

# ENHANCING EU'S RESILIENCE AGAINST TERRORISM: A LEGAL APPROACH

Raluca-Andreea ȘOLEA \*

## Abstract

The growth in amplitude and frequency of the terrorist phenomenon at both the European and international levels, in the past years, makes terrorism one of the most significant challenges for European Union's security. Given EU's international ambitions of a significant actor in the field of security (European External Action Service, 2016), this paper approaches EU's responses to terrorism, from a legal point of view. Arguing in favour of the legal instruments as the most appropriate tools to counter the terrorist phenomenon, the aim of this research is to analyse if and how Europe can become more resilient against the terrorist threat, by resorting to legal means. Specifically, the paper seeks to explore how the regulation of the crime of terrorism in international law might foster the resilience of the EU in an increasingly challenging international context. Addressing the issue of terrorism is of high importance taking into consideration the current international context, when Europe is facing again a war and the terrorist offences have significantly increased along with the conflict in Ukraine that started in February 2022 (Institute for Economics & Peace, 2022).

**Keywords:** international criminal law, crime of terrorism, legal means, EU's security, counter-terrorism

## Introduction

The European Union is nowadays facing numerous diverse and decentralized threats which makes the need to identify, adapt, react, and understand these threats an imperative for the EU and its Member States. In order to become an international significant actor in the field of security, the EU should first and foremost ensure the safety within its borders and in its vicinity.

One of the main challenges for EU's security is the terrorist phenomenon, which has grown both in amplitude and frequency in the last years at the European, but also at the international level, irrespective of the international context. Even in

---

\* Raluca-Andreea ȘOLEA, PhD candidate, Faculty of Law, University of Bucharest, Romania; e-mail: solea.ralucaandreea@gmail.com.

times of the COVID-19 pandemic, when all states have focused on overcoming the pandemic, terrorist acts did not stop to occur, but the terrorist perpetrators have taken advantage of the focus of the governments on the limitation of spreading the virus and committed even more terrorist offences, adapting their actions to the new international context of the Covid-19 Pandemic (Mullins, 2020). Furthermore, terrorist offences have significantly increased along with the conflict in Ukraine that started in February 2022 (Institute for Economics & Peace, 2022).

To counter the terrorist threat, the EU and the international community shall resort to legal means, which we consider the most appropriate instruments in the tough fight against terrorism. We believe that in this increasingly challenging international context, the regulation of the crime of terrorism in international law might foster the resilience of the EU. Therefore, the aim of this research is to explore on how Europe can become more resilient against the terrorist threat by resorting to legal means.

Thus, the paper analyses the legal tools that the EU currently has to combat terrorism, such as the Directive on combating terrorism, adopted in 2017 by the European Parliament and the Council (European Union, 2017), and argues on the reasons why they are not sufficient to combat the phenomenon. Moreover, the research brings forward how the international criminal law can fill the existing gaps in EU's terrorism law to help the EU and its Member States counter terrorism more efficiently and, consequently, foster the resilience of the EU. To that end, the paper exposes the existing international legal tools to combat terrorism, focusing on the most relevant ones for the further development of the international criminal law: the ones that include a definition of the crime of terrorism. Furthermore, we aim to explore new international legal instruments that could be developed by the international community to better counter the terrorist phenomenon, such as an International Court against Terrorism.

Additionally, this research sheds a light on the steps the EU and its Member States can undertake in the international efforts of combating terrorism through legal means, bringing forward the main obstacle in front of the regulation of the crime of terrorism in international law: the lack of consensus on a common notion of the crime of terrorism. In this hard fight against terrorism and the long-lasting process of regulating the crime of terrorism in international law, the EU and its Member States have an important role to play and they shall join their forces to help the international community end the impasse regarding consensus on the definition of the international crime of terrorism. Regulating the crime of terrorism in international law might increase EU's resilience in front of the multidimensional current and potential future crisis. Therefore, a robust regulation of the crime of terrorism in EU's law might in the first place deter the terrorist offenders from committing this crime on EU's soil.

## 1. EU's legal tools to combat terrorism and their drawbacks

In the tough fight against the terrorist phenomenon, the EU has also an important role to play. This part of the paper focuses on EU's legal initiatives to counter terrorism.

Throughout the years, the EU has developed a range of legal tools against terrorism to combat the phenomenon. The most significant one is the EU Framework Decision on Combating Terrorism (European Union, 2002), which has been replaced by the Directive on combating terrorism, adopted in 2017 by the European Parliament and the Council (European Union, 2017). Later on, this paper will explain why it is the most relevant counter-terrorism instrument at the EU level.

In addition to this Directive, the European Parliament and the Council have also adopted the Directive on the control of the acquisition and possession of weapons or the EU Passenger Name Record (PNR) Directive (Official Journal of the European Union, 2016) that allows Member States to collect from each other data of flight passengers to detect suspicious travellers that could be foreign fighters. The reasoning behind the adoption of this Directive is the fact that the EU feels itself threatened by the Europeans who leave conflict zones like the one in Syria and return to EU's soil to coordinate terrorist attacks. In this sense, there are precedents such as the terrorist attacks from Paris in 2015 and from Brussels in 2016: "*sadly, this fear materialised in November 2015 in Paris and in March 2016 in Brussels*" (European Parliamentary Research Service, 2021, p. 2).

As it has been mentioned above in this part of the research, the most important instrument of the EU to counter the terrorist phenomenon is the Directive on combating terrorism adopted by the European Parliament and the Council (European Union, 2017) that replaced the EU Framework Decision on Combating Terrorism (European Union, 2002). Its relevance consists in the fact that it contains a definition of the crime of terrorism:

### Terrorist offences

1. Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences were committed with one of the aims listed in paragraph 2:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage-taking;
- (d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- (i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (1) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
- (j) threatening to commit any of the acts listed in points (a) to (i).

2. The aims referred to in paragraph 1 are:

- (a) seriously intimidating a population;
- (b) unduly compelling a government or an international organisation to perform or abstain from performing any act;
- (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation (European Union, 2017, p. 13).

The Directive (European Union, 2017) incorporates numerous terrorist offences like attacks upon the physical integrity of a person, kidnapping or hostage-taking, seizure of aircraft, travelling for terrorist purposes. According to the Directive (European Union, 2017), not only the attacks upon a person that might cause death and attacks upon his/her physical integrity must be criminalized, but also the participation in a terrorist offence, the leading or funding of a terrorist group:

#### Article 4

Offences relating to a terrorist group

Member States shall take the necessary measures to ensure that the following acts, when committed intentionally, are punishable as a criminal offence:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group (European Union, 2017, p. 13).

The Directive (European Union, 2017) incriminates the funding and leading of a terrorist group, the participation in terrorist acts, supplying information or

material resources, with the condition of the knowledge of the terrorist perpetrators regarding the contribution of such an act to the criminal activities of the respective terrorist group.

This comprehensive definition of the crime of terrorism given by the EU sheds a light on its vision on the crime of terrorism. Taking into consideration the fact that the Directive (European Union, 2017) contains the notion of the crime of terrorism, it might be a source of inspiration for the international community in the further development of the anti-terrorism legislation.

Even if EU's counter-terrorism legal instruments discussed earlier bring forward its active involvement in the struggle against terrorism and one of them (European Union, 2017) also contains an extensive concept of the crime of terrorism, the issue concerning EU's counter-terrorism legal framework is the fact that the most instruments are directives that need to be transposed by the Member States into their national legislation to become effective. This is a long-lasting process and a challenging task for them that not rarely registered delays. There have even been cases in which the measures regarding countering terrorism were not transposed into the national legislation of the Member States, as evidenced within the Twentieth Progress Report towards Security Union from October 2019 (European Commission, 2019). Accordingly, the EU needs a central instrument to counter the terrorist phenomenon.

Acknowledging that terrorism represents one of the most serious threats not only to the European, but also to the international peace and security, as it has been previously recognized by the international community (United Nations, 2000), the EU shall increase its effort in the development of the anti-terrorism law to enhance its resilience against the terrorist threat. Moreover, in this current international context marked by a war at EU's borders, the need to combat the terrorist phenomenon more effectively is even more imperative for the EU and its resilience against crises and threats.

## **2. Resorting to international legal means to enhance EU's resilience**

EU's legal framework against terrorism is not enough to combat the phenomenon and foster its resilience in front of the terrorist threat. Considering that terrorism represents a serious global threat to the international peace and security, it has to be combated globally, by resorting to the international law and, more specifically, to the international criminal law.

### **2.1. An overview of the most relevant existing international legal tools to combat terrorism**

In the last 100 years, the international community has done sustained efforts to regulate the international crime of terrorism in international law. Thus, it has

developed a myriad of legal tools in the attempt to combat the phenomenon. This paper does not bring forward an exhaustive list of the legal instruments developed so far by the international community, but it gives insights into the most relevant ones.

When choosing the most significant counter-terrorism tools, the reference point is the definition of the crime of terrorism. Considering its importance for the regulation of terrorism in the international law, a part of the legal counter-terrorism instruments that include a definition of the crime of terrorism are exposed within this paper.

The response of the international community to the terrorist threat has begun in the twentieth century with the efforts of the League of Nations that developed two Conventions (League of Nations, 1937a, 1937b). One of them would have obliged states to prosecute the acts stipulated in the text of the Convention (League of Nations, 1937a) into their national laws, while the other (League of Nations, 1937b) would have created a permanent international jurisdiction to prosecute the perpetrators guilty of the terrorist acts encompassed in the first Convention (League of Nations, 1937a). Unfortunately, none of the two Conventions (League of Nations, 1937a, 1937b) entered into force because of the outbreak of the World War II and the end of the League of Nations.

Given the fact that they are into force and represent the opinion and will of many countries, the anti-terrorism sectoral universal legal instruments (United Nations, 1963, 1970, 1971, 1973, 1979, 1980, 1988a, 1988b, 1988c, 1991, 1997, 1999, 2005a, 2005b, 2005c, 2005d, 2010a, 2010b, 2014) are cornerstone tools in the global fight against terrorism. Moreover, a significant aspect concerning these universal legal tools against terrorism is the fact that they also encompass a definition of the crime of terrorism. Nevertheless, since they regulate specific types of terrorist acts and only apply to a specific context, like the aerial, nuclear or maritime context, the anti-terrorism sectoral universal legal instruments (United Nations, 1963, 1970, 1971, 1973, 1979, 1980, 1988a, 1988b, 1988c, 1991, 1997, 1999, 2005a, 2005b, 2005c, 2005d, 2010a, 2010b, 2014) are not sufficient to fight the terrorist phenomenon. Many crimes of terrorism remain unregulated by the international law and, as a consequence, the terrorist perpetrators cannot be punished for their grave criminal acts. What the international community needs is a robust regulation of the crime of terrorism in international law, to incriminate all the acts of terrorism, irrespective of the context in which they have been perpetrated.

Besides the universal sectoral instruments mentioned previously, there are also numerous regional treaties that incriminate the crime of terrorism, some of them including the notion of the crime of terrorism (League of Arab States, 1998; African Unity, 1999; Shanghai Cooperation Organization, 2001). Even if they incorporate the definition of the crime of terrorism, they also present some limitations consisting in the area of application - they only apply to specific geographic regions.

As a consequence of the 9/11 events (Pentagon Memorial, 2021) that have shocked the whole humanity with their gravity, the United Nations adopted a series of resolutions (United Nations, 2001a, 2001b, 2001c, 2002a, 2002b, 2002c, 2002d, 2002e, 2003a, 2003b, 2003c, 2004a, 2004b, 2004c, 2004d, 2005a, 2005b, 2005c, 2005d, 2006), some of which oblige states to criminalize terrorist acts in their national laws. Moreover, they urge states to ratify the existing international treaties against terrorism, to prevent and punish violations of national terrorism laws, to cooperate with each other on preventing and countering terrorism, to ensure that all the measures taken to combat terrorism are in compliance with their obligations under the international law.

Nevertheless, even if some of them are binding on states, they are unharmoniously implemented at the national level. To effectively combat the terrorist phenomenon and enhance its resilience against terrorism, the international community needs to develop a common concept of the crime of terrorism to be uniformly applied in all countries.

## **2.2. The main obstacle in front of the regulation of the crime of terrorism in international law**

Despite of its gravity and almost 100 years of international efforts to incriminate the crime of terrorism in the international law, this international crime remained unregulated by the international law because the international community could not agree on a common notion of the crime of terrorism. The Draft Comprehensive Convention of the United Nations (United Nations, 2000), drafted by an Ad Hoc Committee established by the General Assembly, emphasizes the issues that have hindered the agreement on a common concept of the crime of terrorism. One of the main obstacles to the attempt of the international community to reach consensus on the definition of the crime of terrorism is the divergence of opinion on the acts of armed forces and liberation movements. While some members of the Committee consider freedom fights the worst form of terrorism, the others regard them as a legitimate exercise of the right of self-determination (United Nations General Assembly, 1997). Furthermore, some states believe that, when regulating the crime of terrorism in international law, the focus should fall on the incrimination of non-state violence, while other countries argue that the accent should be put on the incrimination of state violence. Hence, the challenges regarding the incrimination of the crime of terrorism in international law are of a political character. For this reason, the cooperation between states is essential to reach consensus on this controversial issue and overcome the long-lasting impasse in reaching agreement on a common concept of the crime of terrorism and regulating the crime of terrorism in international law - by enhancing international cooperation on the terrorism issue, the states will enhance their resilience towards the terrorist threat.

The EU works together with other states to combat foreign terrorist fighters (FTF) within the framework of the Global Counterterrorism Forum (GCTF) - an informal platform designed to address and counter the terrorist phenomenon (Global Counterterrorism Forum, 2023). Some of the actions carried out within the GCTF include preventing radicalization that might lead to terrorism or building capacity of other states, like France is currently doing through trainings for its partners to enhance their resilience in front of the terrorist phenomenon (France Diplomacy, 2023). In addition to these acts, the EU and the other states shall also resort to legal means to better combat terrorism.

### **2.3. New international legal instruments to be developed to better counter the terrorist phenomenon**

At the international level, there are currently two important initiatives for prosecuting the crime of terrorism in international law: the development of an International Court against Terrorism and a Tribunal for Islamic State in Iraq and Syria (ISIS) Fighters. The paper gives insights into both initiatives that are currently in discussion and brings forward the involvement of the EU and its Member States in both initiatives.

The establishment of an ISIS Tribunal - an ad-hoc tribunal for ISIS fighters - is a significant initiative of fighting terrorism through international legal means in international law. The mission of such a Tribunal would be to analyse and prosecute the terrorist offences perpetrated by the armed group of the Islamic State of Iraq and alSham / the Levant (ISIS or ISIL). Accordingly, the *ratione personae* jurisdiction of such a Tribunal would be restricted to the members of a specific armed group - ISIS.

The proposal to create such a Tribunal has come from Sweden, but it did not gain significant support from other countries since it has been perceived as an attempt of the states to avoid their responsibilities regarding the repatriation of their own nationals (Lu Phillips, 2021). A detailed analysis of such a Tribunal, encompassing the legitimacy of its creation, the feasibility, the set-up options, the issues that come into discussion when creating such a Tribunal has been previously made by the author of this paper (Șolea, 2023).

After analysing all the legal aspects of the creation of the Tribunal, it has been concluded that the international community should continue the discussions on the development of an ISIS Tribunal and start working on its creation since it might bring many advantages. First of all, the prosecution of the ISIS perpetrators will prevent impunity in international law. Furthermore, it might also prevent further grave crimes from taking place by deterring the perpetrators from committing such acts. Accordingly, besides preventing impunity in international law, the creation of an ISIS Tribunal might also have a deterrence role. Moreover, the findings of the Tribunal might lead to the development of the international criminal law since the



establishment of a Tribunal to judge the terrorism-related offences of the ISIS fighters offers to the international community another chance to agree on a common notion of the crime of terrorism (Șolea, 2023).

The idea of the development of an ISIS Tribunal belongs to an EU Member State, to Sweden, and it has also been supported by the Netherlands and Denmark (International Review of the Red Cross, 2022). Furthermore, 11 European countries have met in Stockholm in 2019 to discuss the development of such a Tribunal (Syria Justice and Accountability Centre, 2019). Unfortunately, the meeting in Stockholm did not bring important outcomes and the initiative has been left aside to this date. Despite the fact that this initiative did not become reality, the idea of the creation of an ISIS Tribunal coming up from Sweden and supported by other EU Member States and the meeting that took place in Stockholm in 2019 bring forward the involvement of the EU Member States in countering the terrorist phenomenon worldwide.

Moreover, the initiator of one of the most significant initiatives to combat terrorism through international legal means - the development of an International Court against Terrorism - is also an EU Member State, Romania. Romania's initiative of setting up such a court has been also supported by another EU country, by Spain.

It is important mentioning that the initiative is not new, but by coming up with this project, Romania has recalled an idea which lays back in the twentieth century, when the creation of an International Court against Terrorism has been discussed within the League of Nations and a Convention has been drafted to this purpose - the Convention for the Creation of an International Criminal Court (League of Nations, 1937b). It is admirable that two EU Member States have called back this initiative after many years, which was actually from the very beginning a Romanian initiative of the diplomat Vespasian Pella - the so called "Pela's idea" (Aurescu and Gâlea 2015, p. 113). Besides Romania and Spain, the Netherlands has also got involved in the initiative.

For the development of an International Court against Terrorism in the twentieth first century, a working group of legal experts from Romania, Spain and the Netherlands has been set up. The legal experts from the three countries have conducted research on the legal elements of the initiative and drafted a document including the future design of the Court (Aurescu and Gâlea, 2015). This document encompassed proposals concerning the organisation of the Court. As for the jurisdiction of an International Court against Terrorism, it has been established that it would prosecute those guilty of committing the crime of terrorism. Given the transnational character of the terrorist phenomenon and the diversity of countries and regions where terrorist acts occur, the legal experts have agreed that the Court should be established "with aspirations of a worldwide jurisdiction" (Aurescu and Gâlea 2015, p. 113).

Three EU Member States have worked on an ambitious initiative to combat the terrorist phenomenon, but since 2015, when the concept paper about the Court

has been drafted, no more steps have been taken to bring this idea into reality. To fulfil the goal of the establishment of such a Court and prosecute the crime of terrorism in international law, more countries must support the initiative. Considering that the states that come up with the idea and worked on the Court's development process are EU Member States, they should be supported in the first place by other EU countries. Furthermore, the EU Member States should not only work at a diplomatic level for the development of this initiative, but they should also promote it "in relation with the civil society and the academia" (Aurescu and Gâlea 2015, p. 108). To bring the idea of the establishment of an International Court against Terrorism into reality, joint efforts at all levels (diplomatic, societal and academic) are needed.

### **3. The role of the EU and its Member States in the international efforts of combating terrorism through legal means and why should the EU act as soon as possible**

The EU Member States should cooperate more and more with each other and with third countries to combat the terrorist phenomenon and increase their resilience against the terrorist threat.

As it has been mentioned in this paper, Romania, Spain and the Netherlands have worked on a very interesting proposal for countering the terrorist phenomenon globally: the development of an International Court against Terrorism. Their involvement in such an ambitious initiative endows the EU Member States with a central role in the international fight against terrorism.

The involvement of the other EU Member States in the project might increase its chances to become reality. Accordingly, we consider that they should make joint efforts in the further development of the initiative, but each of them should also act individually with third parties. Terrorism is a global threat posed to all the countries: one can never know when another country will face the terrorist phenomenon on its territory. Since terrorist attacks or terrorist attempts occur on a daily basis, terrorism should be always on the table at EU's different internal and external meetings.

The EU Member States acting collectively, but also individually with the third parties can play a central role in the development of the counter-terrorism law. Romania and Spain have already made an important step by coming up with such an ambitious initiative. Even if Romania does not confront itself on its territory with numerous terrorist offences like other EU countries such as France, Germany or Spain, but it is more indirectly exposed to the terrorist threat, by association with some other countries in Europe involved in countering terrorism (Romania Presidential Administration, 2020), its efforts to combat terrorism at the international level and create an International Court against Terrorism are notable. Romania's actions in the development of the anti-terrorism legislation demonstrate that not only states that face terrorist attacks on their territories should engage in the tough struggle

against terrorism, but all states should get involved in the international fight against terrorism and join their forces to combat the terrorist threat globally. The involvement of more and more states in the development process of an International Court against Terrorism and in its worldwide promotion is essential for ending the long-lasting international impasse regarding an international common notion of the crime of terrorism and the incrimination of the crime of terrorism in international law.

The COVID-19 pandemic has evidenced that the cooperation between states is essential to overcome global threats. In the global fight against Coronavirus, the EU has played an important role at a regional, but also at an international level, by developing a vaccine and exporting it to many countries on the globe (European Commission, 2021).

The EU might also have a central role in the global fight against the terrorist phenomenon. Given EU's international ambitions of a significant actor in the field of security (European External Action Service, 2016), being the starting point towards the solution for the regulation of the crime of terrorism in international law, but also the leader in the development of the international counter-terrorism law might help the EU reach this ambitious goal. Furthermore, acknowledging countering terrorism as a top priority for the EU (European Council, Council of the European Union, 2022), it might lead the process of regulating the international crime of terrorism in international law.

Since the internal security of the EU, its Member States and citizens is also depending on what happens outside its borders, the EU should also cooperate with non-EU countries from all geographic regions in the world, like Western Balkans, the Middle East, North Afrika or the Sahel region. In this sense, the Council of the EU has taken in 2015 the decision to step up external action to counter the terrorist phenomenon, with a focus on the Middle East, Mediterranean, the Gulf, North Africa and the Sahel (European Council, Council of the European Union, 2023). Its actions include projects to support capacity building for the states from these different regions to counter terrorism, fighting radicalisation and violent extremism, and intensifying cooperation with key partners.

Furthermore, in 2020 the Council has called for EU's engagement beyond its borders and for strengthening action in the field of counter-terrorism, giving priority to certain geographical (Western Balkans, North Africa, the Middle East, the Sahel region and the Horn of Africa) and thematic areas (human rights, the rule of law, the prevention of radicalisation leading to violent extremism, terrorism financing) (European Council, Council of the European Union, 2023).

Moreover, the EU is currently supporting the countries from the earlier mentioned regions to enhance their national judicial systems and domestic law enforcement capacities. Also, the Europol - European Union Agency for Law Enforcement Cooperation and the Eurojust - the European Union Agency for Criminal Justice Cooperation offer support to the national judicial authorities that

work together on investigations and prosecutions to counter terrorism and other grave international crimes (European Council, Council of the European Union, 2022).

The fact that fighting terrorism is a top priority for the EU can be observed in its numerous internal and external actions noticed in this paper. Despite sustained efforts and a myriad of anti-terrorism actions taken by the EU, terrorist acts still occur on EU's soil. Even if one can remark a decrease in the number of terrorist attacks in EU countries from 2020 to 2021 (in 2021 only 15 terrorist attacks took place on EU's territory, compared to 57 in 2020) (European Council, Council of the European Union, 2022), the EU needs to increase its actions in the counter-terrorism field to enhance its resilience against the terrorist phenomenon, especially in these times when the war in Ukraine has brought many terrorist acts at its borders. Having to deal with so many threats - war, terrorism, pandemic, energy crisis, enhancing resilience is more needed than ever. Therefore, we consider that the EU and its Member States should reiterate and strengthen their involvement in the development process of an International Court prosecuting the terrorist perpetrators worldwide, regardless of their ideology, religion or country of origin.

The EU Member States should be united in their actions to overcome the terrorist threat internally, but they should also help other states from EU's immediate neighbourhood and from other geographic regions, to project security and stability worldwide. Overcoming the terrorist threat globally along with the development of an International Court against Terrorism at the initiative of the EU and its Member States might not only enhance its resilience, but it might also increase the role of the EU as a significant actor in the field of security globally and the trust of other countries from different regions in partnering with the EU.

Because some of the EU Member States have already put forward such a remarkable initiative and worked on a proposal for the establishment of an International Court against Terrorism, the EU should take advantage of the chance of becoming a security provider not only in its region, but also at an international level. Thus, the EU as a whole and all its Member States should join the initiative, and each of them should also cooperate with third parties to bring them at the working table for the creation of an International Court against Terrorism.

## **Conclusions**

In the current international setting, states have to act collectively to overcome the crises they are facing and increase their resilience in front of future possible crises. Considering its ambition of becoming an important global actor in the field of security (European External Action Service, 2016), the EU should increase its efforts in the international fight against terrorism by resorting to legal means, as they might be the most efficient instruments in front of such a threat, considering the deterrence role of the incrimination of the crime of terrorism in international law.

The establishment of a permanent international jurisdiction to prosecute the individuals guilty of terrorist offences might deter the terrorist perpetrators from perpetrating terrorist acts since they might fear the consequences of their offences and give up on committing such terrifying crimes.

As discussed in the paper, the EU has a series of mechanisms to counter the terrorist threat and is taking lots of actions to counter the phenomenon, such as projects to support capacity building for the states from diverse regions to counter terrorism, fighting radicalisation and violent extremism and intensifying cooperation with key partners. Moreover, for its actions in the anti-terrorism fight, the EU has set prior geographic regions which include the Western Balkans, the Middle East, North Africa and the Sahel, and has established thematic areas such as the rule of law, human rights or terrorism financing (European Council, Council of the European Union, 2023). Nevertheless, the terrorist acts did not stop to occur on EU's territory (as mentioned earlier, we can speak about a decrease in number from 2020 to 2021, but there are still terror attacks happening on EU's soil). If we consider other regions, like the Sahel, there is a huge increase in terrorist attacks, making this region the new epicentre of terrorism with deaths "rising by over 2,000 percent in the last 15 years" (Institute for Economics & Peace, 2023, p. 2). Moreover, if we look at the immediate neighbourhood of the EU, the war in Ukraine has also brought terrorist attacks (European Council, Council of the European Union, 2023).

The numerous terrorist offences that occur in different global regions, including on EU's soil and in its vicinity, prove that the initiatives and the actions that have been conducted so far by the EU and its Member States are not sufficient to combat such a major threat to the European and international security. Ultimately, the EU and the international community need to take further action in the fight against terrorism to enhance their resilience in front of the terrorist threat. Given its ambition of becoming a significant global actor in the field of security, the EU might take a leading role in countering one of the main threats to the global peace and security - the terrorist phenomenon.

Considering that the legal instruments are the most appropriate tools to counter terrorism given first and foremost their deterrence role, the EU should resort to the international legal means to counter terrorism and increase its resilience against the terrorist threat.

Some of the EU Member States have already taken action in the counter-terrorism area and proposed, as it has been exposed in this paper, an ambitious initiative to overcome the terrorist threat: the establishment of an International Court against Terrorism. Therefore, the project of the development of such a Court might represent a significant starting point in EU's involvement in countering terrorism through legal means. To turn an ambitious initiative into a significant counter-terrorism legal instrument, the EU and its Member States should work together on the development process of the court and on its promotion at a global level.

The paper has also brought forward the reason that made impossible the regulation of the crime of terrorism in international law: the lack of consensus at the international level on a common concept of the crime of terrorism. To end this international impasse regarding the common notion of the crime of terrorism, the EU and its Member States should act together, but they should also cooperate with third parties to reach the international goal of incriminating the crime of terrorism in international law.

Acknowledging the current complicated international context, marked by a series of crises and the return of the war to the European continent, enhancing resilience against the multitude of threats is an imperative for the EU. To overcome crises and increase their resilience by resorting to international legal means, all states need to work together, in close cooperation. As the President of the European Parliament Roberta Metsola has stated within a Joint Session of the Romanian Parliament in December last year, “together we will emerge stronger from the crises we face today” (European Parliament, The President, 2022).

## References

- African Unity. (1999). *Convention on the Prevention and Combating of Terrorism*. <https://treaties.un.org/doc/db/terrorism/oau-english.pdf>
- Aurescu, B. & Gâlea, I. (2015). Constitutional Law Review, *Establishing an International Court against Terrorism*, 106-117. <https://doi.org/10.47743/rdc-2015-1-0003>
- European Commission. (2019). *Twentieth Progress Report towards an effective and genuine Security Union*, 30 October, Brussels.
- European Commission. (2021). *Statement by President von der Leyen on vaccine exports*. [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_21\\_5341](https://ec.europa.eu/commission/presscorner/detail/en/statement_21_5341)
- European Council, Council of the European Union. (2023). *The EU's response to terrorism*. <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/>
- European Council, Council of the European Union. (2023). *Think Tank reports on the invasion of Ukraine*. <https://www.consilium.europa.eu/en/documents-publications/library/library-blog/posts/think-tank-reports-on-the-invasion-of-ukraine/>.
- European Council, Council of the European Union. (2022). *The EU's work to tackle terrorism*. <https://www.consilium.europa.eu/en/eu-response-to-terrorism/>

- European External Action Service. (2016). *Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign and Security Policy*, June, Brussels.
- European Parliament, The President. (2022). *Together we will emerge stronger from the crises we face today*. <https://the-president.europarl.europa.eu/home/ep-newsroom/pageContent-area/actualites/together-we-will-emerge-stronger-from-the-crises-we-face-today.html>
- European Parliamentary Research Service. (2021). *Understanding EU counter-terrorism policy PE 659.446*, January, Brussels.
- European Union. (2017). *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*. <http://data.europa.eu/eli/dir/2017/541/oj>
- European Union. (2002). *EU Framework Decision on Combating Terrorism*. <https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32002F0475>
- France Diplomacy. (2023). *Terrorism: France's International Action*. Terrorism: France's International Action - Ministry for Europe and Foreign Affairs ([diplomatie.gouv.fr](http://diplomatie.gouv.fr))
- Global Counterterrorism Forum. (2023). *Who we are/Background and Mission*. <https://www.thegctf.org/Who-we-are/Background-and-Mission>
- Institute for Economics & Peace. (2023). *Global Terrorism Index 2023: Measuring the Impact of Terrorism*. <https://www.visionofhumanity.org/resources/>
- Institute for Economics & Peace. (2022). *Ukraine Russia Crisis: Terrorism Briefing*. <https://www.economicsandpeace.org/wp-content/uploads/2022/03/Ukraine-Russia-Terrorism-Briefing-web.pdf>
- International Review of the Red Cross. (2022). *Unfolding the case of returnees: How the European Union and its member States are addressing the return of foreign fighters and their families*. <https://international-review.icrc.org/articles/unfolding-the-case-of-returnees-eu-and-member-states-return-of-foreign-fighters-916>
- League of Arab States. (1998). *Arab Convention on the Suppression of Terrorism*. [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf)
- League of Nations. (1937a). *Convention on the Prevention and Punishment of Terrorism*. <https://archives.ungeneva.org/observations-of-governments-publication-of-the-first-series>

- League of Nations. (1937b). *Convention for the Creation of an International Criminal Court*. <https://archives.ungeneva.org/observations-of-governments-publication-of-the-first-series>
- Lu Phillips, R. (2021). *A Tribunal for ISIS Fighters – A National Security and Human Rights Emergency*. A Tribunal for ISIS Fighters – A National Security and Human Rights Emergency - Just Security
- Mullins, S. (2020). *Assessing the Impact of the COVID-19 Pandemic on Terrorism and Counter-terrorism: Practitioner Insights*. [https://dkiapcss.edu/nexus\\_articles/assessing-the-impact-of-the-covid-19-pandemic-on-terrorism-and-counter-terrorism-practitioner-insights/](https://dkiapcss.edu/nexus_articles/assessing-the-impact-of-the-covid-19-pandemic-on-terrorism-and-counter-terrorism-practitioner-insights/)
- Official Journal of the European Union. (2016). *Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*. <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vk3sxsgbqcqm>.
- Pentagon Memorial. (2021). Events of 9/11. Events of 9/11 - 9/11 Pentagon Memorial
- Romania Presidential Administration. (2020). *National Defence Strategy 2020-2024 „Together for a safe and prosperous Romania in a world marked by new challenges”*, 1 July, Bucharest.
- Shanghai Cooperation Organization. (2001). *Convention on Combating Terrorism, Separatism and Extremism*. Document5 (refworld.org)
- Syria Justice and Accountability Centre. (2019). *SJAC and Partners Urge Caution with regard to International Tribunal limited to ISIS Crimes*. <https://syriaaccountability.org/sjac-and-partners-urge-caution-with-regard-to-international-tribunal-limited-to-isis-crimes>
- Șolea, R.A. (2023). An ISIS Tribunal – a legitimate and appropriate instrument to counter terrorism within the international law?. *Romanian Journal of International Law*, 27, 70-84. <http://rrdi.ro/no-27-january-june-2022>
- United Nations. (2000). *Draft comprehensive convention on international terrorism*. <https://digitallibrary.un.org/record/422477>
- United Nations General Assembly. (1997). *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*, 31 March, New York.
- United Nations Security Council. (2001a). *Resolution 1373*. <https://digitallibrary.un.org/record/449020>
- United Nations Security Council. (2001b). *Resolution 1377*. <https://digitallibrary.un.org/record/452238>



- United Nations Security Council. (2001c). *Resolution 1368*. <https://digitallibrary.un.org/record/448051>
- United Nations Security Council. (2002a). *Resolution 1438*. <https://digitallibrary.un.org/record/475999>
- United Nations Security Council. (2002b). *Resolution 1390*. <https://digitallibrary.un.org/record/456589>
- United Nations Security Council. (2002c). *Resolution 1440*. <https://digitallibrary.un.org/record/476975>
- United Nations Security Council. (2002d). *Resolution 1450*. <https://digitallibrary.un.org/record/481295>
- United Nations Security Council. (2002e). *Resolution 1452*. <http://unscr.com/en/resolutions/doc/1452>
- United Nations Security Council. (2003a). *Resolution 1455*. <https://digitallibrary.un.org/record/484561>
- United Nations Security Council. (2003b). *Resolution 1456*. <https://digitallibrary.un.org/record/484788>
- United Nations Security Council. (2003c). *Resolution 1516*. <https://digitallibrary.un.org/record/506875>
- United Nations Security Council. (2004a). *Resolution 1530*. <https://digitallibrary.un.org/record/517061>
- United Nations Security Council. (2004b). *Resolution 1526*. <https://digitallibrary.un.org/record/514461>
- United Nations Security Council. (2004c). *Resolution 1535*. <https://digitallibrary.un.org/record/518306>
- United Nations Security Council. (2004d). *Resolution 1540*. <https://digitallibrary.un.org/record/520326>
- United Nations Security Council. (2005a). *Resolution 1611*. <http://unscr.com/en/resolutions/doc/1611>
- United Nations Security Council. (2005b). *Resolution 1618*. <https://digitallibrary.un.org/record/554648>
- United Nations Security Council. (2005c). *Resolution 1617*. <https://digitallibrary.un.org/record/554438>
- United Nations Security Council. (2005d). *Resolution 1624*. <https://digitallibrary.un.org/record/556538>
- United Nations Security Council. (2006). *Resolution 1735*. <https://digitallibrary.un.org/record/589562>

- United Nations Treaty Series. (1963). *Convention on Offences and Certain other Acts Committed on Board Aircraft*. <https://treaties.un.org/doc/db/terrorism/conv1-english.pdf>
- United Nations Treaty Series. (1970). *Convention for the Suppression of Unlawful Seizure of Aircraft*. <https://treaties.un.org/doc/db/terrorism/conv2-english.pdf>
- United Nations Treaty Series. (1971). *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*. <https://treaties.un.org/doc/db/terrorism/conv3-english.pdf>
- United Nations Treaty Series. (1973). *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*. [https://treaties.un.org/doc/Treaties/1977/02/19770220%2011-31%20PM/Ch\\_XVIII\\_7p.pdf](https://treaties.un.org/doc/Treaties/1977/02/19770220%2011-31%20PM/Ch_XVIII_7p.pdf)
- United Nations Treaty Series. (1979). *International Convention Against the Taking of Hostages*. <https://treaties.un.org/doc/db/terrorism/english-18-5.pdf>
- United Nations Treaty Series. (1980). *Convention on the Physical Protection of Nuclear Material*. <https://treaties.un.org/doc/db/terrorism/conv6-english.pdf>
- United Nations Treaty Series. (1988a). *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*. <https://treaties.un.org/doc/db/terrorism/conv7-english.pdf>
- United Nations Treaty Series. (1988b). *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*. <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>
- United Nations Treaty Series. (1988c). vol. 1678, p. 304, *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*. <https://treaties.un.org/doc/db/terrorism/conv9-english.pdf>
- United Nations Treaty Series. (1991). *Convention on the Marking of Plastic Explosives for the Purpose of Detection*. <https://treaties.un.org/doc/db/terrorism/conv10-english.pdf>
- United Nations Treaty Series. (1997). *International Convention for the Suppression of Terrorist Bombings*. <https://treaties.un.org/doc/db/terrorism/english-18-9.pdf>
- United Nations Treaty Series. (1999). *International Convention for the Suppression of the Financing of Terrorism*. treaty3 (un.org)
- United Nations Treaty Series. (2005a). *International Convention for the Suppression of Acts of Nuclear Terrorism*. 0533901e.doc (un.org)

- United Nations Treaty Series. (2005b). *Amendments to the Convention on the Physical Protection of Nuclear Material*. <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/24631/A-24631-0800000280478876.pdf>
- United Nations Treaty Series. (2005c). *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*. <https://www.refworld.org/docid/49f58c8a2.html>
- United Nations Treaty Series. (2005d). *Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*. <https://www.refworld.org/docid/49f58cee2.html>
- United Nations Treaty Series. (2010a). *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*. <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/55859/Part/I-55859-080000028055e06f.pdf>
- United Nations Treaty Series. (2010b). *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*. [https://www.icao.int/secretariat/legal/docs/beijing\\_protocol\\_multi.pdf](https://www.icao.int/secretariat/legal/docs/beijing_protocol_multi.pdf)
- United Nations Treaty Series. (2014). *Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft*. [https://www.icao.int/secretariat/legal/Docs/Protocole\\_mu.pdf](https://www.icao.int/secretariat/legal/Docs/Protocole_mu.pdf)

**EURINT**

**ISSN: 2392-8867 2393-2384**

**DOI: 10.47743/eurint-2023-SOL**

