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Exporting U.S. Anti-Terrorism Legislation and Policies to the International Law Arena, a Comparative Study: the Effect on Other Countries' Legal Systems

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**EXPORTING U.S. ANTI-TERRORISM LEGISLATION AND POLICIES
TO THE INTERNATIONAL LAW ARENA. A COMPARATIVE STUDY:
THE EFFECT ON OTHER COUNTRIES' LEGAL SYSTEMS**

I. INTRODUCTION

The terrorist attack on the World Trade Center in New York on 9/11 set in motion a new era all over the world: an era of a world uniting against a common enemy, but also an era of insecurity and fear. Laws have been changed worldwide, nations have united against a common threat, legal theories and beliefs of centuries have been questioned, and civil liberties have been replaced by a need for national safety. Has this worldwide effort worked? Is our world a better place now that we are all fighting the same enemy? Did we learn from our past mistakes? And if yes, did we learn the right lessons?

There is no doubt that we are all more united than ever in our effort to fight this universal war against terrorism. We all agree the terrorists need to be hunted down and brought to justice wherever they are. Do we agree on who they are though? Do we agree on what methods to use in this fight? Do we agree on how much we are willing to sacrifice in our effort to make our world a safer place? Are we all ready to accept that the end justifies the means? And is it realistic to talk about an international consensus in what this war is all about and how to win it? History shows that, despite the common efforts that have been made internationally, we are still a long way from implementing an international anti-terrorism legislation based on a consensus of all countries. The recent wars in Afghanistan and Iraq are good examples of the difficulties the international

community is having in agreeing upon what needs to be done and how. Both of these wars were carried out in the name of world safety and peace. The goal was to find the terrorists and bring them to justice. One would think that such a noble cause would be pursued by the majority of countries. Reality, however, is different. The war in Iraq, for instance, has been highly criticized by many countries, including most of the European Union members, and was opposed to, even by traditional allies of the nations that executed this operation.

Moreover, the outcome of these efforts is doubtful. With both wars officially over, our world somehow does not feel safer; at least not to the extent we were hoping it would. The relations between the Eastern and the Western world are now tenser than ever, the Middle East seems dangerously unstable and peace and democracy have not yet been efficiently established. Some people talked about a war against Islam, trying to create the impression that there is a religious conflict that has been instigated by the West; whatever the arguments behind such an accusation, it is nonetheless a dangerous argument which in some, though isolated, incidents, has been supported by facts. Many Muslims found themselves in a very uncomfortable situation, in their everyday lives, after 9/11, having to convince their neighbors that they are not terrorists. In the United States alone, the number of people arrested after 9/11 has been extremely high; on December 2002, in Southern California only, more than a thousand males over 16 years of age from various Islamic countries were detained without warning, after having been asked to report to the immigration authorities.

It was incidents such as this that threatened to deprive the world's efforts from their true meaning and value and transform them to religious hatred. Despite the attempts that have been made internationally, to agree upon certain terms and plan a common strategy in the war against terrorism, the results are rather discouraging. Although we all agree on the necessity of an internationally accepted definition of terrorism, we seem unable to succeed. One man's terrorist is another man's hero and one country's threat seems to be another country's salvation. A vivid

example of this has been Russia and its conflict with the Chechen separatists; the Russian leadership has been trying to convince the international community that the acts of the Chechens are an international terrorism problem and that Russia needs the help and support of Europe and its allies. Other countries, however, seem reluctant to interfere, considering this an internal conflict that does not amount to an international threat and for which Russia's tactics and politics are responsible¹. The cultural and religious differences, as well as political aspects, create a substantial hardship for many countries to reach an agreement on who the enemy is and what measures are needed, in order for that enemy to be defeated.

In this comparative study we will focus on the effect that recent counter-terrorism efforts have had on different legal systems. There are many obstacles that need to be overcome, and in this effort it is important to realize that we need to respect the unique characteristics of each country's legal tradition as well as its culture and beliefs. We will start by examining the conditions in a number of different countries as well as the steps these countries took to fight terrorism through legislative amendments and procedures and through significant trials and their outcome. Through these examples, we will show that different legal approaches, such as the United States and British counter-terrorism policies, have not been as successful as it was hoped, and have created controversies and obstacles that seem more harmful than helpful. In light of this conclusion, we will second-guess the efficiency of the so far implemented anti-terrorism strategy and propose a different approach, which could solve some of the problems, and lead to a more efficient, but also less controversial, method of making our world a safer place for everyone. International cooperation and mutually agreed procedures should be part of this different approach.

¹ Jim Heintz, "Russia Criticizes West over Chechen Asylum", Thursday September 9th, 2004, available at: http://news.findlaw.com/ap_stories.

II. RECENT DEVELOPMENTS IN ANTI-TERRORISM LEGISLATION AND THE PROBLEMS CAUSED BY ITS IMPLEMENTATION.

In light of recent terrorism strikes all over the world, it seems worthwhile to consider the difficulties inherent in adapting and implementing a common international anti-terrorism strategy into various countries' legal systems throughout the world. We will start by examining the situation in Greece, where recent developments in legislation as well as the neutralization of one of the most active terrorist organizations raised a number of issues, both legal and practical about the effectiveness of the contemporary methods used in counter-terrorism efforts.

A. THE GREEK PRECEDENT.

One of the most active terrorist groups in Western Europe in the 1980's was the Revolutionary Organization "17 November", based in Greece. With a presence of almost three decades, it has also been characterized as Europe's most elusive terrorist group². It was named after the student uprising in Athens on the 17th of November 1973, against the dictatorship that was imposed on the country, an uprising that ended violently causing the deaths of students after the military tanks broke down the gates of the University to force the students out and end the protests³. "17 November" identified itself politically as an extreme-left group, with ideologies that were closer related to Marx-Lenin beliefs and an anti-imperialistic, anti-capitalist and anti-United States and NATO strategy. The organization's first operation was the assassination of Richard Welsh, the CIA's station chief in Athens in 1975 and its last victim was British defense attaché Stephen Saunders, who was shot dead while driving to work on June 2000⁴.

² International Policy Institute for Counter Terrorism: The Revolutionary Organization 17 November. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

³ International Policy Institute for Counter Terrorism: The Revolutionary Organization 17 November. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

⁴ BBC News: British Diplomat shot dead in Athens, Thursday, June 8th, 2000. Available at: <http://news.bbc.co.uk/1/hi/world/europe/782245.stm> (last visited 11/29/2004)

During these three decades, “17 November” has claimed responsibility for 22 killings and a number of bomb and rocket attacks. Their targets were primarily American officials or US interest corporations (such as banks or companies), but also two Turkish diplomats and a number of Greek businessmen, politicians and policemen. The reason why this organization has attracted the attention and concerns of many countries, such as the U.S., Britain, and others is the fact that until June 2003 no members of the organization had been arrested and despite the fact that in a number of incidents the Greek authorities came literally face to face with the terrorists, no significant progress had been made to put an end to the group’s lethal action. The Greek authorities’ inefficiency in arresting members of the group and solving the “mystery” of the “17 November” was the target of intense criticism from countries that have been traditional allies of Greece but also from the Greek people themselves, a majority of whom for many years believed the terrorist group had affiliations with members of the government and politicians in general⁵. The impact of this criticism in the Greek economy was severe, especially in the mid-80s’. In 1985, under the Reagan Presidency, a travel advisory direction was issued from the U.S. government, warning Americans not to visit Greece for safety reasons. A number of such directions followed through the years⁶. In addition to that, negative comments about Greece’s counter-terrorism efforts were published in the U.S. Press⁷.

In fear of isolation and due to the economic pressures by the international community, the Greek authorities tried to show good faith by taking certain steps towards a more effective legislation. The outcome of the above mentioned pressure were the first two anti-terrorism laws that were voted on by the Greek parliament in 1990, the 774/78 Law (that was originally passed

⁵ International Policy Institute for Counter Terrorism; Tally Kritzman, “Greek Counter-Terrorism”, August 8, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

⁶ M. Bossis: Greece and Terrorism-National and International Dimensions, Ant. N. Sakkoulas Publishers, Athens, 1996, p. 35.

⁷ “Not surprisingly, world politics also works to the terrorist’s advantage. In the spring of 1984, the Greek government of Prime Minister Andreas Papandreou provided a grotesque and unforgivable example of that. In response to stiff protests, the Greeks at one point last summer accused the C.I.A. of conducting unilateral operations in their territory. The State Department regards the Greek performance as directly traceable to Papandreou’s harshly anti-American political style.” John Newhouse, The Diplomatic Round, a Freemasonry of Terrorism, The New Yorker, July 8, 1985.

in 1978, revoked in 1983 and re-voted in 1990) and the 1916/90 Law⁸. Despite these efforts, no significant progress was made, and the terrorists continued their action. The assassination of the British official Stephen Saunders, however, in June 2000 appears to be a turning point in the way the Greek government had been handling terrorism. Only a few years before the Olympic Games in Athens (an event of significant financial as well as moral value for the Greek people) and under the international outcry, the Greek authorities realized that there was too much at stake for the country and that an immediate and determined reaction was needed. Just days before the assassination of Stephen Saunders, the National Commission on Terrorism, appointed by the U.S. Congress, recommended designating Greece as a state “not cooperating fully” with U.S. counterterrorism efforts⁹. The National Commission’s recommendations referred to the Annual Report of the U.S. State Department in 1999, which mentioned Greece as “remaining one of the weakest links in Europe’s efforts against terrorism”¹⁰.

Due to nationwide discontent and a feeling of insecurity among the Greek people, the government started a huge publicity campaign; the majority of the media broadcasted Anti-terrorism messages, stressing the threat posed by terrorism to human life, social and political order and democratic values¹¹. This extensive use of the media aimed to achieve several goals, such as uniting public opinion against a common enemy, putting pressure on the public to reveal any relevant information on terrorists and sending a clear message to the international community that Greece is committed to fighting terrorism. Greece sought the help of allies with great experience in counter-terrorism efforts; it established an intense cooperation with the United Kingdom. As a result, a counter-terrorism seminar was held on July 11th and 12th of year

⁸ M. Bossis, *Antiterrorism Legislation: Greece and International Environment*, Ant. N. Sakkoulas Publishers, Athens, 2004, pp. 19-25.

⁹ International Policy Institute for Counter Terrorism: U.S.-Greek counter-terrorism, August 8, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004).

¹⁰ U.S. Department of State: *Patterns of Global Terrorism*, 1999. Available at: http://www.state.gov/www/global/terrorism/annual_reports.html (last visited 11/29/2004).

¹¹ International Policy Institute for Counter Terrorism: *Greek Counter terrorism; symbolic steps*, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

2000, with the participation of high-level British security personnel, as well as several members of the Greek government and the British ambassador¹². The British expertise offered valuable assistance in reorganizing the Greek security forces and constructing a single anti-terrorism body, similar to the British Counter Terrorism Police Department (CTPD); sophisticated surveillance techniques were introduced for the first time to the Greek authorities and the two countries agreed to hold joint anti-terrorist exercises and to exchange technological knowledge in the field¹³. British officials recommended that Greece adopt a comprehensive Anti-Terrorism Bill similar to the one legislated in Britain, without weakening the country's commitment to human rights¹⁴. Finally, several meetings between British and Greek officials took place and collaboration started within the lower operational levels, including bilateral meetings of British and Greek officers¹⁵. In addition, the British authorities noted the importance of legislative changes in existing anti-terrorism laws, in order to gain the support of the public in volunteering information to the police, increase punishments for terrorism and increase the authorities' independence and level of expertise.

Furthermore, during a meeting of European Union Foreign Ministers in Luxemburg on June 13, 2000, Greece expressed its will to cooperate with other European Union States, in order to fight terrorism more effectively, a statement that was warmly greeted by the British¹⁶. Two months later that year, in September, a protocol of cooperation against terrorism was signed with the United States¹⁷. The agreement, signed by both parties, prohibits the two states from interfering in one another's judicial systems (a provision desired by the Greek party, due to

¹² International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

¹³ International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

¹⁴ International Policy Institute for Counter Terrorism: Greek Counter terrorism; affirmative steps in counter-terrorism, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

¹⁵ BBC News: "British police join Greek murder probe", Friday, June 9, 2000; "U.K. and Greece tackle terrorism", Thursday, July 13, 2000. Both articles available at: <http://news.bbc.co.uk/1/hi/world/europe> (last visited 11/29/2004)

¹⁶ International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

¹⁷ International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

intense criticism from Greek public opinion that Washington was being given too much involvement in internal Greek affairs). It involves, however, special legal procedures in order to be passed into law. It allows the exchange of information between the two parties on crimes ranging from money laundering to political assassination plots, and it provides for joint investigation and mutual support for investigations for such crimes taking place on both U.S. and Greek territory; prior to the agreement, a number of proposals had been made from the U.S. authorities to Greece to change its legislation¹⁸. For the purposes of this research, it will be helpful to briefly mention the most significant ones, which were the following:

- Exoneration for members of terrorist groups who “repent” and agree to provide information on fellow group members
- Immunity from prosecution for anti-terrorist squad members who infiltrate terrorist groups and take part in attacks as part of a plan to crack the group open from within
- Creation of a “special” court, without a jury, to try terrorist cases. The magistrates selected for this court would be exclusively engaged to preside over such cases
- Rewards for witnesses who turn in terrorists
- Creation of a witness protection program
- Permission of foreign police and security agencies (such as the FBI) to operate in the country independently of local authorities
- An extension on the pre-trial custody period and on the time a suspect can be held for questioning without charge (which at the time was 18 months)
- The creation of a special team, which would include legal experts, to carry out the questioning.¹⁹

¹⁸ International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

¹⁹ International Policy Institute for Counter Terrorism: Greek Counter terrorism; Washington proposes changes to Greek terrorism laws, August 8, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

The relevant agreements made with both the U.S. and the British government, led to close cooperation of the three countries' authorities. Technology was brought to Greece that was used by the police for surveillance and the collection of information, and the tactics of investigation changed²⁰. As a result, on June 29, 2002, a so-called "serendipitous" incident caused a chain of events that finally led to the neutralization of the terrorist organization "November 17"; although the starting event was a lucky one, there is no doubt that the Greek police much more thoroughly collected and evaluated data from the place of that incident, thanks to the more advanced technological means at their disposal and the valuable guidance of U.S. and British expertise. The incident was the premature explosion of a bomb on the hands of a terrorist at the port of Piraeus, in Athens, that severely wounded him. Police was able to arrest him and gather valuable clues found on the scene such as a number of keys, documents and fingerprints. One thing led to another and within a few months all of the organization's hideouts were discovered, and terrorists were arrested and brought to justice²¹.

The legal framework, under which interrogations, arrests and indictments were made, was the new terrorist law that the Greek parliament had passed in 2001. Law 2928/2001, or the "Terror-Law", as it is called colloquially, had adopted most of the proposals of the British and U.S. authorities, to which we referred earlier²². Under this Law, all terrorism-related crimes would now be tried by a "special court", the Criminal Court of Appeals, excluding the jury from being part of the trial procedure. DNA analysis was now allowed, under certain strict circumstances, infiltration of the terrorist organization was legal, a witness protection program was founded, and more severe punishments were established for terrorism related crimes²³. These were the most

²⁰ International Policy Institute for Counter Terrorism: Greek Counter terrorism; symbolic steps, 2000. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

²¹ International Policy Institute for Counter Terrorism: Breakthrough in cracking 17 November Terror Group, July 18, 2002. Available at: http://www.ict.org.il/inter_ter/frame.htm (last visited 11/29/2004)

²² Ioannis Manoledakis; "Safety and Freedom: Interpretation of Law 2928/2001 on organized crime", Ant. N. Sakkoulas Publishers, Athens, 2002. Also see: <http://www.parliament.gr>.

²³ Ioannis Manoledakis; "Safety and Freedom: Interpretation of Law 2928/2001 on organized crime", Ant. N. Sakkoulas Publishers, Athens, 2002, pp. 34-35.

important changes made to the Greek judicial system. The timing was at least “too perfect”, as it seems this law was passed exactly to assist the authorities in what would soon follow.

The “trial of the century” (as it was characterized by the Greek media and public) started on March 2003. In order to really understand why that name was given to it, we need only look at the numbers that are quite impressive: 19 defendants, 23 murders, 184 attempts of murder, dozens of armed robberies and explosions, 77 seriously injured victims, 273 prosecution witnesses, 236 defense witnesses, 38 prosecution attorneys, 32 defense attorneys. The indictment was 1412 pages long, and it was estimated that 47 hours would be needed simply to read it. The punishments were equally impressive, at least for the Greek legal scene: **1. Dimitris Koufontinas** (who was considered the “right hand” of the leader of the organization) sentenced to *13 times life imprisonment* and *1965 years of imprisonment* and a fine of 23.500 euros, **2. Alexandros Giotopoulos** (considered to be the leader of the organization) sentenced to *21 times life imprisonment, 2109 years of imprisonment* and a fine of 21.000 euros, **3. Savas Ksiros** (the terrorist that was injured in the explosion and was arrested first) sentenced to *6 times life imprisonment, 1776 years of imprisonment* and a fine of 23.500 euros, **4. Xristodoulos Ksiros** sentenced to *10 times life imprisonment, 1376 years of imprisonment* and a fine of 5.000 euros, **5. Vasilis Tzortzatos** sentenced to *4 times life imprisonment, 1249 years of imprisonment* and a fine of 6.500 euros, **6. P. Tselentis** sentenced to *344 years of imprisonment*, **7. Vasilis Ksiros** sentenced to *154 years of imprisonment* and a fine of 7.500 euros, **8. Dimitris Georgiadis** sentenced to *9 years of imprisonment* and a fine of 1.500 euros, **9. Kostas Karatsolis** sentenced to *45 years of imprisonment* and a fine of 1.500 euros, **10. Ilias Kostaris** sentenced to *life imprisonment, 54 years of imprisonment* and a fine of 1.500 euros, **11. Th. Serifis** sentenced to *17 years of imprisonment*, **12. Kostas Telios** sentenced to *120 years of imprisonment*, **13. P. Serifis** sentenced to *8 years of imprisonment*, **14. Nikos Papanastasiou** sentenced to *8 years of*

imprisonment and **15. S. Kondylis** sentenced to *51 years of imprisonment*. The remaining four defendants were acquitted, but the prosecutor appealed for two of them²⁴.

As impressive as the sentences may seem, for the purposes of this research we need to focus on the defendants' arguments that raised a number of issues, which show how problematic the enforcement of current anti-terrorism policies can be. We hereby refer to the opening statement of one of the terrorists, addressing the court and summarizing all the defense arguments that were brought into this trial: *"I consider your Court without jurisdiction, prejudiced and thus unjust and unlawful; without jurisdiction, because it is called to try political acts, which can only be tried by the people and history. Prejudiced and unjust, because by trying to present political acts as criminal ones, it deprives us of our opportunity to present the political and historic frames within which those acts were decided and implemented, while at the same time it implies different motives than the ones we had. Unlawful, because we are brought in front of it based on a law, voted by 20 members of the parliament, requested by an "elite" placed above the nation, made especially for us, after two unsuccessful attempts to impose similar laws, as well as based on other special provisions that were legislated during the progress of our case... All these laws and provisions are contrary even to our Constitution.. In addition you, as judges, are called to create a legal precedent that will legalize the invasion and suspension of rights that have existed for centuries, so that every court in the future will lawfully violate them according to political interests... We will be tried by a special court, which will count on confessions only... As far as I am concerned, my confessions were given under the following circumstances: I was held a prisoner for 40 days, contrary to every law, in a hospital bed with my eyes shut, sleepless for 4 consecutive days and nights, tied up, with strong ropes especially the first 10 days, constantly interrogated with no sense of time, under conditions of psychological violence, under threats of being extradited as well as life threats, under an atmosphere of fear and the influence of*

²⁴ Michalis Dimitriou, "Juror at the Trial of 17 November", Stafyllides Publishers, Athens, 2004, p. 597.

psychotropic drugs that destroyed my personality by bringing me in a state of a child with no will, creating illusions and inability to separate the imaginary from the real."²⁵.

These were basically the main objections and protests of the defense attorneys. The most important one that concerned the court was the nature of the crimes committed; were they political crimes or crimes of the common penal law? In order to better understand why so much significance was given to the definition of the crimes committed, we need to possess a deep knowledge of the Greek legal system. In many countries, as well as in Greece, the actor of a common crime receives a harsher treatment and punishment than the actor of a political crime²⁶. According to the Greek constitution, amnesty can be given under certain circumstances for a political crime, but never for a common criminal law crime (*Article 47, Sections 3 and 4*). Furthermore, a political crime can only be tried by a mixed court (formed by regular judges and jurors) (*Article 97*). Finally, if the actor is a foreign citizen who is fighting for a political change in his country, to make it more liberal, extradition is not permitted under the Greek Constitution (*Article 5, Section 2*). As we can understand, it was of major importance for the terrorists under trial to be considered political actors, since then they would have the opportunity to be tried by jurors and hope for lighter sentences (or possibly no sentences at all).

Closely related to the above mentioned argument, was the objection of the illegality of the "special court" that was founded specifically to try the terrorists. Under the new anti-terrorism law, every crime that every member of the terrorist organization commits, whether related or not to the goals of the organization is placed under the jurisdiction of the Criminal Court of Appeals (*Article 187, Section 1 of the Criminal Code*, as it was amended by the new anti-terrorism law). According to the Greek Constitution, however, and specifically *Article 97*, these types of crimes, such as murders for instance, are under the jurisdiction of the mixed jury courts as a matter of law and the criminal court of appeals only has exceptional jurisdiction in the specific situations

²⁵ Mixalis Dimitriou, "Juror at the trial of 17 November", Stafyllides Publishers, Athens, March 2004, pp. 31-32.

²⁶ M. Bossis, "Antiterrorism Legislation: Greece and International Environment", Ant. N. Sakkoulas Publishers, Athens, March 2004, p. 206.

enumerated in the Constitution²⁷. Taking into consideration all these factors, we can safely assume that the “special court” objection was well-founded and rational, in accordance to the Greek legal framework. The relevant provision of the new anti-terrorism law was the target of intense criticism even in the early stages of discussion of the law in the parliament, but it will be further examined later.

Finally, a number of objections were raised concerning the circumstances under which the defendants were held under custody, the time-frames of their detention as well as the methods used to obtain “confessions” and valuable information. At least in one incident, such objections were supported by evidence of extreme psychological violence and threats of extradition to the United States²⁸. Having analyzed above the conditions prior to the enactment of the new law in Greece (and especially the proposals made by the British and United States officials as to legislative changes needed for a more efficient reaction of the Greek authorities to terrorism), we highlight here the connection between the defense arguments and objections and the specific law provisions that were attacked by them: the “special court” institution, that excluded jurors as well as the prohibition of defining such crimes as political, were both the outcome of foreign influences, unknown to the Greek legislation until now. More specifically, under the European Counter-Terrorism Convention, which Greece ratified in 1988, all thereby defined as terrorist crimes will not be considered political or crimes inspired by political motives²⁹. As for the “special court” provision, it has already been stated above that it was a proposal of both the British and the U.S. authorities. These “imported” policies seem to directly contradict a legal tradition of decades in Greece as well as fundamental constitutional statutes.

²⁷ Ioannis Manoledakis, “Safety and Freedom: Interpretation of Law 2928/2001 on organized crime”, Ant. N. Sakkoulas Publishers, Athens, 2002, p. 205.

²⁸ Michalis Dimitriou, “Juror at the trial of 17 November”, Stafyllides Publishers, Athens, March 2004, p. 240.

²⁹ M. Bossis, “Antiterrorism Legislation: Greece and International Environment”, Ant. N. Sakkoulas Publishers, Athens, 2004, p. 49.

In light of these observations, a further study of the international arena is required, in order to examine whether this has been a local issue, of limited importance, or whether other countries as well are facing similar difficulties in implementing an international policy on fighting terrorism.

B. THE INTERNATIONAL PRECEDENT

1. Yemen.

In September 2004, another trial against terrorists ended in Yemen. The trial involved the deadly attack against the American destroyer “Cole” that took place in 2000, in the southern Yemeni port of Aden. While the destroyer was refueling, two men in a small boat laden with explosives bashed into the side of it, causing an explosion that killed 17 United States sailors and opened a gaping tear in the destroyer’s hull³⁰. The judge sentenced two of the defendants, Abd al-Rahim al-Nashiri and Jamal al-Badawi to death and four other defendants to prison terms of up to 10 years. Nashiri was tried in absentia, due to the fact that he had been arrested in the United Arab Emirates and transferred into American hands in 2002 and is currently held in custody at an undisclosed location outside the United States³¹. He is considered to be the mastermind behind the Cole bombing and since he was arrested by the United States authorities, he has not been granted access to lawyers or visits by human rights groups. It remains unclear whether the American government is willing to transfer him to Yemen to face the death penalty or whether it will resist such a request on legal grounds or because of his intelligence value. All of the defendants were Al Qaeda members³².

³⁰ The New York Times; Neil Macfarquhar and David Johnston, “Death Sentences in Attack on Cole”, September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

³¹ The New York Times; Neil Macfarquhar and David Johnston, “Death Sentences in Attack on Cole”, September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

³² The New York Times; Neil Macfarquhar and David Johnston, “Death Sentences in Attack on Cole”, September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

It is important to examine the pre-trial conditions, in order to better understand the significance of this trial as well as the issues that were raised. Prior to bringing the terrorists to justice, a thorough but in some cases intense investigative effort had been made. There had been a close cooperation of Yemeni and United States authorities that in some occasions jeopardized the relations between the two countries. American officials traveled to Yemen several times to ask for better and more extensive cooperation, when the authorities of Yemen refused to provide U.S. investigators with access to witnesses and evidence. On a number of occasions, American investigators were ordered out of Yemen, because of security reasons. Taking into consideration that Yemen is the old homeland of bin Laden, and has been considered by the international community as a country that has been harboring Al Qaeda members that were trying to escape from Afghanistan, when the United States Army arrived in the country, Yemen has been trying to find ways to show good faith to the international community and distance itself from such allegations. In this effort, the government took significant steps, such as adopting a harsher legislation against terrorists³³. The terrorists' trial took place under the new law, resulting in stricter and more severe punishments and convictions³⁴. We should mention here that under the Yemen law all death sentences, which are carried out by firing squad, need confirmation by President Ali Abdullah Saleh, who in previous cases has either annulled or reduced sentences and even pardoned some individuals³⁵. This trial raised a number of issues and objections on behalf of the defendants, similar to the ones presented above in the Greek terrorists' trial. The defense attorneys objected to the entire proceedings, noting that the suspects were tried by an **exceptional court** set up for the very purpose of trying terror suspects and therefore contrary to the country's Constitution. According to the defense, the procedures that took place completely breached the

³³ The New York Times; Neil Macfarquhar and David Johnston, "Death Sentences in Attack on Cole", September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

³⁴ The New York Times; Neil Macfarquhar and David Johnston, "Death Sentences in Attack on Cole", September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

³⁵ The New York Times; Neil Macfarquhar and David Johnston, "Death Sentences in Attack on Cole", September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004)

right to a fair defense. There were also allegations that the defendants had been **tortured** in order to confess during their four years of imprisonment.³⁶

In a previous terrorist related trial that took place in Yemen in May 2004, for the bombing of a French oil supertanker off Yemen's southeastern coast in October 2002, defense attorneys filed similar objections. More specifically, lawyers protested not being given full access to their clients' files. The lawyers had requested a copy of the files and records related to the case but the judge ruled that the defense teams could check the files only at the court and were not permitted to take a copy away with them.³⁷ Finally, in another terrorism-related trial in Yemen in 1999, eight British Muslims and two Algerians were convicted of planning terrorist bomb attacks in Yemen and plotting what the prosecution called a campaign to drive out Western influence and set up an Islamic state in the Arab country. In that trial as well there were protests and objections from the defense attorneys, who claimed the confessions of the defendants were false and extracted by torture.³⁸

2. Indonesia

In another part of the world, one more terrorism trial has started, on October 2004. An Islamic cleric, Abu Bakar Bashir, was charged in connection with the suicide bombing of the Marriot Hotel in Jakarta in 2003 and the bombings of two nightclubs in Bali in 2002. He is considered to be the spiritual leader of Jemaah Islamiyah, an Indonesian-based terrorist organization affiliated with Al Qaeda. What makes this particular trial important for the purposes of this research, is the fact that Bashir was acquitted of related terrorism charges a year ago. According to the court then there was no evidence that he was the head of Jemaah Islamiyah³⁹. Under pressure, however,

³⁶ The New York Times; Neil Macfarquhar and David Johnston, "Death Sentences in Attack on Cole", September 30, 2004. Available at: www.nytimes.com (last visited 11/29/2004).

³⁷ Arab News; Khaled Al-Mahdi, "Defense Lawyers Protest Secrecy in Yemen Trial", Sunday, June 20, 2004. Available at: <http://www.arabnews.com> (last visited 11/29/2004)

³⁸ BBC News; "World-Middle East Yemen Trial: Both Sides to Appeal", August 10th, 1999. Available at: http://news.bbc.co.uk/1/hi/world/middle_east/415918.stm (last visited 11/29/2004)

³⁹ The New York Times; Raymond Bonner, "Indonesia Brings New Case Against Cleric Tied to Terror", October 29, 2004. Available at: <http://www.nytimes.com/2004/10/29/international/asia/29indonesia.html> (last visited 11/29/2004)

from the United States and Australia, the Indonesian government continued to detain him while seeking evidence to support the new charges. It is questionable how lawful and justified his detainment can be considered, taking into consideration that the court had acquitted him. But outside the courtroom, the trial raises another issue, as it was very well put by Raymond Bonner, the author of the relevant article in The New York Times: “How far the United States is willing to go in helping countries combat terrorism. Key witnesses against Mr. Bashir are in United States custody at secret locations and the government has barred Indonesian investigators from questioning them”.⁴⁰ The United States has captured at least two Indonesians who are considered to be major figures in the group, linking Bashir directly to Jemaah Islamiyah and to terrorist acts. The Indonesian authorities, however, are not allowed to interrogate the two witnesses and the Mr. Bashir’s defense attorney will possibly not have the opportunity to cross-examine them. The trial also seems to be a test for Indonesia’s new president, who has promised to fight terrorism but at the same time claims there is no proof that Jemaah Islamiyah exists⁴¹.

3. Jordan

In Jordan, on September 2000 a military court sentenced six men to death after convicting them of conspiracy to carry out the attacks against Israeli and American tourists in Jordan after New Year’s celebrations. The suspects denied any wrongdoing and denied having links to bin Laden. They said they gave their confessions under duress⁴².

4. Russia.

In Russia terrorism is closely related to Chechens, who opposing the country’s tactics and politics in Chechnya use unorthodox methods, such as “blind hits” and terrorist attacks against civilians. The latest hit resulted in more than 350 deaths, with most of the victims being children. In

⁴⁰ The New York Times; Raymond Bonner, “Indonesia Brings New Case Against Cleric Tied to Terror”, October 29, 2004. Available at: <http://www.nytimes.com/2004/10/29/international/asia/29indonesia.html> (last visited 11/29/2004)

⁴¹ The New York Times; Raymond Bonner, “Indonesia Brings New Case Against Cleric Tied to Terror”, October 29, 2004. Available at: <http://www.nytimes.com/2004/10/29/international/asia/29indonesia.html> (last visited 11/29/2004)

⁴² CNN news; “Convicted terrorist to face new trial in Jordan; U.S. officials deny link to Cole bombing”, December 4, 2000. Available at: <http://archives.cnn.com/2000/US/12/04/millennium.suspect.02/> (last visited 11/29/2004)

September 2004 militants seized a school in Beslan, keeping the teachers and children hostages. The seizure resulted in a number of explosions and gunfire that killed more than 350 people, the majority of which were children. The Russian authorities have made a strong effort to present the issue as one of international terrorism, instead of a conflict of local dimensions. They justify that claim by adding that the Chechen militants are trained and supported by international terrorist groups, like al Qaeda. This incident has caused tension in the relations of Russia with United States and Britain. The two countries granted asylum to Chechen separatist figures, an act that led the Russian Foreign Minister to accuse them of interfering in internal matters and aggravating the situation in Chechnya. The Kremlin was angered by Britain's granting of refugee status to Akhmed Zakayev, an envoy for Chechen rebel leader Aslan Maskhadov, and by U.S. asylum for Ilyas Akhmadov, whom Maskhadov named as his foreign minister while he was Chechnya's president in the late 1990s⁴³.

This latest terrorist attack led the Russian parliament to adopt a far reaching anti-terrorism plan that calls for broadening the powers of all agencies involved in the fight against terrorism and threatens officials with punishment if they fail to prevent attacks. The anti-terrorism plan reads that "all institutions of civil society and all branches of authority must become consolidated in order to resist this evil"⁴⁴.

The new legislation adopts radical changes, such as providing all agencies involved in counter-terrorism acts with "special status" while conducting such operations, increased penalties for those who assist or fund terrorists as well as for officials whose "abuse of office or negligence" leads to a terrorist attack. Other measures proposed in the plan include introducing special passport, visa and registration measures in certain Russian regions and tightening security

⁴³ Associated Press; Jim Heintz, "Russia criticizes West over Chechen Asylum", September 9, 2004. Available at: http://news.findlaw.com/ap_stories/i/1103/9-9-2004 (last visited 11/29/2004)

⁴⁴ Associated Press; Mara Bellaby, "Russian Lawmakers Adopt Anti-Terror Plan", September 22, 2004. Available at: http://news.findlaw.com/ap_stories/ (last visited 11/29/2004)

and control, as well as a measure calling for international cooperation in the fight against terrorism.

C. THE UNITED STATES PRECEDENT

Having examined the situation in countries around the world and the problems occurring in their efforts to try terrorists, it is worthwhile to examine the situation in the United States, which as we have already seen, has been the leader in defining the strategy and policies followed around the world. The most significant legislation under which all recent anti terrorist United States efforts have taken place is the USA Patriot Act that was passed after the 9/11 terrorist hit in New York and Washington that shocked the international community⁴⁵. The Patriot Act expanded the government's powers. Examples of this expansion are the search of homes and offices without prior notice (Sec. 209-220), the use of wiretaps to listen in on telephone conversations and monitor computers and e-mail messages (Sec. 201, 202, 206, 209), as well as the use of military commissions to prosecute terrorists. The USA Patriot Act also provides a definition for domestic terrorism (Sec. 802). As a result of the Patriot Act, the statute of limitations for the prosecution of some terrorism offenses is extended beyond the usual limits imposed for criminal activity (Sec. 809)⁴⁶.

Under this new legislation, the pre-existing term "enemy combatants", relating to the law of war, acquired a significant value. A person characterized by the United States government as an "enemy combatant" can be detained until the end of the war, which is the war against terror (otherwise meaning, that person could be indefinitely detained) and be stripped of all constitutional rights, including the right to due process of law. Enemy combatants can be detained without charge, denied counsel and held incommunicado; according to the United States government, designating any citizen as an enemy combatant is a legitimate exercise of its

⁴⁵ P.L. 107-56

⁴⁶ Edward M. Wise and Ellen S. Podgor, "International Criminal Law: Cases and Materials, 2003 Supplement", LEXIS NEXIS, p.49.

executive discretion that is not subject to judicial review⁴⁷. It has not been revealed by the executive branch, however, how a person is classified as an enemy combatant and therefore it remains a secret what culpable conduct attracts the government's attention and provokes indefinite detention and intense interrogation unchecked by the conventional norms of due process.

One of the cases that most clearly projects the issues raised by the United States anti-terrorism policies is that of Yaser Hamdi. Hamdi was apprehended in Afghanistan in the fall of 2001 by the Northern Alliance, an Afghan group of fighters allied with the United States against the Taliban and was turned over to the Americans. The United States never filed charges against Hamdi. The only official statement of allegations came in a declaration by Michael Hobbs, a Defense Department special adviser, in July 2002⁴⁸. According to that declaration, Hamdi "had affiliated with a Taliban military unit and received weapons training" and "stayed with the unit after the United States began military operations against Al Qaeda and Taliban" in October 2001. Hamdi was taken to Guantanamo Bay, a place where the American military authorities often transfer "enemy combatants" or individuals suspected of being affiliated with terrorist groups. In early 2002, however, the military discovered that Hamdi had U.S. nationality and immediately transferred him to Navy brigs in Virginia and later South Carolina⁴⁹. He was held incommunicado and subjected to an indefinite detention without charges, without any findings by a military tribunal and without access to a lawyer⁵⁰. In August 16, 2002, the Fourth Circuit held that Hamdi was entitled to due process of law as provided by the Fifth Amendment to the United States Constitution which states that "No person shall...be deprived of...liberty...without due

⁴⁷ William J. Haynes II, General Counsel of the Department of Defense, "Memorandum to Members of the Council on Foreign Relations Roundtable. Available at: <http://www.cfr.org/publication.php?id=5312> (last visited 11/29/2004)

⁴⁸ Available at: <http://www.pbs.org/wgbh/pages/frontline/shows/sleeper/tools/mobbshamdi.html> (last visited 11/29/2004).

⁴⁹ The New York Times; Joel Brinkley, "From Afghanistan to Saudi Arabia, via Guantanamo", October 16, 2004. Available at: <http://www.nytimes.com/2004/10/16/international/middleeast/16profile.html> (last visited 11/29/2004).

⁵⁰ The New York Times; Joel Brinkley, "From Afghanistan to Saudi Arabia, via Guantanamo", October 16, 2004. Available at: <http://www.nytimes.com/2004/10/16/international/middleeast/16profile.html> (last visited 11/29/2004).

process of law”⁵¹. According to Judge Doumar confining someone indefinitely who has not been convicted of any offense, let alone be charged, and depriving that person of the assistance of counsel, without more evidence, appeared to be a gross violation of the fundamental principles of justice and an offense against due process. It appears that the privilege of citizenship entitled Hamdi to a “limited judicial inquiry” to determine the legality of his detention “under the war powers of the political branches”, but he was not constitutionally entitled to challenge the facts presented in the Mobbs Declaration or his designation as an enemy combatant. The Supreme Court that discussed the case, after Hamdi appealed the prior decision, decided in June 2004 that Hamdi was entitled to receive notice of the factual basis for his classification as an enemy combatant, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker⁵². Following the Supreme Court’s decision, the American government signed an agreement with Hamdi that would give him his freedom and the right to return to Saudi Arabia, under the terms that he would renounce his U.S. citizenship and give up his right to visit a number of countries, including Afghanistan, Iran, Iraq and Syria⁵³.

The Hamdi case raised a number of concerns, mostly related to constitutional and civil rights of people suspected of terrorist acts. Hamdi was kept in solitary confinement for more than 2 years, without any rights and unable to contact his family or a counsel. The legitimacy of such measure has been highly questioned and the United States have been internationally criticized about their policies, regarding “enemy combatants”⁵⁴. Amnesty International portrayed Hamdi’s indefinite detention without charge as an attempt to circumvent the criminal justice system. According to its Annual Report for the year 2004, “the US-led “war on terror” continued to be waged using indiscriminate and disproportionate means. Hundreds of foreign nationals remained

⁵¹ Hamdi v. Rumsfeld, 243 F. Supp. 2d 527; 2002 U.S. Dist. LEXIS 25492

⁵² Hamdi v. Rumsfeld, 124 S. Ct. 2633; 159 L. Ed. 2nd 578, 2004 U.S. LEXIS 4761; 72 U.S. L.W. 4607; 2004 Fla. L. Weekly Fed. S 486

⁵³ The New York Times; Joel Brinkley, “From Afghanistan to Saudi Arabia, via Guantanamo”, October 16, 2004. Available at: <http://www.nytimes.com/2004/10/16/international/middleeast/16profile.html> (last visited 11/29/2004).

⁵⁴ The New York Times; Joel Brinkley, “From Afghanistan to Saudi Arabia, via Guantanamo”, October 16, 2004. Available at: <http://www.nytimes.com/2004/10/16/international/middleeast/16profile.html> (last visited 11/29/2004).

in prolonged indefinite detention without charge or trial in US custody outside the US mainland. Most of those detained as so-called “enemy combatants” were held without any form of judicial process; for a handful, the only way out of their legal black hole appeared to be through grossly unfair trials before military commissions. Authoritative worldwide opinion condemned the blatant disregard for international and US constitutional standards by the USA. Many of the measures taken by the US authorities in the wake of the 11 September 2001 attacks undermined the fabric of international law”⁵⁵. Hamdi is only one out of two U.S. citizens but also out of a number of people in general, detained in Guantanamo and other undisclosed locations by the United States military, for intelligence purposes.

The Guantanamo cases.

According to the Human Rights Watch Report in June 2002, the number of people held at the U.S. Naval Base at Guantanamo was expected to exceed 500.⁵⁶ A number of these people filed several actions challenging the legality of their detention and asserting various causes of action, including federal habeas corpus. In *Khaled A. F. Al Odah v. United States*, the District court held that it lacked jurisdiction, because their claims were related to the lawfulness of their detention which could only be reviewed through a habeas corpus and the court had no jurisdiction to issue a writ of habeas corpus for aliens detained outside the sovereign territory of the United States⁵⁷. The District Court of Appeals affirmed the judgments⁵⁸. The aliens then petitioned for a writ of certiorari. The Supreme Court that discussed the cases reversed and remanded. According to the court, the aliens had been imprisoned for more than two years in a territory over which the United States exercised “exclusive jurisdiction and control”. The court held that Article 28 U.S.C.S. section 2241 required nothing more and that it conferred on the district court jurisdiction

⁵⁵ Amnesty International 2004 Annual Report. Available at: <http://web.amnesty.org/report2004/2am-index-eng> (last visited 12/01/2004).

⁵⁶ Human Rights Watch; “U.S.: Growing Problem of Guantanamo Detainees”, New York, June 12, 2002. Available at <http://www.hrw.org/press/2002/06/us0612.htm> (last visited 11/30/2004).

⁵⁷ *Khaled A.F. Al Odah v. United States*, 321 F. 3d 1134 (D.C. Cir. 2003) and *Rasul v. Bush*, 215 F. Supp. 2d 55, 56 (D.D.C. 2002).

⁵⁸ *Al Odah v. United States*, 355 U.S. App. D.C. 189, 321 F. 3d 1134, 2003 U.S. App. LEXIS 4250 (2003)

to hear the habeas corpus. It also concluded that the fact that they were detained under military custody was irrelevant to the question of the district court's jurisdiction over their nonhabeas statutory claims, because Article 28 U.S.C.S., clause 1350 explicitly conferred the privilege of suing for an actionable tort on aliens⁵⁹

III. THE INTERNATIONAL ANTI-TERRORISM POLICY AND THE TERRORISTS' DEFENSE ARGUMENTS

After having examined the way a number of countries have tried to adopt the United States policy and legislation in fighting terrorism, we can now identify the common difficulties that different judicial and legal systems had to deal with, when bringing terrorists to justice. Although, most of the above discussed cases and trials were unrelated to each other, dealing with different terrorist organizations and defendants that had no relations with each other and no communication, we can observe similarities in their defense strategies as well as their concerns and complaints. The common arguments that were used in all of the above mentioned cases were the following:

- “Special Courts” were founded, for the purpose of trying terrorists. None of these courts were in compliance with the countries’ constitutions. Instead, they were based on new anti-terrorism laws that were passed right before or during the examination of such cases.
- “Due process” was not granted to any of the defendants, mostly because the defense attorneys had limited access to the documents and witnesses as well as because political interests limited the judges’ ability of independent judgment. We observed

⁵⁹ Rasul et al v. Bush, 124 S. Ct. 2686; 159 L. Ed 548; 2004 U.S. LEXIS 4760; 72 U.S.L.W. 4596; 2004 Fla. L. Weekly Fed. S 457.

that most of the countries that dealt with these terrorists, have been trying to renounce the “label” of harboring terrorists that was put upon them by the international community.

- The interrogation and collection of evidence methods that were used were criticized as violating the defendants’ constitutional and civil rights: allegations of torture of the terrorists and conditions of psychological pressure in order to extract their confessions were made in almost all of those trials, by the defense attorneys.
- Finally, in all of the above discussed cases, suspects were detained for long periods of times, contrary to the lawful time limits, before they were even officially charged.

In our effort to evaluate these arguments and concerns, it seems worthwhile to mention that a country’s sovereign law seems to be of lesser significance, when confronted with an international effort to fight terrorism, and human rights seem to lose the value that decades of legal progress have granted them. Even if we accept that in the United States, the common law system solves such conflicts, it is apparent however that in civil law countries such as the European countries, with a long tradition in constitutional rights and civil liberties, the adaptation of the United States policies is at least problematic and dangerous for the future of their legal systems.

A further analysis of the differences between common law and civil law systems will make this observation clearer. First of all, the main significant difference lies in the order of priority between jurisprudence and doctrine; civil law gives priority to doctrine, whereas common law is based more on jurisprudence. The reason for this difference is the different role that was historically given to the legislator. Civil law systems –based mainly on Roman law- adopt in their majority the theory of separation of powers: the legislator legislates and the courts apply the law. Common law, on the other hand, has as its core the judge-made precedent. Civil law focuses rather on legal principles, which courts are required to apply to specific cases and facts. Common law, on the contrary, sets out a new specific rule to a new specific set of facts and provides the

principal source of law. In this respect, courts are only secondary sources of law in civil law countries, while their role in common law countries is primary.

The result of such differences in the ability of the courts to use discretion in interpreting law between common law and civil law countries is that common law can easily adjust to fit legal situations arising from new and never-before-encountered problems. On the contrary, civil law countries are much more rigid when it comes to “adjusting” civil rights and fundamental constitutional law to fit such new situations. This difference in flexibility between common and civil law can be attributed to the basic priorities given in such countries as to what the law protects. More specifically, common law has as a priority the protection of public welfare and state sovereignty; although there are express civil rights to ensure that the government does not have absolute power over its country’s citizens, there are mechanisms within the U.S. Constitution, for instance, allowing the government to suspend civil rights, so that sovereignty of that government and public welfare is sustained. Such a mechanism is the suspension of habeas corpus: *Article I, Section 9, Clause 2* of the U.S. Constitution: The privilege of the Writ of Habeas Corpus may be suspended by Congress “when the public safety may require it.” Habeas Corpus is “a writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment or detention is not illegal”⁶⁰ Although such a mechanism is provided to Congress under the Constitution, history shows that it can and has been used by other branches of the Government; President Lincoln suspended the Writ of Habeas Corpus, during the early part of the Civil War, on his own initiative, without the legislative branch asserting its constitutional power.

The way the courts have interpreted that power to suspend the Writ of Habeas Corpus is also characteristic of the common law approach; the Supreme Court observed in the *McCleskey v. Zant* case that “the writ of habeas corpus is one of the centerpieces of our liberties. But the writ

⁶⁰ Black’s Law Dictionary, Second Pocket Edition, West Publishing Co, 2001.

has potentialities for evil as well as for good. Abuse of the writ may undermine the orderly administration of justice and therefore weaken the forces of authority that are essential for civilization.”⁶¹ In a much older decision, the Supreme Court also set the priority given by common law to the public welfare, when it said in *Moyer v. Peabody* that “when it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process.”⁶²

Civil law countries, on the other hand, give priority to civil rights of individuals. These rights in many civil law countries are provided not only exclusively to their citizens, but to all people within their territory, and cannot be taken away, under any circumstances, mainly because they are granted by the Constitution itself. The Greek Constitution, for instance, has a separate part dedicated to civil rights that includes 21 statutes, each statute referring to a civil right. For example, *Article 5, Clause 3* of the Greek Constitution states: “Personal freedom cannot be violated. Nobody can be prosecuted or arrested or be imprisoned or confined in any other way, except only when and how the law mandates.” The text of the Greek Constitution leaves very limited discretion to the judges for interpretation; the word “Greek citizen” is expressly mentioned in those rights that are exclusive for Greek citizens, while the rest are granted to anyone in the Greek territory.

Therefore, countries governed by civil law are limited in using their discretion when dealing with arising issues by the inherent precedent given to civil rights by constitution, statutory law or custom, whereas common law countries are not limited in this respect. Common law is more flexible and allows the courts to establish new rules that apply to the new circumstances; people are familiar with such tactics and changes, unlike civil law countries, where a sudden detour from the norms of conduct, as they are defined by the laws, can cause a feeling of insecurity and lead

⁶¹ *McCleskey v. Zant*, 499 U.S. 467; 111 S. Ct. 1454; 113 L. Ed. 2d 517; 1991 US Lexis 2218; 59 USLW 4288; 91 Cal. Daily Op. Service 2680

⁶² *Moyer v. Peabody*, 212 U.S. 78; 29 S. Ct. 235; 53 L. Ed. 410; 1909 US Lexis 1798.

to a negative reaction as well as intense skepticism, on behalf of the legal scholars as well as the people.

All these examples lead us to the conclusion that we are still a long way from implementing an international anti-terrorism legislation, based on a consensus of all countries. The reasons are not only the different legal systems, but also the different cultural, ethical and religious factors that have influenced the various countries' judicial and legislative procedures. Even when the target and the goal are common, still the differences are significant. To support this argument, we include here the attempts to define the term "terrorism" from several members of the European community, that share more or less common legal systems and cultural and religious backgrounds. The French penal code (*Article 421-1*) refers to terrorist acts as acts that can disturb severely the public order through intimidation or terrorizing (the difficulty of defining the term "terrorism" is apparent, since the French legislature could not avoid including the term itself in the definition). The Portuguese penal code (*Article 300*) mentions the violation of national interests, the change or disturbance of the national institutions' function, the enforcement of public authorities to act or not act and the threat of individuals or groups. The Spanish penal code (*Article 571*) refers to the goal of demolishing the constitutional order and the severe violation of public order. The Italian penal code (*Articles 270a, 280 and 289*) refers to the demolition of the democratic order. The German penal code (*Article 129a*) mentions the founding of terrorist organizations without defining the term "terrorist". Finally, the British legislation (*Terrorism Act 2000*), which is considered by the European Committee as the most significant anti-terrorism legislation among the members of the European Union, defines terrorism as an act or threat of act that aims to influence the government or to intimidate the whole or part of the population. This act or threat of act is aiming to promote a political, religious or ideological goal and includes mainly serious violence against individuals or serious damages of property or poses a serious danger for the health or safety of the population. This definition, however, is so broad that it

cannot be adopted by the rest of the European Union members who have a more liberal penal tradition and require more precise and specific legal definitions.

The European Committee has made a proposal to achieve a common definition of the word “terrorism” among the members of the European Union. This proposal recognizes that “the majority of the terrorist acts are basic crimes of the common penal code” that get their terrorism character due to the motives of their actor to severely injure or destroy the fundamental principles and foundations of the state and to threaten the population. It is claimed that such a definition as well as any legislation adopted by the European Union will have more of a symbolic character than any realistic value. This is basically due to the fact that the criminal law in most of the European Union states is based on the act and not the beliefs of the actor, which are of no legal significance unless such beliefs are made concrete by a specific act: *Cogitationis poenam nemo patitur*. Such a proposal suggests that there is an attempt to create a special penal legislation based exclusively on the motives and not the acts of the violators. If one considers how unsafe and subjective it is to identify the motives, one can also realize how dangerous that is for the safety of law and, consequently, for the freedoms of the individuals.

The European Commission’s proposal defines terrorist offenses as offenses committed purposely by an individual or a group against one or more countries, their institutions or their populations, with the intent to terrorize them and to severely harm or destroy their political, economical or social foundations⁶³. This definition covers state terrorism as well, although it is more than obvious that the state that will adopt this anti-terrorism legislation will not enforce it in possible terrorist acts that it will implement or encourage⁶⁴.

Even if the European Union members accept this proposal, it will still be difficult for the various states to adopt it and implement it in compliance with their domestic laws. By pursuing a

⁶³ Ioannis Manoledakis, “Safety and Freedom: Interpretation of Law 2928/2001 on organized crime”, Ant. N. Sakkoulas Publishers, Athens 2002, pp.196-198.

⁶⁴ Ioannis Manoledakis, “Safety and Freedom: Interpretation of Law 2928/2001 on organized crime”, Ant. N. Sakkoulas Publishers, Athens 2002, pp. 199-200.

completely safe society, it seems that we are heading more towards a less liberal one. Everything that is added up in security is taken away from freedom. Moreover, we need to take into consideration the fact that the same measure towards security might be characterized by one state as restricting liberties too much, while in another country it might be a natural, expected and non-restrictive regulation.

III. CONCLUSION

Having analyzed the situation in various countries in regard to anti-terrorism efforts as well as the problems that the exporting of U.S. policies has created, we conclude that suspension of civil and constitutional rights should not be the means in the goal of fighting terrorism; not only because civil law is in direct conflict with such practices, but also and more importantly because the same goal can be achieved through less harsh and more fair means. What would those means be? We will suggest some alternatives that could lead to the desired outcome:

1. We have already mentioned, in the Greek precedent, the beneficial effects of the cooperation of Greek authorities with the U.S. and British authorities. Therefore, an international cooperation in counter-terrorism efforts, through exchange of information, advanced technology and expertise, can help countries be more effective in arresting terrorists and collecting and evaluating evidence that can be later used in a court of law, in order to bring these terrorists to justice and convict them. Torture of suspects, suspension of their fundamental rights and violation of procedural laws creates the danger of victimizing the offenders and negatively affecting the public opinion, which might possibly relate anti-terrorism to anti-civil rights legislation. No special courts are needed to try a terrorist; they have been effective so far in trying any

other criminal, so there is no reason to lose our faith in our traditional legal systems, based on justice, protection of civil rights and treatment of any suspect as innocent, until proven guilty.

2. In our effort to deprive terrorists from finding harbor in certain countries, we should consider the conditions that influence a country's or a nation's decision to follow a terrorist-friendly policy: conditions such as poverty, political instability, lack of democracy, injustice and oppression are ideal for terrorism to be born and supported. Therefore, we believe that the international community should focus its attention on places around the world where such conditions exist today and try to provide the means for reestablishment of democracy and justice, in order to deprive terrorists from a place to hide.

The war against terrorism can be won without sacrificing our legal ethics, without violating constitutional and human rights and procedures. We chose to close this chapter by referring to the words of a highly respected individual, the Secretary General of the United Nations, Kofi Annan: *“The international community is defined not only by what it is for, but by what and whom it is against. The United Nations must have the courage to recognize that just as there are common aims, there are common enemies. To defeat them, all nations must join forces in an effort encompassing every aspect of the open, free global system.... No people, no region and no religion should be targeted because of the unspeakable acts of individuals.... Terrorism threatens every society. As the world takes action against it, we have all been reminded of the need to address the conditions that permit the growth of such hatred and depravity. We must confront violence, bigotry and hatred even more resolutely.. There are those who will hate and who will kill even if every injustice is ended. But if the world can show that it will carry on, that it will*

persevere in creating a stronger, more just, more benevolent and more genuine international community across all lines of religion and race, then terrorism will have failed.”⁶⁵

⁶⁵ The New York Times, Friday 21 September 2001