



Peace Palace · The Hague · The Netherlands · 31 May 2010

Remarks by **Mr. Gilles de Kerchove**, EU Counter-Terrorism Coordinator

Your Highness, Excellencies, distinguished guests,

I am very pleased to have been one of those who were first consulted about the creation of the International Centre for CT. The two areas which it proposes to address are the most complex which CT has to deal with, and are themselves inter-related.

The *prevention of terrorism* and the *international law framework* both need greater attention from scholars and policy makers, as part of a balanced and comprehensive approach.

The EU CT strategy was formulated in 2005 to provide the framework for just such an approach.

As I think most of you know, it is based on the 4 pillars of Prevent, Protect, Pursue and Respond. In short, we should first try to stop people becoming terrorists in the first place. If that does not succeed we need to do our best to protect ourselves from them. If attack nevertheless takes place, we need to effectively pursue the attackers and respond to/minimize the consequences.

Over the last five years, the EU has made great strides, particularly in developing cooperation relevant to *Protect* and *Pursue*. Important examples include work on making it more difficult for terrorists to travel or to protect our borders or our critical infrastructure, the development of Europol and Eurojust through Joint Investigation Teams and the European Arrest Warrant. Many of these measures are relevant to a lot more than just countering terrorism, but it was the urgency of the counter-terrorism argument that was decisive in getting them agreed upon.

However, in comparison to Protect and Pursue, the *prevention of terrorism* is a much more complex task, and an area where I am convinced that *we need to do much more*. There is no simple relationship which explains why any individual or group decides to take up violence to pursue political objectives. What the UN Global Strategy calls 'conditions conducive to the spread of terrorism' are exactly that, conditions in which terrorism can spread but not all societies faced with such conditions trigger such a violent response.

Poverty in itself, for example, rarely triggers political violence, but there are a number of countries in which the lack of development is giving rise to a growing pool of young people whose economic and political aspirations are not being recognised. Countries which cannot provide *good governance* of all their territory allow the development of 'safe havens' in which terrorist groups can thrive.

The EU has made a start in providing direct support for the counter-terrorism efforts of a number of key countries, in South Asia, the Sahel and Horn of Africa, through the 'Instrument for Stability'. However, responding fully to these problems is a much broader challenge for the development community. There can be *no security without development*, but equally *no development without security*: security in which a farmer feels safe accepting micro-credit to dig a tube well, without worrying that it will be destroyed by fighting, or even the security to send his daughters to school.

As well as the physical conditions which are conducive to the spread of terrorism, we need to address the *intellectual or propaganda war*. We need to challenge the ideas of those who promote violence as a respectable or even obligatory response to what they see as the injustices present in the modern world. The European Commission has sponsored extensive research in the area of what is called 'radicalisation' or otherwise 'violent extremism'.

I have also encouraged a number of Member States with particular interest in the subject to take a lead within the EU on particular topics. *Spain* has concentrated on the training of religious leaders in Europe; the *United Kingdom* has led work on countering the Al-Qaeda propaganda narrative; *Germany* has led work on monitoring the internet; *the Netherlands* has done remarkable work on developing the role of local authorities; first *Sweden* and then *Belgium* have been working on community policing; and *Denmark* has taken up the study of 'de-radicalisation': how to support individuals exiting from organisations linked to terrorism.

The study of the prevention of terrorism and its *linkage to the rule of law* represents another major challenge. For the European Union, *respect for international law*, including human rights and international humanitarian law, plays an important role in the fight against terrorism. Efforts to combat terrorism conducted in this manner make us stronger and more secure. Our societies are based on the rule of law and fundamental rights and freedoms. This is exactly what terrorists want to destroy and we must not let them to do so. Perceived *double standards* or non-respect of our values, human rights and international law can *contribute to radicalization and recruitment*.

The EU is committed to promoting human rights *externally* - EU views are for example set out in the *EU guidelines on torture*. The EU is also strengthening the observance of human rights in our *internal*

system: The Charter of Fundamental Rights is now referred to in the Lisbon Treaty, and the EU plans to join the European Convention of Human Rights. The EU's IHL guidelines express our commitment to promotion of international humanitarian law, including in our political dialogues.

The launching of your institute is very timely - the Lisbon Treaty commits the EU to the development of international law. Hence, the EU could become a more active player in the international law debate.

The fight against international terrorism poses *complex legal challenges*. Not all international legal questions are clear-cut and easy to answer. Therefore, I very much welcome the mission of the International Centre for Counter-Terrorism in the Hague to focus on international legal aspects of counter-terrorism. A lot of work needs to be done in this area, and the Institute would be ideally placed to bring together scholars and practitioners from the international law, counter-terrorism, security and human rights communities to explore the international legal issues in an informal and international setting.

The *legal advisers of the EU Member States* have worked in the EU working group on international law to develop EU views on international law principles in the fight against international terrorism. Since 2006, the EU and the Legal Adviser of the US State Department have engaged in a dialogue about counter-terrorism and international law.

Issues discussed include :

- the use of the concept of 'war' and 'laws of armed conflict' in the fight against terrorism as a matter of law;
- the relation between and applicability of international humanitarian law and international human rights law in the fight against terrorism;
- the rights of detainees apprehended in the course of the fight against terrorism, in particular the conditions at Guantanamo Bay;
- the treatment of prisoners and interrogation methods used in detention centres where detainees are held; and
- so-called renditions and secret detention centres.

The EU welcomes President Obama's new course in the fight against terrorism, which includes the intended closure of Guantanamo, the end of secret detention and the end of so-called 'enhanced interrogation methods'. This is an opportunity for closer transatlantic counter-terrorism cooperation and for joined reflection on international legal issues in the fight against terrorism.

Guantanamo Bay was not only a legal enormity, but also a self inflicted wound in the battle of ideas. It was a recruiting tool for Al-Qaeda. We agree with President Obama that Guantanamo likely created more terrorists around the world than it ever detained. It is noticeable that while Guantanamo has

been a staple of Al-Qaeda propaganda, the criminal trials of AQ linked terrorists in Europe have not been used by AQ for propaganda purposes. Treating terrorists as the criminals they are is not only the right thing to do legally, but deprives them of the glamorous 'warrior' status they crave and which is so easily turned to propaganda.

In June 2009, the EU created a framework to help the US in the closure of Guantanamo Bay, which has facilitated the reception of detainees by EU Member States and Schengen partners. On this basis, EU Member States and Schengen partners have committed between themselves to accept more than twenty former Guantanamo detainees. This shows the EU's commitment to helping President Obama to close Guantanamo. The EU helped the US against the background of changed US policies in the fight against terrorism - both sides committed to explore the possibility of developing a Set of Principles in the future. Work done by the Institute could feed into this debate.

So what are the international *legal issues* that could be explored by the ICCT – The Hague? *And what are the challenges?*

First of all, it would be important to look into the *application of existing international legal norms*, try to define principles of international law applicable to counter-terrorism and define which areas need more exploration and re-enforcement. While there are some grey areas, many others are well defined. It would be counter-productive to jump on new solutions without establishing first what the existing legal framework is.

Detention, interrogation, and prosecution of terrorist suspects are also important issues. In the European view, law enforcement is the appropriate legal framework outside of armed conflicts such as Afghanistan or Iraq.

The Centre could try to bring clarity to *the limits of armed conflict in the fight against terrorism*. When does IHL apply? One should explore difficult cases, for example what to do about a person that has fought in the armed conflict in Afghanistan, has a command and control position in Al-Qaeda and is captured in Kenya?

All these questions have consequences for the detention and targeting of terrorist suspects. *Targeted killings* for example are very much in the media today and could be looked at from an international law perspective.

In order to strengthen the law enforcement approach, one could study in more detail *challenges in the prosecution of terrorist suspects* and how to strengthen the international framework and international cooperation in this context.

Safeguarding human dignity in detention and interrogation is an important issue where the law provides much clarity. Work could focus on re-affirmations, for example the customary law nature of Art. 75 AP I, access for the ICRC to detainees, redress possibilities for victims, prosecution of abuses.

The relationship between human rights law and international humanitarian law and extraterritorial application of human rights law, including customary law, could also be addressed.

Procedural rights of persons detained in connection with the fight against terrorism could be looked at. As a matter of policy, what are the grounds and procedural rights and safeguards for detention in non-international armed conflict?

Given the debate on *renditions*, it would be important to identify lawful transfer procedures and their requirements.

The focus of ICCT – The Hague is unique. Bringing together scholars and practitioners from different communities, as the Institute plans to do, would facilitate a balanced debate to develop policy ideas that could find a consensus in the different communities and would be workable in practice. It could feed into the existing political dialogues on these issues and broaden the scope to include more countries and difficult players.

The Lisbon Treaty, in Article 3 (5) TEU, states that:

"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter".

I am convinced that this new Foreign policy objective of the development of international law is a significant way in which the EU can act to strengthen the international framework on which sustainable counter terrorism must be based. That is why I very much welcome the establishment of this Centre and look forward to working with you and supporting you as best I can.