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Report on links between Terrorism and Transnational Organized Crime

By

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Dear representatives of the CoE Member States and of some observer and guest countries, dear representatives of different international organizations and institutions.

It is my pleasure to discuss with you today the work developed during the last two years, and the thoughts, reflections and findings that on the most important issue of Terrorism and transnational organized crime I have come across.

Let me express, first of all my gratitude for being confident on my capacity to research adequately on this topic and, second, to allow me to share these ideas with you today.

Europe is suffering from an unprecedented wave of terrorist attacks featured precisely as attacks against the core values of the European culture as such, like the rule of law, the political pluralism, the protection of a number of untouchable fundamental rights or the cultural and religious diversity, to cite but some of them. And this has been clearly demonstrated in the terrorist bombings and killings having taken place on Western countries in general in the aftermath of Sept/11 attacks, but more precisely on European soil with the break-up of the Syrian conflict and the irruption on the scene of a wilder and more cruel form of terrorism in search of the conquest and domination of the Western world.

A new form of terrorism has risen which uses and disrespectfully manipulates Muslim faith and religion in order to allow any kind of criminal behavior, even those actually very hard to imagine; which damages mainly to Muslim believers and to Arab countries -if we compare figures of the total amount of victims, and which tries to build up a divided world that they have landscaped and have exported all over the world as the idea of Muslims fidels against the rest (all infidels), a new form of crusade recalling mistakes made centuries ago.

The conjunction of this unscrupulous view of crime, the manipulation of a given religion in order to welcome mercenaries, the pursue of a number of material goals including wealth-searching and the ambitious exercise of material unlimited power; and some others factors have provoked a turning of the most important current terrorist organizations. Unlike Al-Qaida, Daesh or Boko Haram require practically no religious knowledge or learning and care little about the complexities of theological discourse, something that speeds up the process of embracing the terror faith and shortens it to a few weeks in many cases.

They sell today a redemption discourse for many criminals in order to get sympathizers, coming back to a traditional radicalization means such as direct contact in prisons, as the biographies of most of the authors of last terrorist attacks occurred in European soil since 2015 demonstrate. This is e.g. the case of Anis Amri (Berlin attack; Tunisian, in jail in Italy), of Adrian Russel Elms (Khalid Masood) (London Parliament attack); or Imam Es-Satty, the recruiter of the author of the terrorist attacks in Barcelona last month; to name a few of those involved in terrorist attacks carried out in Europe since May, the last time I came to you, in particular in the framework of the last CODEXTER meeting, in order to reflect together on this issue.

These are reasons that invite first to leave the traditional separated approach to terrorism, on one side, and TOC on the other side, and second to look for common tools and filling in lacunae. If there have been crossovers and common interests between criminal and terrorist organisations for several decades as some examples have well demonstrated (Abu Sayyag Front, Hizbullah, IRA, ETA, PKK or many others), today this cooperation has become much complex including protection, safe heaven and safe displacement of terrorists, training, recruiting of followers, etc.

A number of legal instruments have since long ago been adopted to combat both TOC and terrorism; as you well know none of them has ever envisaged a common regulation for both phenomena probably due to the changing nature of the two of them, but also because of the lack of a clear picture of the relationship between both forms of crime. These difficulties have worsened due to the globalization process and to the speedy development of new technologies.

There exists a rich legal framework in order to fight against these two scourges of current international society separately. However reinforced cooperation of judiciaries, police services and intelligence agencies within the framework of democracy, respect for human rights and the rule of law is more and more needed. There seems to be no need for the adoption of new legal instruments, but rather for making a better and more exhaustive use of the existing ones; existing legal instruments related to this problem are not competing tools, but rather complementary ones.

At the same time, the strategy of complex financial constructs with the aim of terrorist financing, such as the case of Al-Qaida in 2001, has been abandoned and followers of terrorist organizations are encouraged to be self-sufficient and to become involved in crime in order to get funding for their activities. In this regard five main groups of criminal activities have been identified and their respective international legal frameworks have been analyzed and compared, leading to the following findings.

First finding:

As far as the Palermo Convention on TOC is concerned: a) one: the Convention lacks of any sort of monitoring system as it does not count on any particular form of controlling States' compliance with its provisions; two: many key elements in the Palermo Convention's provisions are not only left to the signatories' will, but also the fact that definition of key concepts playing a crucial role as far as cooperation is concerned are dependent upon domestic legal definition of the said concepts, as the legal technique used by the Convention is the "*reenvoie*" to national provisions. This legislative technique provokes much disparity amongst signatories to the treaty, as much diversity can be found in domestic regulations.

Second finding:

Free movement of small and light weapons has become a major problem and the access of radicalized individuals and terrorists to firearms has become too easy.

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 authorized transfers; and 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 the case of Iraq, meaning that the fight against corruption is a side action to be adopted when fighting against terrorism.

Additionally, the regulation offered by the Protocol shows some lacunae: first: definition of many key elements in the Protocol's provisions concerning arms trafficking are left to the signatories' domestic provisions, where much diversity can be found, such as the case of the definition of what does "antique firearms and their replicas" mean, or the concept of "licence" or "authorization" as well as the specific means of acceding to one of them; second: there are neither specific forms for registering firearms set up in the Protocol's provisions nor a common concept of "marking" or "deactivation" of firearms or common procedures in this regard, a most relevant gap in the case of terrorists acceding to weapons, in clear contrast with some of the efforts made at the regional level, in particular by the EU.

CoE could invite member states to adopt more transparent procedures concerning the approval of arms transfers of any kind, in particular, including necessary accountability for those involved in such procedures. An enhanced and more severe evaluation of risks of the destination state by the transferring state should also be suggested.

Third finding

There is no direct relationship between this crime and terrorism in the international framework regulating trafficking in human beings or some additional criminal offences related to human beings, despite the gravity of any of them: sexual exploitation, children's recruitment, sexual slavery, selling of girls and women, torture, etc. This form of organized crime has ultimately become one of the most important sources of revenue, used by terrorist groups given the fact that it is cheaper and easier to carry out, the absence of any link between the two crimes resulting in lower penalties for those

involved. The existing international legal framework is still weak compared to the CoE convention and the GRETA monitoring mechanism.

Organs harvesting and counterfeiting of medical products have been also identified as two preferred sources of revenues for terrorist groups, therefore quick ratification of the two respective CoE instrument is most needed.

But other additional criminal behaviors have to be considered: forced displacement of persons or forced migration with a view to subjecting groups under the control of terrorist groups and pushing them to become more prone to radicalization as well as the smuggling of migrants. Here the increasing use of new technologies with such purposes has been denounced by EUROPOL, noting that regulation in order to fight these practices does not exist yet.

Fourth finding:

Drug-trafficking is probably the most traditional field in which the nexus crime-terror has been evident. The profitable feedback between both categories of criminal association has been well documented since long ago.

It seems clear that links between both types of criminality have become much narrower and that nowadays the traditional claim that both movements can never merge as economic benefit and political purposes mutually oppose might not be that evident. Beyond the fact of terrorist groups getting economic profit from drug-trafficking in exchange of e.g. military training or training in the use of explosives, In today's criminal milieu terrorist groups additionally use drug-trafficking routes in order to get safe haven in their displacements, but also as a means of recruiting sympathizers.

There exists an obvious close connection between drug-trafficking and corruption of States' authorities, this fact having a direct effect on States' instability as it provokes a rather vicious circle very difficult to overcome, and breeds radicalization amongst impoverish social groups, providing them with a justification for terrorist actions.

The first point to be underlined in this regard is precisely the lack of a common regulation in times of closer relationship between both types of criminality, international treaties regulating both phenomena are neutral as far as this interaction is concerned.

However some inconsistencies appear when dealing with the legal framework governing this criminal phenomenon. First of all, obligations of States parties to these instruments set up by each Convention are not always exactly the same. Thus, only the first Convention, once amended by Protocol in 1972, sets up a sort of soft monitoring mechanism through the intervention of the Commission of Narcotic Drugs of the ECOSOC and the International Narcotics Control Board, with a power to review action of states parties.

Perhaps this fact explains why the situation of CoE member States is deeply diverse as far as obligations set up by those international instruments are concerned.

In any case the inclusion of an important additional cooperation mechanism considered in the 1988 Convention, namely the possibility of organizing joint teams in order to act in the territory of other contracting party and under its authorization with the aim to better protect the security of persons and of operations related to the fight against illicit traffic of drugs should be underlined, similarly to the one enshrined in Article 20 of the Second Additional Protocol to the MLA Convention, which has proved to be particularly useful in some terrorist cases occurred in Europe.

Fifth finding:

Beyond destruction of protected cultural property, smuggling of this kind of goods has developed into a common form of transnational criminality, namely trafficking in cultural heritage. This new crime has been regulated under different UNESCO Conventions Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) in any circumstances, not only concerning armed conflict situations as well as the Protection of the World Cultural and Natural Heritage; and the Protection of the Underwater Cultural Heritage. But more recently, destruction and or smuggling, trafficking or looting of such a heritage by terrorist groups have become an international concern, thus constituting another particularly strong link narrowing cooperation between terrorist groups and TOC as well as transforming into an important financial source for terrorist funding, as UNSC, UNGA and UNSG have repeatedly denounced, calling on member States for action against such criminal activities.

Thus, trafficking in such goods has become common means of financing activities of terrorist groups in the case of certain Middle East states. This new phenomenon should be covered in a specific manner with regard to terrorist groups' actions, the CoE having recently adopted a particular Convention on this issue being of greatest interest, even if no specific reference is made with its connection to terrorism, something that perhaps could have been a positive provision, although it is mentioned in its preamble. The necessary connection in this vein between this offence when committed with terrorist groups with the aim of getting funding with organized crime is evident.

Sixth finding:

A group of different treaties on classical crimes related to terrorism has still to be recalled, such as the taking of hostages, kidnapping for ransom with some novelties, in contrast with former practices, e.g. the significant increase of the kidnapping of international media professional and humanitarian workers (Spanish physiotherapist) in order to get media impact because of general sympathy towards the task they perform but also due to their international nationalities; or extortion, which in addition to its funding effect has recently acquired a prominent propagandistic role also.

In this vein, smuggling of all types of commodities, in particular electronic devices prohibited by jihadists, has been traditionally most used and it still is nowadays. Also in this regard the States fight against corruption should be underlined.

The Council of Europe has been during the last years a pioneering organization in three main aspects: first, because it has been the organization first approaching terrorism from a preventative perspective; second, because it has demonstrated to be able to tackle with this most difficult issue in a more comprehensive way, in clear contrast with other legal instruments adopted by other international organizations, of course always in full respect of the rule of law and the protection of human rights, in this regard the joint meeting of these two committees here so demonstrates; and third, because this organization has been the first one in making its best efforts in order to implement UN Security Council resolutions, as, amongst others, the Riga Protocol to the Prevention Convention shows. A number of UNSC resolutions, resolutions adopted by the UNGA and different reports of the UN Secretary General suggest and invite states to take action against terrorism in close connection with the fight against organized crime, and

to make the best and most efficient use and more profitable combination of the existing international legal instruments in both spheres.

My work ends here; yours starts right now, as once the research has been completed -if we can ever end researching on this issue (it's hardly believable to me)-, it will be up to the States to decide whether to take any action following these discussions. You'll have the last word at the end of this conference once all round tables and interventions have enriched my modest contribution.

Thank you very much