

The United Nations and the European Union: An Ever Stronger Partnership

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SESSION 3: UN-EU Cooperation in the Area of Security: Conflict Prevention, Conflict Management, Post-Conflict Reconstruction, Terrorism

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Thank you. First of all, I want to apologise to you and to the distinguished audience for not participating this morning, but I had to assist to the ministerial meeting on the negotiations on the new European Constitutional Treaty, because that also is one of my responsibilities. It is not very evident to combine it with terrorism and sometimes I mix up things, and at night I dream of freezing the assets of Giscard d'Estaing.

This being said, I want to make one small preliminary remark. I see the title of my contribution is 'EU-UN cooperation on terrorism', but I would like to correct it and say 'EU-UN cooperation in the fight against terrorism'. So let us start now. The horrible events of 9-11 in 2001 and more recently of what we call now March 11 in Madrid, remind all of us that security and democracy can never be taken for granted, and they must be defended actively and constantly. It also makes clear that terrorism must continue to be met through international cooperation: terrorist acts concern the international community as a whole and it will only be defeated through a comprehensive and cooperative response. As the EU, according to their security strategy, regards terrorism as one of the major threats to international peace and security, it seems self-evident, that we find here another challenging domain for closer cooperation between the EU and the UN. And that is why in numerous statements and declarations, and most recently again in the declaration on combating terrorism, that was adopted by the European Council in March of this year, the EU recognizes and supports the key role of the UN in the fight against terrorism. The commitment of the Union to prevent and suppress terrorism in a coherent manner, is also demonstrated by the recently updated guidelines for a common approach to combat terrorism, to which the said Declarations of the European Council refers. In those guidelines, it is stated that 'while recognising the primary responsibility of the UN Security Council for the maintenance of peace and security and for action, in particular cases, within its limit, the EU remains of the opinion that within the UN, the 6th Committee of the General Assembly, which is the legal Committee, is the most appropriate forum for a thorough examination of the general legal issues related to terrorism'. Indeed, during the second half of past century, between 1963 and 1999, a dozen sectoral anti-terrorist conventions were successfully drafted. They were conventions about air traffic, maritime safety, hostage taking, bombing, financing of terrorism, etc. Together, they form an important corpus of legislation, designed to tackle in a pragmatic and effective way various forms of terrorism. For international cooperation in this respect, the EU has always concentrated its efforts on promoting universal adherence to and implementation of a body of legal norms. This so-called piece-meal approach, by all these various conventions, resulted from the failure for more than 70 years now, to find a universally accepted definition of the term 'terrorism'. Therefore, legally addressing terrorism, in its comprehensive aspect proved to be a difficult task. Nonetheless, in the nineties India launched a proposal for negotiating a comprehensive convention on international terrorism. While the EU in a first stage was not very enthusiastic about that idea, it shifted very soon from a cautious and defensive behaviour to an interested and voluntary attitude, thus agreeing to complete the existing

framework with a complementary, general convention, in order to close the loopholes that still remained. Indeed, despite the solid international legal framework, the events of 9-11 had shown that terrorists' perverse inventiveness in their modus operandi knows no limits. Unfortunately, notwithstanding the political goodwill of the EU, in particular, and the momentum created after 9-11, the negotiations were not successful until today, because of the eternal problem of the definition of terrorism. Due to the deterioration of the situation in Palestine, the negotiations on that draft comprehensive convention, are blocked since more than two years. And the same situation, for the same reason, also occurred in other negotiations on a draft convention on nuclear terrorism. Again the problem was the definition of terrorism.

What happened? Since 9-11, a second major player in the fight against terrorism became gradually more active on the scene, namely, the UN Security Council. Acting under chapter 7 of the Charter, it adopted several Resolutions, in the light of the perception that terrorism was no longer solely perceived as a criminal act, but also as a threat to international peace and security. This development had already started a couple of years before 9-11, due to public enemy number one, Mr. Osama Bin Laden, and his Al-Qaeda network. It was the attacks of his Al-Qaeda network on the US embassies in Africa (Kenya and Tanzania) that had led the UN Security Council to adopt resolution 1267, I give you this number because it became a sacred number. That resolution imposed sanctions against the Taliban and later on, against Mr. Bin Laden himself and his Al-Qaeda network. That resolution also created a Sanctions Committee, that was meant to elaborate the list of persons and entities related to the Taliban – Al-Qaeda, who were to be sanctioned. By sanctioning I mean freezing the assets. That Resolution, which was adopted only for a certain delay, was renewed periodically, but I will not give you the other numbers because everybody always speaks about 1267.

In response to 9-11, the Security Council reacted swiftly, unanimously and in an unprecedented manner. After immediately condemning the terrorist attacks, it adopted another famous Resolution, 1373. This resolution 1373 obliged member states, again under chapter 7 of the Charter, to take specific actions to combat terrorism. The Security Council does impose binding measures, not against the state, not in the form of sanctions, but binding measures on all states with the aim of preventing acts of terrorism worldwide. It created uniform obligations for all the 191, until recently, UN states, thus going beyond the 12 existing Treaties that bind only those that have acceded to them. The operative paragraphs of that Resolution 1373, require member states inter alia to deny all forms of financial support to terrorist persons, groups and entities, and to freeze their assets and economic resources, to suppress the provision of safe haven and support for terrorists, and to share with other governments information about groups practicing or planning terrorist acts. In order to monitor the performance of member states in building a global capacity against terrorism, Resolution 1373 established the Counter-Terrorism Committee, which is well-known as the CTC. It is made up of the fifteen members of the Security Council. The CTC is not a Sanctions Committee, nor is its task to prosecute or to condemn states. But on the basis of the reports from the member states, it seeks to establish a basis for serious dialogue between the Security Council and the member states, and it is also aimed at assisting states looking for help. It provides, for example, copies of legislation, information about executive practices, details on training and assistance programs and so on, but it is not an assistance provider itself. The EU, according to several public declarations, believes that the establishment of the CTC has been ground-breaking. As from now, for the first time there is a mechanism for monitoring the universal implementation of the legal obligation of the UN member states, in the fight against terrorism. The EU remains fully committed to supporting the work of the CTC and not later than last week, as well, Commissioner Vitorino and the new coordinator for terrorism, Mr. De Vries, as well as a Troika of terrorism experts, had exchanges of views with the CTC in New York. The Union has already submitted three reports to the CTC, detailing specific actions undertaken to implement Resolution 1373. The latest report enlists the latest legislation adopted by the Union in areas covered by Resolution 1373 and also the regulatory measures that provide for freezing of funds, financial assets and economic resources and the prohibition of the provision of financial

service to persons, groups and entities involved in terrorism. The EU itself has also established an Executive Machinery to prevent and suppress terrorist financing, through which it develops and reviews a common list of persons, groups and entities involved in terrorist acts. The list is established by the Council and acts by unanimity, so every member state can block a name, if it wants to. The criteria that have to be met to put people or entities on the list, are spelled out in common position 931 of 2001, which is an instrument of the EU's Common Foreign and Security Policy and of Police and Judicial Cooperation in criminal matters, it combines the two. These criteria refer to precise information or material in the relevant file, which indicates that the decision has been taken by a competent authority: it can be a judicial authority, or an equivalent competent authority in that area. Moreover, the data on the persons or groups has to be precise in order to clearly identify those involved and in order to prevent errors. Everyone listed will have the right to make an appeal before a judge, and the list has to be reviewed at regular intervals, at least every six months. I tell you all these details because I will come back to that later on.

Why did the EU introduce all these detailed modalities? Because the EU believes that the fight against terrorism has to be conducted with full respect for individual rights and freedoms, in accordance with the purposes and principles of the UN Charter. In addition, plans are being developed to enhance police and improve judicial cooperation in the member states. I will not go through the whole of that long list, I will only mention two instruments: the European Arrest Warrant, which provides for simplified surrender procedures between judicial authorities of the member states, and that also covers terrorist offences; and the Framework Decision on Combating Terrorism, which includes a common definition for the EU of several types of terrorist acts and that imposes also severe criminal punishments to the perpetrators of those acts. The EU is also playing an important role in the provision of assistance to third countries in their efforts to better implement Resolution 1373. And in this respect, it has identified a number of pilot countries for the purpose of launching new assistance projects in the field of counter-terrorism. The EU also recognises the role of the Terrorism Prevention Branch of the Vienna Centre for International Crime Prevention in the strengthening of the capabilities of the UN in the prevention on Terrorism. And the EU has requested to the Terrorism Prevention Branch to develop a project on how it could assist UN member states, with the implementation of the twelve anti-terrorist conventions. Finally, the EU has developed close cooperation with third countries in the field of counter terrorism, particularly through an expanded structured dialogue. In this respect, anti-terrorism clauses have been included in the contractual relations of the EU with those third states. Close cooperation on these issues has also been established between the EU and regional bodies.

Due to time constraints, I could only give you this very general survey of UN and EU actions in combating terrorism. But it gives you at least a summary view of what is happening and things seem to be on the right track. Yet, I want to conclude with two personal considerations of a more cautious nature. First of all, we have seen that in recent years, the centre of gravity of UN action against terrorism, shifted from the General Assembly to the Security Council, from legal norm-setting to the elaboration of conventions, which are subject to parliamentary approval, to more directly binding –most of the time- administrative measures imposed by the Security Council under chapter 7 of the Charter. Sometimes, these measures are not as carefully drafted with all the necessary nuances, as it is the case in conventions. And sometimes, these measures are neither accompanied by the same legal safeguards for those who become the subjects of the restrictions, or by the sanctions. This aspect of the fight against terrorism receives special attention from the EU. As I already stressed before, the EU is of the opinion that national and international efforts to combat terrorism must respect human rights and fundamental freedoms, the rule of law, and –where applicable- humanitarian law. Terrorism must not be answered by disregarding Human Rights. These rights, as defined in the relevant international instruments, apply to all persons, including those who have committed or are suspected of having committed terrorist acts. We have to be vigilant that the remedies against an attack on our democracy do not harm the fundamental

principles and values of our own form of society, which we precisely want to defend and which is precisely the form of society that terrorists try to eliminate. For those reasons, the EU member states have made efforts to amend certain procedures before the Security Council, especially before the Sanctions Committee, created by Resolution 1267, which is mainly called the Al-Qaeda/Taliban Committee, in order to bring these procedures more in line with the aforementioned principles and values. For instance, the EU did that by asking for review procedures and by asking, and obtaining, humanitarian exceptions and so on.

My second remark is that, of course, the hard core of the fight against terrorism has to be to try to prevent and repress the terrorist acts themselves through legal and judicial cooperation, and through close cooperation of intelligence services, by prosecuting people and so on. I think that there is another aspect of the prevention of terrorism that is equally important, namely a comprehensive approach is needed to understand the causes of terrorism. Not in order to justify terrorist acts, but as an essential step in their elimination, and that is the reason why the European Council, in its Strategic Objectives to combat Terrorism, which were next to the Declaration of March, stressed the necessity to identify factors which contribute to recruitment for terrorism, both within the EU as internationally, and to develop a long-term strategy to address these. It is important to continue to investigate the links between extreme religious or political beliefs, as well as socio-economic and other factors and support for terrorism, building on work already undertaken in this area. And we also have to identify appropriate response measures. The EU is actually finalizing a study on the factors that contribute to that support and recruitment for terrorism, and I think, and I am sure the EU will recommend it, it could be useful that these issues were also closely examined and addressed by the high level panel and in further EU-UN cooperation. Thank you.