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Introductory Document:

Responses to blurriness between external and internal security: legal aspects with regard to the fight against terrorism

STATUS QUO

With the attacks of 11 September 2001 and the later terrorist acts in Europe and elsewhere, it became clear that a new threat situation has arisen due to global terrorism. Terrorism is an international phenomenon, both in terms of its targets and in terms of the composition and networks between terrorist groups. Terrorist attacks are aimed at producing the highest possible number of random victims. Unlike countries at war, terrorist groups and networks act without any regard for laws, not even for international humanitarian law. By contrast, the state forces entrusted with protecting the public are bound to uphold the rule of law without compromise.

The European Union Member States have responded to this new threat by re-examining and reforming their existing national legislation. Numerous countries have made their criminal law stricter, introduced substantive and procedural improvements and passed preventive administrative and financial measures. However, the fight against international terrorism has pushed national law to its limits: The measures are designed to fight crime within the borders of an individual country. The legal instruments needed to respond to this global threat often vary from country to country.

An entire package of measures was passed at European level, including the European Security Strategy, the EU Counter-Terrorism Strategy, the EU Strategy for Combating Radicalisation and Recruitment and corresponding Action Plans. These instruments created a framework for a coherent policy on combating terrorism in the EU. Essentially, police co-operation consists of intensifying and improving the sharing of information.

Immediately after 11 September 2001, the United Nations reacted with a resolution of the Security Council (1373 (2001)). In September 2006, the General Assembly unanimously adopted the United Nations Global Counter-Terrorism Strategy (60/288). In addition, a discussion of whether and how terrorist attacks should be categorized within the system of

existing international law has begun, with the aim of further seeking responses to this new threat also at the level of international law.

CHALLENGES

The current threat posed by international terrorism constitutes a special challenge not only for individual countries and the European Union, but for the international community and existing international law as well. The question of how to further improve countries' counter-terrorism capacities with the assistance of international co-operation and international law requires careful examination. Enhanced sharing of information or further development in the area of international law could supplement or reinforce national or European measures.

For the European Union and its Member States, this raises the question of how they could contribute to a co-operation or to the development of joint positions with regard to international law not only among each other but also with third states.

The threat of international terrorism also affects the interface between internal security and defence policy. In its political assessment, special expertise of all stakeholders competent for internal security matters has to be taken duly into account. The increasing overlap between internal and external security demands, therefore, comprehensive responses to these questions, responses which touch on both the second and third pillars of the European Union.

QUESTIONS FOR DISCUSSION

- Are the existing national and European legal instruments sufficiently targeted to respond to the current threat posed by international terrorism, in particular with regard to Home Affairs policy challenges?
- Should we analyse the areas where national legal systems are not able to answer the challenges satisfactorily and where, in order to fill existing legal gaps, European action or the use of international law can provide added value?
- Should we contribute to developing joint positions or a shared legal understanding on how terrorism can be categorized within the system of international law and what international legal framework should be applicable to combating terrorism?
- In particular with regard to expulsion, deportation and surveillance of persons with a terrorist background, should we launch a discussion process between the Member States and further partners on possibilities for further cooperation or common approaches especially vis-à-vis receiving countries?
- In order to better represent Home Affairs interests in international law making and in international bodies or conferences: How could a coherent cross-pillar approach ensure that special concerns of Home Affairs policy are better taken into account?