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Report on the links between terrorism and transnational organised crime

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1. Introduction

1.1 Investigations into the connections between terrorist and criminal groups have traditionally been hindered by the notion that the two types of organisations are said to have different – and ultimately irreconcilable – aims: criminals seek to profit, while terrorists pursue ideological objectives.¹ For a long time, this dichotomy fomented the conclusion that terrorist groups would not engage in criminal activity as doing so would be contrary to their ideological aims.²

1.2 In reality, however, there have been crossovers and common interests between criminal and terrorist organisations for several decades. As early as the 1980s, during the rise of Pablo Escobar and the Colombian drug cartels, scholars defined ‘narco-terrorism’ and debated whether it represented a true case of blurring criminal-terrorist lines.³ In more recent years, the term ‘criminal insurgency’ has been used to describe the way in which criminal organisations represent strategic security threats to states.⁴ Furthermore, it is no secret that the Taliban have at times depended on Afghanistan’s heroin production; that Hezbollah has invested into South America’s illicit narcotics industry since the 1980s; and that groups like the Irish Republican Army (IRA) have been involved in smuggling petrol, cigarettes, and counterfeiting consumer goods.⁵ Similarly, the aims of Al-Qaeda in the Islamic Maghreb – a group which has engaged in the smuggling of cigarettes and counterfeit products since its founding – are widely thought to have alternated from criminal to ideological.⁶

1.3 The most recent manifestation is what scholars have called a ‘new’ crime-terror nexus.⁷ Rather than the merging of entire (criminal and terrorist) organisations, the focus is on their social networks, environments, or *milieus*. Put simply: instead of being one or the other, criminal and terrorist groups have come to recruit from the same pool of people, creating (often unintended) synergies and overlaps that have consequences for how individuals radicalise and operate. This appears to be particularly relevant to the way in which terrorist groups like Daesh (also known as Islamic State, IS, ISIS, or ISIL) have operated in recent years in Europe.

1.4. A number of legal instruments have since long ago been adopted to combat both TOC and terrorism, may it be at the universal or at the regional level. However 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. Meanwhile international legal instruments clearly define what should be considered as organized crime, no common agreement exists still on a definition of terrorism. These difficulties have worsened due to the globalization process and to the speedy development of the TICs.

¹ Santiago Ballina, ‘The-Crime Terror Continuum Revisited,’ *Journal for Policing, Intelligence and the Power of Informal Networks*, Vol 6, No 2, 2011, pp.121-124.

² Steven Hutchinson and Pat O’Malley, ‘A Crime–Terror Nexus? Thinking on Some of the Links between Terrorism and Criminality’, *Studies in Conflict Terrorism*, Vol 30, Issue 12, 2007, pp.1095-1106; Chris Dishman, ‘Terrorism, Crime, and Transformation’, *Studies in Conflict & Terrorism*, Vol 24, No 1, 2001, pp.43-58.

³ John Picarelli, ‘Osama bin Corleone? Vito the Jackal? Framing Threat Convergence Through an Examination of Transnational Organized Crime and International Terrorism’, *Terrorism and Political Violence*, Vol 24, Issue 2, 2012, p.183. Also refer to Sylvia Longmire and John Longmire, ‘Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime’, *Journal of Strategic Security*, Vol 1, Issue 1, 2008, pp.35-51.

⁴ John Sullivan, ‘Criminal Insurgency: Narcocultura, Social Banditry, and Information Operations’, *Small Wars Journal*, December 2012, pp.1-13. Sullivan uses Los Zetas of Mexico as an example of a criminal insurgency.

⁵ Ron Moreau, ‘The Taliban’s New Role as Afghanistan’s Drug Mafia’, *Newsweek*, 12 June 2013; Matthew Levitt, ‘Iranian State Sponsorship of Terror’, *Testimony of Levitt, Joint Hearing of the Committee on International Relations*, 16 February 2005; Levitt, ‘Hizbullah Narco-Trafficking: A growing cross-border Threat’, *The Washington Institute*, September 2012; ‘Want to know what the IRA is now? It’s a trust fund’, *The Irish News*, 27 August 2015.

⁶ Refer to Samuel Aronson, ‘AQIM’s Threat to Western Interests in the Sahel’, *CTC Sentinel*, 7 April 2014, p.9.

⁷ Rajan Basra, Peter R. Neumann, and Claudia Brunner, *Criminal Pasts, Terrorist Futures: European Jihadists and the New Crime-Terror Nexus* (London: ICSR, 2016).

1.5 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 comparing in depth the existing ones in order to identify overlap and potential *lacunae* to be solved. It was significant the fact that, at the time of the Brussels attacks, Belgium had not yet ratified the CoE Convention on the prevention of Terrorism. On the other hand existing legal instruments related to this problem are not competing tools, but rather complementary ones that could help substantially to better counter terrorism in a most effective way, taking into account that this is a difficult offence since political shadows still hung above it and the fact that the lack of legal definition might end in impunity in certain cases.

As it has been underlined by some authors but also by international organizations much of this interaction relies on political, economic and social instability⁸. Nevertheless, Europe is not free from this threat since terrorism has become a global phenomenon. On the contrary, Europe has experienced a terrible wave of terrorist attacks where fruitful linkages between these two forms of crime have clearly emerged. Instability as far as Europe's security is concerned is narrowly connected not only to armed conflicts and wars taking place beyond its frontiers, but also with criminal organized groups operating within the EU's external perimeter, that is, within CoE territory and also beyond it. A comprehensive approach to this interaction and problems caused by it and a reflection on the best way to combine implementation of the existing legal framework for combating this situation has become urgent.

Part I: Crime and Terrorism: Links and Synergies

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1. Current Situation

1.1 The merging of criminal and terrorist milieus in Europe, which this report describes, may not be entirely new. In the mid-1990s, French newspapers referred to operatives of the Armed Islamic Group (GIA) as 'gangster terrorists' because many had previously been involved in local gangs.¹⁰ Likewise, several of the perpetrators of the Madrid train attacks in 2004 were former criminals, and financed their operation by selling drugs.¹¹ At the same time, there is clear evidence that the role of criminals in terrorist operations has become more pronounced, more visible, and more systematic with the rise of Daesh.

1.2 German Federal Police reported that of the 669 German foreign terrorist fighters for whom they had sufficient information, two-thirds had police records prior to travelling to Syria, and one-third had criminal convictions.¹² According to the Belgian Federal Prosecutor, half of his

⁸See EUROPEAN COMMISSION: "Study on paving the way for future policy initiatives in the field of fight against organized crime: the effectiveness of specific criminal law measures targeting organized crime", Final report, February 2015:

http://ec.europa.eu/dgs/home-affairs/e-library/docs/20150312_1_amoc_report_020315_0_220_part_1_en.pdf.

UNODC (2010): "The Globalization of Crime": https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf. See also Tuesday Reitano, Colin Clarke and Laura Adal, "Examining the Nexus between Organised Crime and Terrorism and its implications for the EU Programming", CT Morse. Counter-Terrorism Monitoring, Reporting and Support Mechanism, ICCT, The Hague, 2017.

⁹ This report was prepared with the help of Rajan Basra and a team of researchers at the *International Centre for the Study of Radicalisation (ICSR)*, which included Adam Alayli, Kavish Bisseswar, Juliette Deroo, Lasse Nielsen, and Maximilian Ruf. I am also grateful for Claudia Brunner's contribution on the issue of public-private partnerships.

¹⁰ Kjøk Åshild and Lia Brynjar, 'Islamist Insurgencies, Diasporic Support Networks, and their Host States: The Case of the Algerian GIA in Europe 1993-2000', *FFI Report, Norwegian Defence Research Establishment*, 2001, p.28.

¹¹ 'Madrid bombers financed operation with drug sales, Spain says', *Associated Press*, 14 April 2004.

¹² BKA, BfV & HKE, 'Analyse der Radikalisierungshintergründe und -verläufe der Personen, die aus islamistischer Motivation aus Deutschland in Richtung Syrien oder Irak ausgereist sind', 2015, p.17.

country's 'jihadists' had criminal records prior to leaving for Syria.¹³ A United Nations report suggested a similar pattern amongst French foreign terrorist fighters.¹⁴ Officials from Norway and the Netherlands confirmed that 'at least 60 per cent' of their countries' 'jihadists' had previously been involved in crime.¹⁵ It is against this background that Alain Grignard, a commissioner of Brussels Federal Police, described Daesh as 'a sort of super-gang'.¹⁶

1.3 To better understand these dynamics, a multilingual team of researchers at King's College London compiled a database with the profiles and pathways of 79 European 'jihadists' with criminal pasts. All individuals in this sample were male and predominantly young (the eldest individual was 38 at the time of his mobilization, with the youngest being approximately 16). The average (as well as median) age was 25. The high proportion of converts (19-22 per cent) was in line with estimates of converts amongst foreign terrorist fighters from the European Union.¹⁷ Furthermore, of the 79 individuals, two-thirds (67 per cent) had travelled, or attempted to travel, to Syria as foreign terrorist fighters.¹⁸ Many of these also numbered in the 38 per cent who participated in domestic terrorist plots.

1.4 The intensity of criminality among the individuals in the sample varied, from 'one-time' criminals, to repeat offenders, and more sustained 'career criminals'. Furthermore, the vast majority were low level, local criminals, with only very few operating on a national or transnational level. While the majority were at some point involved in 'petty crime'(68 per cent), nearly two thirds had violent histories (65 per cent).

1.5 Prison played an important role, with 57 per cent of the individuals having been incarcerated on at least one occasion. In twelve cases (15 per cent of the total, or 27 per cent of those who spent time in prison), criminals had embraced 'jihadism' in prison. Seven of these individuals were subsequently involved in a domestic terror plot, which means that they are significantly overrepresented among those involved in plotting terrorist attacks against their own countries. Furthermore, nearly 30 per cent of the individuals in our sample had experience with firearms. By contrast, 'white-collar crime' seemed to be a marginal issue, with just 6 per cent involved in either credit card fraud or identity theft.

2. Radicalisation

2.1 One of the most important questions regarding the crime-terror nexus is how criminal pasts contribute to processes of radicalization, that is, the personal circumstances, experiences, narratives, networks and other factors that explain an individual's involvement in extremism and their mobilization into violence.¹⁹ The profiles and pathways in the database suggest that Daesh's narrative is well-aligned with the personal needs and desires of criminals, and that it can be used to condone as well as curtail continued involvement in crime.

2.2 For up to ten of the individuals in the database, there was evidence for what is best termed a 'redemption narrative'. These were criminals who had experienced what has been termed a 'cognitive opening', a shocking event or personal crisis that prompted them to re-assess their entire life and become open for a radical change of values and behaviour.²⁰ They realized how their criminal behaviour had been harmful, that they needed to break with their past, and make up for their 'sins'. This then provided the rationale for their turn to religion and justified the

¹³ Christophe Lamfalussy, 'Un djihadiste belge sur deux a un passé de délinquant', *La Libre*, 14 August 2015.

¹⁴ United Nations Analytical Support and Sanctions Monitoring Team, 'Analysis and recommendations with regard to the global threat from foreign terrorist fighters', 2015, p.11.

¹⁵ Interviews with Dutch and Norwegian police officers; 1-2 September 2016.

¹⁶ Paul Cruickshank, 'A view from the CT foxhole: an interview with Alain Grignard, Brussels Federal Police', *CTC Sentinel*, 21 August 2015.

¹⁷ Bibi van Ginkel and Eva Entenmann (eds.), 'The Foreign Fighters Phenomenon in the European Union', *International Centre for Counter-Terrorism – The Hague (ICCT)*, April 2016, p.52.

¹⁸ For a definition of foreign terrorist fighter, see United National Security Council Resolution 2178.

¹⁹ For a discussion of definitions, see Peter R. Neumann, 'The Trouble with Radicalization', *International Affairs*, 89(4) (2013), pp. 873-93.

²⁰ Quintan Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (London: Rowman & Littlefield, 2005), p.20.

involvement with groups like Daesh. Just like the criminal gangs of which they used to be members, these groups offered power, violence, adventure and adrenaline, a strong identity, and a sense of rebellion. This made the step from criminality to terrorism smaller than is commonly perceived – especially when considering that, unlike al-Qaeda, Daesh required practically no religious knowledge or learning, and cared little about the complexities of theological discourse.

2.3 The terrorist narrative can also serve as a *legitimiser* of crime. Anwar al-Awlaki, the radical cleric who helped to create al-Qaeda's online magazine *Inspire* and incited young Western Muslims to become 'lone wolves' during the late 2000s, repeatedly told his followers that 'stealing from your enemies' is not only permitted but, in certain cases, obligatory.²¹ Daesh draws on the same logic, with the most prominent example being Khalid Zerkani, a Belgian Daesh recruiter who was responsible for the recruitment and mobilization of up to 72 foreign terrorist fighters.²² After becoming radicalized, Zerkani used his criminal 'skills' (and considerable charisma) to recruit young men as foreign terrorist fighters encouraging them to commit thefts and robberies,²³ which he justified on religious grounds.²⁴ The proceeds were then redistributed among the group and used to fund their travel to Syria, leading to Zerkani's nickname of *Papa Noël* (Father Christmas).²⁵

2.4 There is substantial evidence that criminal backgrounds accelerate radicalization processes. The database shows that the period of mobilization – that is, the time between joining an extremist group and becoming involved in violence – among the 30 individuals involved in domestic plotting was, in many cases, extraordinarily short, often less than four months or even just a few weeks. Furthermore, while there was no 'like-for-like' use of violence, the terrorist use of violence was always *more violent* than someone's criminal use of violence. These findings support the idea that familiarity with (criminal) violence produces terrorists that are not only more volatile but also more violent.

3. Prison

3.1 As various studies by the Council of Europe have shown, prisons are places of 'vulnerability' in which extremists can find plenty of 'angry young men' with criminal pasts who may experience cognitive openings and are 'ripe' for extremist radicalization and recruitment.²⁶ They also bring together criminals and terrorists, and therefore create opportunities for collaboration, networking and 'skills transfers'. Not least, they often leave people who have served their sentences with few opportunities to re-integrate into society and become productive citizens.

3.2 For many new inmates, the very fact of imprisonment is a personal crisis, which raises profound questions about their lives while providing ample time to search for meaning.²⁷ This is precisely the reasons that recruiters from al-Qaeda, Daesh or other terrorist groups view prisons as a 'breeding grounds': not only are inmates vulnerable and experience cognitive openings, making them receptive to extremist ideas, they also tend to be part of the demographic that 'jihadist' groups are keen to attract – young men, who are often unfamiliar with their own religion yet impulsive, confident, willing to take risks, and have been in conflict with the state and

²¹ Al-Awlaki cited in Thomas Joscelyn, 'Anwar al-Awlaki: Jihadists should steal from disbelievers', *Long War Journal*, 17 January 2011.

²² Pieter Van Ostaeyen and Guy Van Vlieden, 'Belgian Fighters in Syria and Iraq – An Important Review of Our Data', published on <https://pietervanostaeyen.com/2016/08/03/belgian-fighters-in-syria-and-iraq-an-important-review-of-our-data/>, 3 August 2016.

²³ Patrick J. McDonnell, "'Papa Noel' – the militant recruiter in Brussels who groomed young men for violence", *Los Angeles Times*, 28 March 2016.

²⁴ Andrew Higgins and Kimiko De Freytas-Tamura, 'A Brussels Mentor Who Taught "Gangster Islam" to the Young and Angry', *New York Times*, 11 April 2016.

²⁵ Pieter Van Ostaeyen, 'Belgian Radical Networks and the Road to the Paris Attacks', *CTC Sentinel*, 16 June 2016.

²⁶ See, for example, "White Paper on Prison Overcrowding", *Council of Europe*, CM(2016)121-add3, 23 August 2016; "Draft Council of Europe Handbook for Prison and Probation Services Regarding Radicalisation and Violent Extremism", *Council of Europe*, PC-CP(2016), 24 October 2016; "Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism", *Council of Europe*, 2 March 2016.

²⁷ *Ibid.*, p.26

established authorities.²⁸ Far from being an obstacle, their pasts have de-sensitized them to law-breaking and violence, and may in fact have provided them with skills that can be used in terrorism.

3.3 Unless extremists are entirely separated from the rest of the prison population, which is not always be possible or advisable, prison environments have the potential to institutionalize a nexus between terrorists and criminals. This is of great benefit to the extremists: not only do they get access to potentially fruitful opportunities and targets for radicalization, they can also take advantage of the criminals' skills and underground connections, facilitating access to forged documents, weapons, money, goods, or even safe houses. The most significant example is that of Chérif Kouachi, Amédy Coulibaly, and Djamel Beghal in France. Kouachi and Coulibaly first met inside Fleury-Mérogis prison near Paris in 2007, and formed a friendship after spending seven months on the same wing.²⁹ The pair – one an 'ordinary' criminal, the other an extremist – were then mentored and radicalized in prison by Djamel Beghal, an al-Qaeda recruiter.³⁰ In other words, prison made it possible for the network to be established that culminated in Kouachi and Coulibaly coordinating the January 2015 Paris attacks, which killed 17 people.

3.4 Four individuals in the database had been 'flagged' for radicalization by the prison authorities but neither police nor intelligence agencies managed to follow up. The gravest example is Mehdi Nemmouche, a French citizen who killed four people at the Jewish Museum in Brussels in May 2014. He had been flagged as 'radical' by the prison authorities, but succeeded in travelling to Syria three weeks after his release.³¹ Equally noteworthy is the case of Omar el-Hussein, who killed two people during shootings at a cultural centre and a synagogue in Copenhagen in February 2015. Having been sentenced to two years in prison,³² he openly – and repeatedly – spoke of his desire to fight in Syria, prompting the authorities to flag him as potentially radicalized.³³ Over the course of his imprisonment, they reported him three times, but none of these alerts were ever investigated.³⁴

4. Operations

4.1 As early as 2013, Danish intelligence warned that the large numbers of criminals who were joining 'jihadist' groups would lead to the proliferation of firearms among would-be terrorists.³⁵ Two years later, the warning came true. Between Omar el-Hussein's two gun attacks (see 4.4), he went to his neighbourhood of Mjølnerparken, where he disposed of an M95 rifle that he had stolen during a home robbery and used during the first attack.³⁶ He then visited an internet café to meet with former gang associates, who likely supplied him with the ammunition that he used in the second attack. The same is true for Amédy Coulibaly (see 4.3). Upon seeing the media reports that followed the attacks in January 2015, the arms dealer that sold him his weapons pre-emptively turned himself in to the police, and confessed to supplying Coulibaly with Škorpion submachine guns, a rocket propelled grenade launcher, and the two AK-47s that the Kouachi brothers used in the attack against Charlie Hebdo.³⁷ Indeed, the July 2015 issue of *Dar al-Islam*, Daesh's French language magazine, featured instructions on acquiring weapons in which operatives were advised to conceal all external displays of religiosity, and instead adopt

²⁸ See Andrew Silke, 'Holy Warriors: exploring the psychological processes of jihadi radicalization', *European Journal of Criminology*, Vol 5, No 1, 2008, p. 107.

²⁹ Angelique Chrisafis, 'Charlie Hebdo attackers: born, raised and radicalized in Paris', *The Guardian*, 12 January 2015.

³⁰ Ibid.

³¹ Upon his return to Europe, he killed four people at the Jewish Museum in Brussels. See Scott Sayare, 'Suspect Held in Jewish Museum Killings', *New York Times*, 1 June 2014.

³² 'Baggrund: Her er hvad vi ved om Omar Abdel Hamid El-Hussein', *DR*, 16 February 2015.

³³ 'Omar ville til Syrien for at kæmpe', *Berlingske*, 16 February 2015.

³⁴ 'PET: Omar havde planer om at flygte efter terror-angreb', *BT*, 4 November 2015.

³⁵ PET Center for Terroranalyse, 'Truslen mod Danmark fra personer udrejst til Syrien', 23 October 2015, p.3.

³⁶ 'Terrortiltalt hjalp Omar El-Hussein', *Berlingske*, 17 March 2016; Michala Rask Mikkelsen, 'Riffel fra terrorangreb blev stjålet under hjemmerøveri', *Berlingske*, 18 February 2015. The rifle model is otherwise known as an RK 95 TP.

³⁷ 'Charlie Hebdo – Un Carolo se rend à la police prétendant avoir eu des contacts avec Amédy Coulibaly', *La Libre*, 14 January 2015.

the look of a *jeune de cité* (a man from the estate) who is 'looking to make a robbery with a weapon'.³⁸

4.2 Other skills-transfers that are valuable to terrorist groups include, for example, the use of fake documents and access to safe houses, which enable terrorists to evade the authorities, and therefore increase the likelihood of a plot turning into a successful attack. Put simply, access to criminal skills makes it easier for terrorists to 'stay under the radar'. What matters in this regard are not specific abilities that former criminals may (or may not) possess themselves, but – rather – their access to networks through which they can be mobilized. According to Harry Sarfo, for example, a former foreign terrorist fighter from the northern German city of Bremen, Daesh fully understands this. He told journalists that, instead of looking for forgers, the group was actively trying to cultivate former criminals who 'have ties to organized crime and... know how to get fake IDs'.³⁹

5. Criminal Financing

5.1 The issue of terrorist financing has been looked at in numerous reports, resolutions, and international conventions.⁴⁰ Although general aspects of the problem are well covered, the linkage between crime and terrorist funding has not received the attention it deserves. Two recent studies have attempted to close this gap. A report by Magnus Normark and Magnus Ranstorp of the Swedish National Defence Academy focused on how European foreign terrorist fighters have funded their travel to Syria: in addition to loans, private donations, bank fraud, and business fraud, it consistently emphasizes the role of petty crime.⁴¹ A study by Emile Oftedal of the Norwegian Defense Research Establishment (FFI) examined the financing of 40 terrorist plots between 1994 and 2013: though nearly three-quarters generated at least some of their income from legal sources,⁴² it shows that criminality – including drug-dealing, fraud, and illicit trade – played a significant role in nearly 40 per cent of the cases.⁴³ With increasing numbers of criminals who turn to terrorism, this source of funding is likely to become more significant.

5.2 Some terrorist groups have enormous budgets. But this only plays a limited role when it comes to the funding of terrorist attacks in the West, which has been largely separate and autonomous from centralized budgets. For more than a decade, these groups have encouraged their Western supporters to self-finance, while simultaneously promoting types of attacks that are cheap and easy to carry out.⁴⁴ This is reflected in Oftedal's analysis, which found that 90 per cent of the terrorist plots in Europe involved 'an element' of self-funding, with nearly half being *entirely* self-financed.⁴⁵

5.3 Terrorist activities in Europe are not expensive. Becoming a foreign terrorist fighter requires little more than buying an airline ticket to Turkey. An AK-47 machine gun can be acquired for less than €2,000 and a pistol for less.⁴⁶ The costs of buying a knife or renting a vehicle are negligible. Oftedal's study found that three-quarters of European plots between 1994 and 2013 cost less than €9,000.⁴⁷ According to the French finance minister, even the November 2015 Paris attacks were financed by a 'sum not exceeding €30,000'.⁴⁸ These are amounts that do not usually require external funding or a dedicated terrorist fundraising operation: they can be

³⁸ Al-Hayat, 'Dar al-Islam Numéro 5', 2015, p.33.

³⁹ Cited in Rukmini Callimachi, 'How a Secretive Branch of ISIS Built a Global Network of Killers', *New York Times*, 3 August 2016.

⁴⁰ See, for example, "FATF IX Recommendations", *Financial Action Task Force, FATF-OECD*, February 2012; United Nations Security Council Resolutions 1373, 2178, 2253.

⁴¹ Magnus Normark and Magnus Ranstorp, 'Understanding terrorist finance: Modus operandi and national CTF regimes', *Swedish Defence University*, 18 December 2015.

⁴² Emile Oftedal, 'The financing of jihadi terrorist cells in Europe', *FFI Report, Norwegian Defence Research Establishment*, p.3 & p.26.

⁴³ *Ibid.*, p.19.

⁴⁴ See the excerpts from Suri's 'The Global Islamic Resistance Call' reproduced in Al-Malāḥim Media, 'Inspire Magazine – Issue 4', 2011, p.31.

⁴⁵ Oftedal, 'The financing...', *op. cit.*

⁴⁶ 'France seeks new powers to monitor terror suspects' bank accounts', *Financial Times*, 23 November 2015

⁴⁷ Oftedal, p.26.

⁴⁸ 'Paris terrorists needed just €30,000 for assault', *The Local*, 3 December 2015.

raised from personal assets and savings, legitimate sources such as work or loans, or small-scale criminal activities that terrorists with a criminal past used to make their living with – be it drug-dealing, illicit trade, or fraud.

5.4 Groups like al-Qaeda and Daesh encourage their followers to become involved in crime to finance their terrorist activities. This relates to an ideological doctrine which states that stealing from ‘unbelievers’ is not only permissible but worthy of commendation. Theft – or any form of crime – is equated with *ghanimah*, which translates as ‘the spoils of war’. Daesh shares this doctrine, and has turned it into practical advice by telling operatives to use fraudulent documents to obtain cash. Its French language magazine, *Dar al-Islam*, states: ‘You should (if possible) try to obtain false documents, in order to *reap the easy spoils*, such as opening a bank account and paying by cheque in societies with low restrictions’ [emphasis added].⁴⁹

Part II: Legal Instruments combating TOC and terrorism: overlapping, lacunae or opportunities?

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1. Object and contents of and methodology for a legal approach

1.1. As it has been already pointed out in the first part of this preliminary report 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), a fact that provoked a separated legal approach to and regulation of these two forms of criminality.

However, evolution experienced by both phenomena and, in particular, paths followed by new terrorism make these crimes 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 pursue a main goal: exercising political and economic control, adopting new methods familiar to those used by all kind of criminal organizations for those purposes: e.g. hierarchical military internal structure of Daesh according to its territorial claimed basis of the “Caliphate”, in contrast with a rather common horizontal structure with autonomous cells practiced by previous terrorist organizations (Al-Qaida). Or the fact of making recourse to killing in case of members abandoning the organization, following in this regard the example of e.g. Latin American “*maras*”, mafia groups or drug-trafficking groups, currently using these methods. Thus, contradictory models cohabit nowadays and centralized and hierarchical practices coexist with rather decentralized terrorist groups more prone to merging, precisely due to this fact, with TOC groups.⁵⁰ Additionally, meanwhile some criminal services used to be outsourced by terrorist organizations with transnational criminal groups in the past, we witness today the appropriation of such criminal “services” by the very terrorist organizations in a do-it-yourself dynamics.

Therefore, nowadays it’s difficult to strictly maintain in all cases that terrorist associations or groups are not simultaneously criminal organizations *per se*, according to the methods used and their meant purposes⁵¹, but using in the case of terrorist groups a legitimizing political,

⁴⁹ Al-Hayat, ‘Dar al-Islam Numéro 5’, 2015, p.33.

⁵⁰ See discussion by DISMAN, Ch.: “The Leaderless Nexus: When Crime and Terror Converge”, *Studies in Conflict and Terrorism* (28): 237-252.

⁵¹ Different forms of interaction between TOC and terrorism have been proposed by academia. They can be sum up in four different models, according to Makarenko: alliances, operational motivations, convergence and birth of a hybrid organization, and black holes or terrorist states. In this regard see Tamara Makarenko (2004) : “The Crime-Terror Continuum: Tracing the Interplay between Transnational Organized Crime and Terrorism”, *Global Crime & (1)*: 129-145; Tamara MAKARENKO & M. Mesquita (2014): “Categorising the crime-terror nexus in the European Union”, *Global Crime* (15): 259-274; M. D. Phillips & E.A. Kamen (2014): “Entering the Black Hole: The Taliban, Terrorism, and Organized Crime”, *Journal of Terrorism Research* (5): 39-48); A. Hübschle (2011): “From Theory to Practice: Exploring the Organized Crime-Terror Nexus in Sub-Saharan Africa, Perspectives on Terrorism (5): 1-7. Others have

religious or moral discourse. In this regard a clear-cut division between both forms of criminality is not always easy to establish but sometimes even rather artificial. According to detailed analysis offered of different terrorist groups' *modus operandi* the proposal of a unique self-explaining theoretical model to be applied to all cases seems nowadays unrealistic.⁵²

1.2. 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 applied up to now. It would be useful to explore new linkages amongst these existing legal instruments in order to fulfil some legal *lacuna*. In this regard the approach followed in this second part of this preliminary report has been to go into legal instruments regulating each of the main identified areas of concern in order to understand definitions, scope and concrete approach in those conventions on the aforementioned areas and, in doing so, to try to find out shortages and potential responses –if any- to them.

This seems also to be the view of UN Secretary General,⁵³ who has insisted on the fact of making recourse to international conventions combating organized crime together with those concerning specifically the fight against terrorism in order to combat such a scourge, and not only making recourse to the latter. UNGA⁵⁴ and UNSC⁵⁵ have expressed themselves in the same vein, consequently opening the door for States and international organizations to make all efforts in this respect.

1.3. As far as the identified crimes to be dealt with in this preliminary report related both to organized crime and terrorism are concerned, there are several major worrying areas, according to the new dimension, methods used and final goals pursued by current terrorists organizations and on the basis of resolutions and reports prepared by the UNGA, UNSC and UN Secretary General. The following points are but hints of the different aspects to be covered by Part II of this report:

- Arms trafficking, in particular illegal trade of small and light weapons and explosives that have been specifically dealt with by the Additional Protocol to the Palermo Convention against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, in force since 2005;⁵⁶

- Trafficking in human beings or substances or/and elements related to them, such as women and children trafficking, as foreseen by Additional Protocol to the Palermo Convention on TOC to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁵⁷ Women sexual exploitation and women trafficking have become usual crimes committed during the last decades and in particular the fact of selling women in order to get financial support for terrorist activities. But also slavery practices related to human beings have been applied to minorities living in territories under the control of terrorist groups, a situation that, according to UNSC, could be considered as crimes against humanity in certain cases.⁵⁸ Moreover, other crimes related to human beings should be included in this report, as this is remarkably the case

adopted a different view, considering social, economic and geographical context as the hardcore explaining the relationship between terrorism and TOC, being each case unique and different and, therefore, avoiding the construction of a single, theoretical model to be applied to all cases. See Reitano, Clarke & Adal, Examining the Nexus between ... cit supra.

⁵² See UN International Peace Institute, Transnational Organized Crime and the Palermo Convention: A Reality Check, 2010.

⁵³ UN Secretary General Report to UNSC S/2016/92, 29/01/2016; also Report S/2016/501, 31/05/2016.

⁵⁴ E.g. AGNU latest Resolution A/RES/70/177, 8/01/2016, amongst many others.

⁵⁵ See, amongst others, UNSC Resolution S/RES/2199(2015), 12/01/2015.

⁵⁶ Ratified by most CoE Member States except for Andorra, France, Georgia, Ireland, Malta, Russian Federation and San Marino:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&clang=en

⁵⁷ Ratified by all CoE Member States except for Andorra:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en

⁵⁸ 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.

of human organs trafficking, as punished by the Council of Europe Convention against Trafficking in Human Organs⁵⁹ as well as trafficking in counterfeited medical products;⁶⁰

- Smuggling of migrants, as prohibited by the Additional Protocol to the Palermo Convention against the Smuggling of Migrants by Land, Sea and Air;⁶¹

- Drug-trafficking, a crime that holds also a leading role as far as countering terrorism and organized crime are concerned⁶². This crime has been traditionally associated to the financing of terrorist groups, as the Taliban regime in Afghanistan showed years ago, but narrow links between drug-trafficking organizations and terrorist groups for wider purposes have been established, e.g. getting protection from *narco* groups –mainly Colombian and Mexican groups– and using their routes to protecting circulation of terrorist members or to allowing them access to weapons or to smuggling different goods;

- Destruction of cultural heritage is a crime that has been traditionally punished under International Humanitarian Law, therefore in the framework of an armed conflict⁶³. However it has developed into a new form of crime, namely trafficking in cultural heritage. This new form of 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 concern⁶⁴.

- Smuggling in different products (cigarettes, electronic devices prohibited by the *sharia* etc.) and extortion, the latter being particularly exercised by Daesh in the form of taxation being compulsorily satisfied by other religious minorities in order to continue alive and dwelling in their own land, a situation that needs also to be analysed. In particular extortion is considered to be an ancient crime linked traditionally to terrorism that is being still used nowadays as a way of financing terrorist activities.⁶⁵

Most of the crimes mentioned above have been considered by UNSC as forms of international organized crime involved in the financing of terrorist activities or terrorist groups.⁶⁶ Additionally,

⁵⁹ <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016802e79ee>, ratified only by Albania at present

⁶⁰ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/211>, ratified by Albania, Armenia, Belgium, France, Hungary, Moldova, Spain and Ukraine.

⁶¹ Ratified by all CoE Member States except for Andorra: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en

⁶² UN Secretary General, Report to UNSC, Doc. S/2016/501. The academia has gone deeply through this issue, being of particular interest the following papers: MYLONAKI, E. (2002): "The manipulation of organized crime by terrorists: Legal and factual perspectives", *International Criminal Law Review* (2): 213-235; Luoise Shelley & John Picarelli.: "Methods Not Motives: Implications of the Convergence of "International Organized Crime and Terrorism", *Police Practice and Research* (3): 305-318; M. P. Roth, & M. Server (2007): "The Kurdish Workers Party (PKK) as Criminal Syndicate: Funding Terrorism through Organized Crime, A Case Study", *Studies in Conflict and Terrorism* (30): 901-920; S. T. Flanigan (2012): "Terrorists Next Door? A Comparison of Mexican Drug Cartels and Middle Eastern Terrorist Organizations", *Terrorism and Political Violence* (24): 279-294.

⁶³ 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.

⁶⁴ 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.

⁶⁵ UN has called to fighting against this crime and not satisfying ransom payments required by these terrorist groups in order to avoid financing them. UNSC Resolutions adopted in the framework of Chapter VII of the UN Charter: S/RES/2133(2014); S/RES/2170 (2014); and S/RES/2999 (2015). See also UNSC Resolution S/RES/2161 (2014) recalling that payment of ransom sums to individuals, groups, undertakings or entities included in the Al-Qaida sanctions list is prohibited. In this regard see M. O'Brien (2012): "Fluctuations between Crime and Terror: The Case of Abu Sayyaf's Kidnapping Activities", *Terrorism and Political Violence* (24): 320-336.

⁶⁶ UNSC Resolution 2199(2015), S/RES/2199 (2015), adopted on the 12/02/2015. For a detailed list of linkages between specific terrorist groups and concrete organized crime episodes see European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens' Rights and

all these crimes have already caught the attention of other international organizations and also of main CoE institutions, having the latter dealt with them in different instruments, such as reports, action plans, and PACE' resolutions⁶⁷. In particular arms trafficking is a most worrying scourge to be solved through better use of legal cooperation mechanisms available in the existing international instruments, particularly taking into account two main elements: first, the utmost relevance that arms availability by terrorists has had in the commission of recent terrorist attacks in Europe; second, the fact that this illegal trafficking militates against democracy and the rule of law – main CoE's *raison d'être*- and constitutes the hard core of one specific additional Protocol to the Palermo Convention, being the latter the cornerstone of the fight against TOC either at the universal or at the regional level, and a most ratified Convention by all CoE Member States.⁶⁸

1.4. This having been said, the UN Palermo Convention on TOC shows two major shortages from a legal point of view. First of all, 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. This being currently the case, UNODC has consequently set up a software tool that allows individual signatories of UNTOC to upload key information on their implementation, together with the possibility of carrying out regional studies on the issue. In this regard it has been said that the Convention and its additional protocols should be considered as a starting point rather than an end in itself.⁶⁹ Second, the fact that 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 systems and upon definition of the said concepts offered by domestic provisions, 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.

1.5. Comparison amongst the aforementioned international legal instruments provides us with a clear picture of means that CoE Member States count on in order to improve the fight against terrorism and organized crime and the best possible use to be done of each one of them. But it also maps the inefficiencies or gaps that the ensemble of those instruments show, paving the way for some recommendations to be suggested in the final part of the report.

2. Arms trafficking

2.1. Free movement of small and light weapons has become a major problem as recent terrorist attacks have demonstrated. Last terrorist attacks on European soil have shown that the access of radicalized individuals and terrorists to firearms has become too easy. Causes for this situation should be analysed and proper legal responses need to be given.

This crime 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 ISIS 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 authorized transfers; and third, arms transfers to corrupt governments or governments involved in conflicts where those arms

Constitutional Affairs Report: "Europe's Crime-Terror Nexus: Links between terrorist and organized crime groups in the European Union, Study for the LIBE Committee (2012), in particular see Annex D.

⁶⁷ In particular see CoE White Paper on transnational organized crime (2016); PACE Recommendation 1713 (2005) Democratic oversight of the security sector in member states; PACE Resolution 1524 (2006) The need for a greater transparency in the arms trade; PACE Doc. 14177, 13.10.2016, Moratorium on arms sales in the Middle East, still under discussion.

⁶⁸ All CoE Member States have ratified this Convention: <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>

⁶⁹ International Peace Institute, Transnational Organized Crime and The Palermo Convention: A Reality Check, December, 2010, 1.

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.⁷⁰

Arms world expenditure has experienced a growth of 50% during the last decade, but it has reached 75% in the case of the Middle East, simultaneously to the rise of new international terrorism with a strong territorial component such as ISIS⁷¹. Consequently, commitment on the side of States to the Arms Trade Treaty has become a priority. This being said, and even if the regulation offered by the ATT is not a *panacea*, this is an important initiative for the purposes of fighting illicit arms trade or transfers; it would also be most desirable that States would subject their arms transfers -dual use material comprised- to common legal provisions. In this regard, the EU has encouraged EU Member States to cooperate with the efforts in order to draft the ATT as well as in order to finally ratify it.⁷²

2.2. Arms trafficking as a criminal offence has been regulated at the universal level by one Additional Protocol to the Palermo Convention, according to which illicit trafficking means: “*the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any of the State Parties concerned do not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol*”. The Protocol includes all problematic sides of this phenomenon: illicit manufacturing, trafficking and falsifying or illicitly obliterating, removing or altering the marking(s) on firearms; and not only of firearms but also their components, parts, and ammunition. The Protocol also includes ancillary offences: attempting to commit or participating as an accomplice; organizing, directing, aiding, abetting, facilitating or counselling the commission of one of the said offences.⁷³

However, despite having been regulated by this universal legal instrument profusely ratified by all States, including CoE Member States, some important *lacuna* must be remarked. First, as it has been previously pointed out, either the Convention or its additional protocols are deprived of any particular monitoring system at present. But second and most important, the fact that the 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. This is clearly the case of the definition of what does “antique firearms and their replicas” mean,⁷⁴ or the concept of “licence” or “authorization” as well as the specific means of acceding to one of them.⁷⁵

Additionally, 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 weapons⁷⁶. In this vein, the EU has shown a deep concern regarding these main issues, having put into practice legislative initiatives in order to better control any potential case of arm trafficking by ratifying on behalf of the EC the aforementioned Protocol to the UNTOC⁷⁷, then adopting Directive 2008/51/EC of the European Parliament and the Council of 21 May 2008, amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons

⁷⁰ See Article 8 UNTOC.

⁷¹ Concerning the evaluation of 2015 trends in arms transfers see: SIPRI Fact Sheet (2016): “Trends in International Arms Transfers, 2015).

⁷² See Council Decision 2010/336/CFSP of 14 June 2010 on EU activities in support of the Arms Trade Treaty, in the framework of the European Security Strategy, OJEU L 152, 18.06.2010; Council Decision 2013/269/CFSP, of 27 May 2013, authorizing EU Member States to ratify, in the interest of the European Union, the Arms Trade Treaty, OJEU L 155, 07.06.2013. All EU Member States have ratified the ATT ; 12 out of the remaining 19 CoE Member States non EU Members have still not done so.

⁷³ Article 5, a & b of the Protocol.

⁷⁴ Article 3 of the Protocol.

⁷⁵ Article 3, d, ii) of the Protocol.

⁷⁶ Articles 8 and 9 of the protocol.

⁷⁷ See Council Decision of 16 October 2001 concerning the signing on behalf of the European Community of the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, annexed to the Convention against transnational organised crime, OJEC L 280, 24.10.2001.

regarding intra-Community transfers of weapons,⁷⁸ insisting on protocols on the marking, deactivation of weapons and information registering systems, including weapons and ammunition by collectors and bodies concerned with historical and cultural aspects of weapons. The Directive sets up stronger requisites that those foreseen in the Protocol.

By Regulation 258/2012 the EU has addressed also arms trade and transfers with countries outside the EU. However there are still obstacles to tracing firearms and law enforcement due to differences across EU Member States regarding the marking of weapons, the categorization and registration of firearms and deactivation standards. These obstacles finally facilitate the misuse of firearms and their trafficking as terrorist attacks on European territory in 2015 and 2016 have demonstrated. In order to try to solve these problems within the EU area a new Regulation has been adopted by the European Commission,⁷⁹ but it seems to be urgent to extend this worry to other CoE Member States non belonging to the EU. The participation of terrorist individuals holding the nationality of particular CoE Member States not belonging to the EU in some of the latest terrorist attacks committed within the EU so suggests.

The privileged position of the CoE in this matter due to its composition lends much support and credibility to any initiative in this sense. As accompanying measures the EU has recognized more competences in favour of involved institutions: CEPOL, EUROPOL and CISE. After the Paris terrorist attacks the EU tries to make acquisition of firearms more difficult, in particular with regard to on-line acquisition, better exchange of information, adopting common norms on marking of weapons and better control of circulation of deactivated firearms, including a stricter control for collectors' weapons. The adoption of a Regulation by the Commission fixing minimum common standards concerning deactivation has also been decided. A special plan for the Balkans area was also proposed by the EU Commission in December 2015.

According to all these initiatives it seems clear that there is not sufficient control that can absolutely prevent terrorist groups from having access to firearms and that initiatives in this sense should be considered within the CoE legal framework.

3. Trafficking in human beings and other related crimes

3.1. According to the Additional Protocol to the Palermo Convention, trafficking in human beings is defined as "*recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other form of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs*".⁸⁰ Apart from the obligation of signatory parties to the Protocol of criminalizing such activities in their respective domestic legal systems and granting protection to the victims nothing is said about this form of organized crime and its relationship with terrorism.

3.2. Yet, different forms of human trafficking so portrayed in the protocol had been traditionally used by terrorist groups and, in particular, by jihadist groups, such as the abduction of girls and the fact of being subject to sexual slavery, with the notorious case of 200 students kidnapped by Boko Haram in a Nigerian school, the abduction of children and their training in terrorist training camps by Daesh, or the torture and slavery regime imposed on women and girls belonging to

⁷⁸ OJEC L 179, 08.07.2008.

⁷⁹ See Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable, OJEU L 333, 19.12.2015, p. 62. As a matter of fact a new Directive has been agreed upon by the Commission and the Parliament, although it hasn't been published yet, amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons regarding intra-Community transfers of weapons. See PE-CONS 62/16, Brussels 29.03.2017.

⁸⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Organized Crime, Article 3 (a).

religious minorities in the territory under the power of the ISIS, in particular Yazidi women and girls.⁸¹

Stories concerning abduction of women and young girl by Taliban and who were finally sold, subject to ill treatment or sexually abused by superior military Taliban authorities had been reported years ago. At the same time the lack of specific provisions concerning human trafficking and terrorism in legal instruments combating organized crime, as it is the case of the Additional protocol to the Palermo Convention or other international legal instruments combating human beings trafficking, has been denounced, a fact that demonstrates that gaps exist in this regard. The same criminal behaviour was traditionally present in the FARC guerrilla practices.⁸² As Human Rights Watch has stated, many of the girls abducted or kidnapped and used as concubines or sold as sex slaves would not report their cases because of the whole issue of dishonour, but their abduction and trafficking still constitute a more discrete source of financing.⁸³

3.3. Trafficking in human beings has become one of the most lucrative and sophisticated industry that, according to the UN statistics, generates billions of dollars each year, only raking behind drugs and arms trafficking. Like guns and drugs, women and children have been traditionally traded as commodities in the global black market, usually as victims of wealthy consumers. As it has been rightly pointed out, human trafficking is not only one of the first financial steps into the transnational and transcriminal mobsters' financial network but it is the bedrock of criminal syndicates as long as it is more profitable and also cheaper to trade with persons than trafficking drugs or weapons.⁸⁴ Taking into account its quick returns, very high profit margins, low risks of arrest, low investment costs and relatively light penalties as no relationship is usually established with major crimes such as terrorism, sex trafficking has emerged as a favourite crime for organized criminal groups and also for terrorist associations.⁸⁵ Additionally to the classical practices considered to constitute an offence of trafficking in human beings, the fact of recruiting women with false promises of a paradise land would perfectly fit in the definition offered by the Additional Protocol to the Palermo Convention even if the victims were not kidnapped or forced to move but accepted voluntarily to be recruited, as the final result compares to slavery, in particular in those cases where once arrived to their destinations recruited women were forced to marrying or to having children restlessly, so demonstrating that the recruitment was for the purpose of exploitation; this has been the case with many young women recruited by Daesh.⁸⁶

3.4. Another alleged form of human trafficking for the benefit of terrorism is the forced displacement or forced migration of peoples from their countries of origin -in particular from conflict areas- towards developed countries. Once transformed into poor and discriminated migrant minorities within wealthy Western European states they become dependent upon those who sent them abroad. The fact of introducing these displaced communities into organized criminal groups which would support and assist them in order to get forged documents, have a home, find a job and, once installed in receiving states' societies, finally contribute financially to

⁸¹ See, amongst many others, F. Syper (2014): "Rape and Sexual Slavery Inside an ISIS Prison". The Daily Beast. Aug. 28, 2014; <http://www.thedailybeast.com/articles/2014/08/28/rape-and-sexual-slavery-inside-an-isis-prison.html>; S. Pierce (2014): « ISIS Continues to Engage in Sex Trafficking ». Human Trafficking Search. Nov. 10, 2014; <http://humantraffickingsearch.net/wp/isis-continues-to-engage-in-sex-trafficking/>. I. Watson (2014): "Treated like cattle: Yazidi women sold, raped, enslaved by ISIS", CNN, Oct. 30, 2014; <http://www.cnn.com/2014/10/30/world/meast/isis-female-slaves/>.

⁸² S. Hutchinson & P. O'Malley, (2007): "A Crime-Terror Nexus? Thinking on Some of the Links between Terrorism and Criminality, Studies in Conflict Terrorism (30): 1095-1107.

⁸³ K. Sullivan (2001): "Kabul's Lost Women", The Washington Post, December 2001: <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A62604-2001Dec18¬Found=true>. See also McGIRK, T (2002): "Lifting The Veil On Taliban Sex Slavery (Feb 10, 2002): <http://www.time.com/time/magazine/article/0,9171,201892,00.html>

⁸⁴ Ch. Dolan (2002): "Terrorism and Trafficking Finding the Nexus. IAST Report: <http://www.iast.netreports.htm>

⁸⁵ Elsie González (2013): "The Nexus between Human Trafficking and Terrorism/organized Crime: Combating Human Trafficking By Creating a Cooperative Law Enforcement System, Law School Students Scholarship, Paper 227: http://scholarship.shu.edu/student_scholarship/227

⁸⁶ See in this regard Ashley Binetti, "A New Frontier: Human Trafficking and ISIS's Recruitment of Women from the West", Georgetown Institute for Women, Peace and Security.

those who helped them to escape from a conflict area. And it is so even if the origin of their displacement and disgrace are these very same groups. The final result would be getting those groups easily radicalized or, at least, some of their members transformed into sympathizers keen on funding their cause.⁸⁷

3.5. Smuggling of migrants has been repeatedly pointed by UN as another source of incomes for terrorism, and in particular in the case of Daesh, as it has also been underlined by the European Parliament.⁸⁸ According to EUROPOL figures an estimate of the yearly turnover of migrant smuggling resulted in an average USD 5 to 6 billion in 2015.⁸⁹ The ILO figures points to almost 90% of affected victims being exploited by the private sector, two thirds of which are directly related to commercial sexual exploitation.

A number of negative circumstances but, in particular, armed conflicts and intensive action of terrorist groups have made of migrants a favourite easy target for mafias and other transnational criminal groups as they are forced to leave and consequently need the covering of these mafias and to using the channels provided by them.⁹⁰ As it has been reported, this situation has become an important source of incomes for Daesh that has obtained significant amounts of money from those inhabitants of territories occupied by the terrorist movement, should they wish to leave, in order to be so authorized, constituting, in this vein, another form of extortion and becoming even a sort of deliberate policy on the side of terrorist groups.⁹¹ Obviously victims of such a desperate situation have been in the need of making recourse to organized crime mechanisms and associations and have become, in this sense, extremely vulnerable victims in the hands of the latter. The use of the web for these purposes has been denounced by EUROPOL, a situation that still lacks of regulation in the existing international legal instruments⁹² and claims for a stronger judicial cooperation.⁹³ Thus, links between terrorism and smuggling of migrants for purposes of financing are generally accepted. So has been the fact of members of terrorist organizations –in particular Daesh members or sympathizers- having used smuggling mafia corridors and routes in order to execute terrorist attacks, more precisely unfortunate successful terrorist attacks carried out on European soil.⁹⁴ But also the fact that providing this precarious means of migration often fuels radicalization of marginalized individuals deprived from a legal status in States of destiny and, consequently, without a future.

3.6. Children trafficking has become one of the most popular forms of trafficking in human beings used by terrorist groups as traditionally warlords and guerrillas in Africa have demonstrated, paving the way for the so called soldier children. But far from insurgency episodes, current terrorism is making reiterated recourse to this form of criminality, as recent training camps for children set up by Daesh have demonstrated. Situations of forced recruitment of minors by Al-Shabaab or Hisbul Islam have also been reported.⁹⁵ It seems obvious that any attempt to effectively fight against terrorism and organized crime will have to address human trafficking. Existing legal instruments do not still include this common approach or are not yet being construed or implemented from this point of view which is, nonetheless, most needed.

⁸⁷ B. Cinar (2010): "Human Trafficking is used for Recruiting Terrorist", Second Annual Interdisciplinary Conference on Human Trafficking, University of Nebraska, Lincoln, <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1023&context=humtrafconf2>;

⁸⁸ See European Parliament Report on the fight against human beings trafficking in the EU external relations, (13.06.2016), Doc. A8-0205/2016, p. 29.

⁸⁹ See Migrant Smuggling Networks. Joint Europol-Interpol Report. May 2016, p. 4.

⁹⁰ See, amongst others, European Parliament Report on Human Rights and Migration in Third Countries, of 10.10.2016, Doc. A8-0245/2016, para. 47, and European Parliament Resolution on Human Rights and Migration in Third Countries, of 25.10.2016, para. 47.

⁹¹ See Alex Schmid, Links between Terrorism and Migration: An Exploration, ICCT Research Paper, May 2016, ICCT, The Hague.

⁹² See European Parliament Resolution of 5 July 2016 on The Fight against the Trafficking in Human Beings in the EU External Relations, paras. K, L, M.

⁹³ See, in this vein, UNODC Regional Strategy for Combating Trafficking in Persons and Smuggling on Migrants 2015-2020, p. 22.

⁹⁴ According to EUROPOL's Report on Migrant Smuggling in the EU, February 2016, p. 12.

⁹⁵ UNHRC (2011): "Trafficking in persons report"; <http://www.unhcr.org/refworld/country,,USDOS,,SOM,,4e12ee4ac,0.html>

In this regard the CoE Convention on Action against trafficking in human beings⁹⁶ should be recalled. The Convention narrowly follows provisions included in the Palermo Convention Additional Protocol -in particular definition of trafficking in human beings-, although it counts on richer provisions that deal not only with criminalizing at the domestic level the described behaviours and the protection of victims, but also set up criminal substantive and procedural provisions and include a monitoring system (GRETA) in order to periodically evaluate States parties compliance with it. Still, the text of this Convention does not even refer to terrorism or any potential relationship between both forms of crime.

3.7. Finally organ harvesting and trafficking, a critical form of crime,⁹⁷ as well as trafficking in counterfeited medicament products addressed to humans⁹⁸ -both significant sources for the financing of terrorist actions-, are new emerged forms of crime directly related to the fight against terrorism and organized crime. In this vein it is worth mentioning the reasoning recently made by a terrorist group in the sense of accepting the fact of removing organs from an “infidel” in order to be transposed to a jihadist, according to an absolutely aberrant interpretation of some general Coran Rules⁹⁹.

The discovery of mass graves with corpses lacking some vital organs commonly required for transplants such as kidneys, lungs, livers or even hearts so witnesses. This kind of traffic operating since long ago through well-known mafias affecting countries such as Moldova or India¹⁰⁰ together with a bizarre mobilization of surgeons in Iraq revealed this most execrable funding activity.¹⁰¹ The Global Financial Integrity Report has reported that trafficking in human organs is one of the ten most profitable illicit activities all around the world, as it annually generates profit between 600 and 1.200 million dollars, an extremely attractive source of income for terrorist groups.

4. Drug-trafficking

4.1. SC Resolution 1373 (2001) already commits UN member States to fight against the financing of terrorism; shows a deep worry about the relationship between terrorism and TOC; and insists on the role played by drug-trafficking as a means for the financing of terrorism.¹⁰² However, it is Resolution 2195 the most important one underlying the relationship between TOC and terrorism and the profit of the latter based on the activities cover by the former. In any case this Resolution rather emphasizes other TOC activities such as kidnapping for ransom, and focuses its attention on the financing effect of such activities.¹⁰³

As a matter of fact UNSC Resolution 2195 demonstrates due coherence in the sense that TOC -as it is defined and regulated according to the Palermo Convention and its protocols- does not formally include drug-trafficking as such, a traditional transnational illicit activity governed by a different and own international framework. In this vein, UNSC Resolution 2199, numbering

⁹⁶ Recently regulated by CoE. See ETS 197. See its text in <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>. Czech Republic and Russian Federation are still not parties to it.

⁹⁷ ETS 216. See its text in <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016802e79ee>

⁹⁸ Also regulated by the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health, ETS no. 211. See text in: <https://rm.coe.int/168008482f>.

⁹⁹ <http://graphics.thomsonreuters.com/doc/document.pdf>

¹⁰⁰ See Andrew Pratt (2004), “Human Trafficking: The Nadir of an Unholy Trinity”, *European security*, 13: 1-2, 55-71, pp. 66-67; Ranee Khooshie Lal Panjabi, “The Sum of A Human’s Parts: Global Organ Trafficking in the Twenty-First Century”, 28 *Pace Environmental Law Review*, 1 2010-2011, pp. 1-144.

¹⁰¹ See “Islamic State reaps profits from organ trafficking, at: <http://www.al-monitor.com/pulse/security/2014/12/islamic-state-financing-funding-human-trafficking-extortion.html#>; Matthew Blake, “Blood money: How ISIS is selling human organs harvested from living hostages and its own dead soldiers to fund terror across the Middle East”, *Daily Mail* (Dec. 19, 2014); Paloma A. Kennedy, “Human trafficking waivers. How the United States implicitly violates federal law and empowers ISIS to commit human trafficking crimes”, 101 *Women Law Journal*, 11, 2016, 11-23. As for the profit made by this traffic on the black market a heart is worth \$119.000; livers \$157.100; and kidneys have a lowest cost ranging from \$15.000 to \$262.900, depending on the country. See “How Much Is Your Body Worth on the Black Market?”, *Finance Degree Center*, <http://www.financedegreecenter.com/black-market-body/>.

¹⁰² See UNSC, S/RES/1373 (2001), para. 4.

¹⁰³ See UNSC, S/RES/2195 (2014), preamble and para. 5.

forms of transnational criminality converging with terrorism and having a certain effect on the fight against it does not include drug-trafficking neither, as it probably takes for granted that this is an illicit activity commonly used for terrorism funding.

4.2. Indeed, drug-trafficking is becoming more and more relevant with regard to other terrorism related effects such as radicalization or recruitment for terrorist purposes.¹⁰⁴ According to this, UN Secretary General's Report on January 2016¹⁰⁵ does not expressly incorporate drug-trafficking as a form of terrorism funding, yet States are strongly encouraged to combat drug-trafficking as a form of combating terrorism always from the point of view of its financing, as it is clearly stated in the Report.¹⁰⁶

4.3. 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 ago¹⁰⁷ and demonstrates how after decades terrorist groups have intensively and skilfully used illegal trade of drugs and psychotropic substances for economic reasons¹⁰⁸, but also in order to have population's support in favour of their insurgency, as far as poor and disadvantaged producers in Colombia and FARC terrorist group well prove.¹⁰⁹In the same vein, the turning of drug cartels in Mexico into criminal associations using terrorist means in order to influence the government or governmental decisions, killing candidates for governorship or bombing police cars, or even aiming at provoking a kind of "failed State

¹⁰⁴ See UNSC, S/RES/2199, 2015, paras. 11, 15, 18, 23, 24 and 28.

¹⁰⁵ See Doc. S/2016/92.

¹⁰⁶ See Doc. S/2016/92, Recommendation A, 1.c.

¹⁰⁷ See e.g. the case of the funding of PKK terrorist activities through drug-trafficking and revolutionary taxes from narcotics traffickers and refiners, in J.C: Salomon, F. Haut & J.L. Vannier, "Political violence and Narco-Trafficking, Paris Institute of Criminology, Paris, 1996; Roth & Server, The Kurdish Workers Party (PKK) as Criminal Syndicate...cit. supra, p. 908; Steven Hutchinson & Pat O'Malley, A Crime-Terror Nexus?... cit supra, p. 1095. In fact, this reality has benefited the use of the term narco-terrorism, that seems to be, nevertheless, confusing and unproductive, taking into account that no total identity occurs even if closer connections and for new purposes are continuously developing among both criminal phenomena, although the use of legal instruments combating both criminal activities can be most beneficial if applied to both criminal behaviors. See Alex Schmidt, "Links between Terrorism and Drug Trafficking: A Case of "Narco-terrorism"?, available at: http://www.academia.edu/1018250/Links_Between_Terrorism_and_Drug_Trafficking_A_Case_of_Narcorrorism, p. 11. See also Emma Björnehed, "Narco-Terrorism: The Merger of the War on Drugs and the War on Terror", *Global Crime*, 6:3-4, 305-324, p. 320.

¹⁰⁸ Only in the case of the EU the estimated spend of the 28 EU Member States' citizens reaches 24 billion€. See EU Drug Markets Report 2016, EUROPOL and EMCDDA; and Communication from the Commission to the European Parliament and the Council. Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and of the EU Action Plan on Drugs 2013-2016: a continuous need for an EU Action Plan on Drugs 2017-2020, COM (2017) 195 final, Brussels, 15.3.2017. Concerning recent studies on jihadist cells operating throughout Europe and being financed by drug-trafficking see E. Oftedal, The Financing of Jihadi Terrorist Cells in Europe, cit. supra. The same perception about the relationship between drug trafficking and terrorism is felt within the EU: see European Commission Final Report. Mid-Term Assessment on the EU Drugs Strategy 2013-2020 and Final Evaluation of the Action Plan on Drugs 2013-2016, December 2016, p. 19. Particularly important was the case of the Taliban regime and Al Qaida with regard to heroine's trade and the support of or, on the contrary, illegalization of heroine crops in order to manipulate market prices and to obtain more benefits. See in this regard Colin P. Clark, "Drugs & Thugs: Funding Terrorism through Narcotics Trafficking, *Journal of Strategic Security* 9, no. 3 (2016): 1-15, 6; Vanda Felbab-Brown, "Kicking the Opium Habit? Afghanistan's Drug Economy and Politics since the 1980s", *Conflict, Security and Development*, 6:2, (Summer 2006): 127-149, available at: <http://belfercenter.ksg.harvard.edu/files/Kicking%20the%20opium%20habit%20Afghanistan%20%20drug%20economy%20and%20politics%20since%20the%201980s.pdf>.

¹⁰⁹ According to the UNODC World Drug Report 2016: "Poverty, economic disadvantage and unemployment are some of the enabling factors of illicit crop cultivation and drug production". See 2016 Report, p. 75. In more general terms the Report states, following UNODC previous Report on this issue in 2012 (World Drug Report 2012 (United Nations publication, Sales No. E.12.XI.1, p. 88), that: "Societies characterized by high income inequality tend to be more prone to crime, and in some extremely unequal societies, members of marginalized groups may view involvement in criminal activities such as drug trafficking as the only feasible strategy for upward social mobility. Similarly, without realistic hopes of a better future, members of those groups may become disillusioned and more vulnerable to illicit drug use". See 2016 Report, p. 79.

situation¹¹⁰ needs to be considered¹¹¹, as well as Hezbollah and Hamas involvement in trafficking of cocaine, heroin and marijuana in close brotherhood with criminal groups controlling the so called Balkans drug route.¹¹²

4.4. It has been commonly agreed that the fact of facilitating trade and easing trade barriers are features of globalization that can potentially have an impact on increasing drug-trafficking and making it easier.¹¹³ It has been argued that globalization has driven an overall decline in the retail prices of drugs by increasing the efficiency of their distribution, by reducing the risk premium involved in dealing drugs and by increasing the degree of competition in illicit drug markets.¹¹⁴ Similarly to the transformation experienced in operational systems progressively adopted by terrorist groups, large organized drug-trafficking criminal groups in control today also appear less hierarchical and more decentralized.¹¹⁵

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, yet some contemporary terrorist organizations that have actually promised loyalty to the “Caliphate” self-established by Daesh have become so involved in such activities that they can scarcely be distinguished from criminal groups in general, as it is e.g. the case of the Islamist Movement of Uzbekistan (IMU), Al-Qaida in the Islamic Maghreb (AQIM) or Al-Shabaab.¹¹⁶

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 as it has been shown in relation to regular consumption of drugs by many of the terrorists involved in recent attacks in Europe, or those suspected of being so and detained by police.¹¹⁷ The same can be said particularly with regard to Daesh itself.¹¹⁸ In fact, as it has been said, involvement of

¹¹⁰ See John P. Sullivan & Adam Elkus, “State of Siege: Mexico’s Criminal Insurgency”, *Small Wars Journal* (2009): 1-12, p. 1; Shawn Teresa Flanigan, “Terrorist Next Door? A comparison of Mexican Drug Cartels and Middle Eastern Terrorist Organizations”, *Terrorism and Political Violence* (2012), 24:2., 279-294, p.288.

¹¹¹ Italian mafia’s recourse to terrorist activities in order to intimidate the Italian government and to stop the judicial campaign of prosecutions of major mafia’s leaders was well known, particularly after the assassination of judges Falcone and Borsellino. See L. Clutterbuck, “law Enforcement”, in A.K. Cronin & J.M. Ludes, eds., *Attacking Terrorism: Elements of a Grand Strategy*, Georgetown University Press, Washington D.C., 2004, pp. 147-148.

¹¹² See M. Lewitt, *Hezbollah: The Global Footprint of Lebanon’s Party of God*, Georgetown University Press, Washington D.C., 2013, p. 320; Colin P. Clarke, “Drugs & Thugs: Funding Terrorism Through Narcotics Trafficking”, *Journal of Strategic Security* (2016), 9: 3, 1-15, pp. 4-5.

¹¹³ See UNODC 2016 World Drug Report, p. 81; European Parliament, LIBE Committee: “Europe’s Crime-Terror Nexus: Links between terrorist and organized groups in the European Union (2012), p. 19; Marinko Bobic, “Transnational organised crime and terrorism: Nexus needing a human security framework”, *Global Crime* (2014), 15: 3-4, 241-258, p. 244.

¹¹⁴ James A. Piazza, “The illicit drug trade, counternarcotics strategies and terrorism”, *Public Choice* (2011) 149: 297-314; Claudia C. Storti and Paul De Grauwe, “Globalization and the price decline of illicit drugs”, *International Journal of Drug Policy*, vol. 20, No. 1 (2009), pp. 48-61.

¹¹⁵ See UNODC, *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment* (Bangkok, 2013), p. 159.

¹¹⁶ See Alex Schmidt, “Links between Terrorism and Drug Trafficking: A Case of “Narco-terrorism”?”, available at:

http://www.academia.edu/1018250/Links_Between_Terrorism_and_Drug_Trafficking_A_Case_of_Narcoterrorism, p. 10; Reitano, Clarke & Adal, *Examining the Nexus...*, cit. supra.

¹¹⁷ It has been clearly the case of Ahmed Coulibaly in the case of Charlie Hebdo attack, Abdelhamid Abaaoud, leader of the Paris November attacks in 2015, Salah Abdesalam in the case of Brussels attacks in 2016, Mohamed Lahouaiej Bouhlel, the suicide terrorist driving the truck in Nice in 2016 or, more recently, Khalid Masood, the responsible person of the terrorist attack at the British Parliament in London in March 2017, or the author of the attack in Stockholm in April 2017. The same can be said with regard to recent detentions of suspected jihadists practiced by the Spanish police in April and May 2017.

¹¹⁸ See Alissa J. Rubin, Lilia Blaise, Adam Nossiter & Aurelien Breeden, “France Says Truck Attacker was Tunisia Native with Record of Petty Crime”, *New York Times*, July 15, 2016, available at: <http://www.nytimes.com/2016/07/16/world/europe/attack-nice-bastille-day.html>

terrorist groups in drug-trafficking should not be understood as an ideological contradiction or an evolution towards a complete merge of both kind of criminal groups,¹¹⁹ in particular considering that jihadist groups justify their participation in drug-trafficking as long as drugs are sold to infidels but not to muslims.¹²⁰

Therefore, in addition to being considered a quintessential source of revenues for terrorist groups in any continent¹²¹ leading to a so called marriage of convenience between the two¹²², drug-trafficking has become a powerful tool for coping with other crucial terrorist groups' purposes. But doubtlessly, the most worrying fact is that, as it has been researched, an important part of those involved in terrorist attacks in Europe at least during the last six years had previously taken part in various forms of crime and, in particular, in small drug-trafficking, without having been in prison or sentenced in a different way.¹²³

As it will be seen later on in this report, 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 or even to circumvent, and breeds radicalization amongst impoverish social groups, providing them with a justification for terrorist actions.¹²⁴

4.5. The legal framework governing drug-trafficking at the universal level is composed of three main conventions¹²⁵ and, therefore, it is additional to the one governing TOC and to the ensemble of conventions regulating the fight against terrorism. Hence, the first point to be underlined in this regard is precisely the lack of a common regulation in times of closer relationships between both types of criminality, even if, by its very nature, drug-trafficking is almost unanimously considered to be part of transnational organized criminality.¹²⁶ In this

¹¹⁹ See Victor Asal, H. Brinton Milward & Eric W. Schoon, "When Terrorist Go Bad: Analyzing Terrorist Organizations' Involvement in Drug Smuggling", *International Studies Quarterly* (2015): 59, 112-123, p. 113; Ahrari, Ehsan, (2009) *The Dinamics of Narco-Jihad in the Afghanistan-Pakistan Region*, The National Bureau of Asian Research Special Report 20: 43-47.

¹²⁰ See Chris Dishman, *The Leaderless Nexus...*, cit- supra.

¹²¹ So has it been established by the FATF Recommendations since 2001. See FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. The FATF Recommendations, February 2012, updated 2015. See also Directive 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Article 3.4.b); and Proposal for a Directive on countering money laundering by criminal law, context of the proposal and Article 2. b) and e).

¹²² See European Parliament, Directorate-General for Internal Policies, "Europe's Crime-Terror Nexus: Links between terrorist and organized crime groups in the European Union. Study for the LIBE committee", 2012.

¹²³ See Robin Simeox, "We Will Conquer Your Rome: A Study of Islamic State Terror Plots in the West", *The Henry Jackson Society, Centre for the Response to Radicalisation and Terrorism (CRT)*, 2015: 3; Sam Mullins, "The Road to Orlando: Jihadist-Inspired Violence in the West, 2012-2016", *CTC Sentinel*, June 2016: 26-30, available at: <http://www.ctc.usma.edu/posts/the-road-to-orlando-jihadist-inspired-violence-in-the-west-2012-2016>.

¹²⁴ As UNODC has put it in its last World Drug Report: "More broadly, just as drug use has serious ramifications for development, certain socioeconomic factors, such as poverty, poor education and lack of health-care services, can have a negative impact on drug use. Inequality, social deprivation and lack of alternative livelihoods, to name but a few, can all be viewed as deficiencies in development that feed one or another aspect of the drug problem. Poverty, unemployment, poor education, domestic violence and social disadvantage are vulnerabilities linked to social development that can be conducive to drug use". See UNODC Country Office for Afghanistan, "Community drug profile No.5: an assessment of problem drug use in Kabul city", (Kabul, 2003), p. 25.

¹²⁵ See Single Convention on Narcotic Drugs of 1953 as amended by the 1972 Protocol; Convention on Psychotropic Substances of 1971; and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf. The Council of Europe, in compliance with Article 17 of the 1988 Convention, adopted the Agreement on illicit Traffic by Sea (ETS no. 156), counting on a co-operation group to combat drug abuse and illicit trafficking in drugs, the so called Pompidou Group. See www.coe.int/pompidou.

¹²⁶ As it is the case of the treatment received by UNODC, or even by the African Union, whose Conference of Ministers for Drug Control and Crime Prevention, held in Addis Ababa in October 2012, endorsed the

regard, international treaties regulating both phenomena are neutral as far as this interaction is concerned. Nonetheless the mention made by the 1988 Convention - the most comprehensive convention on the control of drug trafficking- to other forms of criminal behaviour should be recalled, when it refers to the relationship between illicit drug traffic and "other organized criminal activities which undermine the stability and legitimacy of sovereign states".¹²⁷

At first sight there is no contradiction amongst the Palermo Convention and related protocols and universal conventions regulating narcotics and drug-trafficking as long as they do not count on contradictory definitions: no definition of "criminal organization" is included in the drugs Conventions as it is the case in the Palermo Convention, although no reference is made neither in any of the three drug Conventions to such definition made by the Palermo Convention; consequently, it could be doubtful whether a drug-trafficking association or group should be formally considered as a form of TOC. In any case this does not seem to be the most important obstacle, as in practice there seems to exist a general consensus on the fact of considering drug-trafficking and money laundry derived from it as being part of TOC.

All the three drugs related conventions commit States parties to criminalize and punish with serious penalties the offences set up and defined in the conventions, fuelling in a sense a sort of harmonization of penal treatment given to certain drug related criminal activities within States parties. In this vein such criminal behaviours include: cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of the Conventions, and any other action which in the opinion of any Party to them may be contrary to the provisions of the Conventions.¹²⁸

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, meanwhile the first Convention, the so called Single 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 to the Convention regarding traffic and misuse of drugs and to adopt decisions with regard to states parties,¹²⁹ it is not exactly the same in the other two conventions, where the Commission and the Board are mentioned but do not count on the same powers. In particular, in the first Convention the Board has a most powerful competence to first, opening consultations with or request to furnish explanations to States parties; second, may call upon a given State party to adopt remedial measures; third, may propose to the concerned State party to carry out a study in its territory; fourth, may call the attention of the Parties, the Council and the Commission to the matter; and fifth, has the right to publish a report on the matter. However, these powers are reduced in the other two consecutive Conventions, more specifically, the power to request in-the-field investigations.

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, and that meanwhile all CoE member States are parties to the Convention on Psychotropic Substances, signed in Vienna, 1971, and to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, many of them are not parties to the Single Convention on Narcotic Drugs of

African Union Plan of Action on Drug Control and Crime Prevention (2013-2017). The plan provides a comprehensive approach to the problems of illicit drugs, crime, corruption and terrorism as impediments to development.

¹²⁷ See 1988 Convention's Preamble, para. 3.

¹²⁸ See Single Convention, Article 36; Convention on Psychotropic Substances, Article 22; and 1988 Convention, Article 3.

¹²⁹ See Single Convention, Articles 5 and 7.

1961, as amended by 1972 Protocol.¹³⁰ Therefore, encouraging CoE Member States still pending to ratifying these conventions and filling those gaps constitutes an absolute priority.

Nevertheless, all the three Conventions foresee the use of extradition, widely conceived as a privileged cooperation mechanism amongst parties to them in their fight against illicit commerce of drugs and narcotics, although here, again, some differences still appear.¹³¹ Thus only the 1988 Convention devotes one specific provision to regulate extradition as the main cooperative means among States parties to the Convention in order to combat offences included in it, enshrining also in its express wording the general principle *aut dedere aut judicare*. On the contrary this is not the case in the two previous Conventions, which include extradition together with other penal provisions and do not make express reference to the obligation of states parties to adjudicate on the case when extradition is not agreed upon. The three Conventions also include some other provisions regarding mutual legal assistance.

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, narcotics or psychotropic substances,¹³² 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.¹³³ Additionally, and taking into account that Article 17 of the Second Additional Protocol to the CoE MLA Convention dealing with Cross-border observations does not include terrorist offences in its paragraph 3, this mention made in the 1988 UN Convention on the illicit traffic of drugs could be used, in a joint approach when combating TOC and terrorism, to pursue also suspects of terrorism connected in any way to drug-trafficking, as illicit drugs use is one of the offences listed in that paragraph allowing cross border observations, a factor that could be particularly useful with regard to FTFs and their mobility.

Obviously, any disconformities in the obligations assumed by States through ratification of the existing international treaties on the subject become a black hole through which terrorist activity could be reinforced and strengthened. Means for international cooperation offered by these instruments are not different from those foreseen in the case of preventing and/or countering terrorism. Yet, again, no relationship is formally established in the aforementioned treaties with regard to terrorist offences and to TOC.

5. Traffic in cultural goods or property

5.1. Destruction of cultural heritage is a damage that has commonly taken place in the framework of an armed conflict, having been consequently envisaged and punished under International Humanitarian Law¹³⁴ and with significant hindering effects on human rights.¹³⁵ The

¹³⁰ Only 11 CoE member States out of 47 have ratified this Convention and 35 have signed but not yet ratified the said Convention.

¹³¹ See Single Convention, Article 36; Convention on Psychotropic Substances, Article 22; and 1988 Convention, Article 6.

¹³² See 1988 Convention, Article 9.1 (c).

¹³³ As already proposed in a previous working document, it could even be considered the possible use of these joint investigation teams with respect to third States particularly concerned by the FTFs phenomenon and non-CoE member States through the adoption of the necessary international bilateral agreements. See PC-OC/PC-OC/Docs PC-OC 2015/PC-OC (2015) OJ1E, Strasbourg, 22/05/2015.

¹³⁴ See I Additional Protocol to the Geneva Conventions, Article 53; II Additional Protocol to the Geneva Conventions, Article 16.

¹³⁵ See in this regard Report of the Special Rapporteur, Mrs. Karima Bennouna, in the field of cultural rights, transmitted by UNSG to the UNGA, A/71/317 of 9 August 2016, submitted in accordance with

possibility of attacking this kind of heritage in order to deeper damage a population, depriving it from its historical roots, identity and cultural “patrimoine”¹³⁶ deserved a particular legal protection also by the UNESCO¹³⁷.

Nevertheless, beyond destruction of such a protected 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 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 and its Operation Guidelines adopted in 2015; under the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage; and under the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.¹³⁸ But more recently, destruction and or smuggling, trafficking or looting of such a heritage by terrorist groups have become an international concern¹³⁹, 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,¹⁴⁰ UNGA¹⁴¹ and UNSG¹⁴² have repeatedly denounced, calling on member States for action against such criminal activities.¹⁴³

Thus, trafficking in such goods has become common means of financing activities of terrorist groups in the case of certain Middle East states such as Afghanistan, Iraq, Egypt or Syria, and more precisely as far as Daesh is concerned. This new phenomenon should be covered in a

Human Rights Council Resolution 28/9, and Human Rights Council Resolution on Cultural Rights and the protection of cultural heritage, A/HRC/33/L.21, of 27 September 2016.

¹³⁶ Recent examples of this can be found, amongst others, in the attacks against the old Mostar bridge (1991), Bosnia-Herzegovina; the destructive siege of the Old Town of Dubrovnik (1991); the mutilated and destroyed Buddhas of Bamiyan, Afghanistan (2001); the attacks against religious sites and historic monuments in Timbuktu, Mali (2012); ancient historical sites in Mosul, Iraq (2014) and Palmyra, Syria (2015).

¹³⁷ See UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), already inspired in the protection of such a heritage included in the Hague Conventions of 1899 and of 1907, and in The Washington Pact of 1935, whose Article 12 exceptionally permitted the transport of cultural property under very strict conditions and limited the interpretation of the military necessity criteria in its Article 11. This protection was also extended to conflicts not of an international character by Article 19, so including to any other party to an armed conflict, not only states, and its protection reinforced by stricter requirements set up in the Regulations for the execution of this Convention, Articles 17 and 18. In this vein since the very beginning such movable cultural property shall be immune from seizure, placing in prize or capture (Regulations, Article 14). This protection offered by the 1954 UNESCO Convention was complemented by II Additional Protocol adopted in 1999. See Jean-Marie Henckaerts, “The significance of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict”, International Review of the Red Cross, no. 835, available at: <https://www.icrc.org/eng/resources/documents/article/other/57jq37.htm>

¹³⁸ See also the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

¹³⁹ See 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. The American School of Oriental Research has estimated that 25% of the archeological sites in Syrian territory have been illicitly exploited, excavated and looted, amongst them more than 21% by the ISIL. The importance of combating this criminal activity in order to decrease the ISIL threat has been also underlined by UN Secretary General in its report, S/2016/92. The EU adopted a first instrument on this issue, Council Regulation (EC) 116/2009 of 12 December 2008 on the export of cultural goods, OJEL L39, of 10.02.2009; and, once aware of the new dimension of the problem, it has later adopted Directive 2014/60/EU of the Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State, OJEU L159, of 28.05.2014.

¹⁴⁰ See UNSC Resolution 2195 (2014), S/RES/2195 (2014); Resolution 2199 (2015), S/RES/2199 (2015); Resolution 2253 (2015), S/RES/2253 (2015); Resolution 2322 (2016), S/RES/2322 (2016); and Resolution 2347 (2017), S/RES/2347 (2017).

¹⁴¹ See UNGA Resolution 69/196, A/RES/69/196, containing International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences; and UNGA Resolution 69/281, A/RES/69/281, calling for measures to protect Iraq’s cultural heritage.

¹⁴² See UN Secretary General in its report, S/2016/92, cit. supra.

¹⁴³ See, in the same vein, recent Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, para. 15. DOUE L88, 31.03.2017, p. 8.

specific manner with regard to terrorist groups' actions, 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, although the judgment concerns only destruction of but not trafficking in those goods, and no connection is made with terrorism or its financing.¹⁴⁴

5.2. Council of Europe's main bodies have not been oblivious to this situation.¹⁴⁵ Grounded on a longstanding experience in international legal instruments dealing with the protection of cultural heritage and property in all their different aspects¹⁴⁶ and in response to the situation originated with the armed conflict in Syria and the expansion of a terrorist movement with a strong control over a territory enjoying a extremely valuable cultural heritage, the CoE CDPC has successfully drafted a new Convention replacing the 1985 Delphi Convention that never entered into force, in order to combat this criminal offence with a new dimension closely linked to terrorism, that has just been adopted and open for signature by CoE CM.¹⁴⁷

The new Convention on Offences related to Cultural Property has no specific provisions on links between these offences and terrorism as there was no need as far as in the case of trafficking in cultural property -in contrast with other aforementioned criminal practices- the sole connection with terrorism is for the purposes of financing, obviously in compulsory cooperation with organized crime groups. Nonetheless its preamble already makes a reference to this link and its gravity, an aspect that is also considered in its explanatory report.¹⁴⁸

In order to be more effective, and in accordance with CoE terrorism related Conventions, this new international instrument, open to the signature of all states around the world and not just CoE member States,¹⁴⁹ commits States parties to it to criminalizing a number of practices which have necessarily to be domestically defined and punished,¹⁵⁰ namely those included in previous UNESCO and CoE Conventions: theft and others forms of appropriation, unlawful excavation and removal, illegal importation and exportation, acquisition whether onerous or gratuitous, placing on the market (placing in prize, according to UNESCO terminology), falsification of documents allowing such a traffic, and destruction.

Some contents deserve a particularly positive opinion, as they contribute to fill in legal gaps, such as the fact of including in the concept of cultural property also the underwater cultural property¹⁵¹ or regulating altogether material and immaterial cultural heritage, the fact of taking into account the most preferred sale through the internet –might it be via social networks or through the so called deep dark web- instead of more classical means such as flea markets, auction houses or antique shops.¹⁵² Additionally, the Convention holds legal persons liable for these offences¹⁵³ and it bids also for stronger cooperation mechanisms in order to foster States' action against trafficking by means of setting up wide jurisdiction criteria¹⁵⁴ and fuelling an easy

¹⁴⁴ *The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC, judgment of 27.09.2016. No. ICC-01/12-01/15; <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/15-171>. The Court, according to Article 8(2)(e)(iv) of the Rome Statute, which criminalizes "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives", sentenced Al-Mahdi to 9 years.*

¹⁴⁵ See PACE Resolution 2057 (2015) on cultural heritage in crisis and post-crisis situations of 22 May 2015.

¹⁴⁶ See in this regard the European Cultural Convention of 1954 (ETS no. 18); the European Convention on the Protection of the Archeological Heritage of 1969 (ETS no. 66); the European Convention on Offences relating to Cultural Property of 1985 (ETS no. 119); the Convention for the Protection of the Architectural Heritage of Europe of 1985 (ETS no. 121) and its revised version of 1992 (ETS no. 143); and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society of 2005 (ETS no. 199).

¹⁴⁷ See Council of Europe Convention on Offences relating to Cultural Property, of 31 March 2017, ETS no. 221.

¹⁴⁸ See Explanatory Report of the Convention, para. 15.

¹⁴⁹ See *Ibid.*, para. 13.

¹⁵⁰ See Council of Europe Convention on Offences relating to Cultural Property. Article 3 to 9.

¹⁵¹ See *Ibid.*, Article 2.2.

¹⁵² See *Ibid.*, Article 8.

¹⁵³ See *Ibid.*, Article 13.

¹⁵⁴ See *Ibid.*, Article 12.

use of the extradition mechanism.¹⁵⁵ Finally, it also improves the existing legal framework including a preventative perspective¹⁵⁶ and establishes a follow up mechanism.¹⁵⁷

Having said all this, the Convention intends to be as comprehensive as possible as far as this form of trafficking is concerned and results in an international instrument perfectly compatible with the existing universal legal framework on combating TOC and on the action against terrorism. Once again, the main possible obstacle could be, as ever, States' will. In this regard it has to be recalled that State's commitment to such protection has to be translated into the ratification of international convention on the matter and here, again, important disparities still exist.¹⁵⁸ In this regard it should be recalled that ICC jurisdiction is complementary to that of States parties to it, and prosecutions at the national level for this kind of offences are still a rarity at best.

6. Extortion, kidnapping for ransom, smuggling of other commodities and corruption

6.1. Lastly but not less important are other criminal offences traditionally linked to any form of terrorism developed along the history and also to TOC that need to be considered too in order to be exhaustive, even if, as it may be concluded from all the aforementioned data, legal norms and reasoning, the recourse that terrorism make to any of them is closely linked to the particular aims; geographical location; overall philosophy or claims; and the degree and extension of the territorial control exercised –if any- by the specific terrorist group.

In this sense the taking of hostages and, more particularly, kidnapping for ransom have been some inherent practices followed by most -if not all- terrorist groups. The taking of hostages, as a most used means of blackmail for putting political authorities of a given country under pressure or just with the aim of funding terrorist actions -becoming then kidnapping for ransom- has been used by all terrorist movements along the history. This explains the existence of international norms since long aiming to combating such behaviours.¹⁵⁹ In any case how often these practices take place, who and how many are those individuals subject to these egregious practices shows a direct relationship with goals aimed at and the main features of the given terrorist organization; the social evolution of the affected territory; or even the use of new

¹⁵⁵ See *Ibid.*, Article 19.

¹⁵⁶ See *Ibid.*, Article 20.

¹⁵⁷ The so called Committee of the Parties. See *Ibid.*, Article 22.

¹⁵⁸ With regard to the CoE Conventions on protection of cultural heritage on its different aspects the situation is the following: all CoE member States are parties to the CoE European Cultural Convention (ETS no. 18), plus Belarus, the Holy See and Kazakhstan; none CoE member States are parties neither to the European Convention on the Protection of the Archeological Heritage (ETS no. 66) nor to the European Convention on Offences relating to Cultural Property (ETS no. 119, to be hopefully replaced by forthcoming Convention recently open for signature and ratification); 42 out of 47 CoE member States are parties to the Convention for the Protection of the Architectural Heritage of Europe (ETS no. 121), ratification on the side of Albania, Austria, Iceland, Monaco and San Marino being still pending; 45 out of 47 CoE member States are parties to the European Convention on the Protection of the Archeological Heritage (revised) (ETS no. 143), ratification on the side of Iceland and Montenegro being still pending; and only 17 out of 47 CoE member States are parties to the Council of Europe Framework on the Value of Cultural Heritage for Society (ETS no. 199).

As far as ratifications of the ICC Statute is concerned, ratifications by Armenia, Monaco, Russian Federation and Ukraine are still pending. As far as Additional Protocols I and II to the Geneva Conventions, the following CoE member States are not yet parties to any of the two: Andorra, Azerbaijan and Turkey.

Concerning the UNESCO Conventions, the following CoE member States are still no parties to the 1970 UNESCO Convention on the import, export and transfer of ownership of cultural property: Andorra, Ireland, Latvia, Liechtenstein, Malta, Monaco and San Marino. With regard to the UNESCO 1972 Convention on protection of world cultural and natural heritage, the status of ratifications as far as CoE member States is concerned, is the following: the signature of Liechtenstein is still pending; and in the case of the 2001 Convention on the protection of underwater cultural heritage only 7 out of 47 CoE member states have ratified this Convention.

¹⁵⁹ See the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973, to which all CoE member States are parties to it, as well as the UN Convention against the Taking of Hostages of 1979, to which all CoE member States are parties to it.

technologies. In this vein, politicians, statesmen, diplomats or members of national security forces were a preferred objective for terrorist groups time ago (e.g. ETA, Red Brigades, IRA). However the kidnapping of media professionals and members of humanitarian organizations, those mainly targeted victims by jihadist groups nowadays, has become most popular amongst such criminal associations and particularly more used by terrorist groups than by TOC.¹⁶⁰

This is but an intended purpose of new terrorism and its primary practical goal: a widespread propagandistic effect, as targeting to members of civil society developing a most significant and sympathetic role in armed conflicts beats international community harder, due to the nature of the tasks developed by those kidnapped; the support they receive; the diverse nationality they usually have; and, therefore, the more international reach of the threat. But also due to the discrete means that their governments usually are obliged to follow in order to liberate them usually not subject to any international legal regulation.¹⁶¹

Extortion has also been a traditional funding recourse usually practiced by terrorists and also by TOC in order to get funding in the case of the former –as it was the situation with the payment of illegal taxes by companies, firms and businessmen- or mainly in order to exert power and control in the case of the latter. Yet, this has become a more profitable means in the case of terrorist groups exercising a strong military, political and social control on a wide territory and combining political aims with religious patterns such as Boko Haram and, most importantly, Daesh have practised, as those citizens wishing to leave the territory under the control of the given terrorist group will be subject to satisfying very expensive “visas” in order to be allowed to leave and save their lives. Therefore this traditional means has achieved a renewed importance as a funding system but also as a propagandistic recourse most used by terrorist groups.

6.2. Smuggling of the most diverse commodities has also traditionally constituted and still constitutes a means for terrorist financing rather than TOC financing, having being well documented in the case of many terrorist organizations already mentioned such as Hamas or Hezbollah, PKK, IRA, ETA, Abu Sayyaf, Tamil, Tiggers, etc. The specific smuggled commodities have again much to do with the overall features of the given terrorist group, its geographical location and its capacity for exercising a strong territorial control, as it is clearly the case of exploiting natural resources –mainly oil, gold or gems- in the case of Africa or Middle East. But also cars, cigarettes, alcohol and ultimately all sort of electronic devices are most appreciated by black markets; easy to traffic as strongly prohibited by fundamentalist Islamic regimes; and difficult to fully regulate through international legal instruments. Most worrying items potentially subject to trafficking progressively striking fear on the international community are parts and components of nuclear or massive destruction weapons, foreseen by some specific international conventions although some of whose most diverse aspects have not been yet fully covered by those legal instruments.¹⁶² This constitutes another obvious gap to be solved as soon as possible, in particular taking into account the illegal commerce undergoing in the deep black internet and increased possibilities of information, commerce or exchange of them through the use of new technologies.

6.3. Finally ultimate success of any form of TOC or terrorism has much to do with corruption of those involved in combating these criminal practices e.g. police, judiciary, security forces, customs officers, etc. But being undoubtedly a shared illicit practice used either by TOC and by terrorism it could be considered as a method or an instrumental illicit behaviour rather than a

¹⁶⁰ With the exception of some extremely violent drug cartels in Latin America that have made recourse to this means in order to provoke as much weakness and lack of control in some territories on the part of the State as possible, being state instability another common objective of both kind of criminality although for different purposes. See in this regard Marinko Bobic, “Transnational organized crime...”, cit. supra; Louise I. Shelley & John Picarelli, “Methods and not Motives...” cit. infra.

¹⁶¹ In particular the States can only make recourse to negotiations or finally the discretionary invoking of the diplomatic protection, that has been subject to codification works by the ILC but that has not been yet fully codified by the adoption of an international treaty proposal.

¹⁶² See UN International Convention for the Suppression of Acts of Nuclear Terrorism, to which the following CoE member States are not still parties: Andorra, Bosnia-Herzegovina, Bulgaria, Estonia, Greece, Iceland, Ireland, Monaco and Montenegro.

goal in itself¹⁶³ which, even under strict international regulation,¹⁶⁴ still lacks full implementation and clear and unbiased will on the side of states.

¹⁶³ See in this regard Louise I. Shelley & John T. Picarelli (2002), "Methods Not Motives: Implications of the Convergence of International Organized Crime and Terrorism", *Police Practice and Research*, 3: 4, 305-318, p. 312.

¹⁶⁴ See UN Convention against Corruption of 2003, to which all CoE member States are parties, and also CoE Criminal Law Convention on Corruption of 1999 (ETS no. 173), to which the following CoE member States are not still parties: Germany, Montenegro, The Former Yugoslav Republic of Macedonia and Turkey, some of them key countries with regard to successful links on a number of criminal activities shared between TOC and terrorism.