AGAINST GLOBAL TERRORISM

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The article is devoted to the fight against international terrorism that began since September 11, 2001 vicissitudes. The author describes the current worldwide scene characterized by the neo-liberal logics of the third big wave of globalization, the hegemony of the economic over the social and the political system, and the crisis of the constitutional democracies. The United States' answer to the Twin Towers of New York attacks is based on unilateralism, and there are two levels, through which the American reaction to these events is expressed: the preventive war and the emergency legislation. The role of the EU in the fight against international terrorism is set, and its antiterrorist legislation, taken to address the deep changes in matter of «international security», is analyzed. Besides that, the author describes the attempt of the Italian legislator to adapt Italian antiterrorist norms to changed European security situation and to clarify the notion of «terrorism».

Key words: terrorism, globalization, United Nations, European Union, antiterrorist legislation

БОРЬБА С МЕЖДУНАРОДНЫМ ТЕРРОРИЗМОМ

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Статья посвящена борьбе с международным терроризмом, которая активизировалась после трагический событий 11 сентября 2011 г. Автор характеризует современную ситуацию в мире, охваченном кризисом конституционной демократии и третьей волной глобализации с присущими ей неолиберальными тенденциями и приоритетом экономических интересов перед политическими и социальными. Анализируются односторонние меры, предпринятые США в ответ на террористические акты 11 сентября 2001 г. Эти меры реализуются на двух уровнях: превентивная война и разработка законодательства о чрезвычайном положении. Определена роль Европейского союза в борьбе с международным терроризмом, дана характеристика основных антитеррористических актов, принятых Европейской комиссией и Европейским советом. Кроме того, автор описывает попытку итальянского законодателя адаптировать антитеррористические нормы национального законодательства к изменениям, связанным с обеспечением безопасности в Европе, и прояснить значение понятия «терроризм».

Ключевые слова: терроризм, глобализация, ООН, ЕС, антитеррористическое законодательство

1. Foreword

The transformation process of the conflicts, that began since the fall of the Berlin Wall, would find a wider and pretentious source of legitimacy in September 11, 2001 vicissitudes. Those have been used as presumptive characteristics of the fight against the «international terrorism» and they refer to the neo-liberal logics characterizing the third wave of the economic globalization, introduced by the above-mentioned events that in 1989 have determined the end of the «cold war».

After the World War II, the faith in a future peace, carried also by the law evolution and the international community, has been betrayed by the birth of the U. N. This has becoming a structure without proper skills and unable to reduce the world economic and financial unbalances, that are, in most cases, the main causes of the conflicts[1] and that soon have revealed its real nature of hegemonic organization in which the exclusive relief is given only to the winning States (*in primis* U. S.)[2].

The contradictions, risen up after the end of the «cold war», were already in course. So, during the «cold war» and with the second wave of globalization, where the lie about the big decolonization processes have been used in order to avoid the relations of interdependence between developed (*rectius*, colonizing) countries and developing (*rectius*, colonized) countries, that consist in a continuous expropriation of the economic resources in order to damage the second ones; so, we register an increase of the world-wide inequality[3].

Functional to an economic globalization is the renounce to an International Law as possible peace instrument to advantage of right of humanitarian intervention, through which new kinds of legalized interferences are redefined.

Since the last twenty-five years of the past century, we have seen a progressive loss of sovereignty of the national States, whose interests are gradually coinciding with (*rectius*, being subordinate to) the interests of the multinational enterprises. It is spoken about new centres of private political power that they quickly are replacing the public ones[4] and facilitating the development of a constitutionalism defined as multilevel[5], because it allows the accentuation, rather than the reduction, of the different levels of inequality, which are expression of the heterogeneity of the single legal systems[6].

An example of normative institution useful to the privatization processes characterizing the global society is offered by the *Lex Mercatoria*, which guarantees, within the transnational transactions, the prevalence of the private law[7].

In addition, a worldwide scene characterized by the hegemony of the economic over the social and the political system, it is set up and the same is solved in the renounce to have legal rules. These, in fact, are sacrificed for the market reasons; main participants of the current phase are the supranational organisms, such as the World Bank, the International Monetary Fund or the World Trade Organization.

The progressive substitution of the public jurisprudence to advantage the private one (famous phenomenon known as «constitution of private governance») is useful for those

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[1] *Delmas-Marty M.* Studi giuridici comparati e internazionalizzazione del diritto. Torino, 2004. P. 23.

[2] See: *Capella J. R.* La globalizaciòn: ante una encrucijada politico-jurìdica // Derecho y justicia en una sociedad global. Law and justice in a global society (Anales de la Càtedra Francisco Suàrez). Granada, 2005. P. 13 and ff.

[3] See: *Amirante C.* Il futuro dell'Unione Europea dopo i referendum: tra economia, espertocrazia e democrazia // *Gambino S.* Trattato che adotta una Costituzione per l'Europa, Costituzioni nazionali, diritti fondamentali. Milano, 2006. P. 169 and ff.

[4] See: *Capella J. R.* Op. cit. P. 19.

[5] See: *Policastro P.* On The Reconstruction of the Legal Strength of the Constitution in a World in transition. Multi-Level Constitutionalism towards Multi-level Democracy // Challenges of Multilevel Constitutionalism, Proceedings of IVR 21st World Congress / ed. by J. Nergelius, P. Policastro, K. Urata. Lund, 2003.

[6] See: *Policastro P.* A new Garment for an Old Question: «A Clash between Man's Rights and Citizens' Rights in the Enlarged Europe» // Nordic and other European Constitutional Traditions / ed. by J. Nergelius. Leiden; Boston, 2006. P. 66.

[7] See: *Amirante C.* Il futuro dell'Unione Europea dopo i referendum: tra economia, espertocrazia e democrazia. P. 198–199.

processes of homologation and standardization, that are expression of the third big wave of economic globalization[1].

Direct consequence of such processes is, within the single national ordering, the crisis of the constitutional democracies, and, within the international ordering, the definitive renounce to peace and human rights protection; the gradual widening of the executive powers to the detriment of the national parliaments, the more and more hierarchical political representation and the fail of the separation between the public and private sphere represent those aspects[2].

The crisis of the constitutional State *de iure* manifests itself through the recourse to the emergency legislation and through the war, that assumes, since 11 September 2001, the characteristics of the fight against the «international terrorism».

The European criminal law history is based on the doctrine of the «public security» and is a compromise among liberal thought and authoritarian requests; as far as being functional to the protection of the whole citizens' rights, it emphasizes the difference between narrow privileged social groups and wide marginal groups. So, carrying out a selectively and exclusively function, it is just assuming a merely ideological valence[3]: the same doctrine has been used to legitimate, during the Seventies and the Eighties of the past century, the «State terrorism», that has bloody (and still continues to smear) the Latin America Countries[4]. Since from the end of the «cold war», the security requirements, especially the legal ones, are used both for a further degradation of the constitutional guarantees and the violation of the human rights[5]. The emergency principle, to which the protection of the social needs is historically extraneous, appears today antithetic to the principles of freedom, solidarity and equality – unavoidable foundations of all the democratic Sates *de iure* – and it imposes itself as an authority of control at a global level. After the attacks to the Twin Towers of New York, it finds a formal source of legitimacy in the fight against the «international terrorism»; the political-economic moment prevails on that political-constitutional one.

The neo-liberal logics, that marks the third big wave of globalization, allows new emergency strategies that show themselves through the preventive war, in a permanent worldwide conflict scene. However, it is impossible to give a universally accepted definition of terrorism, especially because the single Governments have always used this expression unilaterally in order to label the attacks of the respective political opponents[6]. The positions of the States (defined as «scoundrel») and the enemy organizations (inserted in the so-called «black lists») are usually condemned, by U. S. A. and its allies, through the concept of «international terrorism», which leads back each violent action made by some subjects against foreign orderings; in this way, the freedom fighters become «terrorists» to the eyes of their same oppressors[7], just because such acquires, eventually, a subjective character[8].

[1] See: *Collier P., Dollar D.* Globalizzazione, crescita economica e povertà. Rapporto della Banca Mondiale. Bologna, 2003.

[2] See: *Ferrajoli L.* La crisis de la democrazia en la era de la globalizaciòn // Derecho y justicia en una sociedad global. Law and justice in a global society (Anales de la Càtedra Francisco Suàrez). P. 37 and ff.

[3] See: *Baratta A.* La politica criminale e il diritto penale della costituzione. Nuove riflessioni sul modello integrato delle scienze penali, in La questione criminale nella società globale. Atti del Convegno Internazionale, Napoli, 10–12 dicembre 1998. Napoli, 1999. P. 341 and ff.

[4] See: *Baratta A.* Op. cit. P. 343–344.

[5] See: *Amirante C.* Diritti dell'uomo e sistema costituzionale: un futuro dal cuore antico? // Diritti dell'uomo e legge fondamentale / introducting essay by E. Denninger. Torino, 1998. P. XVIII.

[6] With regard to this argument, see: *Jenkins B. M.* Il terrorismo internazionale: una rassegna, in Forme di organizzazioni criminali e terrorismo. Milano, 1988. P. 189–190.

[7] See: *Jenkins B. M.* Op. cit. P. 192.

[8] See: *Barberini R.* La definizione internazionale di terrorismo // Ques. giust. 2002. № 6. P. 1352–1353.

On the other hand, as a confirmation of the ambiguity of the examined definition we can ascertain that the American government itself is considered, especially after September 11, 2001 events, one of the more sensitive target for the foreign terrorist attacks, although it has been and still is the main creator of the «State terrorism»; as, for instance, in the known vicissitudes of the Latin America Countries where, especially in the Seventies and Eighties of the past century, dictatorial regimes have been established with military coup and the complicity of the hidden North American leadership, that has been responsible, among all the countless crimes, of hundred of thousand of victims[1].

Closely connected with the diversified concept of «terrorism», it is the difference of the values that inspires the modern democracies[2]; under the pretext of legality, they hide mechanisms that concur to the violation of the same principles from which they claim to be inspired and to the negation of the guarantees placed as their foundation. It would be possible, therefore, to give the terrorist attacks the function to reveal, where possible, the dark face (*rectius*, the true face) of the current democratic orderings[3].

Modern shapes of totalitarianism are then outlined; we pass from a State *de iure* to a State of exceptions, a situation of permanent emergency that legitimates, on one hand, an «infinite civil war», oriented to the redefinition of a «new world-wide order»[4], with the consequent abolition of wide groups of castaway citizens, in the changed political contest[5], and, on the other, the creation of an extra-territorial space, out of any legal system, in which to recluse an infinite number of «no citizens» suspected of whatever terrorist involvements[6].

This is the scene that has been shown after September 11, 2001 and in which United States have acted on a twofold level: the preventive war and the emergency legislation, that, under the pretext of contrasting the antidemocratic behaviour of presumed «invisible enemy», they themselves proceed to the zero setting of the most elementary democratic rules, with serious consequences for constitutionalism and Human Rights.

2. From the United States' unilateralism to a «collective humanitarian intervention»

The U. S. A. answer to the Twin Towers of New York attacks of September 11, 2001 is based on unilateralism. Concerning the military participation policy, we see a definitive de-legitimacy of the residual role carried out by the United Nations Security Council in authorizing the use of the military force (thing far away from its role of peace guarantor), and, as far as the normative production is concerned, we see an ulterior degradation of the already meagre guarantees asserted by the inner legal system and a more general

[1] On this topic, we want to remember another tragic September 11, the one of 1973, the day of the bombing of the *Moneda*, the Chilean presidential palace, prelude of the *coup d'état* of general Augusto Pinochet, the day of the suicide of Salvador Allende, the president democratically chosen, and of the beginning, in Chile, of one of the more bloody-thirsty dictatorships of XX the century. Such military *coup* re-entered in the widest and sadly famous «Condor operation», planned by C. I. A. on behalf of the United States and finalized, on the pretext of defeating the «cancer of the communism», to inhibit that process of democratization that was interesting the Latin America between the Sixties and the Seventies of the past century, favouring and supporting the dictatorships, between the other, in Argentine, Uruguay, Brazil, Bolivia and Paraguay. The above-mentioned plan had as strategic aim, the creation of a coordination for the elimination of the opponents in all the «Cono Sur» of America, through the use of the *desapariciòn*.

[2] See: *Garapon A.* E' possibile una lotta democratica contro il terrorismo? // Crit. dir. 2004. № 4. P. 361.

[3] Ibid. P. 366.

[4] See: *Senese S.* Guerra e nuovo ordine mondiale // Ques. giust. 2002. № 2. P. 469 and ff.

[5] See: *Agamben G.* Stato di eccezione. Torino, 2003. P. 11.

[6] See: *Garapon A.* Op. cit. P. 367.

disownment of the universal human rights (for instance, those ratified by the Convention of Geneva of 1949).

In doctrine, it has been underlined how the starting point of that transformation process of the conflicts, that has led to an unilateral management of them by U. S. A., can be referred to the statement of productive rules, in existence since the beginnings of the Seventies of the past century: these rules require, into the international Community, the duties of the States *erga omnes*, enforceable in an independent way from them, just where United Nations have no competences in matter or where it would not be momentarily able to operate[1].

Until that moment, the single exception to the monopoly on the use of the force, escaped from the Security Council's vigilance only in the case in which it would be stuck in a situation of impasse, was reconnected, in the U. N. Charta, to the natural right of defence, also collective, existing as prerogative of every State in the case of aggression[2].

A substantial transformation of the United Nations role and a decisive acceleration towards the «degenerations of the unilateralism» have been recorded since the 1991 Gulf War, in which U. S. A. and their allies de facto undertook the military participation in Iraq, formally authorized from the Council itself[3].

During the Nineties it has been consolidated the praxis of the use of the force, through which the single State orderings acted on behalf of U. N.; where such authorizations do not quote, as usually happens, a detailed indication of the purposes for which they have been issued, these represent a proper *carte blanche*, far from the «original normative model of the Charta» and «demanded by the States in order to obtain, from the Security Council, a sort of „endorsement" (or a „green light") for operations that they have decided or they are going to accomplish independently, in a substantially unilateral way, according to the provisions of the general international law itself»[4].

The process of de-legitimacy of the role of supreme international authority in war and peace, recognized to the Security Council by a solemn treaty, signed by all the U. N. member States and in which U. S. A. has joined, too, reaches a decisive phase, where U. S. A. and its allies, after September 11, 2001, claim the absolute right of intervention toward those Countries – retained a threat for the world-wide security – for which they have, or have had, expansive aims; the fight against the «international terrorism» therefore becomes a formal legitimate source of military aggression policies. With this interventionist strategy based on unilateralism, United States disown whichever Organization that can impose restrictions in reaching their aims, as it happened for instance, when they have voted against the Statute of the international Crown Court[5], adopted in the July 17, 1998 Conference of Rome and became effective on July 1, 2002, in order to avoid judgments for their own crimes and war criminals[6].

Already the participation in Afghanistan, undertaken on October 7, 2001, in answer to the Twin Towers of New York attacks, hides North-American geopolitical interests and

[1] See: *Picone P.* La guerra contro l'Iraq e le degenerazioni dell'unilateralismo // Rivista di diritto internazionale. 2003. № 1. P. 333–334.

[2] Ibid. P. 335–336.

[3] Ibid. P. 339.

[4] Ibid. P. 341.

[5] See: *Monetti V.* Cronache della Corte penale internazionale // Ques. giust. 2002. № 5. P. 1127 and ff.; *Andreini V.* Il principio di legalità nello Statuto della Corte penale internazionale // Riv. pen. 2004. P. 921 and ff.

[6] See: *Mandel M.* Guerre illegali, danni collaterali e crimini contro l'umanità: il ruolo della legge contro i crimini internazionali dal Kosovo all'Iraq ed oltre // Crit. dir. 2004. № 1–3. P. 22.

the U. N. Security Council has not ever explicitly authorized it. In the Resolution n. 1368, adopted on September 12, 2001 «after having called on all States to work together urgently in order to bring to justice the perpetrators, organizers and sponsors of these massacres», restricts itself declaring «its willingness to assume all the necessary initiatives in accordance with its responsibilities under the Charter of the United Nations», in reference to Chapter VII of the same Charter, «the one that rules the practice of the monopoly of the use of the force for the «peacekeeping and the international security»[1], and, in the successive Resolution n. 1373, adopted on September 28, 2001, reaffirms the needs of the single Countries to complement international cooperation by taking additional measures to prevent and suppress, in their territories the financing and preparation of any acts of terrorism and the improvement of the judicial cooperation[2].

The reasons of a military aggression policy as a reaction to September 11, 2001, that were already inadequate for the «Enduring Freedom» in Afghanistan, are even more unsuitable to justify the successive Iraq invasion, carried out on March 2003. None of the three U. N.'s Resolutions – taken by the American government as the licit foundations of the second Gulf War – contains, in fact, an explicit authorization to open the conflict. The same Resolution n. 1441, adopted on November 2002, establishes the inspectors that were sent to Iraq in order to assess the existence of presumed weapons of mass destruction, are only held «to report» to the Security Council, which has not however entitled them to use the force[3].

In any case United States, through the document of September 17, 2002 and under the pretext of the Twin Towers of New York attacks, reserve to themselves a «general and limitless possibility [...] to protect their own „national interests" not only with unilateral actions, but also with preventive actions, in order to defend themselves against the international terrorism and other modern types of aggression»[4].

We therefore assist to the definitive statement of the concept of «preventive war».

The notion of «perpetual» or «global war on terrorism» keeps on, also during the Obama administration, to legitimate the United States' geopolitical primacy and its power project.

Above all, the events arose since the 2011 and known like the so called „Arab spring"[5] would give to U. S. A., E. U. and their allies new pretentious source of legitimacy to impose a social control at a global level. The war against the Libya legitimates the murders, by the anti-Gaddafi opposition, of scores of innocent black Libyans and African migrants and leaves a lawless and ungovernable place, how before happened in Iraq[6].

According to doctrine[7], the foundation document of the «Responsibility to Protect» («R2P») should use as a very preamble to the Charter of the United Nations and should represent, in Libya, a new «collective humanitarian intervention» carried out by NATO countries.

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[1] See: *Monetti V.* La legislazione antiterrorismo dopo l'11 settembre: il contesto internazionale e l'Italia // Ques. giust. 2002. № 1. P. 51.

[2] Ibid. P. 52.

[3] See: *Mandel M.* Guerre illegali, danni collaterali e crimini contro l'umanità: il ruolo della legge contro i crimini internazionali dal Kosovo all'Iraq ed oltre. P. 17.

[4] See: *Picone P.* Op. cit. P. 347.

[5] With regard to the actual situation in Turkey, see: *Manunza L.* Turchia: in gioco non c'è un parco ma la democrazia // URL: http://www.manifestiamo.eu.

[6] See: Società civile in Iraq. Retoriche sullo «scontro di civiltà» nella terra tra i due fiumi / ed. by A. Petrillo. Milano-Udine, 2011.

[7] See: *Mandel M.* R2P & ICC v. UNC: The Responsibility to Protect and the International Criminal Court versus the Charter of the United Nations // Costituzione, economia, globalizzazione. Liber Amicorum in onore di Carlo Amirante. Napoli, 2013. P. 1375 and ff.

The successive scene of these worldwide conflicts was the Syria. After the use of chemical weapons on August 21, 2013 in Damascus suburb, the United Nations Security Council unanimously adopted, on September 27, 2013, the Resolution n. 2118. The Security Council forbade Syria using, developing, producing, acquiring, stockpiling or retaining chemical weapons and «endorsed the expeditious destruction of Syria's chemical weapons programme, with inspections to begin by 1 October, and agreed that in the event of non-compliance, it would impose „Chapter VII" measures».

The Obama administration defines other States as «scoundrel» to justify again the «perpetual global war» against the human rights[1], that now is no more an «unilateral humanitarian intervention».

The «Responsibility to Protect», in the new phase represented by the exploit of the «Arab spring» by NATO countries, «has been a great success at legitimating imperialist war»[2].

The Iraqi destabilization, consequence of the Second Gulf War, as well as the opposition against the Syria and the U. S. A. interference in the Syrian civil war[3], represent the main cause of the Middle East's new crisis. North American, Israeli and Western partners' (also Italian) Intelligence trained Sunni rebels anti-Assad, who than were recruited like mercenary fighters by ISIS (Islamic State of Iraq and Syria), also known as ISIL (Islamic State in Iraq and the Levant), or merely IS.

The ISIS' offensive against peoples in the area between Iraq and Syria is, therefore, the direct effect of an international military intervention aiming at destabilizing the Arab Countries, which aren't U. S. A. partners, like the Syria of Bashar al-Assad.

In the Resolution n. 2170, adopted, under the binding of Chapter VII of the U. N. Charter, on August 15, 2014, the United Nations Security Council «deplores and condemns in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuse of human rights and violations of international humanitarian law»[4].

Through the successive Resolution n. 2178, unanimously adopted (15 votes to zero) on September 24, 2014, the U. N. Security Council decides that Member States shall «prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities».

In the meantime, only the Kurds forces made a real resistance against ISIS, above all in the Syrian town of Kobani, near the border with the Turkey. The new scenes of war in the Middle East shall have profound effect on regional balance between Turkey, Kurdish people and the alliance United States and Israel with effects in Iran and in Syria[5].

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[1] See: *Borsato A. B.* Il «crimine di terrore»: gli attacchi alla popolazione libica alla luce del caso Galic // Cass. pen. 2012. № 1. P. 305 and ff.

[2] See: *Mandel M.* R2P & ICC v. UNC: The Responsibility to Protect and the International Criminal Court versus the Charter of the United Nations. P. 1386–1387.

[3] See: *Avenia C.* Il conflitto in Siria: spunti di riflessione e analisi critica // Ordine internazionale e diritti umani. 2014. P. 709 and ff.

[4] See: *Cadin R.* Il Consiglio di Sicurezza torna a legiferare nella Risoluzione 2178 (2014) sui «combattenti terroristi stranieri» // Ordine internazionale e diritti umani. 2014. P. 857 and ff.

[5] See: *Zaman A.* What do Kobani airdrops mean for regional politics? // Near East News Agency News. 2014. October 21.

3. The United States' emergency legislation

The second of the two levels through which the American reaction to the Twin Towers of New York attacks is expressed itself, concerns the appeal to the emergency legislation. Acting on its inner institutional level, it determines an ulterior hardening, in an authoritarian sense, of the North American punitive system and gives pretences of universal jurisdiction.

The adoption of old repressive models, on one hand, and the experimentation of new shapes of social control, on the other, leads (under the pretext of the defence of a not really defined concept of «public order») to the sacrifice of the universal Human Rights and in which it has been gone asserting, owing to a progressive overcoming of the idea of national border, a new typology of citizen, whose meaning is wider in comparison to the past and is referred to the category of citizenship, or «political citizenship».

The emergency legislation, outcome of a «culture» strongly rooted in the modern state orderings, imposes itself through the alteration of the source of legal legitimacy and finds a stable position inside a system, the American one, in which it compromises the already meagre constitutional guarantees, with serious repercussions on the spheres of the freedoms, both the one of the citizens and the one of the foreign citizens who live in the same territory[1]: once again it is the eternal contrast between «State reasons/State de jure», that is solved with the prevailing of the first over the second, letting the exception be the rule.

After September 11, 2001 it has been inaugurated, in the United States, a way characterized by the adoption of various emergency liberty-destroying measures, consisting in legal requirements or urgency decrees (the so called Orders), which first significant step is represented by the Senate approval, on October 26, 2001 of the USA Patriot Act (acronym of Uniting and Strengthening Appropriate America by Providing Tools Required to Intercept and Obstruct Terrorism)[2].

The notion of «terrorism» appears again expressed and extended because of this Act, that renders more uncertain the already indeterminate outlines, within which it is used to comprise every ambiguous activity against the «American national security». Among all, the so-called «domestic terrorism» is becoming relevant, and the new formulation helps to repress more easily the political opposition phenomena, whereas the old punitive instruments have been considered inadequate[3].

The Patriot Act generally involves serious limitations to the defensive guarantees recognized by the Bill of Rights (viz. the American Constitution) on the occasion of seizures, interceptions and above all warranty searches – allowed by the IV Amendment only in presence of probable causes, i. e. the probability of the existence of functional proofs able to confirm a whatever guiltiness[4] – favouring at the same time the compression of all the national citizens' privacy right[5]. The fourth title of the provision in examination, that gives restrictions in matter of immigration, attributes to the Attorney general the faculty to put in detention, without any formal accusation, for a period of no more than seven days, the foreigner suspected of terrorist activities or any activity that could be dangerous for the «national security»; in this case we talk about «suspect terrorist» or «suspect alien»[6].

[1] See: *Miraglia M.* Una nuova normalità: metamorfosi della giustizia penale statunitense dopo l'11 settembre // Cass. pen. 2005. № 9. P. 2823.

[2] See: *Magliaro L.* La libertà delle persone dopo l'11 settembre // Ques. giust. 2004. № 2–3. P. 315–316.

[3] Ibid. P. 316.

[4] See: *Miraglia M.* Paura e libertà (Legislazione antiterrorismo e diritti di difesa negli Stati Uniti) // Ques. giust. 2004. № 2–3. P. 298–299.

[5] *Miraglia M.* Paura e libertà (Legislazione antiterrorismo e diritti di difesa negli Stati Uniti) P. 299.

[6] For a detailed exam of the U. S. A. Patriot Act in Italian, see: *Fanchiotti V.* Il dopo 11 settembre e l'Usa Patriot Act: lotta al terrorismo e «effetti collaterali» // Ques. giust. 2004. № 2–3. P. 283 and ff.

The concept of detention limit is, however, surpassed by the adoption of new measures, through the presidential decree (President Issues Military Order) of November 13, 2001, conceived in order to authorize, on one side, the indefinite detainment and, on the other, to institute a military commissions, whose procedures will be ratified by the following decree of the Department of Defence (Military Commission Order) on March 21, 2002[1] – which were to control all the subjects arbitrarily considered terrorist by the USA Government[2]: typically they are «not American citizens» to whom is denied every legal status.

In this context, it is emblematic the position of the Taliban captured in Afghanistan during the operation «Enduring Freedom» and imprisoned in the American base of Guantanamo[3], lager prison that symbolizes the human rights' negation. To these prisoners – who are not recognized prisoners of war and, therefore, deprived of the guarantees given by the III Convention of Geneva of 1949[4] – are not formulated indictments verifiable through a regular trial (in accordance to the American law)[5]; so, in order to characterize such men, «irregular» compared to the «prisoners of war», it has been elaborated the definition of «unlawful combatants» (or «enemy combatants»), with the aim at deporting them, *sine die and sine iudicio*, in detainment centres, i. e. extra-territorial spaces subtracted to the legal system and, so, to every jurisdictional control that could supervise the legitimacy of the pre-trial custody[6].

In support of such policy, turned into the suspension of the constitutional guarantees, the notions of «dispensation» and «necessity» have been produced, that have been respectively inferred from the European and the American law, and, even if unsuitable, they are used to justify violations of the Human Rights, to legitimate practises such as torture and to allow secret halts, extended status of detention or sentences for behaviours constituting no crime at the moment of their commitments[7].

Signals of a more liberal direction, even if currently they represent isolates episodes, come from some pronounce of the U. S. A. Supreme Court in order to habeas corpus petitions, introduced in the interest of some Guantanamo «prisoners» (between these, particular attention has been dedicated to the resources in favour of two Americans citizens, Hamdi and Padilla, whose the second was arrested indeed in Chicago, within the national borders, so, in a territory far from the operative combat zones)[8].

In the sentence Hamdi v. Rumsfeld, signed on June 28, 2004, the Supreme Court individualized that «the detention of a citizen can not be done outside the constitutional principle of the due process, i. e. the right of the prisoner to contest that ultra vires qualification assigned by the Government, to know the elements conveyed to be the justification of such

[1] See: *Ammann D. M.* Le leggi americane contro il terrorismo // Crit. dir. 2003. № 1. P. 30.

[2] See: *Sciso E.* La condizione dei detenuti di Guantanamo fra diritto umanitario e garanzie dei diritti umani fondamentali // Rivista di diritto internazionale. 2003. № 1. P. 112.

[3] See: *Rebecca M.* Diritti dei prigionieri di Guantanamo: revirement favorevole delle Corti USA // Dir. pen. e proc. 2004. № 5. P. 644 and ff.

[4] See: *Ammann D. M.* Op. cit. P. 33.

[5] See: *Sciso E.* Op. cit. P. 122.

[6] See: *Miraglia M.* Lotta al terrorismo e diritti dei prigionieri: la Corte Suprema U. S. A. richiama al rispetto dei principi costituzionali // Dir. pen. e proc. 2004. № 11. P. 1423.

[7] See: *Ammann D. M.* Op. cit. P. 37.

[8] Referring to the three sentences of the Supreme Court on June 28, 2004 and in particular about the «Padilla's case», see: *Miraglia M.* Paura e libertà (Legislazione antiterrorismo e diritti di difesa negli Stati Uniti). P. 304 and ff.; *Idem.* Lotta al terrorismo e diritti dei prigionieri: la Corte Suprema U. S. A. richiama al rispetto dei principi costituzionali. P. 1422 and ff.

status and, in case, to disprove them before a «neutral decision maker»[1]; in the same way the U. S. Court of Appeals for the second circuit of New York has moved, through the sentence signed on December 18, 2003 whose object was the habeas corpus appeal in favour of Jose Padilla[2] and whose deliberation has found a confirmation in the successive intervention of the Supreme Court (Rumsfeld v. Padilla, of 28 June 2004). The pronounces taken in examination represent a due take note of evident irregular actions, but they are referred only to single extraordinary vicissitudes, having as subject American citizens and, so, they do not represent a full condemnation of the acts of the Bush administration, whose faculty to detain for an indefinite period «unlawful combatants» is not disputed for what it represents, but it is subordinated to the Conference authorization.

With regard to this, it has been talked of «deserving» sentences, or of «non-decisions», in order to reaffirm a theoretical due of the overt acts in the respect of the constitutional principles; this, however, supplies the executive power with wide chances to get around, in the praxis, such principles[3].

More important is the sentence of the Supreme Court of the United States of June 29, 2006, that held military commissions, set up by the Bush administration to try detainees at Guantanamo Bay, violate both the Uniform Code of Military Justice and the four Geneva Conventions; particularly they infringe the principle according which the accused has to Know the evidences for the prosecution[4].

The Supreme Court decision on Hamdan v. Rumsfeld has done justice to a citizen of Yemen, Salid Ahmed Hamdan, who was captured during the invasion of Afghanistan, transferred to Guantanamo Bay Naval Base of U. S. A. and, afterwards, in 2004, charged with committing terrorism.

The reaction of Bush administration to this important sentence for constitutionalism and human rights has been immediate. In fact, in the October 17, 2006, the President of U. S. A. signed the Military Commissions Act, that, in opposition to the Supreme Court decision on Hamdan v. Rumsfeld, has purposed to «facilitate bringing to justice terrorists and other unlawful enemy combatants through full and fair trials by military commissions, and for other purposes».

That's a liberty destroying Act, whose unconstitutionality has been wrongly stressed. Indeed, a lot of legal scholars and Congressional members have said the habeas provision of the Act violates a clause of the Constitution that says the right to challenge detention «shall not be suspended» except in cases of «rebellion or invasion». The Act wording also makes possible the permanent detention and torture of anyone founded exclusively on the President decision; the wording of the act appears to explicitly contradict, particularly, the third Geneva Convention that the United States signed.

The United States Military Commissions Act infringes Human Rights principles.

The September 11, 2001 attacks become so, on a outer level, the source of legitimacy of the «preventive war» while, on a inner one, they offer the chance to the United States government to dismantle the already meagre constitutional guarantees: widening beyond measures the executive power and jeopardizing the «checks and balances» mechanism,

[1] See: *Miraglia M.* Lotta al terrorismo e diritti dei prigionieri: la Corte Suprema U.S.A. richiama al rispetto dei principi costituzionali. P. 1426.

[2] See: *Rebecca M.* Diritti dei prigionieri di Guantanamo: revirement favorevole delle Corti USA. P. 646.

[3] See: *Miraglia M.* Una nuova normalità: metamorfosi della giustizia penale statunitense dopo l'11 settembre. P. 2832–2834.

[4] See: *Frosini T. E.* C'è un giudice (anche) a Guantanamo // Diritto pubblico comparato ed europeo. 2006. № 3. P. XXI ff.

i. e. the expression of the separation of the powers, it is possible to use a greater number of repressive instruments, mainly utilized against political opponents and immigrates, to whom are extended more invasive shapes of control.

Also during Obama administration, the U. S. A. government continues to classify many of Guantanamo's detainees as «enemy combatants»; an Obama administration Task force in 2010 classified 48 captives as ineligible for release, transfer or prosecution[1].

In August 2013, the prison of Guantanamo held 164 detainees, «three of them convicted of war crimes and six others awaiting death-penalty trials. The rest remain in a variety of statuses, including at least 84 cleared for transfer in one fashion or another»[2].

In conclusion, in despite of the end of the United States' emergency legislation of Bush administration, the lager prison of Guantanamo keeps on, also during the Obama administration, symbolizing the human rights' negation.

4. The placement of E. U. at the U. S. A. side in the fight against the «international terrorism»

After the New York Twin Towers attack, on September 11, 2001, the placement of E. U. by the United States side in the fight against the «international terrorism» was pretty immediate. Through the «Proposal of framework decision», signed on September 19, 2001 and the «Conclusions of the Presidency and Action plan» on September 21 of the same year, European Commission and European Council have, in fact, stressed on the necessity of a co-ordinate and interdisciplinary engagement of all the States members of the Union in order to face the «public enemy».

The deep changes in matter of «international security», after September 11, 2001, have fed at a communitarian level the sense of unsuitableness of the traditional kinds of collaboration between the Nations to face the changed situation and the requirement of an ulterior approach to the legislations of the States members of the European Union.

Main objective of the European Commission, through the «Proposal of framework decision» signed on September 19, 2001[3], is to define, legally and in an unitary way, the constituent elements of the «terrorist crime» and the applicable endorsements; in this way it is tried to put the basis of a unique criminal case to which all the Countries of the Union have to be uniformed[4]. The Commission determines a criminal figure – that involves in some way one State member – whose behaviour can be acted both by physical persons and legal ones. In the Art. 3 of the «Proposal of framework decision» are defined terrorist the crimes committed by single or groups of persons against one or more countries, against their institutions or populations, with intimidating aim and in order to overturn or to destroy the political, economic or social structures of the State ordering.

The Commission, after the emergency situation determined by the New York Twin Towers attacks, has in synthesis considered indispensable to define the essential elements to which lead back a notion of «international terrorism» that can be take in, in the most uniform way, the criminal systems of the Countries members of the E. U.[5]

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[1] See: List of «indefinite detainees» // Miami Herald. 2013. June 17.

[2] See: *Rosenberg C.* U. S. sends 2 Algerian prisoners home from Guantànamo // Miami Herald. 2013. August 29.

[3] See: *Bonini M.* La «lotta» al terrorismo: il quadro giuridico internazionale e comunitario (Commissione europea, Proposta di decisione-quadro sulla lotta contro il terrorismo, Bruxelles, september 19, 2001) // Rivista Italiana di Diritto Pubblico Comunitario. 2001. № 5. P. 883 and ff.

[4] See: *Bonini M.* La «lotta» al terrorismo: il quadro giuridico internazionale e comunitario. P. 890 and ff.

[5] Ibid. P. 894.

The above-mentioned «proposal» will be formally adopted by the Council of the European Union, on June 13, 2002; it was thus reached the Framework Decision 2002/475/JHA on combating terrorism, which is regarded as «a legal framework common to all Member States, and in particular, of a harmonised definition of terrorist offences».

A change about the transitional text of the «proposal» is represented by the definition, contained in the Art. 2, paragraph 1 of the Framework Decision 2002/475/JHA, of terrorist group, that shall mean «a structured group of more than two person, established over a period of time and acting in concert to commit terrorist offences». Furthermore, in paragraph 1, Art. 2, is specified that «„structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure».

Council Framework Decision 2002/475/JHA, that represents the basis of the counter-terrorist policy of the European Union, is amended by Council Framework Decision 2008/919/JHA of November 28, 2008.

The Action plan, approved on September 21, 2001 by the European Council, is the result of an extraordinary reunion that took place after September 11, 2001. In the first part of the Presidential Conclusions, it is expressed full solidarity to U. S. A. and it is underlined once again the own steadiness in the fight against «international terrorism», assumed as priority purpose by the E. U.; they particularly reaffirmed the legitimacy of the American reaction on the base of Resolution n. 1368, adopted by the U. N. Security Council on September 12, 2001, and they are still hoping for the constitution of a global antiterrorist coalition under the United Nations' escutcheon, and extended also to the Russian Federation, to Arabic and Muslims partners, and to whichever other country disposed to defend the «common values»[1].

In the successive part, dedicated to European policy against terrorism, the Council approves the Action plan, that is articulated in seven points, in which the first three have as main purpose the strengthening of the cooperation of the police and of the Law. In the first of these, it is stated the necessity to institute the European bench warrant, that can allow the direct consign of the persons sought from legal authority to legal authority, guaranteeing, at same time, the fundamental rights and freedoms. Through the second point, the European Council asks the Home Justice and Affairs Council to proceed to the identification both of the presumed terrorist in Europe and of the organizations that support them in order to compile a common directory of the terrorist organizations, and invites to a better cooperation and a better exchange of news among all the intelligence agencies of the European Union for which will be institute common investigative teams. And about the third point, the Countries members will systematically and promptly exchange all the useful data in terrorism field with Europol, with the wish that between Europol and competent American authorities can be concluded an agreement of cooperation by the end of the year. The successive objects that the European Council states, at the points fourth and fifth, are, respectively, the performance of all the conventions in matter, in order to assure a fast development of the international legal instruments and the predisposition of measures against the financing of terrorist groups. The Action plan provides for the strengthening of the aerial security and the coordination of the global action of the European Union, committed to the General Affairs Council.

[1] See: *Bonini M.* Oltre lo «Stato-nazione» per una politica europea di «lotta» al terrorismo (Consiglio europeo straordinario, Conclusioni della Presidenza e Piano di Azione, Bruxelles, september 21, 2001) // Rivista Italiana di Diritto Pubblico Comunitario. 2001. № 5. P. 895.

The overcoming of the concept of «Country/Nation» would be, then, desirable, because of the European interests, especially in legal field[1].

The Action plan of 2001 has been seen again by the European Council, that, on June 15, 2004, has adopted a new Plan that, caring about the purposes approved by the Council itself on March 25, 2004, after the assassination attempts in Madrid, on March 11, 2004, realizes new strategies in the fight against «international terrorism», foreseeing deadlines for the reaching of determined progresses in specific sectors.

Since the European Union antiterrorism legislation, as we know, in the successive years, a lot of the case law of the judgment issued by General court and the Court of Justice of the E.U.

European judges, in fact, as it's observed in doctrine, «affirm their competence to review acts establishing sanctions [...] from the point of view of their conformity with the legal order of the European Union and specifically with the fundamental rights protect by it», but «a number of issues are still unsettled»[2].

It's emphasized, therefore, how the «effective protection of listed subjects' rights can be pursued, according to international human rights agreement themselves, without sacrificing the equally imperative objective to fight international terrorism»[3].

5. The notion of «terrorism» in the Italian criminal system

Among the actions qualified to adapt the Italian legislation to the new European order, the Decree-Law n. 374 of October 18, 2001, converted, with modifications, in the Act n. 438 of December 15, 2001 («Urgent dispositions in order to contrast the international terrorism») is put on a great relief.

The declared attempt of the Italian legislator is to adapt the Italian antiterrorist norm to the changed European security situation after September 11, 2001, filling up the current gaps of our ordering, through modifications of the criminal system, and contributing, in this way, to a coming of the national legislations.

An important news is represented by the Art. 1 of the Act n. 438/2001, that rewrites the Art. 270*bis* c.c. (Italian criminal code). The emergency logic, Leitmotiv of the traditional Italian legal order, presents itself again with renewed energy after September 11, 2001, increasing the perspectives of a political criminal law more and more oriented toward the «fight against the enemy».

The legislator of 2001 has tried to obviate the inadequacy of the Italian criminal system, modifying the Art. 270*bis* c.c., in order to face the threats turned against foreign States stigmatized by the jurisprudence and made more obvious by the new emergency situation after the Twin Towers of New York attack; the change was made in order to conform this Article to the European order, but it remains incapable to supply a notion of «international terrorism» that went beyond a mere tautological definition[4].

The innovation is represented by the introduction of paragraph 3, through which the terrorism purpose is extended to the violence actions made against a foreign Country, an institution or an international organism. The equivocal meaning of last two notions has been wide underlined in the course of the preparatory labour, where worries have risen

[1] See: *Bonini M.* Oltre lo «Stato-nazione» per una politica europea di «lotta» al terrorismo. P. 901.

[2] See: *Lugato M.* Diritto alla tutela giurisdizionale, sanzioni individuali contro il terrorismo internazionale e giudici dell'Unione Europea // Legisl. pen. 2012. № 2. P. 415.

[3] Ibid. P. 416.

[4] See: *Bauccio L.* Il reato di terrorismo internazionale come introdotto dal Decreto-Legge 18 ottobre 2001: alla ricerca di una nozione possibile // URL: http://www.diritto.it/articoli/penale/bauccio1.html.

in order to an excessive expansion of the content of the criminal ban[1], and owing to the Art. 270*bis* c.c., it has been dreaded the criminalization of those dissent behaviours addressed against supranational organizations, such as World Bank, International Monetary Fund or World Trade Organization because those movements are placed within of the widest movement, i. e. the so called no-global, risen at the beginning of the new millennium to main expression of the social oppositions[2].

The change of the Art. 270*bis* c.c., as it was made by the legislator of 2001, is concluded with the introduction of paragraph 4, through which becomes obligatory, for the condemned, the seizure «anything that was used or was destined to commit the offence and of the things that represent the price, the product, the profit or that constitute the use».

The «emergency culture» and the «exception practice» present again a criminal law setting on a symptomatic-subjective background aiming at stigmatizing the author of the crime who puts on, so, the distinctive features of the «Muslim terrorist».

As we can see, it is hard to verify if the constitutional limits in the exercise of the rights (the right of free association, also without authorization and just on condition that the pursued aims are not prohibited to the single person by criminal law, affirmed by Art. 18 Italian Constitution, and the right of free manifestation of the thought through the freedom of speech and expression and through every other means of circulation, in the respect of the rules made up to protect the good habit, affirmed by Art. 21 Italian Constitution)[3] are outclassed or not and it is harder when we are in presence of organizations having as object, beside political or ideological, also religious programs.

Possible objects of the rules prohibition therefore become schools, institutes or places of cult, generating the wrong connection between two different levels – the first, the different values other from our tradition and, the second, the criminal agreement - that leads to the easy and paradoxical identification between «culture of terror» and «Muslim culture».

The regression from the criminal law of the «fact» to the criminal law of the «author» is facilitated by the renewed use of the associative repressive instrument, through which carries out an anticipation of the criminal threshold that is often used to hit a mere prospective criminal will, also if it is a collective will, in violation of the principle *cogitationis poenam nemo patitur*.

We have to add to such considerations the difficulty in delimiting the exact borders of the personality of each member within the criminal responsibility until making equivalent the punishment for the offence-aim to the mere belongings to a criminal association (a problem rises, in particular, in the comparison of those subjects that, within of the organization, cover high positions and to which is possible to contest a moral participation in the offence-aim compared to the others associates).

In comparison with the past it becomes more arduous to define the outlines of the associative participation, especially where the organism, indicted by the Italian legislator of 2001, far from connoting itself as the only hierarchically organized structure, it is realized in a complex network of connected functional cells[4].

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[1] See: *Bauccio L.* L'accertamento del fatto reato di terrorismo internazionale. Aspetti teorici e pratici / introductive essay by di S. Dambruoso. Milano, 2005. P. 82.

[2] See: *Formica M.* Artisti di strada o black block? Gli incerti confini del diritto penale alle prese con le devastazioni ed i saccheggi di Genova // Crit. dir. 2003. № 1. P. 108 and ff.

[3] See, on this point: *De Francesco G. A.* Ratio di «garantia» ed esigenze di «tutela» nella disciplina costituzionale dei limiti alla libertà di associazione // Riv. it. dir. proc. pen. 1982. P. 888 and ff.

[4] See: *Falcinelli D.* Terrorismo (profili sostanziali) // Dig. disc. pen. 2005. P. 1625.

The Italian reaction to the London underground attacks of July 7, 2005 determines an ulterior freeze in an authoritarian sense of our punitive system. In fact, the Act n. 155, July 31, 2005, introduces, through the Art. 270*quater*, 270*quinquies* and 270*sexies* c.c., new cases of «terrorist» crimes. We have seen how the Italian legislator has intervened with the Act n. 438, December 15, 2001, in a fast and perfunctory way, in order to remedy the inadequacy of the Italian punitive system to face the threats turned against foreign States, international institutions or organisms, and moreover evidenced by the «new global emergency» after September 11, and in order to give immediate performance to the indications that E. U. began to supply, to allow a progressive re-approaching of the national legislations in the repression of the phenomenon in examination, starting from the «Proposal of framework decision» and the «Conclusions of the Presidency and Action plan», respectively signed on September 19 and 21, 2001.

In despite of the modification of the Art. 270*bis* c.c. and the introduction, through the paragraph 3, about the internationality of the terrorist purpose, the rule still does not state a definition of «terrorism»; this lack makes necessary, in order to characterize in concrete the terrorist actions, a dismissal to the communitarian sources, among which the main reference is given by the Framework Decision 2002/475/JHA of June 13, 2002.

The scenes that are set up after the Twin Towers of New York attacks, where United States have taken the pretext for a policy of military aggression, have a recoil on each State order (North American and European), emphasizing the symptomatic-subjective factor intent on the stigmatization of the author of the respective political criminal laws.

Since the «preventive war» assumes the characters of an international police operation, «the external» enemy becomes, so, «internal» for all the Countries engaged with U. S. A. and E. U. in the infinite fight for the control of the geopolitical structures (among which we must consider the Russian Federation and the new Arabians and Muslims partners), involving the identification of the Muslim «combatant» or «resistant» figure with the abstract label of «terrorist». A new settlement of our repressive system has been thought necessary in the light of the evolutions of the inner single orderings caused by a new global conflict as the one occurred after the intervention in Afghanistan and, above all, in Iraq. The July 7, 2005 vicissitudes offer the opportunity, for the Italian government, that from the beginning has been in agreement with the American policy of military aggression, of extending within its criminal law those behaviours that also if can not be integrated in the «political association» offence, they can refer to the widest «permanent war» contest.

Because of the Act n. 155, July 31, 2005, can be punished anyone who, apart the cases stated in the Art. 270*bis* c.c., «recruits one or more persons» (Art. 270*quater* c.c.), or anyone who «trains or supplies instructions about the preparation or on the use of explosive materials, fire-arms or other weapons, injurious or dangerous chemistries or bacteriological substances, and every other technique or method» (Art. 270*quinquies* c.c.) «for the achievement of actions of violence or the sabotage of essential public services, with purpose of terrorism, even if revolts against one foreign Country, an institution or an international organism», previewing the confinement from seven to fifteen years, in relation to the first hypothesis, and from five to ten years, with reference to second one (in this case the punishment is applied of the trained person, too).

The aiming at hitting the Muslims combatants recruitment (Art. 270*quater* c.c.) or training (Art. 270*quinquies*)[1] is functional to the incrimination of behaviours that if could not refer

[1] See: *Valsecchi A.* L'accertamento del (doppio) dolo specifico nel reato di addestramento ad attività con finalità di terrorismo // Cass. pen. 2012. № 3. P. 903 and ff.

to subjects surely belonging to a whichever associative bind with a criminal association can not enter in the provision described in the Art. 270*bis* c.c., operating, at same time, a precise taking office within of the Middle Eastern conflicts.

The recent Decree-Law n. 7 of February 18, 2015, converted, with modifications, in the Act n. 43 of April 17, 2015 – which represents the Italian reaction to the Paris attacks against the satiric review (magazine) Charlie Hebdo of January 7, 2015 – has modified the Articles 270*quater* and 270*quinquies* c. c., introducing the criminal punishment for the recruited person and the self-trained person too[1].

Through the successive Art. 270*quater*.1, can be punished anyone who organizes, finances or propagates travels for the sake of terrorism, previewing the confinement from three to six years. The new measures (for example, the passport's retirement to the suspected of terrorism and new limits in the exercise of the privacy right) aim at hitting the phenomenon of «foreign fighters», i.e. the western fighters who were recruited by terrorist organizations: it's stated also a Black List of web sites to terrorist propaganda or apology.

The following Art. 270*sexies* c.c. proposes to fill the void represented by the absence, in the Art. 270*bis* c.c., of a normative definition of «terrorism» purpose and that now defines as terrorist the behaviours that, for «their nature or context, may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation», but still maintaining few closing clauses that are a deferral to all the other normative sources binding for Italy, that endorse ulterior terrorist purposes. In spite of the attempt declared by the Italian legislator of 2005, it is obvious the defect of standardization of the norm from which it is not, easily inferable the nature of the indicted behaviours, where every reference to their violent character is absent[2]. The Art. 270*sexies* c.c. contains the mere list of a series of prohibited actions that however are not sufficient to integrate a clear definition of «terrorism», that, in our opinion, is *a priori* inhibited because its cannot be objectified.

The incriminate figures introduced by the Act n. 155/2005 and amended by the Legislative Decree n. 7/2015 converted in the Act n. 43 of April 17, 2015, represent, along the same lines as the widest «terrorist» offences category, a modern re-proposition of the *crimina laesae maiestatis*, that renew the contradictions between political crime and democratic State[3]. The word «terrorist» has always had a subjective valence, which tends to the stigmatization of the author rather than to the description of the fact, and, if in the «years of lead» it were used in order to label the counterpart, in order to make smaller all the social confrontation of which the phenomenon of the «armed struggle» was expression, opting just for its judicial solution[4], nowadays it is functional to the negation of the existence of a war that assumes the character of a true right of intervention on

[1] See: *Balsamo A.* Decreto antiterrorismo e riforma del sistema delle misure di prevenzione, in Diritto penale contemporaneo (posted on 2015, March 2) // URL: hhtp://www.penalecontemporaneo.it; *Colaiocco S.* Prime osservazioni sulle nuove fattispecie antiterrorismo introdotte dal decreto-legge n. 7 del 2015 // Arch. pen. 2015. № 1; URL: http://www.archiviopenale.it.

[2] See: *Valsecchi A.* Misure urgenti per il contrasto del terrorismo internazionale. Brevi osservazioni di diritto penale sostanziale // Dir. pen. e proc. 2005. № 10. P. 1224.

[3] See: *Musacchio V.* Terrorismo internazionale e stato democratico // Giust. pen. 2005. № 7–8. P. 268 and ff.

[4] See: *Gamberini A., Insolera G.* Terrorismo, Stato e sistema delle libertà: l'inchiesta del 7 aprile // La Questione criminale. 1979. № 2. P. 301 and ff.

the part of North American over-powerfulness, imposing upon itself as a social control at a global level[1].

6. Conclusive considerations

September 11, 2001 vicissitudes have supplied a definitive legitimacy to that transformation process of the conflicts started since the Berlin wall and the consequent end of the so called «cold war», through the experimentation of military aggression policies that assume shapes of true and own operations of international police.

The aberrant consequence of the statement of the logic of universal dominion is the evolution of an international law and a constitutional law that are redefining themselves around principles more and more careless to the recognition of the Human Rights.

The destabilization of the geopolitical areas, where the North American economic interests stand, is the direct consequence of the U. S. A. military intervention policies and the «perpetual global war».

A recent dramatic example of the ungovernable state, caused in Iraq by the Second Gulf War, as well as in Libya by the war against Gaddafi and his murder, is the ISIS' offensive against the peoples, first, in the area between Iraq, Syria and Turkey, then, in Libya.

ISIS is the product of North American and Israeli intelligence for the destabilization of the Arabian Countries through the training of Sunni rebels anti-Assad, who then were recruited like mercenaries fighters by ISIS. This organization represents a real imperialist invasion force and its declared programme is the establishment of an Islamic state, through violence, mass-executions and methodical destructions of whole villages, till now made in the area between Iraq and Syria, where the self-proclaimed „Islamic State" (IS) operates.

Near the border between Turkey and the Syria – especially in the Syrian Kurdish town of Kobani (Rojava) – ISIS is meeting with an heroic Kurdish resistance.

After the shocking video message showing beheading of James Wright Foley, photo-journalist and video-reporter, posted online on August 19, 2014 by ISIS, Obama administration declared an offensive against ISIS.

In this new conflict, nevertheless U. S. A. and their allies only play a formal role, as the global media show us. The leading role in the war against ISIS (and, therefore, against the «real terrorism») is played by Kurdish resistance and, particularly, by People's Protection Units (YPG), the armed wing of the Syrian Kurdish Democratic Union Party (PYD), a group near to the Kurdistan Workers Party (PKK), protagonist in the defence of Turkish borders.

The PKK is a political organization for the independence and unification for Kurdistan, since decennium considered by Turkish government and its allies (*in primis*, U. S. A.) to be a «terrorist organization», as well as is considered to be terrorist the PYD. Nevertheless it is the Turkey state, which practices terror and a racist policy against Kurds and names terrorist the PKK for holding out against the liquidation of Kurdish people.

Till now for these political reasons Turkey doesn't support Kurdish resistance near the border with Syria against ISIS attacks and is bombing PKK positions around Kobani. Erdogan administration was forced into opening an arms corridor to Syria, to allow Iraqi Kurdish peshmerga fighters (de facto, old allies with U. S. A. in the fight against Saddam Hussein) to cross through Turkey into Kobani, only after United States' accusations of irresponsibility

[1] This process of conflicts transformation is functional to the overlapping and the mystification of the two different categories of «*ius in bello*» and «international terrorism»; see: *Preziuso C.* Lo jus in bello come limite alla categoria del terrorismo internazionale // Crit. dir. 2005. № 1. P. 107 and ff.

to not support the Syrian Kurds in their fight against ISIS[1]. The Syrian town of Kobani is free by ISIS' occupation from January 2015.

The opposition between two coalitions in the Middle East is outlined in the new worldwide conflict: from one hand, Turkey, with Saudi Arabia and Qatar (the main financing bodies of ISIS) and the alliance between United States and Israel; from the other hand, a Shiite coalition, including Iran, the Alawite Syria of al-Assad, the Lebanese group of Hezbollah and Palestinian supporters of Hamas (after Hezbollah victorious since its 2006 conflict against Israel, many of Gaza's peoples converted from Sunni to Shiite Islam). Behind the new scenes of war there is a complex network of political, geopolitical and economic interests: lobbies for the control of the oil in the area, above all in Iraq (the same interests which caused the Iraqi military invasion of 2003); the civil war in Syria between the Alawites Shiites of Bashar al-Assad and Sunni, who are the Western strategic partners; the new de facto alliance between Iraq and Iran; the Kurdish independence (included the freeing of the founder and leader of PKK, Abdullah Ocalan, prisoner in a Turkish high-security prison since 1999).

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[1] See: *Zaman A.* Op. cit.

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