



Law and Policy Framework Developments Since 2005, Relating to EU Counter-Terrorism

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1. Introduction

Briefing paper 13 reflected on the lack of thorough, independent and critical evaluation of all aspects of EU counter-terrorism policy, and provided a broad update to some of the issues in counter-terrorism. Briefing papers 14a and 14b will provide a more detailed examination of the legal and policy framework developments (14a) and policy initiatives and issue areas (14b) that have arisen or developed in the last five years. Both papers will include recommendations to policy-makers. In order to provide a context to these recommendations, it is necessary to provide a brief introduction reflecting on where Quakers are coming from, in terms of the Testimony to Equality and the concerns about human rights which result from this.

Quakers believe in that of God - or the good - in everyone.

'In every homeless child, every refugee, every criminal or outcast, every worker or preacher, those in authority and those without it, there is a child of God, one who is precious and loved.' - QF&P 26.50¹

All people are fundamentally and essentially equal and they must be treated by the law and public policy in that way.

'At the centre of Friends' religious experience is the repeatedly and consistently expressed belief in the fundamental equality of all members of the human race. Our common humanity transcends our differences.' - QF&P 23.36²

Quakers believe that people have an intrinsic capacity to change - for the better and for the worse - and this must be reflected by legal processes and remedies.

¹ Quaker Faith and Practice, 26.50, Janet Scott, 1980, [online], accessed September 2011, available at <http://qfp.quakerweb.org.uk/qfp26-50.html>

² Quaker Faith and Practice, 23.36, Meeting for Sufferings' Statement of Intent on Racism, 1988, [online], accessed September 2011, available at <http://qfp.quakerweb.org.uk/qfp23-36.html>

'In personal relationships and in the broader context of community and international affairs a positive response to aberrant or destructive behaviour through reconciliation, restitution and reparation may take longer but it will be more likely to encourage the good in all parties, restore those who are damaged, reduce resentment and bitterness, and enable all those involved to move towards fuller integration.' - QF&P 23.102³

It is these beliefs that ground the approach taken in our examination and critique of the EU's responses to terrorism. This briefing paper, 14a, will look at the legal and policy framework developments, such as the Lisbon Treaty and Stockholm Programme, which provide an important background to EU counter-terrorism policies. Briefing paper 14b will go into more detail about some of the policy initiatives, issue areas and the main causes for concern.

2. The Context

The common public perception of terrorism is at odds with the reality of the threat.

Figure 1: Number of failed, foiled or successfully executed attacks in EU Member States, and their affiliation

	Year 2006 ⁴	Year 2007 ⁵	Year 2008 ⁶	Year 2009 ⁷	Year 2010 ⁸
Separatist	424	517	397	257	160
Left-wing or anarchist	55	21	28	40	45
Right-wing	1	1	0	4	-
"Single issue"	-	1	5	2	1
Religiously motivated	1	4	1	1	3
<i>Total no. attacks</i>	498	583	515	294	249

Whilst terrorism has seemingly, both in the popular media and in the minds of the public, become increasingly synonymous with Islamist terrorism, religiously motivated terrorism is in fact rare. In 2010, of a total of 249 failed, foiled or successfully executed attacks in EU Member States, only three were religiously motivated: in 2009, only one (of 294); in 2008, only one (of 515). The public misconception of the nature of the threat is in part a result of media distortion, which fails to pick up on the reality of the scope and affiliation of terrorist

³ Quaker Faith and Practice, 23.102, Six Quakers, 1979, [online], accessed September 2011, available at <http://qfp.quakerweb.org.uk/qfp26-50.html>

⁴ 2007 Europol terrorism situation and trend report (TE-SAT), [online] accessed September 2011, available at <https://www.europol.europa.eu/sites/default/files/publications/tesat2007.pdf>

⁵ 2008 Europol terrorism situation and trend report (TE-SAT), [online] accessed September 2011, available at <https://www.europol.europa.eu/sites/default/files/publications/tesat2008.pdf>

⁶ 2009 Europol terrorism situation and trend report (TE-SAT), [online] accessed September 2011, available at https://www.europol.europa.eu/sites/default/files/publications/tesat2009_0.pdf

⁷ 2010 Europol terrorism situation and trend report (TE-SAT), [online] accessed September 2011, available at https://www.europol.europa.eu/sites/default/files/publications/tesat2010_0.pdf

⁸ 2011 Europol terrorism situation and trend report (TE-SAT), [online] accessed September 2011, available at <https://www.europol.europa.eu/sites/default/files/publications/te-sat2011.pdf>

offenders in Europe. There is also a prevalent notion that it would somehow disrespect the victims of terrorist attacks to point out their relatively tiny impact, compared to, say, climate change, poverty deaths or state-sponsored military action.

In 2006, the Council of Europe noted that:

“governments are taking advantage of the fear generated by the terrorist threat to impose arbitrary restrictions on fundamental freedoms. At the same time, they are paying no attention to developments in other areas that claim many more lives, or they display a disconcerting degree of passivity. We need only cast our minds to human trafficking or the arms trade: how is it possible, for example, that aeroplanes full of weapons continue to land regularly in Darfur, where a human tragedy with tens of thousands of victims is unfolding?”⁹

It is also worth bearing in mind that the most recent large-scale terrorist attacks in Europe, (those carried out in Norway¹⁰ on 22 July 2011 which killed 77 people), were undertaken as a militant, far-right, xenophobic and fundamentalist Christian attack on Islam, ‘cultural Marxism’ and multiculturalism. Prior to the identity of the perpetrator being revealed as a Norwegian man, the speculation in mainstream (English-speaking) media, from television news channels to right-wing tabloids and left-wing liberal broadsheets, claimed “expert speculation” indicated it was almost certainly a jihadist, Islamist or Al-Qaeda associated cell, that Norway was the selected target because of its reprinting of Danish cartoons depicting the Prophet Mohammed, its role in Afghanistan, its relatively light security etc, etc. Quickly demonstrated to be as off the mark as it was possible to be, one commentator noted that such fact-free conjecture should have us replacing the word “expert” with “guesser” and the word “speculate” with “guess”. Furthermore, the disturbing tendency to ‘assume it’s the Muslims until it starts to look like it isn’t’ is all too easily digestible by the general public, as it is simply ‘following a narrative lead they’ve been fed for years, [of] the overall depiction of terrorism as an almost exclusively Islamic pursuit.’¹¹

The following analysis should be considered in the light of this mismatch between reality and popular perception of terrorism in Europe.

3. The Lisbon Treaty

The Lisbon Treaty, which was signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009, following several years of negotiation about institutional issues, amended the Treaty on European Union and the Treaty Establishing the European Community (now called the Treaty on the Functioning of the European Union). It provides a legal framework and new tools designed to meet future challenges and to respond to citizens’ demands. The Lisbon Treaty has given the EU a considerably greater role in counter-terrorism and security, and introduced a number of new provisions in the field of Justice and Home Affairs (JHA). These included changes in the legal framework and the legislative

⁹ Marty, Dick, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, Explanatory memorandum*, 7 June 2007, Council of Europe Report, Committee on Legal Affairs and Human Rights, [online] accessed August 2011, available at http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf

¹⁰ Norway is not a Member State of the European Union, but as well as being continentally European and a member of the Council of Europe, Norway is a member of the EU’s Schengen area of borderless travel and has various agreements with the EU relating to counter-terrorism.

¹¹ Brooker, Charlie, ‘The news coverage of the Norway mass-killings was fact-free conjecture’ in *the Guardian*, 24 July 2011, [online] accessed September 2011, available at <http://www.guardian.co.uk/commentisfree/2011/jul/24/charlie-brooker-norway-mass-killings?INTCMP=SRCH>

procedures applicable in several areas, resulting in more areas being subject to Qualified Majority Voting (QMV) and "co-decision" (now called the 'ordinary legislative procedure') rather than the consultation procedure (which required unanimity in the Council and only consultation of, rather than co-decision by, the European Parliament (EP)).

The main areas which move from unanimity to QMV in the Council and the ordinary legislative procedure include:

- Part of the rules on short-stay visas and residence permits (Art. 77 TFEU);
- Legal immigration (Art. 79 TFEU);
- Judicial cooperation in criminal matters (Art. 82-86 TFEU);
- Eurojust (Art. 85 TFEU);
- Non-operational police cooperation (Art. 87 TFEU);
- Europol (Art. 88 TFEU);
- Civil protection (Art. 196 TFEU).¹²

Many of these areas are relevant to counter-terrorism. The Lisbon Treaty also created a new Council Standing Committee on Internal Security (COSI). This restructuring of Council preparatory bodies in the JHA area also included the creation of the Working Party on Terrorism: a single, overarching working group to deal with all cross-cutting aspects of terrorism and to consolidate the different terrorism-related action plans.¹³

The EU's role in the commercial elements of security has also evolved. For example, the EU's latest Framework Programme of Research includes a security component, which enables government departments and the security industry 'to seek funding from the EU's €1.4 billion budget (2007-2013) available for collaborative research and development investment in the fields of security and counter-terrorism'.¹⁴

The EU's new Defence and Security Procurement directive was scheduled to be transposed into law in August 2011. The implementation of this directive is a cause of some concern, because of the commercialisation of military responses and technology-focused conceptions of security.

The Lisbon Treaty's creation of the European External Action Service also provides new opportunities to better coordinate traditional external policy instruments and internal instruments, which also has implications for the area of counter-terrorism.¹⁵

¹² For more information, see GENERAL SECRETARIAT OF THE COUNCIL OF THE EU - BACKGROUND - The Lisbon Treaty's impact on the Justice and Home Affairs (JHA) Council: More co-decision and new working structures. December 2009, [online] accessed July 2011, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf

¹³ Committees like COSI, and the Working Party on Terrorism, have representation from each of the Member States and the European Commission and are established to deal with the technical and legal detail of matters within its terms of reference prior to decisions being made on them at ministerial level.

¹⁴ Rosemont, Hugo (2011): 'A quiet revolution?' in Counter Terror Business - the business magazine for security technology, [online] accessed July 2011, available at <http://www.counterterrorbusiness.com/features/74-counter-terrorism-strategy/485-a-quiet-revolution>

¹⁵ For more information, see COUNCIL OF THE EUROPEAN UNION Brussels, 17 January 2011, 15893/1/10 REV 1, NOTE from EU Counter-Terrorism Coordinator to Council / European Council on EU Action Plan on combating terrorism [online] accessed July 2011, available at <http://register.consilium.europa.eu/pdf/en/10/st15/st15893-re01.en10.pdf> p. 2

4. The Stockholm Programme

The Stockholm Programme, adopted by the Council in December 2009, sets out the EU priorities for the **area of justice, freedom and security** for the period 2010-14. Following on from the Tampere and Hague programmes, the Stockholm Programme explicitly aims to promote 'an open and secure Europe serving and protecting citizens'. With respect to terrorism, the Stockholm Programme says that:

- '[T]he threat from terrorists remains significant and is constantly evolving in response to both the international community's attempts at combating it and new opportunities that present themselves. We must not lower our guard against these heinous criminals;
- Respect for the Rule of Law, fundamental rights and freedoms is one of the bases for the Union's overall counter-terrorism work. Measures in the fight against terrorism must be undertaken within the framework of full respect for fundamental rights and freedoms so that they do not give rise to challenge. Moreover, all the parties concerned should avoid stigmatising any particular group of people, and should develop intercultural dialogue in order to promote mutual awareness and understanding;
- The Union must ensure that all tools are deployed in the fight against terrorism while fully respecting fundamental rights and freedoms.'¹⁶

It also reaffirms the prevent, protect, pursue, and respond strategy and calls for a reinforcement of the prevention strand, as well as reaffirming the importance of the role of the EU Counter-Terrorism Coordinator.

Notably, the Stockholm Programme calls upon:

- 'Member States to develop prevention mechanisms, in particular to allow the early detection of signs of radicalisation or threats, including threats from violent, militant extremism;
- the Commission, the Council and Member States to improve initiatives to counter radicalisation in all vulnerable populations on the basis of an evaluation of the effectiveness of national policies. Member States should identify best practices and specific operational tools to be shared with other Member States. New areas of work could include integration and the fight against discrimination;
- Member States, government institutions and the Commission, together with the civil society, to enhance their efforts and cooperate even more closely, especially at local level, in order to understand all the factors underlying the phenomenon and to promote strategies that encourage people to give up terrorism. To that end, a network of local professionals should be set up and networks for exchanging practices on prevention should be developed'.¹⁷

Furthermore, the Programme stresses the importance of better understanding the methods used for dissemination of terrorist propaganda, including on the internet. The need to develop work on aviation and maritime security, along with threat analysis, and special emphasis on targets such as urban mass transit and high speed rail networks, as well as energy and water infrastructures, is also highlighted. The Stockholm Programme specifically calls on the Commission to present a proposal for the use of Passenger Name Record (PNR)

¹⁶ Official Journal C 115 of 4.5.2010, *The Stockholm Programme - An open and secure Europe serving and protecting citizens*. Section 4.5 Terrorism. [online] accessed July 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XG0504%2801%29:EN:NOT>

¹⁷ Stockholm Programme, *ibid.* Section 4.5

data to prevent, detect, investigate and prosecute terrorism and serious crime.¹⁸ The Commission is also called upon to promote increased transparency and responsibility for charitable organisations with a view to ensuring compatibility with Special Recommendation (SR) VIII of the Financial Action Task Force (FATF)¹⁹; and to examine the possibilities to track terrorist financing within the Union.²⁰

Amnesty International expressed concern in response to the Stockholm Programme's terrorism section, over the lack of *specific reference* to international human rights law, relying on only brief references to complying with international standards. Amnesty noted that:

“the key to fighting radicalization and preventing attacks lies in the importance of leaving no human right protection gaps when combating terrorism. Despite the fact that preventing radicalization and attacks are identified priorities for EU action, the connection to human rights law is never made properly.

There is also no mention of human rights in relation to the question of financing terrorism, despite the reports by the Council of Europe and the case law of the European Court of Justice condemning the existing EU system of blacklists for failing to respect the rights of defence. The Stockholm Programme should commit to action on reforming the blacklist systems of the EU to ensure the systematic respect of the right to be heard, the right to an independent review mechanism and to an effective judicial remedy.”²¹

5. The EU strategy for combating radicalisation and recruitment to terrorism

This strategy has three main targets:

- to disrupt the activities of the networks and individuals who draw people into terrorism;
- to ensure that the voices of mainstream opinion prevail over those of extremism, and;
- to promote democracy, security, justice and opportunity for all.

The work streams within this (and countries leading on them) include:

- a) **media and strategic communication**, including pro-active communication with people in third states having Muslim majorities as well as with Muslim communities within the EU (UK), and Imam training (Spain);
- b) **disengagement and de-radicalisation**, particularly among young people, to develop tools that can help give individual young persons long-term support and advice needed to break with (and stay out of) extremism (Denmark), increasing the capacity of public

¹⁸ For more details on PNR, see EUROPEAN COMMISSION, Brussels, 2.2.2011, COM(2011) 32 final, 2011/0023 (COD), Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. {SEC(2011) 132 final} {SEC(2011) 133 final}

¹⁹ FATF Special Recommendation VIII: Non-profit organisations. Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused: (i) by terrorist organisations posing as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

See [online] accessed July 2011, available at: http://www.fatf-gafi.org/document/22/0,3746,en_32250379_32236920_43757718_1_1_1_1,00.html

²⁰ Summarised from the Stockholm Programme, *ibid.* Section 4.5.

²¹ Amnesty International EU Office, *Amnesty International briefing on the future Stockholm Programme*. Brussels, July 2009

- authorities and civil society in the prevention of terrorism, e.g. project COPPRA on community policing preventing radicalisation and terrorism (Belgium);
- c) **Check the Web**, (EU-wide) stemming the use of the internet in radicalization and recruitment (examined below, in 'The Internet and Counter-Terrorism' section);
- d) **Alliance of civilizations**, UN project focusing on the need to tackle the social roots of extremism and polarization, e.g. 'British Muslim media network' (UK), conflict resolution training and education about social and religious issues to journalists (Pakistan), media training for opinion-makers (Arab countries);
- e) **European Network of Experts on Radicalisation**.²²

6. European Network of Experts on Radicalisation (ENER)

ENER is an independent and multidisciplinary network of leading experts on radicalization, set up in 2008, and supported by the European Commission as part of the preventive strand of counter-terrorism policy. ENER aims to deepen understanding of violent radicalisation and extremism that leads to acts of terrorism, in order to enhance counter-terrorism and preventative approaches being pursued at EU and Member State levels.²³

ENER has reported a shift in academia away from overarching grand explanations of what causes violent radicalization, towards a renewed focus on the *processes* of and routes into violent radicalization. These processes and routes are seen to involve:

*"the non-mechanistic yet complex and concurrent interaction of religious, social, historical, and psychological factors which operate at individual, group and pan-social levels."*²⁴

ENER has identified the main challenges, with respect to developing strategies and supporting approaches to deal with the threat of terrorism, as relating to:

- **Research which informs decision making and policies driven by Member States and at European level.**

More research is needed into:

- the 'disengagement' phase (the most poorly understood and least researched) and in the prevention of initial involvement, as it is in these areas that practical counter-terrorism initiatives could become very effective;
- socialisation processes and the multiple pathways thereof;
- the *routes* into violent radicalization - how an individual engages in a specific route that leads to terrorist acts - profiling routes however is the only kind of profiling worth pursuing - profiling individuals and their presumed associated qualities has no future in serious analyses of either the terrorist or the pathways to radicalisation in which they engage. Studying profiles when looking at the terrorists overshadow the dynamics that shape and support the development of the terrorist. As a consequence, practical avenues for policy interventions are obscured.
- the role of the individual as a 'consumer of propaganda', especially in the context of conflict and on the internet;

²² This section is summarised from COUNCIL OF THE EUROPEAN UNION Brussels, 17 January 2011, 15893/1/10 REV 1, NOTE from EU Counter-Terrorism Coordinator to Council / European Council on EU Action Plan on combating terrorism [online] accessed July 2011, available at <http://register.consilium.europa.eu/pdf/en/10/st15/st15893-re01.en10.pdf> p. 3-8

²³ For more information, see ENER website, [online] accessed July 2011, available at <http://www.ec-ener.eu/home>

²⁴ Fiaz, Rokhsana, *Presentation by Rokhsana Fiaz ENER Director to the EESC at a Public Hearing on EU Counter-Terrorism Policy*, 9 Feb 2011

- 'virtual' communities, in response to the growing importance of the internet in the process of radicalization - moving from current focus of 'content' to 'who' gets involved;
- the rise and impact of New Right movements and single issue extremist;
- the 'free rider / lone wolf' phenomenon, especially how they cement traction in wider civil society;
- recidivism - relapsing into terrorist activities.

There is also a need for more collaboration in research, particularly between practitioners and academics. Measuring the effectiveness of policies and intervention is important, although there may be limits to the effectiveness of metrics developed to do so. Finally, because of the practical challenges to change the 'push' factors (*i.e.*, the broad socio-political conditions) that give rise to violent radicalisation and terrorism, counter-terrorism programmes may be more effective in concentrating on addressing the 'pull' factors, which are narrower, more easily identifiable, and specific to particular groups and contexts.

- **The requirements *from* policy practitioners operating in this area.**

Practitioners need to recognise their role in supporting individuals whom they have identified as having traction within civil society, and to create support structures around those individuals. Cultures within counter-terrorism institutions need to 'loosen up', as they frequently impede innovative development and design of policy and interventions that seek to combat radicalisation and recruitment.

- **Facilitating the engagement of civil society.**

Civil society should be understood as a social ecology which operates at multiple levels and tiers. There is value in community-based partnerships, enabling civil society to act as a 'buffer' to the appeal of violent radicals. Integration of the involvement of civil society into policy responses is also needed. As is research into the role of civil society in undermining the street credibility of the violent radicals, and in supporting de-radicalisation efforts and recidivism rates.²⁵

The work of ENER is certainly a positive step in the Prevent strand of CT policy, focusing more on engagement and understanding than merely counter-narratives, propaganda and controlling the ways and means by which people can come into contact with radicalizing materials. At a public hearing on CT policy, the head of ENER, Rokhsana Fiaz, noted that there is an emerging consensus amongst experts on radicalization, and a consequent recognition that there is too much poor quality research being disseminated. It was therefore noted that one challenge for ENER is to create strong filtering mechanisms of such poor quality research. Whilst there is no doubt that some research may be methodologically weak, spurious or lacking in credibility, coherence or logical robustness, QCEA would be concerned if such a filtering mechanism were allowed to become a means of censorship or the self-perpetuation of a single hegemonic "expert" view.

²⁵ This list of challenges has been paraphrased from Fiaz 2011, *ibid.*

7. Victims of Terrorism

Since the entry into force of the Lisbon Treaty, the EU has an explicit competence to legislate on the rights of victims of crime. The Stockholm Programme states that victims of terrorism 'need special attention, support and social recognition,' and called for an integrated and coordinated approach to victims of crime and an examination of how to improve legislation and practical support measures.²⁶

The European Union has devoted 11 March, the anniversary of the 2004 Madrid-Atocha train bombings, to remembering all victims of terrorist attacks in Europe and elsewhere in the world. On 11 March 2011, a statement by the EU Justice Commissioner, Viviane Reding, said that whilst lives lost cannot be brought back, 'the EU can strengthen the rights of victims and their families to help them take part in proceedings or receive the support they need. The criminal justice system is often not sensitive to victims' needs'.²⁷ The Commission followed this up with a 'victims' package' on 18 May 2011, which aims to ensure a minimum level of rights, support and protection for victims across the EU, no matter where they come from or live. The package contains a series of measures that address the quality of treatment that victims receive in the aftermath of crime and during the criminal proceedings that follow. These measures aim to ensure that victims receive the same minimum standard of treatment, including non-discriminatory access to justice, in all EU Member States, irrespective of their nationality or country of residence.²⁸

The European Network of Associations of Victims of Terrorism (NAVt) is another way in which the EU has attempted to address the issue of victim-awareness. NAVt aims 'to stimulate trans-national co-operation between associations of victims of terrorism and enhance the representation of victims' interests at European Union level'.²⁹ It receives funding from the European Commission's Directorate-General for Justice, Freedom and Security.

María Lozano, the director of NAVt, has argued that whilst all counter-terrorism policies must comply with human rights, they should nonetheless focus, first and foremost, on the human rights of victims. Otherwise, she argued, victims suffer two-fold - 'trying to protect the human rights of terrorists could undermine the victim's mental health and dignity'.³⁰

Whilst it is a positive step to ensure that victims of crime, including terrorism, are given appropriate support, both psychological and financial, there is a worrying thread in Ms Lozano's attempt to elevate the human rights of victims above those of perpetrators. Human rights, by their very definition, are fundamentally equal - it is impossible to put the human rights of some above the human rights of others. There cannot be a hierarchy. Empathy for, and outrage at, the immense suffering that victims of terrorist crimes arbitrarily face, can be best served not by treating the perpetrator as somehow sub-human, with a lower level of human rights, but by looking at the role of victims in restorative justice and conciliation.

Restorative justice (RJ) is 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for

²⁶ Summarised from Stockholm Programme, *ibid.* Section 2.3.4.

²⁷ MEMO/11/153, Brussels, 11 March 2011, 'Day of Remembrance of Victims of Terrorism: Joint statement of Vice-President Viviane Reding and Commissioner Cecilia Malmström'

²⁸ Summarised from Europa Press Release, IP/11/585 'European Commission ensures better protection of crime victims'. Brussels, 18 May 2011, [online] accessed July 2011, available at

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/585&format=HTML&aged=0&language=EN&guiLanguage=en>

²⁹ NAVt [online] accessed July 2011, available at <http://www.europeanvictims.net/>

³⁰ María Lozano, the director of NAVt, speaking at the EESC Public Hearing on the EU Counter-Terrorism Policy, Brussels, 9 February 2011

the future.³¹ QCEA believes that restorative justice in the context of terrorist crimes, as in the context of other crimes, has a significant role to play and can actually address the problem of victims not being seen as part of the process of justice. There is an emerging body of work on restorative justice in the context of terrorist crimes.³²

“The perception of restorative justice is to understand crime first of all as harm done to people and communities. It implies an inherent concern for victims’ needs and their role in the criminal justice system and encourages offenders to understand the harm and the consequences of their behaviour. A further aim is that the offender accepts his responsibility and tries to repair the harm done to the victim.”³³

There is no single definition of a ‘victim’ in the context of a terrorist attack, but rather several different kinds of ‘victim’:

‘Primary victims are those who directly suffered harm [physical and/or psychological] from the terrorist attack, including those who experience property damage (economic loss) due to violent acts. The group of *secondary victims* consists of dependants or relatives of the deceased and first responders to acts of terrorism. Lastly, the distinguishing feature of terrorism is fear and this fear is stimulated by threats of indiscriminate and horrifying forms of violence directed against ordinary people everywhere. Discussing the full scope of the consequences of terrorism therefore means discussion of the impact on this wider group, frequently termed either *tertiary or vicarious victims*’.³⁴

Research has suggested that restorative justice practices, like victim-offender mediation, conferencing, circles and victim impact panels, have significant potential, in some cases, to meet the needs of these different kinds of victims. The applicability of restorative justice for terrorist crimes has been assessed by reflecting on other forms of serious violent crime, including hate crime. Research findings indicate that:

- Victim-offender mediation in cases of serious violent crime reveal that the most decisive element of an encounter between victim and offender is communication, the need for information, and the need to gain some sense of closure.
- Most of the victims experienced these meetings as powerful and healing.
- For victims who do not want to engage in a direct face-to-face meeting with the offender, indirect victim-offender mediation is a possible alternative to communicate through an intermediary with the offender.
- If the victim cannot meet the offender, because (s)he is unknown or dead, victim impact panels offer victims a forum where they can tell their story to an offender who is linked to the victim by a common kind of crime. In cases of terrorism, this could be a member of the same terrorist group or other representatives. Such

³¹ Edgar & Newell (2006), *Restorative justice in Prisons*, p. 11, in QCEA’s 2011 report ‘The social re-integration of ex-prisoners’, Chapter 13, ‘Restorative justice and prisoner reintegration’ p. 107, [online] accessed September 2011, available at <http://static.qcea.org/wp-content/uploads/2011/05/rprt-reintegration-full-en-may-2011.pdf?9d7bd4>. This report, and QCEA’s work on restorative justice, provides a general introduction to the ideas behind restorative justice and different models and contexts in which it used, and is not specifically related to terrorist crimes.

³² For example, see *Restorative Justice Online*, and the entries relating to terrorism, [online] accessed September 2011, available at http://www.restorativejustice.org/research/article_search_results?title_boolean=AND&all_fields=terrorism. There are also some interesting testimonies in the Forgiveness Project’s ‘Stories from Combatants for Peace’ section of their website, [online] accessed September 2011, available at <http://theforgivenessproject.com/stories/combatants-for-peace-stories/>

³³ European Forum for Restorative Justice, *Victims of Terrorism: Towards European Standards for Assistance. Executive Summary of the Literature Review*, June 2008. Project promoted by the European Forum for Restorative Justice in cooperation with the International Victimology Institute Tilburg and with the support of the Catholic University of Leuven, the Centre for the Study of Terrorism and Political Violence and Victim Support the Netherlands. p. 12 [online] accessed September 2011, available at <http://www.euforumj.org/readingroom/Terrorism/DesVictExecSummary.pdf>

³⁴ Distinction of different types of victim taken from European Forum for Restorative Justice, *ibid.* p. 4

methods have been used in RJ programmes in the context of the Northern Ireland conflict.³⁵

The impacts on wider groups - or 'tertiary victims' - from the fear generated by terrorist attacks, indicate that a restorative justice response is needed at the community and the societal-level. There has been some research into this area, focusing on situations that have wider impacts comparable with terrorist offences, including large-scale conflict situations and inter-group violence.³⁶

Research findings indicate that restorative justice practices are possible in the context of terrorism, although there will be some limits. They also indicate that there is a significant need for the area to be explored more fully. QCEA recommends that the European Institutions and EU Member States commit themselves to supporting this kind of research and to taking the results from it into account. QCEA also recommends exploration into how the experiences of victims of terrorist crimes could (in some cases) be brought into programmes for engagement with people at risk of becoming terrorist offenders. In sum, as one practitioner has aptly put it;

"RJ meetings cannot, on their own, redress all the effects of terrorism... But even if it is one tool in the box, RJ still has a contribution to make..."

"Terror is renounced not just in the refusal to endorse war, but in every act of human kindness and decency."³⁷

8. Recommendations

With respect to the legal and policy developments examined above, QCEA recommends that:

- Official documents should make explicit reference to the legal basis for particular human rights, in European treaty and case law, as well as international law. This is important in order to leave no room for ambiguity or interpretation and to make a clear statement that the EU has every intention to meet these legal obligations, and to follow up where they are not met. Implicit reference is not enough.
- The Prevent strand, whilst repeatedly affirmed as the priority area where more action needs to be taken, is still not, in reality (in terms of the number of projects and funding), prioritized. The broader aspects of prevention, i.e. social, economic and cultural equality and inclusion, are still largely neglected, or relegated as a problem only in third countries. This must be rectified for any long-term and sustainable approach to countering terrorism, especially given the likelihood of increasing pressures towards conflict in the future. Here, we refer to trends and issues including growing global economic inequality, resource scarcity, climate change and the creation of environmental refugees. These are issues that may leave people with so little stake in ordered society, in such dire plight, and facing such asymmetry of position, that they are prepared to take up arms or commit acts of terrorism. The illegitimacy and immorality of an act does not mean that the issue it is purportedly committed in the name of does not need addressing. The enormity of the task of creating a just and sustainable world cannot change the fact that this is the only viable long-term solution to the threat of

³⁵ Summarised from European Forum for Restorative Justice, *ibid.* pp. 12-13

³⁶ Summarised from European Forum for Restorative Justice, *ibid.* pp. 12-13

³⁷ Marshall, Christopher D. *Terrorism, religious violence and restorative justice* in, Gerry Johnstone and Daniel W. Van Ness, eds., 'Handbook of Restorative Justice' (2007). Cullompton, Devon: Willan Publishing. pp. 372-394. Citation originally taken from 'Restorative justice and victims of terrorism' [online] accessed September 2011, available at

<http://www.euforumrj.org/readingroom/Terrorism/RJ.pdf>

terrorism. No amount of surveillance and control can fully protect us from the threat of terrorism, for it takes no more than the unpredictable act of one, armed, individual. Nor is an Orwellian world of surveillance and control the kind of society we wish to live in.

- The creation and work of ENER is a positive step, and their recommendations should be taken on board by decision-makers. One note of caution however is that when filtering out poor research, appropriate mechanisms are in place to ensure this does not become a form of censorship.
- The provision of appropriate support for victims of terrorism is important. Rhetoric that attempts to elevate the human rights of victims above those of perpetrators is however unhelpful and incorrect, because human rights, by their very definition, are fundamentally equal - there can be no hierarchy. Policy-makers should consider the use of restorative justice practices, in some cases, and promote more research into how restorative justice can be applied to terrorist offences.