



## Interview with Gilles de Kerchove\*

European Union Counter-Terrorism Coordinator\*\*

*Gilles de Kerchove was appointed European Union (EU) Counter-Terrorism Coordinator (EU CTC) on 19 September 2007. In this function, he coordinates the work of the EU in the field of counterterrorism (CT), maintains an overview of all the instruments at the Union's disposal, closely monitors the implementation of the EU CT strategy and fosters better communication between the EU and third countries to ensure that the Union plays an active role in the fight against terrorism.*

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\* Since this interview was first published, Gilles de Kerchove has moved out of this role.

**1. As way of introduction, could you briefly explain your role and responsibilities as the EU Counter-Terrorism Coordinator?**

The position of EU Counter-Terrorism Coordinator (EU CTC) was initially created by the European Council after the 2004 Madrid train bombings. The idea was to position someone who would have an overarching view of all the policies with regard to radicalization and terrorism in the EU and could oversee that the several stakeholders that work on the file coordinate amongst themselves. This includes justice, law enforcement, prosecution, diplomatic services, Ministries of Finance, Ministries of Defence, civil society, private sector, etc. In terms of responsibilities, firstly, the EU CTC acts as a bridge between the EU institutions and the Member States. Secondly, he/she must anticipate future challenges and strategize sound policy solutions to mitigate any terrorist threats. Third, the Coordinator supports the work of the Commission and the European External Action Service whilst helping third States outside of the EU in improving their responses to terrorism as well. Finally, the EU CTC is the face of the EU when it comes to CT, which means much engagement with the media and outreach-based activities.

In terms of positioning, my role is located within the General Secretariat of the Council,<sup>1</sup> as that is probably the place where I can function most independently. At the same time, I have always seen my role as serving all EU institutions, and not just the Council. The means of the EU CTC are limited: I work with around five or six advisers, most of whom are seconded from Member States. There is no budget at my disposal and my role is not supported by a clear legal status: my position is rooted in a Declaration by the European Council<sup>2</sup> and supported by European Council and Council Conclusions. While these documents hold a clear weight, the position of EU CTC is not foreseen by the EU Treaties. Therefore, my impact is dependent on the support and trust of the Member States and on whether they find my position relevant.

I have been in this position for fourteen years and have been through several major crises such as the foreign terrorist fighters (FTFs),<sup>3</sup> the terrorist attacks in Paris in January and November 2015 and in Brussels in March 2016, as well as other major attacks in the EU. I am now retiring at the end of August 2021. A successor has been announced. This shows that Member States continue

\*\* This interview was conducted in Brussels on 4 May 2021 by Dr Knut Dörmann, Head of Delegation to the European Union, the North Atlantic Treaty Organization and the Kingdom of Belgium, ICRC.

- 1 The Council of the EU is an institution of the EU, informally also known as the Council, that is formed by government Ministers from each EU country who meet to discuss, amend and adopt laws, and coordinate policies. Together with the European Parliament, the Council is the main decision-making body of the EU. It is not to be confused with the European Council, with at least quarterly summits, and where EU leaders meet to set the broad direction of EU policy, and with the Council of Europe which is an international organization in Strasbourg comprising forty-seven countries of Europe and that was set up to promote democracy and protect human rights and the rule of law in Europe.
- 2 Council of the EU, "Declaration on Combating Terrorism", 7906/04, Brussels, adopted by the European Council at its meeting on 25 March 2004, available at: <https://data.consilium.europa.eu/doc/document/ST-7906-2004-INIT/en/pdf> (all internet references were accessed in June 2021).
- 3 Expression also used in UN Security Council (UNSC) Resolutions. See, for instance, Resolution 2178 (2014), adopted by the UNSC at its 7272nd meeting, on 24 September 2014.

to find the position relevant. I have to admit that I agree with this analysis. Even if I have emphasized in the past that I am working hard to make my role redundant, with the European Commission and European External Action Service increasingly developing and reinforcing their own CT policies, it remains useful to have an independent voice present, an expert travelling throughout the year within the EU and around the world to identify the emerging trends, issues and needs, and enabling the EU to support Member States with regards to these needs.

Notably, during my tenure I helped anticipate and highlight the issue of FTFs (as early as 2013), as well as the issue of right-wing violent extremism in the EU. I also pushed forward difficult subjects such as assisting President Obama to close down the Guantanamo Bay detention centre. In line with this, I also tried to mobilize the system to provide more support to the camps and prisons in North-East Syria (NES) where alleged Islamic State (IS) fighters and family members are held, to avoid the worsening of both the security and humanitarian situation.

Lastly, I think this position needs to continue to exist to ensure that the issue of CT remains on top of the EU agenda. There is always a peak in discussions and plans in the direct aftermath of a terrorist attack, but what follows is something I call “CT fatigue” (the focus moving from CT towards other urgent needs), which I have noticed in the years I have been in this position. My emphasis has always been to remain focused and allocate the necessary resources, and to ensure that we are not just reactive to these threats but that we anticipate them. One of the agendas that I have been working on in the past couple of years is to bolster the capacity of internal security actors to identify and analyse the potential threat of disruptive technology, such as artificial intelligence (AI), drones, weaponization of space, etc., and also to harness the potential such technology can represent regarding justice and security. As an example, two years ago, I helped with the creation of the EU innovation hub for internal security at Europol.

## ***2. What are your observations on the EU approach to CT in the course of your mandate? How did it consider the “Global War on Terror” narrative?***

With regard to what changed over time, I would start with the entry into force of the Lisbon Treaty in December 2009<sup>4</sup> which made internal security a shared competence between the EU and the Member States. Before this, internal security was largely dealt with on an intergovernmental basis, with the use of instruments such as “Framework Decisions”,<sup>5</sup> and with a minimal involvement of the European Parliament or the European Court of Justice. Under the

4 “Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007”, *Official Journal of the European Union*, C 306/1, 2007, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

5 This type of legally binding act is no longer used since the Treaty of Lisbon came into force in December 2009. A Framework Decision established objectives which the Member States had to fulfil but whereby Member States were free to choose the manner in which they would implement the required objectives.

Lisbon Treaty,<sup>6</sup> it became a shared competence and subject to the “Community method”: I would refer to this decision-making process as the “noble” procedure, notably because the European Parliament is part of the process as co-legislator, because it allows for the use of “normal” policy and legislative instruments (Regulations, Decisions, Directives, etc.), and because the role of the European Court of Justice is enhanced. This was a major step in terms of integration and it has continued since.

I believe that until 2015, the rhetoric of the Commission was that the EU was a modest player only, providing some form of support to the Member States, by adopting legislation, providing funds, creating agencies in support, etc. However, after the attack against Charlie Hebdo in January 2015, the Commission perceived a huge appetite for more Europe on this file, which translated into more ambitious EU policy. This does not mean that Member States have been replaced on this file, but rather that in the last five years the EU has become a serious player also in the field of security.

Regarding the so-called “Global War on Terror”, the EU has always been against this narrative and we discussed this frequently with the US authorities. This was my first file when I was initially appointed, coinciding with the election of President Obama. When I met with his team for the first time, I got the impression that there was an appetite for closing Guantanamo; upon my return to the EU, I said that I was convinced that the new President would call each Head of State and request that they take a few detainees each. I urged the Member States to provide a collective response because I thought an EU collective response would push the war on terror-narrative aside, so that we could move back to a more traditional approach (which is akin to the EU’s approach to the issue of terrorism). This means that the EU rejected the approach of the Bush administration to treat possible suspects as “enemy combatants”. However, the EU’s approach has always been to apply criminal procedural law to possible suspects of terrorism, with all the human rights safeguards, including the fair trial principle, etc. In our view, international humanitarian law (IHL) only applies in specific armed conflicts such as Afghanistan, Iraq and Syria. There is no overarching global armed conflict against Al-Qaida and/or the IS.

I believe that, in the EU, the balance between security and human rights remains. In my opinion, the EU is probably the only place in the world where at times human rights are put before security concerns. For example, it was difficult to convince the European Parliament to take measures in identifying the sources for dissemination of child pornographic material, as it was regarded an issue of the right to privacy. Overall, human rights like privacy and free speech are strongly protected in the EU. I think we have the necessary checks and balances in place, with strong judicial instances as the European Court of Justice.

***3. You were one of the first CT experts to place the issue of so-called “foreign fighters” on the agenda of the EU. When and for which reasons did this file***

<sup>6</sup> Treaty of Lisbon, above note 4.

***gain prominence? In December 2020, the European Commission adopted a CT agenda<sup>7</sup> that “sets the way forward for actions to counter terrorism at EU level”.<sup>8</sup> How is this agenda and other EU policies addressing the “foreign fighters” phenomenon? In general, how can the EU complement the action of EU Member States regarding this issue? Do you see challenges in having a uniform EU approach and policies regarding this population, even for the most vulnerable among them?***

The file gained prominence on the EU’s agenda around 2014, when significant numbers of Europeans began to join IS in Syria and Iraq. Ultimately, about 5000 European citizens joined IS, whereas only a few dozen had fought in the ranks of Al-Qaida before. I placed this issue on the EU’s agenda for two reasons. Firstly, I was of the opinion that we have a responsibility to prevent our citizens, as much as we can, from undertaking activities that harm the stability and security of other countries. Furthermore, although the motivations of Europeans who joined Jabhat al-Nusrah (Al-Qaida’s branch in Syria at the time) and IS as well as the threat they posed at home were the subject of debate, I felt that we should at least prepare for a negative impact on our domestic security. Unfortunately, my concern was proven right in May 2014, when an individual who had spent a year fighting in Syria conducted a shooting at the Jewish Museum in Brussels. Further links between the rise of Jihadism in Syria and Iraq and the terrorist threat in Europe came to light in the wake of the attacks at the headquarters of the satirical magazine Charlie Hebdo and a Jewish supermarket in Paris in January 2015, when at least one accomplice had travelled to IS-controlled territory. Meanwhile IS had started to call on its supporters to mount lone-actor attacks at home. At the time of the mass-casualty attacks in Paris (November 2015) and Brussels (March 2016), which had been prepared and executed by members of IS’s specialized “external operations” outfit, the danger posed by foreign fighters who had joined IS was very much on the agenda.

The extraordinary European Council in February 2015<sup>9</sup> provided a roadmap for the EU’s fight against terrorism and many tools have been developed since. The updated July 2020 European Commission’s Security Union Strategy<sup>10</sup> (and the

7 European Commission, “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond”, COM (2020) 795 final, Brussels, 9 December 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0795&from=EN>.

8 See the factsheet on the CT agenda for the EU: European Commission, *Counter Terrorism and Radicalisation*, December 2020, available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/counter-terrorism\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/counter-terrorism_en).

9 Informal meeting with Heads of State or Government – Statement of the Members of the European Council, Brussels, 12 February 2015; see also Council of the EU, “Council Conclusions on Counter-Terrorism”, 6048/15, as adopted by the Foreign Affairs Council on 9 February 2015, available at: <https://data.consilium.europa.eu/doc/document/ST-6048-2015-INIT/en/pdf>.

10 European Commission, “Communication of the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions

Commission's December 2020 CT Agenda<sup>11</sup>) reflect a further intensification in the EU's CT efforts. As put forward by these and other strategic documents, to counter the threat posed by FTFs, the EU is taking action in several areas:

- (1) The EU provides humanitarian assistance to prevent a further deterioration of the dire humanitarian situation in the camps and prisons where former IS fighters and their families are held in NES.
- (2) The EU supports EU Member States in identifying best practices for the management of returning FTFs and their family members once they are back, with the aim to reduce the risks they could pose to our societies.
- (3) Furthermore, the EU has improved its border security, in order to make sure that travelling FTFs are detected when they try to enter the Schengen zone. Frontex has been strengthened substantially over the last few years, with a staff that will further grow to 10,000. This will enable it to assist Member States in carrying out effective checks at our external borders. The new Pact on Migration and Asylum proposed by the European Commission, and presently under discussion among Member States, strengthens the security dimension of the EU's asylum process. A new EU Regulation on the screening of migrants at our external borders will also contribute to the detection of terrorist suspects.
- (4) Through Europol, and in particular Europol's Terrorist Identification Task Force at the European Counter Terrorism Centre, resources and expertise are being pooled to identify and investigate FTFs. Furthermore, the deployment of Europol guest officers in migration hotspots in Italy and Greece has allowed for a more thorough security check of incoming migrants.
- (5) The EU supports Member States on the use of battlefield information to identify, detect and prosecute returning FTFs.

***4. Many alleged foreign fighters, including EU nationals, and their families are now present in camps and places of detention in NES and Iraq. While the EU provides humanitarian assistance via its partners, the humanitarian situation remains highly precarious. Do you consider COVID-19 to create an additional layer of challenges? What are the measures being taken at the EU level to support principled humanitarian action in this context?***

In 2020 the European Commission devoted around 10 percent of its €37 million humanitarian assistance budget for NES. This budget is for a multisector assistance with special emphasis on health via partners, including to alleviate the dire living conditions in the camps<sup>12</sup> and prisons, including through the country appropriation for the International Committee of the Red Cross's (ICRC) work in Syria.

on the EU Security Union Strategy", COM(2020) 605 final, Brussels, 24 July 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0605&from=EN>.

11 European Commission, above note 7.

12 The Directorate-General for European Civil Protection and Humanitarian Aid Operations (EU Commission) (DG ECHO) partners are responding in all camps in NES, including: providing child protection programming in the two camps with foreign annexes (al-Hol, Roj), giving essential protection and recreational support to vulnerable and isolated children, strengthening Global Camp Management and Camp Coordination (CCCM) coordination across NES and finally being the primary

This humanitarian assistance is important for several reasons. First, it is an imperative based on humanitarian principles to provide assistance to persons in need whatever their beliefs, affiliations or possible crimes. We must prevent the deterioration of living conditions in the camps and prisons, and hopefully even improve it in some respects. Secondly, treating camp residents and prisoners humanely may result in less radicalization and violent extremism.

The local authorities, camp management and non-governmental organizations (NGOs) working in the camps have made certain preparations to avoid the spread of COVID-19 inside the camps. However, as we have seen recently, contagion cannot be completely avoided, when it increases in the surrounding communities.

***5. Do you consider that the difficulties faced in these camps and places of detention are exacerbated for women and children? How is the EU involved in addressing their specific needs? What would be, in your view, the best long-term solution to the issue?***

It is difficult to judge which group is suffering most in the camps and prisons in NES, whether it would be the situations of Syrians, Iraqis or third country nationals, or depending upon the time of arrival (before or after the fall of Baghuz). We can work under the assumption that the living conditions are bad for all involved. Personally, my main concern is on the sad situation of the children, who grow up in deplorable conditions, with lack of protection services, including psycho-social support even if many have already been severely traumatized, few safe spaces, and no or little secular education.

While much can be said in favour of repatriations from a security perspective (to be able to monitor these populations), my role as EU CTC does not extend to potential repatriations of men, women or children from the prisons and camps in NES back to the EU. This is exclusively dealt with by Member States and each Member State defines what is in its short- and long-term interest. From the sideline, I have noticed that some Member States have started to repatriate more children, and in some cases, also their mothers. As I have indicated earlier, Member States – supported by the EU – exchange experiences among themselves on methodologies and best practices on management and for reintegration of children and families, for example through the EU-financed Radicalisation Awareness Network (RAN).<sup>13</sup>

health care providers in five of the twelve camps. Partners provide health assistance throughout NES. They provide full support to over fifteen health facilities – including an emergency field hospital in al-Hol, Raqqa maternity and paediatric hospital, Shiheil hospital, seven primary health centres, mobile units and ambulance services. DG ECHO has been very active in providing the vital humanitarian support to vulnerable people in the camps, but given the limited resources, the situation in al-Hol and the rest of NES also calls for non-humanitarian assistance.

13 The RAN “connects frontline practitioners from across Europe with one another, and with academics and policymakers, to exchange knowledge, first-hand experiences and approaches to preventing and countering violent extremism in all its forms”. For more information, see European Commission,



## **6. In general, how do you see the role of humanitarian actors regarding the situation of alleged foreign fighters and their families?**

During my tenure as EU CTC, I have greatly benefitted from close contacts with the humanitarian actors, not least with the ICRC. The specific status of the ICRC allows the organization to access geographical areas but also populations, like detainees to which no other humanitarian operator has access.

In the camps and prisons in NES, the work of the humanitarian community is absolutely essential, as long as there is no decision of a lasting solution for the destiny of camp residents and prisoners. In my view, unfortunately, this may take some time to reach. In the meantime, we have a moral obligation to ensure the humanitarian assistance.

The European Commission is already supporting a reintegration and rehabilitation project of the United Nations (UN) for some Central Asian States<sup>14</sup> that have taken back their citizens from Syria and Iraq. We are further scrutinizing possibilities on how to enhance EU efforts to provide humanitarian assistance to camps and prisons. This is based on a paper I elaborated late last year, which received Member States' backing in the Political and Security Committee in February. It also entails suggestions for increased efforts to support reintegration of Syrians from the camps in local communities in NES. Similarly, it includes a proposed support for a possible UN project for reintegration in Iraq of Iraqis from the camps. It has five lines of proposed action, which are now being implemented:

- (1) First, for the EU to finance training at a new youth rehabilitation centre. The EU already finances such training at an existing centre. The new centre and possible expansions will enable the local authorities to move youth, presently placed in prisons for adult males, to the much more benign youth rehabilitation centres, which can prepare them for reintegration and scrutinize each individual case. UNICEF<sup>15</sup> coordinates the training at the centres, and strongly encourages this proposal.
- (2) Second, I suggested increasing assistance to alleviate the dismal conditions in prisons, especially for children. The ICRC is among key partners for this endeavour. I hope that the EU as well as EU Member States can facilitate financing, which will enable this important humanitarian action.
- (3) Third, recognizing that conditions at al-Hol camp are lacking in all aspects, I proposed an increased EU assistance through the international organizations and NGOs active in the camp – both the main camp for Syrian and Iraqis and the international annex with residents from around sixty nationalities. The

*Radicalisation Awareness Network (RAN)*, available at: [https://ec.europa.eu/home-affairs/what-we-do/networks/radicalisation\\_awareness\\_network\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/radicalisation_awareness_network_en).

14 Joint Plan of Action for the Implementation of the UN Global Counter-Terrorism (CT) Strategy in Central Asia, adopted by the Central Asian States on 30 November 2011. See <https://www.un.org/counterterrorism/cct/counter-terrorism-in-central-asia>.

15 United Nations Children's Fund.



Directorate-General for European Civil Protection and Humanitarian Aid Operations (DG ECHO) supports seven partners (of which three are UN agencies, three civil society organizations and the ICRC) with a strong focus on health services and protection services. Children are a particular group of concern, in light of their high number, health and nutritional status, and level of trauma, amongst others. Some of the partners supported by DG ECHO are able to operate in the foreign annex. The total amount provided exclusively for humanitarian assistance in al-Hol exceeds €3 million in 2020. Recently, the EU initiated preparations of a project aimed at decreasing the isolation of residents in al-Hol through interactive local radio programmes, linking residents in al-Hol with communities outside the camp. We are monitoring the situation in al-Hol and NES very closely. EU Member States would also in this case have to do more for the EU as a whole to make a difference.

- (4) Fourth, I suggested enhanced support to local communities in NES for voluntary reintegration of Syrians from the camps. The EU has some experience that we can build on, and which, hopefully, can be scaled up, such as recently approved preparations of projects aiming at continued support for health care in local communities, as well as for women-led committees that will coordinate local mediation and reintegration support of female-headed families in al-Hol.
- (5) Fifth, I pointed to the EU's support for the voluntary reintegration in Iraq of the large proportion of residents in al-Hol originating from Iraq – around 30,000. An EU support could come in many formats.

An obvious possibility is to provide financing through a UN Office of Counter-Terrorism (UNOCT)-facilitated project. UNOCT is presently assessing the possibilities to reach an agreement with the Iraqi Government through a Dutch-financed scoping exercise.

I have had a dialogue with high-level representatives of the UN (UNOCT and UNICEF), US government and the Global Coalition to Defeat Daesh/ISIS on these proposals. In all conversations the five lines of action have received unanimous and strong support. This is clearly encouraging for the EU institutions currently engaged in contemplating their possibilities to enhance their engagement.

***7. In May 2020, Eurojust and the Genocide Network published a report on “Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences”.<sup>16</sup> What are the main challenges***

16 Genocide Network and Eurojust, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences*, The Hague, 19 May 2020, available at: [https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05\\_Report-on-cumulative-prosecution-of-FTFs\\_EN.PDF](https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF). The Genocide Network was established to enable close cooperation between the national authorities in EU Member States when investigating and prosecuting the crime of genocide, crimes against humanity and war crimes. See also Eurojust, *Genocide Network*, available at: <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>.

*regarding domestic prosecution of returned alleged foreign fighters? One of the main CT legislative instruments adopted by the EU is the 2017 Directive on Combatting Terrorism.<sup>17</sup> The Directive establishes a list of behaviours that EU Member States must classify as terrorist offences in their national law. In paragraph 37<sup>18</sup> of its Recital, the Directive provides an “IHL saving clause”. Could you tell us more about the purpose and nature of such a clause, and how it relates to the domestic prosecution of alleged foreign fighters?*

In order to be better able to prosecute offences related to travelling abroad to fight alongside a terrorist group, the EU updated its CT legislation with the EU CT Directive. This also happened in implementation of UN Security Council (UNSC) Resolution (UNSCR) 2178 from 2014,<sup>19</sup> which obliges UN member countries to criminalize certain activities related to FTFs. The 2017 Directive on combating terrorism<sup>20</sup> explicitly requires Member States to criminalize travelling for the purpose of terrorism, both outbound and inbound travelling for example. One of the most important challenges for investigations and prosecutions has been the collection, sharing and use of information from the battlefield, in order to prove not only the travel for terrorist purposes or membership in a terrorist group, but also to prosecute and punish the FTFs for the crimes that they have committed on the ground. Most investigations and prosecutions of IS members and FTFs in EU Member States focused on prosecuting and punishing terrorism-related offences.

However, crimes related to IS should not only be considered as those of a terrorist organization. IS can be considered as a party to a non-international armed conflict in Iraq and Syria under IHL,<sup>21</sup> acting as an organized non-State armed group. Therefore, its members, including FTFs, could be responsible for committing war crimes and other core international crimes.

The Genocide Network at Eurojust has carried out work in this context with prosecutors from Member States, to share best practices and strengthen cooperation between war crimes and CT prosecutors, to carry out prosecutions regarding all the crimes that the FTFs may have committed on the ground in

17 “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”, *Official Journal of the European Union*, L 88/6, 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0541&from=EN>.

18 *Ibid.*, § 37 of the Recital: “This Directive should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including under international humanitarian law. This Directive does not govern the activities of armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law, and, inasmuch as they are governed by other rules of international law, activities of the military forces of a State in the exercise of their official duties.”

19 Resolution 2178 (2014), adopted by the UNSC at its 7272nd meeting, on 24 September 2014.

20 Directive (EU) 2017/541, above note 17.

21 See Genocide Network and Eurojust, above note 16, § 6.1: “Although not all terrorist groups can simultaneously qualify as a party to an armed conflict, ISIS and other conflicting parties, such as the ‘Free Syrian Army’ and the ‘Jabhat al-Nusra’ were all highly organised and therefore can be determined as non-state armed groups”.

Syria and Iraq, including war crimes (cumulative prosecutions). Existing national jurisprudence of EU Member States and developing national practice demonstrate that it is possible to cumulatively prosecute and hold FTFs accountable for war crimes, crimes against humanity and the crime of genocide, in addition to terrorism-related offences. Prosecutions based on core international crimes and war crimes have not only led to greater accountability of the perpetrators for their crimes in the conflict zones than prosecutions based only on terrorist offences, but also such prosecutions entailed longer sentences, no application of the statute of limitations and a more encompassing acknowledgement of victims' suffering. This judicial response to FTFs requires comprehensive collaboration at the national level. Focusing on both the terrorism aspect of IS conduct and on core international crimes requires cooperation and coordination between CT and war crimes practitioners at the national level.

The biggest challenge in the context of domestic prosecutions of returnees from the conflict zone is access of law enforcement and judicial authorities in Europe to battlefield information that allows proving of the horrible crimes committed while in the conflict zones and to attribute those crimes to specific individuals. Biometric data on material collected in the conflict zones as well as other data extracted from mobile phones or hard disks and other documents can be used in criminal investigations and in courts in Europe as evidence. After the territorial defeat of the IS, more information and potential evidence collected on the battlefield in Syria and Iraq became available. Access to battlefield information requires much international cooperation and co-ordination between local authorities, military personnel deployed in the region in the context of the Global Coalition to Defeat Daesh/ISIS and intelligence agencies, law enforcement and judicial authorities in Europe. Many actors work on better access to and the use of battlefield information. For example, the UNSC Counter-Terrorism Committee (UNCTED) launched "Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences ('Military Evidence Guidelines')". The Council of Europe is working on guidelines. The North-Atlantic Treaty Organization (NATO) has also just adopted a general policy for the collection of battlefield information in conflict zones. The EU and/or EU Member States actively participated in the adoption of these guidelines and policies. The US government is a key partner for the EU, as it has collected much battlefield information and has experience in its use since 9/11. A real challenge in this regard is over-classification of battlefield information, including contextual information, by the military. However, the EU and its partners are working closely together to address this challenge.

In close cooperation with the US government, the EU organized a workshop in 2019 to further improve cooperation on battlefield information in which EU Justice and Home Affairs agencies such as Europol, Eurojust and Frontex and international organizations were also involved. Eurojust has recently

updated and published a report on the state of play of the use of battlefield evidence in prosecutions in Member States.<sup>22</sup>

A final point on the attempt to obtain information from these conflict zones is that this information is often fragmented and incomplete. With this, law enforcement in the EU can often only use it as a link to start criminal investigations and judicial authorities need further evidence to build up the case. This is another challenge. Sometimes, witness interviews conducted by NGOs or investigative journalists in conflict zones exist, but they can be difficult to draw on in court as they have been conducted by listening to only one side and without the chance for the defendant to state his/her perspective in the process of the interview. Due process issues can arise here. There have been cases where prosecutors in Europe have flown in witnesses of international core crimes such as women for the Yezidi community, for example.

With regard to Recital 37 of the EU CT Directive<sup>23</sup> specifically: it confirms that the directive does not alter obligations of Member States under IHL (such as allowing principled and impartial humanitarian assistance anchored in IHL), and also confirms that actions of armed forces that are governed by IHL are not covered by this Directive. The objective is that actions that are lawful under IHL in the context of active hostilities will not be criminalized as terrorist offences.

Indeed, unlike CT legislation, IHL does not prohibit all acts of violence but aims to regulate them specifically in situations of armed conflict by limiting the choice of methods or means of warfare to spare civilians, as well as civilian objects, from the effects of hostilities. Specifically for non-State organized armed groups that take part in non-international armed conflicts (NIACs), any motivation they may have to observe IHL and to fight in accordance with IHL would probably erode if, irrespective of the efforts they may undertake to comply with IHL, all of their actions were subject to prosecution. This does not take away the fact that, according to IHL, combatant status and combatant's privilege are exclusive to situations of international armed conflict and are not provided for NIAC, and therefore non-State organized armed groups can be prosecuted by judicial authorities for their participation in hostilities and any act that is punishable under the applicable national law (e.g. murder or infliction of bodily harm), even if such conduct does not violate IHL. It should be noted, however, that IHL<sup>24</sup> aims to grant the broadest possible amnesty to persons having participated in the hostilities without having committed any serious violation of IHL.

It is important to ensure that CT measures are in accordance with international law, including IHL, but also international human rights law and international refugee law. While therefore the objective of the "IHL saving clause" is that actions that are lawful under IHL in the context of active hostilities will

22 Eurojust, *Eurojust Memorandum on Battlefield Evidence*, 29 September 2020, available at: <https://www.eurojust.europa.eu/eurojust-memorandum-battlefield-evidence-0>.

23 Directive (EU) 2017/541, above note 17, § 37 of the Recital.

24 See Article 6(5) of Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.

not be criminalized as CT offences, in certain cases the application and the broad formulation of and interpretation given to the IHL saving clause has led to difficulties in terms of prosecution: for instance, in Belgium it has led to the impossibility to prosecute alleged terrorist offences in relation to the PKK.<sup>25</sup>

**8. So-called “violent extremism” continues to be perceived as a threat, including in the EU.<sup>26</sup> How are you addressing this issue at EU level? How do you see policies aiming at preventing or countering violent extremism interacting with humanitarian action?**

While it is important to investigate and prosecute perpetrators of terrorist attacks, to protect our citizens from terrorism, and to mitigate the impact of terrorist acts, we should also do everything we can to prevent radicalization leading to violent extremism and terrorism from occurring in the first place. This can be done by foiling terrorist plots when they are being devised, but also at an even earlier stage, by addressing the factors that make individuals advocate and adopt violent methods to achieve their political objectives. Our policies on violent extremism are concerned with that objective. Factors that make violent extremist ideologies resonate with individuals may be psychological (e.g. thrill seeking, looking for meaning in life), social (e.g. individual experiences with perceived marginalization and exclusion), political (grievances, e.g. about perceived discrimination of certain groups in our society or against government actions) or religious (belief in an extremist interpretation of a religion). The influence of each of these factors differs from person to person, and they cannot always be neatly distinguished from each other. To address violent extremism, the EU facilitates exchange of good practices and lessons learned between policymakers and practitioners across the Member States as well as in priority third countries such as the Western Balkans.<sup>27</sup> The EU’s RAN, as well as a network of prevent policymakers, are leading in this area.

As the internet is the main vector of communication of radical ideologies that may lead to extremist violence and terrorism, the EU adopted on 29 April 2021 a Regulation on terrorist content online<sup>28</sup> to better protect EU citizens by obliging online platforms to remove such content within one hour. The EU also works to counter expressions of illegal hate speech and disinformation, notably on the internet, which fuel violent extremism. It addresses these issues in its standing dialogue with major digital companies, but it has also initiated a Code of Conduct on Countering Illegal Hate Speech and a Code of Practice on

25 Kurdistan Workers’ Party.

26 See, for instance, European Commission, above note 7, Introduction.

27 See, for instance, European Commission, *Prevention of Radicalisation: the Commission Steps up Support in the Western Balkans with a New €1.55 Million Project*, 19 April 2021, available at: [https://ec.europa.eu/home-affairs/news/prevention-radicalisation-commission-steps-support-western-balkans-new-€155-million-project\\_en](https://ec.europa.eu/home-affairs/news/prevention-radicalisation-commission-steps-support-western-balkans-new-€155-million-project_en).

28 “Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on Addressing the Dissemination of Terrorist Content Online”, *Official Journal of the European Union*, L 172/79, 2021, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0784&from=EN>.

Disinformation<sup>29</sup> which will be reviewed soon. Major digital companies have committed to the Code on a voluntary basis. All these issues are discussed within the EU Internet Forum with EU Interior Ministers and representatives of major online platforms, as well as in the Global Internet Forum to Counter-Terrorism since 2017.

The EU also provides funding on preventing and countering of violent extremism (P/CVE) in several thematic areas: education, media awareness, empowerment of women, youth work, socio-economic inclusion, transitional justice, and inter-communal activities including sport and inter-faith and intra-faith dialogue. These can be specific projects for prevention of radicalization or rehabilitation. It can also be more general, positive support and opportunities for at-risk youth (such as increasing critical thinking skills, exchanges, mobilizing culture and sport for integration). Such funding is distinct from humanitarian funding. Personally, I believe that assistance in P/CVE is beneficial to recipients in a different way than humanitarian assistance. Indeed, P/CVE programmes could also encourage promotion of human rights in the security and justice sector, which can build resilience against terrorist and violent extremist groups by developing positive relationships between governments, law enforcement officials and communities through, for example, community policing. Rule of law activities can also contribute to de-radicalization and disengagement programming, or rehabilitation and re-integration for detainees and/or former fighters.

The EU has long recognized the so-called “security–development nexus”, which dictates that there can be no security without development, and vice versa. Fragile States, weak governance and social, economic and political grievances provide space for violent extremists and fertile ground for recruitment and radicalization. Armed conflicts also generate grievances, images and narratives that can be used to radicalize. P/CVE, and the stabilizing impact that building resilience to violent extremism can have, is therefore relevant to improving the delivery of EU assistance and development aid in vulnerable countries.

I am aware of the concerns of humanitarian actors when P/CVE activities are implemented in areas where they are also active, such as in the camps in NES, for fear that it might taint the neutrality and independence of humanitarian efforts and might have an impact on the trust of the people that humanitarians are trying to help. Humanitarian actors also want to remain impartial and assist all persons affected by conflict and violence, regardless of their degree of radicalization. It is therefore important to not associate neutral humanitarian actors with specific P/CVE programmes. However, in practice, I believe both types of assistance are necessary: there is room both for humanitarian assistance such as psycho-social

29 To prevent and counter the spread of illegal hate speech online, in May 2016 the Commission agreed a code of conduct with major digital companies. Other digital companies joined in the course of 2018, in January 2019. The last one joined in September 2020. For more information, see European Commission, *The EU Code of Conduct on Countering Illegal Hate Speech Online*, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en).

support, education, training, assistance with the restoration of family links, etc. to all (which can incidentally have a positive impact in preventing radicalization and violence) as well as programmes to tackle radicalization specifically. Hence dialogue between the various actors is important.

The security facts on the ground in the camps in NES are worrisome. My experience has been that regarding the camps, the humanitarian community has a different assessment of the security situation than the security services who look with concern into violent incidents in the camps or the availability of Sharia classes, presence of radicalized persons that reject services, etc.

Different funding sources are available: certain for humanitarian activities and others for P/CVE assistance – one does not and should not distract from the other. In any case, progress is being made in this context.

***9. On 10 July 2020, during the UN Virtual Counter-Terrorism Week, you stated: “we should ensure that our counterterrorism efforts do not impede the provision of humanitarian assistance. The EU will develop guidelines and good practices for this purpose.”<sup>30</sup> Which core considerations should be taken into account when assessing and countering adverse impact of CT on humanitarian action? Can you point to specific examples of good practice?***

Throughout my tenure as EU CTC I have had a close and trusted working relationship with humanitarian organizations, especially with the ICRC. I strongly believe that principled and impartial humanitarian action also needs to be able to take place in conflict zones controlled by terrorist groups or in which terrorist groups operate. The international community is more and more aware of the complex issues that arise with regard to CT measures and humanitarian assistance, especially as terrorist groups (IS or Al-Qaida affiliates or local groups) are active in many conflicts today, in particular in the Middle East and Africa.

Together with DG ECHO/the European Commission, I co-organized an expert meeting on Counter-Terrorism Measures and Safeguarding Principled Humanitarian Space in May 2019, aimed at bringing together in a novel format a limited number of humanitarian and CT experts from various EU Member States, EU institutions and humanitarian organizations (including the ICRC). The key questions addressed were the national implementation of CT measures while safeguarding principled humanitarian space with a specific focus on the EU context, and enhancing the advocacy of the EU in this area. The objective was to better define the issues which need to be addressed at EU level moving forward. The discussions showed that there are many serious challenges for humanitarian actors, and not many solutions yet in sight. On the CT side, a variety of stakeholders was represented, which shows the multi-faceted and cross-cutting nature of the issue (including Ministry of Finance, Banking Supervisory Authority, Ministry of the Interior, Ministry of Foreign Affairs, Public Prosecutor,

<sup>30</sup> Remarks by Gilles de Kerchove, EU Counter-Terrorism Coordinator, at the UN Virtual Counter-Terrorism Week, 10 July 2020.



CT expert in EU delegation, EU expert on terrorist financing in the Horn of Africa). The activities of humanitarian organizations have been affected by CT measures in a variety of ways. There have been prosecutions of staff of impartial and principled humanitarian organizations. Travel bans implemented under sanctions regimes have affected the transport of fighters to medical care. The import/export of certain goods that are essential for humanitarian aid (pipes, engines) have been blocked, all of which has led to certain activities being put on hold. If humanitarian activities are restricted to government-held areas, reaching populations in need in line with the humanitarian principles becomes challenging. Negotiating access with terrorist groups or engaging with non-State armed groups has therefore also become increasingly difficult for humanitarian actors and has led to meetings taking place in third countries purely due to security measures. Accessing financial services can also be difficult due to banks having to comply with CT measures or adopting a risk-averse approach, which leads to delays, denials of financial services or other problems. Cash-based assistance programmes have also been affected due to concerns surrounding the diversion of funds. The freezing of assets, and the embargo imposed to certain States (Yemen, Syria) cause problems to the humanitarian aid community (however, this is often based on country-based sanctions regimes, not CT sanctions or measures). CT clauses in funding agreements can equally be problematic.

However, in assessing the impact of CT measures on humanitarian action, it is important to keep in mind the following points:

- (1) To have a constructive debate and to make progress it is important to clearly define the problem and the really problematic issues and to distinguish whether a certain problem relates to the donor community as a whole or only to some donors. For example, a number of the issues arise because of the very strict US legislation and practices, which are not replicated by the EU.
- (2) It is important to note that there is the need to allow the work of impartial and principled humanitarian organizations, including NGOs, in areas where terrorist groups operate. However, the difference between the ICRC as an international organization grounded in IHL and certain NGOs that are acting in a non-principled manner needs to be highlighted from a CT perspective: in the past, there have been cases of NGOs disguised as humanitarian operators which have not been impartial and which have been used to finance or otherwise support terrorist organizations. While exceptional, certain small NGOs have even been listed by the UN for financing terrorism.
- (3) It is also important to note that some measures making an impact on humanitarian assistance, especially related to sanctions, are not CT measures: often EU sanctions are country-based sanctions and hence not CT measures. Addressing the impact of those sanctions is a different debate.

At the meta-level, there is agreement that there is a need for a legal and policy framework that allows for principled humanitarian action and on the basis of

which pragmatic solutions can be found. CT measures should not prevent impartial and principled humanitarian action. On the other hand, it has to be ensured that humanitarian assistance is never abused as a pretext to channel funds or other support to terrorist organizations. Hence if CT measures are too strict, they can hinder the delivery of humanitarian aid and can cause restricted access to aid by certain civilian populations, for example. This effect is problematic in view of IHL and the humanitarian principles. The criminalization of humanitarian and medical assistance would in this regard raise important concerns. CT measures may also make an impact on the transfer of humanitarian funds. The ICRC is well established as an organization that is grounded in IHL but smaller, less-known NGOs may be more affected by such restrictive legislation and policies. However, if the CT framework is too loose, it could also open the door for less ethical actors to support terrorism under the guise of humanitarian action. Hence, there is an interest in the CT community to address the issues and find solutions. This is a difficult debate. Recent UN Resolutions such as UNSCR 2462 on terrorist financing include certain humanitarian safeguards. The most important challenge will be national implementation and finding practical, workable ways forward.

Examples of good practices are:

- Roundtables convened by the Ministry of Finance of one Member State and the Human Security Collective (bringing together NGOs) have been held over the past two years, involving all actors (Ministry of Foreign Affairs and banks as well) with an increasingly focused dialogue on specific challenges.
- Good inter-institutional collaboration between the EU Commission's justice service (DG JUST<sup>31</sup>, now DG FISMA<sup>32</sup>), dealing with the financial side of terrorist financing and its humanitarian aid service (DG ECHO), has led to good risk assessment of humanitarian non-profit organizations (NPOs) within the EU, for example.
- CT laws that include humanitarian exemptions, such as CT laws criminalizing travel to designated conflict zones, in line with the Recital 38 of the EU CT Directive.

It is important to find mitigating measures that do not put in question the effectiveness of CT measures while letting impartial humanitarian organizations carry out their mandate. Potential solutions could be found at global or EU level (UNSCRs, EU directives), domestic level (States) and donor level. Generally speaking, risk-based rather than risk-averse approaches should be promoted. Over-compliance by banks or private sector actors and donors can also lead to broader restrictions than originally aimed by the CT framework. They should be avoided. Overall, while some mitigating measures have been put in place, the scope of these remains too narrow. Moving forward, it will be important to learn about good practices that have been developed in States and could be interesting

31 The Commission's Directorate-General for Justice and Consumers.

32 Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

to other States as well. In order to elaborate on more concrete solutions, more “digging” needs to be done. Also, in order to avoid the discussions being too broad, more specificity is needed in identifying the issues at stake and with regard to the “asks”. Overall, it is a multi-disciplinary process that must involve different stakeholders, in order to find common ground and strike a better balance. The Council Conclusions on CT of June 2020<sup>33</sup> recognize the importance of safeguarding the humanitarian space, include a strong commitment of the EU to this and promote the collection of good practices in this context. I believe that it would be important for the EU to move forward and look into specific aspects in much more detail and identify good, workable practices that it could share internationally. There is a need for more political discussions on risk. I also strongly believe that some innovative solutions should be explored. New technologies might be a way for that. For example, the World Bank is experimenting with block chain solutions for direct cash payments.

It is also very positive that CT and safeguarding the humanitarian space are now also being discussed in the context of the Global Counter-Terrorism Forum, the UN Counter-Terrorism Week<sup>34</sup> and the seventh review of the Global Counter-Terrorism Strategy, adopted by the UN General Assembly on 30 June 2021.<sup>35</sup> This shows that there is increasing awareness in the international CT community about these issues and potential side-effects of CT measures. This is a good first step which we can collectively build on. It would now be important to look much more specifically into certain aspects and find practical solutions. In this context it is also important that the humanitarian community presents the various challenges and possible solutions in as much detail as possible. Field experience will be important too, to measure the impact of certain CT measures on the ground and identify and test solutions. However, we have to keep in mind that these are sensitive issues and that it might be possible that sometimes grey zones are preferable, given reputational risks.

***10. The Recital of the Directive mentioned here above also includes a “humanitarian exemption”: “The provision of humanitarian activities by impartial humanitarian organizations recognized by international law, including international humanitarian law, do not fall within the scope of this***

33 Council of the EU, “Council Conclusions on EU External Action on Preventing and Countering Terrorism and Violent Extremism”, 8868/20, Brussels, 16 June 2020, § 27: “Recalling its conclusions on humanitarian assistance and international humanitarian law of 25 November 2019, and in line with UNSCR 2462 (2019), the Council recognises the need to take into account the potential effect of counter-terrorism measures, including sanctions, on humanitarian action. The Council calls for the avoidance of any potential negative impact of counter-terrorism measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in full compliance with humanitarian principles and international humanitarian law. To that end, the Council reaffirms its continued commitment to preserving the humanitarian space, including inter alia through the development of best practices and the adoption of appropriate mitigating measures.”

34 The Counter-Terrorism Week at the UN is a biennial gathering of Member States and international CT partners.

35 UN General Assembly, The United Nations Global Counter-Terrorism Strategy: seventh review, UN Doc. A/RES/75/291, 30 June 2021, available at: <https://undocs.org/en/A/RES/75/291>.

**Directive.”<sup>36</sup> Using comparable language, the UNSCR 2462 on Combatting Terrorism urged States, about the financing of terrorism, “when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”.<sup>37</sup> How do you see these two provisions interacting, and what is the rationale behind them? How would you interpret the notion of humanitarian activities contained in both?**

The EU CT Directive followed UNSCR 2178<sup>38</sup> (2014) and the Council of Europe’s 2015 Additional Protocol to the Council of Europe Convention on Terrorism.<sup>39</sup> Recital 38 of the Directive duly recognizes the need to give humanitarians legal certainty within the EU legislation as demanded by international law, including UNSCR 2462<sup>40</sup> while also recognizing the importance of avoiding loopholes that terrorist groups could exploit. It refers to “impartial humanitarian organizations recognized by international law including IHL”, such as the ICRC. Both the UNSCR 2462 and the EU CT Directive want to avoid that such impartial and principled humanitarian action is criminalized or that provision of humanitarian assistance in areas in which terrorist groups operate or which are controlled by them is regarded as terrorist financing.

As both CT measures and humanitarian aid share the goal of protecting civilians against threats, there is common ground to be built on. Finding the right balance and elaborating ways to reflect this in practice should therefore be a priority. It is important to safeguard humanitarian principles. This is what Recital 38 is about and also what UNSCR 2178 (2014) or UNSCR 2462 is about. The reference to impartial humanitarian actors and IHL makes clear that only this type of humanitarian action, in full respect of IHL, is covered by the exemption (CT directive) and provision to take into account (UNSCR). This is notably a way to prevent non-ethical actors to support terrorism under the guise of humanitarian action.

I have myself pushed to ensure that concerns of humanitarian organizations are adequately taken into account in the UNSCRs and that the US approach is not replicated internationally. I have also pushed for a humane approach to individuals affected by CT legislation; by the way, the European Court of Justice has ruled that social security payments to the family of a terrorist are not covered by terrorist financing as this is just meant to provide the subsistence minimum.

36 Directive (EU) 2017/541, above note 17, § 38 of the Recital.

37 UNSCR 2462 (2019), adopted by the UNSC at its 8496th meeting, on 28 March 2019, § 24.

38 Resolution 2178 (2014), above note 19.

39 Council of Europe, “Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism”, Council of Europe Treaty Series No. 217, 19 May 2015, available at: <https://rm.coe.int/168047c5ea>.

40 UNSCR 2462 (2019), adopted by the UNSC at its 8496th meeting, on 28 March 2019.

It is important to keep in mind that the humanitarian NGO sector does not constitute a higher risk than other sectors, which was highlighted in the supranational risk assessment carried out in 2019, assessing the vulnerability of certain humanitarian NPOs (in particular NPOs receiving institutional funding by the EU or Member States in charge of the management of EU funds) to risks of terrorism financing. The criminalization of the work of impartial and principled humanitarian organizations needs to be avoided.

It is important to highlight that the US and the EU have different approaches to the issue. Forms of spill over from the US approach (prohibiting and criminalizing any type of “material support”, which is an extremely broad concept and has a serious impact on provision of humanitarian support in areas where terrorist groups operate) to the EU or the international level should be avoided. It is a serious issue that criminal investigations have been brought against the staff of impartial and principled humanitarian organizations such as the ICRC by other countries (but not in the EU).

***11. We have observed in the last years the development of new national CT legislation, aiming for instance at criminalizing the travel or stay in territories controlled by non-State armed groups designated as terrorists. Do you see a need for EU Member States to take into account the reasoning behind the humanitarian exemption included in the Recital of the Directive when adopting domestic CT legislation?***

In terms of EU legislation, it is important to give humanitarians legal certainty, while it is also important to avoid loopholes that terrorist groups could exploit. The EU CT Directive contains a humanitarian exemption in Recital 38, which was incorporated to ensure that IHL is respected when Member States apply the EU CT Directive, which means in particular that principled and impartial humanitarian assistance does not fall within the scope of the Directive. Member States certainly need to take into account the reasoning behind the humanitarian exemption included in the Recital when transposing the EU CT legislation. However, the humanitarian exemption is included in the Recital to the Directive and as it is not part of the operational part of the Directive, Member States were not under an obligation to explicitly transpose it into their national laws. Nevertheless, national laws transposing the EU CT Directive have to be interpreted in light of the Directive, and hence also in light of Recital 38. Due to such interpretation in conformity with the humanitarian exemption, humanitarian actors should not encounter any problems in practice within the EU.

Member States had to transpose the EU CT Directive by 8 September 2018, and the European Commission assessed the notifications, tabling a transposition report in July 2020. The Commission concluded that the transposition of the Directive by the Member States is satisfying overall and has led to the strengthening of the Member States’ criminal justice approach of terrorism, and the rights afforded to victims of terrorism. Via this assessment also, it became clear that Member States have not explicitly transposed the exemption, as they

did not see a need to do so. The Commission is currently evaluating the impact of the EU CT Directive which is a wider process than the mere analysis of its transposition into national law: a public consultation process was held until mid-June 2021 before the evaluation report that will be submitted to the European Parliament in the autumn of 2021. The review of the Directive's impact would be a good moment to raise any concerns from the humanitarian side as the evaluation of the Directive is covering if and how Recital 38 was correctly applied by Member States, and thus covers the possible impact of the Directive on humanitarian action, including but not limited to criminalization of humanitarian action. What could be explored further in the evaluation process is, *inter alia*, whether issues arise regarding criminalization of the activities of local organizations that humanitarian organizations are working with. So far, no cases of criminal prosecution of humanitarian actors have been reported in EU Member States (even if arrests have taken place outside of the EU by other, non-EU, States), which seems to indicate that there is no concern in the implementation of the humanitarian exemption of Recital 38.

***12. Before closing this interview, would you like to share with us what you believe have been your most important achievements in this role of EU CTC? The most challenging aspects? Which advice would you give to your successor? Is there anything else you would like to share with our readers?***

One main advice I would give my successor is to consider, as a priority file, the preservation of humanitarian action from adverse impact of CT measures. I launched the reflection through the organization of the expert meeting on Counter-Terrorism Measures and Safeguarding Principled Humanitarian Space that I organized in May 2019, but further work remains to be carried out. I believe this will need to be done through further illustrations and concrete examples so as to identify viable, long-term and effective solutions. In this sense, the introduction of the humanitarian exemption in the EU CT Directive was an essential step.

To round up some of my important achievements – I would say that I have already mentioned some in your first question in this interview. I think there are several files in which I made a difference, but I want to stress that it is a collective ownership, as I have not been alone in my work, and have worked extensively with several stakeholders who are also equally responsible for all the achievements made through the years.

I feel among my main achievements must be the fact that I managed to convince the system that my position was useful, that it would not be at the cost of the importance of other EU institutions and that we could work together. Some examples include the policy to handle travel of foreign fighters towards Iraq and Syria. In fact, I think I raised the problem when no one else was raising it and came up with an analysis of the problem, and with a twenty-four-measure plan on how to tackle the issue, even inspiring ensuing UNSCRs. Through the years, I have also managed to keep the file as a priority agenda even during

the periods of “CT fatigue”. Furthermore, I have raised difficult questions such as the right balance between security and freedom, management of the detainees’ crisis (Guantanamo and al-Hol), the linking up of the internal and external dimensions, etc. Additionally, one of the questions that I have insisted on is the role of ideology. Certain Islamist extremist interpretations of Islam have played a problematic role in all this and need to be addressed. I obtained the agreement of the Council to engage with Saudi Arabia on the proselytism of Islamist extremist materials and financing, which we want to stop in Europe, the Western Balkans and the Sahel. We would want to reduce problematic material that can be contained in speeches or books or can be found on the internet; we would also want to halt funding coming from the Gulf to promote Islamist extremist interpretations of Islam. I have created a certain momentum on this, which I am proud of as I have not been unopposed on this topic.

In general, we have been able to convince Member States to a more collective response approach, including by using agencies such as Europol, Eurojust and Frontex. This is quite an achievement, as I am a policy entrepreneur whose goal is to promote EU integration. I feel that we have made significant progress in the last six years in furtherance of this. In a world where we have so many security threats, we need to provide a collective European response. I believe that the European approach is exemplary as it really seeks a balance between freedom and security. Integration (i.e. EU-led approach) in CT matters is obviously challenging because of issues related to sovereignty, but we are moving in the right direction.