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COMMITTEE OF EXPERTS ON TERRORISM (CODEXTER)

MAIN ELEMENTS TO BE INCLUDED IN THE REPORT FROM EXPERTS ON LINKS BETWEEN TERRORISM AND ORGANISED CRIME

Secretariat of the Counter-Terrorism Division

Information Society and Action against Crime Directorate, DG I

The New Terror-Crime Nexus: Report for Council of Europe

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CONNECTIONS BETWEEN NEW TERRORISM AND ORGANIZED CRIME: OTHER COLATERAL USEFUL INSTRUMENTS IN THE ACTION AGAINST TERRORISM?

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1. Traditionally a dividing line existed between terrorism and international organized crime (e.g. different purposes although similar methods; lack of commonly accepted definition of the former contrary to the latter), however methods used by new terrorism make both phenomena appear to be closer, according to last methods and practices used by Daesh mainly, but also by other jihadist terrorist groups (e.g. Boko Haram, Al-Shabab). These new terrorist organizations use old traditional criminal practices such as theft and extortion, but they also show a main goal: political and economic control; adopt new methods familiar to those used by all kind of criminal organizations for those purposes: e.g. hierarchical military internal structure in contrast with a rather common horizontal structure with autonomous cells of previous terrorist organizations (Al-Qaida), or death punishment in case of abandoning the organizations as e.g. Latin American “*maras*”, mafia groups or drug-trafficking groups, the first ones using these methods, amongst others. Therefore, nowadays it’s difficult to maintain that terrorist associations or groups are not simultaneously criminal organizations *per se*, according to the methods used and purposes pursued, but using a legitimizing political, religious or moral covering. In this regard a clear-cut division between both cases is not always easy but rather artificial¹.

2. Despite this reality legal approach to both phenomena has been done in a rather separate way until now, considering both fields of action as isolated compartments. Consequently, international legal instruments that could be used in order to fight against both phenomena have not been properly or most efficiently used up to now. It would be useful to explore new passages amongst these existing legal instruments or some modifications of them in order to fulfill some legal lacuna. This is also the view of UN Secretary General,² who has insisted on the fact of making recourse to international conventions combating organized crime together with those concerning specifically the fight against terrorism and not only making recourse to the latter. UNGA³ and UNSC⁴ have expressed themselves in the same vein.

3. Arms trafficking have become a major problem concerning latest terrorist attacks and easy access of individual radicalized terrorist to firearms or weapons in general. Arms trafficking (III Additional Protocol to the Palermo Convention) plays a dual role with regard to current terrorism: as a means for committing terrorist attacks but also as a means of financing terrorism, like exchange of small firearms and their sale on the side of Al-Nusra Front or Daesh have recently demonstrated. Three major concerns relate to this form of organized crime: first, the inefficiency of recently ratified Arms Trade Convention; second, diversity and general lack of transparency of national systems authorizing arms transfers, including lack of accountability regarding those transfers; third, arms transfers to corrupt governments or governments involved in conflicts where those arms can finally end in the hands of terrorist groups, such as in the case of Iraq, meaning that the fight against corruption is a side action to be adopted when fighting against terrorism (Art. 8 Palermo Convention).

Arms world expenditure has experience a growth of 50% during the last decade, but is has reached 75% in the case of Middle East, simultaneously to the risen of new international terrorist with a strong territorial component such as ISIS. Consequently commitment on the side of States to either universal or regional conventions related to fight against corruption, and in particular states affected by this phenomenon, but also commitment to the Arms Trade Treaty and to the Palermo Convention and its Third Additional Protocol are also needed as well as a harmonization of national systems authorizing arms transfers. In this regard an enhanced and more severe evaluation of risks of the destination state by the transferring state should be imposed.

¹ UN International Peace Institute, Transnational Organized Crime and the Palermo Convention: A Reality Check, 2010.

² UN Secretary General Report to UNSC S/2016/92, 29/01/2016; also Report S/2016/501, 31/05/2016.

³ E.g. AGNU latest Resolution A/RES/70/177, 8/01/2016, amongst many others.

⁴ Amongst others CSNU Resolution S/RES/2199(2015), 12/01/2015.

4. Drug trafficking shows another narrow link between countering terrorism and existing organized crime, as far as terrorism financing is concerned⁵. It has been traditionally associated to the financing of terrorist groups, such as Taliban in Afghanistan, but narrow links between drug-trafficking organizations and terrorist groups for wider purposes has been established, e.g., getting protection from *narco* groups –mainly Latin American groups and in particular Colombian and Mexican groups- and the use of their routes in order to protect circulation of terrorist (having access to weapons, or smuggling different goods, particularly important criminal offences as far as ISIS and illegal oil exploitation and sale are concerned).

5. Extortion, an ancient crime linked traditionally to terrorism (carried out mainly through kidnapping) is being still used nowadays as a way of financing terrorist activities,⁶ although also and additionally, in a different manner, in particular in the form of illegal “taxes” imposed over religious minorities living on territories under control of terrorist groups.

6. Women sexual exploitation and women trafficking, in particular the fact of selling women in order to get financial support for terrorist activities, as well as slavery practices related to human beings individually considered (Protocol II to the Palermo Convention) or applied to minorities living on territories under control of terrorist groups, a situation that, according to UNSC, could be considered as crimes against humanity in certain cases.⁷

7. Meanwhile destruction of cultural heritage has been traditionally punished under IHL, therefore in the framework of an armed conflict⁸, its trafficking has been protected under UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) in any circumstances, not only concerning armed conflict situations. More recently, destruction of such a heritage by terrorist groups has become an international concern⁹. However, beyond this, smuggling and trafficking in such goods have been common means of financing activities of terrorist groups in particular in the case of certain Middle East states such as Afghanistan, Iraq, Egypt or Syria. This new phenomenon should be covered in a specific manner as far as terrorism or terrorist groups actions are concerned, as recent ICC case Prosecutor v. Al Mahdi (destruction of religious monuments in Mali by a member of Ansar Eddine, associated movement of Al Qaeda) would suggest concerning destruction but not trafficking with the aim of financing (judgment to be rendered by 27/09/2016).

In this vein, the setting up of a Committee within the Council of Europe that shall prepare a draft Convention superseding and replacing the European Convention on Offences relating to Cultural Property (ETS No.119), as well as its draft Explanatory Report, grounded on the previous worked carried out by UNESCO, EU and the International Institute for the Unification of Private Law, has to be remarked and most welcomed. Similarly, any legislative action should be respectful with UNGA A/RES/69/196 containing the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences.

Most of crimes mentioned above have been considered by UNSC as forms of international organized crime involved in the financing of terrorist activities or terrorist groups¹⁰

⁵ UN Secretary General, Report to UNSC, Doc. S/2016/501.

⁶ UN has called to fighting against this crime and not paying rescue sums required by these terrorist groups in order to avoid financing them. CSNU Resolutions adopted in the framework of Chapter VII of the UN Charter: S/RES/2133(2014); S/RES/2999 (2015).

⁷ UNSC has even considered the possibility of qualifying such acts as crimes against humanity under certain circumstances in CSNU Resolution S/RES/2170(2014), par. 3.

⁸ UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and II Additional Protocol (1999); I Additional Protocol to the Geneva Conventions, Art. 53; II Additional Protocol to the Geneva Conventions, Art. 16.

⁹ UNSC Resolution 2195(2014), S/RES/2195 (2014); EU Commission Action Plan to strengthen the fight against the financing of terrorism proposed on 02/02/2016, and European agenda on Security 2016.

¹⁰ UNSC Resolution 2199(2015), S/RES/2199 (2015), adopted on the 12/02/2015.