



# Colloquium

by Dr. Fatih Karaosmanoglu

## Topic of the Presentation:

### **"The Draft Counter-Terrorism Act: Is Turkey Going Back or Ahead?"**

This presentation is concerned with the Draft Counter Terrorism Act (CTA), which is the newly agenda of Turkey. It has been criticized inside and outside of Turkey, especially by the European Union because of the Copenhagen Norms concerning human rights.

Given that both combating terrorism and protection of human rights are significant and sometimes clashing issues, finding the appropriate balance between them is critical. Dr. Karaosmanoglu will address this issue within the framework of the draft CTA from both legal and political perspectives.

## Who is Fatih Karaosmanoglu?

Dr. Fatih Karaosmanoglu, is a Fulbright Visiting Professor for 2005-2006 at Georgetown University. He completed his LLM and PhD at Nottingham and Surrey Universities respectively in 1992 and 1997 after graduation from Ankara University Law Faculty in 1987. He is an Associate Professor of International Relations, and teaches *International Law & Relations, International Protection of Human Rights, the OSCE and Policing, and the Constitution* at both the Faculty of and the Institute for Security Sciences of Police Academy in Turkey.

He is the Deputy Director of the Institute for Security Sciences. He has been involved in the various projects including: the Representative of the Council of European Program 'Human Rights and Policing 1997-2000'; a member of the TIYGUC Project sponsored by the British Council in 1999-2002; a member of the Publishing Board of Police Academy Journal of the Judgments of the European Courts of Human Rights (JECHR) (2002-today); a member of the Scientific Board of the Third National Symposium on Children and Crime: Rehabilitation and Education 2002-2003.

He is the author of several books including "*Human Rights and the OSCE Process, Law and Foreign Policy: The Case of Turkey*", "*Uluslararası Polislik ve İç Güvenlik (International Policing and Homeland Security)* (co-ed. with Tulin Günsen İcli)". His articles have been published in Academic Journals and he has presented papers in a variety of conferences. Two recent articles include: "The Teaching of International Relations in Turkey: Reflection in Foreign Policy of International Legal Human Rights Developments (*Turkish Yearbook of International Relations*)" and "The Democratic Accountability of Armed Forces and the Case of Satık v. Turkey before the European Court of Human Rights / Güvenlik Güçlerinin Demokratik Hesap Verebilirliği ve Avrupa İnsan Hakları Mahkemesi'nin Satık v. Türkiye Kararı (İnsan Hakları Yıllığı / *Yearbook of Human Rights*)".

**Date : Monday, January 30, 2006.**

**Time : 1:30 pm**

**Location : 555 Baker Hall**

## **THE DRAFT COUNTER-TERRORISM ACT: IS TURKEY GOING BACK OR AHEAD?**

### **Introduction**

Here I want to thank you all, the head of the department, professors and students, joining the conference at Michigan State University. This is the first one for me to have a chance for making a speech at American Universities. My second speech will be at Kansas, Whicita State University, in coming April because the proposal I submitted for the Global Security Challenges Conference has been accepted.

Before passing my topic I want to say some remarks.

Every nation and society has a bitterly and painfully experience in their history. I reached to this notion during the Fulbright event, the historic Ford's Theater trip, last week in Washington DC.

As the American people know, Abraham Lincoln was shot on April 14, 1865 by John Wilker Booth in Ford's Theater. Booth was very handsome young actor and also a confederate spy. After shooting Booth leaps to the stage and breaks his leg. Booth turns toward the audience and shouts, "Sic Semper Tyrannis" (Thus be it ever to Tyrants). Then, he hobbles to a rear door and flies down an alley. Lincoln is carried to the Peterson House, across the street (now 10<sup>th</sup> street, NW, Washington DC), then he died there.

After this trip I have come up with the idea that security is really important for human kind every where and every time because where the individuals and societies feel insecure, there would not be any development due to the fact that they can not use their rights and cannot fulfill their obligations. That is the reason why, the balance between the human rights and security is a crucial one. What is the dividing line between them? I don't know, who knows exactly, but what I or we know is that individuals and societies don't want to live without the values they earned, and that they don't want to turn back from the stage they reached on the universal values such as democracy, secularism, human rights etc.

In my speech, firstly, I will give information about the Turkish Draft Counter Terrorism and make its assessment from the legal point of view. *Secondly*, I will approach the issue

from the perspective of political changes with national and global levels, and then, will conclude whether Turkey is going back or ahead.

### **The Draft Counter Terrorism Act<sup>1</sup>**

The Draft Counter Terrorism Act (The Draft CTA) has some unacceptable elements because: *first*, they are against the rule of law, and *second*, will take Turkey and its people back from what it earns: These are as follows:

- ***Reference Source of the Legislation: The British v. The Turkish***

When preparing the Turkish draft CTA, it is said that the 2005 British CTA is used as a reference source. There was the Counter Terrorism, Crime and Security Act of 2001. But it was cancelled by the British Supreme Court because it is against the human rights, and then the 2005 British CTA has adopted.

The Turkish draft CTA is totally different from the 2005 British CTA. Such difference is examined in the following subheadings:

- ***Users of the Powers: Limited / Centralized v. Unlimited / Decentralized***

In the British CTA, power users are only limited to the Secretary of Home Affairs, exceptionally, to a supreme-court judge. The decisions are taken on the basis of intelligence information provided by the MI5 (intelligence service) not the others. The Turkish draft CTA provides that every law enforcement officials and all judges all over the country can use the powers concerning the measurements provided by such Act. Can you imagine the extension of powers in the draft CTA, also can you imagine the potential risk for the individual rights and democratic system in the country.

In the UK, the users of powers are very limited and centralized because of the heavy responsibility. In Turkey however they are unlimited and decentralized, which is likely to lead to the violation of human rights, and thus the risk for its

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<sup>1</sup> <http://www.aktifhaber.com/images/news1/tmktammetin.doc> 26.1.2006.

democratization process in the country. That means that draft CTA has a Hurricane Katrina- like effect, may be more than this, for my country. An example of this, probably the measurements may be applied to thousands of Turkish people a year. Given that from 2001 to 2004 the British CTA have been applied to only 17 foreigners, you can understand how big political hurricane might be! In addition, let us remember, despite such measurements, the London bombs happened.

- ***Reason of the Measurements: Suspicion v. Heavy and Close Risk***

The draft CTA accepts the concept of *Heavy and Close Risk* rather than *Suspicion* on the application of the measurements for a commitment of *a crime in the future* provided there. The British CTA adopts suspicion but related to involvement in terrorism and terrorism related activity (Article 1 (3) and (9)). Who can explain the heavy and close of the risk with *a crime in the future*. It is impossible to do that really.

The Draft CTA adopts some *judicial and administrative measurements*: the restriction on doing a job (judicial), the restriction on entrance to or exit from an area (administrative), and restriction on travel (administrative), confiscation of IDs, passport, driving licence etc (administrative), taking an example of DNA and Fingerprint, photo to be able to use in criminal investigations (judicial).

Thus if we look at from the Draft CTA, the heavy measurements might be applied for those who are *not involved* in a crime or those who *are not suspect* of a crime. That would be unjust and violates human rights. Decisions concerning such measurements will be taken by judge and law enforcement officials including governors, public prosecutor, police chiefs and gendarmerie commands. But who does this depends on the measurement types.

Using a more extensive term *heavy and close risk*, instead of *suspicion* in commitment of crime will result in the violation of human rights. In other words, the decisions taken by law enforcement officials and courts will be based on *intelligence information* rather than *legally evidence*. That means that there are

actually *no courts but secret commissions*. There would not be any actual defense in that case. I think these are not acceptable because the draft Act takes Turkey into a police state rather than the rule of law.

- ***Duration of the Legislation: Temporary v. Permanent***

While the British CTA is temporary, which is a 1 year duration from March 11, 2005, the Turkish draft CTA is valid permanently.

### **National Level and Changing Turkey**

In brief, with the Turkish draft CTA, general law enforcement officials in Turkey will have a power to arrest persons with simple suspicion until 12 hours without informing his/her relatives and public prosecutors; also, the person concerned will not be given any information when the telephone tapping ended; despite the fact that those who make the propaganda of a terrorist organization are punishable up to 5 years, the definition of a terrorist organization is left to law enforcement officials, which is entirely prohibited by the Constitution and the Code of the Criminal Procedure of Turkey as well.

Actually if we look at security and terrorism issues from a national level, what is the picture? What is the philosophy behind the draft Turkish CTA? And what is the logic of a struggling with terrorism in Turkey? In my opinion, it is left only to the use of force and thus to the shoulders of law enforcement officials.

First of all, the new generations in Turkey have understood, much the values of the Republic of Turkey and its founder, Mustafa Kemal Ataturk, mostly after the 9/11. These values, which are universal ones as well, are republicanism, secularism, democracy, and human rights. In addition, the political geography is changing because of the European Union accession negotiations in Turkey: Many legislations have been adopted or changed in the EU process. Turkey is also a changing modern state beyond a classic modern state consisting of only its military, police and tax collectors. Being a significant element of modern state, the civil society is not satisfactorily developed. However, In Turkey, the young generations with self confidence, which is basic in a civil society, are more dynamic and more tolerant each other. That's why, in the post cold war era, the Turkish people are

doing well especially in the area of education and business in home and abroad especially in the Central Asia.

In addition, economically Turkey is getting growth. For the last three years after the 2001 economic crises, there has been considerable improvement in Turkish economy. Since 2002 the economy is attaining a %7 GNP growth average, which is well above growth rate of developed and many developing countries. Turkey as a notoriously high inflation country is now defeating the inflation. For the last 30 years it is the first time in 2005 that inflation came down to single digits as low as %8. The exports of the country have more than doubled in the last three years reaching to \$70b. In addition to all these Turkey has been an attractive place for foreign direct investment for the last two years due to the political and macroeconomic stabilities lacking in the past. The amount of foreign direct investment received in 2005 is equivalent to one that has been received for the last ten years. Turkey is today on the way of becoming one of the largest economies of Europe despite the structural problems in economy like big current account and trade deficits, social security problems, and big external and domestic debt.<sup>2</sup>

Last but not least, the invitation by the Turkish students, who joins the criminal justice program in the Michigan, shows that Turkey is really changing. I remember, 10 years ago, just after coming back to my country, Turkey, from the UK where I completed my master and PhD, students were against the human rights courses narrow-mindedly on the basis of having the more powers to do jobs. I had difficulty in giving my lecture. In brief, I used to say to them repeatedly: of course you are right, and have a right to do your job but you must be in law, democracy and human rights.

Everything has changed and is changing in Turkey and in the Globe since the end of the cold war but both national and global level actors are still able to read the changes regarding *threat and security* issues especially terrorism truly. Let us take an example, the reflex of both the US and Turkey regarding terrorism is characteristically the same and based on the use of force and hard power. The philosophy of the preparation of the Turkish draft CTA also supports my argument.

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<sup>2</sup> Fatih Macit (2006), *The Turkish Economy Today*, an Unpublished Article, (PhD Candidate in Economics Department at Georgetown University).

## **Global Level and Changing Environment**

If we look at from a global level, what is the picture?

There are really new security challenges today. How the states will address new security challenges is still important. This is a big problem facing the world today. During the cold war, there was almost a clear policy on how the eastern and the western states behave about security issues. In the aftermath of the Soviet collapse, states have found themselves in the changing environment of security policies as well. One reason is that the concept of *threat* has changed. In post-cold war era, there is however still a lack of an internationally defined policy or growing consensus on the nature of security threats and the response type.

Obviously terrorism today is a big threat arising. Turkey has been struggling since 80s with terrorism, PKK. Especially after the 9/11 attacks, international terrorism as a threat and keeping the homeland safe has become the agenda of states to struggle with. That is the reason why, in the days following the 9/11, having the preemptive strategy and war the US acted to declare war to Afghanistan and displace the Taliban regime, and then to make military intervention to Iraq. All those actions are based on the 2002 US National Security Strategy (NSS) and the National Strategy for Homeland Security.

The NSS provides the complete set of the elements of power than its predecessors. However, hard power including political, military, and intelligence remain the tools of choice rather than that of soft power including economic, social, cultural and informational. I mean that keeping security and the global war on terrorism is strictly based on the conception of hard power rather than soft power.

That's why the Bush administration's foreign policy is criticized from this perspective as well. For instance, one of the critics is Joseph S. Nye, Professor at Harvard University. He has a book of *Soft Power*<sup>3</sup>. Nye, who visited the Georgetown University two and half month ago and gave his speech, argues it is easy to use hard power and to come down the dictators but what about after that? The situation becomes a problem unless soft power is under consideration. He continues to say, let us take an example, the Iraqi situation: the war

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<sup>3</sup> Joseph S. Nye (2006), *Soft Power: The Means to Success in World Politics*, Public Affairs, New York.

took only 19 days in 2003 but since then the situation is not clear, and understood that there are many things to be done.

That does not mean that the hard power should be excluded from combating with terrorism. However, it is important to keep the balanced use of hard and soft powers.

Apart from Nye, Gerstein (2005) pointed out in his book, *Securing America's Future*, the US National Security Strategy, the National Strategy for Homeland Security will not be sufficient for ensuring America's security in the twenty first century. Having the view that today the efforts are more heavily weighted to the use of hard power, Gerstein suggest a new National Security Act: It must take a comprehensive view of the Information Age environment, national goals and objectives, and the ways and means available to satisfy these goals and objectives. He thus focuses on the development of a new US national security strategy in the information age.<sup>4</sup>

As far as the American case is concerned, most of the security and defense initiatives have historically been directed toward using hard power externally to achieve national goals and objectives. These efforts have been led primarily by the Department of State, the Department of Defense, and the Intelligence agencies. Since the 9/11 attacks, the US has however begun a concerted effort to focus domestically using all elements of power as well as to coordinate, synchronize, and integrate the efforts of numerous federal, state and local government agencies and organizations. The Department of Homeland Security (DHS) has been charged with such efforts. There are strict limits on the use of hard power within the borders of the continental United States or on citizens, either here or abroad.

## **Conclusion**

In my opinion, all states must reconsider their security interests and policies. This is valid for Turkey and the US as well because both countries have been suffering from the acts of terrorism, Al Qaeda and PKK respectively and conjunctionally. This has resulted in paying attention homeland security issues in their foreign affairs as well. The US and Turkey

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<sup>4</sup> Daniel M. Gerstein (2005), *Securing America's Future: National Strategy in the Information Age*, Praeger Security International, Westport, Connecticut/London.

should therefore ask this question: are we adjusted to this difficult environment? If not, how can we manage this task? Of course it is not easy but we have to produce solutions. That is the reason why, I named my presentation, which I will make at Wichita State University, *as the Mission Possible: Foreign Policy, Homeland Security and Soft Power*.

Both the US and Turkey is still affected by the method and conception of the cold war era. They must therefore reconsider the conception of hard and soft powers, especially the former in foreign policy, the latter in domestic policy regarding terrorism and security issues. Even Joseph S. Nye says that Turkey is a country with a strong soft power, this is not valid for the domestic policy in Turkey.

Does Turkey go back? In overall view, “No” because, as I mentioned at the beginning of my speech, Turkey is changing. However, it is likely that Turkey will step back if the draft CTA is passed. The reason is clear: having guaranteed the minimum standards of the Copenhagen Criteria of the European Union Turkey should develop the human rights standards. However, such draft CTA includes many risks with the unacceptable norms and with the norms which are against the rule of law and especially European human rights understanding. In other words, it is likely that many cases will be brought before the European Court of Human Rights in the future. Politically speaking, considering that the full membership negotiations with the EU have started, it is likely that the draft CTA will cause bad human rights practices, and thus, it might an obstacle for its membership to the EU.

In Turkey, the people have earned much especially from the European Union Process. Hence, steps taken on its democratization, protection of individual rights, economically development, socio-cultural development etc show that the Turkish people do not want to step back from its earns.