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INTERNATIONAL JOURNAL - Italian Team for Security, Terroristic Issues & Managing Emergencies



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# SICUREZZA, TERRORISMO E SOCIETÀ

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# Children's Rights vis-à-vis counter terrorism obligations: a priority for security and human rights mutually reinforcing practices

VALERIO DE DIVITIIS

## Nota autore

Valerio de Divitiis is PhD candidate at the Faculty of Law of the University of Málaga. He has been working on terrorism and violent extremism prevention at multilateral level since 2007. For several years he has been conceptualizing, designing and implementing policy and technical assistance including on children-related matters for justice, law-making, social affairs and education practitioners engaged on counter terrorism from over 30 countries. Valerio also served the Country Office in the I.R. of Iran of the UNODC and in its HQ in Vienna the EU Agency for Fundamental Rights as well as UNESCO in the field of education for the rule of law.

## Abstract

The international counter terrorism paradigm is being increasingly contextualized in the framework of sustainable development through civilian and rule of law-based policies shaped around the objective of preventing violent extremism. The recruitment and exploitation of children by terrorist organizations provides an urgent opportunity for the concretization of legal obligations and principles endorsed by the international community. The application of counter terrorism measures in cases involving children remains ambiguous at country level, despite clear international norms. There is a risk that the children's rights may be overshadowed by the emergency nature of terrorism. Countries' practitioners must pursue responses which consider the status of children even when they are liable for terrorism-related offences. Specific circumstances ranging from the prevention of exploitation by terrorist groups, including in educational settings, justice system responses tailored to the cases of children, the risks posed by the nuanced FTF phenomenon and the international legal provisions thereof, are scenarios where the rule of law-PVE vision becomes critical for sustainable response to terrorism.

## Keywords

Counter Terrorism, Children's rights, Preventing Violent Extremism, Rule of Law, Human Security, Foreign Terrorist Fighters, Armed Conflicts.

## 1. Introduction

The recruitment and exploitation of children in terrorism and violent extremism activities are a serious concern for the international community. The Special Representative of the United Nations (UN) Secretary General for Children and Armed Conflict in her first (of seven) recommendations listed in the 2018 annual report submitted to the General Assembly, called upon Member States to protect children caught up in conflict, particularly in the context of countering terrorism and violent extremism. The same document addresses children's rights abuse by terrorist and violent extremist groups (UN General Assembly 2018). It is preceded by a number of reports issued by the UN where such violations are presented together with the risks and challenges countries face in the application of counter terrorism legal obligations in the context of children's rights, criminal law and juvenile justice. That terrorist and violent extremist groups are addressed in UN-level reports dedicated to armed conflict reaffirms the concept that such non-state entities are to be considered as active players in hostilities and, therefore, are subject to relevant international law. The application of counter terrorism measures in cases involving children remains ambiguous, despite clear international legal standards on children's rights and juvenile justice. Children's rights should be a priority of counter terrorism. An analysis of the Sixth Review of the Global Counter Terrorism Strategy (United Nations Global Counter-Terrorism Strategy Review 2018) and the work of other UN bodies shows that there is an important focus on maintaining respect for children's rights and juvenile justice standards when faced with specific geopolitical phenomena. The Review cites the examples of children's exploitation and involvement in armed conflicts and the Foreign Terrorist Fighters (FTF) phenomenon as opportunities to reinforce such rights and standards<sup>1</sup>.

<sup>1</sup> In particular, the UN General Assembly: 1) strongly condemns the systematic recruitment and use of children to perpetrate terrorist attacks, as well as the violations and abuses committed by terrorist groups against children, including killing and maiming, abduction and rape and other forms of sexual violence, and noting that such violations and abuses may amount to war crimes or crimes against humanity; 2) stress the importance of the development and maintenance of effective, fair, humane, transparent and accountable criminal justice systems, taking into account, inter alia, the rights and needs of children as a fundamental basis of any strategy to counter terrorism; 3) calls upon all Member States, to prevent the radicalization to terrorism and recruitment of foreign terrorist fighters, preventing the movement of foreign terrorist fighters across their borders [...] and developing and implementing prosecution, rehabilitation and reintegration strategies, taking into account gender and age dimensions, for returning and relocating foreign terrorist fighters and their families [...] while stressing that children need to be treated in a manner that respects their rights and protects their dignity, in accordance with applicable international law".

Considering this context, the premise of the present paper is that the international counter terrorism paradigm is being increasingly contextualized in the framework for sustainable development through civilian and rule of law-based preventing violent extremism (PVE) policies and the pursuance of effective justice that practically revives the human security orientation that featured the international development vision in the past decades. The case of children provides an urgent opportunity for the concretization of legal obligations and principles the international community endorses. Where terrorism and violent extremism-related cases are dealt with by the criminal justice system, children's involvement necessitates increased attention of the national authorities worldwide. There is a risk that children's rights, perhaps even more than human rights generally, may be overshadowed by the emergency nature of terrorism. Countries' practitioners must pursue responses which consider the status of children even when they are liable for terrorism-related offences. Specific circumstances ranging from the prevention of exploitation by terrorist groups, including in educational settings, justice system responses tailored to the cases of children, the risks posed by the nuanced FTF phenomenon and the international legal provisions thereof, are a range of scenarios where the rule of law-PVE vision becomes critical for sustainable response to terrorism. The present work addresses specific counter terrorism matters and some practical challenges vis-à-vis the responsibilities that countries have concerning children's rights. Specific topics of children exploited by terrorist organization and armed groups as well as risks to children's rights stemming from security-related concerns that arose with the FTF phenomenon as addressed by UN Security Council Resolutions 2178 (2014) and 2396 (2016) will be examined. That much PVE programming is focused towards children, and is deployed across communities including in educational settings, means that the protection of children's rights and juvenile justice standards has emerged as a critical subject in contemporary PVE policy-making. These are important fields where justice, security and PVE actions synergize and call for practical application since the involvement of children in terrorism-related cases and violent extremism<sup>2</sup>. Such analysis will be preceded by a

<sup>2</sup> In its introduction, the *GCTF Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context* (available at <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuchâtel-Memorandum-on-Juvenile-Justice.pdf>) explains that "Children may be affected by terrorism in many ways – as victims, witnesses, and offenders. One recent trend in global terrorism is the high number of children that are radicalized to violence, recruited, and involved in terrorism-related activities. Increasingly, children are recruited by terrorist groups within or outside their country. Some are abducted or forcibly recruited, some are enticed by promises of money or other material advantages, some join voluntarily, and some have little or no choice but to accompany their parents or other family members. The

brief historical reflection of terrorism evolution in the current age. The international community has yet to adopt a comprehensive definition of terrorism, while existing declarations, resolutions and universal “sectorial” treaties relating to specific aspects of it define certain acts and core elements. In 1994, the General Assembly’s Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them”. In 2010, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering proposed the definition of terrorism as “an action or attempted action where: 1. The action: (a) Constituted the intentional taking of hostages; or (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and 2. The action is done or attempted with the intention of: (a) Provoking a state of terror in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something; and The action corresponds to: (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or (b) All elements of a serious crime defined by national law (UN, Human Rights Council 2010). The lack of a universally recognized definition of the term is to some extent predetermined by its highly politicized, rather than purely academic, nature and origin. This allows for different interpretations depending on the purpose of the interpreter and on the political demands of the moment. States as well as non-state bodies have used fear as their weapon of choice for a very long time, and as a historical process the use of fear may have its own dynamic and regularities. Non-state actors using terrorism is not really a new fact; even in pre-modern days, there were groups and individuals that used political violence against the authorities and elite. Most descriptions of modern day terrorism start with the anarchists that are associated with the ‘propaganda of the deed’ from the French propaganda, a group or network or movement that was active in late 19th century France. David Rapoport has

increasing number of boys and girls under the age of 18 allegedly involved in terrorism-related activities requires an appropriate response by States that is grounded in international human rights law and the rule of law.



outlined four major waves of international terrorism in his seminal work on the history of international terrorism. The first (“anarchist”) wave of modern terrorism began in Russia in the 1880s and lasted until the 1920s, the second (“anticolonial”) wave began in the 1920s and ended in the 1960s, the third (“new left”) wave began in the 1960s and continued through to the 1980s, and the fourth (“religious”) wave emerged in 1979 and continues until today (Rapoport 2004). The post-Cold War context provided a facilitative environment for the UN Security Council enabling ad hoc or case-by-case responses to acts of terrorism during the 1990s. The intervention of the Security Council in the aftermath of 9/11 has proved to be a decisive breaking point to a legal regime that binds states to international law against acts of terrorism and increases the obligations to undertake “executive action” against all forms of terrorism. Since 2001 the vast majority of countries have adopted new counter-terrorism legislation or amended existing national laws in response to attacks on their territory or abroad, heightened concerns about threats to their national security and/or counter-terrorism resolutions adopted by the United Nations Security Council. Yet, many of these laws have expanded the range of national security offenses and may be incompatible with international human rights law. It is also necessary to highlight also that the terminology around national security offences is problematic, as the terms “terrorism” and “violent extremism” lack unified internationally agreed-upon definitions, are often politicized, and are used in many different ways.

## 2. Preventing Violent Extremism: its intersection with children’s rights

De-radicalization scholar and practitioner Daniel Koehler defines PVE as “programmes designed to prevent recruitment and radicalisation into violent extremism leading to terrorist actions” (Koehler D. 2017). These programmes are defined by their ‘multi-stakeholder’ approach, engaging a range of government and community-level actors to counter radical extremism<sup>3</sup>. PVE policies found legitimization in the UN Secretary-General’s Action Plan of 2016 (‘the Action Plan’). This identifies poor governance and violations of human rights and the rule of law among the conditions conducive to violent extremism, referring to previous UN Security Council discussion of the FTF phenomenon.

<sup>3</sup> See, for example, Human Security Collective, “Practices and reflections on development, security, and peace in context of violent extremism and terrorism”, Side-event of fourth biennial review of the UN Global Counter-Terrorism strategy, 2014.

The Action Plan recalls that states must define both ‘terrorism’ and ‘extremism’ for the purposes of PVE. Whilst these definitions must, under the terms of the Action Plan, be consistent with international human rights law obligations, many have critiqued the abusive interpretation of these terms by certain states who have been seen to ‘overreach’ the purpose of counter terrorism laws (HUMAN RIGHTS WATCH, 2017). The UN Special Rapporteur on the promotion and protection of Human Rights while Countering Terrorism, has warned against expansive counter-terrorism law and the use of the word terrorism, with no guidance as to its definition, and it is increasingly coupled with terms such as “violent extremism” and “radicalization”, which are also offered without definitions (UN Human Rights Council 2018). Many domestic legislative enactments are characterized by wide-ranging and vague definitions of terrorism (UN Global Counter-Terrorism Implementation Task Force 2018). For example, the use of the term ‘extremism’ in PVE programming in the United Kingdom has attracted well-founded concern that the vagueness of the concept could lead to its use against members of religious minorities and civil society. It may be used to crack down on legitimate political expression and to limit the participation of civil society in accountability, transparency and critique of the state. If the definition of ‘violent extremism’ is insufficiently precise it may also offend against the requirement of legal certainty. Interference with the right to privacy or with freedom of expression must be ‘provided by law’ or ‘prescribed by law’ which, as set out above, means that the interference must occur pursuant to rules that are “foreseeable, that is, formulated with sufficient precision to enable the individual – if need be, with appropriate advice – to regulate his conduct” (Open Society 2016).

The international legal framework for children’s rights has a universally accepted normative basis and is widely respected. All but one UN member state has ratified and is therefore bound to the provisions of the Convention on the Rights of the Child (‘CRC’), adopted in 1989. Similarly, juvenile justice standards are set out in the International Covenant on Civil and Political Rights (‘ICCPR’) together with six other supporting international norms that govern specific aspects of the treatment of children in contact with the justice system<sup>4</sup>. The ‘emergency’ character of terrorism may place risks to

<sup>4</sup> In the “Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System”, Vienna, 2016, the UN OFFICE OF DRUGS AND CRIME lists: UNGA., “UN Standard Minimum Rules for the Administration of Juvenile Justice” (the “Beijing Rules”), Beijing, 1985; UNGA., “UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty” (the “Havana Rules”), Havana, 1990; UNGA., “UN Guidelines for the Prevention of Juvenile Delinquency” (the “Riyadh Guidelines”), Riyadh, 1990; UNGA., “UN Guidelines for Action on Children in the Criminal Justice System”

the safeguarding of children's rights when weighed against security concerns. Nevertheless, the Committee on the Rights of the Child has confirmed that "there are no provisions allowing for derogation from the CRC and optional protocols during emergencies" (2013). Similarly, derogations from the provisions of the ICCPR may only be made under strict circumstances: they must be proclaimed, only go as far as required by the exigencies of the situation, be consistent with other obligations under international law and be non-discriminatory. PVE programming should function in conjunction with rule of law and justice practices for mutually enforceability. The rule of law, justice and PVE do not function in parallel but are intrinsically connected and form a unique and distinct discipline. Such vision includes a variety of perspectives according to the different disciplines engaged in PVE and the responsibilities of the practitioners' (e.g. educational/pedagogical, sociological, sport, environmental, criminological, investigative, intelligence/security, legislative, judicial, justice/law enforcement). In short, PVE can be a path to ensuring compliance with international legal standards on children's rights and juvenile justice while countering terrorism.

### 3. Exploitation of children by terrorist groups

In 1996 a report issued by the Secretary General of the UN General Assembly (The Machel Report) shed light on the extent of recruitment and use of children by armed forces and armed groups. The report called the attention of the international community to the consequences of these practices on the lives of children, describing how recruited children were the subject of physical and emotional abuse, exposed to extreme violence and the risk of death, and often forced to commit atrocities against their own families. At the time, the report argued that the evolving character of conflicts, which were increasingly of an internal nature, presented a number of new obstacles to ensuring the protection of children under the existing international legal framework. The CRC, read together with its Optional Protocols, condemns the recruitment of children into non-state armed groups. Whilst the CRC only tackles the recruitment of children by state armed forces, setting a min-

(the "Vienna Guidelines"), Vienna, 1997; UN ECONOMIC AND SOCIAL COUNCIL., "UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime", 2005, and the UN NATIONS OFFICE OF DRUGS AND CRIME., "Model Strategies and Practical measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice", New York, 2014. Additional guidance specifically focussing on children involvement in terrorism cases is provided by the GLOBAL COUNTER-TERRORISM FORUM., "Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context", Neuchatel, 2016.

imum age of recruitment at 15, the Optional Protocol on the Involvement of Children in Armed Conflict goes further. It obliges states parties to take all feasible measures to ensure that persons under the age of 18 do not take a direct part in hostilities. In addition Article 4 provides a blanket prohibition of the recruitment and use of children by non-State armed groups in hostilities, regardless of whether or not they are recruited voluntarily or compulsorily or take a direct part in hostilities (UNGA, “Optional Protocol to the Convention on the Rights of the Child” 2002).

While the legal framework has significantly evolved over the past twenty years, in particular after 9/11 attacks, so too have the circumstances in which recruitment of children takes place and, in part, the associated forms of exploitation. In fact, terrorist and violent extremist groups have become deeply involved in the recruitment and exploitation of children. International counter-terrorism conventions and protocols make clear that the obligation to criminalize and prosecute acts of terrorism extends to those who organize and direct others to commit terrorist acts<sup>5</sup>. In addition, the Security Council has dealt with the issue of recruitment in its resolutions. In resolution 1373 (2001), the Security Council, acting under Chapter VII of the Charter of the United Nations (thus making the resolution binding for all Member States), decided that all states should refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing the recruitment of members of terrorist groups. In 2014, the Security Council acknowledged for the first time the challenge posed by the recruitment of children into terrorist groups. Through another similarly binding resolution, it called upon all Member States to cooperate in efforts to prevent the radicalization to terrorism and recruitment of FTFs, including children (UN SECURITY COUNCIL Resolution 2178/2014). Terrorist groups make use of websites, social media and instant messaging and, increasingly, messaging applications to recruit children online (Kavaunaugh 2015). Furthermore, terrorist groups also use propaganda as a means for recruiting children. Joining a group may be portrayed as offering status and prestige, smart uniforms, weapons, ‘excitement’ and power to children without providing employment or educational opportunities<sup>6</sup>. An example of past few years is ISIL narratives often focus on ‘victimhood’, using images that show the ‘crimes of the enemy’ to trigger anger and empathy with those injured and killed, and to provoke a

<sup>5</sup>A compilation of the 19 conventions, known as the international legal instruments to prevent terrorist acts, is available at <http://www.un.org/en/counterterrorism/legal-instruments.shtml>

<sup>6</sup>See the findings of a study conducted by UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), “Journey to extremism in Africa: drivers, incentives, and the tipping point for recruitment”, 2017, pp. 5-7, available at <http://journey-to-extremism.undp.org/content/downloads/UNDP-JourneyToExtremism-report-2017-english.pdf>.

desire to carry out revenge on the 'enemy' and thus increase recruitment (The Netherlands National Coordinator for Security and Counter Terrorism 2017).

Neuroscience, psychology and behavioural sciences also provide relevant insights into the vulnerability of children to terrorist recruitment. In fact, decision-making processes largely depend on a series of psychosocial capacities, such as impulse control abilities, gratification delay and resistance to peer pressure. Research shows that such capacities reside in areas of the brain whose development is not completed by adolescence but continues into the third decade of life (UNODC, "Conference", Vienna, 2016). These elements deeply influence adolescents' behaviour and are especially relevant to the design of appropriate prevention policies. Significant life events can also play an important life-altering role during adolescence. Negative life experiences can lead to risk-taking behaviour and impede an individual development as a responsible adult. Such a trigger event can make a child more receptive to new ideas and worldviews, such as the justification of violence. It may, in some circumstances, lead to radicalization or deradicalization (Karen et al 2018). The children recruited by terrorist groups often directly experience conflicts. In most instances, the conflict had a significant impact on the children's psychological, social and emotional development. This must also be considered in developing child sensitive prevention programmes. In some instances, for example, in the territory governed by ISIL after its rise, a child's normal development is intentionally thwarted by the terrorist group that seeks to desensitize the children to violence. This is achieved through widespread publicity and enactment of brutality within spaces controlled by the group which normalize a child's exposure to violence and death. In addition to the deleterious effects of living in an active conflict zone, increasing evidence shows that ISIL systematically indoctrinated children for the purpose of trans-generational continuity of its organization<sup>7</sup>.

<sup>7</sup> McCue C., Massengill J.T., Milbrandt D., Gaughan J., and Cumpston M., "The Islamic State Long Game: A Tripartite Analysis of Youth Radicalization and Indoctrination" *Combating Terrorism Center at West Point, CTC Sentinel*, September 2017, Volume 10 Issue 8, available at <https://ctc.usma.edu/the-islamic-state-long-game-a-tripartite-analysis-of-youth-radicalization-and-indoctrination/> page 24. "This active indoctrination represents the weaponization of children and includes at least three lines of effort: intentional exposure to violence, active incorporation of the Islamic State narrative in educational materials, and Cubs of the Caliphate. Scholarly research as well as Islamic State propaganda document the intentional exposure of children to and forced participation in violence, including executions-factors known to be associated with the development of violent behaviour. Analysis of Islamic State-produced educational materials reveals an intentionally created curriculum that weaves themes of radicalization and indoctrination throughout the content in an effort to reinforce preferred narrative themes. The Islamic State's curriculum is uniquely lethal in the way it teaches other subjects to justify its quartet of interests: the foundation of a caliphate, the building of an Islamic state,

The recruitment of children into terrorist groups raises many issues when considered under a child rights and juvenile justice framework. While forced recruitment continues to be prevalent, some children may appear to ‘voluntarily’ join such groups<sup>8</sup>. The manner in which a child is recruited is not necessarily significant in terms of the form of exploitation to which that child is subjected. States face challenges of determining the appropriate legal framework to apply for children who have been recruited into terrorist groups, depending on the extent of their active involvement in hostilities. At a practical level, this is complicated by the transnationalism of terrorism – as the FTF phenomenon demonstrates – which impacts state capacity to identify those vulnerable to recruitment, prevent travel by children (even if travelling with their families), and take measures to work for their return. Also, the FTF phenomenon-related threats have shifted to other areas where attackers – inspired by the ISIL propaganda and operational capacity – perpetrate terrorist activities in their countries of origin. For instance, in May 2018 in Indonesia, members of *Jamaah Ansharut Daulah* (JAD), an ISIL-linked local network and their families, carried out attacks using a 9-year-old and an 8-year-old girl as suicide bombers (UN Security Council, Analytical Support and Sanctions Monitoring Team (2018).

Importantly, the unprecedented use of social media and online recruitment further complicates the issue of exploitation and recruitment and necessitates innovative prevention and intervention measures<sup>9</sup>.

the use of merciless violence, and the perpetuation of an apocalyptic narrative. The material is professionally produced and sophisticated, paralleling Western academic content in pedagogy and the seamless integration of global narrative themes across disparate subject matter. Perhaps most concerning, the so-called ‘Cubs of the Caliphate’ represent intentional development of the next generation in fulfilment of the Islamic State’s reference to an entire future generation that will sustain the fight”.

<sup>8</sup> On this particular aspect, Birchall, E, Franca, E And Pijnenburg A., “The International Criminal Court and Reparations for Child Victims of Armed Conflict”, Transitional Justice Network, Briefing Paper No. 4, Essex, 2011 available at [https://www1.essex.ac.uk/tjn/documents/Paper\\_4\\_Children\\_in\\_Conflict\\_Large.pdf](https://www1.essex.ac.uk/tjn/documents/Paper_4_Children_in_Conflict_Large.pdf), page 11. “In most conditions of child recruitment even the most ‘voluntary’ acts are undertaken in a desperate attempt to survive, by children with a limited number of options. Children who ‘voluntarily’ join armed groups often come from families who were victims of murder and have lost some or all of their family or community protection during the armed conflict. Many ‘volunteer’ recruits soon become disillusioned, but are not able to leave due to fear of being killed. Many children who try to escape are executed in order to serve as an example to the other children. The line between voluntary and forced recruitment is therefore not only legally irrelevant but also practically superficial in the context of children in armed conflict”.

<sup>9</sup> A case of interest occurred in 2015 in the United Kingdom, when the Greater Manchester Police conducted an operation based on threats from an ISIL-praising minor to the teachers at his school in Blackburn. Despite his engagement with the UK anti-radicalisation process

The universal conventions and protocols against terrorism make clear that the obligation to criminalize and prosecute acts of terrorism concerns not only the immediate perpetrators, but also those who use others by organizing and directing the commission of terrorist acts. In addition, the UN Security Council has dealt with the issue of recruitment in its resolutions. In its resolution 1373 (2001), the Council, acting under Chapter VII of the Charter of the United Nations (thus making the resolution binding for all Member States), decided that all states should refrain from providing any form of support to entities or persons involved in terrorist acts by, *inter alia*, suppressing the recruitment of members of terrorist groups. In 2014, the Council acknowledged for the first time the challenge posed by the recruitment of children by terrorist groups. Through 2178 (2014) – also adopted under Chapter VII of the UN Charter – it called upon all Member States to cooperate in efforts to prevent the radicalization to terrorism and recruitment of foreign terrorist fighters, including children.

Hence we have discussed the relationship between children's rights and recruitment into terrorist groups, and we now turn to the detention of children after involvement with terrorist groups.

#### **4. Children's rights in the context of detention after recruitment into or affiliation with terrorist and violent extremist groups.**

Children may face detention for personal or affiliated involvement with terrorist groups. In recent years, the UN documented thousands of cases of

known as Channel/Prevent, the child persisted in threatening teachers. This led to investigations which revealed that he was instructing an 18-year-old boy to carry out an attack to kill officers during an Army Corps parade, in the name of ISIL, in Melbourne, Australia. A joint arrest was conducted by the British and Australian authorities led to the conviction of the two individuals. The UK minor was sentenced to imprisonment and his case will be reassessed in 2020 – 5 years after the adjudication – to determine the progress of the de-radicalization process. The 18-year-old was sentenced to 10 years in prison in Melbourne. See Greenfield, P., "British terrorist jailed aged 14 seeks lifetime anonymity on release", *The Guardian*, London, 2017, available at: <https://www.theguardian.com/uk-news/2018/jul/22/british-terrorist-jailed-aged-14-seeks-lifetime-anonymity-on-release>. It is noteworthy that one of the three London Bridge bombers and the Borough Market in June 2017, was a member of the same jihadist group responsible for the radicalization of the Blackburn minor. See MILLER, N., "Radical Clerics found guilty of supporting IS had contact with teenager behind Anzac terror plot", *The Sydney Morning Herald*, Sydney, 2016, available at: <https://www.smh.com.au/world/radical-clerics-found-guilty-of-supporting-is-had-contact-with-teenager-behind-anzac-terror-plot-20160817-gqu513.html>.



children recruited by government forces or armed groups across the globe<sup>10</sup>. As discussed in part IV above, some children are recruited by force or coercion, while others are recruited due to insecurity, family or peer pressure, poverty, financial incentives, status, or other reasons. In many conflicts, it may be virtually impossible for children to remain unaffiliated with an armed group. The United Nations University (UNU) refers to the “fallacy of neutrality” in situations where armed groups are the only employer and exert physical control over a populace, or where the state assumes that all adolescent boys in a given territory are affiliated with non-state armed groups (O’Neil S. and Van Broeckoven L. 2018). In both these situations, children may face detention, and therefore a deprivation of their liberty, at the hands of state or non-state forces. Children may be detained because of their personal or familial association with designated terrorist groups<sup>11</sup>. Moreover, there is worrying evidence of the tactical detention of children by state and non-state actors (including internationally designated terrorist organizations) in conflict countries. The Libyan National Army has detained women and girls for the purpose of prisoner exchanges, and various armed groups, militias, and criminal organizations have held children to extort money from the children’s relatives. In Syria, ISIL abducted women and children from the Druze community for ransom and as leverage in negotiations with the Syrian government. In Yemen, Houthi and other armed groups have abducted and held children for ransom. International humanitarian law (IHL) guarantees

<sup>10</sup> The library of the Special Representative of the UN Secretary-General for Children and Armed Conflict – available at <https://childrenandarmedconflict.un.org/virtual-library/> collects all documents referring to accurate statistics on the subject.

<sup>11</sup> In Iraq, at least 1,024 boys and 12 girls were held in juvenile detention facilities on national-security charges in 2017, primarily for alleged association with ISIL. Government forces and armed groups may also detain children because of alleged involvement of family members with opposing forces. In 2017, in Nigeria alone, authorities detained more than 1,900 children for their or their parents’ alleged association with Boko Haram – so not necessarily for the actual affiliation of the children. In Cameroon, at least 57 children were detained in 2017 for their or their parents’ alleged association with Boko Haram. Children may also be targeted for detention based on their religion, ethnicity, tribal identity, or place of origin. ISIL has abducted thousands of Yazidi women, girls and boys from northern Iraq and detained them in Syria for systematic sexual violence and forced marriage. The UN Commission of Inquiry on Syria found that hundreds of religious minorities – primarily women and children from Alawite, Ismaili, Shi’a, Druze, and Christian families – were detained by armed groups in Duoma alone in early 2018. The Libyan National Army has detained women and girls for the purpose of prisoner exchanges, and various armed groups, militias, and criminal organizations have held children to extort money from the children’s relatives. In Syria, ISIL abducted women and children from the Druze community for ransom and as leverage in negotiations with the Syrian government. In Yemen, Houthi and other armed groups have abducted and held children for ransom.



special protection for child combatants and civilian children in non-international armed conflict, where the parties to conflict are government forces and one or more non-state armed groups (or a conflict between non-state armed groups). As such, in a non-international armed conflict, IHL is clear that children are to be afforded 'the care and aid they require whether because of their age or for any other reason', and state parties are required to 'respect and ensure respect for all rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child'. IHL states that children should be provided special protection in when 'detained for reasons related to conflict', whilst the default position of the CRC is that children should only be detained as a last result. IHL also prohibits the punishment of a child for crimes which they have not personally committed, as well as the taking of hostages. Further protection to the children detained in situations described at the beginning of this section is provided by international human rights law. Although some international human rights treaties allow derogation during times of public emergency, the CRC allows only very narrow limitations to its provisions. No limitations are permitted to the provisions regarding the deprivation of liberty, the right to be protected from violence, or the rights of children alleged to have committed criminal offenses. Thus, the key provisions of the CRC that are applicable to the administration of justice also apply to any child who may have committed national security or terrorism-related offenses which would not be covered by IHL<sup>12</sup>. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily<sup>13</sup>.

International standards on juvenile justice are clear that children recruited by terrorist groups should be considered first and foremost as victims. The 'Paris Principles' state that children who are accused of crimes committed while they were associated with armed groups: (...) should be considered primarily as victims of offenses against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles. Wherever possible, alternatives to judicial proceedings must be

<sup>12</sup> The CRC extends the special protection provided by IHL to all children in international-armed conflicts to all children in non-international armed conflicts. See CRC, *Op cit*, Art. 38.

<sup>13</sup> A major part of IHL is contained in the four Geneva Conventions of 1949 supplemented also by the Additional Protocols of 1977 relating to the protection of victims of armed conflicts and the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

sought, in line with the CRC and other international standards for juvenile justice. This states that “Children’s reintegration into civilian life is the goal of the process of securing their release from armed forces or armed groups. Planning for reintegration should inform all stages of the process and should commence at the earliest possible stage (The Paris Principles 2007)<sup>14</sup>.

The CRC further obliges parties to take “all appropriate measures” to promote the physical and psychological recovery and social reintegration of child victims, including children affected by armed conflicts. The Convention states “such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”. Any prosecution of children who were under the age of 18 at the time of their offense should be conducted in line with international juvenile justice standards, including the use of detention only as a last resort and for the shortest possible period of time (Goldson B. and Kilkelly U. 2013). Since 1999, the UN Security Council has adopted a series of resolutions on children and armed conflict urging the rehabilitation and reintegration of children recruited in violation of international law<sup>15</sup>. UNSC Resolution 2225 (2015) urges states “to consider non-judicial measures as alternatives to prosecution and detention that focus on the rehabilitation and reintegration for children formerly associated with armed forces and armed groups taking into account that deprivation of liberty of children should be used only as a last resort and for the shortest appropriate period of time, as well as to avoid wherever possible the use of pre-trial detention for children.” Further, international standard setting bodies affirm that children should not be detained for their association with armed groups (who may be designated terrorist organizations). The Paris Principles state that “children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups”.

The case of Iraq provides many examples of children detained for association with an internationally recognized terrorist organization, ISIL. Children who are suspected to have fought with ISIL have been detained. In 2018, Iraqi authorities began charging many of these women and children as young as 9 to trial with illegal entry, and most of the women and some of the children on charges of membership in or assistance to ISIL under Iraq’s counter terrorism law (Human Rights Watch Iraq 2018). The detention of these

<sup>14</sup> The Paris Principles’ preamble states that “Children’s reintegration into civilian life is the goal of the process of securing their release from armed forces or armed groups. Planning for reintegration should inform all stages of the process and should commence at the earliest possible stage.”

<sup>15</sup> These include resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2225 2349 (2017), 2427 (2018).

children for over one year arguably represents a departure from international standards on the protection of children during and after conflict as set out above. Upon surrendering to the Iraqi government, emphasis should have been placed on their rehabilitation and they should not have been subject to pre-trial detention. In surveys conducted by United Nations University, one 16-year old boy said that he had joined ISIL at the suggestion of friends and attended a training camp for only one day before changing his mind and fleeing to a refugee camp near Mosul, where he was detained by Kurdish security forces and subsequently charged with terrorism. Another boy, aged 17, said he had joined ISIL because he had a heart condition and ISIL promised to arrange surgery that he couldn't otherwise afford. He was later detained and charged with terrorism (O'Neil and Van Broeckhoven 2018).

Armed groups across Libya, including those affiliated with the state, hold thousands of men, women, and children in prolonged arbitrary and unlawful detention, and subject them to torture and other abuses (Office of the UN High Commissioner for Human Rights and the UN Support Mission in Libya, 2018). Children are also deprived of their liberty for financial or political gain, as a means to extract ransom, or to be used in future prisoner exchanges with opposing parties to the conflict. Armed groups often target children on the basis of their tribal origin or family identity (UN Support Mission in Libya Report, 2018). ISIL and its affiliates also abduct and detain women and girls in Libya. In a report to the Security Council, the Secretary-General stated that groups allied with ISIL held women and girls captive in Sirte in early 2017, and that they were subjected to torture, rape, and other forms of sexual violence (Report of the UN Secretary-General on the UN Support Mission in Libya, 2017).

The case of Nigeria provides another strong example of the practice of detaining children of their familial or geographical affiliation to terrorist organizations. In its efforts to counter Boko Haram, the Nigerian government have rounded up and detained thousands of individuals – mostly men and boys – on suspicion of participation in the group or support for its activity. The overwhelming majority of those detained have been held without charge or trial. The UN reported that in 2017, Nigeria detained 1,903 children due to their alleged association<sup>16</sup> with Boko Haram or that of their parents<sup>16</sup> (Report

<sup>16</sup> “Armed groups, such as the Islamic State in Iraq and the Levant (ISIL) and Boko Haram, continue to recruit and use children on a large scale, including across borders. It is therefore more important than ever to ensure adequate capacity to deal with the increasingly complex task of prevention, tracing and reintegration. The phenomenon of the cross-border recruitment of children and their repatriation requires a coordinated international response, based firmly on international law and drawing on international child protection standards. Denying children the opportunity to go back to rejoin their communities and to gain access to services,

of the UN Secretary-General 2017). Nigerian authorities subsequently released 1,190 of the children; in mid-2018, 713 children remained in military detention in Nigeria (Human Rights Watch 2016). For those children who remain incarcerated, it may be seen that they are being held in indefinite detention of children, on the grounds of association with a terrorist organization. The UN Special Rapporteur for Torture has indicated that indefinite detention may amount severe pain and suffering consistent with torture or ill-treatment, which is prohibited under international human rights law as well as being a peremptory norm of customary international law and arguably binding on all states. The scenarios described in the previous paragraphs explain why a growing number of children are in contact with the justice system for having allegedly committed terrorism related offences. These children are, in many cases, regarded as a national security threat. The prevalence of security considerations dictates the 'heavy-handed' approach of the appropriate authorities at the expense of good practice in juvenile justice. Usually, terrorism-related crimes are held to be particularly serious, and this is reflected in harsher sentences. The UN Secretary-General has noted that children formerly associated with such groups are often detained and prosecuted only on the basis of alleged membership in the group. The tendency towards broad criminalization of preparatory acts and forms of complicity, including conspiracy and associative offences, can result in children incurring terrorism offences regardless of the circumstances in which they are recruited and exploited by terrorist groups. Suspected of affiliation with terrorist groups, children have been exposed to brutal interrogations, held in custody indefinitely, without charge, have been detained together with adults who are not their family members and have not been permitted to contact legal counsel or family members. Detaining children without putting in place special conditions can contribute not only to secondary victimization, but also fosters future criminal behaviour. The best interests of the child therefore appear to be 'traded-in' with security concerns. According to recent reports across a number of countries, children have been exposed to brutal interrogations, held in custody indefinitely without charge, detained with adults and prohibited from contacting legal counsel or family members. The prevalence of security considerations often influences the determination of the appropriate authorities and procedures to deal with those children, at the expense of the specialized juvenile justice system. The appreciation of the gravity of the offence with the assessment of the child personal circumstances and her or his best interests is not to be neglected. This consideration assumes increased

or detaining them solely for their alleged association with such groups, runs counter to the best interest of the child and international protection standards, and may generate new grievances”.

relevance since the variety of crimes associated with terrorism that recent international law, especially in relation to the FTF phenomenon, prescribes. In particular, evidence shows that detaining children without implementing specialized conditions, and especially without separating them from adults, can contribute not only to secondary victimization, but also to future criminal behaviour. Importantly, issues arise regarding children exploited by terrorist and violent extremist groups who have crossed an international border and their treatment upon return. There are some cases of children who are detained not because of actual association with armed groups, but simply because they appear of fighting age, come from communities perceived to be sympathetic to opposition forces, or because their family members are suspected of involvement with opposing forces. Hence, children may face detention in conflict countries due to personal or familial association with (internationally or domestically designated) terrorist groups. Importantly, issues also arise regarding children exploited by terrorist and violent extremist groups who have crossed an international border and their treatment upon return. It is to these children that we now turn.

## 5. Children's rights in the context of the FTF phenomenon

The UN Security Council has defined "foreign terrorist fighters" as:

[Individuals] who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories 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 (UNSC Resolution 2178/2014 With Regard to Foreign Terrorist Fighters).

The foreign terrorist fighter phenomenon is far from new, but the activities of foreign terrorist fighters are facilitated by rapidly changing internet and communications technologies. Recruitment is often carried out over the internet. The speed of transition from initial interest to radicalization, to commitment, to action and, ultimately, to joining a foreign terrorist group has accelerated rapidly (UN CTED 2014). The risk posed by foreign terrorist fighters to societies is multifaceted. Previously localized conflicts have become international and their impact has become less predictable owing to the increased diversity of those involved. The risks and concerns raised by those countries which neighbour zones of armed conflict suggest that the threat of terrorist acts by a range of terrorist organizations, including but not confined to ISIL and the Al-Nusra Front, is rapidly changing and cannot be fully geographically contained. They state that there appears to be virtually

no short-term possibility of ending certain conflicts; and that a significant longer-term risk will derive from “alumni” foreign terrorist fighters upon their return to their own countries or upon their arrival in third countries (Renard and Coolsaet 2018). As the number of foreign terrorist fighters leaving for Syria and Iraq has diminished since international military intervention began in 2015, leading to the slow defeat and ground loss of the terrorist organization, countries are faced with increased numbers of terrorist attacks being committed by ISIL homegrown terrorists who have not set foot in a conflict zone but who are inspired by ISIL/Daesh and other terrorist groups. According to a study by the George Washington University, of the fifty-one terrorist attacks in Western Europe and North America between June 2014 (when the so-called “Caliphate” was declared) and June 2017, only eighteen percent of the perpetrators had travelled to Iraq and Syria. Seventy-three percent of perpetrators were citizens of the country in which they committed the attack, and another fourteen percent were either legal residents or legitimate visitors from neighbouring countries (VIDINO et al 2017).

The scope of the FTF phenomenon related to ISIL is extensive. It has been estimated that around 5,000 men, women and children have left Europe for Iraq and the Syrian Arab Republic since 2012 to join ISIS. Russia and former republics of the Soviet Union have seen 9,000 citizens depart to join ISIS, while South and South-East Asia have seen over 1,500 departing. Roughly 6,000 Tunisians left home to join the ranks of ISIS while Turkey saw about 2,100. The military defeat of ISIS, along with other measures, has reportedly resulted in the decline of the inflow of foreign terrorist fighters into Iraq and Syria. Overall, it has been estimated that there are at least 5,600 returnees from 33 countries who have departed ISIS-occupied territories as of October 2017<sup>17</sup>.

In relation to the term, concerns have been raised over the labelling and presupposing of individuals and their families, by association, their families as ‘foreign ‘terrorist’ fighters’, without the due process of law. These concerns include the recognition of challenges related to the adjudication of individuals’ intentions and as well as the blurred lines between terrorism and armed conflict in with legal consequences, including in relation to the protection regime under international humanitarian law (UN Counter-Terrorism Implementation Task Force 2018).

UN Security Council resolution 2396 (2017) refers to “children associated with foreign terrorist fighters”<sup>18</sup>. Such definition may pose concerns since

<sup>17</sup> Estimates based on independent reports (Barret 2017 and Bremmer 2017).

<sup>18</sup> At para 31 of the Res. 2396 (2017) the UN Security Council “emphasizes women and children associated with foreign terrorist fighters returning or relocating to and from conflict may

national legislations from those considering the interpretation of the term “association” in many jurisdictions, which often can lead to the prosecution of serious offences<sup>19</sup>. However, it should be observed that the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007) defines children associated with armed groups as primarily those recruited or used by an armed force or armed group.

Children are among those returning in this reversed wave. For example, in 2018, France estimated that approximately 500 French minors remain in Iraq and Syria, out of which 200 had been born in the area. The total number of EU children who resided in the area controlled by ISIL has been estimated at 3,300 (Barrett 2017). The Government of Russia estimates that around 445 Russian children, over half of whom were under the age of three, travelled with their parents to the conflict zone (Kyakhadze 2018). Kazakhstan estimates that approximately 400 Kazakh children under age 16 are still living in Iraq and Syria. Other estimates include 70 children from Australia, 81 from Bosnia, 17 from Malaysia, and 50 from the United Kingdom (Barrett 2017). In fact, the total number of children in the context of the FTF phenomenon or children affiliated to FTFs could be larger than official estimates (UNSC 2018). At least one third of the children featured in official ISIL reports as ‘martyrs’ were from countries other than Syria or Iraq (Capone 2017). Moreover, it has been difficult to estimate how many children have been born in ISIL territory. For example, British women who traveled to ISIL territory regularly took their children with them. Furthermore, a significant reason for the large number of children pertains to the strong emphasis ISIL has placed upon ensuring a future generation to defend and expand the “caliphate” – once a female arrives, a key duty is to produce and raise “cubs of the caliphate”. In 2016, there were reportedly more than 31,000 pregnant women within the ISIL “caliphate” (The Independent 2017). Iraq’s Interior Ministry suggested that around a third of “marriage-age women” living in areas controlled by ISIL had married members of the terrorist group, many of whom were not actually from Iraq. This will pose a special problem for determining which country a child born in ISIL territory can return to, an issue that has been addressed by some European countries by mandating DNA-testing

have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts, and require special focus when developing tailored prosecution, rehabilitation and reintegration strategies, and stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities”.

<sup>19</sup> For example, in the Italian criminal law the term ‘associazione’ determines the commitment of a serious criminal offence when in relation to organized crime group(s). See Italian Criminal Code, “Art. 416 (bis), Association with the Mafia”.



to confirm that a “stateless” child has a connection to their country. Some states, including those in Central Asia and South-East Asia, have also reported that their nationals had travelled to ISIL-controlled territories to settle as families. Other considerations rendering it difficult to pinpoint the number of FTF children include factors such as ISIL’s systematic use of birth control only to maintain their supply of sex slaves (Addario 2016), as well as the fact that the Islamic State birth certificates they issued are officially recognized by no countries (Callimachi 2018). Given these complexities, it is difficult to establish how many children may return to their or their parents’ countries of origin. This will be problematic for states of origin when determining to which country a child born in ISIL territory can return. This issue has been addressed by some European countries by requiring DNA-testing to confirm that a “stateless” child has a connection to their country (Peachy 2018).

The UN Security Council has recently stressed the need to pay particular attention to the treatment and reintegration of children formerly “associated with” Boko Haram and ISIL, including through the signing and implementation of protocols for the rapid handover of such children to civilian child protection actors, in accordance with applicable international obligations and the best interests of the child (UNSC Res. 2349/2018). Hundreds of children who resided within ISIL-occupied territories are now resident in orphanages in Mosul and Baghdad after their parents were imprisoned or killed (Brown 2017). Many of these children, who have diverse countries of origin, may not possess officially recognized identification papers. They face uncertain futures, waiting to be identified by family members in their countries of origin.

In resolution 2396 (2017), the Security Council further called upon Member States, among others, “to assess and investigate suspected individuals whom they have reasonable grounds to believe are terrorists, including suspected foreign terrorist fighters and their accompanying family members, including spouses and children [...] to develop and implement comprehensive risk assessments for those individuals, and to take appropriate action, including by considering appropriate prosecution, rehabilitation, and reintegration measures.” The sixth review of the UN Global Counter-Terrorism Strategy (2018) called upon Member States to develop and implement “prosecution, rehabilitation and reintegration strategies, taking into account gender and age dimensions” of returning foreign terrorist fighters and their families. The resolution noted that “children may be especially vulnerable to radicalization to violence and in need of particular psychosocial support, such as post-trauma counselling”, stressing that they need to be treated in a manner that respects their rights and protects their dignity, in accordance with applicable international law. According to the UN Security Council Analytical Support and Sanctions Monitoring Team, in 2018 countries’ officials emphasized that



returning children posed a very complex challenge for law enforcement and social services. The background and nationality of some children born in conflict zones are unclear. Many were exposed to extreme ideology, while some were involved in fighting and violence, including taking part in propaganda videos. A further concern that the Monitoring Team highlighted some months earlier based on reports received from UN Member States, is that the return of minors continues to present difficult legal issues since the radicalization process and violence experienced in conflict zones and that it is difficult to manage or prosecute such cases, in part since specialized legislation is not yet available. In relation to children accompanying foreign terrorist fighters, states are to give special consideration to children who have been affected by their parents' conflict with the law. States should ensure that these children are treated as victims, and that their rights are not subject to interferences because of their parents' status as criminals or otherwise. The determination of the best interest of the child is critical to any decision that would separate children from their family, a standard which also applies to children in custody. Special consideration should be given when determining the best interests of separated or unaccompanied children, who are particularly vulnerable and require a child-sensitive due process framework in their assessment. The CRC provides that the child's best interest is to be a 'primary consideration'. This means that the child's best interests may not be considered on the same level as other considerations, due to the special situation of the child, such as dependency, maturity, legal status as well as the lack of their own voice. The Committee on the Rights of the Child, has recognized that there may be situations where there are potential conflicts between the best interests of the child and other interests or rights, such as those of other children, the public and parents. Such a conflict may arise in the case of children accompanying FTFs. The Committee has stressed that potential conflicts must be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. Although states' may determine a child to be a security threat due to their past activity, involvement, or indoctrination within a terrorist organization, the largest weight in decisions concerning the child must be attached to what serves the child best; this applies even in situations requiring states to compromise their own interests.

While states may have valid concerns for their national security in relation to children accompanying FTFs, international human rights law requires that in addressing this issue, states adopt a rights-based approach that views these children first and foremost as victims. Recognizing children accompanying FTFs first as victims is also crucial to those children who have also been forced to participate in the activities of terrorist groups. Such children should be considered as the victims of their environment and efforts should be made

to ensure that their right to development is made possible in a non-hostile environment. The UN Counter-Terrorism Implementation Task Force clarified that “Children should be regarded primarily as victims and treated as such, although this does not exclude prosecution of children above the minimum age of criminal responsibility in appropriate cases” (UNCTITF 2018).

International law on children’s rights and standards on juvenile justice are clear: the responsibility for violence caused by children should fall solely on those who recruit, train, and use children in this regard, and states should focus on providing psychosocial rehabilitation and social reintegration of children who are victims of these circumstances. In assessing the security threat of children accompanying foreign terrorist fighters, it is critical to ensure that decisions concerning the risk posed by the child are not made based on the activities of their parents (UN Committee on the Rights of all Migrant Workers and their families 2017). The reintegration process of children accompanying foreign terrorist fighters should always be preceded by a risk assessment that incorporates a cultural and gender analysis and is rooted in the child’s best interests, regardless of national considerations or priorities (Paris Principles). Children accompanying FTFs may have been forced to participate in military training, to marry at a very young age and to witness human rights violations. There should be proper assessment of impacts of such experiences in each child’s identity, development, physical and mental health, as well as their moral capacity and ability to emphasize. The risk assessment must consider how to best reintegrate a child who may be deemed a security threat due to indoctrination or involvement in violent extremism. At the same time, it must consider situations in which it is likely that a child is at risk of being ostracized or neglected by society due to their past affiliation with a terrorist group (Convention of the Rights of the Child Art. 39). One further consequence of the FTF phenomenon is that the children of FTFs may face violations of their rights to privacy as a result of state monitoring. Recording the identities of suspected terrorists in a database or ‘watch list’ to monitor them is increasingly being used as a means of countering terrorism (Scheinin 2009). The United Nations Security Council has specifically called upon states to “assess and investigate suspected individuals [about] whom they have reasonable grounds to believe are terrorists, including suspected foreign terrorist fighters and their accompanying family members, *including spouses and children*”. The countries are further called upon “to accelerate the timely exchange of information of movement concerning foreign terrorist fighters and their families, *including children*” (UNSC Res. 2396/2017). In this context, some countries reportedly compile the information of children accompanying foreign terrorist fighters and place them in a database for monitoring purposes. Children are also placed in databases of suspected terrorists or rad-

icalized individuals. State parties to the CRC must consider the best interests of the child first and foremost before including a child in a database for these purposes, and to do so must be a last resort measure with adequate safeguards.

## 6. Conclusions

The present work attempts to contribute to the policy and academic-level debate around children-related issues in the context of the rapidly evolving counter terrorism paradigm. Despite the political nature of terrorism, and the lack of a common terrorism definition, its manifestations constitute a critical element of security agendas globally. Countries are required to respond to fast-growing security concerns, to address domestic and international emergencies – often borne by transnational threats – and to meet international law provisions and other security-oriented recommendations. These are often established in the aftermath of emergencies which call for rapid action. A clear example is the rapid (and often compulsory) counter terrorism-related UN resolutions following the 9/11 attacks. Adopting new legal instruments and their interpretation by national systems poses jurisdictional challenges and tasks policy-makers with their correct implementation. These challenges become risks where states are urged to enact security-related provisions without sufficient guidance or much opportunity to adopt these in the domestic legal framework for compliance with human rights obligations as those dedicated to children.

This paper briefly touched upon the use of the internet in relation to terrorism, where a child can be subject to indoctrination and plan the perpetration of a terrorist attack to be staged in the opposite part of the globe. It emphasized how education can shape personalities and facilitate behavioural skills according to agreed values, the objectives of which contribute to the prevention of violent extremism. We have addressed how the FTF phenomenon deeply concerns children whose behaviours are or can become in the future a threat to security if these behaviours are not accompanied with preventative and reintegration practices. Generally speaking, it is crucial to frame CT policies within the contexts of human rights not only because of ethical values enshrined in international norms, but for the very peace and security objectives CT policies and strategies are meant to pursue. International CT is to be accompanied with continued interpretative guidance to be built on solid human rights basis in order to avoid that the political essence of terrorism may motivate responses which actually further radicalization among children across continents.

CT measures and human rights implementation are to be regarded not as interfering with each other but as mutually reinforcing. These two priorities are to be addressed simultaneously to ensure that deep-rooted values enshrined in the international human rights over short-term security objectives but are actually

pursued in a rule of law mechanism. In this sense, the singularity of the risks of conflict between children's rights and counter-terrorism responses is a highly sensitive and critical subject for actually putting such an idea in practice. Addressing this issue may substantially contribute to, anticipate and resolve ethical, rather than political and legal, conflicts. While the international community can better calibrate norms in order to properly reflect children's rights therein, it is encouraging to observe the continued development of a CT doctrine shaped around the human dimension of security. In other words, countries bear the responsibility to keep pursuing obligations established in, inter alia, the CRC, while responding to urgent security threats, including terrorism. This translates into the PVE-Rule of law nexus where children rights and juvenile justice provide the most urgent and appropriate example.

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### III. CRISIS MANAGEMENT



Questo volume è stato stampato  
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La Rivista semestrale *Sicurezza, Terrorismo e Società* intende la *Sicurezza* come una condizione che risulta dallo stabilizzarsi e dal mantenersi di misure proattive capaci di promuovere il benessere e la qualità della vita dei cittadini e la vitalità democratica delle istituzioni; affronta il fenomeno del *Terrorismo* come un processo complesso, di lungo periodo, che affonda le sue radici nelle dimensioni culturale, religiosa, politica ed economica che caratterizzano i sistemi sociali; propone alla *Società* – quella degli studiosi e degli operatori e quella ampia di cittadini e istituzioni – strumenti di comprensione, analisi e scenari di tali fenomeni e indirizzi di gestione delle crisi.

*Sicurezza, Terrorismo e Società* si avvale dei contributi di studiosi, policy maker, analisti, operatori della sicurezza e dei media interessati all'ambito della sicurezza, del terrorismo e del crisis management. Essa si rivolge a tutti coloro che operano in tali settori, volendo rappresentare un momento di confronto partecipativo e aperto al dibattito.

La rivista ospita contributi in più lingue, preferendo l'italiano e l'inglese, per ciascuno dei quali è pubblicato un Executive Summary in entrambe le lingue. La redazione sollecita particolarmente contributi interdisciplinari, commenti, analisi e ricerche attenti alle principali tendenze provenienti dal mondo delle pratiche.

*Sicurezza, Terrorismo e Società* è un semestrale che pubblica 2 numeri all'anno. Oltre ai due numeri programmati possono essere previsti e pubblicati numeri speciali.

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