

# **TERRORISM AS AN OFFENCE IN INTERNATIONAL AND EUROPEAN UNION LAW**

Erdem SEVDİM\*

## **ABSTRACT**

Terrorism has become an international problem which international community has spent much effort to solve it and to reduce its effect on people. Under the umbrella of the United Nations, many conventions and resolutions have been adopted in international area. At regional level, European Union has taken a great deal of measures to handle this serious problem too. In addition, individual countries such as the United States and England etc., which have suffered intensively terrorist attacks, took strict measures to terminate this bloody trouble. Even though both at international or at regional level and individual countries have taken lots of measures, terrorism is still a big problem that must be tackled.

There are many reasons for terrorism such as poverty, self -determination right, violation of international law and religious incentives. In order to combat terrorism effectively, firstly international community must terminate reasons for terrorism. For example, if poverty is a possible reason for terrorism, international communities should give assistance the relevant country both technically and financially to eliminate poverty.

After being diagnosed reasons for terrorism, comprehensive, consistent and coherent definition of terrorism may give an enormous impetus in the way of struggling against terrorism. Looked at international conventions, we understand that there is no a concrete definition which is accepted commonly by countries, which give rise to hesitation and distrust between states.

All above, human rights are the other issues upon which should be touched. Some states take so strict measures, which goes beyond necessity. These kinds of measures led to violation of human rights. Thus, the balance between combating against terrorism and human rights must be protected under decisions of the European Court of Human Rights.

---

\* Judge and working in the European Court of Human Rights at the moment as a Rapporteur

In this study, we tried to examine terrorism in terms of its reasons, definition of it, measures taken by international level and European community and human rights. We finished our study, evaluating international and European law concerning terrorism and measures adopted by them in the conclusion.

**Keywords:** Terrorism, Definition of Terrorism, Reasons of Terrorism, Measures in International and EU Law, International Legal Frameworks, EU Legal Framework, EU Arrest Warrant, Human Rights, the European Court of Human rights, the Patriot Act.

### ÖZET

Terörizm uluslararası toplumun uzun yıllar üzerinde düşündüğü ve çözüm bulmak için caba sarf ettiği uluslararası bir sorun olmuştur. Birleşmiş Milletler şemsiyesi altında birçok sözleşme ve kararlar bu alanda Kabul edilmiştir. Bölgesel seviyede, örneğin Avrupa Birliği gibi, sorunu ortadan kaldırmak veya azaltabilmek için tedbir alınmış ve alınmaktadır. Ayrıca bireysel anlamda ülkeler, Türkiye, Amerika ve İngiltere gibi, yoğun terör saldırılarına maruz kaldıklarından sorunu çözmek için ciddi mücadele etmektedirler.

Gerek uluslararası ve bölgesel ve gerekse bireysel anlamda ülkeler terörle mücadelede ciddi tedbirler almalarına rağmen, ne yazık ki terör, hala yüzyılın en büyük sorunlarından biri olarak yerini korumaktadır.

Teröre neden olan birçok sebepler bulunmaktadır. Fakirlik, halkların kendi geleceğini kendilerinin belirlemesi hakkı, uluslararası hukukun ihlal edilmesi ve aşırı dini eğilimler terörizme yol açan nedenlerden bir kaçıdır. Terörizmle etkin bir şekilde mücadele edebilmek için ilk olarak uluslararası toplum, terörizme yol açan bu ve benzeri nedenleri tespit edip ortadan kaldırmak zorundadır. Bu anlamda, örneğin, fakirliğin teröre neden olduğu zeminlerde bu sorunu ortadan kaldırmak için çalışmalar yapılmalıdır.

Terörün nedenleri tespit edildikten sonra kapsamlı, tutarlı ve herkesin üzerinde ittifak ettiği bir terör tanımının yapılması gerekmektedir. Herkes tarafından benimsenen ortak bir terör tanımının varlığı bu sorunla mücadeleye ciddi ivme kazandıracaktır. Ancak uluslararası toplum tarafından Kabul edilen sözleşme metinlerine bakıldığında ortak bir tanımın yokluğu dikkati çekmektedir. Bu durum uluslararası alanda terörle mücadelede tereddütler hâsıl etmektedir.

Tüm bunların yanında, insan hakları, terörle mücadelede üzerinde durulması gereken bir başka konudur. Bazı ülkeler bu sorunla mücadele etmek için gerekli olan oranın ötesinde sert tedbirler almaktadırlar. Bu tür önlemler aynı zamanda insan hakları ihlallerinin meydana gelmesine neden olmaktadır. Bu çerçevede terörle mücadele

ederken insan haklarına gerekli saygının gösterilmesi ve adil bir denge kurulması adaletin gereğidir. Bu hususa, Avrupa İnsan Hakları Mahkemesi tarafından verilen kararlarda da vurgu yapılmaktadır.

Uluslararası hukuk ve Avrupa Birliği hukukunda terörizm başlıklı çalışmada konu ile ilgili olarak terörizmin sebepleri, tanımı ve gerek uluslararası alanda ve gerekse Avrupa Birliği çatısı altında alınan tedbirler ve son olarak terörizmle mücadelede insan haklarının gözetilmesi anlamında terörizm ve insan hakları konusu irdelenmeye çalışılmıştır.

**Anahtar Kelimeler:** Terörizm, Terörizmin Tanımı, Terörizmin Nedenleri, Uluslararası Alanda ve Avrupa Birliğinde Alınan Tedbirler, Uluslararası Yasal Metinler, Avrupa Birliği Hukukunda Yasal metinler, Avrupa Tutuklama Müzekkeresi, İnsan Hakları, İnsan Hakları Mahkemesi, Vatansızlık Yasası.

## INTRODUCTION

Terrorism has been a big problem for the entire world for a long time. It has affected not only individual countries, but also international society. Terrorist activities have increased within the last decades. If we just look at 2010 statistics, we see that over 11500 terrorist attacks were carried out by various terror organizations in 72 countries. While the numbers of the killed persons are 13200, the numbers of injured persons are 36800. In total there were 50.000 victims of terrorism<sup>1</sup>. Many countries such as Turkey, the USA, and Spain have fought against it. They have spent much money to prevent this sort of illegal activity from emerging but they have not been able to achieve their goal: terrorist acts have continued to take the lives of thousands of people and broken the peace and security of their societies<sup>2</sup>.

The perception of terrorism changes from country to country. In general we can say that terrorism is understood in two ways. One of them is an activity that an individual takes against a state, and the other is an activity which a state takes against individuals. During the 20th Century, terrorism had become an offence that gained an international dimension. Along with an international dimension, international law dealt with this problem.

---

<sup>1</sup> 2010 Report on Terrorism, 2011, 5.

<sup>2</sup> Michael, 326.

Especially after World War II, terrorism obtained an impetus with conflict between states in the international area.

New states, which emerged after the decolonization period, were not ready for the new conditions and problems of statehood. In addition, in the 1960s, borders which were arbitrarily determined by colonist powers gave rise to conflicts among the minorities within them. Terrorist activities were used to take more ground to redraw those arbitrary boundaries.

Intensive political violence happened such as the Vietnam War, the killings of John F. Kennedy, Che Guevara and Martin Luther King Jr. etc. Also, some organizations changed their methods from conventional military assaults to terrorist attacks, as exemplified by the Arab/Israeli conflict in Palestine. A new era of terror was born, leading to the invasion of the 1972 Munich Olympic Games. In the 1980s, Soviet diplomats were abducted to the Middle East. As a consequence, the United Nation started to take stricter measures than it was before<sup>3</sup>.

194 However, savagery and scope of terrorism were not clearly and completely understood until the September 11 attack in 2001 against USA. This attack had a significant effect on all the Whole Countries because all people in the world were shocked by this attack. According to some statistics, in the September 11 attack citizens of over 80 countries were murdered. This hateful attack demonstrated that terror is not only a domestic problem but also an international problem that should be solved<sup>4</sup>.

Even though some countries have individually struggled against terrorism for many years, terrorism has neither been reduced nor terminated, but rather it has shifted its shape and increased its effect on the countries. As a result, it has been sufficiently understood that cooperation between states and international organizations is of vital necessity in order to take effective measures against terrorism. Domestic laws must be supported by international legislations to handle crimes of terrorism on an international level in the future<sup>5</sup>.

---

<sup>3</sup> Saracli, 6-7.

<sup>4</sup> A. Newton, 326.

<sup>5</sup> Banchik,2. (<http://www.peacestudiesjournal.org.uk>).

When we look at the topic of terrorism at the European level, it will be seen that the 9/11 Attack not only had an impact on the international area but also at the European level. After this event, the European Council immediately adopted an Action Plan on Combating Terrorism. Before this event, Europe already had experienced terrorist acts. For instances, in Western Europe in the 1960s and 1970s, such as the killing of the 11 Israeli athletes in 1972, the conflicts in the Basque country, Northern Ireland and the West German Red Army Faction attacks in Italy between 1970 and 1977 were issues that led to much concern. In addition, the attack on the Madrid railway system, which was intended to impact the election to be held three years later on 11 March 2004, killing 191 people and wounding approximately 2000 people, and the attacks on the London public transport system by suicide bomber, killing 50 people and wounding nearly 700 persons were other events that gave rise to an effective measures being taken against terrorism in European level<sup>6</sup>.

We will examine terrorism in the international and European Union law in this study.

The study consists of five chapters.

In the first chapter, we give an introduction and information on the reasons behind terrorism.

In the second, we focused on terrorism in international law, examined the international frameworks on, and definition of it and certain measures adopted by the international community.

In the third chapter, we examined terrorism in European Union law, focused on legal framework, definition of it in European Union Law and measures adopted by EU. We touched upon decision of the European Court of Justice on Kadi Cases.

In the fourth chapter, we shed light on implementation of terrorism acts within domestic law by giving decisions of the European Court of Human Rights about some member states of European Union. Also, we gave some

---

<sup>6</sup> McCormick, 405-407.

information on the Patriot Act, which the United State adopted after the September 11 attack. In this chapter, we highlighted the importance of human rights while combating terrorism.

In the last chapter, we concluded the study, by evaluating all chapters.

## **I. POSSIBLE REASONS FOR TERRORISM**

Reasons for terrorism are quite complicated. Sometimes it is very hard to determine exactly which reasons give rise to terrorism. In other words, while there may be no concrete evidence and exact criteria to grasp the causes of terrorism. We can identify some of the many. The occupation of a country by another state as the violation of the international law, poverty, religious issues and self-determination right etc. can be possible reasons for terrorist movements. We will talk about a few of them in this chapter.

Poverty as a reason for terrorism is a debatable issue. While there may be no direct connection between poverty and terrorism, we can say that if people living in a poor country think that cause of their poverty is a foreign country acting in a global world process, and that they are a victim of this global process, then they may attempt terrorist attacks to gain their share of that global process<sup>7</sup>. On the other hand, some people think that there is a direct connection between poverty and terrorism because people do not find enough daily food to live in some parts of the world. Even if there is sufficient food all over the world, some people live a good standard of living and obtain food easily, others cannot. That is to say, world resources are not shared equitably between countries and also among people within a country. This situation gives direct rise to conflicts and leads to terrorist attacks. If people have clean water, sufficient food and equal living conditions, terrorism may be reduced<sup>8</sup>. In other words, poor people who think that the reason for their poverty is a rich country which exploited their natural resources without permission may resort terrorist acts to regain their rights to the wealth of their own land. One of the strategies adopted by the United Nations General Assembly in resolution (60/28) is to eradicate poverty.

---

<sup>7</sup> Imre-Mooney-Benjamin, 9-10.

<sup>8</sup> Imre- Mooney- Clarke, p.9-12.

Even if there is no direct connection between poverty and terrorism, the indirect connection cannot be ignored.

Uses of the military force against terror organizations rather than negotiating with them cause, instead of reduction, the escalation of terrorism. Today, negotiation with terrorist organizations is seen as a weakness by many political leaders and also by some of the general public. In this field, I would like to give an example relating Turkey.

As it is known, Turkey has had a problem with terrorism since the 1980s. At the beginning, Turkish political and military authorities used military options against terrorism. They did not sit around the table to find out what the terrorist groups wanted and why they were breaking the peace of Turkey so that they could negotiate a settlement satisfactory to both sides. Instead, military options were chosen for over two decades. But nothing changed. On the contrary, the terrorist attacks continued. Since the 2000s, it has been understood that negotiation can be an important mean to bring terrorism under control. This method has been more successful than former.

The second example in this field is the position of groups that have ethnical and cultural differences from those in the mainstream of a country. They may require various rights from the relevant government such as freedom of expression, freedom of religion and freedom to speak their mother language. If the relevant government does not negotiate these requests with minority groups, then the minorities resort to terror acts in an attempt to change the government's attitude. For example, Kurdish people, who have a different language and different cultural traditions from the remainder of the country, had some demands of the Turkish government. The freedom to use their mother language and the right to education in that language were two of them. But the authorities did not grant these freedoms and did not even negotiate with representatives of the Kurdish people. Instead, it implemented a very coercive regime against them. Thus, some of the Kurdish people began to support an illegal terror organization, i.e. PKK, which stated that one of its objectives was to regain the rights of the Kurdish people.

However since 2002, the Turkish government has changed its attitude and has tried to understand what the Kurdish people are asking for, has negotiated with their representatives, and has given to them many of the freedoms they demanded. As a result, today the majority of the Kurdish people have ceased to support the PKK. I think this is a good example of how important negotiation can be and what an effective way for the struggling against terrorism.

The violation of international law is also another reason for terrorism. Illegal occupation of a country by another country gives rise to tensions between the occupying states and the local population. If illegal invasion is not precluded with international rules of law, the local population will resort to terror acts as a legitimate defense. Thus, the laws of all states should be aligned with international laws, which consist of mainly the customary law and treaty law<sup>9</sup>.

The occupier kills many people and they attack to civilian population. The occupation soldiers rape sinless women and kill children without reasons. It is a total breach of international human rights. In retaliation, the local population, by using guerilla tactics, tries to revenge the war crimes of the occupation forces. Sometimes these local groups retaliate, attacking the lands of their attackers, killing more innocent people<sup>10</sup>.

Self-determination rights may be another reason for the terrorist acts. Some non-state actors apply for terrorist activities to obtain self-determination right. The protocol additional to the Geneva Conventions of 12 August 1949 was adopted at the Diplomatic Conference of 1974 -1977. According to the protocol, the right of the self-determination was accepted as an arm of conflict. It states that “armed conflict in which people are fighting against colonial domination, alien occupation or racist regime are to be considered as an international conflict”. Many member states of the Geneva Convention of 1949 claim that this protocol legitimates guerilla warfare and terrorism. Even so, it does not permit terror attacks. Both the Geneva

---

<sup>9</sup> *ibid*, 32.

<sup>10</sup> *Ibid* 34.



Convention and the protocol addition to it forbid attacks to civilians. In spite of this rule, this principle has been violated many times and many attacks have been made on civilians and civil institutions<sup>11</sup>.

Last but not least, religious incentives may be possible reasons for terrorism. However, I would like to underline that the religion itself cannot be a possible reason. For example, if we examine three main religions, Judaism, Christianity and Islam, and their holy books, the Torah, the holy Bible and the holy Quran respectively, there is no provision that permits their followers to kill innocent Civilians even if there is a religious motivation. I would like to mention about the holy Quran's provision on the killing of an innocent person. According to Surah al-Maidah, in the 32nd verse of al-Maidah, it is highlighted that whoever kills an innocent person is deemed as if he kills all human beings and whoever saves an innocent person from the death is deemed as if he saves all human beings. As it is understood from the verse of al-Maidah, it forbids people from killing a person; furthermore it promotes people to save persons from death. Nothing can be a justification to kill civilian population and destroy civil institutions under the holy Quran.

However I have to accept that today many persons or organizations misunderstand provisions of the holy Quran, or they abuse them to achieve their own interests. In addition, sometimes, some intelligence agents of countries use religious persons to attack the civilian population to achieve political aims, giving them pills that cause people to loss their mental capacity. In reality, behind terrorist attacks that appear to be religiously motivated lie personal, political, economic and military interests. In other words, persons or states use religion to further their own interests. Given these reasons, "Islamic terror" that some writers<sup>12</sup> use wrongly is not good title to explain reasons for terrorism because Islam and terrorism cannot come side by side just as Christianity or Judaism and the terrorism will not come side by side.

---

<sup>11</sup> Imre- Mooney- Clarke,33-34.

<sup>12</sup> See Ibid, 28; McCormick, 406.

For instance, the most current event that shocked people all over the world was materialized by Anders Behring Breivik on July 22, 2011, killing 77 people and wounding 151 in a bombing and shooting rampage in Oslo and on Utoya Island. During his trial on terror and murder charges he introduced himself as a representative of the Norwegian and European anticommunist and anti-Islamic resistance movement<sup>13</sup>. He testified that he tried to save Norwegian people from Islamic immigration<sup>14</sup>. He was described as a Christian fundamentalist<sup>15</sup>. He may have committed terrorist acts against innocent people with religious motivation but we cannot claim that the Christianity permits this kind of act and we cannot call it “Christian terror” because the Christianity and terrorism cannot come side by side.

There are also many reasons for terrorism but it is not possible to mention all of them because it exceeds the scope of this study. Thus, we would like to finish this chapter here.

## II. TERRORISM IN INTERNATIONAL LAW

### A. International Legal Frameworks

Because international regulations are reactionary and addressing to specific events, there has been little commonly consistent and coherent definition addressing all the aspects of the phenomenon. There exists no definition of terrorism that includes all principles, obligations and measures which shall be taken by states in the international area. Especially since 9/11 attack, the impact and effect of terror acts have encouraged states to take measures against terrorism<sup>16</sup>. The lack of a coordinated approach has led to the fragmentation of individual conventions. Consequently, the existing efforts address specific fields such as ensuring the safety of civil aviation, the protection of diplomatic personnel and their spouses and the financing of terrorism. In the academic field, this is known as the “thematic approach”. Only the 1976 European Convention on Suppression of Terrorism went beyond the thematic approach. However while it did list

---

<sup>13</sup> See <https://attackonthelaborparty.wordpress.com/2012/04/17/breivik-testimony-april-17-2012>.

<sup>14</sup> See <http://loyalopposition.blogs.nytimes.com/2012/04/16/anders-breivik>.

<sup>15</sup> See [http://en.wikipedia.org/wiki/Anders\\_Behring\\_Breivik#Religious\\_and\\_political\\_views](http://en.wikipedia.org/wiki/Anders_Behring_Breivik#Religious_and_political_views).

<sup>16</sup> Illias-Susan, 196.

the related international treaties, it did not define the word “terrorism”<sup>17</sup>.

The initial attempt at a generally comprehensive and coherent definition was the 1937 Convention for the Prevention and Punishment of Terrorism, which consisted of 29 articles. This Convention emphasized one more time the international principle that a state has the obligation to abstain from acts that encourage terrorist activities directed against another state<sup>18</sup>. For the first time, the 1937 Convention gave us a definition of “terrorism” that goes beyond the thematic approach. Article 2<sup>nd</sup> of the Convention defined terrorist acts. It addressed offences against heads of state and their spouses, public officers and members of the public, as well as public property allocated for public purpose. In the Article 1<sup>st</sup> “terrorism” was defined as “terrorist crimes”<sup>19</sup>.

Articles 2 and 3 subjected suspected perpetrators to extradition from the site of their capture to the country where the crime was committed. Prior to this convention, terrorists would be prosecuted in their national countries as if the crimes had been committed there<sup>20</sup>.

Secondly, with a view to create a venue for the prosecution of terrorism, the 1937 Convention proposed creation of an international criminal court.

Unfortunately these efforts did not enter into force because they were not ratified by the required number of states<sup>21</sup>.

By 2012, following many international conventions had been adopted<sup>22</sup>:

#### 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft in 1963.

---

<sup>17</sup> Ibid, 196-197.

<sup>18</sup> Article 1 of the 1937 Convention for the Prevention and Punishment of Terrorism (Yonah-Marjorie-Allan, 20.)

<sup>19</sup> Article 2 of the 1937 Convention for the Prevention and Punishment of Terrorism (Yonah-Marjorie-Allan, 21.)

<sup>20</sup> Article 8-9 of the 1937 Convention for the Prevention and Punishment of Terrorism (Yonah- Marjorie-Allan, 22-23.)

<sup>21</sup> Yonah-Marjorie-Allan, 31.

<sup>22</sup> See<http://www.un.org/terrorism/instruments.shtml>.

2. Convention for the Suppression of Unlawful Seizure of Aircraft in 1970.
3. Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation in 1971.
4. Convention on the prevention and Punishment of Crimes Against Internationally Protected persons including Diplomatic agents in 1973.
5. International Convention Against the Taking of Hostages in 1979.
6. Convention on the Physical Protection of Nuclear Material in 1980.
7. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation in 1988.
8. Convention on the Marking of Plastic Explosives for the Purpose of Detection in 1991.
9. International Convention for the Suppression of Terrorist Bombings in 1997.
10. International Convention for the Suppression of Financing of Terrorism in 1999.
11. Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation in 1988.
12. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf in 1988.
13. Protocol to Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf in 2005.
14. Protocol Of 2005 To The Convention For The Suppression Of Unlawful Acts Against The Safety Of Maritime Navigation.
15. International for the Suppression of Acts of Nuclear Terrorism in 2005.
16. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation in 2010.
17. Protocol Supplementary to the Convention For the Suppression Of Unlawful Seizure Of Aircraft in 2010.

At the same time, except for various sectorial and regional conventions, there have been many resolutions adopted by both the United Nations General Assembly and Security Council. In particular these are:

1. Resolution 1368, adopted by the Security Council after the 11 September 2001 USA terrorist attacks, and
2. Resolution 1566 by the Security Council,
3. Resolution 2008 adopted by the General Assembly,
4. Resolution 2010 adopted by the General Assembly,
5. Resolution 2006 adopted by the General Assembly,
6. General Assembly resolution 49/60 of 9 December 1994 and
7. 2010 United Nations Global Counter-Terrorism Strategy by the General Assembly.

In these resolutions, the United Nation has attempted to determine strategies and measures to be taken for struggling with terrorism

## **B. The Definition of Terrorism**

We have mentioned at the beginning of this topic that there is no common definition of terrorism because terrorism has so many and various aspects. The perception of terrorism changes from one country to another. As one country accepts that acts of self-determination are legitimate rights of the local population under their control, another country can claim that the same action is terrorism. On the other hand, there are questions of: what terrorism is and what kind of acts can be qualified as terrorism; or against whom it is committed: or is it committed against only a state? Or can civil population be the aim of terrorist attacks? Those questions are not easy to find a suitable answer and it is just as hard as to agree upon them. Thus, there currently exists no clear and comprehensive definition. Also, in a domestic area, each institution gives the term “terrorism” a different meaning. Therefore, reaching to a common definition is quite difficult by all states.

There are many reasons for the ambiguity in the definition of terrorism. One is the “right of self-determination”, which is the general international law principle, and means that every nation has right to independence and can strive to gain that objective. For this reason, self-determination activities should be separated from terrorist acts. This right is accepted in many international conventions. Nations under colonial control have the right to fight for sovereignty. However, invading/colonizing states, thereby violating international law, do not want terrorism to be defined clearly and unambiguously<sup>23</sup>. In other words, some states do not want to exempt violence by any groups or organizations, even those groups acting with legitimate motives. However we have to underline what the United Nation adopted in many resolutions, that a legitimate purpose cannot justify a terrorist attack<sup>24</sup>.

For example, in the resolution adopted by the General Assembly in 2010, the United Nations condemns terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, because terrorism constitutes one of the most serious threats to international peace and security. In addition, in Resolution (1566) adopted by the Security Council in 2004, it is highlighted that “*terrorism are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature*<sup>25</sup>.”

Terrorism definition ambiguity also lies in the relationship of some states with terrorism itself. Some states make contact with terrorist groups to undermine a third state and weaken its administration. States adopting this approach are not keen to define terrorism<sup>26</sup>. There may be many more reasons for ambiguity on the definition of terrorism. We cannot mention them all, but we think these are enough to illustrate why we do not have a common definition. Every state takes its own position and has its own interest on terrorism and these positions differentiate one state from another.

---

<sup>23</sup> Saracli, 17-18

<sup>24</sup> Imre- Mooney- Clarke, 27.

<sup>25</sup> The Security Council Resolution 1566 (2004).

<sup>26</sup> Saracli, 18.

When taking into consideration these realities, we have to look at international and regional conventions or documents, which have been adopted by various international organizations to determine the meaning of the word.

Terrorism was defined, for the first time, in the 1937 Convention for the Prevention and Punishment of Terrorism, which did not put into force at all. According to Article 1/II of the relevant convention, terrorist acts are described as<sup>27</sup>:

“Acts of terrorism means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or the general public<sup>28</sup>.”

It is understood that the 1937 Convention restricted terrorism by addressing only acts committed against a state. For this reason, international writers have criticized this definition as it is too weak to include all terrorist acts in a certain way<sup>29</sup> and the definition does not precisely separate terrorist acts from other common crimes<sup>30</sup>. Thus, many countries did not want to ratify this convention<sup>31</sup>.

The second terrorism defining Convention we would like to discuss is the 1999 International Convention for the Suppression of the Financing of Terrorism within which terrorist acts are those that are:

“... intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act<sup>32</sup>”

---

<sup>27</sup> Galicki, 746.

<sup>28</sup> Yonah-Marjorie-Allan, 20-21.

<sup>29</sup> Wybo, 119.

<sup>30</sup> Illias-Susan, 195.

<sup>31</sup> Galicki, 747.

<sup>32</sup> Article 2/1-b of International Convention for the Suppression of the Financing of Terrorism in 1999.

On a regional level, there are a few conventions that define terrorism. One of them is the 1999 OIC Convention to Combat Terrorism adopted by the Organization of Islamic Cooperation. This Convention defines terrorism in the following sentences:

“Terrorism means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent states<sup>33</sup>”

It is said in the same convention that;

“Terror crimes means any crime executed, started or participated in to realize a terrorist objective in any of the contracting states or against its nationals, assets or interests or foreign facilities and nationals residing in its territory punishable by its internal law<sup>34</sup>”

Another terrorism definition, at the regional level, is given in the Organization of African Unity’s Convention on the Prevention and Combating of Terrorism adopted by OAU. This convention defines terrorism as:

“Terrorist act” means:

“(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

---

<sup>33</sup> Article 1/2 of the 1999 OIC Convention to Combat Terrorism.

<sup>34</sup> Article 1/3 of the 1999 OIC Convention to Combat Terrorism.



“(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

“(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

“(iii) create general insurrection in a State.

“(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to(iii)<sup>35</sup>“

The last regional Convention we would like to mention here is the Arab Convention on Terrorism. Terror is to be defined in this convention as following:

“Terrorism;

“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources<sup>36</sup>“

If we examine to definitions given in both regional and international conventions, some common elements of terrorism could be extracted as following<sup>37</sup>:

1. Violent act: violence must be against persons and properties. Terrorist acts can include murders, injury, and torture on the one hand, abducting of vessels and aircraft on the other hand.

---

<sup>35</sup> Article 1/3 of the OAU Convention on the Prevention and Combating of Terrorism.

<sup>36</sup> Article 1/2 of the Arab Convention on Terrorism.

<sup>37</sup> Oktem, 8-10; Duffy, 32-35.

2. Act should be materialized simultaneously and in a way that is designed perfectly and deliberately, for a certain aim, in the frame of a plan.

3. The objective of creating fear within people is a typical element of terrorism. Victims of terrorism are not the objective of the terrorist. The objective is not to terminate the person, who is chosen as a victim by the terrorist but to create fear among groups to which the victim belongs.

“The most essential aspect of terrorism undoubtedly is that by its indiscriminate nature it rouses general fear and terror. Each terrorist act is a message by itself, saying to us, your children can be the next victim”<sup>38</sup>

4. The main incentive behind the objective is to gain a preference from a government or to exert various bodies or institutions to treat in a certain way or, at least, to be respectful of, their opinions. From this point of view, terrorist acts can be separated from ordinary criminal activities.

5. Terrorism embodies an international characteristic today. It is a reality that the world is a global village. The cause and effect of terrorist activities cannot stay in a state. In other words, terrorist acts have a cross-border effect. It is to be seen that many terrorist organizations have been receiving military, political or psychological support from some states. Even if it is not political support, in order to procure weapons for terrorist attacks, terrorists make a contact with international arms merchants.

We need to define when terror crimes have an “international character”. In order to qualify as “international”, terror acts must involve more than one country, be directed against an internationally protected target, or break an international rule.

Firstly, if the attackers and victims are nationals of differing countries, or their conduct is partly or completely carried out in a foreign state, or in more than one state, it means that the act has an international element<sup>39</sup>.

Secondly, if non-combatant populations, international diplomats or

---

<sup>38</sup> Wybo, 119.

<sup>39</sup> Bassiouni-Nijhoff, 710.

officers, or international civil aviation or international civil maritime navigation installations etc. are targeted by terrorists, then it means that an act of terrorism has been directed against an internationally protected objective<sup>40</sup>. Finally, the following acts are deemed as internationally proscribed conduct and international terror offences

“ 1. *Aggression*

2. *War crimes*

3. *Crimes against humanity*

4. *Genocide*

5. *Apartheid*

6. *Unlawful human experimentation*

7. *Torture*

8. *Slavery and slave-related practice*

9. *Piracy, and unlawful acts against the safety of maritime navigation*

10. *Hijacking and sabotage of aircraft, and acts of violence at airports*

11. *Kidnapping of diplomats and other internationally protected persons*

12. *Taking civilian hostages*

13. *Serious environmental damage*

14. *Serious violation of fundamental human rights*”<sup>41</sup>.

### **C. Measures in International Law**

As we mentioned before, many conventions have been signed at the international area on both sectorial and regional bases. In addition, the United Nations General Assembly and Security Council adopted resolutions to indicate the implementation of international conventions, and to identify methods to combat terrorism. However when we look at domestic law, we see that law enforcement organs and courts are ready

---

<sup>40</sup> Ibid, 710.

<sup>41</sup> Ibid, 711.

to fight with terror. If someone commits a terrorist crime in a domestic area, the jurisdictional court has power to try the suspected perpetrator and the law enforcement agencies have power to implement decisions of the courts. On the contrary, there are no international courts and there are no international law enforcement agencies at international level.

Thus, it is very important to determine which measures can be taken, how they are to be implemented, and, most importantly, how we can effectively struggle with terrorism and respond to it at international level. In order to figure out the answer to these questions, I would like to discuss the current resolutions adopted by both the General Assembly and the Security Council, showing the measures they have taken and the strategies which have been adopted by them.

As mentioned above, International Legal Framework, on 9 December 1994, The General Assembly adopted Resolution 49/60. Many measures were adopted in this resolution. Then, in 2006, an even more comprehensive step was taken in the adoption of Resolution 60/28. Resolution 60/28 included all measures in resolution 49/60, added additional measures and also adopted, for the first time, a plan of action. When we examine Resolution 60/288, we see that measures are listed in four pillars. These pillars are as follow:

- Measures to address the conditions conducive to the spread of terrorism;
- Measures to prevent and combat terrorism;
- Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard;
- Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism<sup>42</sup>.

We can say in general that the resolution provides for political, judicial, economic and social measures and poses many obligations to the member states.

---

<sup>42</sup> The Report on The United Nations Global Counter-Terrorism Strategy by the General Assembly on 17 June 2010.

## **1) Measures to Address the Conditions Conducive to the Spread of Terrorism**

We think about that the objective of these measures is to take proactive measures. Today, it is understood that struggle against terrorism is not only to catch terrorists and to bring them before court but also to eliminate reasons that cause to terrorism. Resolution 60/288 highlights this reality in its content. Nothing can be justification for terrorism. For example, lack of the rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance cannot excuse or justify terrorism, on the one hand, as the resolution states these conditions, it also determines reasons of terrorism on the other hand because all these conditions contribute the emerging of terrorism in a country. Taking into consideration of the scope of this study, we would like to underline measure we think they are important.

If cultures, religions and civilizations start to close each other and the distance between them is reduced, people can solve their problems by negotiating in a peaceful way. Dialogue, tolerance and understanding among civilizations, cultures, peoples and religions will contribute to world peace by making them be closer to each other and it would be the strongest solution to eliminate terrorism.

Resolution 60/288 also underlines these realities and states that Member States should have obligations:

- “to promote dialogue, tolerance and understanding among civilizations, cultures, peoples and religious
- “to promote mutual respect for, and prevent the defamation of, religious, religious values, beliefs and cultures<sup>43</sup>”

## **2) Measures to Prevent and Combat Terrorism**

The second category of measures is steps to preclude and to combat against terrorism. We will touch upon a few measures, which are very important to

---

<sup>43</sup> Resolution 60/28 of 20 September 2006.

combat terrorism in this section. Member states have obligations to ensure that they do not permit the use of their territories for terrorist activities, and do take appropriate precautions to prevent such activities. The resolution highlights the importance of this measure saying that:

“ We resolve to undertake the following measures....

To take appropriate practical measures to ensure that our respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other states or their citizens”

This is very important because terrorists need a place where they install their headquarters and live in a safe way. If states don't allow terrorists to use their territories, they cannot organize their plan and can be caught by the relevant authority easily. However, today some countries allow terrorists to use their territories as a base or shelter. For example, Iran, Iraq and Syria, which are neighbors to Turkey, give PKK terrorist organization the opportunity to accommodate in their own territory. Thus, terrorists enter Turkey, by crossing Iranian, Iraqi and Syrian borders, to attack both civilians and military personnel, and retreat to their safe heaven. Under these circumstances, terrorism cannot be eliminated.

In addition, Resolution stipulates that Member States should take sufficient steps to improve international cooperation among themselves. As it was known that an international enforcement authority doesn't exist. International cooperation can contribute to fighting against terrorism and it is vital in order to both reach the objective determined in the resolution and also to implement the measures to be taken. The more enthusiastic member states work to advance cooperation among themselves.

As it is understood from the content of Resolution, some measures are related to the extradition and prosecution of suspected perpetrators and to the punishment of convicted perpetrators other than to the prevention of the acts themselves. In this area, all member states have obligations to accept terrorism as a crime, mandating an effective punishment. They must ensure an efficient investigation able to caught terrorists within the shortest

time. If the perpetrator is in their territory, they must extradite him to the requesting state upon request. Not only perpetrators but also any person who supports, facilitates, participates or attempts to participate in terrorist acts or the financing of terror acts must be prosecuted and punished on time. In this situation, mutual judicial assistance and cooperation between law enforcement agencies is very important. If states want to achieve results in fighting terrorism, within the scope of mutual legal assistance, they must cooperate on the judicial issues such as

- the exchange of information,
- the extradition of perpetrators of terror,
- the recognizing of decisions given by foreign courts,
- the appearance of witnesses, experts and prosecuted persons,
- cooperation between law enforcement agencies,
- production of records of judicial verdicts and
- rogatory letters<sup>44</sup> etc.

The measures provided for in the United Nations' General Assembly's resolutions are proactive, instead of reactive, law enforcement. "... *the proactive law enforcement emphasizes preventing and interrupting crime rather than reacting to crimes already committed*<sup>45</sup>." One of examples showing that international community adopted the proactive law enforcement is provision in Resolution 60/28 which provides that member states have an obligation "*to refrain from organizing, instigating, facilitating, participating in, financing, encouraging or tolerating terrorist activities and to take appropriate practical measures to ensure that our respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens.*" In addition, Resolution 1373 adopted by the Security Council foresees another proactive approach, saying *that all states shall:*

---

<sup>44</sup> Wybo, 166.

<sup>45</sup> Laborde, 10.

- a) *prevent and suppress the financing of terrorist acts;*
- b) *refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of member of terrorist groups and eliminating the supply of weapons to terrorist;*
- c) *take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;*
- d) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens etc<sup>46</sup>.

### **3) Measures to Build States' Capacity to Prevent and Combat Terrorism and to Strengthen the Role of the United Nations System**

In this field, measures were adopted for increasing of capacity of member states and the role of the United Nations. Today, member states are not in the same conditions. As some have economic problems, others do not have the qualitative personals. Technological improvement may not be sufficient to combat terrorism in a member state. Also, some of member states may not have an effective judicial and administrative infrastructure. Therefore, in order to increase capacity of member states, coordination and cooperation on combating against terrorism are to be promoted by Resolution. For example, one of the measures is *“to encourage measures, including regular informal meetings, to enhance, as appropriate, more frequent exchanges of information on cooperation and technical assistance among Member States, United Nations bodies dealing with counter terrorism, relevant specialized agencies, relevant international, regional and subregional organizations and the donor community, to develop States' capacities to implement relevant United Nations Resolution<sup>47</sup>”*.

In order to reach objectives adopted under this field, Resolution encourage Member State to support projects such as United Nations counter-terrorism

---

<sup>46</sup> *ibid*, 11.

<sup>47</sup> the resolution 60/288 of 20 September 2006.



and technical assistance projects. In addition, each Member State can take contributions of private sector to increase their capacity to combat against terrorism.

#### **4) Measures to Ensure Respect for Human Rights for All and the Rule of Law As The Fundamental Basis to the Fight Against Terrorism**

Terrorism is, first of all, the contravention of human rights. Article 6 of the International Convention on Civil and Political Rights (ICCPR) stipulates that:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Therefore, the international community, which is the part of the ICCPR, has the responsibility to save people from death and terrorist acts. But while doing so, they must balance between human rights with the fight with terrorism. In other words, states should comply with international law, especially international human rights law and other international obligations, while combating terrorism. The General Assembly highlighted that member states should take measures to ensure respect for human rights, and rule of law as a basic element of the fight against terrorism<sup>48</sup>.

### **III. TERRORISM IN EU LAW**

#### **A. EU Legal Framework**

There are great deals of legislation on combating terrorism in EU Law. We will examine some of them in this study in detail. Firstly we will look at two main treaties on terrorism. As it is known, after the Lisbon Treaty, two treaties are mentioned as a European Union law. One of them is the Treaty on the European Union (TEU). Other is the Treaty on Functioning of European Union (TFEU).

In Article 3(II) of the treaty on European Union provides that:

“The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of

---

<sup>48</sup> the resolution 60/288 of 20 September 2006.

persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”

Under this provision, the European Union should take necessary measures to protect its citizens from crimes such as terror. As the European Union eliminates internal borders between its member states, terrorist organizations have opportunity to enter the territory of a member state and to attack it. Thus, EU has to take sufficient sanctions against such acts.

In Article 75 of Treaty on Functioning of European Union, under title “freedom, security and justice, EU law confers on the Parliament and the Council competence to take necessary administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.

The Parliament and the Council, by using this article, in order to ensure EU citizens to an area of freedom, security and justice, have competence to adopt regulations on terrorism. In addition, the council and the European parliament have also competence to adopt directives to define certain crimes such as terrorism, smuggling of migrants and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime, and to determine minimum rules relating to these offences<sup>49</sup>.

Lastly, even if it is not directly relating to combating terrorism, we would like to mention about Article 215 of the TFEU because this provision gives the council competence to adopt restrictive measures on economic and financial issues against third countries or natural and legal person, groups and non-state organizations in the field of the common foreign and security policy. The council adopted many regulations on the basis of this provision on terrorism. We will examine some of these regulations in the later chapters.

---

<sup>49</sup> See Article 83 of the Treaty on Functioning of European Union.

As it is understood from the aforementioned articles, the European Union gave its institutions competences to fight against terrorism. On the basis of these competences, the Council adopted many regulations, framework decision and joint action to struggle against terrorism. Some of them are the framework decision on combating terrorism of 13 June 2002; the Council decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property; Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorism cooperation between the Member States of the European Union; Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, with responsibilities in terrorist offences, in particular Article 2; Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organization in the Member States of the European Union; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups; Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan etc.<sup>50</sup>.

## **B. The Definition of Terrorism**

Europe had also trouble with terrorism, which occurred in many times there such as the killing of 11 Israeli athletes in 1972, the attack on the Madrid railway system and the suicide bomber attacks on London public transport system. After these shocking events, the European institutions took steps to combat terrorism. Finally, after the 11 September 2001 Attack

---

<sup>50</sup> See <http://eur-lex.europa.eu/en/dossier/dossier>.

in USA, the EU strongly believed that it had to take effective measures against terror movements and define terrorism coherently, consistently and comprehensively.

Actually, the first convention on terrorism which was adopted by the Council of Europe in 1977 is the European Convention on the Suppression of Terrorism (ECST), which all Member States of the European Union are part and is referred to by the legal frameworks of the European Union such as the Council Framework Decision on Terrorism. However concrete and consistent definition does not exist in this convention. Rather, it lists terror offences which were already adopted in international convention in Article 1<sup>st</sup><sup>51</sup>. In addition, the ECST imposes obligations on member states to realize that any violent acts against

- the lives of individuals,
- their physical integrity,
- their liberty,
- their property, must not be regarded as a political offence, an offence associated with a political offence or as an offence inspired by political motives<sup>52</sup>.

Six days before the 11 September 2001 in USA occurred, the EU Parliament recommended that the council of the European Union adopted a framework decision including the constituent elements of criminal acts and their penalties in the field of terrorism, the principle of mutual recognition of

---

<sup>51</sup> a- an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;  
b- an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;  
c- a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;  
d- an offence involving kidnapping, the taking of a hostage or serious unlawful detention;  
e- an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;  
f- an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

<sup>52</sup> See Article 2 of the European Convention on the Suppression of Terrorism.

decisions on criminal matters<sup>53</sup>. In addition, at the extraordinary meeting on 21 September 2001, the European Council accepted that a common definition of terrorism in European Union Law was a necessity. After a negotiating period, A Framework Decision was adopted by the Council on 13 June 2002<sup>54</sup>. Article 1 of the Framework Decision deals with the definition of terrorism. According to this provision, intentional acts shall be deemed to be terrorist offences:

“If their nature or context, may seriously damage a country or an international organization where committed with the aim of:

- a) seriously intimidating a population, or
- b) unduly compelling a Government or international organization to perform or abstain from performing any act, or
- c) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization”
- d) it should be defined as offences under national law.”

We would like to extract elements of terrorism by using this definition. Terror acts can be differentiated from ordinary crimes both in terms of their objective elements and subjective element under this definition.

According to the objective elements of terrorism, we will talk about two elements, which separate terrorism form other crimes. Firstly, member states of the European Union are to define terrorism as an offence in their

---

<sup>53</sup> Dumitriu, 585-586.

“(Recommendation 1)

*Calls on the Council to adopt a framework decision with a view to approximating legislative provisions establishing minimum rules at European level relating to the constituent elements of criminal acts and to penalties in the field of terrorism.*

(Recommendation 2)

*Calls on the Council to adopt a framework decision aimed at legislative harmonisation and the establishment of a European common area of freedom, security and justice, abolishing formal extradition procedures and adopting the principle of mutual recognition of decisions on criminal matters, including pre-judgment decisions, relating to terrorist offences, among the Member States of the European Union“*  
**(European Parliament recommendation on the role of the European Union in combating terrorism of 5 September 2001)**

<sup>54</sup> Dumitriu, 589.

domestic law. (It can be seen that the council pay importance the subsidiary principle<sup>55</sup>.) Namely, member states are to accept the offences provided in points (a) to (i)<sup>56</sup> of Article 1 of the Framework Decision as offence in their criminal laws. We agree with the opinion that all terror offences adopted by international law are included in the Framework decision<sup>57</sup>. The second objective element of terror offences is that acts shall seriously damage a country and an international organization<sup>58</sup>. However there is no concrete provision that defines a country in the Framework decision. We hold the view that the acts against people, civil and public property, policy makers, diplomats and institutions etc. be deemed “acts committed against a country”.

The other element of terror offences is the subjective element. It means that terrorist should have a specific intention<sup>59</sup>. In other words, terrorist should commit terror acts with the aim of:

- a) seriously intimidating a population, or
- b) unduly compelling a Government or international organisation to perform or abstain from performing any act, or

---

<sup>55</sup> Under the principle of subsidiarity, in area which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (Article 5 of the Consolidated Version of The Treaty of European Union)

<sup>56</sup> offences provided in Article 1 are as follow:

(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 shelf, 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 or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;

(i) threatening to commit any of the acts listed in (a) to (h).

<sup>57</sup> See Dumitriu, 595.

<sup>58</sup> *ibid*, 595.

<sup>59</sup> *ibid*, 596.

c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

In summary, “*terrorism is political in its aims and motives, is based on the use or threat of violence, is designed to have an impact far beyond its immediate target, is conducted by an organization with an identifiable chain of command or cell structure, and is not perpetrated by a state although it can be sponsored by a state*<sup>60</sup>.”

The Framework Decision does not only define terrorism but also defines offences relating to a terrorist group and offences linked to terrorist activities<sup>61</sup>.

The terrorist group is defined as: “*a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. ‘Structured group’ shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure*“

---

221

According to this definition, first of all, more than two persons must come together to establish a group to commit a terror act. Secondly, the organized group must be found in a certain plan in a certain time. A group which is formed incidentally cannot be deemed the organized one founded to perpetrate terrorist act. A hierarchical relationship between its members is not essential. It seems that the organized group has a broader scope than the illegal organization because the hierarchical relationship is necessary in the illegal organization<sup>62</sup>. Roles and continuity of its membership does not matter.

In addition, even if the perpetrator is not a member of the organized terrorist group described above, if he directs it or participates in the activities of it by supplying information, material resources and means or funding its

---

<sup>60</sup> McCormick, 405.

<sup>61</sup> Articles 2 and 3 of the Framework Decision.

<sup>62</sup> *ibid*, 598.

activities in any way, with knowledge of the fact that the such participation will contribute to the criminal activities of the terrorist group, he will be punished within the scope of terror crime<sup>63</sup>. The first essential element of this situation is that perpetrator must know that he will assist a terror group. If he does not have any information on the terrorism aspect of the group, it is not possible to include his conduct in the scope of the terror crime.

Offences linked to terrorist activities are to be counted in Article 3 of the Framework Decision. Acts such as aggravated theft with a view to committing one of the acts listed in Article 1(1), extortion with a view to the perpetration of one the acts listed in Article 1(1), or drawing up false administration documents with view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b) will be within the scope of terror crimes. The common characteristics of these acts are that although they are not normally terrorist acts. Because of their relevance to terror acts, they are to be evaluated in the scope of terror crimes.

222 Finally, inciting, aiding, abetting and attempting terror crimes will be also within the scope of terror crimes<sup>64</sup>.

## **C. Measures in EU Legislation**

### **1) Measures**

In order to struggle against terrorism, measures taken are significant. If measures are taken and implemented in effective way, then it is possible to reduce the impact of terrorist acts on the general public. Therefore, as it is in international law, the EU has taken lots measures against terrorism. First of all, the Council adopted a Framework Decision on Combating Terrorism of 13 June 2002. The concrete and efficient measures were adopted in this frame decision. Second of all, the Council accepted the EU Counter-Terrorism Strategy of 30 November 2005 and EU Action Plan on Combating Terrorism of 13 February 2006 in line with the adopted strategy. There are also many decisions or regulations adopted by the EU

---

<sup>63</sup> Article 2(2) of the Framework Decision.

<sup>64</sup> Article 4 of the Framework Decision.



which include a great deal of sanctions against terrorist acts however we will mention about measures taken by the aforementioned documents in brief.

Firstly, in the framework decision, the Council brings very coercive, deterrent and comprehensive measures to combat terrorism. The most important innovation adopted by this framework decision, as mentioned before, is the definition of terrorism. Thanks to this innovation, terrorism has the common and consistent definition in the EU law. In addition, the Council imposes many obligations on member states to reduce the impact of terrorism on the general public. As we examined in the former chapter, the framework decision foresees offences, under which all member states have responsibility to regulate as terror crime in their domestic law. The framework decision also determines the concrete penalties for terror crimes. First of all, it provides that member states should punish terror offences in their criminal law. Secondly, most importantly, it determines both the types of punishment and minimum sentence for a certain terror crimes. For instance, it provides that “*each member state shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Article 2(2)(a)...*”<sup>65</sup>

It is understood that the objective of the Council is to harmonize the criminal law of member states on terrorist offences.

Other important measure adopted by the Council is liability of the legal person. We have to mention that the liability of the legal person in the field of criminal law is controversial. Since the legal person consists of natural persons, whoever commits a crime, as general rule, he/she should be punished. In this logic, whoever commits an offence in a legal person, instead of legal personality, he/she should be punished. Otherwise, it should not be in line with the general principles of the criminal law. But it is possible to impose administrative punishment on legal personality. The Frame Decision provides that “*each member state shall take the necessary*

---

<sup>65</sup> Article 5 in the Council Framework Decision on Combating Terrorism.

*measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties...*

<sup>66</sup> "as aforementioned, the Criminal penalties cannot be imposed on the legal personality because it is contrary to the general principles of criminal law.

In the European Union Counter-Terrorism Strategy (EUCTS), the detailed measures are foreseen. Pillar system is to be interiorized in the EUCTS. There are four pillars which are prevent, protect, pursue and respond, under which different measures are to be adopted.

The objective of measures envisaged under the title "prevent" is to take efficient sanction against terror organization, the objective of which is to obtain new militants, and to eradicate reasons that lead to radicalizations and recruitment<sup>67</sup>. In the paragraph 6, the goal of the measures under title "prevent" is to be explained as *"to prevent people from turning to terrorism and to stop the next generation of terrorist."* We think that some of the most suitable instruments for this objective are to have a strong democratic atmosphere, education and economic condition in EU area. As a matter of fact, strategic document underlines that promoting good governance, democracy, education and economic prosperity are key elements to prevent people from turning to terrorism<sup>68</sup>. Also, other measure that should be done is to develop inter-cultural dialogue within or outside the EU. This measure was also adopted by the UN. Instead of the clash between religions or civilizations, the dialogue among them should be enhanced and strengthened under the EUCTS.

In addition to the preventive measures, the protective measures are to be adopted by the EUCTS as the second pillar. The aim of these measures is *"to protect citizens and infrastructure and reduce our vulnerability to attack, including through improved security of borders, transport*

---

<sup>66</sup> Article 8 in the Council Framework Decision on Combating Terrorism.

<sup>67</sup> The European Union Counter-Terrorism Strategy, 7.

<sup>68</sup> The European Union Counter-Terrorism Strategy, 9.

*and critical infrastructure*<sup>69</sup>. "One of innovations given by the EU is the elimination of borders between member states. In this way, citizens of the EU have right to go another member state without showing any passport or identity cards. However the terrorist group may exploit this easy situation to attack member state. Thus, the control of borders is vital to protect civilian from terror act. In order to impede terrorist to attack, the Council as measure adopts the establishment of the visa information system and second-generation Schengen information system. By using these systems, exchange of information between competent authorities of member states would be possible. The introduction of Biometrics is another measure adopted by EUCTS<sup>70</sup>.

The third pillar is called as pursue and aims of which are "*to pursue and investigate terrorist across borders and globally; to impede planning, travel, and communications; disrupt support networks; to cut off funding and access to attack materials, and bring terrorist to justice*"<sup>71</sup>. In this pillar, co-operation and coordination between Member States are underlined. The Quick and deterrent respond to terror attack is so important to fight against terror. Thus, cooperation among Member States has a vital important. The recognition of judicial decision, exchange of information relating terrorist organization and its members, the joint operation against terrorists, the common investigation on terror offences, the collection of evidence of terror crimes in another member state etc. are the most significant instruments to combat terrorism that under title "Pursue", in third pillar, these measures are to be envisaged. The police and judicial cooperation, European Arrests Warrant and European Evidence Warrant are also effective instruments to achieve to the objective of the EUCTS<sup>72</sup>.

Lastly, in the fourth pillar, measures adopted under the title "Respond" are regulated. The objective of these measures is to eliminate the impact of the attack on public. Once any terror attack occurs, various measures are

---

<sup>69</sup> Wennerholm-Brattberg-Rhinard, 10; The European Union Counter-Terrorism Strategy, 3.

<sup>70</sup> The European Union Counter-Terrorism Strategy, 11.

<sup>71</sup> The European Union Counter-Terrorism Strategy, 3.

<sup>72</sup> The European Union Counter-Terrorism Strategy, 14.

foreseen for minimization of the impact of attack on the general public and the protection of civil population in this title. For example, the rapid sharing of operational and policy information, media co-ordination and mutual operational report are some of the important precautions that should be taken after attack. Solidarity, assistance between Member States, compensation for victims of terrorism and their families and the improvement of co-ordination with international organizations on managing the response to terrorist attack and other disasters shall be evaluated within the responsive measures<sup>73</sup>.

The Council adopted the European Action Plan on terrorism in line with the EUCTS.

Except for the aforementioned legal documents, there are lots of the Council decisions and the Council joint actions adopting measures against terrorist act<sup>74</sup> but talking about all of these legal documents goes beyond in the scope of this study. Thus, we focused on the current legal document on combating terrorism.

226

## **2) Kadi & The Council Case**

We would like to talk about the decisions of the European Court of Justice and the Court of First Instances on Kadi & the Council which relates to whether the European Community has the competence to impose certain United Nations Security Council measures on individual organizations and whether the Member States have any obligation to abide by resolutions adopted by the Security Council. We underline that the Kadi case is very significant to the understanding of the relationship between Community and international law<sup>75</sup>. In addition, after the Lisbon Treaty, the relevant provisions in question were modified under the European Court of Justice's decision on Kadi case.

---

<sup>73</sup> The European Union Counter-Terrorism Strategy, 16.

<sup>74</sup> Some of them are the Council decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom, or property; the Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a directory of specialised counter terrorism cooperation between member states of European Union etc..

<sup>75</sup> Tridimas-Gutierrez, 661.

In international law, under the leadership of the United Nations, many resolutions were adopted to combat terrorism. One of them related to the fight against the Taliban regime. With resolution 1267(1999) adopted in 1999 and resolution 1333 adopted in 2000 before the collapse of the Taliban regime, the United Nation foresaw that Member States have obligations to freeze funds and other financial resources which the Taliban possessed and managed and must take efficient measures to implement provisions of the aforementioned resolutions<sup>76</sup>.

In conjunction with these resolutions, the EU Council, acting within the second pillar, adopted the 2000 regulation concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan<sup>77</sup> and the 2001 regulation prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000<sup>78</sup>. In these regulations, the EU Council was to adopt measures on individual organizations. If we look at the preamble of the regulations, it is seen that the EU Council adopted these regulations under the Articles 60<sup>79</sup> and 301<sup>80</sup> of the Treaty Establishing European Community<sup>81</sup>. After having adopted these regulations, in connection with the resolutions adopted by the UN after the collapse of the Taliban regime, EU Council adopted two new regulations<sup>82</sup>. In these new regulations, the EU Council not only based on

---

<sup>76</sup> *ibid*, 662.

<sup>77</sup> See [http://www.hm-treasury.gov.uk/d/council\\_regulation\\_ec\\_337\\_140200.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_ec_337_140200.pdf).

<sup>78</sup> See [http://www.hm-treasury.gov.uk/d/council\\_regulation\\_ec\\_467\\_060301.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_ec_467_060301.pdf).

<sup>79</sup> „If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.“

<sup>80</sup> “Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.“

<sup>81</sup> “Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301“

<sup>82</sup> one of them is the Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting

Articles 60 and 301 of the Treaty Establishing European Community but also on Article 308 of it<sup>83</sup>.

In these regulations, many individual organizations in the lists determined by the United Nation's Security Council were subjected to measures. One of them was Kadi, a wealthy Saudi Arabian national with a substantial economic interest in the European Union. He was included in the lists of sanctions committee<sup>84</sup>. Kadi brought the case before the CFI to annul regulations 2062/2001 and 467/2001, claiming that they violated his fundamental rights such as the right to a fair hearing, the right to respect property, and the right to an effective judicial review<sup>85</sup>. He also claimed that the EU council was not competent to regulate on the issues in question on the basis of articles 60 and 301 EC<sup>86</sup>. Most important questions in this case are those about: 1. EU Council had competence to adopt measures against individual persons or organizations and 2. The position of the United Nation resolutions in European Community Law<sup>87</sup>.

228

Firstly, we would like to examine the issue of the EU's competence to adopt the regulations in question. As mentioned before, the EU Council based on not only article 60 and 301 of the ECT but also article 308. ECT article 60 provides that if action is necessary to interrupt or reduce in part or completely economic relations between countries, the council is competent to take essential urgent measures on the movement of capital and on payments as regards the third country concerned. While the article 301 stipulated economic relations with third countries, the article 60 regulates specific economic issues such as the movement of

---

the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0009:0022:EN:PDF>

Other is the council Regulation (EC) No 561/2003 of 27 March 2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:082:0001:0002:EN:PDF>, accession date 07.05.2012)

<sup>83</sup> Tridimas-Gutierrez, 663.

<sup>84</sup> Hilpold, 152.

<sup>85</sup> Tridimas-Gutierrez, 663.

<sup>86</sup> Hilpold, 153.

<sup>87</sup> *ibid*, 154.

capital and payment. As understood from the Articles, there was no any reference to individuals and organizations. In other words, they stated only countries. However the council imposed obligations on individual persons or organizations. Later, the Council held view that it was necessary to recourse article 308, which regulated that in the course of the operation of the Common Market, if necessary, the Council had competence to take suitable measures, to adopt measures on terrorist activities<sup>88</sup>. Article 301 of the ECT gave the European Community competences to take action in the field of the Common, Foreign and Security policy, which was placed in the second pillar. In other words, it provided the Council with opportunity to take action in community law in the field of inter-governmentalism. According to ETC Article 301, the Council would determine a common position or a joint action under common foreign and security policy, taking decision unanimously, whereupon, the Council would take the necessary urgent measures, acting by a qualified majority on a proposal from the commission<sup>89</sup>.

The Court of First Instance (CFI) held the view that, especially before the collapse of the Taliban regime, ECT Article 60 and 301 had to be interpreted broadly. From the point of view of broad interpretation, the CFI underlined that the community institutions had competence to impose economic sanctions “*not only entities or persons who physically control a part of territory of a third country and those who effectively control its government apparatus but also against persons and entities associated with them and who or which provided them with financial support*”<sup>90</sup>.

In summary, the CFI stated that the community could take measures not only against states but also against non-state actors who supported them directly and indirectly<sup>91</sup>. However after the collapse of the Taliban regime, the CFI adopted the different opinion on the use of ECT Article to take action against economic activities of terrorist organizations. It claimed that

---

<sup>88</sup> *ibid*, 156.

<sup>89</sup> Tridimas-Gutierrez, 665.

<sup>90</sup> Tridimas-Gutierrez, 666.

<sup>91</sup> *ibid*, 666.

if there was no connection between the targeted individual and the relevant country, ECT Article 60 and 301 would not be justification for EU measures against non-state actors; neither could Article 308 by itself be justification. However the CFI held view that article 308 in connection with Articles 60 and 301 provided justification for the community to take action against non-state terrorist actors via regulations. In other words, Article 308 could be justification, for the sake of the requirement of consistency laid down in it, together with Articles 60 and 301 according to opinion of the CFI<sup>92</sup>.

On the other hand, Maduro, Advocate General, held a different opinion from that of the CFI. He insisted that Article 301 provided sufficient opportunity to take action against terrorist activities of non-state actors. Thus, it is not necessary to depend on article 308 to justify the contested regulations<sup>93</sup> and he said this as follow:

“By affecting economic relations with entities within a given country, the sanctions necessarily affect the overall state of economic relations between the Community and that country. Economic relations with individuals and groups from within a third country are part of economic relations with that country: targeting the former necessarily affects the latter. To exclude economic relations with individuals or groups from the ambit of ‘economic relations with ... third countries’ would be to ignore a basic reality of international economic life: that the governments of most countries do not function as gatekeepers for the economic relations and activities of each specific entity within their borders<sup>94</sup>.”

Last but not least, the European Court of Justice (ECJ) accepted that in order to impose sanctions against non-state actors, Articles 60 EC, 301 EC, and 308 EC had to be evaluated together. However in terms of justification of this opinion, it held a different view from that of the CFI. Under ECJ opinion, Articles 60 EC and 301 EC were the bridge between the community method and the CFSP but this bridge could not be extended to the other provisions of treaty. Article 308 provided the opportunity that

---

<sup>92</sup> *ibid*, 668.

<sup>93</sup> Hilpold, 157.

<sup>94</sup> *ibid*, 157.



community institutions would have competence to take measures against non-state actors, extending to the limited scope of Article 60 EC and 301 EC<sup>95</sup>. The ECJ drew attention to the point that the objectives of both the CFSP and the regulations in question were different. While the former were related to maintain international peace and security, the later were concerned with prevention of terrorist activities via economic sanctions. Thus, although Article 308 EC could not be direct justification for economic sanctions against non-state organizations, it could be utilized indirectly. In other words, the objective of Article 308 EC was not to combat terrorism but rather was related to the operation of the Common Market. It would provide the opportunity to implement efficiently articles 60 EC and 301 EC which envisaged various measures. The court underlined that when Member States took sanctions concerning economic issues unilaterally, it could affect the harmonized implementation of the common market or trade between states such as the free movement of capital and payments and the right of establishment<sup>96</sup>. As a result, Articles 60 EC, 301 EC and 308, when interpreted together, could be justification for sanctions against natural and legal persons or non-state organizations. In addition, according to the Court decision, although the Parliament did not have such competence in the implementation of Article 60 EC and 301 EC, 308 would provide the parliament with the to join the decision-making process<sup>97</sup>.

In summary, there are four opinions that held view that the community institutions have competence to take precautions against non-state actors.

“First, as the Advocate General opined, the language of Article 301 EC does not exclude the imposition of sanctions against individuals. Secondly, a historical interpretation of the provision suggests that the authors of the Treaty had no intention to exclude such sanctions. Thirdly, a teleological and evolutionary interpretation favors competence to impose sanctions against non-state actors. Finally, such interpretation appears suited to the nature of Article 301 EC as a pasarelle provision

---

<sup>95</sup> Tridimas-Gutierrez, 668.

<sup>96</sup> *ibid*, 675-676.

<sup>97</sup> *ibid*, 677.

which provides a bridge between the first and the second pillar<sup>98</sup>.”

However the Lisbon Treaty solves these problems on whether community institutions have competence to take action against non-state organizations. The Lisbon Treaty overtly states that the Council may take restrictive sanctions under against natural or legal persons and groups or non-State entities<sup>99</sup>.

I would like to discuss what the position of the UN resolutions was in EU legal order. As mentioned before, in reality, the underlying reason of the case brought by applicants based on the UN resolutions, under which the Council took measures against individuals. Now, We will look for answer about What the position of those resolutions was in EU legal order, taking into consideration that all member states were parties of the United Nation Charter, Article 25 of which provided that member states had obligations to implement Security Council resolutions and Member states were bound by them, also the UN Charter includes the most important provision on issue in question. Article 103 stipulates that “*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail*”<sup>100</sup>.”

Firstly the CFI held the view that under the article 307<sup>101</sup> EC, the community was not bound by the UN Charter by means of public international law

---

<sup>98</sup> *ibid*, 674.

<sup>99</sup> Article 215-2 of Consolidated Version Of The Treaty On The Functioning Of The European Union; Tridimas-Gutierrez, 678.

<sup>100</sup> Hilpold, 159; See <http://www.un.org/en/documents/charter/chapter16.shtml>

<sup>101</sup> Article 307 EC.

“The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.”

because it was not a member of the UN but the community was bound by resolutions adopted by the United Nation by virtue of the EC treaty itself because article 307 EC provided that “*The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty*”

Under the CIF’s opinion, the community was respectful to member states’ international responsibilities under the UN Charter<sup>102</sup>. “*The Security Council resolutions may observe the fundamental peremptory provisions of jus cogens*<sup>103</sup>.” This opinion was criticized by Advocate General Maduro. He took the position that the Security Council’s resolutions were not peremptory provisions. Rather, obligations of Member States resulting from the UN Charter which they signed before EU treaty did entered into force could not prevail if there were conflict between values regulating article 6(1) EU and obligations originating from UN Charter<sup>104</sup>.

Lastly, the ECJ highlighted that Article 307 did not give any precedence to the UN law but also that the community measures fulfilling UN law were not exempted from judicial review. The community had to comply with its founding values adopted by treaties, human rights and fundamental freedoms in all circumstances. It means that international agreements or other documents such as the UN charter and resolutions adopted by competent bodies under the umbrella of the United Nation are not justification for Member States to not comply with values adopted treaties, human rights and fundamental freedoms<sup>105</sup>.

In summary, the ECJ held the view that “*even if obligations arising from UNSC resolutions were to be classified in the internal hierarchy of Community law norms, under Article 300(7) EC, they would take precedence over secondary Community law but not over the treaty itself*”

---

<sup>102</sup> Tridimas-Gutierrez, 683.

<sup>103</sup> Hilpold, 161-162.

<sup>104</sup> *ibid*, 161-162.

<sup>105</sup> Tridimas-Gutierrez, 683.

*and other sources of primary international law such as the protection of fundamental rights*<sup>106</sup>.

#### **IV. HUMAN RIGHTS AND COMBATING TERRORISM: CASE LAW AND THE UNITED STATES**

##### **A. Case Law**

The pressure of terror attack on the international and regional community leads to reactionary approaches to prevent it and reduces their impact on the community. However while combating terrorism, human rights such as freedom of speech, the right to private life, the right to travel have so far been ignored. At least in so far as they have not taken essential attention from both in international and European Union law. As mentioned in the Framework Decision of the European Council, the European Union respects human rights while combating terror. It is true that terror, first of all, violates human rights such as the right to life and the EU must ensure its citizens to an area in which freedom, security and justice are prevailing. However while doing so, the relevant organizations or institutions must do so in a way in which freedom of people must not be violated.

Also, because of terror, more competence is given to the institutions that have obligation to combat it. But the arbitrary and excessive use of this competence is the reason of violation of human rights. Thus, a powerful control mechanism must be adopted to ensure that human rights are not breached while fighting terrorism. Unfortunately, when we examine decisions of the European Court of Human Rights (ECtHR), it is seen that Member States are not sensitive to human rights. Many decisions given by the European Court of Human Rights include human rights violation. We would like to mention two illustrative decisions of the ECtHR that point out that some member states have violated human rights.

##### **1) Gillan and Quinton v. the United Kingdom**

The first case is the case on *Gillan and Quinton v. the United Kingdom*<sup>107</sup>. The United Kingdom has enacted Terrorist Act 2000 (Act 2000). This act

---

<sup>106</sup> Tridimas-Gutierrez, 684.

<sup>107</sup> See Decision of the European Court of Human Rights of 12 January 2010, application no. 4158/05.

gives police effective power to prevent terrorism in its territory. Especially after the bombing campaign between 1992 and 1994 in and around London, in response to these attacks, more stringent measures were adopted. In sections 41-43, the 2000 acts provide for arrest without warrant, the search of premises and the search of persons by police officer upon reasonable suspicion that the person subject to the arrest or search is a terrorist. However it also stipulated that, under some conditions, there is no need to look for reasonable suspicion to stop and search a person<sup>108</sup>.

In these conditions, during a time of demonstration and protests, applicants were subjected to the treatment that one of them, who was riding a bicycle and carrying a rucksack near the arms fair on his way to join the demonstration was stopped and searched by a police officer under section 44 of Terrorism Act 2000 and other person, a journalist, wearing a photographer's jacket, carrying a small bag and holding a camera in her hand, was there to film the protests was stopped by police under section 44 of Terrorism Act 2000. The applicant brought the case before the Court on the basis that stop and search powers implemented against them violated their human rights under Articles 5, 8, 10, 11 of the European Convention of Human Rights (ECHR). The HCtHR decided that the United Kingdom breached Article 8<sup>109</sup> of the ECHR, saying the following sentences<sup>110</sup>:

“The use of the coercive powers conferred by the legislation to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life. Although the search is undertaken in a public place, this does not mean that Article 8 is inapplicable. Indeed, in the Court's view, the public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of

---

<sup>108</sup> Decision of the European Court of Human Rights of 12 January 2010, application no. 4158/05, 17.

<sup>109</sup> “1. Everyone has the right to respect for his private and family life, his home and his correspondence.  
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

<sup>110</sup> Decision of the European Court of Human Rights of 12 January 2010, application no. 4158/05, 38.

humiliation and embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information, which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public...

Each of the applicants was stopped by a police officer and obliged to submit to a search under section 44 of the 2000 Act. For the reasons above, the Court considers that these searches constituted interferences with their right to respect for private life under Article 8.”

## 2) *Thomasi v. France*

The second case is about that of *Tomasi v. France*<sup>111</sup>. In this case, Thomas was suspected of having taken part in an attack, which had been carried out by a commando group of several persons wearing balaclava helmets to conceal their features, at Sorbo-acagrano (Houte –course) on the evening of 11 February against the Rest Centre of the Foreign Legion. Thomas is only an active member of a Corsican political Organization. However, he stayed in detention and was arrested by French police. The period of the investigation and the trial lasted so long that he was detained more than 5 years. He also exposed ill treatment while in custody of the French authorities. He applied for release over and over again, claiming that he was innocent. But he was not released, due to the seriousness of the alleged offences, the protection of public order, the need to prevent pressure being brought to bear on the witnesses or to avoid collusion between the co-accused; and danger of the applicant’s absconding. Thomas claimed that there was no sufficient evidence to justify pre-detention over such a long period of time in the absence of grounds for suspecting him other than his membership of a national movement. In the end of the trial, it was understood that he was innocent because the court acquitted him. The European Commission of Human Rights referred the case to the European Court of Human Rights on grounds of violation of Articles 3<sup>112</sup>, 5(3)<sup>113</sup>, and

---

<sup>111</sup> please look at: Decision of the European Court of Human Rights of 27 August 1992, application no. 12850/87

<sup>112</sup> „No one shall be subjected to torture or to inhuman or degrading treatment or punishment.“

<sup>113</sup> „Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art.

6(1)<sup>114</sup> of the ECHR. The European Court of justice decided that the France violated article 5(3) of the ECHR by saying that;

“The right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the courts to carry out their tasks with proper care (see, inter alia, mutatis mutandis, the Toth v. Austria judgment of 12 December 1991, Series A no. 224, pp. 20-21, para. 77). The evidence shows, nevertheless, that in this case the French courts did not act with the necessary promptness...

There has therefore been a violation of Article 5 para. 3 (art. 5-3)<sup>115</sup>.”

As concerning Article 3 of the ECtHR, the court also decided that France breached it by justifying in a way that<sup>116</sup>:

“it sufficient to observe that the medical certificates and reports, drawn up in total independence by medical practitioners, attest to the large number of blows inflicted on Mr Tomasi and their intensity; these are two elements which are sufficiently serious to render such treatment inhuman and degrading. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

There has accordingly been a violation of Article 3 (art. 3)”

Finally, the ECtHR said that France violated Article 6(1)<sup>117</sup> which says that “*In the determination of his civil rights and obligations..., everyone is entitled to a ... hearing within a reasonable time...*”

---

5-1-c), ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.“

<sup>114</sup> „*In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...*“

<sup>115</sup> Decision of the European Court of Human Rights of 27 August 1992, application no. 12850/87, 36.

<sup>116</sup> Decision of the European Court of Human Rights of 27 August 1992, application no. 12850/87, 39.

<sup>117</sup> Decision of the European Court of Human Rights of 27 August 1992, application no. 12850/87, 41.

It is understood from above case that member states of EU might violate human rights while they struggle against terrorism. They have obligation to respect human rights under the convention on ICCPR and other international human rights law. When we look at the topic from point of view of the general public, they are already in terror due to terrorism in their country, and they also have fear on whether their countries resort unnecessary measures against public to prevent terror. In addition, the exercising of competence conferred by legislation concerning terrorism occasionally give rise to tension between the general public because police, prosecutor or other relevant authority use competence without reason and essential or excessively. We have to educate security forces that everyone is not terrorist and deserves to be respected to their human rights.

## **B) The United States**

After the 11 September 2001 Attack in USA, the Bush administration took very stringent sanctions to combat terrorism.

238

### **1) The Patriot Act**

Their first significant development was the adoption of the United States Patriot Act by the Bush Administration without delay. Some authors<sup>118</sup> in the United States have criticized this act because it does not comply with human rights. Under the Patriot Act, “*the Bush Administration asserted that they have “unprecedented powers to detain American citizens as enemy combatants and has imposed unprecedented secrecy for government actions and proceedings*”<sup>119</sup>.”

Generally, we can say that the objectives of the Patriot Act are classified as:

- “1. Increasing power to detain non-citizens and protect American’s borders;
2. Strengthening laws against contributions to terrorist organizations and money laundering;

---

<sup>118</sup> Chemerinsky, Ervin, Civil Liberties and the War on Terrorism, Washburn Law Journal, Vol.45, 2006, 1-18.

<sup>119</sup> Chemerinsky, 2.



3. Enhancing miscellaneous criminal laws, from terrorism-related offences to telemarketing abuses;
4. Authorizing increased intelligence gathering and dissemination; and
5. Making broad expansions of law enforcement powers<sup>120</sup>.”

Accordingly, the government had a competence to arrest and detain alien individuals. When the Attorney General determines that there are reasonable grounds to believe that any conduct falls within the scope of terrorism, he has power to detain suspect. In the Patriot Act, more competence has been conferred on the Foreign Intelligence Surveillance Court. The broad definition of terrorism has also been giving the government more competence because of the fact that it has a wide discretion to determine whether or not the conduct of someone falls within the scope of the definition of terrorism.

For instance, the Domestic terrorism is defined in this act. Three elements can be extracted from its meaning. One of them is that the activity must be dangerous for human life. The second is that it must violate federal and state criminal laws and the last one is that it must be “*appear to be intended or to intimidate or coerce a civilian population or improperly influence or affect the government’s conduct or policies*”<sup>121</sup>.” This definition also gives government more power to take action against all crimes together with terror crimes.

For certain crimes, the government also has the power to detain non-citizens without following any procedures for certain crimes<sup>122</sup>. The law enforcement agencies gained more authorities to access to e-mail and Internet communications without informing the users. On the other hand, some provisions were brought, which make it possible to forfeit assets of terrorist. Prior to the Patriot Act, American authorities did not have the power to forfeit assets when the crime was committed outside of America

---

<sup>120</sup> Zieske, 83.

<sup>121</sup> *ibid*, 83.

<sup>122</sup> Chemerinsky, p.10.

because the American courts lacked any jurisdiction. However the situation was changed by the Patriot Act. Even though the forfeiture of assets had not been possible for offences that were committed within territory of foreign country but “*civil action*<sup>123</sup> can now be brought to forfeit the proceeds of public corruption offences, crimes of violence, bank fraud and other serious offences that are committed abroad in violation of foreign law, if the property is found in the USA<sup>124</sup>.”

The United State Department of Homeland Security was created after the attack. The objectives of this department are to protect citizens of the United States and its territory from terrorist attack, man-made accidents and natural disasters. The department has the power to respond to terrorist attack<sup>125</sup>. For the protection of United States citizen and its territory, it must take the actions and sanctions necessary to provide domestic security. This department was given considerable powers to do its job. Some of its objectives are to regulate and facilitate international trade, to collect import duties, and to enforce U.S. regulations, including trade, customs and immigration. It has the responsibility to detect money laundering and terrorist financing by using information technology and data mining techniques<sup>126</sup>.

Section 215 of the Patriot Act provides another competence to the Federal Bureau of Investigation as follow:

“The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities

---

<sup>123</sup> “Civil forfeiture is in rem action that is brought against the property itself. It does not require a criminal prosecution or even that the defendant be in custody.” (Cassella, 303)

<sup>124</sup> Cassella, 304.

<sup>125</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Homeland\\_Security](http://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security)(accessiondate: 09.05.2012)

<sup>126</sup> Zdanowicz, 53-55.

A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.”

It is to be seen that this provision permits the government to obtain access to library records without the knowledge of the library owners. Persons who produce any tangible things to the FBI are not responsible for that action. By using this article, the FBI secretly orders business and other organizations to submit the required records. We understand that word “other items” means that there is no limitation of the FBI’s power to obtain tangible things. These may be “*books, records, papers, documents or other items by libraries, booksellers, doctors, universities, Internet service providers, charities, religious organizations, and other public entities and private sector businesses.*” The FBI does not have to show any specific and concrete fact that indicate the connection of a person to terrorist acts<sup>127</sup>. It is quite clear that the FBI has wide discretion on these issues. Plus, persons and organizations who take orders from the FBI under section 215 of the Patriot Act must keep their actions confidential.

Thus, there has been much criticism of Section 215. Many claim that it violates the privacy of American citizens. Firstly, critics have hesitation that the government unnecessarily would take an entire database rather than checking suspect’s database, it would inspect database of innocent people<sup>128</sup>.

Secondly, many scholar and jurists also claim that competence of the government on surveillance would give rise to a chilling effect on expression and political activities. Accordingly, booksellers and librarians vehemently assert that these provisions would cause individuals to stop “*reading, speaking, and engaging in political discourse for fear that government would monitor such activities and put such information into secret files*”<sup>129</sup>.

---

<sup>127</sup> Rmasastry, 2.

<sup>128</sup> *ibid*, 1-4.

<sup>129</sup> *ibid*, 1-4.

As understood from these provisions, Unquestionable and uncontrollable competence has been conferred on the government and its law enforcement agency by the Patriot Act. In practice, these competences have been implemented vehemently. The government is focusing on only combating terrorism. If the only objective is to combat terrorism then, human rights of people are to be ignored. Provisions adopted by the Patriot Act to be implemented against suspects of terrorism act cause the violation of human rights of innocent people. In other words, “*to protect national security from the threat of terrorist activity, the government need not sacrifice privacy*<sup>130</sup>” and human rights.

## 2) Case

We would like to mention a few cases to show how provisions of the Patriot Act have been implemented in practice.

a) *The first case is that of Rumsfeld v. Padilla*<sup>131</sup>. In this case, Jose Padilla was apprehended at Chicago’s O’Hare in May 2002 on the reason that he was suspected of planning to build and detonate a bomb in the United States. Even though he was in detention more than three years, no indictment was directed against him. The United State Court of Appeals for the Fourth Circuit decided as follow:

“the United States may detain him indefinitely, without trial, as an enemy combatant<sup>132</sup>.”

b) *In another case, Yaser Hamdi, who is an American citizen, was arrested by United State Authorities in Afghanistan and was taken to Guantanamo Naval Base in Cuba.* The United States’ government claimed that he was an enemy combatant. Although it is claimed that there is no power to hold an American citizen without any charges and trial in custody but the court decided otherwise<sup>133</sup>.

There are many cases about the detainees at Guantanamo. As known, many individuals were taken as prisoner at the military facility in Guantanamo.

---

<sup>130</sup> Garlinger, 1146.

<sup>131</sup> Rumsfeld v. padilla, 124 S. Ct. 2711 (2004)( Chemerinsky, 3.)

<sup>132</sup> Chemerinsky, 1-8

<sup>133</sup> ibid, 5-6.

Two cases, those of Rasul and of Al Odah, were brought before the Supreme Court on habeas corpus petitions. The only request was supervision of the habeas corpus petitions by the Supreme Court. The government claimed that the court did not have any jurisdiction to supervise these petitions about detainees in Guantanamo. The court ruled that it had no jurisdiction over the issues in question on the basis of its decision in the Johnson v. Eisentrager case. In that decision, the Supreme Court ruled that the Federal District had no jurisdiction to hear habeas corpus petition. These cases show that many people can be held in detention without due process and that there is no court and no authority to supervise these decisions<sup>134</sup>. It is not possible to reconcile these implementations with the principle of human rights.

## CONCLUSION

As regarding combating terrorism in international law, we have many sectorial conventions, resolutions on terrorism in international law. The International communities try to struggle with it by being party to these conventions. Also, the General Assembly and the Security Council adopt many measures in these resolutions. However we should not ignore that terrorism has not been reduced so far. I think that legislations and measures adopted in these legislations are sufficient for fight terror crimes.

In other words, almost all the needed measures are present in the legal frameworks. However there are many problems in practice. Some new instruments may be added to the legal frameworks but in practice, there is still a long way to go

Firstly, in terms of legal framework, the most essential necessity is to adopt a common legislation in which all basic principles concerning terror crimes, especially the common definition of terrorism are included. In addition, we persistently claim that an international terror court must be established. Accordingly, the convention for the creation of an international Criminal Court, which did not enter into force, may be revived. As alternative chose, the international community may confer on the international criminal court

---

<sup>134</sup> *ibid*, 7-8.

powers to try terrorists because an impartial international court is vital to bring suspected perpetrators before justice. However, some terror attacks can be assumed as crimes foreseen in the Rome Statute of the international Criminal Court such as the genocide, crimes against humanity and war crimes but not every terrorist attack is evaluated in the scope of these crimes. Therefore, terror crimes should be included clearly in the scope of the Rome Statute of the International Criminal Court.

Secondly, the most important deficiency to combat terrorism is that states do not have necessary ambition in international area. As it was mentioned before, under the umbrella of the United Nations and by means of the General Assembly and the Security Council, a great deal of measures are adopted by international community however in practice member states are not enthusiastic to make cooperation among themselves. Sovereignty has been asserted as a justification or occasionally the extradition of the national as terror criminal has become a challenge between states.

244 We would like to underline momentarily that the currently efficient measures adopted by the General Assembly are the mutual judicial assistance. The information exchange, the recognition of decisions given by foreign courts and the facilitating of the extradition process, joint operation against terrorism in the international level, collection of evidence by judicial authority of Member States, all of which concern the mutual judicial assistance, are steps that can ensure the reduction of terrorists acts. Accordingly in order to strengthen mutual judicial assistance, first and foremost, as it is highlighted in many resolutions adopted by both the General Assembly and the Security Council, international cooperation must be enhanced in practice. Otherwise international community will fail in spite of having wonderful legislations.

Thirdly, the International community must change their approach to terrorism from a political perspective to a humanistic one. Nothing must be justification for terror. No political reason can be justification to permit terror acts in any country and to fail to punish perpetrators of this offence, to fail to extradite them to the requesting state even if they are national.

Nothing can be precedence over human life. Human life must outweigh all other priorities. Whoever commits, or against whoever commits this crime, all countries must condemn this kind of crime and struggle in order to be seizure and punishment of perpetrators of terror crime. This is the humanistic approach we interiorize in fighting with terrorism. Thus, dialogue among religions and cultures is vital because dialogue between religious and culture will strengthen relationship between them and ensure that all states would be in the same position against terrorism.

While international communities have combated terrorism, they have used reactive approach. After the 11 September 2001 Attack in USA occurred, international community took action reactively against terrorist acts. In the European Union law, nothing has changed. For example, the establishment of the Counter-Terrorism Coordinator was adopted reactively after the Madrid bombings and also the Data Retention Directive came true as a reaction to the London bombings. However, this approach gave rise to ignorance of human rights in the name of protecting security<sup>135</sup>.

As regarding combating terrorism in European Union law, the 11 September 2011 attack had impact on the EU counter terrorism policy. Preemption approach has started to be used in the EU law. According to this approach, competent authority in EU law took intrusive action against suspicious acts to prevent terrorism. But all people in a country were affected by this intrusive action. In other words, the EU counter-terrorism strategy caused to adopt the legal acts to the detriment of human rights. In addition, the EU parliament did not take important role in determining of the EU counter-terrorism policy. The council, by using articles 60 EC and 301 EC, adopted the regulation we mentioned before against the Taliban regime without participation of the EU parliament before the Lisbon Treaty entered into force. The council almost was only authority to take sanctions against terrorism. The European Parliament was not included in the policy-making process. As a result of this attitude, the Council adopted more strict measures without taking human rights into consideration<sup>136</sup>. After the

---

<sup>135</sup> Murphy, 8.

<sup>136</sup> *ibid*, 1-8.

Lisbon Treaty put into effect, the Treaty on the Functioning of the European Union adopted two articles in order to take action against terror and other potential threat. One of them is article 75, which gives opportunity EU to determine a framework for measures against terrorism. In this method, in order to take necessary measures, the ordinary legislative procedure is applicable which means that the Council and the Parliament will act together by using co-decision procedure. However, other article, which is 215 of TFEU, also enables the EU to take restrictive measures against states or more importantly against natural or legal persons and group or non-state entities. In this methods, the council can act upon proposal from the high representative of the Union for foreign and Security Policy and European Commission. The parliament does not have any role in this alternative. The only thing the parliament has is to be informed on process. Therefore the council utilizes article 215 of TFEU rather than article 75 to take action against terrorism. But it leads to conflict between the Council and the Parliament<sup>137</sup>. We hold view that the parliament should have more roles in determining of counter-terrorism policy because only in this way, measures taken are going to be in line with human rights and the general public will get rid of adverse effect of reactive approach.

246

I have to mention that the liability of the legal person in the field of criminal law is controversial. Since legal person consists of natural persons, whoever commits a crime, as general rule, he/she should be punished. In this logic, whoever commits an offence in a legal person, instead of legal person, he/she should be punished. Otherwise, it should not be in line with the general principles of the criminal law. But it is possible to impose administrative fine on legal person. However the Criminal penalty cannot be imposed on legal person because it is contrary to the general principles of criminal law. Thus, Article 7 of the Council Framework Decision of 13 June 2002 on Combating Terrorism must be revised to be in line with general principles of the criminal law.

I think that mutual legal assistance in penal matters is vital to the handling of not only terrorism but also of other international crimes. From the point

---

<sup>137</sup> *ibid*, 7.



of view of international law, states where terrorist attacks are intensive can ask other states to interrogate witness or collect evidence in their jurisdiction<sup>138</sup>. In addition, joint anti-terrorist operations can be carried out. Also, a state can request other states to take efficient measures to prevent transfer and disposal of assets until the final judgment is communicated to the requesting state's court.

As it is known, terrorism is a specific type of crime that needs an elaborated system of international cooperation. In order to fight this type of offence, specific investigation and new techniques are essential. This is important not only in international law but also in domestic law. I think that judges and prosecutors or other authorities should have specific powers to collect evidences, to investigate terror crimes, and to listen to witnesses. In addition, States can adopt the specific conditions different from regular procedures for the arrest, seizure and apprehension suspected perpetrators. That is to say, a specific criminal procedure law should be appropriated to combat terrorism both in domestic law and in international law.

247

---

On the other hand, terrorists need to financial resources to carry out their plans. With international cooperation, bank accounts of terrorist organizations can be frozen. In international area that now this new model is to be used insufficiently however *“the Security Council requires that States should freeze without delay funds or other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist act<sup>139</sup>”*.

I would like to underline that the EU counter terror has impact on general public. While institutions combat terrorism, by adopting stricter measures than it was before, ordinary people' life is to be constrained by them. For example, the financial surveillance system, which is used in the scope of the counter-terrorism, requires to the reporting of financial transaction and customer identification based on suspicion. This may be violation of the data protection in the field of human rights. Also, the surveillance

---

<sup>138</sup> Wybo, p.166.

<sup>139</sup> ibid, 167.

system based on suspicion may be violation of the right to privacy<sup>140</sup>. In the scope of the counter terrorism, more and efficient powers are conferred on persons or institutions but the control on whether powers are used by competent persons or institutions in suitable way and whether there is ultra vires is so weak.

When I look at European Court of Human Right' decisions relating implementation of terror codes within the domestic law, it is clear that human rights are to be violated by member states of EU Union. Especially, law enforcement agencies do not distinguish between innocent people and suspect of terror acts. They use their competence vehemently on the general public. This implementation method also causes fear on public. Actually, one of objectives of terrorism promotes government to take unnecessary measures and restrict freedoms of people because terror organization would have opportunity to justify their acts, claiming that government does not respect freedoms of people. It should be remembered that while combating terrorism, the restriction of freedoms of people also would be another reason of terrorism. The balance between human rights and combating terrorism is prerequisite for justice. The main objective should be protection of human rights because terrorism eliminates human rights. Right to life and to live in safe society etc. are violated by terrorism. The objective of government must be that people regain their rights being distorted by terrorism. Otherwise, if governments also violate human rights, showing reason terrorism, this facilitates terrorism to achieve their goals.

Finally, it is worth to say that the Patriot Act includes some provisions that restrict freedoms of people excessively. Many civil associations and jurist, bookseller and patrons of libraries criticize this legislation because it ensures government competence to take personal data or information from these organizations. Person who gives the requested information has obligation not to tell anything to anyone. In addition, the government has an exceptional powers with this act however there is no an essential

---

<sup>140</sup> Murphy,3.

authority to supervise implementation of these competence. This situation is worrisome in the USA. Critics highly claim that this is a violation of private life. The FBI has so critical competence that it is not possible to say that this is normal in a democratic, social and constitutional state. For example, the FBI can order any person and organization to send the requested information without showing any reason. The person, information of whose is requested by FBI will not be informed after completing of the investigation. This person does not have any opportunity to take any compensation due to intervention of his private life. This is not in line with human rights. In addition, there are many people who are at military center in Guantanamo. They were detained with habeas corpus petition by government however the federal court did not have any competence to hear habeas corpus petition. This is also a violation of human rights because everyone has the right to fair trial and the right to hearing before court.

As a last word, human rights cannot sacrifice in the name of combating terror.

### **BIBLIOGRAPHY**

Banchik, Mira, *The International Criminal Court & Terrorism*, (<http://www.peacestudiesjournal.org.uk>).

Chemerinsky, Ervin, *Civil Liberties and the War on Terrorism*, Washburn Law Journal, Vol.45, 2006.

Duffy, Helen, *The War on Terror and the Framework of International Law*, 2005.

Dumitriu, Eugenia, *The EU' Definition of Terrorism: The Council Framework Decision on combating terrorism*, German Law Journal, Vol. 05, No. 05, 2004.

Hilpold, Peter, *EU Law and UN Law in Conflict: The Kadi Case*, Max Plank Yearbook of United Nation Law, Volume 13, 2009.

Galicki, Zdzislaw, *International Law and Terrorism*, American Behavioral Scientist, Vol.48, 2005.

Garlinger, Patrick P., *Privacy, Free Speech, and the Patriot Act: First and Fourth Amendment Limits on National Security Letters*, New University School of Law, 2009.

Illias, Bantekos-Susan Nash, *International Criminal Law*, Third Edition, 2007.

Laborde, Jean Paul, *Countering Terrorism*( New International Criminal Law Perspective).

McCormick, John, *European Union Politics*, 2011.

Michael, A. Newton, *International Criminal Law Aspects of the War Against Terrorism*, U.S. Naval War College International Law Studies, Vol. 79, 2003.

Murphy, Cian C., *EU counter-Terrorism & the Rule of Law in a post-War on Terror world*, published in M Scheinin, RSCAS Policy Paper 2011.

Oktem, Emre, *Uluslararası Hukukta Terrorism*, 2005.

250

Rmasastry, Anita, *why are librarians Mad About the USA PATRIOT Act?*, Insight on Law & Society, American Bar Association, 2006.

Robert, Imre-T. Brian Mooney-Benjamin Clarke, *Responding to Terrorism*, 2008.

Saracli, Murat, *Uluslararası Hukukta Terorizm*, 2007.

Tridimas, Takis-Gutierrez, Jose A.-Fons, EU Law, *International Law, and Economic Sanctions Against Terrorism: The Judiciary in Distress?*, Fordham International Law Journal, Volume 32, Issue 2, Article 9, 2008.

Wennerholm, Peter- Brattberg, Erik-Rhinard, Mark, *The EU as a Counter-Terrorism Actor Abroad: Finding Opportunities, Overcoming Constraints*, EPC Issue Paper No.60, 2010.

Wybo, P. Heere, *Terrorism and The Military (International Legal Implications)*, 2003.

Yonah, Alexander-Marjorie, Ann Brown-Allan S. Nanes, *Control of Terrorism (International Documants)*, 1979.

Zdanowicz, John S., *Detecting Money Laundering and Terrorist Financing via Mining*, Communications of the ACM, Vol. 47, 2004.

Zieske, William F., *Demystifying the USA Patriot Act*, Illinois Bar Journal, Vol. 92, 2004.

#### WEBSITES

<https://attackonthelaborparty.wordpress.com/2012/04/17/breivik-testimony>.

<http://loyalopposition.blogs.nytimes.com/2012/04/16/anders-breivik>(accession).

[http://en.wikipedia.org/wiki/Anders\\_Behring\\_Breivik#Religious\\_and\\_political\\_views](http://en.wikipedia.org/wiki/Anders_Behring_Breivik#Religious_and_political_views)

<http://eur-lex.europa.eu>.

[http://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Homeland\\_Security](http://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security).

<http://www.un.org/terrorism/instruments.shtml>.

[http://www.hm-treasury.gov.uk/d/council\\_regulation\\_ec\\_337\\_140200.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_ec_337_140200.pdf).

[http://www.hm-treasury.gov.uk/d/council\\_regulation\\_ec\\_467\\_060301.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_ec_467_060301.pdf).

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0009:0022:EN:PDF>).

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:082:0001:0002:EN:PDF>).

<http://www.un.org/en/documents/charter/chapter16.shtml>.

#### INTERNATIONAL AND REGIONAL CONVENTIONS OR TREATIES

Treaty Establishing the European Community.

Consolidated Version Of The Treaty On The Functioning Of The European Union

1937 Convention for the Prevention and Punishment of Terrorism

1999 International Convention for the Suppression of the Financing of Terrorism.

1999 OIC Convention to Combat Terrorism.

The OAU Convention on the Prevention and Combating of Terrorism.

The Arab Convention on Terrorism.

The European Convention on the Suppression of Terrorism.

#### EUROPEAN UNION SECONDARY LEGISLATION

The Council Framework Decision on Combating Terrorism.

The European Union Counter-Terrorism Strategy

European Parliament recommendation on the Role of the European Union in Combating Terrorism of 5 September 2001.

252

#### THE UNITED NATION RESOLUTIONS

The Security Council Resolution 1566 (2004)

Resolution 60/28 of 20 September 2006.

#### INTERNATIONAL REPORT

The Report on The United Nations Global Counter-Terrorism Strategy by the General Assembly on 17 June 2010.

2010 Report on Terrorism by National Counter Terrorism of the United State of America, 30 April 2011.

#### COURT DECISIONS

Decision of the European Court of Human Rights of 12 January 2010, application no. 4158/05, p.17.

Decision of the European Court of Human Rights of 27 August 1992, application no. 12850/87

Kadi v. Council, Joined Cases C-402/05 of European Court of Justice