The contemporary ways of waging a war on terrorism: The case of the USA, the EU and the UN

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Almost a decade after the attacks of September 11, 2001, terrorism has become more varied, complicated and difficult to understand. The world faces an array of different kinds of terrorist threat. Some are extremely dangerous, others pose a risk on a smaller scale. Some are genuinely global, others are purely regional or local. The most difficult form to combat is transnational terrorism, especially that connected with radical Islamist extremist violence. These terrorists possess a desire to kill on the grand scale. The violence for them is not a means of forcing an opponent into negotiations and incremental concessions but a sanctified activity that aims at massive change. In the near-term there is little prospect that the threat from this form of terrorism will diminish, especially since the development of the fundamentalist Islamic organizations has grown enormously in the past thirty years.[1] The growing dynamics of their hostile activities may threaten destabilization of the weak countries and regions of the world. Islamist terror is so dangerous that must be met with revenge. The world, particularly the West, does need to actively protect itself against terrorism. In order to reduce the danger it should utilize each legal unilateral possibility and multilateral actions. Although the enemy is very strong and anonymous, the cooperative efforts of the international community have produced some security improvements. According to the United States (US) authorities key achievement are antiterrorism legislation, progress in securing borders and transportation, enhancing document security, strengthening law enforcement capabilities, disrupting terrorist financing and restricting the international movement of terrorists.

Some countries have passed anti-money laundering and counterterrorism finance legislation, making it more difficult for terrorists to operate. The international community has captured and incarcerated or killed numerous senior operatives in al-Qa'ida and affiliated terrorist groups and has thus degraded the ability of terrorists to plan and mount attacks.[2] A campaign against terrorism is a part of overall security strategies of the US, the EU and the UN. It seems that for the US most global security developments are connected with terrorism. Since the attacks of 9/11 a *Global War on Terrorism* has become the natural priority of this country.[3] Nothing has changed in that respect. The 2006 updated version of National Security Strategy (NSS) was described by George Bush as a wartime strategy. Although the present 2010 document is lack of such a statement, (the new administration of the White House officially uses the term "Overseas Contingency Operation"), President Barack Obama has made a point, in the foreword, that American power has to be built on the ongoing integrated armed forces as a cornerstone of US security. He has also acknowledged that for nearly a decade the US has been at war with a far-reaching network of violence and hatred. And the

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[1] See: Patterns of Global Terrorism 2003, June 1 2004.
[2] See the text presented by Ambassador Dell Dailey December 12, 2007 at the Washington Institute's special policy forum to discuss aspects of the "all elements of power" strategy for fighting terrorism and US Department of State's Country Reports on Terrorism 2006, April 2007.
[3] C. Powell, A Strategy of Partnerships, Foreign Affairs, January/February 2004, p. 25.

US military has been called to defeat al-Qa'ida and its affiliates.[4] The most immediate challenge still remains strengthening American power and combating terrorists who would destabilize and destroy national and global security. The NSS also points out the need to foster national and global economic growth, strengthen alliances and promote development.

The Strategy notes that in the case of preventing conflict the US will use force, if diplomatic means are exhausted. The US is willing to act with international cooperation in that respect. However, it reserves the right to act unilaterally if necessary.[5] Undoubtedly, the wording of American strategy has changed. The document clearly points out the US role in the world as that of the dominant actor setting the world's political and security agenda: "yet as we fight the wars in front of us, we must see the horizon beyond them – a world in which America is stronger, more secure and is able to overcome our challenges while appealing to the aspirations of people around the world. To get there, we must pursue a strategy of national renewal and global leadership – a strategy that rebuilds the foundation of American strength and influence."[6] One of the priorities of the US agenda in 2010 is still terrorism, but the approach has been modified. Although the National Strategy for combating terrorism of 2003 mentioned the importance of dealing with the root causes, the main attention was devoted to protecting the American homeland. By the middle of 2006, the US approach also included the "battle of ideas", including outreach to moderate Muslims, promoting freedom, democracy, fighting poverty and unstable conditions in countries in which citizens were prone to accept the terrorist ideology. In the NSS of 2010 the global fight against terrorism is narrowed down to al-Qa'ida and its terrorist affiliates who support efforts to attack the US, its allies and partners around the world.

Although President Obama has mentioned, in NSS-2010, of the protection of human rights it is still less important than to keep the homeland secure. The critics accuse US policies of violating human rights by the use of the death penalty, cases of torture (i.e. Abu-Ghraib) and extrajudicial transfer of prisoners to other governments and secret prisons (extraordinary renditions). As a result of September 11, the Americans adopted very restrictive legislation tending towards higher standards of efficiency in antiterrorism operations. They have been tightening, among other functions, student visas regulations and immigration rules (i.e. taking pictures and finger-prints of foreigners arriving in the USA). International public opinion has accused this country of arbitrary and secret detention of non-citizens, in addition to secret deportation hearings for persons suspected of associations with terrorist organizations. The opponents have also emphasized the practice of detention in US military custody of American citizens suspected of being "enemy combatants" without charge or access to counsel. The most controversial claims have concerned the authorization of military commissions to try non-citizen terrorists and the failure to abide with the Geneva Conventions of 1949 in the treatment of detainees held in the US military custody, mainly at Guantanamo Bay, Cuba.[7] In the case of prisoners at the aforementioned military base, the

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[4] The full text of the United States 2010 National Security Strategy (NSS-2010) is available in: www.whitehouse.gov/sites/default/files/rss_viewer/national_security/_strategy.pdf , (15.06.2010).
[5] NSS-2010, p. 23.
[6] Ibidem, foreword.
[7] Human Rights Watch (HRW) Briefing Paper, p. 22.

United States during George Bush presidency refused to provide them with the status of prisoners of war. The same initially applied to the members of the Taliban armed forces.

The USA also refused to obey the principles of international human rights law with regard to those detainees, asserting, in effect, that no legal regime applied to them. Therefore in the war against terrorism, the USA might hold such combatants for as long as they choose. In addition, the United States denied the request made by the Inter-American Commission on Human Rights to establish a tribunal or court which would determine the status of the detainees. They did not even respond to the letters from the UN Working Group on Arbitrary Detention seeking information on the treatment and legal status of the Guantanamo detainees.[8] Within days of taking office in January 2009, President Barrack Obama issued executive orders that repudiated key elements of the Bush administration's abusive approach to fighting terrorism. By changing course in such a swift and high-profile way, the President appeared to signal a new and reformed counterterrorism policy, one consistent with basic US values and with international law. But after the first year of this presidency, Barrack Obama chose to retain a number of the previous administration's most problematic policies, albeit in modified form.[9] The US still remains at war and can not fully grasp the reluctance of European public opinion to use the term "war" to refer to the common confrontation with global terrorism.[10] It is hard for Europeans to agree with such an attitude, which they see as simplistic. The attacks of 9/11 have also not been an event to shake the foundations of their worldview. Although to give a balanced analysis of the American strategy one must point out that the US also attaches significance to soft power tools like, diplomatic, economic, law enforcement, financial, information, intelligence and military instruments which should be used to defeat terrorism.[11]

Large scale terrorist attacks have until the beginning XXI century not been an imminent threat for Europe and have not been a danger to be expected on its own soil in spite of the vast experience with domestic terrorism. The terror attacks in Madrid in 2004 and London in 2005 have been turning points for the European Union (EU) to realize it must lay out its own policy towards new terrorism. But the realization that the EU has to formulate its own foreign and security policy principles on which all member states should agree came much earlier, during the Iraq crisis of 2003, which threatened to undermine the whole Common Foreign and Security Policy (CFSP) concept. The foundations of EU policy towards global threats were laid out in the European Security Strategy (ESS-2003). Although mentioned attacks moved terrorism to top of the list on the EU policy agenda, they have not drastically changed the assessment of terrorism as a threat to Europe. The initial EU reaction to 9/11 was a summit on September 21, 2001 of the Ministers of Justice and of Internal Affairs. They passed an "Action Plan Against Terrorism." This was the start of the EU anti-terrorism policy, which has brought, among other things, such results as a European-wide

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[8] Ibidem, p.23.
[9] HRW, Counterterrorism and Human Rights: A Report Card on president Obama's First Year, available in: www.hrw.org/en/news/2010/14/counterterrorism -and-humanrights.
[1010] W. Pope, Acting Coordinator for Counterterrorism at the State Department, New Defense Agenda Conference on "Towards an EU Strategy for Collective Security", Brussels, February 3, 2005, available in: www.useu.be/Terrorism/EUResponse/Feb0305PopeCTIssues.html, (02.03.2007).
[11] US National Strategy to Combat Terrorism, February 2003.

arrest warrant, appointment of a counterterrorism coordinator, reinforcement of intelligence cooperation and concrete steps in fulfilling the above mentioned plan.

The declaration on combating terrorism (2004),[12] counterterrorism strategy (2005),[13] conceptual framework on the European Security and Defense Policy (ESDP) dimension on the fight against terrorism,[14] anti-radicalization strategy (2005), EU action plan on combating terrorism (2004),[15] taken together form EU's counterterrorism policy. The separation of EU antiterrorism strategy into a counter-terror strategy and anti-radicalization strategy points out the importance attached by the EU to the ideological aspects of dealing with terrorism. The counterterrorism strategy consists of four pillars - prevention, protection, pursuit and response – and includes mainly soft power tools (information intelligence and international sharing, collective policy responses, legal and police instruments and international cooperation). Hard measures for the EU include, among other things, prohibition of satellite broadcasts inciting terrorism.[16] The EU has also set up EUROPOL, unfortunately without executive competences and EUROJUST,[17] (a coordination center of senior and experienced judges, prosecutors or police officers of equivalent competence) to improve the fight against serious crime by facilitating the optimal co-ordination of action for investigations and prosecutions covering the territory of more than one Member State with full respect for fundamental rights and freedoms. Traditionally, terrorism in Europe has for most of the time come from domestic sources, which explains the EU's position to treat it as a problem to be dealt with by law enforcement means and not by military ones. As to external dimension, the EU works on encouraging international efforts to combat terrorism, including the signing and ratification of international covenants and cooperation with other countries in pursuing terrorists, freezing their finance etc.[18] The EU, although having supported the US action in Afghanistan, did not approve the mainly military response to 9/11. Already in October 2001 the EU, expected measures to freeze terrorist funding and heighten transport safety, undertake political dialogue, humanitarian and development assistance as measures needed to combat terrorism.[19] According to the EU, the campaign against terrorism should have first included diplomatic measures, sanctions and intelligence cooperation.[20] Large-scale use of force is less suited to counteract terrorism, according to the European point of view. It is considered to be

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[12] The text of the declaration is available in: www.consilium.europa.eu/uedocs/cmsUpload/DECL-25.3.pdf (16.06.201).

[13] The text of the strategy is available in: www.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf, (20.05.2010).

[14] The text of the conceptual framework on the ESDP dimension on the fight against terrorism is available in: www.consilium.eu/uedocs/cmsUpload/14797Conceptual_Framework_ESDP.pdf, (30.04.2010).

[15] The text of EU action plan is available in: www.consilium.eu/uedocs/cmsUpload/Euplan16090.pdf, (14.05.2010).

[16] Communication from the Commission to the European Parliament and Council, concerning "Terrorism Recruitment: Addressing the Factors Contributing to Violent Radicalization," September 21, 2005, available in: www.eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0313en01.pdf, (30.11.2007).

[17] Council Decision 2002/187/JHA.

[18] A.I. Zakharenko, The EU and US Strategies against Terrorism and Proliferation of WMD, George C. Marshal Occasional Paper Series, No. 6, January 2007, p. 16.

[19] Action by the European Union Following the Attacs on September 11, Brussels, October 15, 2001, available in:
www.europa.eu.int/rapid/pressReleaseAction.do?reference=MEMO/01/327&format=HTML&aged=0&language=EN&guiLanguage=en, (15.09.2004).

[20] NATO after September 11, P. H. Gordon, Survival. Vol. 43, No. 4, Winter 2001/2002, p. 94.

a blunt instrument, the Europeans attaching more importance to long-term strategies encompassing judicial work, counterintelligence and conflict prevention.[21]

The EU approach to terrorism, although defined as a challenge for the whole Union, remains subject to the intergovernmental character of EU security cooperation. The EU counterterrorism strategy notes that member states have the lead role in preventing radicalization and providing the emergency response to a terrorist attack and primary responsibility for combating terrorism. The Union, however, should also have the ability to respond in solidarity to an extreme emergency which might overwhelm the resources of a single member state.[22] A solidarity clause requiring member states to offer assistance in case of a terrorist attack or a disaster was introduced in the Draft Constitutional Treaty of the EU.[23]

With the national authorities playing the central role in almost all aspects of counter terrorism, it is difficult to envision the role of the Union as a whole, since the states are not responsible to, or controlled by EU authorities. There is also a general consensus between member states that the EU should not establish a common body along the lines of the FBI or the CIA, and that the EU's role should be a supporting one.[24] The member states often do not adopt the necessary measures foreseen by EU programs fast enough and procrastinate when introducing them into national laws. The obstacle within the Union to laying out a real, common policy towards terrorism are closely connected with the difficulties in forging both the ESDP and CFSP. That is another reason for greater attention to judicial and police cooperation than security and defense matters in combating terrorism. The level of threat perception is also different in the member states and if one of them feels more affected by an event, this does not necessarily translate into actions or decisions on the European level.[25]

The third pivotal international actor that has been involved in the antiterrorist agenda for many decades is the United Nations (UN). Since 1963 sixteen universal instruments (thirteen instruments and three amendments) against international terrorism have been elaborated within the framework of the United Nations system relating to specific terrorist activities. The UN reaction on 9/11 attacks were resolution 1368 and 1373 unanimously adopted by the UN Security Council (Council, SC) in September 2001. Thus, it has made a contribution to further development of international public law. In the first of aforementioned documents[26] the Council held that any act of international terrorism was a threat to international peace and security. It granted the states the right to self-defense according to provisions of art. 51 of the UN Charter. Under terms of the text of resolution 1373,[27] which was worked out under Chapter VII of the Charter UN, the Council has obligated the member states to prevent and suppress the financing of terrorism, as well as criminalize the willful

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[21] W. Rees, R. J. Aldrich, Contending Cultures of Counterterrorism: Traqnsatlantic Divergence or Convergence?, International Affairs, Vol. 81, Issue 5, 2005, p. 905-923.
[22] The European Union Counter-terrorism Strategy, Brussels, November 30, 2005.
[23] EU Constitutional Draft Treaty, Part II, Title IV, Chapter II, articles I-42.
[24] G. De Vries, The European Union and the Fight against Terrorism, a paper presented at the seminar of the Center for European Reform, Brussels, January 19, 2006.
[25] A.I. Zakharenko, op. cit., p. 17.
[26] The UN resolution 1368, SC/7143 available in: www.un.org/News/Press/docs/2001/SC714.doc.htm, (30.07.2010).
[27] The UN resolution 1373, SC/7158 available in: www.un.org/News/Press/docs/2001/sc7158.coc.htm, (30.07.2010).

provision or collection of funds for such acts. By the above document the SC also established a Committee of the Council to monitor the resolution's implementation and called all states to report on actions they had taken in order to fulfill the obligations. The following security resolutions : 1267, 1333, 1390 and 1455 (2003) have concerned the sanctions against Afghan Taliban and al-Qai'da fighters, freezing their assets, ban of movement by the terrorists within a state and imposition of embargo on arms. Generally, all of the United Nations resolutions focus on the methods of terrorist acts passing over the motives of the assassins. Thus the UN has avoided disagreement connected with a definition of terrorism.

There are too many differences among the member states about how to define terrorism, keeping in mind the fact that there is no single generally accepted definition of terrorism as of yet. At the same time a number of programmes, offices and agencies of the United Nations system have been engaged in specific activities against terrorism, further assisting Member States in their counter-terrorism efforts. To consolidate and enhance these activities, the Secretary General Kofi Annan presented, in May 2006, a conception of combating terrorism. In September the same year member states embarked upon a new phase in their counter-terrorism efforts by agreeing on a global strategy to counter terrorism.[28] The Strategy marks the first time that all Member States of the United Nations have agreed to a common strategic and operational framework to fight terrorism. The Strategy forms a basis for a concrete plan of action: to address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism; to strengthen the role of the United Nations in combating terrorism; and to ensure the respect of human rights while countering terrorism. The Strategy builds on the unique consensus achieved by world leaders at their 2005 September Summit to condemn terrorism in all its forms and manifestations. In fact the Counter-Terrorism Strategy in not a *sensu stricto* strategy. It is a collection of single activities which should be taken by the member states. The protection of human rights plays the main role in this document. The Strategy recognizes that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing. It reaffirms that respect for human rights constitutes the fundamental basis of common fight against terrorism. Generally the UN possibilities of combating terrorism as a supranational and ideological phenomenon, are limited, from the beginning, by lack of political will and the possibilities within the member states of the UN.

The aforementioned very general considerations demonstrate that fighting against contemporary terrorism is not an easy operation, because terrorist groups have transformed themselves, modify their structures, becoming transnational in character and quickly adapting to processes of globalization. Therefore, counterterrorism is very difficult. Because of the lack of uniform international regulations countries, in the fight against terrorism, undertake individual measures that are sometimes incompatible with international human rights law. Defending themselves against attacks, they are forced to implement temporary restrictions that curtail some civil liberties in order to preserve their territorial unity and security.

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[28] The UN resolution A/RES/60/288 available in: www.un.org/terrorism/strategy-counter-terrorism.shtml, (15.06.2010).
[29] W. Dietl, K. Hirschmann, R. Tophoven, Terroryzm, Warszawa, 2009, p. 317.

However, it does not mean the restrictions should be in force longer than necessary. Nothing can excuse a country, which under the pretext of human rights protection, violates these rights, arbitrarily recognizing the measures used as lawful and selectively adhering to international obligations. These kinds of activities, such as torture, indefinite detention without charge, or inclination to exclude terrorism suspects from internal judiciary resist not only NGOs monitoring human rights in the world, but also domestic and international public opinion. The lack of uniform international regulations in the fight against terrorism is bound up with the reluctance of international governmental universal as well as regional organizations to feel obliged to pass unconditionally binding agreement. No one intends to deprive a country of its right to self-determination. The member states are not going to assign their rights to suprastate institutions, which are more and more often inefficient.

Although many ways of combating contemporary terrorism have been elaborated by different subjects of international relations, the problem still rests unresolved. So, how to combat terrorism? Probably the proper or good answer was given by one of the higher officers of the German secret service. When he was asked by his guest about the usefulness of employing a big number of scientists with Turkish language skills and knowledge of Islam. He said he was not interested in teaching them the counterintelligence work at all. Their main task was to explain to him and his colleagues the Islamic and Arabic world its religion, philosophy and culture. Because if they did not know the sociocultural and ethnic conditions shaping the men who used Islam to justify their actions, they would not be able to invent the reasonable ways of combating them.[29] The answer is likely a prerequisite to solve this persistent problem.

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