How the Global Counterterrorism Forum Can Become More Human Rights Compliant (Part I)

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Introduction

The Global Counterterrorism Forum (GCTF) was set up in 2011 as a multilateral, informal platform of 30 Members working to support and catalyze the implementation of the United Nations (UN) Global Counter-Terrorism Strategy, the UN Secretary-General's Plan of Action to Prevent Violent Extremism and relevant UN Security Council Resolutions. In the first decade of its existence, the GCTF has produced numerous good practice documents on cutting-edge topics related to counterterrorism (CT) and preventing and countering violent extremism (P/CVE), often addressing emerging topics long before the UN. The GCTF prides itself on being committed to involving external partners, such as non-member countries,

international organizations, civil society, members of academia and the private sector in its various activities, and thereby encouraging greater collaboration and the sharing of expertise, experiences and good practices.

However, in recent years, the GCTF has increasingly faced criticism, especially from the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter UN Special Rapporteur), on its role in contributing to soft law creation, its failure to meaningfully and consistently involve civil society and human rights experts in its document development, as well as its lack of sufficient commitment to human rights.

The following post outlines the main criticisms directed at the GCTF, concerning its procedures of document creation, the alleged lack of human rights compliant approaches and accountability in its Framework Documents, and the concrete language they use. The post will then list recommendations that the GCTF could implement in the short and longer term to address these challenges, building on some of the findings of the 2021 report entitled 'The First Decade of the Global Counterterrorism Forum: Monitoring, Evaluating and Looking Forward'(hereinafter M&E Report), to which the present author contributed. The post will argue that it is possible for the GCTF to adapt and become more inclusive and human rights compliant while preserving its informal nature and consensus-based decision making.

Main Challenges Facing the GCTF

The 2011 Political Declaration establishing the GCTF explicitly stated the importance of respecting human rights while countering terrorism and recognized that they are essential to a successful counterterrorism effort. This commitment was further reiterated almost a decade later, in the GCTF's 2020 Ministerial Declaration. Respecting human rights in CT and P/CVE has gained more attention within the GCTF since the UN Special Rapporteur published her report entitled 'Promotion and protection of human rights and fundamental freedoms while countering terrorism' in 2019. Since then, the criticisms voiced by the Special Rapporteur have been echoed by many others in the human rights community. These criticisms, in general, are focused around three main issues:

1. The process of document creation within the GCTF lacks transparency and the involvement of civil society and human rights experts is insufficient and inconsistent.

Many in the human rights community raised concerns about the lack of transparency surrounding the process by which GCTF Framework Documents are developed. The GCTF has a strict process of developing documents that are, ultimately, endorsed by Members at the annual Ministerial Plenary Meeting. These Framework Documents are not legally binding, but are widely used, not only by the governments of GCTF Members, but also by others outside the Forum, and often influence the outputs of various UN organs and entities. GCTF good practices are produced in order to inform and guide governments in developing

their own policies, to shape bilateral or multilateral capacity-building efforts or to share expertise with civil society and non-governmental organizations (CSOs and NGOs). To this end, non-member countries and organizations, as well as different UN bodies, are invited to take part in the consultation process surrounding the creation of GCTF Framework Documents.

However, concerns have been raised whether the strict, consensus-based operational procedures of the GCTF allow for the meaningful involvement of civil society actors and human rights experts. Non-member countries and organizations have to be admitted to meetings where documents are developed by the co-chairing members of the given Working Group under which the document is developed. During a two-week long "silence procedure", GCTF Members can exclude countries, organizations or individuals from the list of non-members to be invited. This process results in a certain number of pre-approved "usual suspects" who are regularly invited to GCTF meetings, while it excludes possible new names. The findings of the M&E Report suggest that the same applies to experts from GCTF member countries: an overreliance on technical experts on terrorism from ministries of foreign affairs results in a lack of inclusion of expertise on human rights issues and international law.

2. GCTF Framework Documents, in general, lack accountability for a rule of law and human rights compliant approach and carry with them the possibility of soft law creation.

The GCTF prides itself on its informal and apolitical nature, allowing it to respond quickly to emerging CT and P/CVE challenges and to swiftly develop Framework Documents to address them. This informal character and consensus-based decision making does enable the Forum to "stay ahead of the curve" with regards to new developments in the field. Often compared to the slow, bureaucratic workings of the UN system, the GCTF operates with a minimal footprint, comprised of a small Administrative Unit (staffed by less than ten people), five Working Groups and a handful of Initiatives. This light, informal structure means that documents are developed faster than they would within the UN system, but it also results in the creation of good practices that "have not always been grounded in agreed international standards." Though these documents do contain the obligations to respect human rights and the rule of law, this language is generally very vague.

The GCTF harbors a close relationship with the UN and as a result, on occasion, its documents have influenced UN outputs; soft law norms thus becoming formal and binding legal frameworks. An often cited example is the GCTF's The Hague–Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighters Phenomenon which played a crucial role in the development of UN Security Council Resolution 2178 (2014), adopted only a day after the GCTF memorandum was published. Another example is the UN Counter-Terrorism Executive Directorate's (CTED) Technical Guide to the Implementation of Security Council Resolution 1373 (2001) and Other Relevant Resolutions of 2017, "which consistently references GCTF good practice documents as

assessment benchmarks." However, while the UN Global Counter-Terrorism Strategy has a strong human rights component, the GCTF has no structural commitment to human rights protections. Therefore, this process of converting soft law norms into binding legal frameworks not only undermines UN procedures, but also the informal, non-binding nature of the GCTF's processes themselves, given that these may not only lead to the development of non-binding GCTF documents, but in the longer term to the creation of hard law.

3. Certain GCTF Framework Documents use unclear language and definitions that are not recognized under international law. Some contain recommendations and good practices that have not been previously examined from a human rights perspective and/or can have serious consequences in violating human rights.

The GCTF swiftly taking up issues that are not discussed in other international fora often also means that its Framework Documents may contain recommendations and good practices that have not been previously examined from a human rights perspective. An example is the Counterterrorism Watchlisting Toolkit. The Toolkit has been criticized for not providing an explanation for the need of watchlists in the first place, while it "uncritically exports the flawed U.S. watchlisting system as a standard for the rest of the world to follow, without recognition of its serious problems." In addition, it is argued that "it fails to take seriously the adverse human rights effects of watchlisting," and has been deemed fundamentally problematic from a human rights perspective.

Similarly, the recommendations outlined in the GCTF's Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context have been criticized by CSOs and academia for legitimizing administrative measures that might abuse or limit human rights and fundamental freedoms, by "provid[ing] a stamp of approval of a multilateral body for promoting internal administrative restrictions", saying that "under the guise of best practices, GCTF provides the space for abusive practices." The Zurich-London Recommendations on Preventing and Countering Violent Extremism and Terrorism Online have received a somewhat similar criticism. The document contains a set of recommendations highlighting the importance of so-called Internet Referral Units (IRUs) in countering violent extremism online, while failing to acknowledge that the use of IRUs has not been "thoroughly examined from a human rights or rule of law perspective."

A number of GCTF Framework Documents have also been criticized by the human rights community for their use of unclear language and terms that have not been previously defined under international law. An example is the previously mentioned The Hague–Marrakech Memorandum (for the use of the term "foreign terrorist fighters") and the Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism (for the use of the term "violent extremism"). It can be argued that this is problematic for multiple reasons, one being that using "opaque and deeply contested" terms can allow for their abusive application and as a result the adoption of a broad range of measures in relation to these terms, some of which might not be in respect of human rights

or the rule of law. The second is that these undefined, contested terms can then make their way into legally-binding legislation as a result of the soft law creating function of the GCTF mentioned in the previous subsection.

Part II of this post will argue that it is possible for the GCTF to adapt to become more inclusive and human rights compliant while preserving its informal nature and consensus-based decision making.