

THE EU IN THE AGE OF “NEW” TERRORISM:  
CHALLENGES, RESPONSES, AND VISIONS

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THE EU IN THE AGE OF “NEW” TERRORISM:  
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## ABSTRACT

### THE EU IN THE AGE OF “NEW” TERRORISM: CHALLENGES, RESPONSES, AND VISIONS

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This thesis analyses the European Union’s internal and international efforts against the “new” terrorism threat after the September 11 terrorist attacks of 2001. With the help of globalisation, some characteristics of terrorism have changed and terrorism has become more challenging in terms of its network structure, amateur personnel, and willingness to cause mass casualties. In addition, terrorist units have become a global actor affecting world politics. In the face of the threat of “new” terrorism, the EU, which had never had consensus on the term terrorism and on the ways to tackle it in its history before September 11 attacks, has started to enhance institutionalising its legal and administrative capacity and inclined to develop liberal strategic policies since the September 11 terrorist attacks. The EU also involved in counterterrorism cooperation with its global partners after the September 11 terrorist attacks by concluding police and judicial cooperation agreements, transport and border security agreements, and releasing joint statements, although some divergences and disagreements on the ways to confront the terrorism remains as a significant problem. In this context, it is evident that the September 11 terrorist attacks acted as a catalyst for the intensification of the EU’s internal and international efforts for fighting against terrorism.

Keywords: The European Union, “new” terrorism, counterterrorism, liberalism, realism.

## ÖZET

### “YENİ” TERÖRİZM ÇAĞINDA AB: ZORLUKLAR, KARŞILIKLAR, VE GÖRÜŞLER

Yıldız, Uğur Burç

Avrupa Çalışmaları Y.L: Uluslararası İlişkiler ve Avrupa Birliği Bölümü

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Bu tez Avrupa Birliği'nin 11 Eylül terör saldırıları sonrasında “yeni” terörizm tehdidine karşı kendi içinde ve uluslararası alanda verdiği çabaları analiz etmektedir. Globalleşmenin etkisiyle terörizmin bazı özellikleri değişmekte ve terörizm yeni şebeke yapısı, amatör personeli, ve kitlesel kıyıma yönelmesiyle daha ciddi bir sorun haline gelmektedir. Bunun yanında, terörist birimler dünya politikasını etkileyen bir global aktör halini almaktadır. 11 Eylül saldırıları öncesinde kendi içinde terörizm terimi ve terörle savaş konularında bir uzlaşmaya varamayan AB, bu dönemden sonra “yeni” terörizm tehdidine karşı yasal ve yönetsel kapasitesini geliştirerek kurumsallaştırmaya başlamış ve liberal stratejik politikalar geliştirmeye yönelmiştir. Ayrıca AB, global ortaklarıyla terörle mücadele konusunda önemli derecede farklılıklara ve anlaşmazlıklara sahip olmasına rağmen bu global ortaklarıyla polis ve adli işbirliği anlaşmaları, ulaştırma ve sınır güvenliği anlaşmaları imzalayarak ve ortak deklarasyonlar yayımlayarak teröre karşı yapılanmada işbirliğine gitmiştir. Bu bağlamda, şu bir gerçektir ki, 11 Eylül terör saldırıları AB'nin kendi içerisinde ve uluslararası alanda teröre karşı mücadele çabalarını yoğunlaştıran itici bir güç olmuştur.

Anahtar Kelimeler: Avrupa Birliği, “yeni” terörizm, terör karşıtı yapılanma, liberalizm, realizm

This thesis is dedicated to my dear mother Aysel Yıldız and my dear  
father Mehmet Yıldız  
in whose endless love and support I found my strength

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## LIST OF ABBREVIATIONS

AI	Amnesty International
AN	Aryan Nations
ASEAN	Association of South-East Asian Nations
BSO	Black September Organization
CBP	Customs and Border Protection
CFSP	Common Foreign and Security Policy
CIM	Christian Identity Movement
CBNR	Chemical, Biological, Nuclear or Radiological Weapons
CSI	Container Security Initiative
CTBT	Comrehensive Test Ban Treaty
EDU	Europol Drug Unit
ESDP	European Security and Defense Policy
ESS	European Security Strategy
ETA	Euskadi ta Askatasuna
FBI	Federal Investigation Bureau
FLN	Front de Libération Nationale
FLQ	Front Libération du Quebec
ICC	International Criminal Court
IRA	Irish Republican Army
JHA	Justice and Home Affairs
JRA	Japanese Red Army
JSB	Joint Supervisory Body

MERCOSUR	Southern Cone Common Market
NATO	North Atlantic Treaty Organization
NSS	National Security Strategy
OSCE	Organization for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
PFLP	Popular Front for the Liberation of Palestine
PLO	Palestine Liberation Organization
PNR	Passenger Name Record
RAF	Red Army Faction
RB	Red Brigades
TACIS	Technical Assistance to the Commonwealth of Independent States
WMD	Weapons of Mass Destruction
WPC	Biological Weapons Convention
WTO	World Trade Organization
VWP	Visa Waiver Program
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

## INTRODUCTION

It could be suggested that even though the Members of the EU still have divergent policies to fight against terrorism, the EU should be a more united power by enhancing its internal and international efforts against “new” terrorism threat after the September 11 terrorist attacks. In order to be a such power, the EU has started to institutionalise its legal and administrative capacity, developed strategic objectives in line with its liberal approach, and engaged in counterterrorism cooperations with its global partners such as the US, Mediterranean countries, and Russia, despite remaining divergences and disagreements with these Partners. Thus, by enhancing its efforts, the EU has become a more cohesive and cooperative power in order to wipe out the threat of terrorism, if it is considered that the EU had never reached consensus against terrorism before the September 11 terrorist attacks.

It is commonly accepted that no single theory of international relations provides a complete account of the international system. However, these theories enable policy makers and academicians to conceptualise and contextualise both past and contemporary events. The theories that have found greatest favours with policy makers are those which provide insights into how the international system works by proposing causal explanations, describing events and explaining trends and phenomena. In this context, since the international security environment has become more complex and interdependent after the end of Cold War, the September 11 terrorist attacks of 2001 and Madrid train station bombings of 2004 have also contributed to this complexity and forced to conceptualise the international system within theories. Analysis of the foreign and security policies of the EU, which is the

main focus of this study, and of the US, indicates that policy makers of the EU are influenced by liberalism while the US policy makers are influenced by realism when dealing with the threat of terrorism after the September 11 terrorist attacks. Thus, liberalism and realism, the two traditional explanatory theories of international relations, continue to shape the ways in which policy makers conceptualise international relations after the September 11 to confront terrorism. On the other hand, since the term terrorism is very controversial, it is worth mentioning that these theories remain insufficient to explain the concept of terrorism.

The terrorism is not a new challenge to the international community. For many years, terrorism has continued to be a significant challenge with its dangerous nature, various definitions and types. However, what is striking even today is the changing characteristics of terrorism with the help of the imperatives of globalisation. In this context, today, the new structure of terrorism, the new kind of personnel and the new attitude towards violence make the situation even more challenging. These changing characteristics of terrorism have been regarded by some authors who study terrorism as the emergence of “new” terrorism, particularly employed by terrorists motivated by religious imperatives.

In the aftermath of the September 11 terrorist attacks, the new features of terrorism came into most visible scene and “new” terrorisms’ incubation period has ended. The terrorism has now become an influential actor on international politics. The devastating terrorist attacks of September 11, 2001, have also given a message to the international community indicating the need on enhanced cooperation to defeat the terrorism at the beginning of the 21<sup>st</sup> century. Thus, the first chapter of this paper

analyses the challenges of terrorism by giving great emphasis on the changing characteristics of terrorism.

The European countries that have sheltered various terrorist organizations in their continent for many years faced with the threat of “new” terrorism and the fact of the need to enhance their cooperation among themselves. In this context, the European countries, which still have different approaches on terrorism, began to enhance their efforts to counter the threat of terrorism under the framework of the EU after the September 11 attacks. The following terrorist attacks in Madrid also confirmed these facts.

In order to flourish cooperation to confront terrorism, the EU has worked to improve its legal and administrative capacity. By reflecting its liberal approaches on security matters after the end of Cold War, the EU also developed liberal strategic policies to tackle the threat of terrorism. That is why the second chapter of this study examines the EU’s internal efforts developed as a response after the September 11 terrorist attacks.

Considering the very internationalisation of “new” terrorist threat, cooperation among governments has become significantly genuine. Thus, the EU engaged in counterterrorism cooperations with its global partners, despite remaining divergences and disagreements. With this regard, the EU and the US have divergent policies to fight against terrorism as a result of their respective liberal and realist strategic objectives, which was the very case in the dispute for the invasion of Iraq that also divided Europeans by revealing that Europeans had problems among

themselves in terms of deeming the invasion of Iraq as part of combating terrorism or not, or the invasion had become inevitable fact, how to make it. However, beyond their strategic divergences, the EU and the US have a significant convergency on counterterrorism cooperation in police, judicial, and transport and security matters.

To confront terrorism, the EU also cooperates with its Mediterranean Partners under the framework of the Euro-Mediterranean Partnership which also serves as an excellent reflection of the EU's liberal approach to fight against terrorism by struggling against terrorism from its origin. Although the Euro-Mediterranean Partnership's achievements on counterterrorism remain on the declaratory level, they should not be underestimated. In all Euro-Mediterranean Conferences, governments proved their will to cooperate against terrorism through presidency conclusions. These conclusions should probably form later counterterrorism cooperation between Partners. In addition, even though the Chechen conflict remains as a significant problem to the relations between the EU and Russia, they engaged in police cooperation and issued significant statements which may provide a framework for practical counterterrorism cooperation in the future, as in the case of Euro-Mediterranean Summit conclusions. Therefore, the third chapter of this project examines the EU's international efforts after September 11 terrorist attacks by also giving particular attention on European countries' different approaches to Iraq dispute.

Conclusively, it is the fact that the Members of the EU still have divergent policies for dealing with terrorism. However, the September 11 terrorist attacks and the subsequent Madrid train station bombings acted as a catalyst to the EU to

intensify its internal and external efforts to fight against terrorism. The EU issued various documents and legislations to institutionalise its legal and administrative policies and developed liberal strategic dimensions to fight against terrorism. The EU also adopted various agreements and issued joint statements with its partners on counterterrorism, despite the fact that divergence and disagreements among the Partners when tackling terrorism still remain as an important problem. Thus, these efforts made the EU more cooperative and cohesive for combating terrorism after the September 11 terrorist attacks. In the light of these facts, the final chapter of the project looks at the vision of the EU to tackle the threat of terrorism.



# CHAPTER 1:

## Challenges of Terrorism

Since the end of the Cold War, the international environment has witnessed the emergence of complex issues and more interdependent actors. Terrorism is one of the complex issues in the new era, particularly after the September 11 terrorist attacks. The new era should be conceptualised within the two traditional theories of international relations, liberalism and realism, even though they remain insufficient to explain the concept of terrorism.

In fact, terrorism poses a great challenge to the international community for many years with the lack of uniform definition and the emerging types through different motivations. Today, it is also a growing challenge that some characteristics of terrorism has changed with the implications of globalisation process, so the terrorism has been regarded as “new” terrorism by some authors who work on terrorism. Thus, in this chapter, first of all, terrorism will be analysed within the theories of international relations so as to conceptualise the EU approach on terrorism. Then, the historical development of terrorism will be studied. In the next part, the definition of terrorism will be discussed in detail. Following that, the types of terrorism will be focused on. Finally, the characteristics of “new” terrorism will be analysed with the emphasis on the September 11 terrorist attacks.

# 1.1 Terrorism and International Relations Theories

## 1.1.1 Realism versus Liberalism

Throughout the Cold War, realist perceptions were dominant and played significant role in international relations.<sup>1</sup> According to the realist point of view, states are the most important actor on international relations and their behaviour is directed by their interests which are defined in terms of power. In addition, securing the national interests through military means is the main goal of all states in anarchical environment of international relations.<sup>2</sup> Taking into account this perception, power maximisation and state survival were the main rationales during the Cold War in which the nuclear balance between hegemonic powers, the US and the Soviet Union, was the main concern of international agenda. In addition, during the Cold War, main struggle between hegemonic powers was to gain military superiority in the context of nuclear power. It can be drawn that the security issues determined the international agenda during the Cold War in which the continuous struggle for power and survival was the main concern.

With the end of the Cold War tension, the international agenda has started to change. In particular, globalisation has started to affect actors, issues, and the international environment. Globalisation led to an increase in trade, greater cultural exchange, advancement in technology, spread of multiculturalism, erosion of

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<sup>1</sup> Robert Jackson and Georg Sorensen, *Introduction to International Relations Theories and Approaches*, (Oxford: Oxford University Press, 2003), p.101

<sup>2</sup> Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Knopf, 6th edit, 1985)

national sovereignty and national borders, increase in the share of world economy, and increase for the role of international organizations.

With the above mentioned implications of globalisation, liberal perceptions gained more importance and began to challenge the realist perceptions in the post-Cold War era. The fundamental assumptions of liberalism are as follows. First of all, international politics involves a variety of agents, including states, organizations, groups, and even individuals; second, these agents pursue interests (both selfish and collectively) through an international agenda that includes economic, environmental, developmental, and cultural matters, in addition to security matters; third, the exercise of power involves a variety of hard power and soft power instruments; finally, laws and institutions based on principles, norms, morals, and rules, play the vital function of providing order in the international system.<sup>3</sup>

## 1.1.2 Theoretical and Practical Divergences in Transatlantic Relations

### 1.1.2.1 The US Approach

Even though the proponents of realism interpret the theory in different ways, there are several concepts that all realists adopt. Dunne and Schmidt gathered together these shared understandings in the principles of statism, survival, and self-help. According to Dunne and Schmidt, realism posits the following ideas. First, states are the principal actors in the international system, operating in an anarchical

environment; second, the lack of authoritative and global government forces states to focus on the primary national interest of survival; third, in order to ensure survival, states do not rely on international institutions but actively engage in self-help arrangements which are manifested in the development and use of force, especially offensive military force.<sup>4</sup> In such a setting, non-state actors are ignored. In addition, unilateralism- “a pattern of international engagement in which one nation acts outside the framework of bilateral (between two countries) or multilateral (involving many countries) agreements and negotiation”<sup>5</sup>- prevailed over multilateralism- “a structure to manage international and regional affairs that constrains unilateral behaviour through institutional mechanisms (treaties, international law, and voting process) that ensure consultation and engagement”<sup>6</sup>-, because realists claim that international system is fundamentally anarchical and that multilateralism cannot eliminate the basic struggle for power among states<sup>7</sup>. Moreover, military hard power has privileged mean over civilian soft power because realism sees world politics as a state of war for power among states.<sup>8</sup>

Taking into account the above mentioned main assumptions of realism, it should be stressed that the US foreign and security policy operated in realist

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<sup>3</sup> Louis Klarevas, “Political Realism: A Culprit For the 9/11 Attacks”, *Harvard International Review*, (Vol.26, Issue 3, 2004), p. 19

<sup>4</sup> Tim Dunne and Schmidt BC, “Realism” in John Baylis and Steve Smith (eds), *The Globalisation of World Politics: An Introduction to International Relations*, (Oxford: Oxford University Press, 2001, 2nd Edit.), pp.150-155

<sup>5</sup> Tom Barry, “The Terms of Power”, *Foreign Policy in Focus*, November 2002, p.3 Available at:<<http://www.fpiif.org/pdf/gac/0211power.pdf>> (Visited on: January 10, 2005)

<sup>6</sup> Ibid, p.2

<sup>7</sup> John Van Oudenaren, “What is “Multilateral” ???”, *Policy Review*, (No.117, February/March 2003), p. 39

<sup>8</sup> Klarevas, p. 19

framework during the Cold War and dealt firstly with the containment of Soviet aggression.<sup>9</sup>

The trends of 1990s increased globalisation, institutionalisation, and democratisation which led to President Bill Clinton to expand the priorities of the US beyond traditional Cold War concerns to include free trade agreements, peacekeeping, Third World development, and environmental protection.<sup>10</sup> In brief, President Bill Clinton put new liberal paradigms for the US beyond traditional Cold War concerns such as balance of power and arms control. However, the arrival of G.W.Bush to Whitehouse ended the liberal breeze of Clinton Administration. G. W.Bush, who came to office in 2001, was influenced by realism and dedicated himself to establish a “unipolar world”. By acting unilaterally in the first months of his administration, G.W.Bush refused to approve some multilateral agreements such as “Kyoto Protocol”, “Biological Weapons Convention”, “Comprehensive Test Ban Treaty”, and to join “International Criminal Court” regardless of the opposition of the international community.<sup>11</sup>

Even though the Bush Administration viewed international matters through realist perspective in its first months of arrival, it was the September 11 terrorist attacks that stimulated the realist perspective of Bush administration on international matters and, in particular, created realist foreign policy instruments to confront the threat of terrorism. In addition, it was the September 11 terrorist attacks that put the

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<sup>9</sup> Ibid

<sup>10</sup> Ibid,p.20

<sup>11</sup> Laurent Cohen-Tanugi, *An Alliance At Risk: The United States and Europe Since September 11*, (Baltimore: Johns Hopkins University Press, 2003), p.18

terrorism to the top priority of the US foreign policy and permeated anti-terrorism to the all facets of American diplomacy.

In June 2002, President G.W.Bush endorsed his unilateral “pre-emption” concept in his West Point, New York, speech in order to tackle the threats that the US faced, in particular, the increasing threat of terrorism by stating that “[w]e cannot defend America and our allies hoping for the best...Americans to be forward-looking and resolute, to be ready for pre-emptive action when necessary to defend our liberty and our lives”.<sup>12</sup> President’s speech at West Point Academy was the forerunner of the US National Security Strategy (NSS) which was published in September 2002. In fact, even though NSS of the US includes some tenets of liberal theory of international relations, for instance, it states that the US “will actively work to bring the hope of democratic development, free markets and free trade to every corner of the world”<sup>13</sup> and it also pledges that the US will work with multilateral organizations such as UN and WTO to develop and maintain a more stable world order and to champion liberal values such as human dignity, freedom of speech, and other ethnic tolerance<sup>14</sup>, other elements of the NSS show that these goals will be carried out by a decidedly realist foreign policy. The NSS indicates that the military hard power of the US as a defining factor in international affairs and in tackling the threat of terrorism underlines the importance of the US military force by stating that “[o]ur forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equalling the power of the United

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<sup>12</sup> U.S. President G.W.Bush’s West Point, New York, Speech on June 1, 2002, Available at:<<http://www.whitehouse.gov/news/releases/2002/06/print/20020601-3.html>> (Visited on: 4 February, 2005)

<sup>13</sup> “National Security Strategy of United States of America”, (Washington, D.C., September 2002) Available at:<<http://www.whitehouse.gov/tr/nsc/nss.pdf>> (Visited on: 9 September, 2004)

<sup>14</sup> Ibid, p.1

States”.<sup>15</sup> The NSS also emphasizes its willingness to use military power without multilateral support by stating that the US “will not hesitate to act alone, if necessary, to exercise our right of self defense by acting preemptively against such terrorists”<sup>16</sup> The statements of G.W.Bush at West Point and the sentences of the NSS confirm an alignment of the US foreign policy with key realist assumptions such as survival and self-help when dealing with the threat of terrorism and other threats of 21th century.

### 1.1.2.2 The EU Approach

Before beginning to analyse the transformation of international environment and the EU approach to fight against terrorism, it is worth mentioning that the EU had never had consensus on the evolution of term “terrorism” in terms of both definition and the ways of tackling it in its history before the September 11 terrorist attacks. However, it was the effects of September 11 terrorist attacks that encouraged the EU to reach a consensus on terrorism. Therefore, it introduced a common definition of terrorism and developed liberal strategies to fight against terrorism.

One of the explanatory concepts for analysing the transformation of international environment is the concept of “Complex Interdependence”, theorized by liberal school of thought. In their book *Power and Interdependence*, Keohane and Nye mentioned the characteristics of complex interdependence concept in order to evaluate the developments taking place in the era of globalisation and show the rise of liberalism to this end. According to Keohane and Nye, complex interdependence has three main characteristics: multiple channels connecting societies, absence of

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<sup>15</sup> Ibid, p.30

hierarchy among issues, and minor role for military power.<sup>17</sup> In this part, the characteristics of complex interdependence will be analysed in order to provide analytical tool to evaluate the transformation of international environment and the EU's foreign policy to confront the threat of terrorism in comparison with realist perceptions.

The first characteristic of complex interdependence is the multiple channels which include informal ties between governmental elites as well as foreign office arrangements and among non-governmental elites (face-to-face and through telecommunications), and transnational organisations (such as multinational cooperations). These channels should be summarized as interstate, transgovernmental, and transnational relations. In this context, apart from interstate relations that are the normal channels connecting the states according to realists, new channels have emerged and affected the relations among societies. Transgovernmental channels challenge realist perceptions, which take the states as coherent units, because different interest groups and figures have emerged inside the states including non-governmental elites, which are establishing ties with other non-governmental elites by influencing other states. More importantly, transnational channels, including multinational cooperations, challenge the realist perceptions which see the states as the only units in international relations.<sup>18</sup> By the impact of these new multiple channels, new multiple actors influence the international affairs apart from states.

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<sup>16</sup> Ibid, p.6

<sup>17</sup> Robert Keohane and Joseph S. Nye, *Power and Interdependence*, (New York: Longman, 3rd Edit., 2001), p.21

<sup>18</sup> Ibid, pp.21-22



In the post-Cold War era, multiple actors started to more affect the international politics, in particular, by the economic, social, technological and communicative impacts of globalisation. Terrorist groups should be considered as transnational groups. In the post-Cold War era, terrorist groups strengthened their network by benefiting from the transformation of economics, communication, and weapons technology and they started to play a very influential role in world politics.

In the light of above mentioned developments, the European Security Strategy (ESS), published by Javier Solana, the High Representative of the Common Foreign and Security Policy of the EU, on December 12, 2003, underlines the fact that new threats and new international actors are emerging other than classical wars between states.<sup>19</sup> Europe “faces new threats which are more diverse, less visible and less predictable in character”.<sup>20</sup> In order to confront these threats in the era of globalisation, particularly the threat of terrorism, which the ESS mentions it as the most important threat to the European security, the ESS indicates that “the end of Cold War has left the United States in a dominant position as a military actor. However, no single country is able to tackle today’s complex problems on its own”<sup>21</sup>, so according to the ESS, the solution increasingly depends on an effective multilateralism<sup>22</sup> by upholding and developing international law especially under the framework of the UN Charter and the UN Security Council must have the main responsibility in order to maintain peace and security.<sup>23</sup> The EU’s support to multilateralism is in line with liberal school of thought, because liberals hold that it is

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<sup>19</sup> “European Security Strategy (ESS)”, (Brussels: The Council of the European Union, December 12, 2003), Available at: <<http://ue.eu.int/uedocs/cmsUpload/78367.pdf>> (Visited on: 9 September, 2004)

<sup>20</sup> Ibid, p.3

<sup>21</sup> Ibid, p.1

<sup>22</sup> The addition of “effective” to “multilateralism” can be seen as a response to failure of UN in avoiding the Iraq War in 2003.

the multilateralism that shapes the behaviour of sovereign states in ways that modify the anarchy of the international system.<sup>24</sup>

The second characteristic of the complex interdependence concept is the absence of hierarchy among issues. It moves away from realist perceptions' focus on military force and power politics to include political and economic dimensions of the international system. Thus, the absence of hierarchy underlines the converging importance of "high politics" and "low politics". Throughout the Cold war, the military security determined the agenda of international politics. However, as liberals indicate, in the new era, the hierarchy among issues no longer exists and various issues do not subordinate to military security anymore.<sup>25</sup> This new approach gave new dimensions to foreign security policies according to liberals who argue that states must pursue their foreign policy interests through an international agenda that includes economic, developmental, environmental, and cultural matters, in addition to military matters.

That liberal perception occupied one of the primary concerns of the EU's foreign policy to tackle terrorism and other key threats such as the proliferation of weapons of mass destruction (WMD), regional conflicts, state failure, and organized crime which are interdependent among themselves according to the ESS. In this context, the ESS states that "[i]n contrast to massive visible threat in the Cold War, none of the new threat is purely military; nor can any be tackled by purely military means".<sup>26</sup> Therefore, in order to tackle the terrorism threat and other key threats by

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<sup>23</sup> ESS, p.9

<sup>24</sup> Oudenaren, p. 39

<sup>25</sup> Keohane and Nye, p. 22-23

<sup>26</sup> ESS,p.7

its root causes the ESS declares that “we need to extend the benefits of economic and political cooperation to our neighbours”<sup>27</sup> to promote well-governed countries around the borders of the EU<sup>28</sup>. This will help to ensure the extension of zone of security on the European periphery. This approach of the EU is a case in the EU’s engagement with Mediterranean partners, through more effective economic, security and cultural cooperation under the framework of Barcelona Process.

The third characteristic of complex interdependence is the minor role of military force. In the era of globalisation, military force becomes less effective to solve problems, particularly economic and social ones. In the Cold War era, nuclear power was the primary determinant of power and used as a means of deterrence and instrument of diplomacy, so the high politics dominated the international agenda. However, in the era of globalisation, division between high politics and low politics blurred and new issues emerged. This transformation of political agenda should be used to solve problems. Therefore, the international security environment requires a combination of “hard power” and “soft power” policies.<sup>29</sup>

In the light of these facts, the EU focuses on both military and civilian measures to confront terrorism and other emerging threats. Even though the EU tries to strengthen its military capabilities under the ESDP framework, it emphasizes the importance of soft power and conflict prevention concepts. These liberal concepts of soft power and conflict prevention take part in the ESS which indicates that dealing with terrorism and other key threats require a mixture of instruments.<sup>30</sup> In addition,

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<sup>27</sup> ESS,p.8

<sup>28</sup> ESS,p.7

<sup>29</sup> Keohane and Nye, p. 23-24-25

<sup>30</sup> ESS, p.7

the ESS declares that “the proliferation may be contained through export controls, attacked through political, economic and other pressures while the underlying political causes are also tackled”<sup>31</sup> and “dealing with terrorism requires a mixture of intelligence, police force, judicial, military and other means”.<sup>32</sup>

Taking into account the above mentioned perceptions of realism and liberalism theories of international relations, it should be concluded that the EU approach to confront terrorism is in line with liberalism by supporting multilateralism, pursuing its foreign policy interests through an agenda including economic, cultural, developmental, and environmental matters, in addition to military matters, and emphasizing the importance of soft power and conflict prevention concepts. On the other hand, the US approach is line with realism by underlying the importance of the military hard power of the US and pursuing a unilateral preemption concept to tackle the threat of terrorism and other threats.

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<sup>31</sup> Ibid

## 1.2 The Concept of Terrorism

### 1.2.1 The History of Terrorism

One of the earliest examples of terrorist acts was perpetrated by the radical Zealots, a Jewish sect active during the Roman occupation of the first century in the Middle East. The Zealots wanted to get rid of Roman Empire's rule by a campaign involving assassinations. The intent of their actions was to give a message to broad target audience. Therefore, the Zealots chose to attack wherever there were people to see their action. As Walter Lanquer puts it "the sources telling of their activities are sparse and sometimes contradictory but it is known from Josephus that Zealots used unorthodox tactics such as attacking their enemies by daylight, preferably on holidays when crowds congregated in Jerusalem".<sup>33</sup> Between the years of 1090 and 1272, the Assassins, an Islamic group, used similar tactics with the Zealots in combating with Christian Crusaders.<sup>34</sup> Moreover, the Assassins used the same notion of self-sacrifice and suicidal attacks as some terrorists influenced by Islamic fundamentalism do today. They used violence as a divine act to ascend to the heaven. As written in the "*Almanac of Modern Terrorism*" some authors argue that the 13th century's Islamic Assassins are the forerunners of modern terrorists.<sup>35</sup>

Religion ensured the main justification of use of terror until the French revolution. After the King Louis XVI's execution, the Jacobins, led by the Committee of Public Safety and Robespierre, launched terrorism process that the

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<sup>32</sup> Ibid

<sup>33</sup> Walter Lanquer, *A History of Terrorism*, (New Brunswick: Transaction Books, 3rd edit., 2001), p.7

<sup>34</sup> Ibid, p.8-9

term “reign of terror” refers an excellent example of state terrorism in the last decade of XVIII century.<sup>36</sup> In this terrorism process, about 12000 French citizens were killed because of their opposition to the revolutionary regime. Indeed, this massacre was made for political reasons to protect enlightenment ideals that changed the interest from religion to nationalism and democracy.

Nationalism, anarchism, Marxism, and other secular political movements changed the situation during 1800s. These trends challenged the divine rule of monarchs. However, religious motivations were not totally lack. The most of the people in European countries rebelled against church domination of political life to construct secular societies. Indeed, the terrorism of 1800s was antimonarchical and gained its concrete meaning by “Narodnoya Volya” of Russia.<sup>37</sup> As Walter Lanquer argues “of all these movements Narodnoya Volya was the most important by far, even though its operations lasted only from January 1878 to March 1881”.<sup>38</sup> Even though Narodnoya Volya assassinated many government officials and Tsarist, the political police of Russia, of the highest rank, its most successful action was the assassination of Tsar Alexander II of Russia on March 1,1881, paradoxically after most of the group members had already been arrested by police.<sup>39</sup> Four months after the assassination of Alexander II, a group of political radicals convened “anarchist conference” in London to discuss how to achieve revolutionary change. The idea of the conferences was to establish “Anarchist International”, it is also called as “Black International” after they adopted black flag, to support and coordinate terrorism for

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<sup>35</sup> Jay M. Shafritz, E.F. Gibbons, Gregory E.J. Scott, *Almanac of Modern Terrorism*, (New York: Facts on File, 1991)

<sup>36</sup> The French term *regime de la terreur* originated the English word ‘terrorism’

<sup>37</sup> Lanquer, p.11

<sup>38</sup> Ibid, p.12

<sup>39</sup> Ibid

defeating monarchies and elected governments throughout the world.<sup>40</sup> Bruce Hoffman claims that even though “this idea, like most of their ambitious plans, came to nought, the publicity generated by even a putative “Anarchist International” was sufficient to create myth of global revolutionary pretensions and thereby stimulate fears and suspicions disproportionate to its actual impact or political achievements”.<sup>41</sup> The individual actions or operations carried out by small cells of like-minded radicals of anarchists made detection and prevention by the police particularly difficult, thus further heightened the public fears. For instance, following the assassination of William Mckinley on September 14, 1901, by Leon Czolgoz, a Hungarian refugee, who was not the member of any anarchist organization, but only inspired by the philosophy, paved the way for enactment of legislation by the US Congress not to give permission to anarchists or anyone who influenced by this philosophy to enter in the United States.<sup>42</sup> In general, the years between 1880 and 1920 were the period of “anarchist wave”<sup>43</sup> of terrorism.

Meanwhile, a Bosnian Serb assassinated Austrian archduke Fracis Ferdinand on June 28, 1914, who was on official trip in Sarajevo, Bosnia, to free its country from Austrian domination. This assassination triggered the World War I. As in the case of today’s state sponsors of terrorism do, it is claimed that Serbia provided some assets for this assassination.

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<sup>40</sup> Bruce Hoffman, *Inside Terrorism*, (New York: Columbia University Press, 1998), p.19

<sup>41</sup> Ibid

<sup>42</sup> Ibid, p.20

<sup>43</sup> David C. Rapoport identified four terrorism waves. According to Rapoport, “In the 1880s, an initial ‘anarchist wave’ appeared that continued for some 40 years. Its successor, ‘anti-colonial wave’ began in 1920s and by the 1960s had largely disappeared. The late 1960s witnessed the birth of the ‘new left wave’ which dissipated largely in the 1990s, leaving a few groups stil active in Sri Lanka, Spain, France, Peru, and Columbia. The fourth or ‘religious wave’ began in 1979, and it follows the pattern of its predecessors, it still has twenty to twenty-five years to run”. See David C. Rapoport, ‘The Four Waves of Rebel Terror and September 11’ in Charles W. Kegley (ed.), *The New Global Terrorism: Characteristics, Causes, Controls*, (Upper Saddle River: Prentice Hall, 2002), pp.36-53

The dictatorial regimes of Germany, Italy, and the Soviet Union terrorised their citizens by intimidation, torture, unlawful detentions, beatings, and assassinations by unknown hands during 1920s and 1930s. On the other hand, in 1930s and 1940s, systematic terrorism aroused in the Middle East by terrorist organizations influenced by Islamic fundamentalism to gain independence of their countries from colonialist states. In this context, Muslim Brotherhood in Egypt and Irgun, a Jewish terrorist organization, fought against Britons in Palestine and Front Liberation Army, *Front de Libération Nationale (FLN)*, battled with French in Algeria.

After the end of World War II, terrorism regained its previous connotations. During 1940s and 1950s, nationalist/anti-colonialist organizations aroused in the Middle East, Asia, and Africa in order to gain independence from European domination. Israel, Algeria, and Kenya gained their independence at least in part to their nationalist movements that used terrorism against continued rule of colonial powers.<sup>44</sup> As Bruce Hoffman indicates, it was also during this period that the politically correct appellation of “freedom fighters” came into fashion because of the international community’s support and sympathy to struggles for national liberation and self-determination. In particular, many newly independent Third World states and communist block states argued that anyone or any movement which fought against colonial and/ or Western domination cannot be described as “terrorists”, but they were deemed to be “freedom fighters”. Indeed, this perspective was most famously explained by Yassir Arafat, chairman of the Palestsine Liberation

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<sup>44</sup> Hoffman, p.25-26



Organization (PLO), when he addressed the UN General Assembly in November 1974:

*“The difference between the revolutionary and terrorist lies in the reason for which each fights. For whoever stands by just a cause and fights for freedom and liberation of his land from the invaders, the settlers and colonialists, cannot possibly be called terrorist...”*<sup>45</sup>

Terrorism continued to be viewed in revolutionary context during the late 1960s and 1970s. However, this explanation expanded its meaning by including nationalist and ethnic separatist groups outside a colonial or neo-colonial framework as well as radical, entirely ideologically motivated groups. The Paletsine Liberation Organization, Québec Liberation Front, *Front Libération du Québec (FLQ)*, Freedom for the Basque Homeland, *Euskadi ta Askatasuna (ETA)*, employed terrorism to draw international community's attention to their causes. On July 22, 1968, the three armed terrorists of Popular Front for the Liberation of Palestine (PFLP), one of the six groups later constituted Palestine Liberation Organization, which fought to regain Palestine territories occupied by Israel since the Six-Day War of 1967, hijacked an Israeli El Al commercial jet en route from Rome to Tel Aviv. This incident drew enormous attention from international community to the plight of Palestinians. Bruce Hoffman argues that even though there had been several commercial aircraft hijackings before, this incident was the first political hijacking that started the internationalisation of terrorism.<sup>46</sup> In addition, the hijacking of this airplane was the first example with its international character seems similar with the September 11 terrorist attacks.

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<sup>45</sup> Yassir Arafat quoted in Hoffman, p.26

<sup>46</sup> Hoffman, p.67

In 1972, the Black September Organization (BSO), a Palestinian Paramilitary Unit, founded in 1970, attacked on Israeli athletes at the 1972 Munich Olympic Games, that resulted the death of 11 Israeli athletes, ended the indifference of Western World toward terrorism.<sup>47</sup> Despite international community's condemnation of Munich massacre, it generated spectacular publicity that the PLO exploited. Indeed, two years after Munich events, Yassir Arafat, the leader of the PLO, was invited to UN to address General Assembly and the PLO subsequently gained the observer status in the main international body. Moreover, the PLO, as a non-state actor, had more diplomatic relations with countries than Israel, an established nation-state, had by the end of 1970s.<sup>48</sup> In this time of increasing ethnic and nationalist movements throughout the World, other nationalist groups such as Quebec Liberation Front, *Front de Libération du Québec (FLQ)*, French-Canadian separatists effective at Quebec region of Canada, and Irish Republican Army (IRA), effective in United Kingdom, started to emulate the Palestinian example to get international publicity.

The internationalisation process of terrorism in the late 1960s and 1970s was not only the product of Palestinian success but also the activities of other movements. During these years political extremists started to oppose American occupation of Vietnam and economic and social inequities of modern capitalist liberal-democratic state. The Red Army Faction (RAF) in Germany, known also as Baader-Meinhof Gang, and Red Brigades (RB), *Brigate Rosso*, in Italy, its famous act was the murder of former Italian Prime Minister Aldo Moro in 1978, were the

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<sup>47</sup> Cindy C. Combs, *Terrorism in the Twenty-First Century*, (Charlotte: University of North Carolina Press, 2003), p.208

<sup>48</sup> Hoffman, p.75

most active radical paramilitary leftist movements in this period, which tried to establish socialist regimes by destroying their capitalist governments.<sup>49</sup>

In the beginning of the 1980s, the right-wing terrorism, or neo-fascist terrorism, perpetrated in response to left-wing movements that arose in some parts of the European countries and the United States. However, the right-wing groups could not get the support like left-wing groups enjoyed, so the violence perpetrated by the right-wing groups remained mostly short-lived and periodic. The most famous actions of these groups were the bombing of Munich Oktoberfest Celebration, in 1980, perished 14 and injured 215 people; Bologna rail station bombing, in 1980, killing 84 and injured 180; track bombing of Alfred Paul Murrah building at Oklahoma City by Timothy Mcveign, a Gulf veteran, in 1995, killing 168 and injured over 800 people which was the most lethal terrorist attack in the US borders before the September 11 terrorist attacks.

The most important development in international terrorism was the resurgence of religious terrorism that was reinforced, in whole or in part, by state-sponsors in 1980s. David Rapoport argues that the Iranian Revolution and Muslim resistance in Afghanistan against the Soviets provided necessary conditions for religious terrorism in terms of supporting and accommodating the religious terror groups.<sup>50</sup> However, the 1990s were the golden age of religious terrorism. During the 1990s, the number of religious terrorist organizations increased appreciably. In addition, the characteristics of terrorism changed in these years. In this context, some

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<sup>49</sup>Adrian Geulke, *The Age of Terrorism and International Political System*, (London: Tauris Academic Studies, 1995), p.61-62-63

foremost academicians and authors who study terrorism argue that terrorism has become a “New” Terrorism<sup>51</sup> by its new network structure, increase willingness to cause mass casualty, and mostly religious imperatives. The “new” terrorism led to more casualties than the violence perpetrated by secular terrorists. The most notorious acts of new terrorism should be exemplified as follows:

- The series of 13 simultaneous car and truck bombings in Bombay, in February 1993, by radical Islamists, killed 400 people and injured more than 1000.
- On September 11, 2001, unprecedented terrorist attacks on World Trade Center, New York, and Pentagon, Washington D.C., by Al Qaeda, killed nearly 3000 and injured more.
- On November 19, 2003, track bombing attacks on British Consulate and the HSBC Bank in Istanbul by Islamic extremists, killed 27 people and injured more than 400.
- On March 11, 2004, Al Qaeda’s terrorist attacks to three different train stations in Madrid, killed up to 200 and injured more than 1250 people.

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<sup>50</sup> David C. Rapoport, “The Four Waves of Rebel Terror and September 11” in Charles W. Kegley (ed.), *The New Global Terrorism: Characteristics, Causes, Controls*, (Upper Saddle River: Prentice Hall, 2002), pp.36-53

<sup>51</sup> Ian O. Lesser, Bruce Hoffman, John Arquilla, David Ronfeldt, Michele Zanini, *Countering the New Terrorism*, (Santa Monica: RAND, 1999); Walter Lanquer, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, (Oxford: Oxford University Press, 1999); Steven Simon and Daniel Benjamin, “America and the New Terrorism”, *Survival*, (Vol.42, No.1, Spring 2000), pp.59-75; Oliver Roy, Bruce Hoffman, Reuven Paz, Steven Simon and Daniel Benjamin, “America and the New Terrorism: An exchange”, *Survival*, (Vol.42, No.2, Summer 2000), pp.156-172; David Tucker, “What is New About the New Terrorism and How Dangerous is it”, *Terrorism and Political Violence*, (Vol.13, No.3, Autumn 2001), pp.1-14 provide abundance of information analysing the “New” Terrorism.

- On September 1, 2004, Chechen militants' horrific school siege in Beslan, North Osetia, killed at least 335 and injured over 700, mostly children<sup>52</sup>

## 1.2.2 Difficulty of Defining Terrorism

Even though terrorism exists in history for many years, there is no single definition of terrorism. The definitional weakness helps terrorists to find weak points in administration and politics of states so that they commit their crimes. In this context, it is also common to ask what issues in the definition of terrorism remains unresolved. According to Alex P. Schmidt and Albert I. Jongman, some of the answers of this question are as follows:

- 1- The boundary between terrorism and other forms of political violence
- 2- Whether government terrorism and resistance are part of the same phenomenon
- 3- Separating terrorism from simple criminal acts, from open war between contesting groups, and from acts that clearly arise out of mental illness
- 4- Is terrorism a sub-category of coercion? Violence? Power? Influence?
- 5- Can terrorism be legitimate? What gains justify its use?
- 6- The relationship between guerrilla warfare and terrorism
- 7- The relationship between crime and terrorism.<sup>53</sup>

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<sup>52</sup> Others are: On February 26, 1993 track bombing attack to New York City's World Trade Center by Islamic radicals, killed 6 people and injured more than 1000; On March 20, 1995 Aum Shinrikyo's, a Japanese cult, sarin gas attack on the Tokyo subway, killed 12 people and injured nearly 5500; On April 19, 1995 bombing of Alfred P. Murrah Federal Building of Oklahoma City by Timothy Mcveigh, killed 168 and injured over 800; Between February and March 1996, Hamas's suicide bombings in Israel, which turned the tide of Israeli elections, killed 60 people; In April 1996, hand-grenade and machine-gun attack by Egyptian Islamic extremists on Western tourists, killed 18 people outside the Cairo Hotel, Egypt; In November 1997, massacre of 58 foreign tourists and 4 Egyptians by Gamat Al-Islamiya, Islamic radical group, at the Temple of Queen Hatshepsut in Luxor, Egypt; On

Indeed, among these unresolved issues for the definition of terrorism, the relationship between guerrilla warfare and terrorism is the most striking one and therefore merits further attention. The relationship between guerrilla warfare and terrorism is the most important reason for why the international community cannot find single definition for terrorism. This problem mainly stems from the fact that, on the one hand, many Third World states call the groups, who involve guerrilla warfare to gain independence or to oppose Western oppression, as freedom fighters not terrorists, on the other hand, most of the Western states, especially former colonial ones, call these groups as terrorists not freedom fighters. Even these states have different perspectives on the issue depending on their changing national interests and point of views. Therefore, as Boaz Ganor argues, the definitions of terrorism remain state-centric and the statement of “one man’s terrorist is another man’s freedom fighter” becomes cliché and most important difficulty to define and confront terrorism.<sup>54</sup>

Academics, international organizations, journalists, individual states, and politicians use a variety of definitions of terrorism. These definitions mainly focus on terrorist organizations’ motivations, mode of operation, and characteristics. However, it is common to define the term by its motivations, especially as political violence. For instance, according to Brian Jenkins:

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August 7, 1998 bombings of U.S. embassies in Kenya and Tanzania by Al-Qaeda, killed 257 person and injured more than 5000

<sup>53</sup> Alex P.Schmidt and Albert I. Jongman (et al), *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*, (New Brunswick: Transaction Books, 1988), p.29-30

<sup>54</sup> Boaz Ganor, “Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter”, Available at:<<http://www.ict.org.il/articles/define.htm>> (Visited on: February 3, 2005)

*“Terrorism is the use or threatened use of force designed to bring about political change”.*<sup>55</sup>

Like Brian Jenkins, Walter Lanquer defines the term as political violence:

*“Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience”.*<sup>56</sup>

The lack of universally accepted definition of terrorism hinders to coordinate international cooperation on fight against terrorism. In order to solve this problem, United Nations (UN), as the main international body, adopted its definition as below:

*“any act intended to cause death or serious bodily injury to a civilian, or to any person not taking any 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>57</sup>

However, the UN definition cannot bear the complexity of the problem. According to Martha K. Jordan, the first reason to this complexity is sovereignty. States reserve their rights to define bounds of activities and policies in their own borders, so each state reserves the right to determine, politically and legally, what

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<sup>55</sup> Quoted in Steve Best and Anthony J. Nocella, ‘Defining Terrorism’, *Animal Liberation Philosophy and Policy Journal*, (Vol.2, No.1, 2004), p. 10

<sup>56</sup> Ibid

terrorism is. No country wants to be limited by a definition that will constrain its own foreign and domestic policy. Secondly, some members of the UN use terrorism for their purposes. Therefore, the UN will not be suitable forum to develop definition or policy for terrorism, if not the UN members agree to stop sponsoring, harbouring, and training the terrorists.<sup>58</sup>

Even though Europe faces terrorism on the continent for many years, there was no consensus among European countries on the definition of the term. However, the September 11 terrorist attacks increased the fears among European countries and the European Council provided a common definition of terrorism for the EU Member States by adopting “Council Framework Decision of 13 June 2002 on Combating Terrorism”, In the Framework Decision, terrorist offences are defined, before the lists of punishable terrorist offences in the same article, as offences must be committed with the aim of :

- “ - *seriously intimidating a population, or*
- *unduly compelling a government or international organization to perform or abstain from performing any act, or*
- *seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization”.*<sup>59</sup>

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<sup>57</sup> UN International Convention for the Suppression of the Financing of the Terrorism, Article 2 (b), Available at: <<http://www.un.org/law/cod/finterr.htm>> (Visited on: February 3, 2005)

<sup>58</sup> Martha K. Jordan, “Terrorism and US Foreign Policy: Problems in Definition and Response”, Available at: <<http://www.au.af.mil/au/awc/awcgate/acsc/97-0399.pdf>> (Visited on: January 29, 2005)

<sup>59</sup> Council Framework Decision of 13 June 2002 on Combating Terrorism, Art. 1., Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_164/l\\_16420020622en00030007.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf)> (Visited on: February 2, 2005)



It is clear that the adoption of the framework Decision is a significant step for European cooperation on fight against terrorism. However, taking into account the fact that the EU's Framework decisions only put the standards that Member States are expected to follow, the success of this framework decision would depend on the insertion of the Framework Decision's provisions into Member States' legislations.<sup>60</sup>

In the case of individual state level, every state defines the term in accordance to their national interests and point of views. Thus, the definition of terrorism differs from one state to another. A uniform definition does not exist even in the agencies of countries. For instance, there is still no common definition between various agencies of the US.

### 1.2.3 Different Types of Terrorism

Before beginning to explain different types of terrorism, it is necessary to point out that it is impossible to distinguish some types from each other because some of them are interdependent. In addition, terrorism is typed differently by academicians and authors. As Murat Karagöz argues, like the challenge in defining terrorism, typing the terrorism with one single classification is impossible<sup>61</sup>. However, it is common to type terrorism as state-sponsored, anarchist, nationalist, ideological, and religious.

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<sup>60</sup> For a detailed analysis of the Council Framework Decision of 13 June 2002 on Combating Terrorism see Chapter 2- (2.2.2) *The Terrorism Framework Decision*

<sup>61</sup> Murat Karagöz, "September 11: A New Type of Terrorism", *Perceptions*, (Vol.7, No.3, September/ November 2002), p.145

In the case of state-sponsored terrorism, radical states practice terrorism as a foreign policy tool- as Bruce Hoffman puts it, as “a cost-effective way of waging war covertly, through the use of surrogate warriors or guns for hire”.<sup>62</sup> The Iranian Islamic revolution had a very impact on the emergence of state-sponsored terrorism. Paul Wilkinson argues that after the end of Cold War, state-sponsored terrorism has dramatically reduced, especially employed by the former Soviet Union and its Warsaw Pact communist regimes.<sup>63</sup> However, in 2002, only five states, which employ state-sponsored terrorism, remained and all of them are in the Middle East: Iran, Iraq, Syria, Sudan and Libya.<sup>64</sup> But in fact, it is clear that countries listed as state-sponsors of terrorism differ from one country to another in the world.

Anarchist terrorists employ terrorism to overthrow established governments. These groups, variously defined, want to replace capitalism by dictatorship of proletariat as inspired by Marxism. From 1870 to 1920 anarchist terrorism practiced its golden age. Indeed, in that period anarchist terrorists involved in very successful actions by directing their plans to the heads of some states, including the assassination of Tsar Alexander II of Russia in 1881, King Umberto I of Italy in 1900, and US President William Mckinley in 1901.<sup>65</sup>

The aim of the nationalist terrorism is to form a separate state for their own group, often by drawing attention to a fight for “national liberation” that they think the world has ignored. The characterization of nationalist terrorism is very

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<sup>62</sup> Hoffman, p.186

<sup>63</sup> Paul Wilkinson, “Why Modern Terrorism? Differentiating Types and Distinguishing Ideological Motivations” in Charles W. Kegley (ed.), *The New Global Terrorism: Characteristics, Causes, Controls*, (Upper Saddle River: Prentice Hall, 2002), pp.106-139

<sup>64</sup> Ibid

contentious because, most importantly, many groups claim that they are not terrorists but “freedom fighters” engaged in “assymmetric warfare”. The most important nationalist terrorist organizations include Basque Fatherland and Liberty (ETA), terrorized Spain to get independence for Basque region, Irish Republican Army (IRA), employed many terrorist attacks on British society in the aim of getting independence for Northern Ireland, Palestine Liberation Organization (PLO), wants to stop Israel invasion in occupied territories of Palestine in order to establish independent Palestinian state.

Ideological terrorists want to change the existing political, social, and economic system. The most devastating actions of ideological terrorism are practiced by left-wing terrorists. The left-wing terrorists seek to establish communist or socialist regimes by destroying capitalism. The Red Brigades (RB), in Italy, Japanese Red Army (JRA), in Japan, and Red Army Faction, in Germany, were the important practitioners of left-wing terrorism. On the other hand, the right-wing terrorists want to destroy liberal democratic governments to create fascist states, or to protect the existing system or to help the system return to an earlier status from which it has. Cindy C. Combs indicates that right-wing terrorism, unlike that of the left, has been stronger in the US than in Europe throughout the history and, in addition, terrorist organizations like Aryan Nations (AN) and Christian Identity Movement (CIM), both active in the US, began to gain strength due to the diminish of left-wing movements in the 1980s.<sup>66</sup>

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<sup>65</sup> David C. Rapoport, “The Four Waves of Rebel Terror and September 11” in Charles W. Kegley (ed.), *The New Global Terrorism: Characteristics, Causes, Controls*, (Upper Saddle River: Prentice Hall, 2002), pp.36-53

<sup>66</sup> Combs, p.167

Religious terrorist groups use terrorism to overthrow the dominant religious order that they claim evil and corrupted. Today, religious terrorists, as Magnus Ranstorp argues, are also motivated by political considerations within their context. Therefore, distinguishing the religious and political sphere of these terrorist groups is very difficult.<sup>67</sup> For instance, political origins of some groups in Israel/ Palestine, Chechenya, and post- Saddam Iraq, which see themselves freedom fighters rather than terrorists, demand statehood and self-determination. On the other hand, the differences between religious and secular terrorists, as Bruce Hoffman argues, lies in their “radically different value systems, mechanisms of legitimization and justification, concepts of morality, and Manichean world view that holy terrorists embrace. For religious terrorists, violence first and foremost is a sacramental act or divine duty executed in direct response to some theological demand or imperative”.<sup>68</sup> Throughout the history, religious terrorism is employed by many major faiths and small cults. What is striking today is the recent upsurge of terrorists influenced by Islamic fundamentalism. Al-Qaeda, Hamas, Hizballah, and Palestinian Islamic Jihad are the examples of contemporary terrorist organizations influenced by the Islamic fundamentalism that apply very violent and devastating actions such as the September 11 terrorist attacks in 2001, Istanbul bombings in 2003, and Madrid train station bombings in 2004.

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<sup>67</sup> Magnus Ranstorp, “Terrorism in the Name of Religion”, *Journal of International Affairs*, (Vol.50, No.1, Summer 1996), p. 43

<sup>68</sup> Bruce Hoffman, “Holy Terror: The Implications of Terrorism Motivated by a Religious Imperative”, *Studies in Conflict & Terrorism*, ( Vol.18, No.4, 1995), pp. 272

## 1.2.4 The “New” Terrorism and the September 11 Attacks

### 1.2.4.1 The “New” Terrorism versus Old Terrorism: Changing Characteristics

The bombing of World Trade Center in 1993 , the bombing of Oklahoma city federal state building and Tokyo Sarin gas attacks in 1995, American embassy bombings in 1998, bombing of US destroyer in Yemen in 2000, the September 11 terrorist attacks, Istanbul bombings in 2003, Madrid train station bombings, and Beslan School siege in 2004 were the indication of a new and more threatening terrorism influenced , in part or in whole , by a religious motivations, one that aims to produce casualties on a massive scale.

Terrorist threats exist throughout the history but, as Kostas Infantis argues, it had never been considered so seriously as an actor or even a polar in the world arena since after the end of Cold War.<sup>69</sup> The “new” terrorism can be accepted as an actor in world politics because “new” terrorists’ operational area is the world not a limited region of one part of the world. Even the aim of these “new” terrorists is to change the whole world system, not to change political system of one country. They are trying to influence the world politics. The consequences of the actions of “new” terrorists have influenced not only the country that the terrorist action occurred but also the whole world politics. For instance, the September 11 terrorist attacks changed all the international politics.<sup>70</sup>

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<sup>69</sup> Kostas Infantis, “Understanding International Politics After the September 11 Terrorist Attacks: A Note on the Security Paradigm”, *Perceptions*, (Vol.7, No.1, March/ May 2002), p. 105

<sup>70</sup> Brian Jenkins, “The Organization Man: Anatomy of a Terrorist Attack” in James F. Hoge and Gideon Rose (eds.), *How Did This Happen ?Terrorism and the New War*, (New York: Public Affairs, 2001), pp.1-15

On the other hand, the “new” terrorism has pursued their above mentioned aim of demolishing the world order through its own special characteristics. Indeed, it was these characteristics that made the actions of “new” terrorists more dangerous and also more difficult to avoid. In that context, this section will try to analyse the characteristics of “new” terrorism in order to identify the threat correctly.

Firstly, according to David Tucker, network structure is a good place to begin analysing the characteristics of “new” terrorism. The “new” terrorists are now capable of developing network forms of organization for the same reason that business are. The information revolution by lowering the cost of communication, allows terrorist organizations to operate outside a controlling hierarchical structure. Therefore, terror organizations can flatten out their pyramids of authority and approach a network form like dispersed entities, linked by advanced communications and common purpose. The structural transformation of terrorist organizations from hierarchy to network is the advantage that an organization acquires, because it becomes more flexible, adaptive, and resilient by its loose coordination with others, so if its one or several constituent entities are destroyed, the others carry on.<sup>71</sup> In sum, the network structure of the new terrorists cannot be decapitated like former terrorists’ hierarchical structure.

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<sup>71</sup> David Tucker, “What is New about the New Terrorism and How Dangerous Is It ?”, *Terrorism and Political Violence*, (Vol.13, No.3, Autumn 2001), p.1

Secondly, as Micheal Whine argues, the recent innovations and inventions assisted to network form of “new” terrorists.<sup>72</sup> Because of the communication revolution, the “new” terrorists are able to find more political and individual support and provide knowledge, resources, and money. Even they could search the internet to get information on how to build nuclear bomb.

Thirdly, the “new” terrorists are mainly amateurs. They become together in *ad hoc* groups and then disband, so it is difficult to follow and counteract them. In addition, less of these “new” terrorists are getting training from state-sponsors but rely on networks of supporters, they get what they need from World Wide Web or publications.

Fourthly, the “new” terrorists do not limit themselves on the casualty of their attacks. The “new” terrorists want to cause terrifying lethality on their victims. Bruce Hoffman indicates that even though the total volume of terrorist incidents worldwide declined in the 1990s, the percentage of terrorist incidents with fatalities increased.<sup>73</sup> Bruce Hoffman also adds that there are some reasons to explain terrorism’s increased lethality. First, terrorists want to get more attention than their early colleagues. Second, they are getting profit from past experiences, so they become experts on killing. Third, the amateur terrorists participating in terrorist acts increased. Lastly, the combination of new tactics, motivations, and adversaries cause mass casualty.<sup>74</sup>

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<sup>72</sup> Micheal Whine, “The New Terrorism”, (Stephan Roth Institute for the Study of Contemporary Anti-Semitism and Racism at Tel Aviv University: Anti-Semitism Worldwide 2000/1) Available at: <<http://www.tau.ac.il/Anti-Semitism/asw2000-1/whine.htm>> (Visited on: March 3, 2005)

<sup>73</sup> Ian O. Lesser, Bruce Hoffman, John Arquilla, David Ronfeldt, Michele Zanini, *Countering the New Terrorism*, (Santa Monica: RAND, 1999), p.10-11

<sup>74</sup> *Ibid*, p.3

Fifthly, the “new” terrorists are mostly religious motivated. In the 1990s, religious motivated terrorist groups dramatically increased. The very majority of terrorists motivated by religious imperatives are Islamic fundamentalists. They believe they are carrying out the mandate of God to kill unbelievers in order to dominate Islam in the world. On the other hand, as Steven Simon argues, even though recent years witnessed the proliferation of terrorists influenced by Islamic fundamentalism, the threat of violence by other religious terrorists has also increased including Japan’s Aum Shrinkyo, American Christian Patriot Movement, and Isreal’s Jewish messianic militants.<sup>75</sup> Moreover, as most importantly for humanity, the increase in religious motivation correlates with an increase in lethality.<sup>76</sup>

Finally, the “new” terrorists frequently do not claim responsibility after their actions. They do not need to claim responsibility because they believe that they are only responsible to God and God sees their action. No one else matters. Jonathan Stevenson argues that what derives “new” terrorists to kill is particularly hatred unlike the classical terrorists that present their demands clearly and generally by taking responsibility for their actions in order to threaten their advarsaries that the bloodshed would not stop if their demands are not met.<sup>77</sup>

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<sup>75</sup> Steven Simon, “The New Terrorism and the Peace Process”, Begin- Sedat Center for Strategic Studies, (updated: February 8, 2001), p.10 Available at:<<http://www.biu.ac.il/SOC/besa/publications/simon/SOC/besa/publications/simon/new-terror.pdf>> (Visited on: November 1, 2004)

<sup>76</sup> Taking 1995 as an example, Bruce Hoffman’s data show that religiously motivated terrorists were responsible for a quarter of all incidents, but caused 60 percent of all fatalities. Moreover, in 1996, the last year of his data, groups driven in whole or in part by a salient religious or theological motive committed 10 of the 13 most lethal terrorist attacks, See, Ian O. Lesser, Bruce Hoffman, John Arquilla, David Ronfeldt, Michele Zanini, *Countering the New Terrorism*, (Santa Monica: RAND, 1999), p. 16

<sup>77</sup> Jonathan Stevenson, “Pragmatic Counter-terrorism”, *Survival*, (Vol.43, No.4, Winter 2001), p. 40



#### 1.2.4.2 The September 11 Terrorist Attacks in the Context of “New” Terrorism

In September 11, 2001, four terrorist groups hijacked four airplanes, two of them Boston’s Logan Airport and other two from Dulles Airport of Washington. Two airplanes crashed to World Trade Center that is located in the hearth of Manhattan, New York City, and one dove into Pentagon at Washington. The other plane was destroyed by the US Air Forces on Pennsylvania. The attacks left nearly 3000 death and more injured people. The September 11 terrorist attacks in which the airplanes were used as weapons of mass destruction were the “bloodiest day on American soil since the civil war”.<sup>78</sup> Osama Bin Laden’s Al-Qaeda was declared as responsible. However, most importantly, the US President G.W.Bush declared war on terrorism.<sup>79</sup> The threat of “new” terrorism was on the highest points of international politics then. Indeed, the “new” terrorism, which emerged after the end of the Cold War, gained its meaning with the events of September 11. The “New” terrorism’s many characteristics can be seen in September 11 terrorist attacks.

Firstly, the “new” terrorism’s network structure could be seen in the September 11 terrorist attacks. According to Cindy C. Combs, it is clear that these 19 terrorists were part of a much larger network and that years of planing had been a part of September 11.<sup>80</sup> In addition, the terrorist cells, that operates autonomously,

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<sup>78</sup> Alan W. Dowd, “Thirteen Years: The Causes and Consequences of the War in Iraq”, *Parameters*, (Vol. 33, No.3, Autumn 2003), p. 46

<sup>79</sup> Joseph Fitchett, “U.S. War on Terrorism: It’s Likely to be Long, Dangerous and Harsh”, *International Herald Tribune*, (September 14, 2001), Available at:<[http://www.iht.com/articles/2001/09/14/t4\\_23.php](http://www.iht.com/articles/2001/09/14/t4_23.php)> (Visited on: December 17, 2004)

<sup>80</sup> For instance, Hani Hanjour lived in Arizona since 1990 and took flight lessons nearly in 1996 and 1997. Nawaq Alhamzi and Khalid Al-Midhar lived together in San Diego, California, in 1999, and took a few flight lessons in there. Mohamed Atta and Marvan Al-Shehhi traveled around South

did not aware the identity of each other.<sup>81</sup> Moreover, their leader cannot be captured and some supporters of these actions, logistically and financially, were arrested in different parts of the world such as Germany and Philippines.

Secondly, they probably used internet to reach each other and learnt flight plans of airlines companies. As Murat Karagöz argues, “the September 11 attacks were accomplished by using open information”.<sup>82</sup> The center of the “new” terrorism is information technology’s blessings. As Andrew Cotey indicates, by using information technology, they even hit the Pentagon.<sup>83</sup>

Thirdly, the perpetrators of September 11 were amateur and they gathered in *ad hoc* organization. They gathered just for the September 11 attacks as four separate groups. They were the “sleeper agents” waiting for order in some places to make their action.<sup>84</sup> Even they took amateur flight lessons in some parts of the US to successfully fulfil their action.

Fourthly, the September 11 terrorist attacks caused horrific, unprecedented lethality in which nearly 3000 people were perished and more wounded. More horrifically, about 1.100 of 3000 death bodies were not identified. It is clear that the terrorists wanted to kill as many people as they could succeeded so that they preferred to hijack transnational flights with full of oil and dove into the middle of the World Trade Center that is located in the downtown of Manhattan, New York

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Florida from July 2000 to September 2001 and took a flying lessons and meeting accomplices. See, Cindy C. Combs, p.182

<sup>81</sup> Combs, p.182

<sup>82</sup> Karagöz, p.155

<sup>83</sup> Andrew Cotey, “September 11th 2001 One Year On: A New Area in World Politics”, *Alternatives*, (Vol.1, No.3, Fall 2002), p.4

City. Indeed, limitless casualty is the most dangerous characteristic of the “new” terrorism.

Fifthly, it is very clear that the perpetrators of September 11 were religiously motivated. They saw themselves as the sword of Islam, even though Muslim religion prohibits killing someone. After September 11, some of the terrorists’ video cassette was captured in which they declared they were ready to die for God and they would punish the big evil, the United States.<sup>85</sup> On the other hand, it was also unhumanistic that there had been a demonstration on the streets of some capital cities of Middle East countries, such as Baghdad and Tahrán, to celebrate the attacks. They believed that God took their revenge.

Finally, none of the terrorist organizations took the responsibility of the September 11 attacks in the beginning. Even though in a few minutes later attacks Japanese Red Army took the responsibility, they did not insist on. It does not matter for “new” terrorists to take the responsibility because they only believed that they fulfilled their sacramental duty and, most importantly, God saw their action. However, even though Osama Bin Laden, the leader of Al-Qaeda, in his September 16, 2001 speech, stressed he did not carry out these attacks, he took the responsibility after 48 days from September 11, on October 29, 2004. He stated in videospeech that was sent to Al-Jazeera Television:

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<sup>84</sup> Richard H. Shultz and Andreas Vogt, “It’s War! Fighting Post 9-11 September Through a Doctrine of Pre-emption”, *Terrorism and Political Violence*, (Vol.15, No.1, Spring 2003), p.10

<sup>85</sup> Bernard Lewis, “The Religious Roots of Contemporary Terrorism” in Charles W. Kegley (ed.), *The New Global Terrorism: Characteristics, Causes, Controls*, (Upper Saddle River: Prentice Hall, 2002), pp.194-201

*“I say to you, Allah knows that it had never occurred to us to strike the towers. But after it became unbearable and we witnessed oppression and tyranny of the American/ Israeli coalition against our people in Palestine and Lebanon, it came to my mind...And as I looked at the demolished towers in Lebanon, it entered my mind that we should punish the oppressor in kind and that we should destroy towers in America in order that they taste some of what we tasted and so that they be deterred from killing our women and children”.*<sup>86</sup>

Every terror attack wants to give a message. Beyond the message of September 11 attacks to the US government, attacks revealed for international community that the “new” terrorism is the most challenging threat to the international security at the beginning of the twenty-first century. On the other hand, the message for the EU was clear: requirement of enhanced security efforts both internally and externally. To this end, the EU that fought against terrorism by realist perspective at the Member State level for many years, tried to institutionalize its legal and administrative capacity and developed liberal strategic objectives at the EU level, and enhanced its international efforts in line with its liberal approach to fight against this “new” terrorism after the September 11 terrorist attacks.

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<sup>86</sup> Quoted at: <<http://english.aljazeera.net/NR/exers/79C6AF22-98FB-4A1C-B21F-2BC36E87F61F.htm>> (Visited on: January 8, 2005)

## CHAPTER 2:

# Responses by the EU: Internal Efforts Against Terrorism After September 11

As a response after the September 11 terrorist attacks, the EU has intensified its internal efforts for fighting against terrorism. Thus, in this chapter, following an analysis of the EU's internal efforts after September 11 as an overview, the EU's internal efforts to institutionalise its legal administrative capacity by adopting European Arrest Warrant and Framework Decision on Combating terrorism, enhancing the role of Europol, and creating Eurojust and Joint Investigation teams would be examined. After that, as part of its internal efforts, the EU's introduction of European security strategy, appointment of Counterterrorism Coordinator, adoption of Solidarity Clause and Conceptual Framework for the ESDP dimension of terrorism in order to develop liberal strategies to tackle the threat of terrorism will be analysed.

### 2.1 An Overview of the EU's Internal Efforts

As Nora Bensahel argues, the unexpected result of the September 11 terrorist attacks was that it furthered integration within the EU Member States<sup>87</sup>, particularly in improving the legal and administrative capacity to combat the "new" terrorism

threat. The EU had been developing some measures particularly since 1999 Tampere Summit, but disagreements among the EU Member States on Justice and home affairs matters such as extradition procedures and immigration, and security and defence matters such as the role of the ESDP in fight against terrorism had hindered it. However, after the September 11 terrorist attacks, the EU realised that cooperation is vital to prevent terrorist attacks from occurring.<sup>88</sup>

The EU reacted swiftly to the attacks and tabled concrete measures. The main lines of the EU's normative reaction were set out in the "Plan of Action", road map, by the Extraordinary European Council of September 21, 2001, and in the conclusions of the Justice and Home Affairs Council the day before. With the adoption of Plan of Action, 68 measures were listed in a road map as blue print, which was to be updated regularly,<sup>89</sup> and "the Council has decided that the fight against terrorism will, more than ever, be a priority objective of the EU".<sup>90</sup> The larger part of the road map measures were dedicated for the cooperation in criminal matters within the scope of Justice and Home Affairs, most importantly, including the adoption of European arrest warrant and a common definition of terrorism, in line with 1999 Tampere Summit conclusions; creation of joint police investigation teams across the EU, enhancing the Europol; and the establishment of Eurojust.

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<sup>87</sup> Nora Bensahel, *The Counterterror Coalitions: Cooperation with Europe, NATO, and the European Union*, (Santa Monica: RAND, 2003), p.34

<sup>88</sup> Ibid

<sup>89</sup> Jan Wouters and Fredrick Naert, "Of Arrest Warrants, Terrorist Offences and Extradition Deals. An Appraisal of the EU's Main Criminal Law Measures Against Terrorism after September 11", *Institute of International Law Working Papers*, (No:56, June 2004), p.4

<sup>90</sup> "Conclusions and Plan of Action of Extraordinary European Council Meeting on 21 September 2001", (Brussels: September 21, 2001), Available at: <[http://europa.eu.int/comm/justice\\_home/news/terrorism/documents/concl\\_council\\_21sep\\_en.pdf](http://europa.eu.int/comm/justice_home/news/terrorism/documents/concl_council_21sep_en.pdf)> (Visited on: January 5, 2005)

In addition, the European Council adopted the European Security Strategy in December 2003 in order to determine the key threats that the EU faces, strategic objectives that the EU carries out, and consider policy implications of creating a security strategy.

After Madrid train station bombings on March 11, 2004, the European Council, in its March 25, 2004, session, adopted “Declaration on Combating Terrorism” to get new protection measures against terrorism. These measures include, most importantly, the appointment of Counterterrorism Coordinator Mr. Gijs de Vries, declaration on solidarity against terrorism as laid down in Article 43 of the draft Treaty establishing a Constitution for Europe, developing the contribution of the ESDP for fight against terrorism, and agreement on the EU plan of action to be revised.

In the light of these facts, it should be concluded that the EU enhanced to institutionalise its legal and administrative capacity and developed liberal strategies to fight against terrorism after the September 11 terrorist attacks as a response.

## 2.2 Institutionalising the Legal and Administrative Capacity

### 2.2.1 European Arrest Warrant

Even though the EU had been discussing adoption of a common arrest warrant long before the September 11, the idea had been stagnated in the face of opposition from several member states such as Italy, the UK, and Greece. However, as Susie Alegre indicates, the September 11 terrorist attacks spurred the adoption of

common arrest warrant allowing for political agreement on the highly controversial area of the EU law, European criminal law.<sup>91</sup>

On September 19, 2001, the European Commission once again submitted a proposal for the “Framework Decision on European Arrest Warrant”. On September 21, 2001, the Extraordinary European Council directed the JHA Council to flesh out an agreement on this framework decision. The JHA Council adopted the framework decision on June 13, 2002, and agreed that it would come into force no later than January 2004.<sup>92</sup> The essence of the decision is stated in Article (1):

“1. The European arrest warrant is *judicial decision* issued by a Member state with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the *principle of mutual recognition* in accordance with the provisions of this framework decision”.

Therefore, the aim of European arrest warrant is to provide that trails of suspected criminals, including terrorists, are not held by messy extradition procedures.

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<sup>91</sup> Susie Alegre, “European Arrest Warrants: A Lapse in Justice”, *International Herald Tribune*, (February 2, 2004), Available at: <[http://www.iht.com/articles/2004/02/02/edalegre\\_ed3\\_.php#](http://www.iht.com/articles/2004/02/02/edalegre_ed3_.php#)> (Visited on: December 10, 2004)

<sup>92</sup>“Council Framework Decision of 13 June 2002 on European Arrest Warrant and Surrender Procedures between Member States”, O.J. 2002, L 190/1 Available at:<[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_190/l\\_19020020718en00010018.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_190/l_19020020718en00010018.pdf)> (Visited on, December 11, 2004)



The scope of application of the Arrest Warrant is set out in Article 2, which states in Article 2 (1):

“A European arrest warrant may be issued for acts punishable by the law of the issuing Member State<sup>93</sup> by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made for sentences of at least four months”.

The most important difference among other European Conventions on Extradition<sup>94</sup> and European Arrest Warrant lies in the fact that in European Arrest Warrant, “double criminality” is not required.<sup>95</sup> This means that it is not necessary that the offence concerned is also punishable under the law of executing Member State.<sup>96</sup> However, for offences not listed in Article 2 (2) the executing state may require that the acts for which the European arrest warrant has been issued constitute an offence under the law of executing member state. Article 2 (2) listed that in 32 offences double criminality may not be required, if these offences are punishable in the issuing Member State by a custodial sentence or detention order for a maximum period of at least three years. These crimes include *inter alia* terrorism, a number of offences related to terrorist activities, such as illegal restraint and hostage taking, illicit trafficking in nuclear and radio active materials, kidnapping, illicit trafficking in weapons, munitions and explosives, unlawful seizure of aircraft/ships and

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<sup>93</sup> The “issuing (Member) State” is the State of which the judicial authority has issued the European arrest warrant

<sup>94</sup> The Convention on Simplified Extradition Procedure Between the Member States of the EU, 10 March 1995; The Convention Relating to Extradition Between Member States of the EU, 27 September 1996.

<sup>95</sup> Jan Wouters and Frederik Naert, “The European Union and ‘September 11’”, *Institute for International Law Working Papers*, (Belgium, Leuven: Catholic University of Leuven), p. 14

<sup>96</sup> The “executing (Member) State” is the State of which the authorities are asked to execute the European Arrest Warrant

sabotage, laundering of the proceeds of the crime, and a number of other offences, e.g. fraud, murder, racism, corruption, illicit trafficking in narcotic drugs.

One of the biggest problems to modernize and modify the extradition system is the question of ground for refusal, for the surrender of the requested person. The European Commission and the Council solved this problem in the way very much along the traditional lines of the extradition legislation by inserting *compulsory* and *optional* grounds for non-execution into the European Arrest Warrant.<sup>97</sup> Framework Decision on European Arrest Warrant lists three grounds for *compulsory* non-execution:

(1) the offence is covered by amnesty in the executing State and that State had jurisdiction over the offence; (2) the requested person has been finally judged in respect of the conduct concerned in a Member State and, if he/she has been sentenced, the sentence has been served, is being served or may no longer be executed according to the law of the sentencing State; (3) the requested person can, by reason of his/her age, not be held criminally responsible for the offence under the law of the executing State.<sup>98</sup>

There are also a number of grounds for *optional* non-execution:

Firstly, as mentioned above, in some cases double criminality may still be required- for acts which fall outside the list of 32 types of specific offences. Secondly, there are a number of grounds for refusal which broadly can be regarded

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<sup>97</sup> Michael Plachta, "European Arrest Warrant: Revolution in Extradition?", *European Journal of Crime, Criminal Law and Criminal Justice*, (Vol.11, No.2, 2003), p. 186

as applications of the double jeopardy prohibition (*ne bis in idem*).<sup>99</sup> Thirdly, the executing State may refuse execution if the offence is concerned is statute-barred according to its own law and it had itself jurisdiction over this offence.<sup>100</sup> Fourthly, the executing state may refuse execution if it undertakes to execute itself the sentence or detention to which the requested person has been condemned if that person is a national or resident of the executing State or is staying in that State.<sup>101</sup> Finally, a refusal to execute is also permitted for offences committed in whole or in part in the territory of the issuing Member State which are not punishable extraterritorially according to the law of the executing Member State.<sup>102</sup>

Indeed, one of the greatest achievements of the European Arrest Warrant is the abolishment of nationality-based exception, even though it is not listed. This means that requested person's nationality of the executing Member State is not a ground for rejecting execution.<sup>103</sup>

### 2.2.2 The Terrorism Framework Decision

On September 19, 2001, the European Commission submitted a proposal for a framework decision on combating terrorism. The Extraordinary European Council, on September 21, 2001, agreed that the EU had to adopt a common definition of terrorism. On October 19, 2001, the Ghent European Council called that this definition to be reached by December 6-7, 2001. JHA Council reached a provisional

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<sup>98</sup> Art. 3

<sup>99</sup> Art. 4 (2), (3) and (5)

<sup>100</sup> Art. 4 (4)

<sup>101</sup> Art. 4 (6)

<sup>102</sup> Art. 4 (7)

<sup>103</sup> Wouters and Naert, "The European Union and 'September 11'", p. 15

political agreement on the framework decision in its December 6-7, 2001 meeting. After the consultation of European Parliament and parliamentary scrutiny in Sweden, Denmark, and Ireland, the Council adopted the decision on June 13, 2002.<sup>104</sup>

The framework decision on combating terrorism provided the common definition of terrorism, terrorist groups, and sets uniform minimum and maximum penalties across the EU. Before the adoption of framework decision, only 6 of the 15 EU Member States had legislation that criminalised terrorism. This was the case in France, Germany, Italy, Portugal, Spain, and the UK.<sup>105</sup>

The Article 1 of the decision ensures the definition of terrorism offences that says, each EU Member State according to its national law shall ensure that the following offences which are committed to:

- seriously intimidate a population,
- compel a government or an international organization to perform or abstain from performing any act,
- seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization

will be punishable as terrorist offences:

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<sup>104</sup> “Council Framework Decision of 13 June 2002 on Combating Terrorism”, O.J. 2002, L 164/3. Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_164/l\\_16420020622en00030007.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf)>, (Visited on: November 2, 2004)

<sup>105</sup> Kristin Archick, “Europe and Counterterrorism: Strengthening Police and Judicial Cooperation”, *Congressional Research Service Report to Congress* ( July 23, 2002), p. 2, Available at: <<http://www.usembassy.it/pdf/other/RL31509.pdf>> (Visited on: November 5, 2004)

- (a) attacks against the life of a person, which may cause death
- (b) attacks against the physical integrity of a person;
- (c) hostage taking or kidnapping;
- (d) causing extensive damage to a Government or public facility;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, supply, transport or use of weapons, explosives or of chemical, biological or nuclear weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource;
- (i) threatening to commit any of the acts listed between (a) and (h).

According to Elisabeth Symeonidaou-Kastanidou, the definition of Framework Decision is the most comprehensive one and it helps better to understand terrorism's socio-political nature, if it is compared with previous attempts to define terrorism either in the context of international treaties or domestic legislation. For instance, the European Convention on the Suppression of the Terrorism, signed on January 27, 1977, classifies terrorist acts as, among other crimes, all serious offences involving an attack against the life, physical integrity or liberty of internationally protected persons, as well as offences involving kidnapping or taking hostages. Therefore, it defines terrorist acts with regard to the identity of the victim or type of the offence, while the motive of the perpetrator or the damage possibly produced by his conduct at the expense of a State or an international organization are not taken into account. In the same vein, the UN Convention For the Suppression of the

Terrorist Bombings, signed on December 15, 1997, states that any person commits a (terrorist) offence, if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in (*inter alia*) a place of public use, with the intent to cause death or seriously bodily injuries. Thus, the treaty only refers to specific crimes, which can most definitely cause an entire population to be seriously intimidated, but it does not take into account the political objectives which make terrorist crime distinguishable from other types of criminal conduct.<sup>106</sup>

Apart from terrorist offences, the Article 3 of the the Framework Decision makes reference to certain actions of lesser gravity, such as aggravated theft or extortion that are the crimes linked to terrorist activities on the condition that they are perpetrated with a view to committing a terrorist offence.

The Framework Decision also defines the terrorist group and determines offences relating to terrorist group. In that context, 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 offences”.<sup>107</sup> Directing and participating are deemed as offences relating to terrorist group.<sup>108</sup> Even though these terms are not fully described in the text, “directing” a terrorist group is the act of guiding this group to the choice of the offences which are to be committed. On the other hand, “participation” covers any act of cooperation or contribution to the offences planned by the organization including supplying information or material resources, and

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<sup>106</sup> Elisabeth Symeonidou- Kastanidou, “Defining Terrorism”, *European Journal of Crime, Criminal Law and Criminal Justice*, (Vol.12, No.1, 2004), p.24-25

<sup>107</sup> Art. 2 (1)

<sup>108</sup> Art. 2 (2)

funding the illicit activities.<sup>109</sup> Inciting, aiding or abetting these acts is also regarded as punishable behaviour.<sup>110</sup>

A common maximum penalty of deprivation of liberty is only provided for offences relating to terrorist groups. To this end, maximum penalties are determined as no less than fifteen years for directing terrorist groups and no less than eight years for participating terrorist groups.<sup>111</sup> Terrorist offences, on the other hand, should be punishable with “custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required”.<sup>112</sup>

Indeed, the common definition of terrorism is a great achievement for coordinating and cooperating counterterrorism efforts among the EU Member States. However, it is worth mentioning that the Framework Decision on Combating Terrorism does not give the EU any new supranational powers. Instead, the Framework Decision improves efforts to deal with terrorism by putting standards that the EU members are expected to follow. For instance, the role of the EU in defining and criminalising terrorism is similar to its role in customs policy: the EU determines common policies but leaves the enforcement of this policy to national judges and police authorities. Thus the successful implementation of the Framework Decision depends on the insertion of the provisions into national legislations by the EU Member States.<sup>113</sup>

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<sup>109</sup> Kastanidou, p.29-30

<sup>110</sup> Art. 4 (1)

<sup>111</sup> Art. 5 (3)

### 2.2.3 The Europol

The establishment of Europol was agreed with K.1 (9) of the Maastricht Treaty, on February 7, 1992, to fight with the problem of European trans-national crime.<sup>114</sup> TREVI Ministerial Meeting in Copenhagen on June 2, 1993 created Europol Drugs Unit (EDU) that started working in January 1994.<sup>115</sup> In 1995, the Europol Convention was concluded and the mandate of Europol extended, which defines the objective of Europol as:

*“improving...the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a ways as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned”.*<sup>116</sup>

The Europol Convention came into force on October 1, 1998, and Europol has started its activities on July 1, 1999.

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<sup>112</sup> Art. 5 (2)

<sup>113</sup> Bensahel, p. 36-37

<sup>114</sup> Wouters and Naert, “The European Union and ‘September 11’”, p.20

<sup>115</sup> Ibid

<sup>116</sup> “Convention on the Establishment of a European Police Office”, July 26, 1995, 1995 O.J. (C 316), Available at: <<http://www.europol.eu.int/index.asp?page=legalconv>> (Visited on: January 26, 2005)



Even though terrorism is not a new competence for Europol, its role in fight against terrorism was strengthened after the September 11 terrorist attacks.<sup>117</sup> In this context, a special anti-terrorism unit has been set up within the Europol with the task to collect and analyse data concerning current threats and provide operational and strategic analysis<sup>118</sup> and Europol is financed by supplementary budget for 2002 of more than three million euros.<sup>119</sup> In addition, on April 24-25, 2002, the JHA Council agreed to amend the Europol Convention to allow it participating in “Joint Investigation Teams”.<sup>120</sup> This allows Europol to ask members to initiate investigations into specific cases but without giving Europol independent coercive powers.<sup>121</sup> Therefore, the EU Member States can decide not to accept the request of Europol because of their security interests or such a request would jeopardise the success of investigations or the safety of the individuals.<sup>122</sup> As a response to Madrid train station bombings, on March 11, 2004, the Council decided to reactivate the closed “Counter-terrorist Task Force” within Europol. The aim of Counter-terrorist Task Force is to facilitate the direct exchange of information between national representatives to get a more complete picture of the criminal activities of terrorists.<sup>123</sup>

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<sup>117</sup> See the Conclusions adopted by the Council (JHA), Brussels, 20 September 2001, 12156/01 Available at: <[http://europa.eu.int/comm/justice\\_home/news/terrorism/documents/concl\\_council\\_20sep\\_en.pdf](http://europa.eu.int/comm/justice_home/news/terrorism/documents/concl_council_20sep_en.pdf)> ( Visited on: January 28, 2005)

<sup>118</sup> Nicolaos Lavranos, “Europol and the Fight against Terrorism”, *European Foreign Affairs Review*, (Vol. 8, No.2, 2003), p. 262

<sup>119</sup> “Europol Supplementary and Amending Budget for 2002 (New Counter-terrorism Activities)”, O.J. 2002, C 74/1. Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c\\_074/c\\_07420020323en0010004.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_074/c_07420020323en0010004.pdf)> (Visited on: January 28, 2005)

<sup>120</sup> For a detailed analysis of the Joint Investigation Teams see Chapter 2- (2.2.5) *Joint Investigation Teams*

<sup>121</sup> Jamie Woodbridge, “Tackling Terrorism within EU Borders”, *European Security Review*, (No.12, May 2002), p.2

<sup>122</sup> Lavranos, p.262

<sup>123</sup> Björn Müller-Wille, “Building an European Intelligence Community in Response to Terrorism”, *European Security Review*, (No.22, April 2003), p. 1

In fact, it should be questioned that whether these measures, taken after September 11, significantly increase the authority of Europol on the EU Member States. Europol should now ask the member states to launch investigations, but it cannot order them to do so. Europol personnel cannot detain or arrest any suspects but can join in investigations of crimes only within their specified mandate.<sup>124</sup>

## 2.2.4 The Eurojust

Judicial cooperation in criminal matters was first included as an EU objective in the Maastricht Treaty.<sup>125</sup> The European Council of Tampere, on 15-16 October 1999, in point 46 of its conclusions, made a decision to establish permanent judicial cooperation unit called Eurojust, to enhance fight against serious crime.<sup>126</sup> On December 14, 2000, provisional judicial cooperation unit, with the name of Pro-Eurojust, Eurojust's forerunner, was established by the decision of Council of the European Union, which started work on March 1, 2001.<sup>127</sup> The September 11 terrorist attacks stimulated the creation of Eurojust<sup>128</sup> and Eurojust was finally established by a Council Decision on 28 February 2002.<sup>129</sup> Eurojust, a "unit" with legal personality<sup>130</sup>, composed of one prosecutor, judge or police officer seconded

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<sup>124</sup> Bensahel, p. 40-41

<sup>125</sup> Treaty Establishing the European Union, Art.K.1(7)

<sup>126</sup> "Presidency Conclusions of the Tampere European Council", October 15 and 16, 1999, Available at: <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/00200-r1.en9.htm](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm)> (Visited on: January 25, 2005)

<sup>127</sup> "Council Decision of 14 December 2000 setting up a Provisional Judicial Unit", O.J. 2000, L 324/2, Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_324/l\\_32420001221en0020003.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_324/l_32420001221en0020003.pdf)> (Visited on: January 28, 2005)

<sup>128</sup> Bensahel, p.41

<sup>129</sup> "Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime" O.J. 2002, L 63/1. Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_063/l\\_06320020306en00010013.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_063/l_06320020306en00010013.pdf)> (Visited on: January 28, 2005)

<sup>130</sup> Art. 1

from every member state with equivalent competence.<sup>131</sup> The objective of Eurojust is mainly to stimulate and improve the coordination between the competent authorities of Member States, of investigations and prosecutions in the Member States, taking into account any request emanating from competent authority of a Member State and any information provided by any body competent by virtue of provisions adopted within the framework of the treaties concerning two or more Member States, or in certain conditions a Member State and non Member State, in relation to serious crime, in particular by facilitating the execution of mutual legal assistance and the implementation of extradition requests.<sup>132</sup>

Eurojust does not have authority to launch or execute investigations, but instead relies on a system of lateral links among its members. Like Europol, whole is greater than the sum of its parts principle is also valid for Eurojust and that cross-border issues such as terrorism and organized crime require increased cooperation among judicial authorities.<sup>133</sup> Eurojust seeks to improve cooperation between the different legal systems of the EU Member States rather than harmonize them.<sup>134</sup>

After Madrid train station bombings, the European Council adopted Declaration on Combating Terrorism on March 25, 2004, in which the “European Council calls on Member States to ensure that the optimum and most effective use is made of existing EU bodies, in particular Europol and Eurojust, to promote

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<sup>131</sup> Art. 2 (1)

<sup>132</sup> Art. 3 (1) (a) and (b)

<sup>133</sup> Bensahel, p. 41

<sup>134</sup> House of Lords Report, “Judicial Cooperation in the EU: The Role of Eurojust”, (UK: House of Lords, 2004), p. 8, Available at: <<http://www.publications.parliament.uk/pa/Id200304/Idselect/Ideucom/138/138.pdf>> (Visited on: January 25, 2005)

cooperation in fight against terrorism”.<sup>135</sup> The European Council also called the EU Member States to designate Eurojust national correspondents for terrorist matters and use Eurojust to the maximum extent to cooperate in cross-border terrorism cases. Furthermore, the Council called Eurojust representatives to associate with the work of Joint Investigation Teams as far as possible.<sup>136</sup>

### 2.2.5 Joint Investigation Teams

The Tempere European Council on October 15-16, 1999, called for joint investigation teams to be set up to combat trafficking in drugs and human beings, as well as terrorism. Following the September 11 terrorist attacks, the Council Framework Decision of June 13, 2002, provided the establishment of joint investigation teams.<sup>137</sup> The competent authorities of two or more Member States can now set up a joint investigation team for a specific period and a limited period in order to carry out criminal investigations in one or more of the Member States setting up the team.<sup>138</sup>

A joint investigation team should, in particular, be set up where a Member State’s investigation requires difficult and demanding investigations having links with other member states<sup>139</sup>, and “a number of Member States are conducting

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<sup>135</sup> “Declaration on Combating Terrorism”, ( Brussels: European Council, March 25, 2004), Available at: <<http://www.ue.eu.int/uedocs/cmsUpload/79635.pdf>> (Visited on: November 2, 2004)

<sup>136</sup> Ibid

<sup>137</sup> “Council Framework Decision of 13 June 2002 on Joint Investigation Teams”, O.J., 2002. L 162/1., Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/1\\_162/1\\_16220020620en00010003.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/1_162/1_16220020620en00010003.pdf)> (Visited on: February 2, 2005)

<sup>138</sup> Art. 1s

<sup>139</sup> Art. 1 (a)

investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved”.<sup>140</sup>

## 2.3 Developing a Strategic Dimension

### 2.3.1 European Security Strategy

In order to determine a common security strategy in the face of the threats that the Europe challenges, High Representative Javier Solana presented as a draft the European Security Strategy (ESS), also intitled as “A Secure Europe in a Better World”, at the Thessaloniki European Council meeting on June 19, 2002, which was subsequently adopted by the Brussels European Council on December 12, 2003.<sup>141</sup>

The ESS is divided into three parts:

The first part of the ESS deals with “key threats” facing the Europe after the end of Cold war. In that context, the ESS puts terrorism on the front of the threats by indicating that today’s terrorist movements are well-resourced, connected by electronic networks, and incline to unlimited violence to cause mass casualty to destroy democratic structure of the EU Member States. Proliferation of weapons of mass destruction is set out below terrorism as a second key threat in the ESS by pointing out the race in the WMD and serious possibility of using them in any terrorist attacks. The ESS handles regional conflicts as the third key threat to European security. In this respect, it is stressed that the regional conflicts, neighbouring to Europe or above all in the Middle East, can cause extremism,

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<sup>140</sup> Art. 1 (b)

terrorism, state failure, and provides opportunities for organized crime. State failure is the fourth key threat. The ESS indicates that the bad governance- corruption, weak institutions, and civil conflicts are the reasons of state failure and lead to obvious threats, such as organized crime and terrorism and adds to regional instability. Lastly, the ESS points out that Europe is a prime target for organized crime. According to the ESS cross-border trafficking in drugs, women, illegal migrants and weapons are the internal threats to European security which have significant external dimension and linked to terrorism.<sup>142</sup>

The second part of the ESS is dedicated to “strategic objectives”. Three liberal strategic objectives are determined for the EU. The first objective is to extend the “zone of security” around Europe to the East, to the South and beyond by extending the benefits of economic and political cooperation to troubled countries, because in the age of globalisation key threats stem from distant threats and they are as important as threats created at home. The second objective is to strengthen the international order by developing and supporting an “effective multilateralism” with well functioning international institutions. In this context, the ESS stresses the importance of upholding and developing international law and points out the UN Charter as the fundamental framework of international relations. In addition, the UN Security Council has been taken as the primary responsible body to maintain peace and security in the world. The important role of other key institutions of international order such as WTO, NATO, OSCE, Council of Europe, ASEAN, MERCOSUR, and the African Union are also handled in the ESS for more multilateral international order. The third objective for the EU is to be prepared

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<sup>141</sup> Gerrard Quille, “The European Security Strategy: A Framework for EU Security Interests?”, *International Affairs*, (Vol.11, No.3, Autumn 2004), p.422

against new dynamic threats before a crisis occurs. It is indicated that conflict prevention and threat prevention cannot be started too early. In this respect, “preventive engagement” is at the heart of the EU approach against key threats in order to avoid them by acting at the first signs of trouble.<sup>143</sup>

The final part of the ESS considers the policy implications for the EU of establishing a security strategy. While the ESS stresses that the EU has been made good progress in the development of coherent foreign policy and effective crisis management capability, it is also emphasized that the EU must be “more active, more coherent, and more capable” in these areas. Developing a “strategic culture that fosters early, rapid and when necessary, robust intervention” are specified to make the EU more active in order to counter the new dynamic threats. For more coherent EU, the ESS underlines the importance of the CFSP and the ESDP, and puts that the challenge is now to bring together the different instruments and capabilities that the EU created over recent years. This should be done by bringing together the European assistance programmes, European Development Fund, military and civilian capabilities from Member States, and other instruments. On the other hand, according to the ESS, transforming the EU military forces into more flexible and mobile structure, and enabling them to deal with new threats should provide more capability to the EU. Moreover, the ESS specifies the need to engage in cooperations with international partners to make a contribution to the EU’s foreign and security policy and crisis management. In this respect, the ESS indicates the necessity of developing the relations with the US, Russia, and countries of the Middle East, Africa, Latin America and Asia.

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<sup>142</sup> ESS, p.4

## 2.3.2 Strategic Achievements of Declaration on Combating Terrorism

Following the Madrid train station bombings, on March 11, 2004, Brussels European Council meeting of March 24-25, 2004, resulted with the release of the Declaration on Combating Terrorism in order to provide more effective counter-terrorism measures. The impressive achievements of Declaration on Combating Terrorism for the EU's strategic objectives to fight against terrorism are the creation of counterterrorism coordinator and early activation of solidarity clause that is laid down in the draft Treaty establishing a Constitution for Europe. In fact, the EU Member States by creating the position of counterterrorism coordinator and adopting solidarity clause proved an important degree of political will on establishing a liberal multilateral cooperation on fight against terrorism at the EU level in terms of counterterrorism coordination and mutual assistance.

### 2.3.2.1 The Counterterrorism Coordinator

Following the proposal by Javier Solana, Secretary-General of the Council of EU and High Representative of the CFSP, Mr. Gijs de Vries, a former Dutch deputy interior minister, was appointed as counterterrorism coordinator through the release of Declaration on Combating Terrorism on March 25, 2004.<sup>144</sup> The function of the coordinator, who works within the Council Secretariat, is to “coordinate the work of the Council in combating terrorism and, with regard to the responsibilities of the Commission, maintain an overview of the all the instruments at the Union's disposal

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<sup>143</sup> Javier Solana, “Thoughts on the Reception of the European Security Strategy” *Oxford Journal of Good Governance*, (Vol.1, No.1, July 2004), p.18



with a view to regular reporting to the Council and effective follow-up of Council decisions”.<sup>145</sup>

### 2.3.2.2 The Solidarity Clause

EU Member States were not eager to debate the involvement of the EU military force in fighting against terrorism, however, the September 11 terrorist attacks led to such a debate at the beginning of the 2002. After the US’s Afghanistan operation, the Spanish government insisted on the fight against terrorism could be put in the Treaty on European Union, Maastricht Treaty, along with other Petersberg Tasks.<sup>146</sup> However, other EU Members were suspicious on the inclusion of that new mission, because of practical reasons, the EU force was not yet prepared to contribute usefully to the fight against terrorism, and legal reasons, no treaty reform was envisaged at that time. After discussions among the EU Members, particularly, on that reasons, European Council’s Seville meeting in June 2002 adopted a Solemn Declaration<sup>147</sup> that examined the terrorism and the ESDP issue indicating that the CFSP and the ESDP can be used in fight against terrorism.<sup>148</sup> Even the time of disagreements among Europeans on Iraq crisis, there was a growing convergence of

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<sup>144</sup> Thomas Fuller, “Leaders of 25 Nations Endorse Plan in wake of Madrid Bombings: EU Adopts Ambitious Antiterror Measures”, *International Herald Tribune*, (March 26, 2004)

<sup>145</sup> “Declaration on Combating Terrorism”, (March 25, 2004)

<sup>146</sup> Petersberg Tasks were established in June 1992 at the Ministerial Council of the Western European Union (WEU). These tasks were consisted of humanitarian and rescue tasks, peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking. Today, these missions are expressly included in Article 17 of the Maastricht Treaty and forms the limiting framework and foundation of ESDP

<sup>147</sup> “Declaration by the European Council on the Contribution of the CFSP, including the ESDP, to the Fight against Terrorism”, ( Seville: European Council, June 22, 2002), Available at: <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/72638.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf)> (Visited on: March 4, 2005)

<sup>148</sup> Martin Ortega, “Petersberg Tasks, and Missions for the EU Military Forces”, (Paris: EU Institute for Security Studies, February 2005), p.2 Available at: <<http://www.iss-eu.org/esdp/04-mo.pdf>> (Visited on: March 2, 2005)

new thinking on how to confront terrorism in the security and defence field.<sup>149</sup> For instance, the UK and France agreed on need of solidarity against possible terrorist attack at Le Touquet Summit on January 4, 2003, by declaring that they committed themselves from now on to mobilise all their available assets in order to provide help and assistance to the other country against terrorist acts. The France and the UK also invited other EU Member States to join this commitment and to support the proposal to include in the draft Treaty establishing a Constitution for Europe a solidarity clause against terrorism.<sup>150</sup>

In the name of same solidarity, after Madrid terrorist attacks on March 11, 2004, agreement was reached at March 24-25, 2004, Brussels European Council Summit, in which the Declaration on Combating Terrorism released, to early activate the solidarity clause, that is laid down in the draft Treaty establishing a Constitution for Europe. The European Constitution was signed on October 29, 2004.<sup>151</sup> In the European Constitution, solidarity clause is laid down in Article 1/43<sup>152</sup> which states that if one of the EU Member States becomes the object of a terrorist attack, the EU shall mobilise all the instruments at its disposal, including the military resources made available by the Member States in order to<sup>153</sup> :

- prevent the terrorist threat in the territory of the EU Member States;

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<sup>149</sup> David Spence, "International Terrorism: The Quest for a Coherent EU Response", in Alyson JK Bayles and Isabel Frommelt (eds.), *Business and Security*, (Oxford: Oxford University Press, 2004), pp. 75-99

<sup>150</sup> "Declaration on Strengthening European Cooperation in Security and Defence" (Le Touquet, February 2003), Available at: <[http://www.defence.gouv.fr/dga/fr/pdef/declaration\\_touquet.pdf](http://www.defence.gouv.fr/dga/fr/pdef/declaration_touquet.pdf)> (Visited on: March 8, 2005)

<sup>151</sup> The European Constitution was signed on 29 October 2004 but it was in ratification process in the EU Member States when this study had been conducted

<sup>152</sup> Under Solidarity Clause, assistance is also rendered in the event of a natural or man-made disaster.

<sup>153</sup> See "A Constitution for Europe" Available at: <[http://www.europa.eu.int/constitution/download/print\\_en.pdf](http://www.europa.eu.int/constitution/download/print_en.pdf)> (Visited on: November 24, 2004)

- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack.

In addition, arrangements for implementing the solidarity clause, Article 1/43, are set out in Article III-329 of the Constitution for Europe in which it is stated that the nature of the assistance is not automatic, but depends on a request for assistance from the victim member state.

### 2.3.3 The Conceptual Framework of the ESDP to Fight Against Terrorism

The European Security Strategy (ESS), Declaration on Combating Terrorism, and the adoption of solidarity clause by the EU Constitution laid the foundations of the “Conceptual Framework on the European Security and Defence Policy Dimension of Fight Against Terrorism” endorsed by European Council on November 22, 2004.<sup>154</sup>

As a response to crisis, the EU can mobilise civilian, military means and instruments which encompass crisis management and conflict prevention capacities in support of the CFSP objectives. This facilitates “a comprehensive approach to prevent the occurrence of failed states, to restore order and civil government, to deal

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with humanitarian crisis and prevent regional conflicts”.<sup>155</sup> Thus, the main objective of the ESDP tasks target failed states that pose security threat indirectly from the periphery of the EU. However, the Madrid train station bombings brought the danger into the heart of Europe then the ESDP missions were reevaluated in order to address the terrorism issue. In this context, four main areas of action were determined in line with the EU’s liberal approach of ensuring the combination of hard power and soft power instruments to tackle the terrorism by the endorsement of Conceptual Framework on the ESDP dimension of the fight against terrorism. These are<sup>156</sup> :

*Prevention:* Under the framework of an EU-led crisis management operation, prevention of an asymmetric threat is to ensure that the Member States of EU would support an operation by providing necessary level of effective intelligence and information gathering.

*Protection:* Protection is a fundamental aspect of any EU-led crisis management operation. In the case of a terrorist threat, the aim of protection is to minimise the vulnerabilities of EU personnel, material, assets and civilian targets in the operation area.

*Response/ Consequence Management:* In the context of a crisis management operation, it is mentioned that EU-led ground forces would be available to cooperate with local authorities.

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<sup>154</sup> “Conceptual Framework for the European Security and Defence Policy Dimension of Fight Against Terrorism” Available at: <<http://register.consilium.eu.int/pdf/en/04/st14/st14797.en04.pdf>> (Visited on: March 8, 2005)

<sup>155</sup> Ibid

*Third Countries:* A wider spectrum of the ESDP missions can be evaluated to incorporate supporting the third countries in the fight against terrorism. In addressing the fight against terrorism, the wider issue of the protection of the EU citizens in third countries, especially in the case of hostage taking, would also be considered.

One of the basic principles of the ESDP dimension of the fight against terrorism is its voluntary nature. The voluntary nature of EU Member States' contributions is one of the basic principles of the EU capability development process. It depends on each Member State to choose the most appropriate means to fulfil their solidarity commitment such as in ways that pooling, sharing and coordinating often scarce resources in this field.<sup>157</sup>

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<sup>156</sup> Ibid  
<sup>157</sup> Ibid

# CHAPTER 3:

## Responses by the EU: International Efforts

### Against Terrorism After September 11

As in the case of the intensification of its internal efforts, the EU has also intensified its international efforts against terrorism after the September 11 terrorist attacks. Thus, in this chapter, the EU's international efforts with its global partners on counterterrorism cooperation will be evaluated by emphasizing on remaining divergences and disagreements on the ways to confront terrorism. In this context, the divergences between the EU and the US approaches on tackling terrorism and convergences on counterterrorism cooperation between the EU and the US will be analysed. Under the Euro-Mediterranean Cooperation on terrorism, firstly, the Barcelona Process will be observed in order to explain the important parts of the EU's approach on terrorism. Then, the counterterrorism cooperation of Euro-Mediterranean Partners will be examined. Before the elaboration of the EU-Russia disagreements on Chechen conflict, the counterterrorism cooperation between the EU and Russia will also be pointed out in brief.

#### 3.1 Transatlantic Cooperation

Since the September 11 terrorist attacks, there has been a growing divergency between the EU and the US on the ways to confront terrorism, which mainly stems

from both sides' different strategies. However, beyond these divergences, the EU and the US have a considerable convergency in terms of cooperation in the areas of police and judicial cooperation, transport and border security.

### 3.1.1 Transatlantic Divergences

#### 3.1.1.1 Growing Division between Europe and the US

Despite the end of Cold War, the Bill Clinton administration believed in the value of European support and made significant efforts to persuade European allies to adopt the Atlantic Alliance to better deal with the new types of threats in regions beyond Europe. In addition, despite growing American power to confront new threats, the President Bill Clinton was convinced that the US should do everything possible to provide agreement among Europeans before resorting to unilateral action, not only on issues like Balkans, but also on global issues like the Middle East. That liberal commitment to consensus with Europeans changed to a significant degree with the arrival of G.W.Bush to the Whitehouse, and then again, even more so, after the September 11 terrorist attacks.<sup>158</sup>

G.W.Bush gave his first foreign policy speech in November 1999 stating that “in the defence of our nation, a president must be a clear-eyed realist”<sup>159</sup> and during 2000 presidential election campaign he criticized the liberal foreign policy perspective of the Clinton administration.<sup>160</sup> The Bush administration, influenced by realist world

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<sup>158</sup> Philip H.Gordon and Jeremy Shapiro, *Allies at War: America, Europe, and the Crisis over Iraq*, (New York: McGraw-Hill, 2004), p.45

<sup>159</sup> Soeren Kern, “Who is Running US Foreign Policy”, (Real Instituto Elcano, February 17, 2005), Available at: <<http://www.realinstitutoelcano.org/analisis/685.asp>> (Visited on: March 8, 2005)

<sup>160</sup> Klarevas, p. 20

view, took the Office in January 2001 and dedicated itself to establish “unipolar world”. By acting unilaterally in the first months of his administration, the US withdrew from the “ABM Treaty”, refused to join “International Criminal Court (ICC)”, refused to approve the “Biological Weapons Convention” (WPC) and the “Comprehensive Test Ban Treaty” (CTBT), regardless of the opposition of the European countries, China, and Russia. Indeed, these oppositions to unilateral policies of the Bush administration came into most significant degree, at least from Europeans’ point of view, when the US rejected the “Kyoto Protocol” on global warming.<sup>161</sup>

On the other hand, indeed, the Bush administration did not systematically avoid working with Europeans within multilateral forums. On some specific issues, notably in its efforts to stop nuclear proliferation of North Korea, reinforcement of “Road Map” for the Middle East, NATO’s further enlargement with seven new members, the Bush administration preferred a liberal multilateral approach that sought the support of Europeans.<sup>162</sup> In fact, the Bush administration’s willingness to use multilateral forums on these specific issues were no more than to show the willingness of Bush administration to accomplish some specific realist foreign policy goals of the US.

Therefore, the divisions between the US and Europeans on international matters began significantly with the arrival of the Bush administration to the Whitehouse. However, it was the September 11 terrorist attacks that expanded and

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<sup>161</sup> Philip H.Gordon, “Briding the Atlantic Divide”, *Foreign Affairs*, (Vol.82, No.1, January/February 2003), p.70

<sup>162</sup> Gordon and Shapiro, p.54



accelerated the gaps between European and American approaches on international matters, particularly the ways of tackling the threat of terrorism.

Initially, the September 11 attacks seemed to have brought Europe and the US closer together opening a new period of transatlantic cooperation based on a common threat, terrorism. The European Allies of NATO immediately invoked Article 5 of the North Atlantic Treaty and supported UN Security Council resolution which gave US international legitimacy to respond to the attacks. After the initial shock of the attack wore off, the transatlantic relations started to deteriorate again. Significant differences emerged over how to deal with the threat of terrorism. Now, both had to choose broad strategies according to their respective strengths and conceptual understanding of how the post-Cold War World works. On the one hand, Europeans, have a long experience with the terrorism phenomenon, and believe that the root causes of terrorism lies in the economic and social alienation of communities and military force cannot eradicate the sources of terrorism. In addition, before September 11, the EU's strategic priorities were not global military issues, but economic and political integration, Eastern enlargement, and the completion of the monetary union. September 11 attacks did not change that. On the other hand, September 11 terrorist attacks were so massive for the US that they regarded these attacks as an act of war against the US and inclined to use unilateral military force combined with greater American power and resources.<sup>163</sup>

This unilateral perspective of the US administration took place in its Afghanistan operation by rejecting the multilateral support of NATO's European

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<sup>163</sup> Ibid, p.60

allies. The US did not prefer NATO forces in Operation Enduring Freedom in Afghanistan in order not to share the command structure of military forces with NATO allies. Instead, the US received bilateral military support from its European allies for Operation Enduring Freedom and symbolic NATO support, in particular, NATO AWACS (early warning aircraft) patrolled the US air space and NATO frigates patrolled the Eastern Mediterranean in order to free up the US assets for deployment.<sup>164</sup> Indeed, the US's unilateral military operation in Afghanistan by leaving out NATO troops was the evidence of the US foreign policy's alignment to realism's self-help principle in which the realists claim, for survival, states do not depend on international institutions but actively involve in self-help arrangements which are manifested in the use of force. In addition, as Nora Bensahel points out, many Europeans were dissatisfied with the symbolic role that NATO played in Operation Enduring Freedom as a response to September 11 terrorist attacks and attributed it to US unilateralism and arrogance.<sup>165</sup>

Operation Enduring Freedom in Afghanistan confirmed the Bush administration in its view that the Cold War norms of alliance no longer applied, even though the NATO invoked the collective defence commitment, Article 5, for the first time in its history.<sup>166</sup> However, the real turning point for transatlantic relations was the US President G.W.Bush's January 29, 2002, State of Union Address in which he stated an "axis of evil" that included Iraq, Iran, and North Korea, and warned that these regimes, by seeking weapons of mass destruction, pose "a grave threat and growing danger" because they "could provide these arms to terrorists [and] attack our allies or attempt to blackmail the United States". However,

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<sup>164</sup> Bensahel, p.8-9

<sup>165</sup> Ibid

the US would not “permit the world’s most dangerous regimes to threaten the US with the world’s most destructive weapons”. Beyond these remarks President G.W.Bush put an important message for Europeans to consider:

*“My hope is that all nations will heed our call, and eliminate the terrorist parasites who threatened their countries and our own...But some governments will be timid in the face of terror. And make no mistake about it: if they do not act, America will...America will do what is necessary to ensure our nation’s security. We will be deliberate, yet time is not on your side. I will not wait on events, while dangers gather. I will not stand by, as perils draws closer and closer. The United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most dangerous weapons”.*<sup>167</sup>

As Philip H. Gordon and Jeremy Shapiro argue, the above mentioned speech implied a strategic doctrine of unilateral preemptive war that would emerge later in the year and the implication of speech was clear for Europeans: If the US deemed force necessary to deal with the threat to the US security, no nation or alliance should or could stand in the way.<sup>168</sup> On the other hand, as Simon Serfaty argues, the speech, relying on self-help and statism, deepened Europeans’ fears that, as had been shown in Afghanistan, America’s European allies were being moved to secondary role even for the treatment of issues which were of direct concern to them.<sup>169</sup>

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<sup>166</sup> Gordon and Shapiro, p.66

<sup>167</sup> G.W.Bush, “State of Union Address”, ( Washington, D.C., January 29, 2002) Available at: <<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>> (Visited on: April 5, 2005)

<sup>168</sup> Gordon and Shapiro, p.67

<sup>169</sup> Simon Serfaty, “Anti-Europeanism in America and Anti-Americanism in Europe” in Christina V. Bellis and Simon Serfaty (eds.), *Visions of America and Europe: September 11, Iraq, and*

The European reaction to the speech was tough and swift. German Foreign Minister Joscha Fisher said “The international coalition against terrorism is not the foundation to carry out just anything against anybody, and particularly not on one’s own”. He also complained that alliance partners should not be treated like “satellites”.<sup>170</sup> In addition, French Foreign Minister Hubert Vedrine called the speech “simplistic” and “absurd”.<sup>171</sup> Moreover, Chris Patten, the EU Commissioner for External Affairs, warned that “[h]owever mighty you are, even you are the greatest superpower power in the world, you cannot do it all on your own”.<sup>172</sup> Finally, the French Prime Minister Lionel Jospin urged the US not to define its policy only for single goal by stating the problems of the international community “cannot be reduced simply to the struggle against terrorism, however vital that struggle may be. Nor can such problems be solved by overwhelming military power”.<sup>173</sup> In fact, these remarks were implicit message to the US’s realist statist and self-help approach of acting unilaterally in contrast that Europeans underline the necessity of liberal multilateral cooperation for fighting against terrorism.

The President G.W.Bush’s endorsement of the unilateral military “preemption” doctrine in a speech at West Point, New York, in June 2002, confirmed the European view that the Bush administration had a simplistic approach to foreign policy that reduced everything to the military aspects of war on terrorism.<sup>174</sup> While

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*Transatlantic Relations*, (Washington, D.C: Center for Strategic and International Studies, 2004), p. 13

<sup>170</sup> Quoted in Steven Erlanger, “Germany Joins Europe’s Cry that the U.S. Won’t Consult”, *New York Times*, (February 13, 2002), Available at:<[http://vredessite.nl/andernieuws/2002/week08/02-13\\_germany.html](http://vredessite.nl/andernieuws/2002/week08/02-13_germany.html)> (Visited on: April 8, 2005)

<sup>171</sup> Quoted in Judy Dempsey, “Washington Turns Deaf Ear to Europe’s Divided Voices”, *Financial Times*,(February 13, 2002) Available at:<<http://specials.ft.com/attackonterrorism/FT30RJ9IMXC.html>> (Visited on: April 8, 2005)

<sup>172</sup> Ibid

<sup>173</sup> Ibid

<sup>174</sup> Gordon and Shapiro, p. 68

speaking at West Point, President Bush described a “threat with no precedent” that required “new thinking”. He added, “[d]eterrence means nothing against shadowy terrorist networks with no nation or citizens to defend. Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies. We cannot defend America and our allies hoping for the best... if we wait for threats to fully materialize, we will have waited to long”. Thus, the President Bush promised to “take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge”, and he concluded his message, “in the world we have entered, the only path to safety is the path of action. And this nation will act...Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and our lives”.<sup>175</sup>

Indeed, the President Bush’s West Point speech implied that the US had a right and duty to apply preemptive action not only against an imminent threat, but also, if Washington decided, against a potential threat.<sup>176</sup> In September 2002, President Bush’s January 29, 2002 State of the Union Address and June 2002 West Point Speech given an official status in the National Security Strategy (NSS) of the US. By putting the military power of the US as a defining factor of international relations, NSS indicates the willingness to use US military forces without multilateral support by stating “[w]e will not hesitate to act alone, if necessary, to exercise our right of self defense by acting preemptively against such terrorists”.<sup>177</sup>

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<sup>175</sup> “US President G.W.Bush’s West Point, New York, Speech”, (New York: West Point Military Academy, June 1, 2002), Available at:<<http://www.whitehouse.gov/news/releases/2002/06/print/20020601-3.html>> (Visited on: April 10, 2005)

<sup>176</sup> Gordon and Shapiro, p. 68

The two important speeches of President Bush and the statements of the NSS confirmed the US alignment with key realist assumptions such as statism, survival, and self-help while implementing its foreign policy to deal with the threat of terrorism. In contrast, indeed, it was the realist US foreign policy that caused great concern to many European governments and the majority of the European public who supported liberal multilateral cooperation against unilateral approach of the US to get rid of terrorism.

The implications of speeches made by President Bush and the statements of the NSS came into force after the US invasion of Iraq in March 2003. In 2002, Europe-US clash over Iraq led to the serious deterioration of transatlantic relations. The dispute shook the European-American relations to its core and posed a challenge to the main institutions underpinning the world order during the post World War II period. The United Nations Security Council, the main international body for international peace and security, failed in March 2003 to reach a consensus on the resolution of Iraq dispute. NATO, the most important and enduring military alliance in the history of the world, not only failed to unite on Iraq, but also failed to respond to a request from one of its members, Turkey, to arrange its defence measures. The EU, in the midst of the constitutional convention for the continent's political unification, was profoundly divided by France, Germany, Belgium, Luxembourg, and Greece on the opponent side and the UK, Spain, Italy, Poland, Hungary, Denmark, Portugal, the Czech Republic, who also signed "Letter of Eight" on January 30, 2003, to express solidarity to the US, on the proponent side of military operation in Iraq. The intra-European divergences on Iraq also spilled over into

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<sup>177</sup> NSS, p.6

relations between Western and Eastern Europe with the publication of “Vilnius 10 Text” by Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Macedonia, Slovakia and Romania to show the same solidarity with the US as the publishers of Letter of Eight did.<sup>178</sup>

Philip H. Gordon enumerated the arguments for and against the war on Iraq in his paper: *Iraq: The Transatlantic Debate* in order to explain the reasons of divergences between Europeans and the US, and Europeans themselves. Philip H. Gordon puts six war arguments used by the war’s advocates (US, publishers of Letter of Eight and Vilnius Ten Text). The first argument of war’s advocates was that nuclear weapons could lead Saddam Hussein to risk aggression against his neighbours and seek to dominate the Middle East. As the war’s adherents claimed, the worst nightmare scenario was that the Iraqi regime might obtain nuclear weapons. In that situation, Saddam Hussein could attack neighbouring countries in order to seek the domination in the region. A second argument was that if nothing is done to stop Saddam Hussein’s development of WMD, these weapons could be passed to Islamic terrorists. The third argument that war’s advocates claimed that it was no longer possible to manage rigorous and detailed inspections to ensure that Saddam Hussein’s regime did not possess nuclear weapons and WMD because Iraq is too big to be inspected properly. In addition, WMD could easily be hidden or transported to other countries such as Iran and Syria. The fourth argument was that the cost of existing *status quo* had become too high. Saddam Hussein’s vicious rule, sanctions on Iraq, humanitarian suffering, threats to Iraq’s neighbours, the need for troops in Saudi Arabia, the no-fly zones, Saddam Hussein’s support for Palestinian

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<sup>178</sup> Gordon and Shapiro, p. 2

terrorists and periodic disruption of oil markets posed a great danger to the interests of the West and the region. Upholding international law and the authority of the UN Security Council was the fifth argument. War's advocates argued that the regime of Saddam Hussein had flouted the authority of the UN by defying 16 Security Council resolutions for the past 11 years. Therefore, expecting the enforcement of other resolutions or the implementation of other WMD non-proliferation regimes was impossible in Iraq. The last argument of war's advocates was that the only threat of military action would have forced Iraqi regime to disarm. Opponents of war had often pressured Iraq by political tools, however without a credible military dimension these attempts were proving futile.<sup>179</sup>

On the other hand, the opponents of war in Iraq (France, Germany, Belgium, Luxembourg, Greece) firstly claimed that military operation in Iraq could not be too easy as the proponents of war claimed. Iraqi regime change would not be a repeat of Gulf War, when the forces were fought in the desert and the main objective was kicking Iraqi army out of Kuwait. This time, Saddam Hussein would have fought for his survival perhaps by using his so-called WMD, so the casualties of war could be much more on invading forces and civilians. In addition, to involve in an urban combat could defeat coalition force's technological superiority. The day after problem was the second argument of opponents of war. The opponents' impression was that the US had no vision for post-Saddam Hussein Iraq, most importantly, including how to convince Iraqi ethnic and religious groups to cooperate. The third argument of opponents was that the Iraqi invasion would have undermined the war on terrorism. The invasion of Iraq , if things go bad, would have led to the US

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<sup>179</sup> Philip H. Gordon, "Iraq: The Transatlantic Debate", *Occasional Papers*, (Paris: EU Institute for Security Studies, No.39, November 2002), p. 8-11



bombings of Arab civilians, broadcast throughout the Arab world; an Israeli incursion in West Bank under cover of Iraq invasion leading to high Palestinian terrorist attacks; potentially violent invasion could have fueled resentment of West in Arab world to intensify attacks on Western societies. This would have undermined the efforts to prevent terrorism in the world. Finally, opponents of war claimed that the unilateral US invasion would be illegal, unless explicitly authorized by the UNSC. Even a unilateral US action would be dangerous for international security because China, Israel, Russia and anyone else could emulate the US's unilateral way against its neighbours to increase their spheres of influence. Therefore, the unilateral US action could destroy the order of international system in the long run.<sup>180</sup>

Robert Kagan theoretically analysed the reasons for these divergences between the US and many European governments and the majority of the European public. Robert Kagan claims that European opposition to the US was the result of different philosophical and psychological ways of perceiving the world. In that way, Europeans live in a Kantian world where the rules are paramount and the use of military force is the last resort. Robert Kagan also argues that Europeans' temptation in that way is due to the power gap between European states and the US. Thus, the best choice for militarily weak Europe to sustain its global influence is to insist on conducting international politics by the world of norms.

On the other hand, according to Robert Kagan, Hobessian US rule of law does not matter in the face of danger. Due to the US's overwhelming military power, the US is capable of acting unilaterally even if the whole world is against them which

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<sup>180</sup> Ibid, 12-14

is not the case for Europeans. Thus, the unilateral US action could not be accepted by Europeans.<sup>181</sup>

However, it is simplistic to explain the European attitude by reducing it only to the military power differences between Europe and the US as Robert Kagan argues. In fact, European societies demanded their governments act according to the long existing liberal European values and standards such as human rights, democracy, the rule of law, and multilateralism which are institutionalised in the EU during its nearly 50 years of history.

### 3.1.1.2 The European Union and the US Security Strategies

The divergences between European states concerning the war in Iraq, which was analysed in the previous section, increased the need for a common strategic approach of all the EU countries. Therefore, Javier Solana, High Representative of the CFSP of the EU, prepared the “European Security Strategy” which he entitled “A Secure Europe in a Better World” that was accepted by the European Council on December 12, 2003. In fact, the publication of the ESS not only created common strategic approach for the EU, but also revealed the strategic divergences between the EU and the US on the confrontation of increasing threat of terrorism and other emerging threats. Thus, in this part, the main themes of the ESS and the NSS will be compared in order to analyse these strategic divergences between the EU and the US, which stems from the implementation of strategic objectives of both papers.

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<sup>181</sup> Robert Kagan, “Power and Weakness”, *Policy Review*, (No. 113, June/July 2002)

In fact, as Jean-Marc Rickli argues, the two papers are relatively similar in their threat assessment conclusions.<sup>182</sup> Both papers acknowledged the danger of terrorism, failed states, or in the words of the NSS rogue states, weapons of mass destruction which pose serious danger to their citizens, their territory and to the international community. The NSS indicates that rogue states are the primary threat because they not only provide a sanctuary for terrorists but also breed them. The ESS concurs with this analysis, while pointing out the crucial role of the regional conflicts as enabler of terrorism, extremism, state failure and organized crime. Yet, the ESS and the NSS conclude that the major threat is the use of weapons of mass destruction. While the ESS points out that “the most frightening scenario is one in which the terrorist groups acquire weapons of mass destruction”<sup>183</sup>, the NSS puts that “the gravest danger our Nation faces lies at the crossroads of radicalism and technology. Our enemies have openly declared that they are seeking weapons of mass destruction, and evidence indicates that they are doing so with determination”.<sup>184</sup>

The greatest difference between the ESS and the NSS stems from the implementation of both papers. In this way, the ESS adopts a two-pronged strategy: extending the zone of security in the EU’s neighbourhood and “effective multilateralism”. To extend the zone of security in the EU’s neighbourhood, the ESS considers the Balkans and Mediterranean as the key regions for the success of European strategy by stating that “[o]ur task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean

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<sup>182</sup> Jean-Marc Rickli, “US and EU Security Strategies”, *Oxford Journal on Good Governance*, (Vol.1, No.1, July 2004), p.56

<sup>183</sup> ESS, p. 4

<sup>184</sup> NSS, p. vi ; Rickli, p. 56

with whom we can enjoy close and cooperative relations”.<sup>185</sup> In order to ensure well governed countries in the Balkans and Mediterranean region, the ESS indicates the importance of the extension of the benefits of economic and political cooperation to these regions. In this context, the EU adopts a liberal approach by pursuing its foreign policy interests through an international agenda which includes developmental, economic, environmental, and cultural matters, in addition to security matters, to solve terrorism and other emerging threats by its root causes.

The ESS emphasizes that today’s problems are so complex that no country can tackle it by its own<sup>186</sup>, so the solution of these complex problems depends on “effective multilateralism” by upholding and developing international law under the framework of the UN Charter.<sup>187</sup> In addition, the ESS identifies the UNSC as the primary international body responsible for the maintenance of peace and security. Thus, the EU underlines the importance of multilateral cooperation to fight against terrorism and other emerging threats. The EU’s multilateral perspective reflects its liberal approach on international matters, because they are liberals who claim that the international community can improve the world and promote justice by cooperation—particularly through international institutions, as multilateralism is a preferred approach for global problems in the anarchical environment of international system.<sup>188</sup> However, NATO took less prominent place in the ESS. In fact, NATO is considered as a toolbox for the EU missions and as a bridge in transatlantic relations.<sup>189</sup>

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<sup>185</sup> ESS, p. 8

<sup>186</sup> Ibid, p. 1

<sup>187</sup> ESS, p. 9

<sup>188</sup> Klarevas, p. 20

On the other hand, the US strategy, unlike the European strategy, based on the instrumentalisation of cooperation in favour of the US interests in line with the perceptions of realists who argue that for survival states must selfishly pursue their national interests, the most vital being national security.<sup>190</sup> To this end, when the nature of threat has become unclear and volatile, the NSS puts that coalitions can no longer be fixed, but depend on missions. Therefore, even though the US “will work with others to defuse regional conflicts”<sup>191</sup>, it would not inhibit its freedom of action by fixed pattern of cooperation.<sup>192</sup> Likewise, international organizations’ roles are subordinated to the mission as well. Thus, according to the NSS, NATO must “act wherever American interests are threatened, creating coalitions under NATO’s own mandate, as well as contributing to mission based coalitions”.<sup>193</sup> In the same vein, the NSS indicates the US encouragement to develop the ESDP that is compatible with NATO and thus compatible with the US interests. Moreover, the NSS considers the UN exclusively for soft security matters.<sup>194</sup>

The strategic divergences in two papers are echoed in the means favoured to implement them. The NSS significantly emphasizes the importance of the US military power. The NSS considers military force as an appropriate tool to destroy terrorist organizations, prevent rogue states before they use weapons of mass destruction, protect the US national interests, and strengthen “America’s homeland security to protect against and deter attack”.<sup>195</sup> In other words, the NSS puts the military force of the US as a whole to carry out the US hegemony in line with realist

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<sup>189</sup> Rickli, p. 57

<sup>190</sup> Klarevas, p. 19

<sup>191</sup> NSS, p. 1

<sup>192</sup> Rickli, p. 57

<sup>193</sup> NSS, p. 25

<sup>194</sup> Rickli, p. 57

perceptions which claims that the most important resources in the pursuit of the national interests are material capabilities, especially offensive military ones. The NSS also considers non-military means. However, as Jean-Marc Rickli points out, non-military means subordinated to the military means and apply in soft security issues.<sup>196</sup>

On the other hand, the perspective of the ESS aims to provide a balance between military and civilian instruments in order to pursue more coherent and capable policies. The ESS puts that developing military capabilities is needed in order to address new threats.<sup>197</sup> From one point of view, this should be considered as the rise of realist “hard power” perception for the EU, however in the ESS military factor is handled as one mean together with the civil ones for the implementation of the EU policies. Besides, the ESS draws the role of military power to a minor degree and as a post conflict tool by stating that in the failed states “military instruments may be needed to restore order”, and in regional conflicts “military assets and effective policing may be needed in the post conflict phase”.<sup>198</sup> Thus, while the ESS perspective offers a constructive way for “restoring order” by military means, it provides destructing way of causes of terrorism by civilian soft power means. In this context, the ESS states that “proliferation may be contained through export controls, attacked through political, economic and other pressures while the underlying causes are also tackled” and “dealing with terrorism requires a mixture of intelligence, police, judicial, military and other means”.<sup>199</sup> To sum up, as the liberals claim, today’s complex security issues requires comprehensive understanding of both “hard

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<sup>195</sup> NSS, p. 6

<sup>196</sup> Rickli, p.58

<sup>197</sup> ESS, p. 12

<sup>198</sup> Ibid, p. 7

power” and “soft power” policies<sup>200</sup>, the EU acknowledge this approach in its security strategy.

The most striking divergency between the ESS and the NSS emerge when they deal with terrorism and other threats. The ESS refers “preventive engagement” by stating that “[w]e need to be able to act before countries around us deteriorate, when signs of proliferation are detected, and before humanitarian emergencies arise. Preventive engagement can avoid more serious problems in the future”.<sup>201</sup> Even though the ESS’s preventive engagement also encompasses military hard power, the ESS envisages military hard power as a useful tool to restore order in failed states for humanitarian means only in the post conflict phase under the framework of the UN. In fact, the ESS dominates civilian soft power instruments for its preventive engagement approach. In this context, the ESS’s preventive engagement incorporates various instruments of civilian soft power for crisis and post crisis situations under the framework of the UN with the aim of fighting terrorism and other emerging threats from their root causes. Thus, the emphasize of the ESS both on soft and hard security instruments for its preventive engagement approach, even though soft security tools given more emphasize, justifies the claim of liberalism that military hard power has become less effective to solve problems in the complex and interdependent environment of international relations, so that the international security environment requires the combination of “hard power” and “soft power” policies.

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<sup>199</sup> Ibid

<sup>200</sup> Keohane and Nye, p. 23-24-25

<sup>201</sup> ESS, p. 11

On the other hand, the NSS adopts “preemption” concept. The NSS states that deterrence no longer works against people willing to sacrifice their lives and concludes that the US will strike before their enemies to do so.<sup>202</sup> In addition, preemption concept of the NSS is closely related with unilateralism: “while the US will constantly strive to enlist the support of international community, we will not hesitate to act alone, if necessary to exercise our right of self-defense by acting pre-emptively against such terrorists”.<sup>203</sup> These statements of the NSS are a clear justification of the US’s alignment to realism’s key assumptions such as self-help and survival while pursuing its foreign policy to confront the terrorism.

### 3.1.2 Transatlantic Convergence

Despite their growing divergences on the ways for tackling the terrorism and other threats, as Valsamis Mitsilegas argues, the September 11 terrorist attacks acted as a catalyst for the intensification of law enforcement cooperation between the EU and the US.<sup>204</sup> Since September 11, the EU has made improving the law enforcement cooperation with the US a top priority as part of its international efforts to combat terrorism. The Bush administration and Members of Congress have welcomed these initiatives of the EU to prevent other terrorist attacks against the US and root out terrorist cells in Europe.<sup>205</sup>

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<sup>202</sup> NSS, p. 15

<sup>203</sup> Ibid, p. 6

<sup>204</sup> Valsamis Mitsilegas, “The New EU-USA Cooperation on Extradition, Mutual Legal Assistance and the Exchange of Police Data”, *European Foreign Affairs Review*, (Vol.8, No.4, Winter 2003), p.515



The dialogue between the EU and the US officials on police, judicial, and border control policy matters have increased substantially since September 11 terrorist attacks. The EU officials meet with their respective the US counterparts at least once a year, and the EU-US working group of senior officials meet once every six months in order to discuss their police and judicial cooperation against terrorism. In 2004, Europol posted two liaison officers in Washington to work with the US officials, and the US posted an FBI liaison officer in The Hague, Netherlands, to work with Europol officials on counterterrorism. The EU and the US officials also bridged the many gaps between their respective terrorist lists. In addition, the EU and the US established a high-level policy dialogue on border and transport security including passenger data- sharing, cargo security, biometrics, visa policy, and sky marshalls.<sup>206</sup>

Beyond the increasing dialogue, the EU and the US also signed agreements concerning police and judicial cooperation, and transport and border security against terrorism.

### 3.1.2.1 Europol- US Agreements

In 2001 and 2002, two information sharing agreements were signed between Europol and the US. The first agreement was concluded on December 11, 2001. The purpose of the agreement is “to enhance the cooperation of the EU Member States,

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<sup>205</sup> Kristin Archick, “U.S- EU Cooperation Against Terrorism”, *CRS Report for Congress*, (RL31509, April 13, 2005), p. 1, Available at:< <http://www.usembassy.it/pdf/other/RS22030.pdf>> (Visited on: May 1, 2005)

<sup>206</sup> *Ibid*, p. 2-3

acting through Europol, and the US in preventing, detecting, suppressing, and investigating serious forms of international crime in the areas mentioned in Article 3, in particular through the exchange of strategic and technical information defined in Article 2”.<sup>207</sup>

Article 2 of the agreement provides Europol and the US law enforcement authorities to share both “strategic” information, including threat tips, crime patterns, and risk assessments, and “technical” information including strengthening administrative structures, forensic police methods, investigative procedures, methods of training the officials, criminal intelligence analytical methods, identification of law enforcement expertise.

Areas of criminality to which the agreement applies are arranged in Article 3 of the agreement. According to Article 3, the cooperation established in this agreement shall relate to following criminal activities:

- (i) unlawful drug trafficking;
- (ii) trafficking in nuclear and radioactive substances;
- (iii) illegal immigrant smuggling;
- (iv) trade in human beings;
- (v) motor vehicle crime;
- (vi) crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property;
- (vii) forgery of money and means of payment.

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<sup>207</sup> “Agreement Between the United States of America and the European Police Office”, Art. 1, Available at: <<http://www.europol.eu.int/legal/agreements/Agreements/16268-2.pdf>> (Visited on:

In addition, illegal money laundering activities in connection with these forms of crime or specific manifestations thereof and related criminal offences are put into the areas of criminality.

This agreement does not include personal data sharing. In fact, agreement on the exchange of personal data, the issue of most interest to the Americans, was deferred to second agreement concluded in 2002. The disagreement on personal data exchange stemmed from the fact that the EU laws specify that the EU can only transmit personal data to another state with the same legal framework to protect the privacy of such data.<sup>208</sup> In this context, the US structure differed from the EU one because the US does not have a central authority that is responsible for the supervision and control of the use of personal data and also there is no structured data protection legislation.<sup>209</sup>

In order to solve this problem, the US proposed that the principles of such protection, rather than specific institutions set up to protect data, be examined. If the Parties should agree that the purposes of both sides were similar, and that different institutions and laws accomplished the same goal in practice, that understanding might form the basis for agreement. After an exchange of information on their respective principles and institutions to protect personal data, the EU and the US signed the “Supplemental Agreement Between Europol Police Office and the United

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April 28, 2005)

<sup>208</sup> Leslie S. Lebl, “The European Union and the United States: Combating Terrorism”, *ACES Working Paper Series*, p. 11, Available at: <[http://www.american.edu/aces/aces\\_papers/ACES-case-Lebl.rtf](http://www.american.edu/aces/aces_papers/ACES-case-Lebl.rtf)>, (Visited on: April 28, 2005)

<sup>209</sup> Mitsilegas, p. 517

States of America on the Exchange of Personal Data and Related Information”<sup>210</sup> in December 2002 allowing the transfer of such data for law enforcement purposes.<sup>211</sup>

The “supplemental” agreement intensified the level of cooperation between Europol and the US law enforcement agencies. This intensified cooperation allow for an unprecedented dimension of personal data exchange in terms of quantity and sensivity of the data.<sup>212</sup>

In this context, the exchange of a wide range of personal data- transmission of information is provided in the “supplemental” agreement for purposes including “the prevention, detection, suppression, investigation and prosecution of any specific criminal offences, and for any specific analytical purposes”.<sup>213</sup> Therefore, the exchange of information is not limited to data related to the “fight against terrorism”, but encompasses “any offence”.<sup>214</sup> Article 5 (4) puts that the grounds for refusing or postponing assistance must be limited “to the greatest extent possible”. In the Exchange of Letters accompanying the Agreement, it is noted that Article 5 (4) of supplemental agreement “is to be understood not to permit the imposition of generic restrictions with respect to the sharing of personal data, additional to the express requirements of the Agreement as a precondition to be imposed by either Europol or one of its Member States”.<sup>215</sup> This serves to prevent refusals of the EU Member

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<sup>210</sup> “Supplemental Agreement Between Europol Police Office and the United States of America on the Exchange of Personal Data and Related Information”, Available at: <<http://www.europol.eu.int/legal/agreements/Agreements/16268-1.pdf>> (Visited on: April 28, 2005)

<sup>211</sup> Lebl, p. 11

<sup>212</sup> Lavranos, p. 265

<sup>213</sup> Art. 5 (1)

<sup>214</sup> Mitsilegas, p.520

<sup>215</sup> “Exchange of Letters Related to the Supplemental Agreement Between the United States of America and Europol on the Exchange of Personal Data and Related Information”, (Brussels: Council of the EU Document, 13996/02, Europol 95, November 11, 2002) Available:< <http://www.statewatch.org/news/2002/nov/3euus13996en2.pdf>> (Visited on: April 30, 2005)

States to transmit data to the US “on the grounds that the data protection system in the US *per se* contains inadequate safeguards”.<sup>216</sup>

The exchange of sensitive personal data is also provided in the “supplemental” agreement. Accordingly, Article 6 of the Agreement puts that the transmission of personal data revealing race, political opinions, or religious or other beliefs, or concerning health and sexual life is possible “only upon the transmitting Party’s determination that such data is particularly relevant to a purpose set forth in Article 5, paragraph 1”.

Article 7 (1) (a) and (b) defines US authorities competent to receive Europol data- these include the US Federal authorities, but also “the US or local authorities provided that they agree to observe the provisions of the Agreement, in particular Article 5 (1)”. On the other hand, Article 7 (2) permits access to the US data to the “competent law enforcement authorities of the Member States of the European Union or for use within Europol”. The Exchange of Letters defines “competent authorities” as those authorities who are “responsible for functions relating to the prevention, detection, suppression, investigation and prosecution of criminal offences”.<sup>217</sup>

Article 7 (3) of the Agreement permits the onward transmission of information to international organizations or third parties only “with the prior written consent of the Party that supplied the information, unless already in the public domain”. Europol’s Joint Supervisory Body (JSB) reacted to this provision by claiming that Europol must not consent the onward transmission of Europol data by

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<sup>216</sup> Mitsilegas, p. 520

<sup>217</sup> Exchange of Letters, p. 4

the US in any case.<sup>218</sup> The Exchange of Letters states that the US “takes note of the fact that under its legal framework Europol is not allowed to provide authorization for onward transmission beyond that reflected in this Agreement”.<sup>219</sup> According to Nicolaos Lavranos, this limitation is worthless because the scope of the agreement is so broad that onward transmission can always be possible within the scope of the agreement.<sup>220</sup>

### 3.1.2.2 Judicial Cooperation Agreements

The EU and the US signed two agreements on extradition and mutual legal assistance to simplify the extradition process, and increase better prosecutorial cooperation. Two points should be noted before the examination of agreements: first, the Agreements do not intend to substitute existing bilateral agreements between the Member States of the EU and US, but to supplement them.<sup>221</sup> While all 15 Member States had a bilateral extradition agreements with the US, 11 of 15 had mutual legal assistance agreements with the US while the agreements have been signed.<sup>222</sup> Second, the Agreements considerably extend the ambit of cooperation between the EU and the US, because scope of the Agreements is very broad.<sup>223</sup>

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<sup>218</sup> Mitsilegas, p. 520

<sup>219</sup> Exchange of Letters, p. 4

<sup>220</sup> Lavranos, p. 265

<sup>221</sup> Mitsilegas, p.526

<sup>222</sup> Bill Gillmore, “The Twin Towers and the Third Pillar: Some Security Agenda Developments”, *EUI Working Papers* (Florence: European University Institute, No.2003/7), p. 10

### 3.1.2.2.1 The Extradition Agreement

The Extradition Agreement<sup>224</sup> defines extraditable offences which are “punishable under the laws of both the requesting and requested State by deprivation of liberty for a maximum period of more than one year or by a more severe penalty”.<sup>225</sup> It adds to this an attempt or conspiracy to commit, or participation in the commission of, an extraditable offence and requests for enforcement of the sentence of a person convicted of an extraditable offence when the period of deprivation of liberty remaining to be served is at least four months.<sup>226</sup> Article 4 (4) of the agreement states that extradition may be refused for extraterritorial offences unless they are also extraterritorial offences in the requested State in similar circumstances.<sup>227</sup>

Beyond the some main provisions of the extradition agreement mentioned above, the death penalty provision of agreement merits further attention. Even though the bilateral agreements between the EU Member States and the US contain assurances that suspects extradited to the US would not face death penalty, the US officials were reluctant to agree to such a blanket guarantee with the EU as whole in the negotiations of the agreement.<sup>228</sup> In contrast, the main objective of the EU in the negotiations were to obtain a guarantee that the death penalty would not be imposed

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<sup>223</sup> Mitsilegas, p. 526

<sup>224</sup> “Agreement on Extradition Between the European Union and the United States of America”, O.J., 2001, L 181/27 , Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_181/l\\_18120030719en00270033.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_181/l_18120030719en00270033.pdf)> (Visited on: May 1, 2005)

<sup>225</sup> Art. 4 (1)

<sup>226</sup> Ibid

<sup>227</sup> Art. 4 (4)

<sup>228</sup> Kristin Archick, “Europe and Counterterrorism: Strengthening Police and Judicial Cooperation”, *CRS Report for Congress*, (RL315009, July 23, 2002), p.14, Available at: <<http://www.usembassy.it/pdf/other/RL31509.pdf>> (Visited on: November 7, 2004)

or carried out on extradited individuals from a Member State to the US.<sup>229</sup> The discussions on death penalty was solved in favour of the EU's demands in Article 13 of the extradition agreement which states that in cases where extradition is sought for offences punishable by death, the requested State "may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the requesting State, on condition that the death penalty if imposed shall not be carried out". Therefore, the US accepted the EU demands that suspects extradited to the US would not face death penalty.

On the other hand, Amnesty International (AI) criticized the Article 13 of the extradition agreement. Amnesty International considers that Article 13 leaves an unacceptable margin of discretion with regard to conditioning and refusing extradition in the face of the death penalty. It is not consistent with Protocols 6 and 13 of European Convention on Human Rights and with the EU Charter of Fundamental Rights which prohibit extradition where there is a risk of death penalty.<sup>230</sup>

### 3.1.2.2.2 Mutual Legal Assistance Agreement

Mutual Legal Assistance Agreement between the EU and the US<sup>231</sup> contains innovative elements. The provisions of Mutual Legal Assistance Agreement enable

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<sup>229</sup> Ibid, p.6

<sup>230</sup> Amnesty International, "EU-US Extradition Agreement Still Flawed on Human Rights", June 4, 2003, Available at: <<http://www.amnesty-eu.org/static/html/pressrelease.asp?cfid=7&id=168&cat=59&1=1>> (Visited on: May 2, 2005)

<sup>231</sup> "Agreement on Mutual Legal Assistance Between the European Union and the United States of America", O.J. 2003, L 181/34, Available at: <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_181/](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_181/)>



the use of modern communication techniques and facilitate mutual legal assistance by simplifying the exchange of the requests.<sup>232</sup>

Article 4 of the Agreement concerns identification of bank information. Article 4 (1) (a) stipulates that requested State shall promptly communicate a requesting State its inquiries on bank account or accounts of “identified natural or legal person suspected of or charged with criminal offence”. Article 4 (1) (b) also states that the actions described in Article 4 (1) (a) may also be taken for the purpose of identifying “information regarding natural or legal persons convicted of or otherwise involved in a criminal offence”, “information in the possession of non-bank financial institutions” or “financial transactions unrelated to accounts”.

Article 5 (1) of the Agreement enables the establishment of “Joint Investigative Teams” which can operate in the respective territories of each Member State of the EU and the US to facilitate criminal investigations and prosecutions involving one or more Member States of the EU and of the US. The procedures under which these teams will operate will be “as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences as determined by the respective States concerned”.<sup>233</sup>

Beyond the identification of bank accounts and establishment of joint investigative teams, the provisions of the Agreement also contain various forms of mechanisms for assistance. These mechanisms include video conferencing for taking testimony (Art.6), expedited transmission of requests, including by fax and e-mail

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[l\\_18120030719en00340042.pdf](#)> (Visited on: May 1, 2005)

<sup>232</sup> Mitsilegas, p.529

(Art.7), and mutual legal assistance to administrative authorities investigating a case with a view to criminal prosecution (Art.8). The Agreement also comprises a provision on limitations on the use of information to protect personal and other data (Art.9) and on requests for confidentiality (Art.10).

### 3.1.2.3 Border and Transport Security

The EU and the US have also concluded several agreements in the area of border control and transport security. In April 2004, the EU and the US signed a customs cooperation agreement.<sup>234</sup> The Agreement tries to extend the US Container Security Initiative (CSI) throughout the EU. CSI stations the US customs officers in the foreign countries' ports to help pre-screen the US-bound cargo containers. The primary aim of pre-screen is to ensure that containers do not contain dangerous materials such as WMD.

On May 28, 2004, the EU and the US signed an agreement on transfer of PNR ( Passenger Name Record) data.<sup>235</sup> The agreement permits airlines operating flights to or from US to provide US Customs and Border Protection (CBP) with PNR data (including phone numbers, addresses, credit card numbers) in their reservation and control systems within 15 minutes of a flight's departure. The European

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<sup>233</sup> Art. 5 (2)

<sup>234</sup> "Agreement Between the European Community and the United States of America on Intensifying and Broadening the Agreement on Customs Cooperation and Mutual Assistance in Customs Matter to Include Cooperation on Container Security and Related Matters", O.J. 2004 L 304/34. Available at: <[http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l\\_304/l\\_30420040930en00340037.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_304/l_30420040930en00340037.pdf)> (Visited on: May 3, 2005)

<sup>235</sup> "Agreement Between the European Community and the United States of America on the Processing and Transfer of PNR Data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection", O.J. 2004 L 183/84, Available at:

Parliament has lodged a case against PNR agreement in the EU Court of Justice by claiming that the agreement breaches EU citizens' data privacy rights.<sup>236</sup>

The EU and the US also tries to improve international information exchanges on lost and stolen passports and increase travel document security by using the interoperable biometric identifiers such as digital fingerscans and photographs. The aim of cooperation on biometric identifiers is to minimize the EU-US conflicts on new US rules for its Visa Waiver Program (VWP).<sup>237</sup> Even though the US law had required machine-readable biometric passports from the citizens of VWP countries by October 26, 2004, the US Congress extended the deadline for biometric requirements for VWP passports to October 26, 2005, in order to allow more time for the solution of technical problems. However, European participants to VWP do not seem to meet 2005 deadline.<sup>238</sup> Therefore, the EU lobbies with the US to extend the deadline to 2006.<sup>239</sup>

The EU and the US discussed the use of armed air marshals for some transatlantic flights. Some EU Member States-such as France and the UK- opposed to use of armed air marshals by claiming that guns on board planes would increase the security risks. Thus, in April 2004, the US officials pledged to consider alternative

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<[http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_183/l\\_18320040520en00840085.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_183/l_18320040520en00840085.pdf)> (Visited on: May 3, 2005)

<sup>236</sup> Archick, "U.S.- EU Cooperation Against Terrorism", p.4

<sup>237</sup> The Visa Waiver Program of US allows the temporary visitors of participant countries to enter the US without obtaining visa.

<sup>238</sup> Fifteen of the EU's 25 members participate in the VWP, which allows travel to the United States without a visa. To mitigate security concerns about the extension of the biometric deadline, VWP entrants as of September 30, 2004 are processed through the US VISIT program, in which US visitors are fingerprinted and photographed upon arrival.

<sup>239</sup> Archick, "U.S.-EU Cooperation Against Terrorism", p.4

measures that could be put in place for European opposition to armed marshals, and the EU and the US agreed that cancelling flight should be a measure of last resort.<sup>240</sup>

## 3.2 EU-Mediterranean Cooperation

### 3.2.1 Terrorism and the Barcelona Process

According to the EU perspective, stability and development in the Mediterranean region is essential for security at home and abroad. At the same time, the EU believes that the root causes of terrorism lie in the economic, political, and social inequities that exist in the southern shores of the Mediterranean and these inequities can only be addressed with the promotion of well governed countries in the region.<sup>241</sup> In order to do so, the EU tries to extend the benefits of economic and political cooperation to the Mediterranean region to eradicate the deepest causes of terrorism and other key threats by pursuing its foreign policy interests through an international agenda including economic, political, developmental, social matters, in addition to security matters. By adopting this liberal approach, the EU moves away from the US's realist perception that reduces fight against terrorism excessively on military matters. In that context, the Barcelona Process that incorporates various cooperation areas and the subsequent adoption of Valencia Action Plan under its framework after the September 11 terrorist attacks to promote regional security and development serve as a critical piece of the EU perspective on fight against terrorism.

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<sup>240</sup> Ibid

<sup>241</sup> Benedicte Suzan, "The Barcelona Process and the European Approach to Fighting Terrorism", (Brookings Institution: Center on the U.S. and France, 2002),p.1 Available at: <<http://www.brookings>.

The Euro-Mediterranean Conference of Ministers of Foreign Affairs, held in Barcelona on November 27-28, 1995, started the Euro-Mediterranean Partnership (Barcelona Process), a wide framework of political, economic and social relations between the Member States of the EU and 12 Partners of the Southern Mediterranean (namely, Morocco, Algeria, Tunisia, Cyprus, Malta, Egypt, Israel, Jordan, Syria, Lebanon, Turkey and the Palestinian Authority).<sup>242</sup> In fact, the Barcelona Process represents the beginning of the new security concept- which replace the Cold War's power politics with, in addition to security factor, more emphasize on political, economic, social and environmental factors of international system<sup>243</sup>- for the EU and Mediterranean countries relations. After the collapse of the Soviet Union, the EU saw numerous south-south struggles and a range of new transnational threats (particularly terrorism, illegal trafficking in arms, drugs and persons, immigration and various regional conflicts) rather than nuclear threat or potential for North-South conflict of the Cold War era. These new transnational threats meant that the massive differential in wealth that characterized the two sides of the Mediterranean was no longer compatible with long-run stability and prosperity within the EU. The EU believed that the European security had become more tied to economic, political and social development of the southern countries than to military preparedness or non-proliferation.<sup>244</sup>

The Barcelona Declaration defined three objectives of the Euro-Mediterranean Partnership. These are:

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edu/dybdocroot/fp/cusf/analysis/suzan.pdf> (Visited on: November 2, 2004)

<sup>242</sup> Claire Spencer, "Rethinking or Reorienting Europe's Mediterranean Security Focus?" in William Park and G. Wyn Rees (eds.), *Rethinking Security in the Post-Cold War Europe*, (New York: Addison Wesley Longman Limited, 1998), pp. 135-154

<sup>243</sup> Siret Hürsoy, *The New Security Concept and German-French Approaches to the European 'Pillar of Defence', 1990-2000*, (Marburg: Tectum Verlag, 2002), p. 51-52

1. The definition of a common era of peace and stability through the reinforcement of political and security dialogue (political and security chapter).
2. The construction of a zone of shared prosperity through an economic and financial partnership and the gradual establishment of a free trade zone by 2010 (economic and financial chapter).
3. The rapprochement between peoples through a social, cultural and human partnership aimed at encouraging between cultures and exchanges between civil societies (social, cultural and human chapter). The ultimate goal is to develop free and flourishing civil societies.

The Euro-Mediterranean Partnership comprises two complementary bilateral and regional dimensions:

1. Bilateral dimension: EU carries out a number of activities bilaterally with each country. The most important are the Euro-Mediterranean association agreements which the EU negotiates with Mediterranean partners individually. They reflect the general principles governing the new Euro-Mediterranean relationship, even though they each contain characteristics specific to the relations between the EU and each Mediterranean partner.
2. Regional dimension: Regional dialogue represents one of the most innovative aspects of the Euro-Mediterranean Partnership, covering the cooperation in political, economic and cultural fields. Regional

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<sup>244</sup> Suzan, p.2

cooperation has a very important strategic impact as it deals with problems that are common to many Mediterranean partners while it emphasizes the national complementarities. Regional dimension supports and complements the bilateral actions and dialogue taking place under the Euro-Mediterranean Association Agreements.

The MEDA programme is the main financial instrument for the Euro-Mediterranean Partnership. The MEDA programme devoted 3.44 billion Euro for 1995-1999, 879 million Euro in 2000, and 5.35 billion Euro for 2000-2006 in order to enhance Euro-Mediterranean cooperation.<sup>245</sup>

### 3.2.2 Counterterrorism Cooperation

Counterterrorism cooperation between the EU and the Mediterranean Partners can only be seen at the declaratory level, but should not be underestimated.<sup>246</sup> In fact, both sides showed their willingness to overcome problems, particularly definitional problem, and to enhance their cooperation. On April 22-23, 2002, at Valencia Euro-Mediterranean meeting, both sides declared that they are determined to give unconditional support to the convening of an International Conference on Terrorism under the UN auspices, to fully support the UN resolutions 1368 and 1373, and to pursue and bring to justice those who perpetrate, plan and sponsor terrorist acts.<sup>247</sup>

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<sup>245</sup> EU Commission Official Publication, "Europe and the Mediterranean: Towards a Closer Partnership", (2003), p. 5

<sup>246</sup> Rosa Balfour, "Rethinking the Euro-Mediterranean Political and Security Dialogue", *Occasional Papers*, (Paris: EU Institute for Security Studies, No.52, May 2004), p.18

Following the terrorist attacks in Morocco, on May 16, 2003, the Mid-term Euro-Mediterranean meeting held in Crete, Spain, on May 26-27, 2003. The meeting concluded that the fight against terrorism should be regular subject in the political dialogue between Partners and that Senior Officials should continue their dialogue through ad-hoc meetings. The meeting also concluded that “differences regarding the definition of terrorism should not prevent partners from identifying areas where they can cooperate”.<sup>248</sup>

The Euro-Mediterranean meeting at Naples, on December 2-3, 2003, went further in declaring Partners’ commitment to fight against terrorism “in all its forms and manifestations wherever and whomsoever committed” without getting any opposition from Syria. It is also concluded that the dialogue on terrorism would be continued at the level of senior officials, including ad hoc meetings, and cooperation would be pursued “under existing and future regional and bilateral programmes for training and technical assistance to improve the capability to fight against terrorism”.<sup>249</sup>

Dublin Euro-Mediterranean Mid-Term meeting held in Dublin, on May 5-6, 2004, following the Madrid train station bombings. The conference concluded that the recent terrorist attacks showed that the cooperation for fight against terrorism must be a priority objective and Partners need to move to the stage of concrete

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<sup>247</sup>Euro-Mediterranean Conference, “Presidency Conclusions”, (Valencia, April 23, 2002), Available at: <[http://europa.eu.int/comm/external\\_relations/euomed/conf/val/concl.pdf](http://europa.eu.int/comm/external_relations/euomed/conf/val/concl.pdf)> (Visited on: April 18, 2005)

<sup>248</sup> Euro-Mediterranean Mid-Term Conference, “Presidency Conclusions”, (Crete: May 27, 2003), Available at: <[http://europa.eu.int/comm/external\\_relations/euomed/conf/cret/concl.htm](http://europa.eu.int/comm/external_relations/euomed/conf/cret/concl.htm)> (Visited on: April 18, 2005)

<sup>249</sup> Euro-Mediterranean Conference, “Presidency Conclusions”, (Naples: December 3, 2003), Available at: <[http://europa.eu.int/comm/external\\_relations/euomed/conf/naples/conclusions\\_en.pdf](http://europa.eu.int/comm/external_relations/euomed/conf/naples/conclusions_en.pdf)> (Visited on: April 18, 2005)



operational joint activities both at regional and bilateral levels. At bilateral level, foreign ministers mandated the Justice and Security sub-committees “to take forward such joint activities at expert level with the aim of improving and assisting the development of counter-terrorism standards and capabilities”. In addition, it is put that the fight against terrorism should also be pursued under the framework of the EU Plan of Action to Combat Terrorism which was adopted in the wake of the September 11 terrorist attacks.<sup>250</sup>

November 29-30, 2004, Euro-Mediterranean meeting at The Hague stated that the EU and some countries of the region, particularly Morocco, Algeria and Tunisia, have stepped up the dialogue and cooperation on counterterrorism which could be extended to other partners. It is also noted that Ad-hoc meetings on fight against terrorism were held in April 2004, focusing primarily on the ways to prevent the financing of terrorism, and November 2004, concentrating on enhanced cooperation with some Mediterranean Partners.<sup>251</sup>

Conclusions of the latest Euro-Mediterranean conference, held in Luxembourg on May 30-31, 2005, emphasized that state-to-state cooperation has proved important, but it should be reinforced by mutually agreed measures to confront the global terrorism threat. Both sides underlined the importance “to adopt all relevant UN Conventions, and to fully implement the commitments pertaining to the ones they have ratified, as well as these commitments which derive from the

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<sup>250</sup> Euro-Mediterranean Mid-Term Conference, “Presidency Conclusions”, (Dublin: May 6, 2004), Available at: <[http://europa.eu.int/comm/external\\_relations/euromed/conf/dublin/concl.pdf](http://europa.eu.int/comm/external_relations/euromed/conf/dublin/concl.pdf)> (Visited on: April 18, 2005)

<sup>251</sup> Euro-Mediterranean Conference, “Presidency Conclusions”, (The Hague: November 30, 2004), Available at: <[http://europa.eu.int/comm/external\\_relations/euromed/conf/hague/conclusions.pdf](http://europa.eu.int/comm/external_relations/euromed/conf/hague/conclusions.pdf)> (Visited on: April 18, 2005)

UNSC Resolutions concerning the fight against terrorism”. In this context, Foreign Ministers also encouraged the signature, ratification and implementation of recently agreed Convention for the Suppression of Acts of Nuclear Terrorism under the UN framework. In addition, meeting concluded that disagreements on the definitions of terrorism hinder regional dialogue on fight against terrorism. Therefore, Foreign Ministers supported the joint efforts to reach the largest possible consensus on the draft of the UN Comprehensive Convention Against Terrorism that promises to close gaps on the UN’s twelve existing conventions on terrorism and, in this context, which also tries to provide universally accepted definition of terrorism.<sup>252</sup>

Conclusively, the conclusions of Euro-Mediterranean Conferences should be considered as important step. These conclusions should pave the way for future Euro-Mediterranean Cooperation for counterterrorism in a practical way.

### 3.3 The EU-Russia Cooperation

The EU and Russian relations have significantly improved since the collapse of the Soviet Union and creation of the Russian Federation. The ratification of “Partnership and Cooperation Agreement (PCA)” between the EU and Russia in 1997 has formed the legal basis for bilateral relations. The PCA indicates a new level of EU-Russian relations upgraded to partnership based on common respect for democratic principles and human rights. The Agreement designated the main areas of

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<sup>252</sup> Euro-Mediterranean Conference, “Presidency Conclusions”, (Luxembourg: May 31, 2005), Available at:< [http://europa.eu.int/comm/external\\_relations/euromed/conf/lux/euromed.pdf](http://europa.eu.int/comm/external_relations/euromed/conf/lux/euromed.pdf)> (Visited on: April 18, 2005)

cooperation between the EU and Russia: political and economic cooperation.<sup>253</sup> In June 1999, the EU adopted “Common Strategy on Russia”, which is valid for a period of four years, built upon existing bilateral relations extending coherence to include the consolidation of democracy, the rule of law and public institutions, the integration of Russia into a common European economic and social sphere, reinforcement of stability and security in Europe and beyond, and a commitment to common challenges on the European continent such as organized crime, illegal immigration and environment. In addition, through TACIS (Technical Assistance to the Commonwealth of Independent States) programme, created in 1991, the EU has provided financial assistance for the reinforcement of democracy and the rule of law and promotion of a market economy.<sup>254</sup>

### 3.3.1 Counterterrorism Cooperation between the EU and Russia

#### 3.3.1.1 Joint Statements and Areas of Cooperation

The September 11 terrorist attacks brought counterterrorism cooperation to the table of EU-Russian political dialogue.<sup>255</sup> At the summit level, the EU and Russia issued two related joint statements. In fact, these statements are also important to form the framework of practical counterterrorism cooperation in the future, as in the case of Euro-Mediterranean Conferences’ conclusions. The first statement was issued following the EU-Russia Summit in Brussels on October 3, 2001, in which the two Parties pledged to increase cooperation to form an international coalition against

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<sup>253</sup> Tatiana Romanova and Natalia Zaslavskaya, “EU-Russia: Towards the Four Spaces”, *Baltic Defence Review*, (Vol.2, No.12, 2004), p. 84-85

<sup>254</sup> *Ibid*, p.86

<sup>255</sup> Dov Lynch, “Russia Faces Europe”, *Chilliot Paper*, (Paris: EU Institute for Security Studies, No.60, May 2003), p. 69

terrorism. In addition, as part of this statement, the EU and Russia agreed to exchange information on <sup>256</sup>:

- (i) the activities of individuals or groups belonging to terrorist networks or or maintaining links with such networks;
- (ii) tickets of dubious authenticity;
- (iii) supplies of arms, explosives and dual-use goods;
- (iv) financial transactions which should be used in support of terrorist intrigue;
- (v) new forms of terrorist activity, including chemical, biological or nuclear threats

On November 11, 2002, the EU and Russia issued a second statement on fight against terrorism after their Brussels summit. The statement emphasized the need to bring to justice the perpetrators, organizers and sponsors of terrorist acts and stressed the role of the UN as the main legal and political authority in counterterrorism struggle. In addition, through the issue of statement, both parties declared that they agreed on areas of the EU-Russia cooperation in fight against terrorism to intensify cooperation related to counterterrorism. In this context, the EU and Russia reiterated the areas of cooperation on exchange of information stressed by Statement on International Terrorism on October 3, 2001, and agreed to increase their cooperation on the following issues<sup>257</sup> :

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<sup>256</sup> “Statement on International Terrorism”, (Brussels: EU-Russia Summit, October 3, 2001), Available at: <[http://europa.eu.int/comn/external\\_relations/russia/summit\\_10\\_01/dc\\_en.htm](http://europa.eu.int/comn/external_relations/russia/summit_10_01/dc_en.htm)> (Visited on: April 12, 2005)

<sup>257</sup> “Joint Statement on the Fight Against Terrorism”, (Brussels: EU-Russia Summit, November 11, 2002), Available at: <[http://europa.eu.int/comn/external\\_relations/russia/summit\\_11\\_02/js\\_terr.htm](http://europa.eu.int/comn/external_relations/russia/summit_11_02/js_terr.htm)> (Visited on: April 13, 2005)

- (i) enhanced cooperation in all relevant international and regional fora;
- (ii) early signature and ratification of relevant counterterrorism conventions and protocols, and smooth and rapid implementation of relevant UN Security Council Resolutions;
- (iii) early finalisation of the UN Comprehensive Convention against Terrorism and the international convention for the suppression of acts of nuclear terrorism;
- (iv) enhancing common efforts to stop the financing of terrorism, including freezing of funds and other financial assets of terrorists;
- (v) Strengthening cooperation with and support to third countries to implement UNSCR 1373 (2001), including reinforcement of technical cooperation to third countries for their capacity buildings in the field of counterterrorism.

More practically, the statement also stressed that an agreement between Europol and Russia on the exchange of technical and strategic information was to be finalised as soon as possible.

### 3.3.1.2 Europol-Russia Agreement

The negotiation process of Europol and Russia agreement on the exchange of technical and strategic information was finalised in the late 2003 and Parties signed the “Agreement on Cooperation Between the European Police Office and the Russian

Federation”.<sup>258</sup> The Agreement lays the basis for enhanced police and judicial cooperation on terrorism and other serious crimes between EU and Russia.<sup>259</sup>

Before analysing some main provisions of the Agreement, it is important to mention that Agreement does not include the exchange of personal data between Europol and Russia. Article 2 of the Agreement states that “the exchange of personal data shall be carried out on the basis of a separate agreement between the Parties”.

According to Article 4 of the Agreement, Europol and Russia “shall cooperate in the area of prevention, detection, suppression and investigation of crimes” in areas such as terrorism and its financing, money laundering, illicit trafficking in explosives, nuclear and radioactive materials, narcotic drugs, poisonous substances, and illegal immigration.

Article 5 of the Agreement determines the ways of Europol-Russia cooperation. In this context, Article 5 (1) states that Parties shall cooperate on the exchange of strategic and technical information of mutual interest including information on:

- (i) forms, methods and means of committing crimes;
- (ii) new types of narcotic and psychotropic substances discovered in illicit trafficking, the technologies and the materials used to produce such

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<sup>258</sup> “Agreement on Cooperation Between the European Police Office and the Russian Federation”, (November 6, 2003), Available at: <<http://www.europol.eu.int/legal/agreements/Agreements/16191.pdf>> (Visited on: April 2, 2005)

<sup>259</sup> Lynch, p.69

substances, as well as new methods for the examination and identification of such substances;

- (iii) channels for transferring illegally acquired funds;
- (iv) crime situation and development reports, threat assessments;
- (v) new forms and methods of combating crime;
- (vi) legal and administrative measures to develop main trends of law enforcement activities;
- (vii) modern forensic police methods and investigating procedures;
- (viii) advanced forms and methods of personnel training;
- (ix) centres of excellence;
- (x) methods of information processing and analysis;
- (xi) criteria for the evaluation of law enforcement activities.

Exchange of law enforcement experience including the organization of conferences, internships, consultations and seminars<sup>260</sup>; exchange of legislation, technical literature, manuals and other related law enforcement materials<sup>261</sup>; training<sup>262</sup> are also put as ways of cooperation between Europol and Russia.

In addition, “cooperation within the framework of this Agreement is carried out on the basis of requests for assistance, or on the initiative of one of the Parties, if this Party presumes that such assistance is of interest to the other Party”.<sup>263</sup> Moreover, Agreement contains provisions to deny assistance. In this context, assistance may be denied completely or partially if “the Russian Federation considers

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<sup>260</sup> Art. 5 (2)

<sup>261</sup> Art. 5 (3)

<sup>262</sup> Art. 5 (4)

<sup>263</sup> Art. 7 (1)

that the execution of the request may damage its sovereignty, security, public order or other essential State interests, or contradicts its legislation or international obligations” or “Europol considers that the execution of the request conflicts with its purposes and tasks”.<sup>264</sup>

Finally, Article 13 of the Agreement puts that the provisions of this agreement “shall not affect rights and obligations arising out of any other bilateral or multilateral agreements to which the Europol or Russian Federation are a party, including Mutual Legal Assistance Treaties”. The provisions of Agreement “shall also not affect any working law enforcement relationship” between the EU Member States and Russia.

### 3.3.2 Disagreements between the EU and Russia over Chechen Conflict

Before analysing the EU-Russian disagreements on Chechen conflict, it is worth mentioning that for Russia the issue of terrorism is primarily linked to Chechnya and it is very important for Russian foreign policy that Russian efforts in Chechnya be recognized by the international community as combating terrorism.<sup>265</sup>

Even though the EU-Russian relations has significantly improved after the end of Cold War, even upgraded to strategic partnership, the issue of Chechnya has always remained as a significant problem between Partners. The most sticking point is the EU’s insistence on political solution of the Chechen conflict, based on the

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<sup>264</sup> Art. 8 (1)

<sup>265</sup> Dimiri Trenin, “Russia and Anti-terrorism”, in Dov Lynch (ed.), “What Russia Sees?”, *Chilliot Papers*, (Paris: EU Institute for Security Studies, No.74, January 2005), p.115-116



territorial integrity of Russia, the creation of representative institutions and respect for human rights, while Russia sees its military actions as the only way to stop chechen conflict and terrorist actions it generates.

At the beginning of the second Chechen war in October 1999, the EU and Russia engaged in a heated discussion in Helsinki. The EU urged Russia to avoid use of military force and to negotiate with political leaders of Chechens. However, Russian President V. Putin wanted the EU not to interfere its internal affairs on how to conduct Chechen conflict.<sup>266</sup> In April 2004, Russia complained on a critical draft UN human rights resolution on Chechnya, proposed by the EU. The draft resolution strongly condemned the serious violations of international human rights law and international humanitarian law in Chechnya. The draft resolution also urged the Russian government to ensure free unimpeded access for the UN, aid agencies, the media and non-governmental organizations to the region. Russia described the draft resolution as an “unfriendly” act and Deputy Foreign Minister Vlademir Chizkov claimed that the EU proposal “does not reflect the partnership relations between Russia and EU”.<sup>267</sup>

In addition, the tension between the EU and Russia has also increased in September 2004, when the EU foreign ministers demanded that Russia provide the EU information on how the Beslan School siege tragedy could have happened. Russian reaction to this demand was immediate and angrily, calling the EU’s inquiry an insolent, odious, offensive and clear interference to Russian internal affairs. Even

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<sup>266</sup> Pravda, “The Chechenya Factor in Russia- E.U. Relations”, October 4, 2004, Available at: <[http://english.pravda.ru/printed.html?news\\_id=14367](http://english.pravda.ru/printed.html?news_id=14367)> (Visited on: June 2, 2005)

though the EU and Russia later called this incident a misunderstanding, the disagreements on Chechen conflict between Partners again came to the surface.<sup>268</sup> Moreover, on March 9, 2005, the EU reacted to the killing of Chechen leader Aslan Maskhadov by Russian forces by calling on Russia to respect human rights and work for a political settlement to the conflict.<sup>269</sup>

On the other hand, in the aftermath of the Beslan school siege, Yuri Baluyevski, the chief of the general staff of Russia's armed forces, declared that Russia would carry out preemptive strikes on terrorist bases in any region of the world. Interestingly, the speech did not take much attention from the EU which argues that a policy of preemptive strikes is too risky for international security. Only the EU's official spokeswoman Emma Udvin reacted to this speech, saying that she could not be sure whether the speech represented government policy of Russia. Emma Udvin also added that 25 nations of the EU is against "extra-judicial killings" in the form of preemptive strikes.<sup>270</sup>

In fact, the EU reflects its liberal world view in Chechen conflict by constantly making pressure to Russia to solve the conflict through political settlement under the framework of international law. However, Russia is in the side of realist power politics by reducing the option of settlement only to military means.

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<sup>267</sup> EU Business, "Russia Slams EU Resolution on Chechnya Submitted to UN Human Rights Body", April 12, 2004, Available at: <<http://www.eubusiness.com/afp/040412141337.b0j6s2hs>> (Visited on: June 4, 2005)

<sup>268</sup> EU Business, "Hostage Tragedy Further Tests Strained EU-Russia Ties", September 6, 2004, Available at: <[http://www.eubusiness.com/East\\_Europe/040906143713.60axjnz6](http://www.eubusiness.com/East_Europe/040906143713.60axjnz6)> (Visited on: June 4, 2005)

<sup>269</sup> Radio Free Europe, "EU Calls for End to Rights Abuses in Chechnya", March 9, 2005, Available at: <<http://www.rferl.org/featuresarticle/2005/3/B2D3A35A-817C-475E-818E-5DAC4A12C5BB.html>> (Visited on April 24, 2005)

<sup>270</sup> The Associated Press, "EU Wary of Pre-emptive Strikes by Russia", September 9, 2004, Available at: <<http://www.katv.com/news/stories/0904/171745.html>> (Visited on: June 1, 2005)

## CHAPTER 4:

### Concluding Remarks: Visions from the EU Perspective

International security environment has been transformed by emerging complex issues and more interdependent actors since the end of the Cold War. Terrorism takes place as one of the most complex and serious threats to the international security in this new security environment. The EU, as an interdependent actor, was affected by this complex security threat and designed liberal strategic policies in response to the September 11 terrorist attacks of 2001 such as supporting effective multilateral international order, adopting foreign policy agenda comprising developmental, economic, cultural, environmental matters, in addition to security matters, in order to pursue its interests, providing the combination of “hard” power and “soft” power instruments for its preventive engagement strategy.

In fact, the history of terrorism dates back to the early centuries. However, although the threat of terrorism has existed for many years, there is no single definition of it. Academicians, policy makers, international organizations and individual states have defined the term in various ways. This complexity stems from the fact of the term terrorism’s political connotation. To this end, there are lots of issues remained unresolved to ensure a uniform definition of terrorism for the international community. However, among these unresolved issues, the most important one is the relationship between guerrilla warfare and terrorism in which the Third World states describe guerrilla warriors as freedom fighters and Western countries call them as terrorists. Thus, the definitional weakness poses significant

challenge to the international cooperation against terrorism. As in the case of the challenge in defining terrorism, it is impossible to type terrorism in one single categorisation because terrorism exists in various motivations throughout the history. Therefore, many types of terrorism have emerged such as state-sponsored terrorism, anarchist terrorism, nationalist terrorism, ideological terrorism (left-wing and right-wing), and religious terrorism. It is also a challenge to distinguish these types from each other, because some of them are interdependent.

Beyond above mentioned challenges, what is disturbing today is terrorism's emergence as an international actor affecting world politics after the September 11 terrorist attacks. By the help of globalization, the characteristics of terrorism have changed to a great extent and terrorism has become "new" terrorism according to some foremost authors who study terrorism. The characteristics of the "new" terrorism are quite different from the old one. The terrorism's new structure is a network, facilitated by information technology, new personnel are amateurs, who often come together in *ad-hoc* or transitory groups, and new attitude is an increased willingness to cause mass casualties, perhaps by using chemical, biological, nuclear or radiological weapons (CNRB). In addition, the employers of the "new" terrorism are mostly terrorists motivated by religious imperatives, especially terrorists influenced by Islamic fundamentalism who frequently do not claim responsibility because of their belief that God sees their action.

The characteristics of the "new" terrorism should evidently be seen in the unprecedented September 11 terrorist attacks in which the "new" terrorism's incubation period has ended. In fact, the September 11 attacks revealed the necessity

of international cooperation to confront terrorism. In this context, the EU Member States, which still differ on the ways to combat terrorism, have come together under the EU in order to intensify their efforts for fighting against terrorism, both internally and internationally. Therefore, it is worth mentioning that September 11 attacks acted as a catalyst for the EU efforts to tackle terrorism and the following Madrid train station bombings also contributed to this fact.

In the light of these facts, as a response to September 11, the EU adopted concrete measures to institutionalise its legal and administrative capacity to cope effectively with terrorism. In this context, the EU adopted the European Arrest Warrant to reduce the prospect of terrorists evading justice by exploiting differences in national legal systems. By the adoption of Framework Decision on Combating Terrorism, the EU ensured a common definition of terrorism, which is the most comprehensive terrorism definition when compared to the other definitions of domestic state legislations or international treaties, set out minimum penalties for terrorist offences, and criminalised the direction of, support for and incitement to terrorist activity. To enhance the role of Europol for fighting against terrorism, a special anti-terrorism unit has been set up under Europol framework to collect and analyse operational information. In addition, Counter-terrorist Task Force has been reactivated under Europol to provide direct exchange of information between the EU Member States. Moreover, Europol's participation in Joint Investigation Teams has been provided without giving Europol an authority to launch an investigation by its own. In order to improve coordination between magistrates and prosecutors, the EU established Eurojust and its association with Joint Investigation Teams have also been accepted. By furthering its efforts, the EU ensured the creation of Joint

Investigation Teams, in which the Europol and Eurojust have been allowed to link as mentioned above, by the involvement of one or more EU Member States with the aim of implementing criminal investigations. On the other hand, it is worth mentioning that the EU's framework decisions set the standards for the EU Member States are expected to follow. Thus, taking into account the fact that European Arrest Warrant, a common definition of terrorism, and Joint Investigation Teams have been introduced through framework decisions, the implementation of these achievement would depend on how much the EU Member States would be successful to insert them into their own legislations. In addition, because of its intergovernmental and voluntary structure, Europol challenged the dilemma of sharing multinational information on the issue of security for fighting against terrorism. Moreover, Eurojust's mandate is limited to provide cooperation rather than harmonization.

As part of its internal efforts, the EU developed liberal strategies to fight against terrorism. To this end, the EU published European Security Strategy document in accordance with its liberal approach, in which the EU underlined the importance of effective multilateral cooperation under the framework of the UN, extending the zone of security by extending the benefits of economic and political cooperation to its neighbours, and preventive engagement strategy incorporating various soft security instruments. In addition, through the release of Declaration on Combating Terrorism, the appointment of Counterterrorism Coordinator Mr. Gijs de Vries and the early activation of solidarity clause that is laid down in the draft Treaty establishing a Constitution for Europe have been introduced, in which the EU Member States gained their cooperation a liberal multilateral dimension as a result of their political will. Moreover, the EU reevaluated the missions of the ESDP to

address the fight against terrorism by combining hard power and soft power instruments in line with its liberal approach. In this context, four main areas are determined for the development of the ESDP's civilian and military crisis management capabilities related to terrorism. These are prevention, protection, response management, and support to third countries in fighting against terrorism.

To fully confront the threat of terrorism cannot be achieved only by enhancing internal efforts. Thus, the EU also enhanced its international efforts with its global partners. To this end, the EU engaged in cooperation with the US. However, there are some divergences between Partners that stem from each side's different strategies related to the EU's liberal approach and the US's realist approach to tackle terrorism. While the EU, in line with its liberal approach, supports effective multilateral system under the UN framework, pursues multidimensional foreign policy agenda including economic, developmental, cultural matters, in addition to security matters, and develops a conflict prevention concept by combining hard power and soft power instruments, the US, on the other hand, in line with its realist approach, makes its military hard power a prominent factor and pursues its foreign policy unilaterally by also emphasizing the role of preemptive strike that was the case in Iraq war which also proved the divisions among Europeans.

Indeed, the international Iraq dispute showed how the Europeans could not reconcile their differences. Throughout the Iraq dispute, the Europeans divided among themselves on whether to give the US a support for the invasion of Iraq or not. On the one hand, the countries like France, Germany, Belgium, Luxembourg, and Greece, and the most majority of the European public, by supporting multilateral

consensus, insisted that the invasion of Iraq would be unlawful if it is not explicitly authorised by the UN and the invasion could damage the international efforts to wipe out terrorism. On the other hand, the publishers of the “Letter of Eight” and the “Vilnius Ten Text”, notably the UK, Spain, Italy, Poland, Denmark, Estonia, Latvia, Lithuania, and Slovakia, supported unilateral US military operation by indicating that the Iraq regime had breached the resolutions of UNSC for 11 years, which forced Iraq to disarm. That is why these perspectives of Europeans on the Iraq dispute were a distinct slap at the very notion of the CFSP that the EU was meant to be developing- and which even the proponents of military operation against Iraq claimed to support.

Beyond the divergences between the EU and the US, convergences should be seen in their counterterrorism cooperation. Indeed, the counterterrorism cooperation between the EU and the US is in significant degree. The EU and the US signed two information sharing agreements including the sharing of intelligence and personal data for police cooperation. In addition, the EU and the US concluded Extradition and Mutual Legal Assistance agreements for their judicial cooperation. As a result, requests for extradition are handled much faster, the EU and the US agencies are in direct contact, extradition is possible for many offences and authorities can access to bank accounts on the other side of the Atlantic, the joint EU-US investigative teams can be set up, and usage of modern communication techniques for assistance are provided. Moreover, in order to improve transport and border security, the EU and the US concluded customs cooperation agreement which extends customs cooperation to cover container security, and agreement on the transfer of PNR (Passenger Name Record) data for transatlantic flights.



Southern Mediterranean is one of the most important regions of the world with its terrorist breeding. The EU believes that the breeding of terrorists in the region stems from the fact of region's economic, political, and cultural instability. Thus, the EU gives great importance to providing stability in region to eradicate the root causes of terrorism. In this context, the long-standing Barcelona Process and its reinvigoration with Valencia Action Plan in 2002 reflects the EU's liberal approach to tackle terrorism by pursuing multidimensional foreign policy including developmental, cultural, economic matters, in addition to military matters.

On the other hand, the EU and its Mediterranean Partners also involved in counterterrorism cooperation under the framework of Barcelona Process after the September 11 attacks. However, the Euro-Mediterranean Partnership on counterterrorism could only be seen at the declaratory level. In fact, the reason for this insufficiency mainly stems from different definitions of terrorism used by the Partners. After September 11, the EU and the Mediterranean Partners called the requirement of counterterrorism cooperation in all Euro-Mediterranean Summit conclusions. In these conclusions, both sides accepted to bring justice the perpetrators, planners and sponsors of terror actions, pledged that differences regarding terrorism definition could not prevent to identify cooperation areas, committed to fight against terrorism in all its forms and manifestations regardless of who perpetrated, underlined the importance to adopt all terrorism related the UN Conventions and to accomplish the largest possible consensus on the draft of the UN Comprehensive Convention Against Terrorism which also tries to ensure universally accepted definition of terrorism. In fact, these statements can be regarded as important steps in terms of showing both sides' willingness to beat some problems,

especially the problem of defining the term terrorism, and to improve counterterrorism cooperation. Thus, the conclusions of summits should not be underestimated; they should pave the way to create future concrete counterterrorism cooperation.

The EU- Russian relations have proved to be an important step since the end of the Cold War. Even they signed Partnership and Cooperation Agreement which form the basis of EU-Russian strategic partnership. As a response after September 11 terrorist attacks, the EU and Russia also involved in counterterrorism cooperation. In this context, Partners issued two joint statements on terrorism in which the both sides agreed to exchange information on terrorism matters and determined areas of cooperation that should found the framework for counterterrorism cooperation between the EU and Russia in the future, as in the case of Euro-Mediterranean Partnership conclusions. In addition, the EU and Russia signed an agreement on the exchange of technical and strategic information to enhance police and judicial cooperation, which does not include exchange of personal data. On the other hand, the Chechen conflict still remains as a significant problem between Partners. The reason of the disagreements on Chechen conflict stems from the fact that from the beginning of the conflict, the EU, in line with its liberal approach, wants a solution of the problem through political settlement, while Russia uses its military hard power as a defining factor for the solution of the conflict.

Thus, , the EU's internal and international efforts against terrorism after the September 11 attacks made it more cohesive and cooperative organisation in order to collaboratively come up with solutions to deal with terrorism, if it is taken into

account that the EU had significant disagreements to reach consensus to fight against terrorism before the September 11 terrorist attacks.

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