



Strasbourg, 26 September 2019

CDCT-DEF(2019)03rev

**COUNCIL OF EUROPE COMMITTEE
ON COUNTER-TERRORISM
(CDCT)**

**THE SUB-GROUP FOR THE PURPOSE OF EXAMINING
THE FEASIBILITY OF ELABORATING A DEFINITION
OF TERRORISM
(CDCT-DEF)**

FINAL REPORT

1. Introduction

In accordance with its Terms of Reference for 2016 – 2017 and 2018 – 2019, the Council of Europe Committee on Counter-Terrorism (CDCT) has held a series of preliminary discussions concerning the need for, and the feasibility of, elaborating a legal definition of terrorism to be applied among the Parties to the Council of Europe Convention on the Prevention of Terrorism (CETS No 196) and its Additional Protocol (CETS No 217) (hereinafter “the Convention” and the “Additional Protocol” respectively). Mindful of the many and varied challenges involved in such an undertaking, the CDCT during 2017 and 2018 examined a series of alternative options for formulating a definition of terrorism which would effectively enhance the scope of Article 1 of the Convention in order to reflect the fact that contemporary terrorists have moved beyond the more traditional targets and the *modus operandi* which are the subjects of the UN terrorism treaties currently referred to in Article 1 of the Convention, in particular by targeting random victims and making use also of vehicles, knives and other everyday utensils for the execution of terrorist attacks. Hence there is a real risk that the standards of the Convention and its Additional Protocol may not be applicable to some of these new forms of terrorist attacks, unless the scope of Article 1 is significantly enlarged.

Furthermore, the Bureau of the CDCT considered that a more comprehensive definition of terrorism would better reflect contemporary trends in terrorism, enable more comprehensive police and judicial cooperation under the Convention and its Additional Protocol, improve the compatibility of these two aforementioned legal instruments with domestic and EU law as well as current and prospective UN law and practice, enhance legal certainty and the rule of law in the application of Council of Europe instruments pertaining to terrorism, and finally provide a more concrete basis for Council of Europe activities relating to counter-terrorism, counter-radicalisation and violent extremism¹. In order to provide the Committee with a proper basis for its further deliberations on the subject, the CDCT-DEF was established by decision of the CDCT of 18 May 2018.

2. Tasks and composition of the CDCT-DEF

According to its Terms of Reference, the CDCT-DEF “*shall examine the feasibility of elaborating a definition of terrorism to replace or augment the current wording of Article 1 of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), and/or its Appendix, and prepare a report on its findings to be submitted to the CDCT. The report shall state whether or not, in the view of the Sub-Group, it is feasible to elaborate the aforesaid definition together with the reasons therefor. In case the Sub-Group finds that it is feasible to elaborate a definition of terrorism, the report shall also contain a proposal on the possible main characteristics of such a definition which will be compatible with existing international obligations of member States.*”

The CDCT-DEF was composed of delegations of the following member States: Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Greece, Hungary, Italy, Poland, Portugal, Romania, the Russian Federation, Serbia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom.

The European Commission and Interpol also participated in the Sub-Group.

¹ Cf. “The Added Value of a Pan-European Definition of Terrorism for the 2005 Warsaw Convention” (doc. CDCT-BU (2018) 1).

The CDCT-DEF was chaired by Mr Nicola PIACENTE (Italy) and assisted by Professor Ana SALINAS DE FRÍAS of the University of Malaga, Spain.

3. Working methods

The CDCT-DEF held a total of three meetings of two days each in 2018 and 2019.

It was foreseen by the CDCT, that the CDCT-DEF should “*base its work on relevant existing domestic, international and regional definitions of terrorism or drafts thereof, provided the latter are in a sufficiently advanced state.*”² However, after initial deliberations, the Sub-Group concentrated its efforts on examining the various definitions of terrorism contained in the relevant UN treaties, as these are adhered to by the largest number of States, including among the member States of the Council of Europe, and hence could be considered as a suitable basis for a regional European definition of terrorism.

At its first meeting, the CDCT-DEF requested the Secretariat assisted by its academic expert, Professor Ana SALINAS DE FRÍAS, to prepare a legal analysis of the existing definitions of terrorism/criminal provisions contained in relevant global treaties, including those listed in the Appendix to the Convention, thereby providing an overview of possible legal gaps to be filled for its next meeting. In accordance with these instructions, Professor SALINAS DE FRÍAS prepared a brief report analysing:

- A) The various definitions of terrorism used in relevant (adopted) UN treaties, their commonalities and differences; and,
- B) which acts these treaties criminalise.

The purpose of the report was to respond to the question of whether updating the list of treaties annexed to the Convention would theoretically and practically be sufficient for covering also the new forms of terrorism (e.g. the use of vehicles or tools as weapons in terrorist attacks) without the addition of a more general definition to replace or amend the current wording of Article 1 of the Convention.

The analysis³ prepared by Professor SALINAS DE FRÍAS, was discussed in detail during the second meeting of the Sub-Group.

Acting on the assumption of the need for a definition of terrorism to amend the current wording of Article 1 of the Convention, the CDCT-DEF conducted a thorough analysis of the characteristics and elements that could be included in a possible definition of terrorism in order to assess whether or not it would be possible to draw up and agree on such a definition. To this end, the CDCT-DEF engaged in drafting two versions of a possible definition of terrorism in the attempt to combine the main characteristics of a possible definition of the act of terrorism and for the purpose of better illustrating the available options. In this context the Sub-Group engaged in in-depth discussions and two substantially different approaches were expressed during the debates on both the feasibility and the main elements of a possible new definition of terrorism. It should be noted that the two options discussed were neither considered as formal proposals nor should

² Cf. the Terms of Reference of the CDCT-DEF (doc. CDCT DEF (2018) 1).

³ Cf. Doc. CDCT-DEF (2019) 01

they in any way be considered as binding on the outcomes of future negotiations on a new Article 1 of the Convention, should the CDCT decide to launch such negotiations.

The present report was prepared by the CDCT-DEF in view of submitting it to the CDCT for further consideration.

4. Findings and recommendations

On the feasibility of elaborating a common European definition of terrorism:

Firstly, the CDCT-DEF shares the finding that the current wording of Article 1 of the Convention does not encompass all forms of terrorism currently prevalent in Europe and globally. Merely updating the Appendix containing the list of relevant UN counter-terrorism treaties will, in the view of the Sub-Group, not remedy this deficiency, in particular because of the sectorial nature of the UN treaties listed in the Appendix.

Secondly, though it was not possible to currently reach unanimous agreement, the vast majority of Delegations of the CDCT-DEF consider it feasible to elaborate a common European legal definition of terrorism as referred to above, as it should be possible for member States to agree to a definition of terrorism, which is generally based on already agreed language derived from the relevant UN counter-terrorism treaties.

On the main characteristics of a possible European definition of terrorism:

The CDCT-DEF proposes to the CDCT to take into consideration to revise the current wording of Article 1 of the Convention by introducing an actual legal definition of terrorism to be read and understood in conjunction with the UN counter-terrorism treaties contained in an updated Appendix, making use of one of the available forms of legal instruments.

The CDCT-DEF proposes that a European definition of terrorism focusing on the description of the offence of terrorism should be formulated in general terms. The wording should, as far as possible, be derived from relevant UN treaties and other international legal instruments.

The first part of a definition of terrorism could be used to describe what sort of criminal acts (in addition to those referred to in the UN treaties listed in the Appendix which should also be updated) can be considered terrorist offences in case of their commission or threat thereof with a specific terrorist purpose when they cause death or bodily injury to a person, or extensive damage to, or destruction of, public or private property likely to endanger human life or result in major (including economic) loss. The “public or private property” could be further described as for example an information or a computer system, a place of public use, a State or government facility, a public transportation system, or an infrastructure facility, including critical infrastructure. Some Delegations considered that “cultural property or world heritage” and “the environment” should also be included in such a list, taking into account that UNSC resolution 2347 (2017) deals with the practice of terrorist groups to deliberately destroy and/or plunder cultural property and that the destruction of, and the trafficking in, cultural property as well as environmental destruction is part of the strategy of some terrorist groups, while others expressed doubts in this regard supporting the argument that cultural property or world heritage and the environment can

be considered as covered by the phrase “place of public use”⁴. One Delegation was of the opinion that, in addition to the acts referred to in the UN treaties listed in the Appendix, a definition of terrorism should refer only to acts or the threat thereof which cause death or serious bodily injury to any person not taking an active part in the hostilities in a situation of armed conflict.

The second part of a definition of terrorism could be used to define the aims (i.e. the intent or *mens rea*) required to qualify the criminal act as “terrorism” (as opposed to any other form of serious crime). These aims could be: 1) Intimidating a population, 2) compelling a State or an international organisation to perform or abstain from performing any act, or 3) destabilising or destroying the fundamental political, constitutional, economic or social structures of a State or an international organisation. Some Delegations considered it unnecessary to add the last of the three aims, since it is already included in the preamble to the Convention.

These main characteristics of a possible European definition of terrorism outlined above should be considered in more detail. If the CDCT decides to begin a drafting procedure, the relationship of a possibly revised Article 1 with other provisions of the Convention, which may also have to be amended or supplemented if a definition of terrorism is agreed, in particular Article 14, paragraph 2, letters a – c, should be looked into among other issues.

Finally, the CDCT-DEF proposes that a possibly revised Article 1 should continue to refer to the list of UN treaties set out in the Appendix. This list will have to be updated by adding the following three legal instruments:

- The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.
- The Convention of 2010 on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention).
- The Protocol Supplementary of 2010 to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol).

5. List of reference documents

The CDCT-DEF has in its work made use of the following documents:

- Discussion Paper on a Definition of Terrorism for the 2005 Warsaw Convention on the Prevention of Terrorism (doc. CODEXTER BU (2017) 5rev *confidential*).
- The Added Value of a Pan-European Definition of Terrorism for the 2005 Warsaw Convention (doc. CDCT-BU (2018) 1 *confidential*).
- Analysis of the definitions of terrorism used in the “sectoral” UN counter-terrorism treaties and the acts that these treaties criminalise. Further reflection on whether it would be sufficient to merely update the list of treaties annexed to Convention 196, or if it would be necessary to have an additional, general definition in a revised Article 1 of the Convention, which takes into account more novel forms of terrorism – report prepared by Professor Ana SALINAS DE FRÍAS (doc. CDCT-DEF (2019) 01

⁴ Cf. the (1997) United Nations International Convention for the Suppression of Terrorist Bombings, Article 1 (5)

- Terms of Reference (2018 – 2019) for the Sub-Group on Definition of Terrorism (doc. CDCT-DEF (2018) 1).