I. A short introduction to counter-terrorism

What is terrorism?

Since 1963, the international community has elaborated and adopted 19 sectoral United Nations (UN) conventions containing a number of very specific crimes. In the convention on the financing of terrorism, the crime of terrorism is defined *inter alia* as “Any other act intended to cause death or serious bodily injury to a civilian, [...] when the purpose of such act [...] is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”.

At the same time, discussions on an internationally agreed definition of terrorism have been on the UN agenda for over 20 years. So far, no consensus has emerged among States owing to divergent views on whether legitimate struggles for self-determination, State terrorism or acts complying with international humanitarian law should be included or excluded from the scope of application of this comprehensive convention.

The lessons learned from many years of counter-terrorism efforts are enshrined in the UN Global-Counterterrorism Strategy adopted as an annex to a resolution by the General Assembly in 2006. Its four pillars are still an excellent roadmap today:

I. Addressing the conditions conducive to the spread of terrorism or what is known today mainly under the notion of “preventing violent extremism”

II. Preventing and combating terrorism in criminal justice sense

III. Developing national and international capacities

IV. Ensuring the respect for human rights and the rule of law.

What is required is a comprehensive and balanced implementation of these four pillars.

Where are human rights?

Human rights in general occupy an important space within the UN Global Counter-Terrorism Strategy. The UN Global Counter-Terrorism Strategy states that “the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy” and recognises that “effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing”. Its biannual review resolution further stresses that “when counter-terrorism efforts neglect the rule of law, at the national and international levels, and violate international law, including the Charter of the United Nations, international humanitarian law and
refugee law, human rights and fundamental freedoms, they not only betray the values they seek to uphold, they may also further fuel violent extremism that can be conducive to terrorism".

In addition to this, many relevant UN Security Council resolutions adopted since 9/11 state that counterterrorism measures are to be taken "in accordance with international law, including international human rights law, international refugee law, and international humanitarian law".

Despite these declarations recognising the importance of human rights in counterterrorism efforts, compliance with human rights obligations is often not ensured and states have little or no guidance on how to fulfil their various obligations.

**Where are child rights?**

Children are increasingly affected and associated to terrorist related activity. Recent research conducted by the UN Interregional Crime and Justice Research Institute shows that “International policy and law-making has struggled to keep up with the rapid changes. Therefore, the rights of children affected by terrorism and counter-terrorism have been largely overlooked. The lack of attention paid to the child rights framework has led to a treatment of children in a manner that runs counter to States’ obligations”.

The phenomenon of foreign terrorist fighters, defined in UN Security Council resolution 2178 (2014) as “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training” has added multiple layers of complexity. With the Islamic State group having lost most of its territories both in Syria and Iraq, the issue has shifted towards the prosecution of these individuals.

**II. The Neuchâtel Memorandum**

**Rationale and Process**

To adequately address the phenomenon of children being recruited or associated with terrorist groups and the applicable legal framework, Switzerland launched in April of 2015 an initiative within the Global Counterterrorism Forum. The GCTF is an international forum comprising 29 States from the Global North and South and the EU, focused on civilian-led efforts to counter terrorism.

The International Institute for Justice and the Rule of Law, an organisation based in Malta, was tasked with drawing up a document and received support from a wide range of individuals and organisations. In a carefully designed process, the document was discussed and consulted by GCTF members, counter-terrorism specialists and international child rights experts, leading to a fruitful exchange between them.
As a result of this process, the “Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context” was adopted by the GCTF members in September 2016 at a ministerial meeting with the aim of clarifying and operationalising the existing obligations of States when dealing with children alleged as, accused of or recognised as having infringed terrorism laws.

Content

The Neuchâtel Memorandum makes the following five main points:

1. **First**, it stresses the need for effective preventive measures. If further action is taken to prevent children from being radicalised and recruited by terrorist groups, States would be less compelled to deal with children who have engaged in criminal behaviour.

2. **Second**, there is no clear line between what is a perpetrator and what is a victim in this context. A child recruited by a terrorist group is at the same time a victim of a violation of international law and needs to be treated accordingly.

3. **Third**, the juvenile justice system for which the Neuchâtel Memorandum advocates should not be considered a soft option that would exclude the accountability for the wrong committed. It is about a child-sensitive response by a system that is geared towards rehabilitation and reintegration and that fully takes into account the rights and needs of children.

4. **Lastly**, the essence of the Neuchâtel Memorandum lies in the recognition that the protection of child rights and the preservation of public safety go hand in hand and are mutually reinforcing.

The Neuchâtel Memorandum is a call to States to respect not only human rights and the provisions specifically applicable to children, but also international humanitarian law, international criminal law and the wide range of international juvenile justice standards. This protection applies regardless of the seriousness of the crime a child has allegedly committed.

Follow-up

The adoption of the Neuchâtel Memorandum in September 2016 was just a first step. Switzerland and other States and institutions are currently in the next phase, actively implementing the Neuchâtel Memorandum and further disseminating its content.

In 2017 and 2018, the International Institute for Justice and the Rule of Law conducted a series of workshops with prosecutors, judges, prison and law enforcement officials in the Middle East and North Africa, francophone Africa and the Horn of Africa to this end. Additional training sessions are planned in the Balkans and Southeast Asia as well as a culminating event at which participants from the previous workshops are expected to report on the progress made on the implementation of the Memorandum.
The UN Office on Drugs and Crime has done excellent work in drafting a handbook on children recruited and exploited by terrorist and violent extremist groups which will in the near future also be used in training courses and workshops.

To further strengthen compliance it is also important that the topic continue to be addressed by States within the UN. Until 2016, the review of the UN Global Counterterrorism Strategy did not explicitly mention the specific rights of children. Then in 2016, the General Assembly finally recognised that “effective, fair, humane, transparent and accountable criminal justice systems, taking into account, the rights and needs of children, in accordance with international law, [are] a fundamental basis of any strategy to counter terrorism”. The resolution goes on to state that “every child alleged as, accused of or recognized as having infringed the law […] should be treated in a manner consistent with his or her rights, dignity and needs”.

It is to be hoped that the discussions held at various levels will contribute to changing the perception within the counter-terrorism community on child rights and lastly strengthen child rights not only on paper but through concrete action and implementation.