Terrorism and Human Rights: EU Anti-terrorism Measures from an ECHR Perspective

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1. Introduction
When hearing of ‘Terrorism and Human Rights’ in a post-9/11 world an international lawyer’s mind may immediately concentrate on issues such as the lawfulness of self-defense as a response to terrorist acts, the relationship between multilateral and unilateral measures, the applicability of humanitarian law, the treatment of detainees at Guantanamo Bay, etc.¹

Since we are here today on the occasion of the founding conference of a European Society of International Law, I think it is worthwhile to focus on the European responses to terrorist threats from a European, international law point-of-view. I intend to speak about some EU anti-terrorism measures which I find rather problematic from a human rights point-of-view – to be precise: if looked at through the lenses of the European Convention on Human Rights as interpreted by the European Commission and Court of Human Rights.

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The direction of EU activities in this area was clearly laid out in the EU Action Plan of 21 September 2001 which provided, *inter alia*, for the “adoption of a common definition of terrorism ‘as a matter of urgency’”, the “identification of presumed terrorists in Europe and of organisations supporting them in order to draw up a common list of terrorist organisations” as well as “combating the funding of terrorism as a decisive aspect of the fight against terrorism”.

The two most problematic aspects of such EU action I would like to draw your attention to are: a) the definition of terrorism and b) the freezing of assets of terrorists.

2. Definition of Terrorism

For decades lawyers and diplomats have attempted to agree on an internationally acceptable definition of terrorism. Their successes, at least on the universal level, have been rather limited. While the UN General Assembly has adopted resolutions reflecting a shared understanding of the notion of terrorism, the UN Comprehensive Convention on International Terrorism is still under negotiation. Thus, it was not possible to speak of a clearly defined notion of terrorism as of 9/11 2001. Nevertheless, the UN Security Council in its anti-terrorism resolution 1373 of 28 September 2001 demanded from all states to ensure that “terrorist acts are established as serious criminal offences in domestic laws and regulations”.

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4 See UN GA Resolution of 19 November 2002, A/RES/57/27, in which the General Assembly “2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”
5 UN Security Council Resolution 1373 (2) (e) provides that all States shall “[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;’ Available at <http://ods-dds-