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COUNCIL OF EUROPE COMMITTEE ON COUNTER-TERRORISM (CDCT)

6th Plenary Meeting

Videoconference, 18 – 20 May 2021

Abridged Report and List of Decisions

Secretariat of the Counter-Terrorism Division
Information Society and Action against Crime Directorate, DG I

DGI-CDCT@coe.int / www.coe.int/terrorism

The Council of Europe Committee on Counter-Terrorism (CDCT) at its 6th Plenary meeting held on 18 - 20 May 2021, by videoconference, Chaired by Ms Ileana VIȘOIU (Romania):

- I. Expressed condolences regarding the passing of Mr Vladimir DAVIDOVIC, a long-term CDCT/CODEXTER member on behalf of Serbia;
- II. Decided to:

1. Opening of the meeting

Take note of the opening remarks by Director Jan KLEIJSSSEN (Information Society – Action against Crime, Council of Europe) who began his remarks by stressing the continuing importance of the CDCT work in light of ongoing terrorist threats, as evidenced by the recent attack in France and abduction of European citizens abroad. He continued by informing the CDCT delegates of the developments within the Council of Europe related to forthcoming four-year strategic planning, and other Council of Europe initiatives of their interest, such as the preparation of the Second Additional Protocol to the Cybercrime Convention and the Feasibility Study on the potential elements of a legal framework for the development, design and application of artificial intelligence. In doing so, he highlighted the transversality of some of these efforts, as was the case in the development of Guidelines on the links between terrorism and transnational organised crime through inter-committee engagement. Mr Kleijssen thereafter focused on the 6th Plenary session and the breadth of the work ahead of it, highlighting a number of important items on the agenda of the session, including the draft Recommendation on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings related to Terrorist Offences, the draft Recommendation on Measures aimed at Protecting Children against Radicalisation for the Purpose of Terrorism, bioterrorism, financing of terrorism, and the postponed conference on Women and Children in Terrorism, which should reflect upon the complicated situation, from both a security and a human rights point of view, for many women and children currently detained in camps in North East Syria, among other issues. He concluded by noting the value of the CDCT engagement in different awareness-raising activities, such as the conference on “Supporting Victims of Terrorism in Cross-Border Situations”.

2. Adoption of the agenda

Adopt the agenda.

3. Communication by the Chair, the Delegations and by the Secretariat

Take note of the information provided by its Chair, Ms Ileana Vișoiu, notably:

- I. the outcomes of the last CDCT Bureau meeting (30-31 March 2021) as they relate to the items to be discussed at the Plenary, namely:
 - a. the postponement on the work on definition of terrorism until in-person meetings are possible;
 - b. the proposal to take up Activities 3.1 and 3.6 of the Counter-Terrorism Strategy;
 - c. the completion of the work of the CDCT-GE Working Group on the draft Recommendation on use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences and the Explanatory Memorandum;

- d. the beginning of the work of the CDCT-RA Working Group on the draft Recommendation on risk assessment of individuals indicted and convicted for terrorist offences; and
 - e. the progress on the finalisation of the draft Recommendation on the measures aimed at protecting children from radicalisation for the purposes of terrorism and its Explanatory Memorandum.
- II. steps taken to proceed with implementation of the Activity 1.5 of the Strategy (Financing of Terrorism), namely the meeting with the Chairs of Moneyval and COP 198 and its outcomes that will be further discussed during this session.
 - III. CDCT input in external activities, including the workshop on Legal and Administrative Instruments to Counter the Threat from Violent Right-Wing Extremist and Terrorist Movements, conference on “De-radicalisation in Prisons” (conducted under the auspices of the German Chairmanship of the Council of Europe Committee of Ministers), and the first meeting of the European Network for Victims’ Rights attended by the CDCT. This information was supplemented with the brief description of the efforts on the European Union level regarding the adoption of the Regulation on addressing the dissemination of terrorist content online that is of relevance for the CDCT and an area of its possible future work.

Take note of information provided by Mr Carlo CHIAROMONTE, Council of Europe Counter-Terrorism Coordinator and Secretary to the CDCT, that:

- I. on the 31 March 2021, the Committee of Ministers adopted the Guidelines on the links between terrorism and transnational organised crime as they had been prepared by the CDCT;
- II. since the last CDCT Plenary in November last year, on 12 January 2021, San Marino ratified both the Convention on the Prevention of Terrorism (CETS No. 196) and its Additional Protocol, on 15 March 2021, Croatia ratified the Additional Protocol to the Convention on the Prevention of Terrorism (CETS No. 217) and on 25 March 2021, Switzerland ratified both the Convention and the Protocol. The Convention has now 42 ratifications and 6 signatures and the Protocol 23 ratifications and 19 signatures;
- III. the German Presidency of the Committee of Ministers of the Council of Europe had organised events related to counter-terrorism issues, notably the Online Symposium on “Supporting Victims of Terrorism in Cross-Border Situations”, on 14 April 2021, and the virtual Conference on “(De)radicalisation in Prisons” on 17 May 2021, both events having been co-hosted by the Council of Europe and the German Federal Ministry of Justice and Consumer Protection. The Secretariat also took part and made some presentations on the CDCT work at two events organised by the International Institute for Justice and the Rule of Law (IIJ) and participated in the OSCE-Wide Counter-Terrorism Conference 2021. Lastly, the Secretariat took part in the second meeting of the ENVR where the Secretariat presented the Council of Europe Network on Victims of Terrorism in light of the expressed interest for cooperation between the ENVR and the Council of Europe Network, as previously outlined by the Chair.

4. Council of Europe Counter-Terrorism Strategy: Completed, ongoing and future activities of the CDCT

Hold an exchange of views on the current state of implementation of the Council of Europe Counter-Terrorism Strategy (2018 – 2022) and take note of progress made in this regard.

Agree with the decision of the Bureau to: 1) initiate activities 3.1 (Collection of best practices with regard to de-radicalisation, disengagement and social reintegration) and 3.6 of the Strategy (Law enforcement and emergency services responses during and in the immediate aftermath of terrorist attacks), and 2) postpone the examination of the issue of “definition of terrorism” until one of its next Plenary meetings in so far the public health conditions will allow for an in-person meeting; 3) prolong the deadline for submitting comments concerning the issue of definition of terrorism to the end of September 2021.

Take first steps regarding implementation of Activity 2.4 of Strategy (Mutual legal assistance in criminal matters, extradition, and the use of joint investigative teams, in relation to terrorism) through exchange of views with Chairs of the CDPC and the PCOC.

Take note of the information provided by the Secretariat relating to the draft CDCT Terms of Reference for the next four years (2022 – 2025), as prepared by the Secretariat and submitted for examination to the Bureau at its last meeting in March 2021 and then to the CDCT for written comments. These draft Terms of Reference, as well as all those of all other Council of Europe committees, will be going through an internal procedure until the final adoption by the Committee of Ministers after the summer break.

Take note of the position of the Russian Federation that expressed its disappointment with the fact that the draft Terms of Reference had to be sent to the Committee of Ministers without their substantial examination and real approval by the Plenary session and prior to it, which is contrary to the established practice of the CDCT.

Instruct the Secretariat to attempt to insert changes to the language of deliverable 11 of the draft Terms of Reference (2022 – 2025) following the proposal from one delegation (draft binding or non-binding instruments concerning combating promotion of terrorism and radicalisation on the internet and social media) and keep the members of the CDCT informed on when the draft Terms of Reference will be examined by the Committee of Ministers.

5. Awareness raising on radicalisation and other preventive measures among frontline practitioners, in particular in schools (Activity 1.4 of the Strategy)

Hold an exchange of views with the independent expert, Mr Robert ÖRELL, on the final text of the draft Recommendation on measures aimed at protecting children against radicalisation for the purpose of terrorism and the draft Explanatory Memorandum thereto.

Approve both draft texts revised pursuant to comments provided by the delegations and instruct the Secretariat to submit the draft Recommendation to the Committee of Ministers for final adoption. The Explanatory Memorandum is to be also transmitted to the Committee of Ministers for information.

Take note of the Swedish position that “race” should not be used in the document and that, if “race” is used, Sweden advocated for the following to be added in the document: “The use of the term race does not imply an acceptance of theories which attempt to determine the existence of separate human races”.

6. Identification of emerging terrorist threats (Activity 3.4 of the Strategy)

Hold an exchange of views on the draft outline of the Study on emerging terrorist threats and provide guidance on the proposed terminology and issues to be considered in the Study.

7. The use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences (Activity 2.1 of the Strategy)

Took note of the information provided by the Co-Chairs of the Working Group on use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences (CDCT-GE), Mr Mario JANEČEK and Mr Nicola PIACENTE, on the outcome of the third and final meeting of the CDCT-GE, which took place online on 23 – 24 February 2021.

Examine and approve, by vast majority of members present (quorum confirmed), the finalised texts of the draft Recommendation and accompanying draft Explanatory Memorandum and instruct the Secretariat to submit the draft Recommendation to the Committee of Ministers for final adoption. The Explanatory Memorandum is to be also transmitted to the Committee of Ministers for information.

Take note of the dissenting opinion of the Russian Federation on both draft texts and instruct the Secretariat to transmit the dissenting opinion as an appendix to the meeting report of this Plenary session of the CDCT to the Committee of Ministers.

Examine the letter received from a group of non-governmental organisations regarding the draft Recommendation on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences and the response thereto by the CDCT, and approve the final wording of the response letter to be sent out by the Secretariat on behalf of the CDCT.

Invite, on an *ad hoc* basis and on specific topics, representatives of civil society organisations to specific activities of mutual interest.

8. Risk assessment of individuals indicted and convicted for terrorist offences (Activity 3.2 of the Strategy)

Hold an exchange of views with Mr Thomas GREGOIRE, Chair of the Working Group on Risk assessment of individuals indicted and convicted for terrorist offences (CDCT-RA) and take note of the information provided by him about the outcome of the deliberations of the 1st meeting of the Working Group, which took place online on 9 - 10 March 2021.

Encourage members to nominate further participants to the Working Group in order to reflect the plurality of disciplines engaged in this technical activity.

9. Bioterrorism

Take note of presentations made by the Russian Federation, INTERPOL and Europol on their efforts related to bioterrorism and hold exchange of views with them on the presented information.

Examine the draft questionnaire on bioterrorism prepared by the Secretariat, as amended and finalised by the Bureau at its last meeting, provide guidance on its finalisation, and instruct the Secretariat to distribute it to the CDCT member and observer States with the response deadline of 22 October 2021.

10. Financing of terrorism (Activity 1.5 of the Strategy)

Take note of the information provided by the Chair, Ms Ileana Vişoiu, on the first meeting with the Chair of Moneyval and the Chair of CoP 198, concerning the implementation of the Activity 1.5 of the Strategy.

Examine the approach proposed for implementing Activity 1.5 and the accompanying Terms of Reference of the joint group of experts that would be assigned to implement this task, make some amendments to it (on the deadlines), and approve both the approach and the proposed Terms of Reference with a revised timeline for the production of the preliminary draft report to the end of April 2022, which is to be communicated to Moneyval and COP 198 for final agreement.

Nominate one CDCT member to the expert working group implementing Activity 1.5 of the Strategy, Mr Ruslan Kantur (Russian Federation).

11. Law enforcement and emergency services responses during and in the immediate aftermath of terrorist attacks (Activity 3.6 of the Strategy)

Examine the discussion paper prepared by the Secretariat on Activity 3.6 of the Strategy and take note of the information provided orally by the Secretariat in this respect.

Implement the activity through events aimed at exchange of experiences in this field, and subsequent development of guidelines or manuals.

Instruct the Secretariat to initiate implementation of Activity 3.6 in the manner decided by the CDCT.

12. The roles of women and children in terrorism (Activity 3.5 of the Strategy)

Hold the International Conference on the Roles of Women and Children in Terrorism, postponed in 2020 due to Covid 19, on 15 and 16 December 2021.

Examine the draft programme of the Conference that was prepared last year and approve it.

Instruct the Secretariat to make necessary arrangements for the organisation of the Conference.

13. Network of Contact Points for the exchange of information regarding the legal standing of victims of terrorism (Activity 3.3 of the Strategy)

Take note of the information provided by the Secretariat on the 3rd meeting of the Network of Contact Points for the exchange of information regarding the legal standing of victims of terrorism and on the current status of the Country Fact Sheets.

Take note of the information on the online Symposium on “Supporting victims of Terrorism in Cross-Border Situations”, which took place on 14 April 2021.

Call on all member States which have not yet done so to notify the Secretariat of their designated contact points.

14. 24/7 Network of Contact Points on Foreign Terrorist Fighters

Take note of the information provided by the Secretariat on the status of the 24/7 Network of Contact Points on Foreign Terrorist Fighters.

15. Country profiles on counter-terrorism capacity and information on measures taken at national level against terrorism

Consider the updated country profiles on counter-terrorism capacity as submitted by the Delegations of Austria, Hungary, Lithuania and Serbia and authorise their publication on the website of the CDCT. Postpone consideration of the country profile on counter-terrorism capacity for Latvia in view of the need to further update the text, as communicated by the Latvian Delegation.

Take note of the information that the updated country profile of France submitted by the French Delegation to the Secretariat will be considered at the 7th Plenary Meeting of the CDCT.

Invite all other member States to update or submit their country profiles on a regular basis.

16. Elections

Postpone the election of the new member of the CDCT Bureau to the next Plenary meeting.

17. Any other business

Take note of the proposal made by the Chair to invite representatives of other international organisations dealing with counter-terrorism matters to join the Plenary and inform it of their activities.

18. Date and place of the 7th Plenary Meeting of the CDCT

Hold the 7th Plenary meeting of the CDCT from 22 to 24 November 2021, in hybrid form, should the public health conditions allow for it.

19. Adoption of the Abridged Report and List of Decisions taken

Adopt the Abridged Report and List of Decisions taken.

APPENDIX**DISSENTING OPINION OF THE RUSSIAN FEDERATION**

The Russian Federation cannot concur with the majority and, acting under Article 11, paragraph (c), of the Rules of Procedure of the Council of Europe Intergovernmental Committees (adopted by the Committee of Ministers on 9 November 2011 at the 1125th meeting of the Ministers' deputies), finds it necessary to submit the present dissenting opinion to be appended to the majority recommendation on the gathering of evidence from conflict zones for the purpose of criminal prosecution of terrorist offences.

First, with respect to the information gathered by the military in zones of armed conflict, the document in the current version does not specifically indicate that the military personnel engaged in the gathering of information to be used as evidence in criminal justice proceedings should be deployed in zones of armed conflict on legal grounds, namely, with the consent of the State on the territory of which such evidence is collected, unless the United Nations Security Council decides otherwise.

Second, the definition of "evidence", as proposed in the majority recommendation, is unjustifiably broad, for it makes the legality of a particular piece of evidence contingent upon the rules of evidence, as they are proscribed in domestic law. It means that competent domestic authorities can render a certain piece of information admissible, irrespective of the international legal circumstances surrounding the gathering process, for instance, if such piece of information is obtained in violation of international law (especially when the gathering of evidence is carried out on the territory of a foreign State). There is no doubt that States should exercise their activities whilst gathering relevant information, which can be used as evidence, in strict accordance with the principle of non-intervention in the internal affairs reflecting the norm of customary law¹.

¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, International Court of Justice, I.C.J. Reports 1986, para. 202.

Third, neither can the gathering of evidence in zones of armed conflict be qualified legal, nor can the particular piece of information be considered admissible, if the relevant information is acquired in breach of the recognized rules and principles of international law, including those of sovereign equality of States, non-intervention in the internal affairs of the State, and territorial integrity². The enumerated principles enshrined in the Charter of the United Nations should prevail over domestic laws and regulations of States³. Therefore, if such information is gathered in violation of international law, its subsequent qualification as admissible by domestic authorities does not preclude its illegality from the point of view of international law, including in the context of the international obligations arising from the Charter of the United Nations⁴.

Previously, United Nations Security Council Counter-Terrorism Executive Directorate developed guidelines dealing with the use and admissibility as evidence of information gathered by the military, and this document stipulates that when operating on the territory of another State, the military should operate in accordance with international law, including international human rights law and international humanitarian law, as applicable, as well as relevant bilateral agreements entered into with that State, taking into account the importance of respecting applicable international law, such as the principles of sovereignty, non-intervention in the internal affairs of the State, and territorial integrity⁵. Since the majority recommendation does not contain a similar provision, it is

² Cit. ex.: *Guidelines to Facilitate the Use and Admissibility as Evidence in National Criminal Courts of Information Collected, Handled, Preserved and Shared by the Military to Prosecute Terrorist Offences* (“*Military Evidence Guidelines*”). III. Mandates and cooperation. A. Mandates. P. 13. United Nations Security Council Counter-Terrorism Executive Directorate [Electronic resource] // Mode of access: https://www.un.org/sc/ctc/wp-content/uploads/2020/01/Battlefield_Evidence_Final.pdf.

³ *Applicability of the Obligations to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion of 26 April 1988, International Court of Justice, I.C.J. Reports 1988, para. 57.

⁴ Under Article 27 of the Vienna Convention on the Law of Treaties, States may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

⁵ Cit. ex.: *Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences* (“*Military Evidence Guidelines*”). III. Mandates and cooperation. A. Mandates. P. 13. United Nations Security Council Counter-Terrorism Executive Directorate [Electronic resource] // Mode of access: https://www.un.org/sc/ctc/wp-content/uploads/2020/01/Battlefield_Evidence_Final.pdf.

manifestly weaker than the CTED Military Evidence Guidelines and does not have any “added value”.

Concerning the explanatory memorandum, the Russian Federation reiterates its principled position that the collection of evidence should be carried out by relevant actors in strict accordance with applicable rules and principles of international law, which cannot and should not be reduced to international human rights law. In particular, the collection of information by the military without the international mandate authorizing such activities cannot be considered as legal under international law. We would like to make a reference to the CTED Military Evidence Guidelines adopted in 2019, namely to the chapeaux of Chapter III which reads as follows: “When operating on the territory of another State, the military should operate in accordance with international law, including international human rights law and international humanitarian law, as applicable, as well as relevant bilateral agreements ..., taking into account the importance of respecting applicable international law, such as the principles of [sovereign equality], non-intervention in the internal affairs of the State, and territorial integrity”.

In this context, we do not accept the explanatory commentary on Paragraph 2 (page 3), since, from the Russian perspective, both investigators and prosecutors should act in accordance with the principle of the rule of law, and the collection and retention of evidence obtained in conflict zones should be carried out in a manner consistent with international obligations, including under the Charter of the United Nations and the European Convention on Human Rights.

Moreover, we do not support the majority that refused to insert the general reference to the UN Charter in the explanatory commentary on Paragraph 7 (page 3). We believe that fair and efficient criminal prosecutions cannot be carried out in violation of international law, namely the obligations stipulated in the UN Charter.

In regard to the explanatory commentary on Article 26, we proceed from the assumption that the definitions contained in the Recommendation should be interpreted

and utilized in light of the international obligations, including those arising from the UN Charter.

We do not agree with the current interpretation of “Safeguards” as it is laid upon in the explanatory commentary on Article 32. In our view, the majority interpret “Safeguards” in a narrow way, whereas the purpose of this paragraph implies the delineation of the standards reflected in the Recommendation from other international obligations, including those provided for in the UN Charter.

Given the fact that the above-mentioned concerns continuously raised by the Russian Federation were not taken into account, the Russian Federation departs from the majority and cannot support either the recommendation or the explanatory memorandum in their entirety.