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RETHINKING HUMAN RIGHTS PROMOTION AND PROTECTION IN THE CONTEXT OF THE WAR ON TERROR IN THE TWENTY FIRST CENTURY¹

International concern with human rights is a phenomenon of comparatively recent origin. Although it is possible to point out to a number of treaties of international agreements affecting humanitarian issue before World War II, it is only with the entry into force of the United Nations Charter in 1945, that it is possible to speak of the advent of systematic human rights protection and promotion within the international system. None the less, it is clear that the international protection of human rights, has its antecedents in domestic efforts to secure legal and political protection for individuals, as well as groups, against the arbitrary excesses of state power.

Such domestic attempts have a long and dignified history, and are intimately connected with revolutionary activity directed towards the establishment of constitutional systems based on democratic legitimacy and the rule of law. Even today, the promotion of human rights at both the national and international level are intimately connected, if not symbiotic.

Our capacity to affect the human rights promotion and protection in this century is greater than before, however, the considerable doubts still exist about the issue: what principles should regulate a new perspective on human rights and the creation of an alternative globalization with regard to the challenge coming from the terrorist threat?

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Today most discussions of “human rights” are misleading because the surface there is almost always a hidden agenda. Human rights are frequently described as a potential barrier to effective protection from terrorist acts than a precondition genuine security. It seems that the review dealing with the human rights issue should stress the point that the security is at risk much more when the rights are violated. In fact, it is in the breach, not in the respect of human rights, that security is put at risk.

Human rights now are very much a part of international relations and law. They define fundamental moral canons for criticising international and national conditions and behaviour. As such they are imbedded in the practice of nations and treaty prescriptions.

The definition and protection of human rights remains one of the major themes of political, philosophical and legal discourse. Although the idea of human rights has been repeatedly criticised², it retains considerable popularity and support. A substantial body of opinion holds that there are such things as human rights and that they ought to have legal protection. This view has, from time to time, received expression in the form of general declarations of fundamental rights which persons are supposed to have. Clearly the making of such declarations is not sufficient to ensure the actual protection of human rights, and such general declarations of rights have often been dismissed as mere rhetoric. The advocate of human rights must address the issue of how the move from the rhetorical affirmation of rights to the actual protection of human rights is best made. No discredit of general declarations of rights is intended by the above statement, for they have a role to play in the exchange of ideas and the formation of opinion. In that sense, to talk of mere rhetoric is to miss the point because rhetoric undoubtedly has its effect.

What that effect might be is not, however, the principal concern of this paper. Rather, the concern is to show what implications the choice of mechanism for the protection of rights has, in moving from rhetorical affirmation to real protection of human rights in the context of the war on terror.

Human rights have come to the forefront of attention in both political theory and public practice. But too often the treatment in theory has been so abstract it does not inform practice as it might be – and it does not learn from practice as it should. One may try to bridge this divide by asking some key questions: whether human rights can survive the challenges of the war on terror in the global environment of the new millennium? How should the international community best respond to the instrumentalisation of human rights abuses as an allegedly justifiable weapon of the war against terrorism? Unfortunately, there is no single, clear and in-depth answer to these questions.

² The excessive individualism in western human rights doctrine has been criticised by the Islamic world, East Asia, and some within the West itself. However, there is no need to apologise; human rights are popular and necessary worldwide precisely because they protect individuals against group authority. More on this issue see: C. Gearty, *Can Human Rights Survive?*, Cambridge 2000.

There is a broad and deeply rooted in the history of international relations assumption that the protection of rights and freedoms and the obligation to provide security for its citizens lay on the state. To fight terrorism and to respect or promote human rights are all different aspects of the same protection system falling on the state. Therefore the balance between the state security and human rights is one of the most important issues of the internal and international state policy. There is no doubt that states must take all the necessary measures so as to not confuse the fight against terrorism with the fight against annoying oppositionists. Combating terrorism should not be used as a pretext for discrimination against any segment of society. Terrorists often claim to act on behalf of ethnic groups, religions, or even nations. These claims are generally false. Terrorists represent only a very small faction of any such group. People turn to terrorism for various reasons. Many terrorists act from political, ideological, or religious convictions. Some are simply criminals for hire. Others become terrorists because of perceived oppression or economic deprivation. The correct policy against terrorism must take into account the reasons people turn to terror and, where appropriate and feasible, address them. No cause, however, justifies terrorism. Often “suppression of terrorism” has been used as an excuse for laws and practices designed to stifle dissent and opposition. In many cases this has amounted to a “war” against political opposition of whatever kind, with the use of a repressive catalogue of violations of human rights including the right to life, the right not to be tortured, the right not to be detained arbitrarily and the right to a fair trial. Those affected, frequently include the wider population who are innocent of any illegal activity. There is a realistic danger that the war on terror might undermine, in one way or another, the general expectations concerning the quality of democratic societies. Democracy is necessary, but not sufficient to protect human rights, and human rights are the necessary basis for a legitimate response to terrorism. Democratic rule of law, transparency, and participation must be maintained; they can mitigate some abuses against citizens within the national territory, and provide some retroactive accountability. But contesting the politics of fear that underlines the design of military policies, abuses abroad and against non-citizens, shadow states, and the unilateral abrogation of international law requires reframing national security as human security.

Moreover, liberal democracies must also strive to exercise cosmopolitan self-determination, in which leaders construct national interest in accordance with the needs of their own citizens, guided by accountability to international universal principles – rather than by hegemonic aspirations. Democracy is a political community constituted to protect its citizens from the range of threats to their life, liberty, personal integrity, and human dignity. It must remain so even against the threat of unlawful and indiscriminate violence. This is the mandate and limit of state security policy.

The fight against terrorism accompanied with respect for human rights are common aspects of a protective system for which governments are responsible.

However, counter-terror measures introduced in numerous states with the aim of combating terrorism fail to meet international human rights standards and pose a great challenge to them.

Since September 2001, the fight against terrorism has become a tremendous issue on the international agenda³. Repeatedly struggle against terrorism has been used by states as a means to reinforce the security measures, most of the time in disregard with international human rights standards. There has been a worrying trend to view human rights as an obstacle to security, particularly security from terrorism. Some argue that the threat of terrorism can justify limiting or suspending human rights. Even the prohibition of torture, a fundamental human rights principle and a rule of customary international law which binds every state and every individual, has been called into question.

The threat of terrorism is used as a justification for the disregard of international human rights law. Although the fight against terrorism is legitimate and necessary, its objective is increasingly diverted by governments in order to exert their power at the expense of their commitments on human rights. Political and civil rights have been regularly sacrificed to claims of international and national security. The attendant disregard for internationally accepted standards and norms of behaviour set out in international and humanitarian law and the acceptance of militarism as a preferred method of dealing with threats of terrorism continue to impact negatively on human rights protection nationally and internationally and make a mockery of adherence to human rights standards generally. States get involved in fighting what is sometimes called “revolution”, “separatism” or “extremism” but what is now more commonly described as “terrorism”.

Having the above in mind, it is correct today to think in a serious way about the consequences of certain policies adopted in the name of the fight against terrorism. Since the adoption of the UN resolution 1373/2001, “other regional bodies and numerous states have sanctioned counterterrorism measures which are inconsistent with internationally recognised human rights standards”⁴. This situation caused the United Nations special Rapporteurs and independent experts to adopt joint statement, in which they expressed “profound concern at the multiplication of the policies, laws and practices increasingly being adopted by many countries in the struggle against terrorism, which in their view were negatively affecting the enjoyment of the human rights”⁵.

³ „Our response to terrorism, as well as, our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism—not privileges to be sacrificed at a time of tension”. See statement of Kofi Annan to special meeting at the UN Security Council’s Terrorism Committee with International Regional and Sub regional Organisations, New York March 2003, available on www.unhcr.ch/terrorism.

⁴ Note by the United Nations High Commissioner for Human Rights, doc. No E/CN/4/2005/103, February 7, 2005.

⁵ The United Nations, doc. No E/CN/4/2004/4, annex I.

In fact it is a serious problem to be considered, whether human rights after 9/11 attacks and the war on terror, are a luxury we can no longer afford, or rights that must always remain a fundamental part of democratic politics, in order to determine the boundary between individual freedom and governmental tyranny. It is not an easy task to evaluate the impact of the war on terror on human rights, as well as to develop a counter-terror strategy which takes human rights seriously. While some international lawyers, policy-makers, scholars and activists in the field of human rights argue that “war” is necessary in defence of liberal democracy, others assert that it is time to move away from the “war model” towards a new paradigm based upon respect for human rights, an internationally-coordinated anti-terror justice strategy, and long term political vision that can reduce the global tension that generate a political constituency for terrorists⁶.

Thus, at this point, it is correct to indicate that contrary to the rhetoric of the war against terrorism, the world’s most significant human rights challenges did not emerge on 11 September. The majority of those whose lives and well-being are at risk, the sources of their insecurity are unconnected with the events of 11 September, predating the war against terrorism and continuing despite its interventions. They are persecuted by the state as well as by the non-state agents.

Likewise terrorism has long been the focus of international attention, resulting in a proliferation of agreements relating to the issue. Prior and after September 11th, the General Assembly has been constantly requiring states to eliminate terrorism and strengthen cooperation in the fight against it, while respecting international human rights standards⁷. The United Nations has developed a wide range of international legal instruments that enable the international community to take actions to suppress international terrorism. Twelve UN Conventions on Terrorism provide basic legal tools to combat international terrorism – from the seizure of an aircraft to the financing of terrorism. As for today the twelve existing universal instruments on terrorism are not sufficient to cover all aspects of terrorism. In fact, the existing universal conventions on terrorism are not of a comprehensive nature and are aimed at preventing and suppressing the commitment of specific acts of a grave nature⁸.

The resolutions adopted by the UN General Assembly on the subject of terrorism require particular attention because five of them are specifically in relation to human rights and terrorism. On numerous occasions the UN General Assembly condemned “acts, methods and practice of terrorism in all forms and manifestations, as activities aimed at the destruction of human rights, fundamental freedoms and democracy...”⁹. In particular the General Assembly referred to terrorism as

⁶ For detailed information see: *Human Rights in the War on Terror*, ed. R. A. Wilson, Cambridge 2005.

⁷ See e.g. A/RES/55/158, §3.

⁸ Historically, the UN conventions emerge in response to new forms of terrorism, such as hijacking, hostage taking, safety or maritime navigation and platforms, threats linked with nuclear material or explosives, public bombing and financing of terrorism.

⁹ See UN General Assembly Resolutions: A/RES/54/164, & 3.

a violation of the right to live free from fear and the right to life, liberty and security¹⁰. However, international consensus has not, so far, been achieved on a precise definition of terrorism. Indeed, till now, there is no accepted general UN definition of terrorism.

In fact, the controversial issue of terrorism has thus been approached from such different perspectives and in such different context that it has been impossible to get to acceptable definition on the UN forum. Amazingly the resolution 1372/2001 adopted on September 2001 by the Security Council, under the Chapter VII of the UN Charter extensively lists mandatory counter-terrorism measures to be applied by all UN member states. However, it also fails to define the concept of terrorism or terrorist's acts. This omission has opened a Pandora's box in delegating to each state the discretion to apply its own definition of terrorism, or, indeed to apply none at all. Since then some states have been developing a rather far-reaching understanding of the concept of terrorism. In being offered such an opportunity certain states have even been prone to apply the terrorist appellation to such acts which constitute an exercise protected under international law.

The recent universal conventions have recognised terrorism as a threat to international peace and security. Terrorism is never justified under any circumstances and must be punished at the domestic level by appropriate penalties considering the danger of the acts.

Universal UN instruments recognise the need for a comprehensive convention on terrorism¹¹, although a number of scholars and politicians represent the opinion that this need not necessary include the task of defining terrorism as an absolute necessity. They argue that terrorism is changeable, still evolving concept and a conventional knowledge regarding terrorism must be constantly revised. For this reason they would rather stand for the case-by-case approach of universal treaties as the best solution to address the problem of terrorism in international law in the context of human rights protection.

Non-Governmental Organisations (mainly Amnesty International and Human Rights Watch) as well as the whole range of human rights activists survey the issue of the human rights in the context of terrorism from a different angle. Their main task is to expose all the negative feature of the war on terror. Obviously there is no doubt that the war on terror has a negative impact on traditional civil liberties. The citizens' rights such as freedom of expression, freedom of information, protection of the private sphere etc. are threatened in various ways. Extraordinary security measures being taken, rise NGO's profound anxiety, because they constitute an intrusion into the personal sphere of citizens'.

¹⁰ A/RES/52/133, § 2.

¹¹ See e.g. 1994 Declaration on Measures to Eliminate International Terrorism, Art. 7; International Convention for Suppression of Terrorist Bombing, Preamble; International Convention for Suppressing of the Financing of Terrorism, Preamble.

There is no doubt that states are responsible for the security of their citizens, but, here the human rights defenders come with some crucial questions: does limiting human rights really make people more secure? Does country become less vulnerable to threats of terrorism? Who is responsible for the balance between state security and human rights protection?

Perhaps the most critical opportunity to answer the troubling questions issued by the war against terrorism is to found exactly in the advocacy for and of international legal standards. It is in this realm that human rights activists strive to ensure there is constructed an authoritative and efficacious temper to the power and authority of the nation state and to that power exercised by other actors. The role that agreed international standards, due processes, transparency and the rule of law can play in holding states and others to account should not be underestimated, if only because of what occurs when these standards are ignored or with deliberation and intent, overridden.

The war against terrorism is a case in point, although NGO's and human rights activists avoid using the term "terrorism". In their view it is simply not an acceptable term of use given that there is no internationally agreed definition of what that term mean.

Their arguments point out that there also exists an increasing pressure, upon citizens, to conform to governmental views about terrorism and the latter's evaluation as a threat to western society as such. In such circumstances the citizens accept less progressive and rigorous norms having no guarantee that they get back their rights in the foreseeable future. That, they argue, additionally aggravates internal tensions, ethnic, and national rivalries, existing social problems etc. Therefore entire population groups – defined according to religious, racial, ethnic criteria – are being discriminated against. In many countries the whole minority groups suffer as a result of the publicly cultivated stereotypes in regard to the terrorist threat.

According to the strong opponents of the war on terrorism, the development described above, as the consequences of the war on terror, have a lasting negative effect on the human rights advancement. Some of these effects are, for example, large scale political and social destabilisation in the region of strategic importance; the impossibility of sustainable social and economic development; new divisions of society and political systems – internally and externally – along religious, racial, ethnic and national lines; economic deprivation of the masses of people in the affected regions, marginalization of existing international structures (such as United Nations) that have helped, so far, to preserve a kind of co-existence among peoples and states.

Of particular importance for the human rights defenders is also the fact that the war on terror, carried by one power followed by the allies states, has not only serious impact on the sovereignty of states and freedom of the citizens. They indicate that if such a new kind of war is not accompanied by comprehensive social and political strategy for the eradication of the roots of terrorism, it may lead to

a considerable increase of terrorist incidents. Consequently it may defeat its own purpose in the long run.

Taking into consideration the set forth arguments the human rights advocates believe that it is of utter importance to develop the comprehensive strategy against terrorism. According to them it should begin with a clear, precise, legally consistent definition of terrorism. Definition that allows to distinguish terrorist acts from acts of legitimate resistance, in conformity with the rules of international humanitarian law as well as international documents protecting human rights. In their opinion the absence of a universal definition of terrorism has led to significant limitations, restrictions and abuses of human rights all over the world.

It was already mentioned above that the definition issue has been a concern of the UN, but not only. Some years ago, academics identified over hundred different definitions of terrorism and yet, despite the frequency with which it is now used to justify everything from arbitrary detention to regime change, the term has not been subjected to the rigours of jurisprudence nor is there a broadly accepted definition under which one may systematically evaluate governments' application of the term and the actions they seek to justify under protection of its rubrics.

The human rights activists present further convincing arguments for the necessity of terrorism definition. They argue that additional consequences of the imprecise use of this term are not merely semantic. Rather, it is the case that the term's fluidity is serving to darken the accountability of the state and of the others' whose actions amount to human rights abuses¹². In fact, at present this term has been generally used only to describe the violence used by non-government groups not by state officials. Was it ever agreed – ask human rights defenders – that the state cannot be said to have committed acts of terrorism? Equally problematic to the cause of justice is the inconsistent application of the term to non-state actors. For example, with respect to armed groups it is not agreed whether or not terrorism should refer to violence committed by armed groups or whether it should exclude violence by groups who are trying to overthrow oppressive governments¹³.

Obviously, they do not question governments' rights to take action to defend people in their jurisdiction from violent attacks on their lives, whether the perpetrators are groups trying to achieve political objectives, or common criminals motivated by greed or anger. On the contrary they emphasise that governments have a duty to ensure the protection of fundamental rights, including the right to life. The concern here is with the manner in which states respond. States can and should respond within the framework of international human rights and international humanitarian law that has been established, tried and tested after World War II. And yet, by fail-

¹² Take the example of the particular lessons revealed by the origins of the term "terrorism". The term terrorism was first used in a political context to describe the conduct of the 18th century Jacobins who were in power for a short time after the French Revolution. The Jacobins sought to impose their will by the mass executions of their opponents and their period of rule came to be called the Region of Terror.

¹³ African and Arab States, for example, have adopted treaties to combat terrorism that exclude armed struggles for "liberation and self-determination".

ing to condition it on respect for these fundamental human rights, the war against terrorism has become a license to governments to ignore human rights and to commit a wide range of abuses, secure in knowledge that other governments are going to turn a blind eye in the interests of a “global coalition against terrorism”.

Short presentation of the two points of view concerning the human rights issue in the context of the war on terror shows there does not exist a major controversy over the necessity to protect rights and freedoms against any acts of violence. Despite the absence of universal definition, most of international legal instruments recognise terrorism as crime of serious matter. In fact, from an international human rights perspective, it is qualified as an act aimed at the violation of the freedom from fear, the right to life and security of the person.

Nevertheless, there is one major negative aspect of the absence of definition of terrorism. Such situation allows states to individually select whom they label as terrorist and this can lead to heavy consequences on individual and international relations. The “term terrorism in itself is a motive highly loaded politically”¹⁴.

Thus, at this point, it is correct to indicate that instead of continuing the debate on defining terrorism, the real need is for proper mechanisms to deal with the acts within the concept of terrorism as well as the counter-terrorism measures adopted by states. There is no doubt that the concept of terrorism is a complex one. However, this does not indicate that in the war on terror it is impossible to clarify the protection of individuals, particularly their fundamental rights and freedoms. Since there are no proper international mechanisms to monitor the application of counter-terrorism measures in full respect of international law, then international human rights supervision becomes even more essential for the protection of individuals as well as groups. The introduction of the international human rights monitoring procedures could be in many cases the very significant protection for human beings against violation of their rights and freedoms. Moreover, the establishment of an international legal framework of obligations and limits for states in combating terrorism would stop them to react too strongly to threats of terrorism.

States with the democratic standards rooted in their internal political and legal systems are committed to uphold human rights and the rule of law everywhere and accept that their conduct will be judged according to these standards. In the twenty first century the threat of transnational terrorism pose a great challenge to the international security environment and protection of human rights. Therefore, international community is obliged to develop such methods in its struggle against the abuses of human rights by terrorist acts that they will be able on one hand, to neutralise terror groups and, on the other, protect civil liberties and freedoms as well as not exacerbate the socio-economic-political-religious fissures that are breeding grounds of terrorism. Serious and genuine concern about human rights, civil liberties and fundamental freedoms calls for giving priority to the eradication of the root causes of terrorism. Therefore, at present, the development of a compre-

¹⁴ J. J. Lambert, *Terrorism and Hostages in International Law*, Cambridge 1990, p. 13.

hensive economic and social strategy for sustainable growth, including measures for the reduction of poverty and social injustice seems to be, not the only one, but nonetheless, one of a very important elements of global strategy in protecting human rights against terrorism.

At the same time, in order to be credible and effective, the fight against terrorism must not only respect the sovereignty of states and the fundamental rights of individuals and groups everywhere, but it must be complemented by world campaign against any forms of injustice within the framework of a global development strategy. Such strategy cannot be determined and implemented unilaterally. It has to be pursued within the multilateral framework of the United Nations. There is also a very important task for regional bodies, particularly the European Union.

That leads us to the point where it is necessary to highlight some of the key questions facing the EU regarding human rights in this century. The basic question is what impact do we expect the EU to have on human rights in the context of the war on terror?

Terrorism is not a new phenomenon in Europe. The context of terrorism in the EU has been set mainly by each member states' own historical, political, economic and social circumstances. However, the EU as a political institution has been more and more identified as a symbol and has already become threatened and targeted by acts of terrorism. In order to achieve the far – reaching goal of protecting human rights the EU has to take into account also the international security environment. Terrorism in Europe is essentially a transnational phenomenon, therefore, to counter terrorism effectively, law enforcement needs to share information, cooperate closely and coordinate its efforts at the European level. The unique nature of the EU as an international organisation and the advanced levels of cooperation between member states provide the opportunity to advance the fight against terrorism within a framework that respects and promotes the protection of human rights, democracy and the rule of law. This applies not only to the protection of human rights within Europe's borders, but beyond them as well. There can be no double standards as regards protection of rights and freedoms in the EU internal and external cooperation. However, law enforcement must be balanced by measures aimed at protection of rights and liberties of the European citizens. The complex legal structure of the EU should not be allowed to subvert the protection of rights and freedoms and the necessary political and judicial accountability. Non-binding declarations regarding the need for a remedy are simply not sufficient. This requires the EU to work out a peaceful alternative to terrorism as well as to global war on terror. If the roots causes of terrorist acts are ignored and if the problem of terrorism is merely portrayed as one to be handled through military and security measures, the present tensions and conflicts may well lead to the constant and serious grow of restraining human rights in the name of international security. Such circumstances generate a grave risk that temporary suspensions of democratic rules and rights may become a gateway to

the permanent curtailment of human rights. Paradoxically, therefore, security measures can facilitate the destruction of democratic values and liberties they exist to preserve.

Within the tragic events of September 11, 2001, and the adoption of the Security Council of Resolution 1372/2001 the European Union faced an immense challenge: to fight the wave of terrorism on a world scale while trying to respect the universal value of human rights and to work for more promoting these values. It acts, *inter alia*, not to confuse terrorism with the struggle for democracy and the respect of these universal values in which movements of opposed to tyrannical regimes are engaged.

Taking account of this distinction, the European Parliament¹⁵ shortly before the 9/11, recalled that “terrorist acts within the European Union must be considered as criminal acts whose aim is to alter political, economic, social and environmental structures in states governed by the rule of law by actually threatening to use violence or restoring to violence, as distinct from acts of resistance in third countries against state structures which themselves employ terrorist methods”¹⁶.

This distinction was repeated on other occasions. The European Council, at its extraordinary meeting on 21 September 2001, put terrorism at the top of its agenda and approved the “Action Plan to combat terrorism”. For the first time, the EU developed a coordinated, coherent and cross-pillar approach to all its policies and measures to fight terrorism. The European Council stated that “terrorism is a challenge to the world and to Europe”, and that the fight against terrorism will “more than ever, be a priority objective of the European Union”. Significantly, it added that the commitment to fight terrorism will go hand in hand with “respect for the fundamental freedoms which form the bases of our civilisation”¹⁷.

In November 2001, Luis Michel, former Belgian Minister for the Foreign Affairs, had warned, “All necessary measures have to be taken so as to not confuse the fights against terrorism with the fight against irritating oppositionists. The

¹⁵ The impact of the terrorist attacks of September 11, 2001 on EU counterterrorism policy cannot be fully understood unless we consider that, apart from the Council of Europe decision of December, 1998, instructing Europol to deal with crimes related to terrorism, the position of the European Union toward terrorism has been limited to a strictly political level. All EU institutions have constantly condemned terrorism, but the definition of a common counter-terrorism policy or, at least, the definition of their role in combating terrorism had not been integrated into their political agenda.

¹⁶ The persistence of the various forms of terrorism in several EU countries (namely, Spain, France, and Greece), its resurgence in Italy, as well as its evolution in the international context, pushed the Committee on Citizens’ Freedoms and Rights, Justice, and Home Affairs to prepare a report on the role of the EU in combating terrorism in order to promote the creation of a common area of freedom, security, and justice. European Parliament Recommendation on the role of the European Union in combating terrorism. (2001/2016 INI), §(T), doc. No A5-0273/2001, adopted 5 September 2001.

¹⁷ The area covered by the fight against terrorism span the three “pillars” of the EU – that is:– the first pillar (or Community) which includes issues such as the free movement of persons, asylum and immigration and judicial cooperation in civil and commercial matters; – the second pillar (which is intergovernmental) covering the Common Foreign and Security Policy; and – the third pillar (also intergovernmental) covering criminal law issues of justice and home affairs, in particular police and judicial cooperation in criminal matters). The European Council document 12800/01 of 16 October 2001.

danger is a real one". He also notified that "the war on terror should not in any way undermine our expectations concerning the quality of our democratic societies"¹⁸.

In fact, the war on terror accompanied with respect for human rights are common aspects of a protective system for which governments are responsible.

The above was followed by a number of the EU various declarations, decisions, action plans to combat terrorism, reports and programmes strengthening freedom, security and justice in the European Union. The EU Council Framework Decision on combating terrorism, which was agreed in record time in December 2001, has been so far, one of the key elements of the Eu's response to the threat of terrorism in the context of human rights protection. Mainly, because, it has offered for the first time a common definition at the EU level of "terrorist offence" and of persons and organisations responsible for offences, aiming at a common minimum harmonisation of Member States' criminal law in this respect¹⁹.

Basically, all the documents adopted either by the European Commission, the European Council or the Committee on the on Civil Liberties, Justice and Home Affairs placed terrorism at the top of their agenda, and stated that the lack of democracy, civil liberties and the rule of law is a precondition for many forms of internal and international terrorism. Also the special attention has been driven to the fact that it is crucial in the counter-terrorist efforts to uphold democratic principles and maintain moral and ethic standards, otherwise, increased repression and coercion are likely to feed terrorism than reducing it.

It seems necessary to point out that many terrorist insurgencies will not come to an end unless the root causes are addressed and fundamental grievances and rights are provided for. Thus, there is a need in the European Union to focus on the factors that sustain terrorism if the Community wants to identify possible avenues of prevention, or ways of braking the vicious circle of terrorist revenge and counter-revenge.

The counter-terrorism policies elaborated in the countries of the EU in the aftermath of September 11, 2001, have been characterised by a desire to strengthen the networks of international cooperation among law-enforcement agencies, intelligence services, and judiciary, but also by the introduction of several exceptional measures adopted usually on a temporary although sometimes on a permanent basis. Relying on the assumption that some legal guarantees for civil rights and

¹⁸ La Libre Belgique, 10 November 2001.

¹⁹ It must be stressed that although this document was agreed upon in December 2001, in fact it came to force in June 2002. The Framework Decision contains nine specific acts mostly concerning attacks on persons or weapons related. The acts committed must fall under one of three categories of objectives in order to qualify as a "terrorist acts". These objectives are: – to seriously intimidate a population, or – unduly compel a government or international organisation to perform or abstain from performing any act, or – seriously destabilise or destroy the fundamental structures of a country or an international organisation. Article 1 (1)(d). In addition, there are provisions relating to human rights in recital 10 of the Preamble and Article 1 (2) of the Framework Decision that stipulate that the measures provided for in the Framework Decision "shall not have the effect of altering the obligation to respect fundamental rights or freedoms", such as the right to strike, freedom of assembly, of association or of expression. OJ L 164 22.06.2002.

liberties are incompatible with an efficient fight against new terrorist threats, exceptional rules have been presented as absolutely necessary for the protection of European population. The subsequent diffusion throughout the EU of a new model of governance expressing such exceptional measures has provoked considerable criticism both within established political institutions and in civil society.

Lately a broad use of security laws leading to violations of human rights can be tracked in many EU states. In regard to a number of individual EU member states, antiterrorism measures have been introduced ostensibly to deal with emergency situations. Many states have implemented anti terror legislation and counter terror measures that directly impede the enjoyment of human rights. Some states activated emergency restrictions that undermine human rights with claiming to be a response to terrorism. Some explicitly or implicitly involve derogating from human rights guarantees by limiting or suspending them²⁰.

There is no doubt that the states under the international human rights law have the right and indeed the duty to protect their populations from violent criminal acts. However, such measures must be implemented within a framework of human rights protection.

These human rights standards are binding obligations that apply to all persons under a state's jurisdiction. They cannot be avoided simply by placing a person deliberately outside the jurisdiction. It is particularly important that the administration of justice is fair. Without the safeguards of the rule of law, including mechanisms to ensure accountability, action taken against criminal suspects may lead to serious violations of human rights, such as unfair trials, secret detention, detention without charge or trial, torture, "disappearance", and extra-judicial execution.

There is no question that the European Union condemns terrorism in all its forms as a violation of human rights. However, finding a rights-based approach to fighting it has been less obvious. The contemporary "war on terror" has been generally based on the assumption that terrorism in its current form is nothing more than a war against Western values and as such the democratic states are more or less united in taking action against this threat. However, I would argue that it is too simplistic attitude. The anti-terrorism debate hinges on finding the right balance between human rights protection and effective security measures. Are effective counter-terrorism measures compatible with the full respect for fundamental freedoms? Is it necessary for states to make compromise and infringe on the rule of law in order to better protect their population from the threat of terrorism? And here we face a hard to manage dilemma of modern life: protecting traditional civil liberties

²⁰ Anti-terrorist laws in some countries, including the US and the UK, have targeted only foreigners or foreign-born citizens, stigmatising them as a source of danger and encouraging a climate in which xenophobia and racism flourishes. In a number of countries Moslems and Arabs have been attacked. In others anti-Semitism has re-emerged, particularly with worsening of the conflict in the Middle East. Racism is a latent feature of all societies, but it appears to have become a blatant feature of European politics and election campaigns. Its victims are refugees, asylum seekers, foreigners, and even foreign-born citizens. Those who need their rights protected the most have become the ones most targeted for attacks.

of our citizens, and at the same time ensuring their safety from terrorist attacks with catastrophic consequences.

Therefore, particular attention needs to be given to balancing anti-terrorism measures and the observance of human rights standards, otherwise the fight against terrorism would be “self-defeating”. There is no moral justification for terrorism, but once it exists, certain circumstances can make it grow. The war on terror must be reviewed through a “prism of basic rights”. A “rights response” is necessary in the strategic approach to terrorism and this necessitates closer collaboration between the main actors (USA and the EU) and a willingness to reach out to civil society. In its efforts to fight terrorism, neither the US nor the EU can afford to ignore the importance of civil rights. In fact, if action against terrorism was to be a joint effort, joint decision-making was necessary. If Europe wanted a role of importance, then it had to get its resources in line and not be as slow to react to problems at hand. This must be a fundamental reaction.

That may lead us to the final conclusion of this paper, that the call for a new human rights policy derives both from an assessment of the current internal situation and from the particular historical context in which the Union finds itself. It must be emphasised, however, that the need for such a policy is far greater now than it was, even in the recent past. The approach adopted here is not driven primarily by a sense that there are systematic violations of human rights in the context of war on terror which remain entirely unaddressed. But, by the same token, there clearly are many human rights challenges that persist and to which greater attention must be given.

Terrorist threat must not tempt democracies into undermining their own values. The future of the European Union depends upon its truly embracing human rights in a concrete and enforceable manner rather than simply as declaratory principles. This surely means making the Charter of Fundamental Rights of the European Union a legally binding instrument in the EU law. The EU cannot afford to allow member states to create first and second class citizens in terms of fundamental rights, particularly under the cover of the war on terror. Finally as the EU expands its policy and active areas, it needs a specialised agency to advise institutions and member states on the fundamental rights implications of new policies and proposals. It also needs to alert them to the implications at the EU level of human rights situation in member states and third countries as identified by the Council of Europe’s human rights machinery.