

**Counter-Terrorism Committee Executive Directorate (CTED)**

**Virtual open briefing of the Counter-Terrorism Committee on  
“The role of judges, prosecutors and defence counsel in bringing terrorists to  
justice, including the effective use of battlefield or military-collected evidence”**

*Thursday, 12 November 2020, 10.00 a.m.–12.30 p.m.*

**Draft concept note**

**I. Introduction**

1. The promotion of effective rule of law-based criminal justice responses to terrorism is a central component of global counter-terrorism efforts, including those of the Security Council. In its resolution 1373 (2001), the Council decided that Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures taken against them, such terrorist acts are established as serious criminal offences in domestic laws and that the punishment duly reflects the seriousness of such terrorist acts. Other resolutions, as well as international counter-terrorism instruments, set forth terrorism-related offences that must be criminalized.

2. Security Council resolution 2396 (2017) calls upon Member States to share best practices and technical expertise to improve the collection, handling, preservation and sharing of relevant information and evidence, including information obtained in conflict zones, in accordance with domestic law and the obligations Member States have undertaken under international law, to ensure foreign terrorist fighters (FTFs) who have committed crimes may be prosecuted.<sup>1</sup>

3. In its resolution 2396 (2017), the Council calls on States to assess and investigate individuals (including suspected FTFs and their accompanying family members, including spouses and children) who enter their territories and whom they have reasonable grounds to believe are terrorists, and to develop and implement comprehensive risk assessments for such individuals.<sup>2</sup> The Council also calls on States to develop and implement comprehensive and tailored prosecution, rehabilitation and reintegration strategies,<sup>3</sup> giving special focus to the particular needs women and children associated with FTFs.<sup>4</sup>

4. Criminal-justice systems across the world are confronted with the challenge of ensuring that suspected terrorists are appropriately brought to justice. Some Member States are currently handling thousands of suspects through their respective criminal-justice systems with extremely limited resources. A large number of States are faced with the challenge of dealing with FTFs, including bringing to justice individuals suspected of having committed crimes thousands of

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<sup>1</sup> S/RES/2396 (2017), para. 20.

<sup>2</sup> Ibid., para. 29.

<sup>3</sup> Ibid., para. 30.

<sup>4</sup> Ibid., para. 31.

kilometres away in foreign lands. Prosecutors may be required to handle non-traditional types of evidence, such as information or material collected by military forces (sometimes called “battlefield evidence” or “military evidence”) or collected intelligence. All of these can raise issues relating to reliability, chain of custody, and the admissibility of such information as evidence in domestic criminal proceedings. While information-sharing is encouraged, it is important to ensure that such evidence is collected in a manner consistent with applicable national and international law.

5. MLA and extradition are bedrock elements of international cooperation in criminal investigations and prosecutions, including cases related to terrorism. While recognizing that MLA and extradition often involve different actors and processes, they can both face common challenges. Ratification of, and full and effective implementation of obligations under, the existing international counter-terrorism conventions and protocols, as well as adoption and effective use of domestic laws, policies, and practices to facilitate formal and informal cooperation with foreign law enforcement and criminal justice authorities, are key components of international cooperation on counter-terrorism.

6. Resolution 2322 (2016) provides guidance to States on the use of applicable international instruments, reviewing and updating MLA laws and mechanisms, strengthening implementation of respective treaties and simplifying MLA requests. The Council also encourages States, in the absence of applicable conventions or provisions, to cooperate when possible on the basis of reciprocity or on a case by case basis. It also urges States to act in accordance with their obligations under international law, in order to find and bring to justice, extradite or prosecute any person who supports, facilitates, participates or attempts to participate in the direct or indirect financing of activities conducted by terrorists or terrorist groups. Resolution 2322 (2016) also recalled that all States shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings. The participants of the virtual open briefing are therefore encouraged to discuss best practices in implementing resolution 2322 (2016) and other relevant decisions of the Council, especially when relevant to the collection of evidence of terrorist crimes abroad.

7. Many Member States lack the required legal frameworks, procedures, or expertise to facilitate the sharing of such evidence with prosecutors or for prosecutors to use that evidence in a criminal trial, while protecting the interests of justice. Courts, as critical guarantors of the protection of human rights, including the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law and fair-trial guarantees for criminal defendants are confronted with difficult problems in terrorism cases. Dealing with intelligence and electronic evidence may require judges to understand complex information and communication technologies (ICT) issues in order to be able to issue search and seizure warrants and to rule on the admissibility and reliability of such evidence. Judges also need to understand the conditions under which the military may be operating when collecting information in conflict zones. Lastly, international human rights law provides that individuals are entitled to be tried in their presence, to defend themselves in person or through legal assistance of their own choosing; to be informed, of this right, if they do not have legal assistance; and to have legal assistance assigned to them in

any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it. Defence counsel may encounter difficulties in defending their clients where investigation files contain classified information and witnesses' identity may not be revealed for security reasons.

8. On 8 November 2017, the Counter-Terrorism Committee convened an informal open briefing in which the Counter-Terrorism Committee Executive Directorate (CTED) and an international expert highlighted the practices and challenges faced by the military in the collection, preservation and sharing of information aimed at bringing terrorists to justice within a rule-of-law framework before a civilian court. In December 2019, CTED issued the *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").

## **II. Objective of proposed open briefing**

9. The purpose of the proposed virtual open briefing is to highlight the views and practical perspectives of leading counter-terrorism criminal justice practitioners who will assess current trends, real-life practical challenges and good practices in bringing terrorists to justice in light of the abovementioned developments. Specifically, the proposed open briefing will aim to concisely bridge possible gaps in the policy-making process at the Counter-Terrorism Committee and the reality faced by practitioners on the ground. The proposed virtual open briefing will embed a human rights-based and gender-sensitive perspective throughout. Representatives of the International Association of Prosecutors (IAP), the International Bar Association (IBA), and the International Institute for Justice and the Rule of Law (IIJ) will be invited to present the practical perspectives and challenges faced by judges, prosecutors and defence counsel, relating to their roles in bringing terrorists to justice, in particular in relation to the use of information or evidence obtained in conflict zones.

## **III. Format of discussions and topics**

10. The proposed virtual open briefing will include a panel of experts from IAP, IBA and IIJ. It will consist of an opening session; presentations on the current landscape; and presentations by a panel of experts on the above-mentioned topics. The presentations will be followed by an interactive question-and-answer session, and a closing session.

11. The virtual open briefing will be held in English.

12. The Committee Chair will act as Chair and moderator.

13. The virtual open briefing will be held via Cisco WebEx, with special privileges for Committee members, guest speakers, and CTED.

14. Member States and United Nations accredited non-governmental organizations will be able to submit their questions to the panellists, via e-mail to [kanako.emoto@un.org](mailto:kanako.emoto@un.org), by Wednesday, 11 November 2020.

15. An annotated agenda and meeting documentation will be posted on the Committee's website.

#### **IV. Date and venue**

16. The virtual open briefing will be streamed live on UNTV on 12 November 2020, from 10.00 a.m. to 12.30 p.m.

#### **V. Outcome**

17. Member States will be informed of (i) the existing policies and guidelines relating to the challenges; (ii) the practical challenges faced by judges, prosecutors and defence counsel in bringing terrorists to justice, including the effective use of battlefield or military-collected evidence; and (iii) possible solutions to bridge the gaps between policies and challenges faced by practitioners.

#### **VI. Communications**

18. CTED will promote the virtual open briefing through the appropriate channels. A press release may be issued following the virtual open briefing.