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University of Vienna - Faculty of Law

Doctoral Programme in Law

## Research Proposal

### **Title:**

Exclusion from Refugee Status and EU Counter-terrorism law

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### **Research Field:**

Public International Law

Vienna, June 2017

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## I. Background

Due to armed conflicts, turmoil as well as humanitarian crises in the Middle East and North Africa, the European Union is facing a high refugee influx in the last years, which causes much debate in public, but also among policy makers and Member States of the European Union. In the years 2014 - 2016, more than 3 million refugees lodged an asylum request within the European Union (2014: 626.960 persons; 2015: 1.322.825 persons; 2016: 1.259.955 persons)<sup>1</sup>.

At the same time, the threat and the impact of international terrorism in Europe is rising on a constant level. With the terror attacks in Madrid in 2004<sup>2</sup> and in London in 2005<sup>3</sup>, and after a period of „dormancy“, a new wave of international terrorism hit Europe: Bataclan - Paris 2015<sup>4</sup>; Zaventem and Maelbeek - Brussels 2016<sup>5</sup>; Bastille Day - Nice 2016<sup>6</sup>; Christmas market - Berlin 2016<sup>7</sup> and just recently two times in London<sup>8 9</sup>.

A dilemmatic relationship between refugee protection and anti- or counter-terrorism measures does exist.<sup>10</sup> The concept of exclusion of international protection constitutes a crossroad of international refugee law and countering serious international crime, including terrorism. When there are serious reasons to believe for considering that persons have committed specific crimes or certain acts according to Article 1F (a)-(c) of the Geneva Convention relating to the Status of Refugees (‘Geneva Convention’)<sup>11</sup>, those persons are excluded from the Geneva Convention regime of international protection. The rationale for the exclusion clauses *'is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees.'*<sup>12</sup>

Due to the emerging challenges of international terrorism, the aspect of foreign terrorist fighters and

<sup>1</sup> Eurostat, numbers of asylum applicants EU 28 – yearly data, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=de&pcode=tps00191&plugin=1> (accessed on: 5 June 2017).

<sup>2</sup> 2004: Many die as bombs destroy Madrid trains, BBC News, available at: [http://news.bbc.co.uk/onthisday/hi/dates/stories/march/11/newsid\\_4273000/4273817.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/march/11/newsid_4273000/4273817.stm) (accessed on: 28 February 2017).

<sup>3</sup> 7 July London bombings: What happened that day?, BBC News, 3 July 2015, available at: <http://www.bbc.com/news/uk-33253598> (accessed on: 28 February 2017).

<sup>4</sup> Paris attacks: What happened on the night, BBC News, 9 December 2015, available at: <http://www.bbc.com/news/world-europe-34818994> (accessed on: 28 February 2017).

<sup>5</sup> Brussels attacks: Zaventem and Maelbeek bombs kill many, BBC News, 22 March 2016, available at: <http://www.bbc.com/news/world-europe-35869254> (accessed on: 28 February 2017).

<sup>6</sup> Nice attack: At least 84 killed by lorry at Bastille Day celebrations, BBC News, 15 July 2016, available at: <http://www.bbc.com/news/world-europe-36800730> (accessed on: 28 February 2017).

<sup>7</sup> Berlin lorry attack: What we know, BBC 24 December 2016, available at: <http://www.bbc.com/news/world-europe-38377428> (accessed on: 28 February 2017).

<sup>8</sup> London terror attack: what we know so far, the Guardian, 5 June 2017, <https://www.theguardian.com/uk-news/2017/jun/04/london-attacks-what-we-know-so-far-london-bridge-borough-market-vauxhall> (accessed on: 5 June 2017).

<sup>9</sup> London terror attack: what we know so far, the Guardian, 24 March 2017, <https://www.theguardian.com/uk-news/2017/mar/22/attack-houses-parliament-london-what-we-know-so-far> (accessed on: 5 June 2017).

<sup>10</sup> Vedsted-Hansen, Jens, *The European Convention on Human Rights, Counter-Terrorism, and Refugee Protection*, Refugee Survey Quarterly 2010, 29 (4): 189-206.

<sup>11</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>12</sup> UNHCR Guidelines on international protection: *Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, para 2, <http://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html> (accessed on: 8 June 2017).

the refugee situation in Europe, the topic of exclusion of international protection will become more relevant and important in legal practice. States in the global North increasingly recourse to Article 1F, because of security issues, migration and asylum seekers.<sup>13</sup> Public authorities as well as the judiciary in European Union ('EU') member states will find themselves more often at this intersection of international refugee law and EU Counter-terrorism law and have to deal with the practical implications in a very sensitive, but dynamic field of law.

## II. Current State of Research & Relevance of the Topic

In international refugee law, the concept of exclusion from international protection according to Article 1F of the Geneva Convention is well established.<sup>14</sup> Persons are outside of the scope of the Geneva Convention if there are serious reasons considering that they have been involved in certain crimes defined in Article 1F of the Geneva Convention. Acts of violence of 'terrorist' nature can be classified to constitute a '*serious non-political crime*' (Article 1F (b) Geneva Convention)<sup>15 16</sup> as well as an '*act contrary to the purposes and principles of the United Nations*' (Article 1F (c) Geneva Convention)<sup>17 18</sup>. Notably, since the terror attacks of September 11<sup>th</sup>, 2001, the United Nations Security Council ('UNSC') referred to the threat and danger of international terrorism on several occasions and declared particular acts as '*acts contrary to the purposes and principles of the United Nations*'.<sup>19</sup>

In the EU the full and inclusive application of the Geneva Convention is regulated in Article 78 Treaty on the Functioning of the EU ('TFEU')<sup>20</sup>, in Article 18 of the EU Charter of Fundamental Rights and in EU Directive 2011/95 EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection ('EU Qualification Directive')<sup>21</sup>,

<sup>13</sup> Yakut-Bahtiyar, Zarif, *Exclusion Clauses of the Refugee Convention in Relation to National Immigration Legislations, European Policy and Human Rights Instruments: Article 1F versus the Non-Refoulement Principle*, International Journal of Refugee Law (2017) 29 (1): 198-200.

<sup>14</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137; Zimmermann, Andreas, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford University Press, 2011, at 579; Nyihah, MK, *Exclusion under Article 1F: Some Reflections on Context, Principles and Practice*, 12 IJRL (2000), 295; Saul, Ben, *Terrorism as a Legal Concept*, Sydney Law School, Legal Studies Research Paper No. 15/85 (2015);

<sup>15</sup> UNHCR Guidelines on international protection, *Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, para 15, <http://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html> (accessed on: 8 June 2017).

<sup>16</sup> ECLI:EU:C:2010:661, C-57/09 and C-101/09 BRD v B&D (2010), para 81f., <http://curia.europa.eu/juris/document/document.jsf?text=&docid=79167&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=90436> (accessed on: 2 June 2017).

<sup>17</sup> UNHCR Guidelines on international protection, *Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, para 17, <http://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html> (accessed on: 8 June 2017).

<sup>18</sup> ECLI:EU:C:2010:661, C-57/09 and C-101/09 BRD v B&D (2010), para 82, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=79167&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=90436> (accessed on: 2 June 2017).

<sup>19</sup> See e.g. UNSC Resolution 1373 (2001), 1377 (2001), Resolution 1624 (2005), Resolution 2178 (2014), <http://www.un.org/en/sc/documents/resolutions/> (accessed on: 8 June 2017).

<sup>20</sup> Charter of Fundamental Rights of the European Union, Article 18, 26 October 2012, 2012/C 326/02.

<sup>21</sup> EU Directive 2011/95/EU, recital 3, <https://www.eso.europa.eu/sites/default/files/public/Dve-2011-95->

including the exclusion clauses from international protection.<sup>22</sup>

In the EU, the terrorist offenses in criminal law are harmonized within EU Counter-terrorism law by EU Framework Decision 2002/475/JHA on Combating Terrorism 2002<sup>23</sup>, which was amended by Council Framework Decision 2008/919/JHA.<sup>24</sup> In March 2017, the EU adopted a new EU Directive (2017/541) on combating terrorism<sup>25</sup>, which is extending the existing list of terrorist crimes. The national laws of EU Member States shall comply with the new EU Directive until latest September 2018.

The regime of the exclusion clauses in international law is not something new, but attention in the past was given particularly on the principle of *Non-Refoulement* and the aspect of Human Rights.<sup>26</sup> In light of the developments of the last years described in chapter I and the emerging new forms of international terrorism, scholars and academia are shifting their attention towards the individual application of exclusion clauses in regard to terrorist acts and the issue of individual responsibility in asylum and criminal proceedings.<sup>27</sup>

In the area of freedom, security and justice in connection with asylum and international terrorism three relevant decisions were issued by the Court of Justice of the European (CJEU): joined proceedings *C-57/09 and C-101/09 Bundesrepublik Deutschland (BRD) v B&D (2010)* (hereinafter *B&D*)<sup>28</sup>, *C-373/13 H. T. v Land Baden-Württemberg ('H.T.')*<sup>29</sup> and *C-573/14 Belgian Commissioner General for Refugees and Stateless Persons ('CGRA') v. Mostafa Lounani (2017)* (hereinafter *Lounani*)<sup>30</sup>.

[Qualification.pdf](#) (accessed on: 8 June 2017).

<sup>22</sup> EU Directive 2011/95/EU, Article 12, <https://www.easo.europa.eu/sites/default/files/public/Dve-2011-95-Qualification.pdf> (accessed on: 8 June 2017).

<sup>23</sup> EU Council Framework Decision 2002/475/JHA, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0475&from=EN>, (accessed on: 2 June 2017).

<sup>24</sup> Council Framework Decision 2008/919/JHA, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0919&from=EN> (accessed on: 2 June 2017).

<sup>25</sup> Directive EU 2017/541, <https://db.eurocrim.org/db/en/doc/2704.pdf>, (accessed on: 8 June 2017).

<sup>26</sup> Yakut-Bahtiyar, Zarif, *Exclusion Clauses of the Refugee Convention in Relation to National Immigration Legislations, European Policy and Human Rights Instruments: Article 1F versus the Non-Refoulement Principle*, *International Journal of Refugee Law* (2017) 29 (1): 198-200; Mole, Nuala, *Asylum and the European Convention on Human Rights*, Human rights files No. 9 (revised), Council of Europe, 2000, 15f.

<sup>27</sup> Singer, Sarah, *Terrorism and Exclusion from Refugee Status in the UK: Asylum Seekers Suspected of Serious Criminality*, Queen Mary Studies in International Law, 2015; Walsh, Jeff, *European Database of Asylum Law (EDAL), Exclusion from International Protection for Terrorist Activities under EU Law: from B&D to Lounani*, February 9, 2017, <http://www.asylumlawdatabase.eu/en/journal/exclusion-international-protection-terrorist-activities-under-eu-law-b-d-lounani> (accessed on 10 June 2017); Beamont, Thomas, *The Lounani case: When can a member of a terrorist group can be excluded from refugee status?*, March 9, 2017, <https://www.freemovement.org.uk/lounani-case-can-member-terrorist-group-excluded-refugee-status/> (accessed on June 12, 2017); Coutts, Stephen, *Terror and Exclusion in EU Asylum Law Case - C-573/14 Lounani*, March 3, 2017, <http://europeanlawblog.eu/2017/03/03/terror-and-exclusion-in-eu-asylum-law-case-c-57314-lounani-grand-chamber-31-january-2017/> (accessed on June 10, 2017); Peer, Stevens, *Foreign fighters' helpers excluded from refugee status: the ECJ clarifies the law*, January 31, 2017, <http://eulawanalysis.blogspot.co.at/2017/01/foreign-fighters-helpers-excluded-from.html> (accessed on June, 10, 2017); Simeon, James C., *Complicity and Culpability and the Exclusion of Terrorists From Convention Refugee Status Post-9/11*, *Refugee Survey Quarterly* 2010; 29 (4): 104-137.

<sup>28</sup> ECLI:EU:C:2010:661, *C-57/09 and C-101/09 BRD v B&D (2010)*, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=79167&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=90436> (accessed on: 2 June 2017).

<sup>29</sup> ECLI:EU:C:2015:413, *C-373/13 H. T. v Land Baden-Württemberg*

<sup>30</sup> ECLI:EU:C:2017:71, *C-573/14 CGRA v Lounani (2017)*, <http://curia.europa.eu/juris/document/document.jsf?>

With regard to the question, whether an individual responsibility of the person in question exists, all three judgments confirmed the legal approach that for each case, an individual assessment of and a full investigation into all circumstances of the case has to be conducted to be able to consider the individual responsibility.<sup>31</sup> Apart from this common finding and some clarifications, the judgements are – when considered together – also diverse and leave much room for uncertainties. Whilst the CJEU took in *B&D* and *H.T.* a more restrictive and narrow approach towards the individual responsibility of terrorist acts<sup>32</sup>, the CJEU in *Lounani* expanded the scope of the exclusion clauses in EU law as well as the specific conditions for individual responsibility.<sup>33</sup>

A presumption of criminal responsibility can arise when certain factors and parameters exist, including the structure of the criminal group, its actual activities, the individual's position, knowledge, pressure exposed and the ability to influence its activities.<sup>34</sup> The UNHCR Guidelines on international protection declare that the fact that somebody was '*a member of an organization involved in unlawful violence does not in itself entail individual liability for excludable acts.*'<sup>35</sup> In *B&D*, the CJEU confirmed that understanding that '*the mere fact that the person concerned was a member of such an organization cannot automatically*' trigger the exclusion from refugee status and it is not justifiable for a competent national authority to base its decision solely on that person's membership of an organization on a terror list. But membership is a factor which must be taken into account.<sup>36</sup> Whether the organization or the individual is listed on an international terrorist list of the UNSC or the European Union, can trigger considerations of the exclusion clauses.<sup>37</sup>

In *H. T.* the CJEU ruled that the role the person actually played in supporting an organization, which is listed as a terror organization, must be in focus of the individual assessment for responsibility. Mr. H.T. '*participated in legal meetings and manifestations such as the celebration of the Kurdish New Year and the collection of funds for that organisation. The fact that he carried out such acts does not necessarily mean that he supported the legitimacy of terrorist activities. Even more so, acts of that nature do not constitute, in themselves, terrorist acts.*'<sup>38</sup> Therefore this level of support did not seem to be sufficient to be an active participation in violent terrorist acts and the CJEU took a relatively strict interpretation.<sup>39</sup>

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[text=&docid=187322&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=115970](#) (accessed on: 2 June 2017).

<sup>31</sup> C-57/09 and C-101/09 *BRD v B&D* (2010), para 87, 93 ; C-573/14 *CGRA v Lounani* (2017), para 70; C-373/13 *H. T. v Land Baden-Württemberg*, para 90.

<sup>32</sup> See Hoppe, Michael, *Aktuelle Rechtsprechung zum Asyl- und Flüchtlingsrecht*, Zeitschrift für Ausländerrecht 11-12/2012, p. 405f.

<sup>33</sup> Peers, Steve, *What if a refugee allegedly supports terrorism? The CJEU judgment in T*, June 24, 2015, <http://eulawanalysis.blogspot.co.at/2015/06/what-if-refugee-allegedly-supports.html> (accessed on: 7 June 2017).

<sup>34</sup> See Marx, Reinhard, *Unterstützung terroristischer Organisationen nach Art. 12 II Buchst. b) und c) QRI*, Zeitschrift für Ausländerrecht 10/2008, 344f.

<sup>35</sup> UNHCR Guidelines on international protection, *Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, para 19, <http://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html> (accessed on: 8 June 2017).

<sup>36</sup> C-57/09 and C-101/09 *BRD v B&D* (2010), para 88f.

<sup>37</sup> See C-57/09 and C-101/09 *BRD v B&D* (2010), para 8897; UNHCR Guidelines on international protection, *Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, para 25, <http://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html> (accessed on: 8 June 2017).

<sup>38</sup> C-373/13 *H. T. v Land Baden-Württemberg*, para 91.

<sup>39</sup> Peers, Steve, *What if a refugee allegedly supports terrorism? The CJEU judgment in T*, June 24, 2015, <http://eulawanalysis.blogspot.co.at/2015/06/what-if-refugee-allegedly-supports.html> (accessed on: 7 June 2017).



In the *Lounani* Case, the CJEU took a rather contrary position with regard to the evaluation of terrorist acts. Mr. Lounani provided in Belgium logistical support (supply of information, forgery and fraudulent transfer of passports, network organisation for volunteers) as member of the leadership of a group listed as a terrorist organization.<sup>40</sup> Although Mr. Lounani did not personally commit any terrorist acts, or instigated such acts, or participated in their commission, the CJEU ruled that *'(f)or the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted by the courts of a Member State on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.'*<sup>41</sup> (emphasis added) This means that not only persons who committed terrorist acts, but also those who engaged in support activities can be excluded from international protection under certain circumstances.<sup>42</sup> In addition, the CJEU ruled that in the context of the individual assessment, a final conviction on a charge of participation in the activities of a terrorist group by the courts of a Member State is *'of particular importance'*.<sup>43</sup> This leads to difficult questions about the role and the nature of a conviction when applying the exclusion clause, especially in case no (final) judgment exists.<sup>44</sup>

Furthermore, the CJEU expanded in *Lounani* the scope of terrorist acts by declaring that *'the concept of 'acts contrary to the purposes and principles of the United Nations', to be found in Article 1F(c) of the Geneva Convention and in Article 12(2)(c) of Directive 2004/83, cannot be interpreted as being confined to the commission of terrorist acts as specified in the Security Council Resolutions'*.<sup>45</sup> The CJEU went on and stated with regard to Article 12(2) (c) of the EU Qualification Directive that *'it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Framework Decision 2002/475.'*<sup>46</sup> Rather, it seems to be sufficient when the person supported an act which has been identified by the UNSC to be for the purpose of the perpetration, planning or preparation of terrorist acts.<sup>47</sup> This leads to the question, whether it is possible to exclude an applicant for international protection by relying on the similarity between the applicant's conduct and measures that the UNSC recommends that states combat?<sup>48</sup>

<sup>40</sup> C-573/14 CGRA v Lounani (2017), para 30, 64.

<sup>41</sup> C-573/14 CGRA v Lounani (2017), para 79.

<sup>42</sup> Beamont, Thomas, *The Lounani case: When can a member of a terrorist group can be excluded from refugee status?*, March 9, 2017, <https://www.freemovement.org.uk/lounani-case-can-member-terrorist-group-excluded-refugee-status/> (accessed on June 12, 2017); Peers, Stevens, *Foreign fighters' helpers excluded from refugee status: the ECJ clarifies the law*, January 31, 2017, <http://eulawanalysis.blogspot.co.at/2017/01/foreign-fighters-helpers-excluded-from.html> (accessed on June, 10, 2017).

<sup>43</sup> C-573/14 CGRA v Lounani (2017), para 78.

<sup>44</sup> See Peer, Stevens, *Foreign fighters' helpers excluded from refugee status: the ECJ clarifies the law*, January 31, 2017, <http://eulawanalysis.blogspot.co.at/2017/01/foreign-fighters-helpers-excluded-from.html> (accessed on June, 10, 2017).

<sup>45</sup> C-573/14 CGRA v Lounani (2017), para 48.

<sup>46</sup> C-573/14 CGRA v Lounani (2017), para 54.

<sup>47</sup> See C-573/14 CGRA v Lounani (2017), para 67.

<sup>48</sup> Beamont, Thomas, *The Lounani case: When can a member of a terrorist group can be excluded from refugee status?*, March 9, 2017, <https://www.freemovement.org.uk/lounani-case-can-member-terrorist-group-excluded-refugee-status/> (accessed on June 12, 2017).

These various aspects and ambiguities with regard to the application of the exclusion clauses and the attribution of individual criminal responsibility in the evolving field of EU Counter-terrorism show the absence of legal certainty. The CJEU judgments *B&D*, *H.T.* and *Lounani* demonstrate the lack of a consistent and coherent approach and the emerging nature of this subject make further study and research necessary and appropriate.

### III. Research Questions & Methodology

The analysis conducted in chapter II. leads to the following research questions:

- 1) What is the scope of terrorist offenses according to public international and EU law in relation to the exclusion clauses?
  - a) How do UNSC Resolutions shape EU-Counter-terrorism law and what are the legal consequences for exclusion of refugee status?
  - b) What are the legal impacts of the newly adopted EU terrorist crimes on the application of Article 1F Geneva Convention?
  - c) What are the legal implications if national authorities and/or courts in the European Union refer their decisions directly to widely-drawn UNSC resolutions in the area of criminal and refugee law?
- 2) Under which conditions can a person be excluded from refugee status with regard to a crime of a terrorist nature according to Article 1F Geneva Convention in the EU?
  - a) What are the aspects of a comprehensive individual assessment?
  - b) When is individual responsibility established with regard to the commission of a crime with a terrorist nature? What are the limits of culpability?
  - c) What impact has a judicial conviction and what the absence thereof?
  - d) What are the legal impacts of the newly adopted EU terrorist crimes on the individual responsibility?

The research thesis will be divided into three parts.

The **first part** will deal with how the concept of exclusion from international protection is defined in international law with respect to crimes of a terrorist nature. The Geneva Convention, the various existing definitions of terrorism in public international respectively EU law, relevant UNSC Resolutions as well as EU legislation will serve as a starting point.<sup>49</sup> The inquiry will take into account the evolution of international protection specified in the Geneva Convention and in EU legislation (e.g. EU Qualification Directive, Framework Decision on Counter-terrorism, newly adopted EU Directive on Counter-terrorism).<sup>50</sup> The emergence of international and regional counter-terrorism law, including the role of the UNSC and the nature of terrorist lists will be considered too. Furthermore a study of legislation, academic literature and case law of relevant refugee law, human rights, and international criminal law with respect to counter-terrorism as well as public

<sup>49</sup> Clapham, Andrew, Gaeta, Paola, Sassoli, Marco, *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, 2015; Hathaway, James C., *The Rights of Refugees under International Law*, Cambridge University Press, 2005; Hanhimäki, J.M., and Blumenau, B. (eds.), *An International History of Terrorism: Western and Non-Western Experiences*, London, Routledge, 2013. Hegemann, H., *International Counterterrorism Bureaucracies in the United Nations and the European Union*, Baden-Baden, Nomos, 2014.

<sup>50</sup> Guild, Elspeth, Baldaccini, Anneliese, *Terrorism And the Foreigner: A Decade of Tension Around the Rule of Law in Europe*, Immigration And Asylum Law And Policy in Europe Vol. 11, p. 383ff., 2007.



international law will be conducted.

In the **second part** the specific relationship between public international law and EU law in the area of counter-terrorism and refugee law will be researched in. Therefore EU legislative acts, including the European Charter of Fundamental Rights, EU Directives and Framework Decisions on Counter-terrorism, relevant case law of the European Court of Human Rights and the CJEU, as well as of national courts when suitable, will be scrutinized to be able to identify the implications of UNSC Resolutions on EU-Counter-terrorism law and the exclusion regime of the Geneva Convention. In particular the line of arguments of the Court of Justice of the EU in *Lounani* will be taken into account by reference to various scholarly critics<sup>51</sup>, in order to assess possible future implications in the field of counter-terrorism and the exclusion clauses.

The specific nature and the scope of terrorist acts will be analyzed in the **third part**, when terrorist acts serve as a justification for the exclusion from international protection. Therefore applicable public international criminal law and European Union law, including scholarly commentaries on them, will be scrutinized for the purpose of identifying the crucial aspects, decisive factors and relevant conditions, under which someone committed respectively supported somehow a terrorist crime and is therefore excluded from refugee status.<sup>52</sup> Furthermore, some countries experienced criminal and/or asylum law proceedings in connection to terrorist offences extensively in the recent past. Thus it will be of importance to include domestic case law from countries, who have dealt more frequently with the issue at hand than others, like Germany, Belgium, the Netherlands, United Kingdom and others. Additionally, also case law from non EU countries are of importance when dealing with the specific nature of exclusion from refugee status linked to terrorist offences. Through domestic judgements and judicial assessments of various terrorist offences, case law contributes significantly to clarify and to develop the legal nature and scope of terrorist acts and the application of exclusion clauses in counter-terrorist law.

Also in this respect, the CJEU in *Lounani* extended the applicable scope of terrorist acts and the judgement will have major implications on case law in this field. The newly adopted EU Directive on Counter-terrorism, which contains also new terrorist crimes, will have naturally an essential impact on the scope of terrorist crimes in the EU. With regard to the *Lounani* case and the new EU Directive on Counter-terrorism, academic literature and scientific treatment of these newest developments in EU Counter-terrorism law are still at a very early stage, but will be taken into account when published, while this research will be conducted.

<sup>51</sup> Walsh, Jeff, European Database of Asylum Law (EDAL), *Exclusion from International Protection for Terrorist Activities under EU Law: from B & D to Lounani*, February 9, 2017, <http://www.asylumlawdatabase.eu/en/journal/exclusion-international-protection-terrorist-activities-under-eu-law-b-d-lounani> (accessed on 10 June 2017); Beamont, Thomas, *The Lounani case: When can a member of a terrorist group be excluded from refugee status?*, March 9, 2017, <https://www.freemovement.org.uk/lounani-case-can-member-terrorist-group-excluded-refugee-status/> (accessed on June 12, 2017); Coutts, Stephen, *Terror and Exclusion in EU Asylum Law Case - C-573/14 Lounani*, March 3, 2017, <http://europeanlawblog.eu/2017/03/03/terror-and-exclusion-in-eu-asylum-law-case-c-57314-lounani-grand-chamber-31-january-2017/> (accessed on June 10, 2017); Peers, Stevens, *Foreign fighters' helpers excluded from refugee status: the ECJ clarifies the law*, January 31, 2017, <http://eulawanalysis.blogspot.co.at/2017/01/foreign-fighters-helpers-excluded-from.html> (accessed on June, 10, 2017).

<sup>52</sup> Cassese, Antonio, Gaeta, Paola, *Cassese's International Criminal Law*, Oxford University Press, 2013, p. 146f.

## IV. Outline & Structure

### *Part 1 – Exclusion from International Protection and the Crime of Terrorism*

1. Introduction and Overview
2. Evolution and Historic Development
  - a. Exclusion from International Protection
  - b. The Crime of Terrorism
3. The Concept of Exclusion from International Protection on the grounds of a Terrorist Crime

### *Part 2 – Counter-terrorism Law, Exclusion Clauses and the EU*

4. International Legal Order in Counter-terrorism
5. Legal Framework of Counter-terrorism in the European Union
6. Exclusion of International Protection implemented in the EU Legislation
7. Implications of International Counter-terrorism Law on EU Case Law
8. Relevant EU Case Law: Terrorism and Exclusion Clauses

### *Part 3- Application of the Exclusion Clauses & the Scope of a Terrorist Act*

9. Definitions of Terrorist Acts
  - a. Public International Criminal Law
  - b. European Union Law
10. Analyses of the Aspects of Individual Responsibility in Legislation and Case Law
  - a. Membership to Terrorist Organizations
  - b. Acts of Terrorism
  - c. Burden and Standard of Proof
  - d. Complicity and Culpability
  - e. Intent and Knowledge
  - f. Prosecution and Conviction
  - g. Defences
11. Key Considerations
12. Conclusion & Outlook
13. Executive Summary English & German
14. Bibliography

## V. Financing & Work Plan

I will collect the resources mainly from the University of Vienna law and main library, Austrian National Library as well as online accessible academic publications. Additionally, to broaden and to deepen the perspective on the research subject, I do plan certain – but timely limited – research visits to relevant stakeholders and competence centres in Austria (e.g. Federal Ministry of the Interior, BFA-Federal Office for Immigration and Asylum in Austria, BVT-Federal Office for the Protection of the Constitution and Counterterrorism) and abroad in order to conduct research and/or interviews, for example in Brussels (EU, NATO Multimedia Library), The Hague (Peace Palace Library, International Centre for Counter-Terrorism) or other leading academic institutions in this field, to name a few possibilities. These mentioned academic institutions, organizations and stakeholders possess a major amount of relevant literature as well as experience in the specific research field.

The dissertation will be financed primarily by my own funds. Additionally, I will apply for certain grants and funds.

Hereinafter an overview of the university courses already conducted respectively planned within the Curriculum:

**2014 – 2016 (completed)**

- SE Seminar in Public International Law: EU - External & Internal Security
- SE Seminar in Public International and European Law: Investment Law
- KU International Judicial Decisions and their Political Context
- KU Introduction to the External Relations of the European Union
- KU War, Geopolitics and the Responsibility to Protect
- KU System and Methodology: The Ethics of Spinoza
- VO Legal Methods
- Various optional subjects in Public International and European Law

**SS 2017**

- Study of relevant literature, research and finding of the dissertation topic
- Composition of the Research Proposal
- Request for approval of the dissertation project (and of the Research Proposal) and presentation to the colloquium open to members of the faculty
- Work on the dissertation and regular consultation with the supervisor

**WS 2017 (planned)**

- Work on the dissertation and regular consultation with the supervisor
- Potential research abroad

**SS 2018/ WS 2018 (planned)**

- Work on the dissertation and regular consultation with the supervisor
- Potential research abroad

**SS 2019/ WS 2019 (planned)**

- Revision of the thesis and improvements
- Submission of the thesis
- Defensio

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