



- Contribution by the Kingdom of the Netherlands -

Call for submissions: The Interface between International Human Rights and International Humanitarian Law in Counter-Terrorism Regulation: Assessing legal and institutional dimensions

The Kingdom of the Netherlands is pleased to contribute to the upcoming thematic report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Netherlands applauds the important work the Special Rapporteur has done on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

In your recent report, you have highlighted several points of attention. By means of this contribution, the Netherlands illustrates its efforts for a human rights-based approach to counterterrorism and preventing and countering violent extremism (P/CVE), and to implement the recommendations of the Special Rapporteur.

Comprehensive approach: connecting the national and local level and enhancing synergy between security and development

The Dutch counterterrorism policy is based on the Dutch National Counterterrorism Strategy (2016-2020). The focus is on an integrated approach combining preventive measures with counterterrorism and judicial efforts. Multidisciplinary cooperation is a central element of the five areas of interventions: procure, prevent, defend, prepare, and prosecute.

The local approach is one of the Netherlands' most important means to prevent radicalization and counter terrorism. The Dutch local approach connects security authorities, local government, and social workers for a context-specific approach in a multidisciplinary case management team, chaired by the municipality. In the last two years, the Kingdom of the Netherlands improved this local approach by strengthening the local networks with key figures, setting up a manual for local networks, and research regarding the needs on the municipal level. In addition, in 2019 the Toolkit Evidence Based work in Preventing Radicalization for municipalities was launched. The aim is to support the development of interventions and evaluation on processes and effect.

This cooperation between the national level and local governments is an essential element of informing policy-makers about local drivers of violent extremism, and of ensuring an inclusive approach with meaningful engagement of all stakeholders. The Netherlands is convinced that inclusiveness enhances effectiveness of the approach.

The Netherlands also supports this approach abroad, via its network of Regional Security Coordinators. The Regional Security Coordinators form a network of CT- and P/CVE focused diplomats posted in areas where the threat of terrorism is high. They work together with national and local authorities, with civil society organizations and local communities, to enhance resilience against violent extremism at the community level. Cooperation between national and local levels is a central element of their work, which has a strong focus on prevention, but also reinforces capacity of local authorities and guides them towards a human rights centered approach in counterterrorism. Examples of their approach include round tables with local authorities and civil society organizations (CSOs) in the Horn of Africa and the Sahel on Human Security, and strengthening the criminal justice response to terrorism and contributing to accountability in Iraq through supporting victims of terrorism to participate in criminal proceedings.

Thereby they also cooperate with the development sector to enhance synergy between security-oriented and development interventions. A sustainable approach to preventing violent extremism, requires addressing structural problems like marginalization, lack of education and employment, and a troubled state-citizen

relationship. To this end, the Netherlands has developed a PVE-sensitivity toolkit: a tool to help development officers in the Dutch Ministry of Foreign Affairs to identify possible positive and negative indirect impact of new ODA-programmes on preventing violent extremism. Implementation of the toolkit started with training of MFA policy and programming officers in 2019. The first new programmes have been assessed using this PVE-toolkit.

Empowering civil society in preventing and countering violent extremism

The Kingdom of the Netherlands emphasizes the importance of Pillar IV of the UN Global Counter-Terrorism Strategy (GCTS). For the Netherlands, counterterrorism can only be effective when human rights are protected and promoted. In that regard, the Netherlands welcomes the work of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism. During the interactive dialogue with the Special Rapporteur on 16 October 2019, the Netherlands underlined the importance of human rights, the need for constructive dialogue, and the value of a balanced and context-specific approach in counterterrorism. This approach is much needed when tension arises between counterterrorism measures on the one hand, and activities of civil society and humanitarian organizations on the other. To support dialogue on human rights and counterterrorism the Kingdom of the Netherlands and the Kingdom of Morocco, as co-chairs of the Global Counterterrorism Forum (GCTF), invited the Special Rapporteur for an interactive panel discussion with the GCTF. The Netherlands highly appreciates the participation and contribution of the Special Rapporteur in this discussion.

Involving civil society and CSOs in countering terrorism and preventing violent extremism remains of utmost importance for a successful approach, particularly in preventing violent extremism in a sustainable way. Civil society encompasses, inter alia, a range of community-based and non-profit organizations, aid organizations that provide humanitarian assistance and protection, human rights defenders, community elders, religious leaders, faith-based organizations, journalists and think tanks. As such, civil society is an essential partner in protecting human rights and achieving the Sustainable Development Goals including the promotion of peaceful and inclusive societies. The role of civil society in preventing and countering violent extremism and terrorism is vital and should be supported wherever possible. As a strong supporter of CSO empowerment, the Netherlands has invested in engaging civil society in the many GCTF meetings during its GCTF co-chairmanship. Thereby contributing to GCTF recommendations and good practices that reflect perspectives from all necessary stakeholders.

The Netherlands remains committed to the mission of meaningful CSO engagement and putting human rights central in the international CT approach. To this end, in 2020 the Netherlands launched the GCTF Initiative on Ensuring Implementation of Countering the Financing of Terrorism Measures While Safeguarding Civic Space, which it co-leads with the Kingdom of Morocco and the UN Office of Counter-Terrorism (UNOCT). The objective of this initiative is two-fold. Firstly, to develop a set of GCTF good practices that will help support the implementation of CFT measures while at the same time protecting the work of civil society organizations; secondly, to stimulate dialogue with all involved stakeholders: CT experts, CFT experts, and CSOs, including human rights organizations and humanitarian organizations. Through this initiative, the Netherlands seeks to contribute to international efforts to effectively implement countering the financing of terrorism measures such as outlined in UNSC resolution 2462, without compromising on the critical work done by civil society organizations and humanitarian actors. The Netherlands feels that there is room to provide clarity and common understanding on this important topic, and underlines the necessity for enhanced insight into the issues where the implementation of counterterrorism measures can have unintended consequences for civic space.

The Kingdom of the Netherlands is committed to contribute to guidance in how to balance the objectives of both counterterrorism actors, and civil society and humanitarian organizations, while promoting respect for relevant IHRL and IHL norms. Dialogue with the many different stakeholders involved is key. Biannually organized national round tables include participants from civil society, the financial sector and government, and aims to create progress on the theme of de-risking and financial access for non-profit organizations in the light of sanctions, counterterrorism financing policies and FATF standards. Being elected as member of the Human Rights Council for 2020-2022, the Netherlands remains committed to bringing forward this dialogue and engaging the necessary partners throughout the different multilateral fora.

Furthermore, the Netherlands supports the Global Center for Cooperative Security, which leads the biannual Blue Sky Process to inform the review of the Global Counter-Terrorism Strategy. This process, with a specific focus on pillar IV of the GCTS and on engagement of civil society, is an important asset to inform the review process. The Netherlands takes these recommendations seriously and encourages the UN and its member states to strengthen

its partnerships with CSOs and to commit to a human rights-based approach to CT. We encourage the UN to take up a leading role in this field, and UNOCT to coordinate UN efforts in this endeavor. The Netherlands will keep on bringing forward the importance of human rights and engagement of CSOs in the upcoming seventh review of the UN GCTS and the second UN High-Level Counter-Terrorism Week.

Human rights standards in CT-measures

An effective and sustainable CT approach requires not only attention to human rights in the preventive interventions: human rights standards also need to be an integral part of repressive measures at a state's disposal. The Netherlands has made several efforts in this field.

Firstly, in the application of counter-terrorism based sanctions regimes, with a particular attention to due process and the procedural rights of listed persons. The Netherlands has contributed to UNSC resolution 1373 on the freezing of assets to prevent potential terrorist activities and the implementation of the ISIS/Al-Qaida sanctions regime. During its membership of the UNSC, the Kingdom of the Netherlands has promoted the implementation of sanctions against individuals and entities related to ISIL (Da'esh) or Al-Qaida and contributed to the placement of 10 individuals and 3 entities on the ISIL (Da'esh) and Al-Qaida sanctions list. Following a national decision from 2017, the Netherlands proposed one designation (individuals) for the ISIL/Al-Qaida sanctions list of the European Union (EU). With this proposal, the Kingdom of the Netherlands confirmed its pioneering role in the EU terrorism sanctions regime. The Netherlands realized one of the first listings under the new jurisdiction.

On the national and the international level, the Kingdom is a strong advocate of a context-specific approach to sanctions. As a member of the Group of Like-Minded States on Targeted Sanctions, the Kingdom of the Netherlands has promoted fair and transparent procedures for a more effective United Nations sanctions system. These activities were primarily aimed at improving due process with regards to the office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee (see UN documents S/2015/867 and S/2018/1094). In the reporting period, the Ombudsperson has frequently visited the Netherlands to interact with experts.

Secondly, the Netherlands is committed to the implementation of UN Security Council Resolution 2396 (2017) on returning and relocating foreign terrorist fighters, both on an international and national level. The resolution obligates UN member states to collect and analyze passenger name record (PNR) data, in order to detect and prevent travel of terrorist individuals. With the Travel Information Portal-software, the Netherlands had developed unique capacity and expertise to contribute to the worldwide implementation of this resolution. In 2018, when the Netherlands was a non-permanent member of the UN Security Council, the Netherlands handed this software over to the UN to support the global implementation of the resolution. The Netherlands has implemented obligations to collect and analyze Passenger Name Records (PNR). Firstly, by setting up a National Passenger Information Unit. In furtherance of International Civil Aviation Organization (ICAO) standards recommended practices, the Netherlands developed the ability to collect, process and analyze PNR data and pays ample attention to ensuring PNR data is used by and shared with competent national authorities, with full respect for human rights and fundamental freedoms. This will help security officials make connections between individuals associated to organized crime, and terrorists, whether domestic or transnational.

The resolution also calls upon countries to take the appropriate measures towards prosecution in compliance with relevant domestic and international law. The Netherlands is a strong advocate for holding FTF, including women, accountable as impunity may never be the answer. Any form of prosecution -international, regional or national- should be in line with International human rights and humanitarian law and the Netherlands puts this notion at the center of discussions towards accountability of FTF, for instance during the high-level event on "Accountability for atrocity crimes committed by Da'esh" in the margins of the UN General Assembly in September 2019.

Concluding remarks

To be successful against terrorism, a close and strong cooperation between the UN and its member states and other international organizations and forums is vital, and human rights are an indispensable part of that cooperation. The Netherlands applauds the UN for its work conducted in countering terrorism and preventing violent extremism, and encourages the UN to take up a leading role in mainstreaming human rights in counterterrorism.