

Special Meeting on UNSC 2396: Review of the Madrid Principles

Presentation by Ms. Tanya Mehra, International Centre for Counter-Terrorism (ICCT) – The Hague, on “Facilitating the use and admissibility of evidence obtained by the military for criminal-justice proceedings to prosecute terrorist suspects”

(Excellencies, ladies and gentlemen, it is a honour to join you today.)

Already in 2014 CTED and ICCT explored the challenges and opportunities of **collecting information from the battlefield by the military to bring terrorist to justice.**

However, now there is a **sense of urgency** to see how information from the conflict post-conflict and high-risk situations can be used within a RoL framework as evidence in court.

1. Although the number of **returning and relocating FTFs** have been lower than anticipated, they **remain a potential threat**. Many countries are struggling with prosecuting FTF and their families. This is partly due to lack of admissible evidence.
2. The situations in West and East Africa, Afghanistan or Libya are posing similar challenges.
3. But it is also about **bringing terrorists to justice for actual crimes** they have committed and **restoring dignity to victims**. This means using all types of admissible evidence, including so called ‘military evidence’. In Europe, the **first wave of FTFs** that have been tried will be **released in the coming years**. They have received relatively short sentences since they have been charged ‘only’ for membership of a terrorist organization or preparatory offences due to lack of evidence. Rather than trying them for the actual crimes they have committed.

The information from the battlefield could include: **documents and membership cards of terrorist organizations**, a good example is the Sinjar documents, which were obtained during a raid in Iraq in 2007 and contained information of 700 FTFs.

Other information includes computers and cell phones which contain social media posting, photos, contact details of networks; but also statements of witnesses and victims or fingerprints which can be retrieved from physical objects such as weapons and IEDs. A good example is project Watchmaker lead by INTERPOL which collects and shares information of suspected and known bombmakers.

In this context, ICCT started working this year for CTED to develop guidelines to assist Member States in their efforts to collect evidence from the battlefield with the military.

- **We are only looking at information taken during conflict, post-conflict and high-risk situations to be used in prosecution of terrorist offences as described in relevant int'l conventions and SC resolutions before national criminal courts.**

Please let me highlight some elements which were identified during the development of the guidelines and may relevant for the reviewing process of the Madrid Principles.

- Firstly, and most importantly, the involvement of the military should be considered as the **exception**. This means that the military can assist in collection of evidence only when law enforcement and prosecutors cannot collect evidence on the ground. **The aim should be strengthening criminal justice responses to terrorism, not militarizing counter-terrorism measures.**
- Secondly, when preserving, collecting and sharing information, the military must at all the time **respect the rule of law, IHL and IHRL**,

The guidelines offer specific guidance on how the right to security and other human rights such as the prohibition of torture, the right to a fair trial and the right to privacy can be observed.

- Thirdly, the military should perform the task of collecting information in full respect of the **principle of sovereignty and territorial integrity!**
- Fourthly, in order for information to be **admitted as evidence in court**, it is crucial that the military preserves the information properly and maintains the **chain of custody**.

In addition, some members states might need to provide legal authorization for their military to conduct evidence collection, as well as to **adjust their legislation** to allow the information gathered by the military to be used as evidence in court. We would also need to **raise awareness** and **promote cooperation** among relevant stakeholders and **provide training for the military**.

To conclude, let me emphasize, that this is not a plea to increase the role of military in countering terrorism which could revive the war paradigm.

The aim is to successfully bring terrorist to justice within a RoL framework by using strong and admissible evidence to the fullest extent possible, including from the battlefield. This would allow terrorists, including returning FTF, to be tried in a manner reflecting the seriousness of the crimes they have committed and thus helping to achieve justice and restoring dignity to victims.