

# Looking Beyond the Pillars

## Rule of Law Capacity Building and the UN Global Counter-Terrorism Strategy

The 2014 review of the United Nations Global Counter-Terrorism Strategy will be the last of its kind before the expiration of the Millennium Development Goals initiative. These goals, born out of the UN General Assembly's Millennium Declaration, constituted a 15-year global initiative meant to spur international progress across a series of specific, measurable human development targets. Support for their realization was cited as a key element of Pillar I of the Strategy on addressing the conditions conducive to the spread of terrorism. Recognizing that concrete progress in the areas of security, justice, human rights, and the rule of law are critical for achieving sustainable development, there has been an outpouring of support for featuring human rights and the rule of law more prominently in the post-2015 development agenda. The likelihood that human rights– and rule of law–related goals will be integrated into the post-2015 framework suggests the potential for stronger linkages between the global development agenda and efforts to implement the Pillar IV of the Strategy on ensuring respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. A critical opportunity now exists for stakeholders to consider ways to support the post-2015 development agenda and capitalize on the potential for greater alignment between UN system-wide efforts in support of human rights and the rule of law and efforts to implement the Strategy.

### Looking Beyond the Pillar: Bridging Conceptual Gaps

Devoted to “measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism,” the fourth pillar of the Strategy encourages UN member states to ensure that all counterterrorism measures comply with national and international law.<sup>1</sup> More importantly, it resolves that compliance with and respect for national and international law and human rights obligations are the fundamental bases for combating terrorism, and essential to the realization of all components of the Strategy. At the international level, Pillar IV calls on all member states to become party to and fully implement the core international instruments on human rights law, refugee law, and international humanitarian law and reaffirms the key importance of the United Nations and its constituent actors in promoting and strengthening the rule of law at national and international levels.<sup>2</sup> The pillar covers the need to criminalize acts of terrorism by means of national legislation and calls on member states to develop and maintain effective criminal justice systems capable of bringing terrorists to justice in compliance with international law and with due respect for human rights and fundamental

freedoms—a critical dimension to efforts to build States' capacity to prevent and combat terrorism under Pillar III.<sup>3</sup>

As a core “enabling objective” underlying all aspects of the Strategy, accounting for progress made in the implementation of Pillar IV in furthering the goals of the Strategy presents a daunting challenge. Since 2008, the Secretary-General has issued biennial reports on the work of the UN system under each pillar of the strategy, including an annex documenting Strategy implementation efforts reported by member states and regional and subregional organizations.<sup>4</sup> These reports, along with the Counter-Terrorism Committee’s global implementation surveys, offer a useful review of individual efforts and achievements in relation to Strategy implementation, such as those of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Yet, these only scratch the surface of UN efforts to achieve the aims of Pillar IV, focusing more on measures to ensure the protection of human rights and the rule of law while combating terrorism rather than as the fundamental basis for combating terrorism. In countries with strong rule of law-based and rights-respecting criminal justice systems, a focus on the former may be appropriate in curbing the tendency toward exceptional and extralegal responses to terrorism. In most national contexts, however, particularly in low-income, fragile, and conflict-affected countries, an emphasis on the latter is essential. If criminal justice systems are incapable of providing fair, impartial, and rights-respecting justice and security services generally, their ability to do so effectively in the context of countering terrorism is rightfully questionable. Therefore, efforts to enhance national criminal justice capabilities “to ensure respect for human rights for all and the rule of law” contribute de facto to rights-respecting, rule of law-based criminal justice capacity to effectively combat terrorism.

### **Reinforcing Cooperation with Reciprocity: Overcoming Architectural Obstacles**

Although UN system efforts on countering terrorism were highlighted in the Secretary-General’s 2013 report on strengthening and coordinating UN rule of law activities, a significant disconnect remains between the principal UN counterterrorism actors and their counterparts across the UN system on human rights and rule of law capacity-building activities. For example, the April 2014 report of the Secretary-General included a matrix of UN counterterrorism projects and activities prepared by the UN Counter-Terrorism Implementation Task Force (CTITF). Under Pillar I, the matrix included listings for 88 projects. Although most of these projects could hardly be described as counterterrorism-specific activities, they are nevertheless cited for their potential contribution toward addressing conditions conducive to the spread of terrorism. Indicative of the persistence of a disconnect in the area of human rights and rule of law capacity building, the matrix included only six projects under Pillar IV, all of which appear to be directly counterterrorism related. These policy silos are partially due to a lack of coherence in related coordination at the strategic level.

At a high-level meeting on the rule of law in September 2012, the UN General Assembly called on the Secretary-General “to ensure greater coordination and coherence among the United Nations entities and with donors and recipients to improve the effectiveness of rule of law capacity-building activities.”<sup>5</sup> Just prior to the meeting, the Secretary-General issued a revised terms of reference for the Rule of Law Coordination and Resource Group (RoLCRG), calling for closer engagement with other rule of law-related coordination bodies in the UN system, including the Task Force on Transnational Organized Crime and Drug Trafficking (TFTOCDT),

the Inter-Agency Security Sector Reform Task Force (IASSRTF), and the Inter-Agency Working Group on Disarmament, Demobilization and Reintegration.<sup>6</sup> The principal actors in the UN counterterrorism architecture, in particular the CTITF Office and the Counter-Terrorism Committee Executive Directorate (CTED), are noticeably absent from this group (table 1).<sup>7</sup>

**Table 1. Membership of Selected Entities Across Rule of Law–Related Coordinating Bodies in the UN System**

	Rule of Law Coordination and Resource Group (RoLCRG)	Inter-Agency Security Sector Reform Task Force (IASSRTF)	Task Force on Transnational Organized Crime and Drug Trafficking (TFOCDT)	Inter-Agency Working Group on Disarmament, Demobilization and Reintegration (IAWGDDR)	UN Counter-Terrorism Implementation Task Force (CTITF)
UN Department of Political Affairs (DPA)	✓	✓	✓	✓	✓
UN Department of Peacekeeping Operations (DPKO)	✓	✓	✓	✓	✓
Office of the UN High Commissioner for Human Rights (OHCHR)	✓	✓	✓	✓	✓
UN Development Programme (UNDP)	✓	✓	✓	✓	✓
UN Office on Drugs and Crime (UNODC)	✓	✓	✓	✗	✓
World Bank	✓	✗	✓	✓	✓
CTITF Office	✗	✗	✗	✗	✓
Counter-Terrorism Committee Executive Directorate (CTED)	✗	✗	✗	✗	✓

A core group of UN and international entities are represented across most or all of the coordination bodies noted in the RoLCRG’s new terms of reference, including the UN Department of Political Affairs (DPA), UN Department of Peacekeeping Operations (DPKO), the Office of the UN High Commissioner for Human Rights (OHCHR), the UN Development Programme (UNDP), the UN Office on Drugs and Crime (UNODC), and the World Bank. As it happens, these entities are represented on the CTITF. Engagement on human rights and rule of law and countering terrorism remains a one-way street. The relationship between these actors and the UN counterterrorism architecture does not appear to be based on mutual reciprocity. As the table illustrates, the onus seems to be placed on entities in the broader UN system to plug into and contribute toward the realization of counterterrorism objectives under the coordination of the CTITF. Conversely, the CTITF Office and other principal UN counterterrorism actors are not plugged into the broader policymaking mechanisms in other rule of law–related coordination groups. This contributes to a siloing of policy and programming perspectives in the area of counterterrorism-related, human rights and rule of law–related engagements and detracts from deeper and more effective coordination at headquarters and in the field.

### Looking Past 2015

Acknowledging the mutual complementarity of cross-cutting policy agendas is not the same as cooperatively engaging toward the realization of shared goals. Building bridges across the

broader fields of human rights and the rule of law capacity building, in policy and in practice, is imperative when considering progress toward the implementation of Pillar IV and for capitalizing on the Strategy's potential synergies with the post-2015 development agenda. Looking toward the next Strategy review in 2016—the Strategy's 10th anniversary—there is a need to develop deeper linkages between existing counterterrorism-related, rule of law capacity-building activities and the vast array of other human rights, rule of law, and criminal justice capacity-building initiatives and entities within the broader UN system.

The post-2015 development agenda and the Global Counter-Terrorism Strategy are not all-encompassing plans to address the world's development and security challenges, nor are they intended to be. Their successful implementation depends on efforts across a vast spectrum of interconnected policy agendas. Effective rule of law-based criminal justice responses to terrorism cannot be achieved absent effective rule of law-based criminal justice. While not directly referenced in the Strategy, impartiality and political noninterference in the courts, mechanisms to protect the public from violations of rights and ensure due process, and access to competent legal representation are crucial areas of capacity for ensuring effective rule of law-based criminal justice responses to terrorism. These criteria are among those being considered for inclusion in the post-2015 development agenda.<sup>8</sup> By more effectively integrating into the broader UN peace and security architecture, the UN counterterrorism regime will be able to better coordinate complimentary efforts across the broader spectrum of UN rule of law-related activities. In addition, reciprocal engagement will allow for a more accurate accounting of how a broader range of initiatives indirectly contribute to Strategy implementation.

In order to capitalize on and support more effective Strategy implementation and support the achievement of the human rights and rule of law objectives of the post-2015 development agenda, we make several recommendations.

For the CTITF Office

- 1. Reexamine the existing approach of monitoring entities and programming contributing to the implementation of Pillars III and IV of the Strategy.** The existing approach of monitoring UN activities to support Pillars III and IV is built on the assumption that rule of law and rights-respecting criminal justice measures to combat terrorism can be promoted independently from efforts to strengthen effective, accountable, and rights-respecting criminal justice systems generally. A more holistic and balanced stocktaking methodology for UN activities that contribute to Pillars III and IV would highlight the synergies and gaps and reduce redundancy across a wide range of rule of law-related capacity-building activities across the UN system.
- 2. Organize a working group on the post-2015 development agenda to review the agenda's potential linkages and other implications for ongoing Strategy implementation efforts.** Although there has been extensive debate on and international support for the inclusion of governance-, justice-, the rule of law-, and violence reduction-related objectives in the post-2015 development agenda, the UN counterterrorism community has not actively participated in these dialogues. It may be worthwhile to examine potential synergies between the forthcoming post-2015 development framework and efforts to implement the Strategy. Such a dialogue could

take place under the auspices of the CTITF in the form of a working group or a series of informal consultations and roundtables with relevant stakeholders.

- 3. Develop a definite set of indicators and benchmarks to more concretely measure progress in implementing the Strategy.** Justice and security development practitioners are constantly striving to develop appropriate metrics to gauge not only the outputs, but also the outcomes and impact of their activities, programs, and strategies. Until now, reviews of the Strategy have primarily focused on inputs and outputs. The next Strategy review will mark a decade since its unanimous adoption in the General Assembly. A more rigorous system to measure outcomes and impacts of related efforts over the past decade would more clearly demonstrate the added value of the Strategy at the next review.

For the wider UN system

- 1. Build stronger linkages between the UN counterterrorism regime and the UN peace and security architecture.** Stronger engagement among the UN counterterrorism regime, including the RoLCRG, the IASSRTF, the TFTOCDT, and the Focal Point for Police Justice and Corrections, would serve in widening the pool of expertise on criminal justice technical cooperation and capacity building, build consensus on good practices and ways of working with national criminal justice actors, and foster a more integrated approach to peace and security.
- 2. Create a coordination mechanism that includes all UN actors working on criminal justice–related technical assistance and capacity building.** A range of interagency coordination mechanisms at UN headquarters attempt to build a more integrated approach for UN system support for different aspects of rule of law capacity building. However, no single mechanism brings together those entities directly engaged in providing technical assistance and capacity-building support to criminal justice systems. Such a group would serve to streamline program practices, identify synergies and gaps in the provision of integrated criminal justice capacity-building assistance, develop shared goals, and reduce overlap among relevant stakeholders at headquarters and in the field. These efforts would be fed into the Secretary-General’s report to the General Assembly. A stocktaking of criminal justice–oriented assistance being delivered by the UN system would be a useful first step in bringing together the relevant stakeholders.

## About the Global Center

The Global Center on Cooperative Security works with governments, international organizations, and civil society to develop and implement comprehensive and sustainable responses to complex international security challenges through collaborative policy research, context-sensitive programming, and capacity development. In cooperation with a global network of expert practitioners and partner organizations, the Global Center fosters stronger multilateral partnerships and convenes key stakeholders to support integrated and inclusive security policies across national, regional, and global levels.

## Endnotes

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<sup>1</sup> UN General Assembly, *The United Nations Global Counter-Terrorism Strategy Review*, A/RES/66/282, 12 July 2012, para. 2.

<sup>2</sup> *Ibid.*, paras. 1, 3–8.

<sup>3</sup> *Ibid.*, para. 4.

<sup>4</sup> See UN General Assembly, *United Nations Global Counter-Terrorism Strategy: Activities of the United Nations System in Implementing the Strategy; Report of the Secretary-General*, A/62/898, 7 July 2008; UN General Assembly, *United Nations Global Counter-Terrorism Strategy: Activities of the United Nations System in Implementing the Strategy; Report of the Secretary-General*, A/64/818, 17 June 2010; UN General Assembly, *United Nations Global Counter-Terrorism Strategy: Activities of the United Nations System in Implementing the Strategy; Report of the Secretary-General*, A/66/762, 4 April 2012; UN General Assembly, *United Nations Global Counter-Terrorism Strategy: Activities of the United Nations System in Implementing the Strategy; Report of the Secretary-General*, A/68/841, 14 April 2014.

<sup>5</sup> UN General Assembly, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1, 30 November 2012.

<sup>6</sup> Ban Ki-moon to members of the Policy Committee, memorandum on Decision No. 2012/13, 11 September 2012, <http://www.refworld.org/pdfid/52ca7a2f4.pdf>.

<sup>7</sup> To help address this gap, the Global Center on Cooperative Security held a meeting on strengthening the multilateral rule of law and terrorism prevention efforts with representatives of multiple UN entities, including the Rule of Law Unit in the UN Secretary-General's office, the Counter-Terrorism Committee Executive Directorate, the UN Counter-Terrorism Implementation Task Force, member state missions, and experts from civil society. For a summary of these discussions, see Center on Global Counterterrorism Cooperation, "Strengthening Multilateral Rule of Law and Terrorism Prevention Efforts," April 2013, [http://globalcenter.org/wp-content/uploads/2012/12/13Apr12\\_RoL\\_Prevention\\_MeetingNote\\_Final.pdf](http://globalcenter.org/wp-content/uploads/2012/12/13Apr12_RoL_Prevention_MeetingNote_Final.pdf).

<sup>8</sup> Global Dialogue on the Rule of Law and the Post-2015 Development Agenda supported by the governments of Denmark, Mexico, Senegal, and Turkey, and the UN Development Programme, December 2013, <http://www.worldwewant2015.org/node/417693>.

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