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MOTION FOR A RESOLUTION

further to the Council and Commission statements

pursuant to Rule 37(2) of the Rules of Procedure

by Elmar Brok

on behalf of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy

and Jorge Salvador Hernández Mollar

on behalf of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on 'Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001'

B5-0530/2002

European Parliament resolution on ‘Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001’

The European Parliament,

- having regard to Articles 21 and 39 of the Treaty on European Union,
- having regard to its recommendation of 5 September 2001 to the Council, pursuant to Article 39(3) of the Treaty on European Union, on the role of the European Union in combating terrorism¹,
- having regard to its resolution of 4 October 2001 on the extraordinary European Council meeting in Brussels on 21 October 2001,²
- having regard to its resolutions of 29 November 2001 on the draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime,³
- having regard to the Council framework decision of 13 June 2002 on combating terrorism and to the Council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between the Member States, and the prior European Parliament resolutions of 29 November 2001,⁴
- having regard to its resolution of 15 May 2002 on the transatlantic relationship,⁵
- having regard to the Declaration of the Seville European Council of 21-22 June 2002 on the contribution of the CFSP, including the ESDP, in the fight against terrorism,
- having regard to Resolution 1267 of 15 October 1999 of the United Nations Security Council on the situation in Afghanistan,
- having regard to the following UN-Security Council Resolutions:
 - 1269 of 19 October 1999 condemning unequivocally all acts of terrorism as criminal and unjustifiable and calling on Member States to adopt specific measures in this respect,
 - 1373 of 28 September 2001 requiring international cooperation to combat threats to international peace and security caused by terrorist acts,
 - 1390 of 16 January 2002 on the situation in Afghanistan,

¹ OJ C 72, 21.03.2002, p. 135-41

² OJ C 87, 11.04.2002, p. 216-19

³ OJ C 153, 27.06.2002, p. 295

⁴ OJ C 153, 27.06.2002, p. 284

⁵ P5_TA(2002)0243.

- A. keen to assess the achievements of and the prospects for the European Union's anti-terrorism policy one year after the tragic events of 11 September 2001,
- B. whereas, since the 11 September attacks, the terrorist threat has taken on a global dimension and thus calls for a response at the same level,
- C. whereas the fight against terrorism blurs the traditional distinction between foreign and domestic policy,
- D. whereas there are links between international terrorist networks and the international drugs and weapons mafias, and there is an imperative need for reform of the UN conventions on drugs,
- E. aware of the fact that terrorism is often related to long-lasting armed conflicts, recognising that the international mechanisms for civil conflict prevention and civil crisis management have very often failed and expressing the will to draw lessons from this development and to strengthen timely civil conflict prevention,
- F. whereas the European Union is committed to the fight against terrorism in all its dimensions, whether its origin or activities occur inside or beyond its borders, and to supporting the efforts undertaken by its Member States through the effective use they must make of all the necessary instruments, within the limits defined by the rule of law and with full respect for human rights,
- G. whereas the need of the European Union to protect itself against the threat of terrorism should be reflected in the Common Foreign and Security Policy and the European Security and Defence Policy, alongside the need to confront other international threats,
- H. whereas recognition of the threat posed by terrorism shows that European policy must not be restricted to a narrow definition of defence but must be enlarged to accommodate a wider concept of security,
- I. whereas measures – whether international or domestic – to combat the threat of terrorism must strengthen and not weaken the rule of law and should in particular be fully in line with the Geneva Conventions,
- J. whereas European Union action in this area must be based on a strengthening of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law set out in Article 6(1) of the Treaty on European Union, must fully comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States as general principles of Community law, as stipulated by Article 6(2) of that Treaty, and must also be based on the measures to prevent and combat terrorism laid down in Article 29 of that Treaty,
- K. whereas the fundamental rights of individual citizens must be respected, and measures that limit such rights must be avoided, bearing in mind that any restrictions on freedoms and rights resulting from measures to combat terrorism would represent a success for the

terrorists because they would impinge on the true values of functioning democracy,

- L. whereas no Member State should use anti-terrorism legislation to eliminate or diminish the rights of those who, within organisations and movements, challenge the government's policies or practise social opposition or civil disobedience,
- M. whereas, if terrorism is to be prevented, the provisions laid down in the Treaties concerning effective Union action at internal and international level must be exploited (Articles 21 and 34 of the Treaty on European Union), while ensuring, nonetheless, that a balance between liberty, justice and security is maintained,
- N. welcoming, in principle, the global anti-terrorism strategy which the European Council laid down quickly and effectively, on 21 September 2001, by adopting the European action plan to combat terrorism, which, since that meeting, has been updated at the meetings in Ghent (19 October 2001), Laeken (14 December 2001) and Seville (21-22 June 2002),
- O. deploring the fact that it was not involved in the drafting of that plan and that it has been involved in the framing of only a few of the 64 measures implementing⁶ it , in clear contravention of the Treaties, and resolved to explore the possibility of bringing the matter before the Court of Justice,
- P. whereas the European Council, in the conclusions of its extraordinary session of 21 September 2001, categorically rejected any equation of groups of fanatical terrorists with the Arab and Muslim world,

* * *

1. Welcomes the reaffirmation by the European Council in the Seville Declaration that the fight against terrorism will continue to be a priority objective of the European Union and a key plank of its external relations policy, and emphasises the cross-border nature of terrorism;
2. Takes the view that a global strategy implemented by the Union and its Member States with a view to preventing and combating terrorism must:
 - uphold the principle of the rule of law
 - be subject ex ante and ex post to democratic scrutiny by national parliaments and the European Parliament;
 - include effective measures to prevent and punish terrorist crimes, but also guarantee respect for fundamental rights and civil liberties;
 - promote democratic dialogue and action to further the attainment of social, economic

⁶ See latest update of the Road Map, considered by the General Affairs Council of 22 July 2002 – doc. 10773/2/2002

and political justice;

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International implications of the fight against terrorism

3. At international level, this calls, first of all, for the adoption by the United Nations of the World Anti-terrorism Convention⁷ and the Convention on the Elimination of all Forms of Terrorism⁸. That adoption is vital if the principles laid down in the dozen or so specific international agreements and in the resolutions of the General Assembly⁹ and the Security Council, in particular Resolution 1269/99 and, above all, Resolution 1373/2001, are to be consolidated; in these negotiations, the EU will have to defend with a single voice the European model based on the protection of fundamental rights, by seeking to secure a strengthening of those rights in the context of the measures to be taken by the Security Council¹⁰, and the principles of fundamental rights as reflected in the relevant legislative and operational measures¹¹;
4. Recalls that the principles of the collective security system as embodied in the UN Charter are:
 - a general prohibition on the threat or use of force in international relations and the peaceful resolution of disputes (according to Article 2(3) and (4) of the UN Charter and the jurisprudence of the International Court of Justice (ICJ));
 - in the case of an armed attack, as was the case on 11 September, the restoration and maintenance of international peace and security is primarily the responsibility of the UN Security Council;
 - the right of self-defence of an attacked state can only be legitimate if it is authorised by the UNSC or otherwise complies with international law and if it is proportionate, necessary and effective (see Article 51 of the UN Charter);
 - the humanitarian law principles which distinguish between civilian and military targets and between combatants and non-combatants are also applicable when conducting duly authorised and proportionate military operations under Chapter VII (Articles 39-42) of the UN Charter¹² and, furthermore, at UN level the Security

⁷ Points 8, 9 and 10 of the Road Map.

⁸ Points 8 and 9 of the Road Map.

⁹ See the Declaration of the General Assembly of 9 December 1994 on measures to suppress international terrorism.

¹⁰ In particular when that body acts pursuant to Chapter VII of the UN Charter and implements preventive measures in connection with the freezing of the assets of terrorist organisations.

¹¹ In particular in connection with the follow-up to Resolutions 1373/01 and 1390/02 (points 6 and 7 of the Road Map).

¹² See 1949 Geneva Red Cross Conventions and the additional Protocols of 1977 - the ICJ 1966 Advisory Opinion where Court stated : 'States must never make civilians the object of attack and must consequently never

Council and its own member states must respect non-derogable fundamental rights protected by Article 4(2) of the ICCPR (International Covenant on Civil and Political Rights);

5. Confirms the constructive role being played by the European Union and its member states in international cooperation to combat terrorism consistent with their legal responsibilities in the context of the United Nations, NATO and other international organisations and conventions;
6. Affirms the principle that the response to terrorism must not be disproportionate, bearing in mind that the diplomatic, social and economic turbulence caused by heavy-handed intervention risks causing reactions that may hamper future efforts to secure the peaceful resolution of conflicts;
7. Considers that, although efforts for the peaceful resolution of conflicts and management of crises must have a high priority, it is necessary to be firm in denying terrorists any reward for their crimes, especially in the interests of victims and their families and in squeezing out serious organised crime from globalised trade; reiterates that the EU rejects any attempt to justify, excuse, tolerate or condone acts of terrorism by any act or declaration that does not reject those terrorist activities; any attempt to pay tribute to members of terrorist groups or to misuse democratic institutions for the benefit of terrorist groups must be condemned;
8. Does not believe that a strategy of pre-emptive strikes is the most effective way in the fight against terrorism;
9. Reiterates its concern at rising unilateralism in US foreign policy; emphasises, nevertheless, the need to develop within the transatlantic framework a common and comprehensive approach to security and the risks to security; emphasises as well that such an approach should be established in a balanced way in which both the EU and USA contribute on an equal footing;
10. Is concerned by the growing distortion of the transatlantic link, and calls on the Council and the Member States to focus their attention on enhancing European unity and cooperating with the US within the new Atlantic Alliance framework; reaffirms that NATO remains a fundamental guarantee for Euro-Atlantic stability;
11. Reiterates the EU's support for India's proposal to draw up a common agreement in the framework of the UN regarding the fight against terrorism;
12. Recognises the reform efforts of NATO to respond to new global challenges such as the fight against terrorism, and that in this respect the reform of its political and military structures is shifting from collective defence to collective security; underlines that the concept of collective security is based primarily on non-military approaches to conflict

use weapons that are incapable of distinguishing between civilian and military targets and - USA Department on Defense, Report to Congress on Conduct of Persian Gulf War, 31 ILM 612(1992)).

prevention aimed at taking away the roots of conflict instead of trying to combat the resulting phenomena;

13. Underlines in this regard that for the EU multilateralism should continue to be the leading approach in external crisis intervention, particularly within the framework of the United Nations;
14. Recalls that with the increased and conscious deployment of its traditional instruments such as aid, development of democracy, trade and diplomacy, the EU stands for a comprehensive notion of security, and is increasingly making conflict prevention the guiding principle of its foreign policy action, thereby tackling not only the symptoms of terrorism, but also its root causes, such as poverty, human rights infringements, oppression and forcible relocation of persons, and lack of education;
15. Recalls that in the post-11 September world the fight against terrorism has become a major objective of the ESDP, which, however, cannot be carried out by military means alone, and that the prevention and repression of terrorism requires a whole range of non-military measures such as intelligence-sharing and police and judicial cooperation, and trade and industry, for which full interinstitutional and inter-pillar cooperation to ensure democratic accountability and respect for civil liberties will be needed, or the building or rebuilding of democratic institutions, infrastructure and civil society in failed or failing states;
16. Considers it essential that the EU give more priority to reducing the phenomenon of failed or failing states, since they often function as states of origin for terrorism and international crime;
17. Asks the European Council and the Member States to continue to denounce infringements of human rights throughout the world, even in countries that are allies in the fight against terrorism;
18. Considers that Member States and candidate countries should share a common definition of terrorism, in accordance with the Council framework decision on combating terrorism, which should be part of the acquis;
19. Recalls that the fight against terrorism should not impinge on the political social and human rights of citizens, and should not be a pretext for supporting massive repressive acts by governments against their citizens; also stresses that the EU's greatest contribution to preventing terrorism will be its capacity to be effective in the building or rebuilding of democratic institutions, social and economic infrastructure, good governance and civil society, and in combating poverty, alienation and the risk of a 'clash of civilisations';
20. Points out that governments must safeguard legal certainty under all circumstances, even for persons suspected of terrorism-related crimes;
21. Welcomes the activities and initiatives undertaken at the national and regional level by the candidate countries and other partners in Europe, showing their strong commitment to combat terrorism and their readiness to contribute by concrete means (enhanced exchange

of information and intelligence, better cooperation between borders, immigration and police services, elimination of terrorist financing sources etc) to strengthening European security;

22. Stresses the need steadily to improve the functioning of the judiciary in candidate countries including the training of judges, prosecutors and investigators in all questions related to the judicial cooperation in criminal matters; calls on the Commission to develop further the method of 'twinning' which has proved to be efficient in strengthening the capacities required;
23. Considers it important that the European countries which are not part of the present enlargement process should be fully integrated in effective pan-European mechanisms of judicial cooperation;
24. Considers it essential to promote economic and political stability at the external borders of the enlarged Union by making the best possible use of the PHARE, TACIS and INTERREG programmes and developing cross-border cooperation;
25. Emphasises that the solving of the Middle East conflict in accordance with UN resolutions is an essential element in the fight against terrorism;
26. Believes that the agreements the European Union signs with its partner and associated countries should specify the obligations that bind the parties to those agreements in the field of the fight against terrorism by including an anti-terrorist clause that could be drafted on the basis of the content of the exchange of letters between the EU and the Republic of Lebanon concerning cooperation in the fight against terrorism;
27. Believes that the key role being played by the quartet of the USA, the EU, the Russian Federation and the UN in solving the Middle-East conflict should also carry over into international efforts to combat terrorism in general;
28. Urges that the political dialogue should be focused more sharply on particular countries having key regional roles, such as India, Pakistan, Iran and the Arab states, and that relations with these countries be strengthened through appropriate instruments of cooperation and assistance;
29. Agrees with the conclusions of the Foreign Affairs Council meeting of 22 July 2002 that the development of the ESDP must take further account of capabilities that may be required to combat terrorism, whether for the protection of forces deployed in EU crisis management operations or as regards the protection of civilian populations against the effects of terrorist attacks;
30. Welcomes the agreement in the Council of 25-26 March 2002 on implementing the Galileo global satellite navigation and positioning system and wishes this autonomous European capability success;
31. Believes that the European Union is especially well placed to deploy non-military tools in tasks of social and economic reconstruction, and that such actions help in the long run to

reduce the influence of extremist groups liable to promote terrorist crimes;

32. Recalls the appeal of the Euro-Mediterranean parliamentary forum of June 2002 to give unconditional backing to the convening of an International Conference on Terrorism under the auspices of the United Nations and adopt a joint approach to the drafting of a general convention on terrorism;

Inside the Union

Strengthening the principle of the rule of law

33. Given that one of the fundamental aim of terrorism is to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, we must ensure a democratic dialogue between institutions and citizens, thus acting to strengthen the institutional and legal framework guaranteeing peaceful coexistence between peoples and between citizens of all communities, whether at international, European, national or local level, and to support all the efforts undertaken through the effective use of all the necessary instruments within the limits defined by the rule of law and in full respect of human rights;
34. Doubts that effective coordination of a European anti-terrorism policy is possible under the present structure of the Union and recognises that the new dimensions of the fight against terrorism demand major changes to the Treaties; to this end, urges the Convention on the Future of Europe to study the proper ways to modify them, notably by exploring how to avoid the present EU three-pillar division and by creating the necessary legal basis to allow the EU to freeze assets and cut off funds of EU persons, groups and entities involved in terrorist acts and included in the EU list;
35. At the future European level, it is essential to create one single and comprehensible structure for the European Union, including the Charter of Fundamental Rights, and to underline how important it is for civil liberties to be made an intrinsic part of all Community matters.

In order to secure European democratic scrutiny and judicial control, the importance of which was shown not least in the action that followed September 11th, we need to make sure that a new single structure embraces all European JHA areas that have a direct effect on citizens.

With the Treaties as they currently are, it is essential, at European Union level, that the legal provisions already in place should be strengthened by means, in an external perspective, of the inclusion of anti-terrorist clauses as part of the EU agreements with its partner and associated countries and, in an internal one, of the adoption of the framework decision on the freezing of assets⁷; Member States should also step up their efforts to prevent and detect the financing of terrorism.

In addition to any enhanced cooperation between police and judicial authorities we must ensure that in parallel there are safeguards for the individual and so the Parliament calls on the Commission, to present as soon as possible:

- legislative measures dealing with the protection of the rights of persons facing prosecution based on the Consultation Paper ‘Procedural safeguards for suspects and defendants in criminal proceedings’
- an assessment of the feasibility of mutual recognition of evidence obtained in connection with trials
- an EU third-pillar instrument for the protection of personal data specifically in the context of law enforcement, thereby ensuring there is a balance between data protection and the imperatives of judicial and police cooperation;
- appropriate guidelines regarding compensation for victims of terrorist acts;

36. Considers that the fight against terrorism demands more institutional flexibility; recommends, therefore, introducing the rule of enhanced cooperation, including in matters of security and defence policy, and, in particular, with regard to military operations in the fight against terrorism that go beyond the Petersberg tasks;

37. Any decision to restrict the free movement of persons by the reintroduction of internal border checks and the integrated management of visa and border control policies must be justified by exceptional circumstances such as threats to the security of Member States and the European Union as a whole;

38. At Member State level, there is a very pressing need to ratify the Union conventions governing extradition and judicial cooperation on criminal matters and the protocols thereto¹³, and to prepare the implementation of the framework decisions on terrorism and the European arrest warrant¹⁴; in that connection, Parliament cannot but be concerned at the delays in the ratification of Union acts revealed in the Road Map;

Strengthening citizens’ motivation and democratic scrutiny

39. Whilst an important line of defence against terrorism is the mobilisation of public opinion against those who pose a threat to the rule of law and fundamental democratic principles, it must be ensured that any measures to counteract this threat do not engender xenophobia or prejudice, and that any attempt to justify, excuse, pay tribute or misuse democratic institutions for the benefit of terrorists who refuse to take opportunities for the peaceful expression of their views should be socially censured.

It is essential that the European Union and the Member States should inform and involve all citizens regarding the implications of current and proposed counter-terrorism measures so that as a result they are in a better position to endorse these steps;

40. Emphasises the indescribable damage and great suffering that terrorism causes to its

¹³ Points 18, 19 and 20 of the Road Map

¹⁴ Points 15 and 16 of the Road Map

victims and to their families; welcomes, therefore, the adoption of measures which take account of the special circumstances that surround them, particularly the approximation of national legislation concerning the compensation of victims of terrorist acts;

41. Emphasises that terrorism constitutes an attack on democratic society and the rule of law as a whole and causes indescribable damage to the victims and great suffering to their families; prevention and the fight against terrorism are, therefore, one of the obligations that are owed to the victims and their families;
42. Welcomes the adoption of the Commission ‘Green Paper: compensation to crime victims’ and urges that the appropriate legal instruments for the approximation of national legislation concerning the compensation of victims of terrorist crimes should be proposed and rapidly adopted, bearing in mind the special circumstances that surround them;
43. The requirement to inform citizens likewise applies to representative institutions, such as the European Parliament and the national parliaments. It is highly regrettable that, thus far, those parliaments should have been informed only in part about the measures taken by the Council in the context of United Nations and international agreements (common positions and anti-terrorism clauses in international agreements)¹⁵ and that the European Parliament should have been unable to debate them;

Strengthening the prevention and punishment of terrorist crimes

44. The existence of a clear legislative framework and democratic support is not enough if the measures adopted are not implemented and if the bodies responsible for their implementation are not effective. In that connection, the picture which emerges from the most recent version of the Road Map cannot but prompt concerns in the EP regarding, in particular:
 - the problems encountered by Europol in obtaining data from the Member States,¹⁶
 - the fact that Eurojust is not yet fully operational¹⁷ and the lack of a stable framework for cooperation among all the bodies/individuals involved in the fight against terrorism in the European institutions,¹⁸
 - the wide array of computer networks set up to process terrorism-related information and the differing levels of data protection the various systems offer,
 - the lack of effective mechanisms to allow democratic scrutiny of the bodies involved (Europol, Eurojust, the Task Force of Police Chiefs, etc.) and the decisions taken by them in the realm of the area of freedom, justice and security;

Future action

45. Takes the view that the fight against terrorism also offers the Union an opportunity to

¹⁵ Points 6a, 7, 11 and 13a of the Road Map.

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show that it is capable of achieving its ambition of becoming an area of freedom, security and justice; takes the view that the mixed results achieved in the wake of the 11 September tragedy have highlighted the changes needed to the Treaties; in this sense, urges the Convention on the Future of Europe to study the proper ways to modify them, notably by exploring how to avoid the present EU three-pillar division and by creating the necessary legal basis to allow the EU to freeze assets and cut off funds of EU persons, groups and entities involved in terrorist acts and included in the EU terrorists list;

46. States, in this connection, its conviction that the terrorist threat represents a problem for EU-wide security and that the new Treaty should therefore prepare for future situations by stipulating that:

- the Union, acting on the basis of proposals from the Member States and the European Commission, should draw up a strategy which is credible both at EU and international level,
- this should be defended as a European strategy by the Member States in the Security Council, pursuant to Article 19 of the Treaty on European Union,
- provided that there are suitable legal safeguards for the individual, the principle of the mutual recognition of acts adopted at Member State level should become the norm,
- any measure taken by the Union or its Member States should be consistent with the Charter of Fundamental Rights proclaimed in Nice in December 2000;

47. Instructs its President to forward this resolution to the Council, the Commission, the national parliaments and the President of the Convention on the Future of Europe.