VOL. 7 - SPECIAL ISSUE
(2026)

Journal of International Criminal Law

Online Scientific Review

Special Issue
EU-GLOBACT HANDBOOK

EUROCRIMES

EDITED BY
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ISSN: 2717-1914

www.jiclonline.org

EU-GLOBACT HANDBOOK

EUROCRIMES

A Q&A Compendium and Structural Frameworks on Offences Under Article 83 TFEU

This JICL Special Issue constitutes one of the scientific products the Jean Monnet Module (2023-2026) *Transnational Crime and EU Law: Towards Global Action against Cross-Border Threats to Common Security, Rule of Law, and Human Rights* (EU-GLOBACT) – (Coordinator: Prof. Dr. Anna Oriolo).

Project funded by European Commission Erasmus + Programme – Jean Monnet Action Project number 101126599. Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

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OVERVIEW

The Journal of International Criminal Law (*JICL)* is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publications;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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International Terrorism

by Luisanna Savino[*]

KEY FINDINGS: Dogmatic transition of the phenomenon; Relevance of specific intent in the definition; Anticipation of the punishability threshold (Advanced prevention); Subsidiary role of Artificial Intelligence and administrative limits; Consolidation of the mutual recognition model.

I. Why does International Terrorism Represent an Asymmetric Threat of Global Interests and What Political Tensions Hinder a Unified Definition?

International terrorism is a criminal phenomenon toward which the attention of the international community had already focused on the eve of World War II, and it still remains an element of extreme relevance within the agenda of States and main international organizations.

Traditionally framed within the category of **transnational crimes** – meaning illicit conducts that, despite carrying international significance, do not fall under the jurisdiction of international tribunals, as their repression is handed over exclusively to individual States – international terrorism has assumed a **new legal and political configuration** following the events of **September 11, 2001**: given the tragedy of those events, a progressive recognition of the phenomenon within the framework of **international crimes** has taken place.

Despite the centrality of the phenomenon, the **legal definition** of international terrorism remains controversial. This is due to its intrinsic complexity, historical layering, and multi-faceted nature, elements that make it hard to elaborate a single shared definition at

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the international level. Indeed, one of the problems that most hinders the fight against terrorism is the **lack of agreement on the definition** of terrorism itself.
The core of this problem lies within the **underlying political tensions**:

- On one side, there is a **broad alignment of countries and scholars** who believe that the definition of international terrorism **should not include** the actions of those who fight for the freedom of their people, oppressed by a foreign occupation, as frequently recalled in the debate surrounding the **Israeli-Palestinian conflict**.
- On the other side stands a **group of States and experts** who point out that what must be considered is **the act itself**, regardless of the context in which it occurs or its underlying motivations: an act, therefore, can be qualified as international terrorism even if framed within the struggle for the assertion of the **principle of self-determination of peoples**.

These divergences within the international community became evident on numerous occasions within the **UN General Assembly**, demonstrating the fear that an excessive exploitation of the notion of terrorism could lead to qualifying as terrorists those figures fighting to obtain the independence of their peoples under the principle of self-determination. In this context, the **Palestinian question** has been frequently cited as an emblematic example of such tensions.
Historical events have demonstrated that international terrorism has always assumed different forms and is, therefore, in **continuous evolution**. During and after World War I, acts of terrorism took on a central role as tools of struggle for the liberation of peoples subjected to foreign occupation, as demonstrated by partisan struggles. Subsequently, international terrorism was understood as a form of **planned and systematic violence**, exercised especially in urban contexts and against State entities by clandestine groups pursuing objectives of a political nature. It has also been highlighted how terrorism is an extremely complex and articulate phenomenon, seeing the **intersection between criminology and politics**, expressing itself through dynamics of war, propaganda, and, in some cases, religion.

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A. Schmid, Political Terrorism: A Research Guide, 1983

Within the international sphere, the definition by Schmid is well-known and considered conventional by many, especially in the United States:
"Terrorism is a method of combat in which random or symbolic victims serve as instrumental targets of violence. The members of a group are placed in a state of chronic fear (terror), derived from previous acts of violence or the credible threat of violence. The victimization of the target group is considered abnormal by most observers [...] which in turn creates an audience of spectators beyond the immediate target of terror [...]. The purpose of terrorism is either to immobilize the target of terror to produce disorientation and/or acquiescence, or to mobilize secondary targets."

In general, international terrorism presents certain **distinctive traits** identifiable in the adoption of **calculated acts of violence** against individuals and groups, aimed at creating a climate of intimidation and terror, and often at causing death in the name of political or religious purposes. It is, however, appropriate to note how the **Security Council**, in **Resolution 1373** adopted in September 2001, affirmed that **it is not necessary to provide a unified definition** for this international crime to elaborate the most effective possible protections against the phenomenon.

The approach of this resolution, which represented a **turning point** in the fight against international terrorism by imposing **binding obligations** on Member States regarding prevention and enforcement, demonstrates that one must not focus on the etymology of the phenomenon, but rather on the **motivations of terrorist groups**, on their **modalities, and strategies**. The Security Council, in fact, preferred not to dwell on the legal definition of "international terrorism", but rather adopted the objective of elaborating **urgent and concrete measures** to strengthen international cooperation.

International law provides a series of protections against terrorism; in particular, it drives States to **cooperate effectively** with one another in preventing and fighting the crime. This discipline is articulated across various legal instruments aimed at regulating specific profiles of enforcement against terrorism, integrated by further international conventions and treaties intended to regulate cooperation in criminal matters, the protection of refugees, as well as the rules relating to the **law of armed conflicts**.

The international regulatory framework must be integrated with what has been laid out by the **European Union (EU)**, which, following the events of September 11, 2001, activated itself especially in the area of **Common Foreign and Security Policy (CFSP)** to identify terrorist groups and entities, implementing measures against the financing of terrorism with acts such as the **freezing of financial assets and economic resources** belonging to the terrorist groups themselves. In a series of regulatory acts adopted in December 2001, the European Council proposed specific tools to fight international terrorism, even establishing a true *black list* for persons and entities involved in terrorist activities.

The EU, therefore, significantly intensified its internal processes of cooperation and integration in the face of terrorist aggression, despite the discordant orientations adopted by individual national governments.

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Specialized European Union Agencies against Terrorism

The institutional integration of the European Union against the terrorist threat consolidated thanks to the establishment and reinforcement of specialized agencies within the Area of Freedom, Security, and Justice:

- **Europol (1998):** Central hub for intelligence exchange and coordination of national police forces, reinforced with the European Counter Terrorism Centre (ECTC).
- **Eurojust (2002):** Organism aimed at implementing judicial cooperation in criminal matters among magistrates of Member States for the prosecution of cross-border terrorist offenses.
- **ENISA (2004):** European Union Agency for Cybersecurity, essential for preventing structured cyber-attacks on critical infrastructures managed by terrorist cells (cyber-terrorism).
- **Frontex (2005):** Agency for the control and security of the external borders of the Union, fundamental for intercepting the flows of foreign terrorist fighters.

II. What are the Essential Elements Required to Define the Crime of Terrorism?

Despite the considerable doctrinal and political divisions previously highlighted, there are several essential elements that are typically considered regarding the definition of the crime of international terrorism. These prerequisites, derived from numerous international conventions on the matter and declarations of the UN General Assembly, can be summarized into three peculiar characteristics:

- **Intent to spread terror:** The eversive action is programmatically oriented toward instilling chronic fear within the civil population or segments of it.
- **Indiscriminate nature of the attack:** The conducts strike indiscriminately, deliberately overriding the core international law principle of distinction between civilians and combatants.
- **Presence of an eversive specific intent:** The action is guided by precise ideological, political, religious, racial, or ethnic-national purposes.

Furthermore, to fully understand the phenomenon, it is important to consider that these acts constitute a **violation, or a threat, to values of universal relevance** such as international security and peace, likewise harming the protective prerogatives held by diplomatic agents and UN officials.

Under the profile of **multilevel dogmatic qualification**, it should be noted that terrorism, depending on the circumstances in which it occurs, can be linked to the categories of *crimina iuris gentium*:

- **War crime:** Where the conduct is inserted and perpetrated within the context of an armed conflict, whether international or internal.
- **Crime against humanity:** In the hypothesis where the terrorist act is part of a widespread, massive, and systematic attack directed against the civilian population.

Ultimately, international terrorism **does not currently fall** under the material competence of the Rome Statute of international criminal courts. However, in light of the severe events of recent years and the emergence of a global form of terrorism, States could evaluate the opportunity of this choice and decide to attribute competence over terrorism to the **International Criminal Court (ICC)** or create an *ad hoc* special tribunal for these crimes.

The attacks of **September 11, 2001**, in New York and at the Pentagon marked the establishment of a **new generation of terrorist activities**, which raised growing concerns within the international community. The fact that the United States suffered the most significant terrorist attack ever organized highlighted above all the **transnational organizational framework** possessed by certain terrorist groups such as, for instance, *Al-Qaeda*, which distinguished itself by its complete **financial autonomy** from States, acting as a global asymmetric actor.

This triggered, in particular, the fear throughout the West that Osama Bin Laden's terrorist network might attempt to acquire **weapons of mass destruction (WMD)**. These concerns emerged as early as October 2001. In this context, the **International Convention for the Suppression of Acts of Nuclear Terrorism of April 13, 2005**, assumes particular importance, aimed at establishing a common legal basis to prevent, prosecute, and punish acts of terrorism involving nuclear materials and devices. In particular, the Convention specifies the criminal figure of **nuclear terrorism**.

REFERENCES

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005, Art. 2

"Any person commits an offense within the meaning of this Convention if that person unlawfully and intentionally: (...) Makes use in any way of radioactive material or a device, or uses or damages a nuclear facility in such a manner as to cause or risk causing the release of radioactive material: (i) with the intent to cause death or serious bodily injury; or (ii) with the intent to cause substantial damage to property or to the environment; or (iii) with the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing any act."

Further structural changes occurred after September 11: international terrorism began to **exploit modern technologies** to establish itself and instil fear. Specifically, with the war in Iraq in 2003, a specific strategy of terrorist groups emerged, aimed at **maximizing the media dissemination** of every single attack. This technique proved particularly effective in the kidnappings of Western journalists and workers, followed by the broadcasting of images and news across media platforms, **amplifying the global psychological impact** of the events.

To best understand the post-9/11 phenomenon of international terrorism, it is fundamental to consider the proposal for a Council of the European Union framework decision on the fight against terrorism, presented by the Commission in September 2001, which laid the groundwork for criminal harmonization within the European area.

REFERENCES

Proposal for a Council Framework Decision on Combating Terrorism (COM/2001/521 Final, Explanatory Memorandum), 2001

"Terrorism is an old phenomenon but, unlike in the past, today's terrorism is particularly dangerous as the real or potential impact of armed attacks is increasingly devastating and lethal. This is due to the growing sophistication and fierce ambition of terrorists, as recently demonstrated by the tragic events of September 11 in the United States, or to technological developments, both regarding traditional weapons and explosives and regarding even more terrifying tools such as chemical, biological, and nuclear weapons. Furthermore, new forms of terrorism are emerging. The profound changes in the nature of terrorist offenses show the inadequacy of traditional forms of judicial and police cooperation in the fight against terrorism. […] Given the absence of borders within the European Union and the fact that the right to free movement of persons is guaranteed, it is necessary to take new measures regarding the fight against terrorism. Terrorists can take advantage of the differences in legal treatment across different Member States."

Understanding the current threat landscape requires a preliminary overview of global terrorism, with a specific focus on **the evolution of characteristics of terrorist groups**:

- **First Generation (Traditional-National Phase):** Rigid and pyramidal hierarchical structures, strong dependence on the logistical or financial support of specific state sponsors, actions targeted at local or regional levels for self-determination.
- **Second Generation (Al-Qaeda Phase - Post-9/11):** Transnational network with a molecular character, total financial autonomy from States, digitalization of propaganda, and systematic exploitation of global media resonance.
- **Third Generation (Contemporary Scenario)**: Fluid reticular structures (hub-and-spoke), lone wolves radicalized on the web, use of decentralized technologies (cryptocurrencies, darknet channels), and the constant threat of cyber-terrorism.

Recently, the terrorist association that has raised the most concerns across the international community overall is the Islamic State (**ISIS** or *Daesh*). This entity distinguishes itself from all previous terrorist groups, particularly from *Al-Qaeda*, due to the nature of its communicative strategy: **ISIS features a utopian-type propaganda** centred on the immediate construction and territorial governance of a self-proclaimed global caliphate, unlike *Al-Qaeda* which always maintained a predominantly **nihilistic** propaganda direction of pure asymmetric destruction of the Western adversary. Thus, the contemporary terrorist threat constitutes an unprecedented challenge to peace among nations, the stability of international relations, and the internal security of States across all geopolitical areas.

III. How do the UN and NATO Shape the Global Counter-Terrorism Response?

The **United Nations (UN)** was born with the signing of the Charter of the United Nations on June 26, 1945, in San Francisco. Composed of 193 members, representing almost the entirety of the international community, it is the highest multilateral organization aimed at promoting international peace and security. Within the Charter, there are already regulatory elements indicating the organization's purposes, specifically in Art. 1 and Art. 2. Furthermore, Art. 103 of the Charter establishes a *supremacy clause* asserting the preeminence of the UN over "other" obligations incumbent upon Member States in the event of a conflict between such obligations and the UN Charter, or the obligations arising therefrom.

REFERENCES

Charter of the United Nations, 1945, Art. 103
In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail. This provision constitutes the supremacy clause (*supremacy clause*) asserting the **preeminence of the UN Statute** and the binding decisions of its organs over any other treaty obligations binding Member States.

In line with its objectives, the **UN Global Strategy** against international terrorism consists of adopting measures structured around **four essential purposes**:

- **Countering the conditions** conducive to the spread of the phenomenon (e.g., conflict resolution, socio-economic development).
- **Preventing and combating** terrorism as such, by depriving groups of operational and financial resources.
- **Developing the capacity of States** to face the threat, strengthening bilateral technical assistance.
- **Ensuring respect for human rights** and the rule of law as the fundamental basis for the fight against terror.

In this framework, the **General Assembly**, the only organ in which all Member States hold the right to vote, plays a fundamental role in elaborating a legal framework to promote international cooperation. The Assembly operates through subsidiary organs termed **Standing Committees**, composed of representatives from all States. Among these, the following play a crucial role in countering eversion:

- **The Third Committee (Social, Humanitarian and Cultural Committee):** Deals with issues relating to human rights and their preventive protection, monitoring that emergency enforcement laws do not violate fundamental freedoms.
- **The Sixth Committee (Legal Committee):** A technical-legal organ which in 1994 adopted the Declaration on Measures to Eliminate International Terrorism.

Furthermore, the General Assembly established, via Resolution 51/210 of 1996, an ad hoc Committee (Ad Hoc Committee) which led to the adoption of the International Convention for the Suppression of the Financing of Terrorism (New York, 1999) and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). Since 2001, this Committee has held the mandate to draft a **Comprehensive Convention on International Terrorism** aimed at elaborating a general, abstract, and unified definition of terrorist offenses, applicable also to hypotheses not governed by older sectoral conventions. To date, however, due to well-known political divisions over the notion of a terrorist, this Convention **has not yet entered into force**. In 2006, the Assembly consolidated this path by officially adopting Resolution 60/288, which established the **United Nations Global Counter-Terrorism Strategy**.

Regarding the **Security Council**, it plays a central role in operational enforcement against the phenomenon. Composed of fifteen members, including **five permanent members with veto power** (China, France, Russian Federation, United Kingdom, and United States), it intervenes through binding resolutions under Chapter VII of the UN Charter and targeted sanctions regimes (*targeted sanctions*). One of the most relevant instruments in the history of international law is **Resolution 1373** adopted on September 28, 2001, in the immediate aftermath of the September 11 attacks. With this act, the Council qualified terrorist attacks as a threat to international peace and security, reaffirming the **right to individual and collective self-defence** under Art. 51 of the UN Charter.

REFERENCES

UN Security Council, Resolution No. 1373, 2001, Operative Paragraph 2

"Decides that all States shall: (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists; (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information; (c) Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens; (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens."

The centrality of Resolution 1373 lies finally in its establishment, under operative Paragraph 6, of the **Counter-Terrorism Committee (CTC)**, tasked with monitoring the implementation of obligations by all members.

The ratio behind establishing the Counter-Terrorism Committee (CTC) is to create a permanent and superior forum to which all Member States have the legal obligation to periodically provide reports and information regarding the status of adjustment of their domestic criminal laws. The organ considers terrorism a serious violation of international peace and security, thus justifying the adoption of counter-measures in all its forms, in accordance with the principles established by the UN Charter. This monitoring and verification activity on the field was subsequently strengthened and institutionalized by the Security Council through Resolution 1535 of 2004, which established the Counter-

Terrorism Committee Executive Directorate (CTED), a special executive office designed to provide direct technical and operational support to the Committee itself.
Ultimately, it can be noted that the traditional approach to the terrorist phenomenon, based on mere domestic prevention and criminal repression, is today inadequate in light of the exceptional development and growing transnational complexity reached by terrorist organizations. These have structured criminal networks capable of jeopardizing one of the most essential international public goods: security, launching a direct attack against the democratic, civil, and political values of the global community. The cross-border width of the phenomenon has generated no small difficulties in the elaboration of a general international convention on the matter by the UN, leaving room for the intervention of European regional legislators.
In addition, the role played by **NATO** is also central in the analysis of counter-strategies, especially following the terrorist attacks of September 11, 2001. In this context, the Alliance recognized terrorism as a **threat to collective security** and progressively developed various measures to face it. The reaction of NATO to the attacks against the United States was immediate and of particular legal relevance: for the first time, in fact, Member States decided to **activate Art. 5 of the Washington Treaty**, namely the **collective defense clause** (also recognized by Art. 51 of the UN Charter). In doing so, NATO formally brought the legal effects of asymmetric terrorist acts under the traditional notion of an **armed attack**.
NATO's commitment materialized through a growing cooperation with partners and international organizations, particularly with the United Nations. Relevant under this profile was the role played by the Alliance in **Afghanistan**, which contributed to structuring global counter-terrorism cooperation on the field. The Atlantic Alliance, thanks to its **transatlantic dimension**, its dense network of global partnerships, and its own operational capacities of *intelligence-led defence*, is therefore capable of bringing a lasting contribution to the continuous challenge against international terrorism.

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The NATO-ICI Strategic Framework in Combating Terrorism

- Activation of Art. 5 NATO Treaty (Post-9/11): Equating the effects of an asymmetric terrorist attack to a traditional armed attack, activating the right to collective self-defense under Art. 51 of the UN Charter.
- Positive Obligations *ex* ICSFT Convention (1999): Duty of States to criminalize financing, freeze suspicious funds, cooperate in criminal assistance, and apply the rule of *aut dedere aut judicare*.
- Scope of the ICJ Judgment of January 31, 2024: Delimitation of the scope of application of the ICSFT Convention. It hits individual crimes of financing (even if committed by state organs) but does not configure a direct responsibility of the State for eversive acts of its own emanation, while imposing the strict duty to investigate suspects (Art. 9 ICSFT).

A crucial aspect to consider in this context is the issue of the state liability in the financing of terrorism. The **International Convention for the Suppression of the Financing of Terrorism (ICSFT)** is a United Nations treaty adopted by the General Assembly in 1999 through Resolution 54/109. Its main purpose is to prevent, suppress, and punish the financing of terrorist acts, preventing financial flows, funds, and assets from being used to support such activities. The Convention specifically defines the concept of terrorism financing, including all operations aimed at providing, collecting, or employing resources for the realization of eversive acts, and establishes **precise positive obligations of**

criminalization and cooperation binding Member States. It represents, therefore, a fundamental multilevel tool to hit terrorist groups in their vital financial resources.
In relation to the application of the ICSFT and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the **international litigation between Ukraine and the Russian Federation** carries a cornerstone academic significance. Ukraine's appeal originates from the geopolitical events occurring from 2014 onward in the eastern area of the Country (Donbass) and in Crimea. Kyiv lamented the violation, by Moscow, of the obligations provided by the Convention, accusing it of having provided funds, heavy weapons, and operational support to illegal armed groups (such as the militias of the Donetsk and Luhansk People's Republics) responsible for severe attacks against civilians, including the **downing of Malaysia Airlines Flight MH17**.
Ukraine claimed direct **State responsibility** of the Russian Federation for having, through its state organs and other agents, subsidized the preparation and commission of terrorist acts perpetrated by non-state actors. The case concluded on **January 31, 2024, with the judgment on the merits by the International Court of Justice (ICJ)**.

CASE STUDY

International Court of Justice, Ukraine v. Russian Federation Judgment, 2024

The ruling of January 31, 2024, represents the **first judgment on the merits by the International Court of Justice on the ICSFT Convention** and offers crucial points of reflection for legal doctrine, given the scarcity of judicial precedents on international terrorism. The ICJ issued a very strict decision under a literal profile, clarifying that **the ICSFT Convention does not directly govern the financing of terrorism by the State as such (State-sponsored terrorism)**, but forbids and represses financial conduct when it is perpetrated by **individual physical persons** (be they private subjects or single state organs acting individually). Therefore, the Convention imposes positive obligations of prevention and repression of illicit conduct on one's own territory, regardless of the nature of the authoring subject.
In the specifics of the judgment, the Court was called upon to verify the violation of various conventional obligations:

- **Art. 8**, on measures of identification, freezing, or seizure of illicit funds.
- **Art. 9, para. 1**, relating to the **obligation to investigate** and look into reports of suspected subjects on one's territory.
- **Art. 10**, which enshrines the cornerstone principle of international criminal law ***aut dedere aut judicare*** (extradite or prosecute).
- **Art. 12, para. 1**, in matters of assistance and mutual cooperation in criminal investigations.
- **Art. 18, para. 1**, on the general duty of preventive cooperation and information exchange.

The International Court of Justice excluded the existence of the violations complained of by Ukraine for almost all the cited articles due to a lack of evidence on the specific terrorist intent of the transferred funds (deemed aimed at financing warlike guerrilla warfare but not terrorist acts against civilians under the ICSFT standard). However, the ICJ ascertained the actual violation of Art. 9, para. 1, by Russia, condemning Moscow for the failure to carry out adequate, timely, and genuine investigations regarding the official and detailed reports sent by Kyiv about suspected financiers of terrorism present on Russian territory.

IV. How do the United Nations Balance Counter-Terrorism Operations with Human Rights?

The protection of human rights in the fight against terrorism proves to be a delicate and complex topic on which, especially in the last decade, the attention of international doctrine and practice has cantered. No unanimous orientation is found, however, regarding which value should prevail when a conflict arises between security requirements and the protection of individuals.
Legal doctrine is historically split around **three macro-ideological approaches**:

- **Criminal Emergency Approach:** Moves from the conviction that the protection of human rights can be legitimately compressed and derogated in function of temporary necessities tied to the security of the State.
- **Case-by-Case Balancing Approach:** Considers that the right of individuals to protection against terrorist violence falls itself among fundamental rights; it follows that States should balance proportional measures between collective security and individual protection.
- **Absolutist Protection Approach:** Considers violations of human rights radically unjustifiable, even if motivated by the eversive purpose of combating the terrorist phenomenon; according to this perspective, States and supranational organizations should always act in line with fundamental guarantees, regardless of security contingencies.

This uncertainty directly involved the UN, which treated the topic especially within the framework of the Third and Sixth Committees of the General Assembly. In particular, the **Third Committee** placed the accent on fundamental profiles such as: the **principle of legality** in the criminalization of acts, the **principle of non-discrimination**, **procedural guarantees**, the **prohibition of torture**, and the obligation of ***non-refoulement*** (prohibition of return toward countries at risk).
Regarding the Sixth Committee, Special Rapporteur Martin Scheinin highlighted how the absence of an agreement on the definition of the phenomenon still blocks the completion of negotiations on the global counter-terrorism Convention.
Among the innovations introduced by the General Assembly, particular attention must be reserved for the **UN Global Counter-Terrorism Strategy (2006)** and the *Counter-Terrorism Implementation Task Force*. The Strategy is of particular relevance since it represents the first comprehensive framework approved at the international level to face the problem. One of its four pillars concerns precisely **respect for human rights and the rule of law** as basic elements; however, Special Rapporteurs highlight how this centrality does not always find matching verification in concrete operational practice of the United Nations.

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Operational Criticalities on the Field

In a particular way, **four core areas** have been identified in which, during counter-terrorism operations on a global scale, possible violations of international norms have been recorded:
1.The modalities of **prolonged detention** and special prison regimes lacking immediate legal assistance.
2.The compression of guarantees of a **fair trial**, due to the use of secret evidence or intelligence sources non-disclosable to the defence.
3.The violation of the **absolute prohibition of torture** and inhuman or degrading treatment during interrogations conducted in conflict zones or offshore detention centres
4.The disproportionate limitation of **other fundamental rights**, such as the freedom of expression, freedom of association, and the right to privacy through mass electronic surveillances.
It has been highlighted by international doctrine how such violations result sometimes perpetrated directly by intergovernmental organizations or multilateral agencies operating on the field. However, the **international legal responsibility of the UN** and of Member States has been frequently excluded or limited by domestic and foreign judicial organs applying the rules on institutional immunities of the United Nations. It emerges, therefore, that despite the General Assembly having paid formal attention to the protection of human rights, in specific operational contexts profound structural criticalities exist that pose the urgent problem of the Organization's responsibility for conducts non-compliant with international obligations.

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Limits to Balancing Human Rights in Counter-Terrorism

- **Absolute Inalienable Rights (Core Rights):** Rights that can never be compressed, not even in situations of military or eversive emergency. They include the right to life, the prohibition of torture, the prohibition of slavery, and the principle of criminal legality penale (*nullum crimen sine lege*).
- **Proportional Derogable Rights:** Rights that admit temporary and proportionate limitations for national security needs, provided they are provided by law and necessary in a democratic society. They include the right to privacy, freedom of movement, freedom of assembly, and freedom of expression.

V. How has the European Union's Response to the Phenomenon of International Terrorism been Structured?

The fight against terrorism represents by now one of the priority themes for the international community. In particular, the **European Union (EU)**, in its capacity as an international organization and security community, plays a crucial role in preventing and regulating terrorism offenses. Due to its complex nature, the EU has had to face intricate interactions between transnational and governmental levels in elaborating counter-terrorism policies and strategies.
It must be reiterated how, prior to the attacks of September 11, 2001, counter-terrorism measures at the community level were overall **limited and fragmentary**, almost entirely relegated to spontaneous intergovernmental cooperation. The decisive impulse within the **Common Foreign and Security Policy (CFSP)** configures itself, therefore, as a reaction to those tragic events, from which arose a security emergency that led to a progressive, albeit sometimes uneven, regulatory development.

The European Union pursues the objective of **harmonizing national legislations** of individual Member States and has distinguished itself for the constant search for common defense and prevention strategies against the terrorist phenomenon, in coherence with the mutation of the same tied also to new geopolitical assets and the use of new computer technologies.
In this regard, it is important to consider **Common Position 2001/930/CFSP**, a decision of historical significance adopted by the Council of the European Union on December 27, 2001, with the aim of outlining the general principles of the fight against terrorism. This act established a strict legal and operational framework, introducing specific measures:

- The **suppression of any form of support**, active or passive, for entities or persons involved in terrorist acts.
- The adoption of measures to **prevent recruitment** of members by terrorist groups.
- The **elimination of the supply of weapons**, as well as of falsified or fraudulent identity and travel documents.

The main purpose of Common Position 2001/930/CFSP was to give immediate and effective execution within the European legal order to the resolutions of the United Nations Security Council, in particular to **Resolution 1373 (2001)**, binding Member States to apply targeted sanctions and to establish the first official lists (*black lists*) for the freezing of assets.
In addition, given that terrorist organizations for the realization of their illicit activities require huge sums of money and, in general, considerable economic resources (such as armaments, equipment, logistical transfer of human resources, recruitment, and training), the European Union began to impose itself through regulatory acts of judicial cooperation in criminal matters. The first true pillar was **Framework Decision 2002/475/JHA** of June 13, 2002, issued in order to combat international terrorism. This decision indicated as an **activity of participation in a terrorist group** also the conduct of those who provide material or financial resources with full awareness of the eversive purpose of such contribution.
This initiative – subject to subsequent modifications and finally entirely replaced by **Directive (UE) 2017/541** – constitutes the broadest European action of prevention and enforcement against the terrorist phenomenon since, following the latter, a series of coordinated and incisive measures have been arranged, such as the freezing of capital, the blocking of suspicious financial activities, and direct cooperation of judicial police.
The **legal basis** for such a powerful European regulatory production is constituted today by **Art. 82 and 83 of the Treaty on the Functioning of the European Union (TFEU)**. In particular, Art. 83 authorizes the European Parliament and the Council to establish minimum rules aimed at uniforming, among Member States, the definition of offenses and the scale of penalties to apply in relation to criminal phenomena of particular gravity and with a marked transnational dimension.

VI. How does the European Union Regulate Terrorist Offenses and Related Conduct?

From the outlined regulatory framework, it emerges that over time, and following numerous attacks perpetrated by organizations belonging to the so-called Islamic State (**ISIS**), the European Union has placed the fight against terrorism as an absolute priority.

Despite the progress made, the need to adapt existing legislation to the new face of the threat became clear. In particular, with the aim of intensifying enforcement actions, provisions were introduced to punish behaviours connected to the phenomenon of **Foreign Fighters** – combatants who travel abroad to join terrorist activities, training, or combat.

The attacks perpetrated in Paris and Copenhagen in early **2015** represent some of the most serious episodes of terrorism in recent European history; these events shook world public opinion, prompting European institutions to rapidly evolve the legislative framework to fill the gaps that emerged in preventing and monitoring the flows of radicalized combatants.

The events in the Danish capital on February 14 and 15 that year perfectly illustrate this turning point. The perpetrator, a man of Danish origin inspired by radical Islamist ideologies, was identified as Omar El-Hussein. Both attacks targeted symbolic venues: the first was carried out on February 14 at the Krudttønden cultural center, where a debate on freedom of expression was taking place with the French ambassador to Denmark. El-Hussein opened fire, killing one person and wounding three police officers. The second attack took place in the early hours of February 15 in front of the Great Synagogue in Krystalgade, where a young member of the Jewish community was killed and two other officers were wounded. The perpetrator was eventually killed during a shootout with the police. Both attacks marked a shift in the perception of the terrorist threat in Europe, strengthening international cooperation and raising concerns about the domestic radicalization of young people in Europe.

The EU, therefore, found itself facing a period of high terrorist risk. Despite the political declarations and agendas adopted (such as the European Agenda on Security and the Security Union), the measures implemented – including terrorism alerts, the temporary reintroduction of controls in certain areas of the internal Schengen borders, and an enhanced exchange of information – did not prevent other serious attacks from occurring between 2016 and 2017 in cities such as Brussels, Nice, Berlin, Stockholm, Manchester, and London.

The emergence of new actors, such as ISIS/Da'esh, lone wolves, and *Foreign Fighters*, as well as the evolution of terrorist operational methods, prompted the European Union to review and update its legislation. In March 2017, after months of debate among Member States, the Council and the European Parliament approved **Directive (UE) 2017/541**, repealing the previous Framework Decision 2002/475/JHA. This new act transposed and updated European legislation in light of the growing threat, broadening the concept of terrorist offense and introducing the category of **"related offenses"**. Specifically, in Art. 3 of Title II, terrorist offenses and behaviours attributable to a terrorist group are analytically listed, now including traveling for terrorist purposes and online self-training.

REFERENCES

Directive (EU) 541, 2017, Title II, Art. 3 (Terrorist Offenses)

Directive (UE) 2017/541 defines, in Art. 3, terrorist offenses as intentional acts which, given their nature or context, may seriously damage a country or an international organization. These acts include: attacks on a person's life, attacks on physical integrity, kidnapping or hostage-taking, and massive destructions (infrastructures, public places), when committed for terrorist purposes.

VII. What does the Council of Europe Provide Regarding the Prevention of International Terrorism?

As previously highlighted, terrorism represents a growing threat to world security, and the frequency of attacks on European soil has triggered a widespread fear among the population.

The fight against terrorism has become, over time, an absolute priority for the **Council of Europe**, which, since its inception, has reserved a primary role for the **defence of democracy and human rights**. Its organs are called upon to establish effective legal and technical instruments to ensure adequate protection for the population and a rigorous surveillance system. The actions of this institution are based on **three fundamental pillars**:

- **Strengthening the international legal framework:** Through the drafting of binding multilateral conventions that fill the regulatory gaps among Member States.
- **Addressing the causes of terrorism:** Intervening on factors of social vulnerability, intolerance, and isolation that fuel extremism.
- **Protecting fundamental values:** Guaranteeing that criminal enforcement never sacrifices the rule of law, democracy, and individual liberties.

In particular, after September 11, 2001, the firm stance of the Council of Europe has been to seek a **just balance between freedom and security**. A prominent problem in the geopolitical framework is represented by the increase in European citizens who chose to join the ranks of the Islamic State (**ISIS**) in Iraq and Syria. The UN estimated the presence of approximately **25,000 foreign combatants** coming also from European countries (specifically France, the United Kingdom, and Russia).

To face this phenomenon, and in implementation of **UN Resolution 2178 (2014)**, the Council of Europe strengthened its regulatory apparatus through an **Additional Protocol** to the Convention on the Prevention of Terrorism, opened for signature in **2015**. According to the institution, the pursuit of security must never debase the values of democracy; on the contrary, it is necessary to increase protections that are strictly compliant with the **principle of legality** and humanitarian law. This also serves to avoid playing into the ultimate purpose of terrorism, which is to provoke violent, liberticidal, and disproportionate reactions from States.

Regarding the regulatory architecture, the Council of Europe has addressed the problem since the 1970s but intensified legislative production after 2001. The **"Council of Europe Convention on the Prevention of Terrorism"** of May 16, 2005 (Warsaw Convention) assumes a milestone importance. This act focuses on **prevention in the broadest sense**, aiming to fill the gaps in international law identified by **CODEXTER** (Committee of Experts on Terrorism, established in 2003), such as the completion of agreements on extradition and judicial cooperation. Likewise, the Convention qualifies as autonomous criminal offenses those **preparatory instrumental acts** that contribute to the commission of terrorist offenses, including **recruitment**, **training**, and **public provocation**.

REFERENCES

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), 2005, Art. 5, Art. 6, and Art. 7

The Convention imposes on signatory States the obligation to criminalize three key behaviours prior to the terrorist act: public provocation to commit a terrorist offense (Art. 5), recruitment for terrorism (Art. 6), and training for terrorism (Art. 7), understood as providing practical instructions on weapons or explosives with awareness of the eversive purpose.

Building upon this regulatory foundation, the criminalization of preparatory acts is structured around **the three operational pillars of the Council of Europe (Warsaw Convention)**:

- **Public Provocation (Art. 5):** Punishes the distribution of messages to the public that cause a risk of terrorist acts, balancing the sanction with Art. 10 ECHR on freedom of expression.
- **Recruitment (Art. 6):** Incriminates the act of soliciting or inducing another person to commit or participate in a terrorist or associative action.
- **Training (Art. 7):** Configures as an autonomous offense the act of imparting technical instructions for the manufacturing or use of explosives and dangerous substances for eversive purposes.

VIII. What Role does Artificial Intelligence Perform in European Counter-Radicalization Strategies?

Within the framework of enforcement measures against international jihadist terrorism, the phenomenon of **radicalization** constitutes one of the most complex profiles to intercept. Radicalization refers to all those activities aimed at recruiting new followers and indoctrinating them according to the dictates of extremist ideologies. This concept is highly articulated: part of the doctrine defines it as the psychological and behavioural process through which individuals adhere to violent extremism.

The United Nations delineates **violent extremism** as the beliefs and actions of people who support or employ violence to achieve ideological, religious, or political goals, including terrorism and other forms of structured and politically motivated violence.

Indoctrination often occurs through explicit incitements to embrace slaughterous ideologies, sometimes accompanied by detailed operational instructions for the jihadist cause (such as digital manuals for the artisanal manufacturing of explosive devices or toxic substances). Nowadays, radicalization occurs **prevalently through computer tools**. Although the *dark web* offers greater cryptographic protection from police wiretaps, a massive use of the *surface web* and commercial social networks remains to spread propaganda to an undifferentiated audience. A third form of radicalization is identified in the *online* humiliation of victims of attacks: this conduct, besides offending human dignity, exponentially increases the risk of emotional proselytism among vulnerable subjects.

Therefore, the role of technology is essential in the responses of Western legal systems, both from a regulatory and jurisprudential standpoint. Faced with the pervasiveness of digital propaganda, the need arises to timely curb the phenomenon through **automated tools (intelligent algorithms)** capable of detecting the intrinsic risk of contents and

flagging them for immediate removal, in line with Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online.
This is often followed by the use of criminal law tools to punish the "radicalizer". However, the criminal law approach is not the only applicable path. **Administrative measures of advanced prevention** can be adopted, particularly within the framework of **immigration law**, especially when criminal action proves difficult due to the vagueness or ambiguity of the disseminated messages. If the author of the eversive conduct is a foreigner, domestic authorities can resort to **ministerial expulsion for reasons of national security**.
The main modalities of multilevel administrative intervention include:

- The **preventive denial of entry** or renewal of the residence permit due to a threat to State security.
- The **refusal of assisted repatriation** of one's own citizens (*foreign terrorist fighters* or their family members) detained in foreign conflict zones, if considered subjects with a very high rate of radicalization.

CASE STUDY

European Court of Human Rights, Judgment H.F. v. France, 2022
An indispensable jurisprudential reference point is the famous ruling of the Grand Chamber in the case *H.F. and Others v. France*. The European Court of Human Rights was called upon to verify whether the refusal by the authorities in Paris to repatriate French women and children (family members of ISIS *foreign fighters*) held in the Syrian prison camps of Al-Hol constituted a violation of Art. 3, para. 2, of Protocol No. 4 to the ECHR (the right to enter the territory of the State of which one is a citizen). The Grand Chamber established that **there is no absolute and automatic right to the repatriation of one's citizens from abroad**, since the State does not exercise effective territorial jurisdiction in those areas. However, the Strasbourg judges imposed on the State the obligation to guarantee a review procedure for repatriation requests that is immune from arbitrariness and equipped with adequate procedural guarantees of judicial review, balancing internal security with the best interests of the minors involved.

In order to intercept these communication flows before they lead to eversive action on the field, modern internet hosting providers (hosting service providers) leverage Artificial Intelligence by applying four main technological tools:

- **Natural Language Processing (NLP):** Analyses textual language to detect suspect content. Through lexical or vector-based analyses, the algorithm evaluates the risk level of the text by analysing critical terms or the recurrence of multiple "tokens" semantically linked to jihadist rhetoric, automatically interpreting the overall communicative context.
- **Image Matching:** Instantly compares images and videos uploaded by users with centralized databases containing extremist material or already known terrorist logos, blocking their upload in real time through *hashing* techniques.
- **Clustering:** Grouping algorithm aimed at cataloguing similar content to identify hidden *patterns*, automated dissemination networks, and connections between profiles that are apparently distant on the web.
- **Recidivism Tackling Algorithms:** Aim to identify radical subjects who continue to create new fictitious accounts to spread eversive content even after the removal of previous ones, using advanced behavioural analysis techniques and device fingerprint tracking.

Technology based on Artificial Intelligence is therefore a key and complementary element in the fight against transnational radicalization: thanks to complex machine learning algorithms, the processes of identification, classification, and assessment of eversive risk have become immediate, proactive, and extremely effective for the security of the European Space.

REFERENCES

Regulation (EU) 784, 2021
This text imposes on hosting service providers the legal obligation to **remove flagged terrorist content within one hour** from the receipt of the removal order issued by the competent authority of a Member State. The regulation introduces severe sanctions for non-compliant providers and establishes a common framework for the use of automated proactive measures based on Artificial Intelligence.

IX. How has Domestic Legislation Reacted to and Regulated International Terrorism?

To understand Italian legislation regarding the prevention and contrast of international terrorism, it is first essential to consider **Art. 270 of the Criminal Code**, which, in its original 1930 version, was mainly oriented toward the repression of specific criminal offenses connected to the subversion of the constitutional and political order, predominantly of an **internal nature**.
Following the global impact of terrorism at the international and European level post-September 11, the gaps in the Italian system were filled through **Decree-Law No. 374 of October 18, 2001** (converted with modifications into **Law No. 438 of December 15, 2001**). This landmark reform radically rewrote and amended **Art. 270-*bis* of the Criminal Code**, typifying new associative forms and extending criminal sanctions to the conduct of anyone who promotes, constitutes, organizes, directs, or participates in **associations aiming at the commission of acts of violence for purposes of terrorism, including international terrorism**.

REFERENCES

Italian Criminal Code, Art. 270-*bis* (Associations for the Purpose of Terrorism, Including International Terrorism)
"Whoever promotes, constitutes, organizes, directs or participates in associations which propose the commission of acts of violence for purposes of terrorism or subversion of the democratic order shall be punished with imprisonment from seven to fifteen years. (...) The purpose of terrorism occurs also when the acts of violence are directed against a foreign State, an eversive institution, or an international organization."

The choices made in 2001 were subsequently expanded, since enforcement actions could not remain merely emergency-based and confined to the traditional associative model alone. The Italian legislator, driven by Euro-unitarian sources, felt the need to abandon an exclusively sector-specific and *ex-post* repressive perspective: there was an urgent need for an **anticipated vision of advanced prevention**, capable of impacting individual behaviours, logistics, and the early identification of those responsible.
Following these objectives, the Italian legal system structured a **double criminal and penitentiary track**, which includes:

- The introduction of **abstract danger offenses with individual conduct**, aimed at punishing preparatory acts prior to the association (such as recruitment *ex* Art. 270-*quater* c.c., training *ex* Art. 270-*quinquies* c.c., and the subsequent incrimination of behaviours connected to *foreign terrorist fighters* and *online* self-training via Decree-Law 7/2015).
- The extension of the **suspension regime of ordinary penitentiary treatment rules *ex* Art. 41-*bis* of the Penitentiary Law** (known as *carcere duro* or harsh prison regime) to subjects detained or convicted for crimes of international terrorism and subversion, in order to sever communication links between the detainee and the external organization.

However, those criminal phenomena which, although qualified as terrorism within individual historical systems, **do not assume a transnational significance**, remain strictly excluded from the notion of international terrorism. This is the case, for example, of the **Red Brigades** (*Brigate Rosse*) in Italy, whose eversive action, although terrorist, structurally exhausted its logistical and political effects within the national territory, without harming interests shared by a plurality of States, without involving foreign cells, and without targeting international organizations.

CASE STUDY

Italian Cassation Court, Fifth Section, Judgment No. 15444, 2023

In this important ruling, the Supreme Court ruled on the offense of **self-training for activities with purposes of terrorism (Art. 270-*quinquies* c.c.)**, examining the case of a young man who radicalized independently on the *surface web* by downloading ISIS military manuals for manufacturing explosive devices and chemical toxins. The judges of legitimacy established a key principle: for the punishability of individual self-training conduct, interaction with a physical instructor or formal insertion into a cell is not required, but it is indispensable to prove the **suitability and unequivocal nature of the acts** committed by the agent, ensuring that the acquisition of technical instructions is animated by the specific intent (*dolo specifico*) of wanting to commit a subsequent act of terrorist violence, thus excluding from the criminal scope the mere informative or study interests.

FOCUS

The Progression of Repression Instruments in the Italian System

● **Historical Phase (Original Art. 270 c.c.):** Focus centered on protecting the state personality and on internal associative crimes (e.g., subversive associations and armed bands of an internal political matrix).
● **Transnational Emergency Phase (Decree-Law 374/2001 – Art. 270-*bis* c.c.):** Extension of the associative offense to the international dimension. Configuration of the terrorist purpose also in case of attacks directed against foreign States or supranational organizations.
● **Advanced Prevention Phase (Decree-Law 7/2015 and subsequent reforms):** Anticipation of the punishability threshold to purely individual and preparatory behaviours. Incrimination of traveling abroad for terrorism purposes (*foreign fighters*), financing a single conduct, and self-training via telematic and encrypted channels.

X. How do Europol, Eurojust, and the EPPO Coordinate Cross-Border Eversive Investigations?

Operational enforcement against eversive networks within the European Union demands a level of inter-institutional coordination capable of overcoming the traditional

fragmentation of national criminal investigations. The molecular nature of modern terrorism requires that information exchange occurs immediately and in a centralized manner.

The security architecture of the European Union articulates around three judicial and police pillars:

- **Europol:** Through the **European Counter Terrorism Centre (ECTC)**, it serves as the central hub for sharing tactical and strategic information, monitoring financial flows and online propaganda. Furthermore, it annually publishes the *TE-SAT* report on terrorism situation and trends in the EU based on data from Member States. In 2021, a comprehensive decrease in arrests was recorded (388 compared to 449 in 2020), with a clear prevalence of investigations into jihadist terrorism (260 arrests concentrated in France, Spain, and Austria) and an increase in arrests related to right-wing extremism, contrasted by a decline in anarchist-insurrectionalist terrorism.
- **Eurojust:** Coordinates criminal prosecution among the national judiciaries of Member States, facilitating the transmission of evidence and the simultaneous management of arrest warrants. In 2019, Eurojust established the **Counter-Terrorism Register (CTR)**, a centralized database that collects in real time information on criminal proceedings and convictions for terrorist offenses across the Union, allowing for the detection of hidden links between parallel investigations and files.
- **EPPO (European Public Prosecutor's Office):** Although the original competence of the EPPO is focused on financial crimes harming the financial interests of the Union (Regulation EU 2017/1939), the Office coordinates its action in cases where complex fiscal fraud, smuggling, or money laundering are exploited or managed by eversive cells for the **autonomous financing of terrorism**.

To understand how these pillars interact in practice, the coordinated action against terrorism can be summarized in three consequential phases:

- **Interception Phase (Europol - ECTC):** Monitoring of the telematics network, tracking of anomalous financial flows, and publication of TE-SAT statistics to guide enforcement actions across the territory.
- **Data Matching Phase (Eurojust - CTR):** Insertion of judicial data into the Counter-Terrorism Register. Automatic detection of cross-border connections between files from different prosecutor's offices.

Operational Phase (National Prosecutor's Offices / Investigation Squads): Coordinated execution of searches, asset seizures, and simultaneous arrests through the use of the European Arrest Warrant (EAW) and the European Investigation Order (EIO).

CASE STUDY

Court of Justice of the European Union, PNR, 2022

An essential jurisprudential pillar is the judgment of the Court of Justice regarding Directive (EU) 2016/681 on the use of passenger name record (**PNR**) data. Called upon to assess the legality of the bulk collection of air travellers' data, the Court validated the Directive, recognizing its absolute necessity for the prevention of international terrorist crimes and the tracking of foreign fighters. However, in line with the orientation of protecting fundamental rights, the CJEU established that the application of the PNR system must be **limited to what is strictly necessary**, banning the use of predictive algorithms based on discriminatory profiles and requiring that the automated processing of data always be subject to effective human review before proceeding to stops or searches at the border.

XI. Key Findings

The scientific and regulatory analysis carried out within this paper leads to the outline of **five fundamental findings**:

- **Dogmatic transition of the phenomenon:** The attacks of September 11, 2001, and the rise of global asymetric organizations such as **ISIS** (characterized by a utopian-territorial propaganda compared to the nihilism of *Al-Qaeda*) imposed a progressive recognition of international terrorism. Traditionally confined to the category of transnational crimes subject to purely domestic enforcement, the phenomenon has assumed the characteristics of an **international crime** that attacks the peace, collective security, and fundamental rights of the global community.
- **Relevance of specific intent in the definition:** In the absence of a unified global comprehensive international convention (hindered by political tensions surrounding the principle of self-determination of peoples), European law (Directive EU 2017/541, which updated Framework Decision 2002/475/JHA) defines the offense of terrorism through the mandatory concurrence of two elements: an **objective material element** (the commission of intrinsically serious acts) and a **qualified subjective element (specific eversive intent / *dolo specifico*)**, aimed at intimidating the population or unduly coercing the will of a State or an international organization.
- **Anticipation of the punishability threshold (Advanced prevention):** The multilevel legal response (UN, Council of Europe, European Union, and Italian risiones *ex* Art. 270-*bis* c.c. and following) has progressively abandoned the purely *ex-post* repressive logic. Safeguarding security has dictated the **autonomous criminalization of individual preparatory acts**, punishing instrumental conducts prior to the execution of the attack, such as recruitment, logistical training (Warsaw Convention 2005), and **online telematics self-training** (Law 146/2006 and anti-terrorism reforms).
- **Subsidiary role of Artificial Intelligence and administrative limits:** Countering digital radicalization relies on automated systems based on Artificial Intelligence (*Natural Language Processing* and *Image Matching* techniques). Where the vagueness of messages prevents criminal prosecution in compliance with the principle of specificity, legal systems resort to **immigration law and ministerial expulsions** for security reasons, balancing State protection with the

procedural guarantees established by the jurisprudence of the ECtHR (the *H.F. v. France* case on the limits to the right of return).

- **Consolidation of the mutual recognition model:** Operational coordination within the Area of Freedom, Security, and Justice relies on the interoperability of special agencies (Europol, Eurojust) and the use of the **Counter-Terrorism Register (CTR)**. The effectiveness of the European counter-terrorism system depends on bypassing the political filters of national governments and applying mechanisms for the mutual recognition of evidence and arrest warrants (the PNR system), balanced by the absolute respect for fundamental rights established by the Court of Justice of the EU (*Kadi* judgment).