust all non-violent options before they can justify the use of military force as the means to an end in their CT efforts.[41]

In general, all of these principles were codified (and some have argued that there is progressive development) in the UN Charter. The fundamental aim of the international community, according to the Article 1 of the Charter is international peace. Therefore, the primary purpose of the UN is to:

> *To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace*.[42]

The Article 2(3) requires from SEE Countries to implement the principle of last resort before they launch military CT operations. In other words, to settle their international disputes by peaceful means.[43] Then, the Charter regulates the use of force by general prohibition and exceptions from that prohibition.

Namely, in Article 2(4) the Charter makes it clear that SEE Countries

> …" *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.*" [44]

Today it is generally accepted that this provision reflects a *ius cogens* rule of customary international law.[45] Hence, SEE Countries cannot derogate from this prohibition by virtue of bilateral or multilateral agreements.[46] Nevertheless, this does not mean, that SEE country(s) cannot be militarily present or active in another country with that country's prior consent. In fact, practice shows that military presence in another country's territory with its consent with the purpose of carrying out counter-terrorist or counter-insurgency operations, provided by agreement is common. This is not inconsistent with the purposes of the UN Charter.

The exceptions from the general prohibition of the use of force applicable to SEE Countries if they decide to resort to the use of military force in CT efforts are explicitly allowed in two situations. First, the so-called collective military enforcement action was taken or authorized by the UNSC in accordance with Chapter VII, precisely Article 42 of the Charter. Second, the exercise of individual or collective self-defense as outlined in Article 51 of the Charter.

In practice, so far, both exceptions were implemented (Afghanistan and Iraq) and SEE Countries have participated in both of them. During the Afghanistan engagement under the auspices of the Global war on terror, the UNSC has passed the resolution and has authorized the establishment and engagement of the International Security Assistance Force (ISAF).[47] This resolution was authorized under Article 42 of the UN Charter. Nevertheless, the US engagement in Afghanistan was not just within ISAF. Launching the operation Enduring Freedom, the US presence in Afghanistan was justified under the right to self-defense i.e., under the Article 51 of the Charter.[48] Although this practice was criticized, today, most Countries seem to support such interpretation of Article 51.[49] In the aftermath of the 9/11 attacks the NATO Members have expressed their understanding that the incident of 9/11 amounted to an 'armed attack' against the United States.[50] At the same time, the members of the Security Council, although not explicitly describing the 9/11 events as an "armed attack", carefully worded resolutions 1368 and 1373 so as to affirm the inherent right of

self-defence within a context of a broader response to terrorism.[51] Finally, most other States have not objected to the US-claimed right of self-defence in response to this particular attack. Once that these criteria are met SEE Countries as we mentioned above are obliged to implement the ius in bello standards and principles in their CT military operations.

4.2. Applicability of the ius in bello principles in SEE Countries' CT military efforts

The *ius in bello* is the body of ILOAC composed of principles and standards that guide how parties in armed conflict should fight. This means that the *ius in bello* principles and standards provide framework how SEE Countries should plan, organize and conduct their military CT efforts that amount to an armed conflict; how they should treat all individuals who are non-combatants, enemy combatants, spies and terrorists under these circumstances; and finally, what kind of weapons and ammunitions can SEE Countries use and in what kind of situations these weapons and ammunitions can be used. These principles and standards are established by the customary law, based on recognized practices of war, as well as treaty laws.

The Hague Regulations of 1899 and 1907 constitute the first set of the treaty law applicable to SEE Countries' CT operations.[52] These treaties set out the rules for conduct of hostilities – i.e. how SEE Countries should conduct CT military operations. The other set of treaties that establish the principles and standards of warfare for SEE Countries come from the four Geneva Conventions of 1949. Precisely, treaties, which protect war victims—the sick and wounded (First); the shipwrecked (Second); prisoners of war (Third); and civilians in the hands of an adverse party and, to a limited extent, all civilians in the territories of the Countries in conflict (Fourth).[53] There are two Additional Protocols of 1977, which define key terms such as combatants, contain detailed provisions to protect noncombatants, medical transports, and civil defense, and prohibit practices such as indiscriminate attack. All of the SEE Countries are parties to these treaties. While the four Geneva Conventions of 1949 have been universally ratified, the same is not true for other treaties that constitute *ius in bello*, for example the Additional Protocols. Hence, the Geneva Conventions that are considered as a customary law have not the same meaning as the Additional Protocols. In other words, Additional Protocols will not apply fully (except for specific provisions which has been identified as a customary international law (or customary international humanitarian law) for the Countries, even NATO Allias that have not ratified them yet.[54] The same will apply for the treaties that constitute the so-called positive part of the *ius in bello*. These treaties like the Additional Protocols to the Four Geneva Conventions may consists provisions that are identified as customs such as some provisions of the 1925 Geneva Gas Protocol, but generally they apply only to the Countries that have ratified them.[55] In short, provision prescribed in positive ILOAC (read *ius in bello*) will apply to SEE Countries' CT military operations only if they are parties to the specific treaty (which regulates methods and means of warfare) and if there is a provision which has been identified as a the customary international law, meaning it will apply regardless of whether SEE Country has ratified the whole agreement (treaty, convention, protocol etc.) or not.

Hence, during the CT operations that amount to the level of armed conflict SEE Countries must ensure that their military (and other, if applicable, security forces) comply with the core *ius in bello* principles. These principles are: military necessity, humanity, proportionality and distinction.

SEE Countries' military and security forces during the CT operations that amount to the level of armed conflict at all times must distinguish between the civilian population and legitimate targets - terrorist and between civilian objects and objectives occupied and used by terrorists (principle of distinction).[56] SEE Countries' military and security forces can conduct CT operations that amount to an armed conflict only if these operations are necessary to accomplish legitimate military purpose and are not otherwise prohibited by the ILOAC (the military necessity). The only permissible military purpose is to weaken the military capacity of the terrorists against they are engaged.[57]

SEE Countries military and security forces that conduct CT operations when armed conflict exists during the planning processes of an attack must take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects – (principle of proportionality);[58] When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.[59] Finally, SEE Countries' military and security forces must apply the principle of humanity via human treatment to captured or wounded terrorists. This principle prohibits violence to life and person (including cruel treatment and torture), the taking of hostages, humiliating and degrading treatment, and execution without regular trial against non-combatants, including persons *hors de combat* (wounded, sick and shipwrecked). It is set forth in common Article 3 of the Geneva Conventions and also prescribed in Article 75 of the Additional Protocol I and Article 4(1) of the Additional Protocol II to the Geneva Convention.[60]

In addition, while conducting the CT operations that amount to the level of armed conflict SEE Countries' military and security forces must consider applicability of the IHRL. Giving that response to CT operations with military forces so far have shown that not all operations against terrorist could be considered as the operations that are held or about to be held in armed conflict SEE Countries' military and security forces must apply IHRL principles. Former is especially important in terms of the right to life, i.e. when conducting a CT operation where use of a deadly force is required. Namely, as practice have shown in both situations, SEE Countries' engagement in CT efforts abroad in Afghanistan and Iraq were part of the post-conflict CT efforts. While the ISAF mission was more or less designed by the UNSC Resolution, the "coalition of willing" in Iraq was arguably occupying power (Albania, Bulgaria and Macedonia participated in the operation Iraqi Freedom from 2003 until 2008). Therefore, the proposed scenario i.e., that not all CT operations will amount to an armed conflict is relevant for the SEE Countries CT efforts. This, however, is not the only reason.

The major human rights bodies (UN Human Rights Committee, European Court of Human Rights, Inter-American Commission and Court of Human Rights) have applied IHRL rules on the use of potentially lethal force in situations of armed conflict and occupation.[61] Under IHRL the SEE Countries' military and security forces may only resort to the use of potentially lethal force during the CT operations where absolutely necessary and may only use that amount of force which is necessary to deal with the threat posed. In post-conflict CT engagements (like Afghanistan and Iraq) when there will be effective control of the territory and the SEE CT forces will conduct operations to maintain public order and security an obligation to attempt to conduct an

arrest/detain operations wherever possible will always bound these forces. This standard applies both to the planning and the on the ground action phases of an operation.[62] However, when situation escalate and SEE Countries' CT forces or their coalition forces do not have effective control over the territory in the area of operation, then IALOC applies and *ius in bello* principles are leading law.[63]

Conclusion

Combating modern terrorism among others requires that the counter-terrorist agents maintain the legitimacy in their efforts (policies, actions, and operations). Applicability of law thus, is a sensitive issue in these efforts. So far, the applicability of appropriate laws during counter-terrorist (CT) efforts has not been addressed appropriately in most of the SEE Countries. The relevance of this subject however, is indisputable.

In their CT efforts South East European (SEE) Countries must apply both domestic and International Law. When the CT efforts (actions and operations) are conducted domestically they should consider national constitutional laws, national criminal laws and the provisions adopted by the International Human Rights Law (IHRL) as the guarantor for the necessary balance between public safety and protection of the individual rights.

Giving that SEE Countries have participated in global CT operations that amount to an armed conflict in their future engagement they should also consider applicability of the International law of Armed Conflict (ILOAC). When applying the standards and principles of the ILOAC, SEE Countries must consider the *ius ad bellum* and the *ius in bello* principles and standards. So far, and this is relevant for the foreseeable future, it would be very unlikely that SEE Countries will conduct offensive CT operation that amount to an armed conflict during the combat phases of these operations. However, they might participate in post-conflict operations like in Afghanistan and Iraq. In this context, when conducting CT operations in such environments, SEE Countries must consider applicability of the principles and standards of IHRL along with the principles and standards of ILOAC (*ius in bello, per se*). The relevance of the IHRL principles is especially crucial in the context of use of deadly force (i.e. to the operations in the context of use of deadly force and the right to life connected issues).

Refernces

[1] See for example Robert Wright, (September 11, 2002), "A Real War on Terrrorism, Does Globalization Cause Terrorism or Cure it?", Slate, accessed August 10, 2016, at: http://www.slate.com/articles/news_and_politics/politics/2016/10/why_vladimir_putin_is_donald_trump_s_spiritual_running_mate.html; or see: FLORIN ŞTIBLI, (2010), "Terrorism in the context of globalization", AARMS TERRORISM Vol. 9, No. 1 1–7, accessed August 10, 2016 at: http://www.zmne.hu/aarms/docs/Volume9/Issue1/pdf/01.pdf

[2] Roderick Packers, (December, 2015), "Migration and terrorism: the new frontiers for European solidarity", European Union Institute for Security Studies,accessed August 9, 2016 at: http://www.iss.europa.eu/uploads/media/Brief_37_Article_222.pdf

[3] See more general in: Joseph L. Soeters, (2005), *Ethnic Conflict and Terrorism: The Origins and Dynamics of Civil Wars*, Routledge

[4] i.e., the bridge between East and West, between

[5] Adriana Stanoch, "NATO is Not Only About Security, but Also About Values", Atlantic Community Org., accessed August 10, 2016 at: http://www.atlantic-community.org/-/nato-is-not-only-about-security-but-also-about-values

[6] Ivan Vejvoda, (April 29, 2015), "Progress and Challenges in the Western Balkans" United States Congress House of Representatives, accessed August 09, 2016 at: http://www.gmfus.org/sites/default/files/IV%20-%20Hearing%20United%20States%20Congress%20House%20Subcommittee%20Europe%2029%20April%202015.pdf

[7] See for example: The Hoy, (July 16, 2016), "NATO asks Erdogan to respect democratic values of Atlantic Alliance", The San Diego Union Tribune, accessed: August 10, 2016 from: http://www.sandiegouniontribune.com/hoy-san-diego/sdhoy-nato-asks-erdogan-to-respect-democratic-values-of-2016jul18-story.html

[8] *Prison for Albanian Jihadists*, Gazeta Shekulli Blog (Feb. 25, 2014), http://www.gazetashekulli.org/ 2014/02/25/prison-for-albanian-jihadists/.

[9] _____, (Oct. 31, 2014), *Bulgaria Takes Important Step to Stop "Home-Grown" Jihadists*, Standart News, accessed August 11, 2106 at: http://www.standartnews.com/english/read/bulgaria_takes_important_step_to_stop_homegrown_jihadists-6072-6072.html

[10] Criminal Code of Bosnia and Herzegovina art. 162B, Official Gazette of Bosnia and Herzegovina, No. 47/14, *English translation available at* http://www.coe.int/t/dlapil/codexter/Country%20Profiles/Legislation/BiH%20Criminal%20Code%20Article%20162b%20-%20draft.pdf.

Drazen Remikovic, *Balkan Countries Unite Against ISIL*, SETimes.com (Aug. 10, 2014), http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2014/10/08/feature-01.

[11] In September 2014, new amendments to the Macedonian Criminal Code entered into force. Newly added article 322-a established that militants who fought in combat operations abroad within a framework of a foreign military, police, paramilitary, or para police groups are subject to no less than five years of imprisonment. The same punishment applies to those found-guilty of indirect support of such actions. Solicitation on behalf of and recruitment for a foreign paramilitary group is punishable by a minimum four-year term of imprisonment. Law of Sept. 3, 2014, on Amendments to the Criminal Code of the Republic of Macedonia, Sluzben Vesnik na Republika Makedonija (Official gazette of the Republic of Macedonia) No. 164/14

[12] Aleksandar Vasovic & Gareth Jones, (October 10, 2014), "Serbia backs jail terms for Serbs fighting in foreign conflicts" Reuters, accessed: August 10, 2016, at: http://www.reuters.com/article/us-serbia-conflicts-idUSKCN0HZ1JB20141010

[13] Sinisa Jakov Marusic, (Oct. 20, 2014), "US Praises Macedonian Law to Jail Militants", BalkanInsight, Accessed August 12, 2016 at: http://www.balkaninsight.com/en/article/us-praises-macedonian-bill-to-jail-militants.

[14] European Court for Human Rights, (December 13, 2102), "Case of El-Masri vs. The former Yugoslav Republic of Macedonia, Grand Chamber, *(Application*

no. 39630/09), Judgment, accessed Auguist 12, 2016, at: http://hudoc.echr.coe.int/eng?i=001-115621&%7B%22itemid%22%3A%5B%22001-115621%22%5D%7D#{"itemid":["001-115621"]}

[15] See for example: Drazen Remikovic, (August 10, 2014), "Balkan Countries Unite Against ISIL", SETimes.com, accessed: August 11, 2106 at: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2014/10/08/feature-01.

[16] European Court for Human Rights, (December 13, 2102),

[17] Broader discusion over this issue see in: Christopher Greenwood, (2006), *Essays on War in International Law*, Cambridge, Cambridge University Press, 409-32; or in: Joan Fitzpatrick, 'Jurisdiction of military commissions and the ambiguous war on terrorism' (2002) 96 *AJIL* 345, 346-50

[18] International Court of Justice, "Statute of the International Court of Justice", ICJ Basc Document, accessed August 11, 2016, at: http://www.icj-cij.org/documents/?p1=4&p2=2#CHAPTER_II

[19] ICJ, Art 38

[20] For an overview of these instruments see more in: The United Nations, "Actions to Counter Terrorism, Legal Instruments", accessed August 12, 2016, at: http://www.un.org/en/counterterrorism/legal-instruments.shtml

[21] See for example: Human Rights Watch, ''Universal jurisdiction in Europe: The state of the art'', accessed August 12, 2016 at: www.hrw.org/reports/2006/ij0606

[22] Article 4 of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (jurisdiction based on the registration of the aircraft and the presence of the suspect); Article 5 of the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and Article III of the Protocol for the Suppression of Unlawful Acts of Violence at Airports; Article 3 of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; Article 5 of the 1979 International Convention against the Taking of Hostages; Article 8(1) and 8(2) of the 1979 Convention on the Physical Protection of Nuclear Materials; Article 6 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Article 3 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf; Article 6 of the 1997 International Convention for the Suppression of Terrorist Bombings; and Article 7 of the 1999 International Convention for the Suppression of Financing of Terrorism

[23] Article 7 of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; Article 7 of the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; Article 7 of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; Article 8(1) of the 1979 International Convention against the Taking of Hostages; Article 10 of the 1979 Convention on the Physical Protection of Nuclear Materials; Article 10(1) of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Article 4 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Article 8(1) of the 1997 International Convention for the Suppression of Terrorist Bombings and Article 10(1) of the 1999 International Convention for the Suppression of Financing of Terrorism

[24] Hugo Grotius, (1925) *De Jure Belli ac Pacis, Book II, chapter XXI, section IV* (English translation by Francis W. Kelsey (Oxford/London: Clarendon Press/Humphrey Milford, pp. 527–529

[25] See: International Law Comission, (2014), "The obligation to extradite or prosecute", Yearbook of the International Law Commission, 2014, vol. II (Part Two)

[26] See more in: Daniel O'Donnell, (2006), "International treaties against terrorism and the use of terrorism during armed conflict and by armed forces", International Review of the Red Cross, Vol 88, No.864, pp 853-880

[27] The United Nations, (December 10, 1948),"The Universal Declaration of Human Rights", accessed August 10, 2016 at: http://www.un.org/en/universal-declaration-human-rights/

[28] The United Nations, (December 16, 2016), "International Covenant on Civil and Political Rights", Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, accessed August, 10, 2016, at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[29]The United Nations, *(December 16, 1966),* "International Covenant on Economic, Social and Cultural Rights", Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27, *accessed:* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

[30] Such as: The General comments of the Human Rights Committee, see: The United Nations, "Human Rights Treaty Bodies - General Comments", accessed August 10, 2016 at: http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx

[31] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (UN Doc. E/CN.4/1996/39, November 1996), accessed August 12, 2016 at: http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.

[32] The United Nations Security Council Resolution 1368, adopted unanimously on 12 September 2001; and The United Nations Security Council Resolution 1373, adopted unanimously on 28 September 2001

[33] NATO, "Collective Defense, Article 5", accessed August 15, 2016, at: http://www.nato.int/cps/en/natohq/topics_110496.htm

[34] Ibid

[35] See more about this in: Cyrille Fijnaut, Jan Wouters and Frederik Naert, (2004), *Legal Instruments in the Fight Against International Terrorism*, Brill, Part V

[36] In addition to bilateral non-aggression pacts concluded during the history of state practice, the twentieth century saw multilateral treaties defining entirely new restrictions against going to war. The three most notable examples are the Kellog-Briand Pact outlawing war as an instrument of national policy, See: "The Kellogg–Briand Pact (or Pact of Paris, officially General Treaty for Renunciation of War as an Instrument of National Policy", (1929) League of Nations Treaty Series, Vol94, p.57, (No. 2137), accessed August 15, 2016 at: https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2094/v94.pdf; The London Charter (known also as the Nuremberg Charter) defining "crimes against peace", as one of three major categories of international crime to be prosecuted after the World War II, See: United Nations, (August 8, 1945), "Charter of the

International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis *("London Agreement")*, accessed August 15, 2016 at: http://www.refworld.org/docid/3ae6b39614.html; and the United Nations Charter see: The United Nations, (October 24, 1945), "Charter of the United Nations", accessed August 10, 2016 at: http://www.un.org/en/charter-united-nations/

[37] See for example: Don Hubert and Thomas G. Weiss, (2001), *The Responsibility to Protect: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, Canada: International Development Research Centre

[38] Seth Lazar, (May 3, 2016), "War", Stanford Encyclopedia of Philosophy, accessed August 15, 2016 at: http://plato.stanford.edu/entries/war/#2.1

[39] Don Hubert and Thomas G. Weiss, (2001)

[40] Seth Lazar, (May 3, 2016),

[41] Buchanan, A. and R.O. Keohane, (2004), "The Preventive Use of Force: A Cosmopolitan Institutional Proposal", Ethics & International Affairs, 18(1): 1–22

[42] Article 1 from the United Nations Charter, The United Nations, (October 24, 1945)

[43] Article 2(3) from the United Nations Charter, The United Nations, (October 24, 1945)

[44] Article 2(4) from the United Nations Charter, The United Nations, (October 24, 1945)

[45] The International Court of Justice (ICJ) first confirmed this in the so called *Nicaragua v United States of America*, See: The International Court of Justice, (1986), *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits), ICJ Rep (hereinafter *Nicaragua*) [99-100]

[46] See for example: Christine Gray, *International Lawand the Use of Force* (Oxford, Oxford University Press, 2000), 24

[47] ISAF, was a NATO led security mission in Afghanistan, established by the United Nations Security Council (UNSC) in December 2001 by Resolution 1386, as envisaged by the Bonn Agreement. See: The United Nations, United Nations Security Council resolution 1386, adopted unanimously on 20 December 2001

[48] The Avolon Project, (Oct. 7, 2001), "Letter Dated 7 October 2001 from [John D. Negroponte] the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council", Yale Law School, Lilian Goldman law Libreary, Documents in Law, History and Diplomacy, accessed August 16, 2016, at: http://avalon.law.yale.edu/sept11/un_006.asp

[49] See for example: Sikander Ahmed Shah, (2010), "War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of U.S. Drone Attacks in Pakistan", 9 Wash. U. Global Stud. L. Rev. 77, accessed August 15, 2016 at: http://openscholarship.wustl.edu/law_globalstudies/vol9/iss1/4

[50] NATO Press Release (2001) 124, Statement by the North Atlantic Council (12 September 2001) 40 *ILM* 1267

[51] Although the Council members did not explicitly characterize the 9/11 attacks as 'armed attacks' (but rather as a threat to international peace and security in terms of Article 39), the confirmation of the right of self-defense in this particular resolution could only mean that they considered that terrorist attacks constituted armed attacks

for the purposes of Article 51 of the UN Charter. See more in: Christopher Greenwood, (2006) 409-32

[52] ICRC, “Treaties, States Parties and Commentaries”, accessed at: https://ihl-databases.icrc.org/ihl/INTRO/195

[53] The International Committee of the Red Cross, (January, 01, 2014), “The Geneva Conventions of 1949 and their Additional Protocols”, accessed August 15, 2016 at: https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols

[54] The International Committee of the Red Cross, (March, 2005), “Customary Law”, Vol 87, No 857, accessed August 15, 2016, at: https://www.icrc.org/eng/assets/files/other/icrc_002_0860.pdf

[55] The study of the Customry International law that have been conducted by the ICRC have identified that even though Additional Protocol I, has been ratified by more than 160 States, its efficacy today is limited because several States that have been involved in international armed conflicts are not party to it. Similarly, while nearly 160 States have ratified Additional Protocol II, several States in which non-international armed conflicts are taking place have not done so. In these non-international armed conflicts, common Article 3 of the four Geneva Conventions often remains the only applicable humanitarian treaty provision. Treaty law does not regulate in sufficient detail a large proportion of today’s armed conflicts, that is non-international armed conflicts, because these conflicts are subject to far fewer treaty rules than are international conflicts. Only a limited number of treaties apply to nonintentional armed conflicts, namely the Convention on Certain Conventional Weapons as amended, the Statute of the International Criminal Court, the Ottawa Convention on the Prohibition of Anti-personnel Mines, the Chemical Weapons Convention, the Hague Convention for the Protection of Cultural Property and its Second Protocol and, as already mentioned, Additional Protocol II and Article 3 common to the four Geneva Conventions. While common Article 3 is of fundamental importance, it only provides a rudimentary framework of minimum standards. Additional Protocol II usefully supplements common Article 3, but it is still less detailed than the rules governing international armed conflicts in the Geneva Conventions and Additional Protocol I. See all in: The International Committee of the Red Cross, (March, 2005),

[56] The principle of distinction is customary law principle, reflected in Article 48 of Additional Protocol I, requires parties to “. See: Protocol I Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 Dec. 1977, entered into force 7 Dec. 1978

[57] Article 52 of Additional Protocol I to the Geneva Conventions provides a widely accepted definition of military objective: "In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage" See: Protocol I Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 Dec. 1977, entered into force 7 Dec. 1978

[58] Article 51 of the Additional Protocol I Additional to the 1949 Geneva Conventions

[59] Article 57 of the Additional Protocol I Additional to the 1949 Geneva Conventions

[60] Article 3 to the Geneva Conventions; Article 75 of the Additional Protocl and Article 4 of the Aditional Protocol II to the 1949 Geneva Conventions

[61] The University Centre for International Humanitarian Law, (September 1-5, 2005), "Expert meeting on the right to life in armed conflicts and situations of occupation", accessed August 25, 2016 at: http://www.geneva-academy.ch/docs/expert-meetings/2005/3rapport_droit_vie.pdf

[62] Ibid

[63] Ibid