



## The EU's Role in Ensuring Global Security Terrorism and International Humanitarian Law

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# THE EU'S ROLE IN ENSURING GLOBAL SECURITY

## TERRORISM AND INTERNATIONAL HUMANITARIAN LAW

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***Abstract:** The European Union is a global and regional player, which at various levels of cooperation (bilateral, interregional and multilateral) participates in ensuring international peace and security. The article will analyze the determinants of the EU's role and influence in the field of international security: the ability to undertake missions; willingness to allocate resources to security and defense. Terrorist acts pose a threat to international peace and security, with terrorism denying the fundamental principles of humanity and the essential principles and objectives of international humanitarian law. The main objective of international humanitarian law is to protect the civilian population against acts of terrorism and contains legal provisions on the protection of persons who become victims of violence. This category of rules protects the military who laid down their arms, as well as the civilian population. In order to combat terrorism, the United Nations argues in Resolution 1373 (2001) the need to strengthen international cooperation between States by taking measures to prevent and suppress acts of terrorism.*

***Key words:** terrorism, protocol, violence, freedom, civilians, hostages.*

### Introduction

In recent years, states and international organizations have developed increasingly robust measures to enhance their counter-terrorism framework, adding greater complexity to the provision of neutral, independent and impartial humanitarian assistance.<sup>1</sup>

Terrorism negates the basic principles of international humanitarian law, including the principles of humanity and distinction. Each state has the duty to ensure the security of their population, as well as the right to take measures to combat terrorism, in accordance with international law, as also established in Resolution 1373.

The European Union is a global and regional actor, which at different levels of cooperation

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<sup>1</sup> International Committee of the Red Cross, *Combating terrorism should not come at the expense of humanitarian action or principles*, 2019, disponibil la <https://www.icrc.org/en/document/combating-terrorism-should-not-come-expense-humanitarian-action-or-principles>, accesat la data de 30.04.2023.

(bilateral, interregional and multilateral) participate in ensuring international peace and security. The article will analyze the determining factors of the role and influence of the EU in the field of international security: the ability to undertake missions; willingness to allocate resources to security and defense objectives; recognition of the EU as an important actor in the field of international security. The EU supports the efforts of both the UN in ensuring international security and the OSCE - in strengthening regional security. EU member states contribute to the UN security budget, including participating in various peacekeeping operations.

International humanitarian law prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population. However, in international law the contours of what is and what is not an act of terrorism are not always clear as there is no definition as to who or what constitutes a terrorist, a terrorist group or an act of terrorism .

### **Terrorism in the 21st century**

Terrorism did not end with the attack on America on September 11, 2001, it is an old form of conflict, but which has taken on different proportions in the 21st century due to globalization and the unprecedented development of technology. After the 9/11 attack, the United States retaliated with a military intervention in Afghanistan that basically foreshadowed what the war on terrorism in the 21st century would mean, namely "fighting a non-state enemy, highly fluid and perverse, capable instead of use in their own interest the territory of other states (especially weak ones, but also those that deliberately support such structures), and especially capable of waging an asymmetric war of attrition, based on the psychological intimidation of the adversary and the use of any means, even and of the wildest and most violent, to weaken him permanently, materially and morally".<sup>2</sup>

Also, Thomas Friedman, critic of foreign policy, claims that the war against terrorism is "the equivalent of the third world war", it is a global problem that must be fought by states both nationally and internationally. Carl von Clausewitz defined war as a "continuation of politics by other means", so terrorism can also be defined as "a war that promotes a policy by other means", because even if contemporary attacks have a religious character, they are based like

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<sup>2</sup> Maior, George Cristian, *Incertitudine. Gândire strategică și relații internaționale în secolul XXI*, Editura RAO, București, 2014, p. 238.

any war, the achievement of political goals (the determination of governments to abandon a law or policy measure).<sup>3</sup>

One of the most obvious characteristics of terrorism is the extreme violence, followed by the psychological impact or effect.<sup>4</sup> Studies have shown that a natural disaster such as the 2010 Haiti earthquake, where there were 200,000 dead, 250,000 injured and 1,000,000 people left homeless, does not have as much impact as a terrorist attack, for example the September 11, where there were 3000 victims, but it terrorized the whole world. Another characteristic is the clandestine character, the need for clandestineness resulting from the very nature of the violent action, as terrorists are forced to act covertly, to avoid being identified by law enforcement.<sup>5</sup> Other characteristics: it manifests itself at the level of some communities, groups, religions; rejects Western-style democracy and its influence; the tendency to form an international network; exacerbated, exclusivist and aggressive traditionalism.

## **International humanitarian law regarding counter-terrorism and hostage-taking**

### **Conceptual boundaries**

International humanitarian law is the set of rules that, during armed conflict, protect persons who do not or no longer participate in hostilities and regulate the methods and means of warfare with the aim of limiting and preventing human suffering in times of armed conflict.<sup>6</sup> Most rules govern the conduct not only of governments and their armed forces, but also of armed opposition groups and any other parties to the conflict.<sup>7</sup>

Acts of terrorism can occur during armed conflict or peacetime, and international humanitarian law only applies in situations of armed conflict. Therefore, it does not regulate terrorist acts committed in peacetime.

International humanitarian law will apply to the activities of terrorist organizations and counter-terrorism initiatives in the context of an internal or international armed conflict,

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<sup>3</sup> Ibidem

<sup>4</sup> \*\*\**Rezoluția Parlamentului European referitoare la cutremurul din Haiti*, accessed on [https://www.europarl.europa.eu/doceo/document/B-7-2010-0072\\_RO.html](https://www.europarl.europa.eu/doceo/document/B-7-2010-0072_RO.html), accessed at 30.04.2023.

<sup>5</sup> *Ibidem*, p. 158.

<sup>6</sup> United Nations Office on Drugs and Crime, *Frequently Asked Questions on International Law Aspects of Countering Terrorism*, p. 76, <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>, accesat la data de 30.04.2023.

<sup>7</sup> *Ibidem*.

regardless of whether the initial use of force was lawful or not, and terrorism in the context of an armed conflict may also bear responsibility individual criminal in accordance with international criminal law.<sup>8</sup>

From the study of several trials of those guilty of terrorist attacks, it appears that their motivation was the respect of human rights, such as the right to self-determination.<sup>9</sup> But violence, the use of force in self-defense, deprivation of liberty, torture do not justify the defense of the right to self-determination or free expression, because self-defense can only be justified if "the person commits the act to remove a material, direct, immediate and unjust attack, which puts in danger to his person, another's, their rights or a general interest, if the defense is proportional to the seriousness of the attack"<sup>10</sup>, according to Art. 19 of the Criminal Code on Legitimate Defense or according to Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms in what regarding the right to life, "death cannot be caused to someone intentionally"<sup>11</sup> unless the death penalty is established by a court (in states where the death penalty is legal, for example Belarus, being the only state in Europe where they have place of executions) or "in cases where this would result from an absolutely necessary resort to force", such as defense against illegal violence. Also, Article 9 mentions the right to freedom of thought, conscience and religion, stating that this right provides freedom to any person to change his religion and to manifest it in public or private, so as to respect "public security , the protection of public order, health or morals or the protection of the rights and freedoms of others"<sup>12</sup>. There are also situations where the measures adopted to combat terrorism do not respect privacy. An example of this is the "Patriot Act" in the United States, which allows the FBI and the Department of Justice to have access to any database and to be able to intercept telephone conversations when a person is suspected of terrorism.<sup>13</sup>

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<sup>8</sup> Ibidem

<sup>9</sup> Topor, Sorin, *op. cit.*, pp. 171-174.

<sup>10</sup> *Codul Penal privind Legitima Apărare*, art. 19, <https://lege5.ro/Gratuit/gezdmnrzgi/legitima-aparare-codul-penal?dp=gqytsojtgezto>, accessed at 30.04.2023.

<sup>11</sup> \*\*\**Convenția pentru apărarea drepturilor omului și libertăților fundamentale (STE. 5 – 1950)\** amendată prin protocolul nr. 11 (STE.155 – 1994)\*, art 2.

<sup>12</sup> Ibidem

<sup>13</sup> Topor, Sorin, *op. cit.*, p. 168.

## **Prohibition of terrorism in the Geneva Conventions and the two additional protocols**

The First Geneva Convention, in Article 3 relating to conflicts that do not have an international character, which is also mentioned in the following two Conventions, prohibits discrimination on the basis of race, color, creed or sex against persons who do not directly participate in hostilities, including members of the armed forces who laid down their arms. Also, violent contacts are prohibited on these persons, especially murder "in all forms, mutilations, cruelties, tortures and torments".<sup>14</sup> The prohibition of taking hostages is also mentioned in the article.

The only international document that expressly prohibits terrorism is the Fourth Geneva Convention of August 12, 1949, regarding the protection of civilians during armed conflict, which states that "no protected person shall be punished for an offense who did not commit it personally. Collective punishments and any measure of intimidation or terrorism are prohibited".<sup>15</sup>

International humanitarian law prohibits the intentional use of acts of terrorism as a means of war. Terrorist attacks committed against civilians and which would result in death or serious harm to physical or mental integrity constitute serious crimes.<sup>16</sup> In Article 85 of the first Additional Protocol, "subjecting the civilian population to an attack, launching an indiscriminate attack affecting the civilian population or civilian property, knowing that this attack will cause loss of human life, injury to civilians or damage to civilian property, the fact to direct attacks against historical monuments, works of art or places of worship"<sup>17</sup> are serious violations in this protocol and are considered.

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<sup>14</sup> \*\*\**Convenția de la Geneva pentru îmbunătățirea sorții răniților și bolnavilor din forțele armate în campanie, din 12 august 1949, Art. 3.*

<sup>15</sup> \*\*\**Convenția de la Geneva privitoare la protecția persoanelor civile în timp de război din 12 august 1949, Art.33. p. 11.*

<sup>16</sup> \*\*\**Protocolul adițional la Convențiile de la Geneva din 12 august 1949 privind protecția victimelor conflictelor armate internaționale, Art. 85*

<sup>17</sup> \*\*\**Protocolul adițional la Convențiile de la Geneva din 12 august 1949 privind protecția victimelor conflictelor armate fără caracter internațional, Art. 13(2).*

## **Conclusion**

Every day reflects the dramatic consequences of the fight against terrorism. Regardless of the purported legitimacy of this struggle or the causes espoused or attributed to those involved in it, what we see is the civilian population bearing the brunt of armed violence. The results of terrorist acts are cities reduced to rubble, civilians are directly attacked, humanitarian and medical personnel, transport and infrastructure are targeted and limited in performing their functions, the civilian population is deprived of essential supplies to survive. All these effects result in hundreds of thousands of people being displaced, leaving a home, a job or even close relatives behind. In the absence of a political solution, respect for international humanitarian law and the fundamental values that underpin this body of law are needed more than ever.

We can conclude that persons responsible for terrorist acts, according to the Geneva Conventions, cannot be eligible for the status of prisoners of war. Terrorist groups do not fall under any of the requirements of Article 4 of the Geneva Convention on the Treatment of Prisoners of War of 12 August 1949. First, terrorists are not part of the armed forces of belligerent states or members of participating parties to legally recognized conflict. Terrorists also do not conform to the laws and customs of war, which involve wearing a fixed insignia that can be recognized from a distance, as well as carrying weapons in plain view.

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