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Reconciling National Security with the Rights of the Child

An Analysis of Radicalized Asylum-Seeking Children in Finland

Candidate number: 9017

Submission deadline: 1 December

Number of words: 17 954



Table of contents

1	INTRODUCTION	1
2	GENERAL LEGAL FRAMEWORK	3
2.1	National Security	4
2.2	The Rights of the Child.....	5
2.3	Refugee Law	6
 PART I – RADICALIZED CHILDREN: FROM CONFLICT TO POST-CONFLICT REHABILITATION		
3	CHILDREN: A NEW AND EMERGING THREAT TO NATIONAL SECURITY?	8
3.1	Finland’s Counter-Terrorism Framework.....	8
3.2	Child Terrorists: A Contradiction in Terms?	11
3.2.1	Children as Victims of Terrorism	11
3.2.2	Children as Perpetrators of Terrorism.....	15
3.3	Children, Radicalism and Violent Extremism	19
4	THE RECEPTION OF RADICALIZED CHILDREN SEEKING INTERNATIONAL PROTECTION	20
4.1	The Best Interests of a Child in a Rehabilitative Context	22
4.1.1	Protection	25
4.1.1.1	Non-Refoulement.....	25
4.1.2	Provision	27
4.1.3	Participation	29
4.2	Family Reunification: Fostering National and Human Security	32
4.3	The Status of the Child.....	36
 PART II – RECONCILING SECURITY WITH THE RIGHTS OF THE CHILD		
5	CHILDREN ARE A HETEROGENOUS GROUP	38
5.1	Age	39
5.2	Gender	40
6	SECURITY AND HUMAN RIGHTS: OPPOSING NORMS OR MUTUALLY ENFORCING LAWS?	43
7	CONCLUSIONS AND RECOMMENDATIONS	46
	TABLE OF REFERENCE	48

1 INTRODUCTION

In the past years the world has been shocked with the repeated violent actions of the Islamic State of Iraq and Syria ('ISIS' or 'IS'). What has however been even more shocking is the extent and openness of child recruitment by IS. These children are not only recruited to fight but the *cubs of caliphate* are groomed to be ISIS' future pure soldiers.¹ Meanwhile, the world is currently facing the largest refugee crisis since World War II, with the conflict in Syria being by far the biggest driver of migration.² The United Nations High Commissioner for Refugees (UNHCR) estimates that approximately 25.5 million refugees currently exist worldwide, half of whom are under the age of 18.³ As such, some children, previously having taken part in IS, may now seek belonging elsewhere. To what extent such children will pose a long-term threat upon a receiving State remains largely unknown but, solutions to best cope with the on-going issue are urgently called for.

IS will continue to pose a serious international threat as their values run contrary to the nation-state system,⁴ represented by the United Nations (UN). In fact, IS carries certain State-like characteristics, such as a defined territory, a clear leadership structure and even a constitution-like document released in 2015.⁵ ISIS is therefore a form of a proto-State,⁶ adopting post classicist definitions of jihadism, interpreting it as a permanent state of war, and seeking to export it elsewhere.⁷ Moreover, all Nations, under the UN led system, are bound to promote respect for human rights (HR) in an atmosphere of friendly relations.⁸ IS threatens the realization of such HR as set in the Universal Declaration on Human Rights (UDHR),⁹

¹ M Bloom, J Horgan, and C Winter, 'Depictions of Children and Youth in the Islamic State's Martyrdom Propaganda' (2016) 9 CTC Sentinel 29, 30.

² UNHCR, 'Figures at a Glance' (17 November 2017) <<http://www.unhcr.org/figures-at-a-glance.html>> accessed 17 November 2017.

³ *ibid.*

⁴ Nation-State is a contested term but is generally understood to refer to a State where its citizens share a common national identity. W Connor, 'A Nation is a Nation, Is a State, Is an Ethnic Group...' (1978) 4 *Ethnic and Racial Studies* 377, 379.

⁵ A Van Engeland, 'Statehood, Proto State and International Law: New Challenges, Looking at the Case of ISIS' in J Crawford, A Koroma, S Mahmoudi and A Pellet (eds), *The International Legal Order: Current Needs and Possible Responses: Essays in Honour of Djamchid Momtaz* (Brill Nijhoff 2017) 78-79.

⁶ *ibid.*

⁷ Engeland (n 5) 78-79.

⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 1(2), (3), (4).

⁹ Universal Declaration of Human Rights (adopted 10 December, 1948 UNGA Res 217 A(III)).

International Covenant on Civil and Political Rights (ICCPR)¹⁰ or the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹ and instead, systematically refuses to recognize international law or abide by the international community's values.¹²

The research question of the thesis therefore is: how can the law best respond to and help children, who have previously been radicalized by ISIS, and who are now seeking asylum in Finland? In relation to this, 2 closely connected hypotheses are presented. First hypothesis is that children are both victims and perpetrators of violence, holding agency of their own and as such, may pose a threat to national security (NS). The second related hypothesis is that NS is based on human security (HS) which in turn is the freedom from individual's (fear of) HR violations.¹³ As such, a successful NS strategy to counter-act a potential threat posed by children, calls for the full respect for HR and, more specifically, the rights of the child (RoC).¹⁴ Consequently, this thesis will reconcile NS with the RoC in an effort to counter violent extremism (CVE) among asylum seeking children.¹⁵

A need for further research into children and violent extremism (VE) is called for as the nuances of radicalism are yet to be fully understood and particularly study into children's radicalism is largely underrepresented. Two distinct groups of children can be identified in this regard. First, children who possess Finnish nationality or permanent residency. These children are not refugees and cannot be denied entry into Finland. The second group, and the one this paper will solely focus upon, is the group of children who have previously lived in IS controlled regions, now fleeing the conflict, seeking international protection under article 87

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1973) 993 UNTS 3.

¹² Engeland (n 5) 78.

¹³ Human security takes on an individual, centric approach to security, focusing on people's freedom from want and freedom from fear. It enhances human freedom and human fulfilment through the respect for human rights. UN Development Programme, 'Human Development Report' (1994) 22-25; Commission on Human Security, 'Human Security Now' (2003) <<http://www.humansecurity-chs.org/finalreport/FinalReport>> accessed 17 November 2017, 2-4, 22-24.

¹⁴ A Hirvonen, 'Fear and Anxiety: The Nationalist and Racist Politics of Fantasy' (2017) 28 *Law and Critique* 249, 251.

¹⁵ Radicalization Awareness Network Centre of Excellence, *Child Returnees from Conflict Zones* (November 2016) (Child Returnees) 10-11.

of the Finnish Aliens Act (2004).¹⁶ Such children are asylum seekers. The analysis will centre around Finnish law, in light of European Union (EU) legislation, European Convention on Human Rights (ECHR)¹⁷ and international law. The findings will come to show an underrepresentation of the RoC in Finland. Children face the hard blunt of counter-terrorism (CT) efforts and a policy is needed to specifically address the position of children in a CVE context.

Trajectories in child recruitment into IS and of reintegration outcomes present a gap in literature and a methodological challenge as the complexity of the phenomena of a ‘child terrorist’ has dramatically increased in the past years. As such, this thesis will adopt a ‘law-in-context’ multi-disciplinary research. The main focus is on a legal analysis while simultaneously drawing some supporting knowledge from psychosocial research into children in conflict situations. The sources referred to in this thesis will base itself on the sources of international law contained in article 38(1) of the Statute of the International Court of Justice (ICJ).¹⁸ Therefore, international conventions as well domestic and regional legislation, customary international law (CIL) and general principles of law will be the primary sources used in the thesis. Additionally, reference will be made to books, journal articles as well as relevant news articles, academic papers and reports in order to best understand the complexity of the on-going phenomena of children and terrorism.

2 GENERAL LEGAL FRAMEWORK

De-radicalization and integration of children travelling from conflict regions requires the involvement of a broad range of actors from different fields. Security and immigration fall under the Ministry of Interior (MoI) and the Immigration Office (MIGRI) will be responsible for the asylum process and reception of asylum seekers. In addition to a child’s asylum case, a broad range of actors are involved in a de-radicalization context, ranging from the police, judiciary, community organizations, religious communities, social welfare and child care

¹⁶ Ulkomaalislaki [2004] 301/2004 art 87.

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

¹⁸ Charter of the United Nations and Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 38(1).

services. All actors have a role to play to provide adequate treatment for trauma and enable children to transition to a life removed from violence.

The following paragraphs will lay out the basis of NS, RoC and refugee law (RL) while each will be continuously discussed in greater detail throughout the thesis. On the outset, it is important to highlight that no laws operate in a vacuum but rather are shaped and moulded by the passing of time and the different legislative fields are complementary to one another.

2.1 National Security

Security is a ‘slippery and contested term’.¹⁹ In fact, no exact legal definition on NS exists. In 2009, the Finnish Report on Human Rights claimed the broadening nature of the notion of ‘security’²⁰ and arguably, ever since the 9/11 attacks in 2001, security has been closely connected to the threat of terrorism. The newly published Finnish Strategy on National Security²¹ of 5 October 2017, despite a lack of a legal definition on NS, attempts to provide an up-to-date understanding on what NS currently entails in Finland. NS contains the qualities of the Finnish society which enable people to enjoy the rights and freedoms endowed upon them by the State system. NS requires these rights and freedoms to be enjoyed without criminality, obstructions, accidents or fear caused by national and international phenomena.²² As such, security arguably consists of both physical security from harm as well as the freedom from fear of potential harm.²³ It therefore follows that a basis of NS in HS means putting people at the centre of all State actions;²⁴ making human beings ‘secure in freedom, in dignity, with equality, through the [realization] of their basic human rights’²⁵ as confirmed by article 28 UDHR.²⁶

¹⁹ L Zedner, ‘The Concept of Security: An Agenda for Comparative Analysis’ (2003) 23 *Legal Studies* 153.

²⁰ Finnish Government, *Valtioneuvoston Selonteko Suomen Ihmisoikeuspolitiikasta* (VNS 7/2009vp, 2009) 35.

²¹ Ministry of Interior, *Hyvä elämä – turvallinen arki: Valtioneuvoston periaatepäätös sisäisen turvallisuuden strategiasta* (15/2017, 2017).

²² *ibid* 10-11.

²³ *ibid*.

²⁴ B Ramcharan, *Human Rights and Human Security* (Martinus Nijhoff 2002) 40.

²⁵ *ibid*.

²⁶ UDHR (n 9) art 28; P Niemelä and A Lahikainen, *Inhimillinen Turvallisuus* (Vastapaino 2000) 9-18.

CT legislation and policies on CVE form part of the Finnish NS framework. The Finnish Criminal Code first introduced the crime of terrorism in 2003,²⁷ and a Plan of Action to Counter Violent Extremism (FinCVE) came about in 2006.²⁸ The European Counter-Terrorism Strategy (2005),²⁹ includes a pillar on prevention of terrorism, addressing societal conditions that lead to radicalization. Similarly, the UN Global Counter-Terrorism Strategy³⁰ calls for a holistic approach to combating terrorism, including addressing the root causes of factors conducive to terrorism. Both CT and CVE will be discussed in greater detail in Chapter 3.

2.2 The Rights of the Child

A cornerstone of the law on the RoC is the Convention on the Rights of the Child (CRC)³¹ (1989) and, it has been written into the Finnish Child Welfare Act (2007) (FinCWA).³² A child, according to CRC article 1(1), is anyone under the age of 18 and this is reflected in the FinCWA article 6. However, the FinCWA builds upon the notion of childhood by outlining anyone between ages 18-20 to be youth.³³ Broadly speaking, childhood deserves special care and assistance³⁴ and a child must be afforded necessary assistance to assume their responsibilities in a community.³⁵

The CRC is a cornerstone instrument in the realization of the rights of the child but a child must more generally also enjoy the full body of human rights law. In fact, the CRC repeats many rights that are already applicable to children by virtue of the ICCPR and ICESCR.³⁶

²⁷ Laki Rikoslain Muuttamisesta [2003] 17/2003 chapter 34a.

²⁸ Ministry of Interior, *Kansallinen väkivaltaisen radikalisoitumisen ja ekstremismin ennalta ehkäisytoimenpideohjelma* (15/2016, 2016).

²⁹ The Council of the European Union 'The European Union Counter-Terrorism Strategy' (30 November 2005) 14469/4/05 REV4.

³⁰ UNGA Res 60/288 (8 September 2006) UN Doc A/60/288.

³¹ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (1989) art 1(1).

³² Lastensuojelulaki [2007] 13.4.2007/417.

³³ *ibid* art 6.

³⁴ CRC (n 31) preamble; *ibid* art 1.

³⁵ *ibid*.

³⁶ See for example ICCPR (n 10) art 6, 24; ICESCR (n 11) art 10; S Detrick, *Commentary on the United Nations Convention on the Rights of the Child* (Brill Nijhoff 1999) 713.

Moreover, ICCPR article 24 and UDHR art 2 call for the equal treatment of all children without distinction of any kind.³⁷ This prohibition of discrimination has been transferred into article 8 of the Finnish Non-Discrimination Act.³⁸ Accordingly, a basic starting point in a discussion on the reception of radicalized asylum-seeking children is that *all* children must be treated equally and require special care for the full realization of their rights.

2.3 Refugee Law

The Finnish Aliens Act governs asylum matters in Finland and the framework for the reception of asylum seekers is set in the Reception Law (2011),³⁹ stemming from the EU Reception Conditions Directive (2013).⁴⁰ The definition of ‘refugee’, under article 3(11) and 87 of the Aliens Act bases itself on article 1(A)(2) of the Refugee Convention (‘the 1951 Convention’).⁴¹ Namely, a refugee is any person who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’.⁴² A common policy on asylum, including a Common European Asylum System, is an essential part of the European Union’s objective of establishing an area of freedom and security for anyone legitimately seeking protection in the EU. This policy must be governed by the principle of solidarity.⁴³ Solidarity is a structural principle of international law,⁴⁴ based on a common responsibility of all Nations to share both advantages and burdens of asylum equally and justly.⁴⁵ EU has

³⁷ UDHR (n 9) art 2; ICCPR (n 10) art 24.

³⁸ Yhdenvertaisuuslaki [2014] 1325/2014 art 8.

³⁹ Laki kansainvälistä suojelua hakevan vastaanotosta [2011] 746/2011.

⁴⁰ European Council and the Parliament Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/96.

⁴¹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁴² *ibid* art 1(A)(2).

⁴³ Reception Conditions Directive (n 38) preamble para 2.

⁴⁴ M Virally, ‘Le rôle des ‘principles’ dans le développement du droit international’ in M Batelli and P Guggenheim (eds), *Recueil d’études de droit international en hommage à Paul Guggenheim* (Genève 1968) 542; UN Charter (n 8) chapter VI, VII.

⁴⁵ *ibid*.

further introduced a Qualifications Directive ('QD'),⁴⁶ which too recognizes the definition on a refugee as any person fulfilling the criteria set in article 1(A)(2) of the 1951 Convention. The QD clarifies for Member States (MS) the grounds of granting international protection, ensuring for greater uniformity across Europe. Finally, Dublin III Regulation has been set up,⁴⁷ determining the State that assumes responsibility over an asylum application in Europe.

Article 6 of the Aliens Act broadly lays out the treatment of minors: "In any decisions issued under this Act that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health."⁴⁸ The definition on a refugee does however not distinguish between a child and adult and in principle the same grounds thus apply to both groups. A child will, on basis of his/her age, not automatically be granted asylum. As such, to ensure full respect for the rights of the child and guarantee a child's need for special safeguards, the Asylum Act must be read together with the CRC and FinCWA.

EU continues to struggle to cope with the influx of refugees.⁴⁹ Public opinion across Europe is becoming increasingly divided on the reception of asylum seekers and polarization within societies exacerbates the hardship children experience due to past conflict and forced migration.⁵⁰ The following chapters will therefore examine the challenging relationship between NS and the rights of children seeking asylum in Finland.

PART I – RADICALIZED CHILDREN: FROM CONFLICT TO POST-CONFLICT REHABILITATION

⁴⁶ Council Directive 2004/84/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304/12.

⁴⁷ European Parliament and Council Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180/31.

⁴⁸ Aliens Act (n 16) art 6(1).

⁴⁹ MJ Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004) 256-258.

⁵⁰ *ibid.*

3 CHILDREN: A NEW AND EMERGING THREAT TO NATIONAL SECURITY?

On 18 August 2017 Finland was struck by its first terrorist attack as asylum seeker Abderrahman Bouanane stabbed 10 individuals in Turku, killing 2. Abderrahman was a so-called lone-wolf attacker and he swore his loyalty to IS.⁵¹ The terrorist attack has sparked a new enhanced public debate on the potential security threat caused by migration; questioning the reception of asylum seekers in Finland.

The MoI is in charge of both NS and migration. Thus, asylum matters and security are already at first sight intrinsically connected and both are currently undergoing remodelling in Finland. On 7 September 2017, the MoI discussed the role of prevention, that will have a power of addressing global ‘megatrends’ with potential force for change in the NS of Finland. One of the seven global trends considered is the security inferences caused by immigration.⁵² Factors influencing a sense of security within people in Finland are varied, but the threat of terrorism, as demonstrated by an elevated threat level assessment since June 2017,⁵³ has been high on the national agenda.

3.1 Finland’s Counter-Terrorism Framework

Terrorism has been left universally undefined.⁵⁴ The earliest known attempt to define terrorism under international law was seen in 1937, when the League of Nations adopted the Convention on the Prevention and Punishment of Terrorism (1937 Convention).⁵⁵ The 1937 Convention defined terrorism as ‘criminal acts directed against a State and intended or

⁵¹ Ministry of Interior, *Väkivaltaisen Ekstremismin Tilannekatsaus (3/2017, 2017)* (‘Tilannekatsaus’) 10-11.

⁵² Sisäministeriö, ‘Sisäministeriön strategiassa korostuu yhdessä tekeminen’ (7 September 2017) <http://intermin.fi/artikkeli/-/asset_publisher/sisaisen-turvallisuuden-strategiassa-korostuu-yhdessa-tekeminen> accessed 21 November 2017.

⁵³ Supo, ‘Terrorist Threat Assessment’ (*Suojelupoliisi*, 14 June 2017) <www.suojelupoliisi.fi/counterterrorism> accessed 21 November 2017.

⁵⁴ Sisäministeriö, ‘The Fight against Terrorism is Spearheaded by cooperation between authorities (*Ministry of Interior*)’ <www.intermin.fi/en/police/counter-terrorism> accessed 21 November 2017.

⁵⁵ League of Nations, *Convention for the Prevention and Punishment of Terrorism* (1937); C Ragni, ‘The Contribution of the Special Tribunal for Lebanon to the Notion of Terrorism: Judicial Creativity of Progressive Development of International Law?’ in N Boschiero, T Scovazzi, C Pitea and C Ragni (eds) *International Courts and the Development of International Law* (Asser Press 2013) 671.

calculated to create a state of terror [...]’.⁵⁶ Moreover, one of the most noteworthy definitions on terrorism is that provided by the Appeals Chamber of the Special Tribunal of Lebanon in 2011 where in the case *Ayyash et al.*, the Chamber concluded that, under customary international law, terrorism is an autonomous core international crime at least in the context of peace times.⁵⁷ Likewise, UN Security Council (UNSC), in Resolution 1377 of 12 September 2001,⁵⁸ declares terrorism to be a threat to international peace and security⁵⁹ as complemented by the UN CT Strategy in 2006.⁶⁰ However, in absence of an mutually agreeable international legal definition of terrorism, States are in a position to use their own national characterisations.⁶¹ Therefore, the definition this paper will consider is that under Finnish law.

Chapter 34a of the Finnish Criminal Code,⁶² defines terrorism to be an act ‘with terrorist intent and in a manner, that is conducive to causing serious harm to a State or an international organisation’⁶³ while article 6, Chapter 34a expands on terrorist intent.⁶⁴ A crime of terrorism, under Finnish law, reflects the international and regional instruments binding Finland. Article 6(1),(2) mirrors UNSC Resolution 1566 (2004) paragraph 3⁶⁵, in which UNSC recalls that ‘criminal acts, including against civilians, committed with [...] purpose to provoke a state of terror in the general public [...] or compel a government or an international organization to do or to abstain from doing any act [...] are under no circumstances justifiable’⁶⁶. Similarly, paragraphs (1),(2) reflect the subjective elements of the EU Framework Decision on combatting terrorism.⁶⁷ Article 6(3), criminalizing the intention to ‘unlawfully amend the constitution of a State [...] or cause particularly harm to the [...] social structures of a State’, however provides for a broader basis for Finnish authorities to consider an act as terrorism. The problematic nature can best be described by referring to the original text in Finnish in

⁵⁶ *ibid* 1937 Convention art 1.

⁵⁷ *Ayyash et al* (Interlocutory Decision) STL-11-01/PT/T26 (16 February 2011) para 85.

⁵⁸ UNSC Res 1377 (12 November 2001) UN Doc S/Res/1377 para 5.

⁵⁹ *ibid* para 14.

⁶⁰ UNGA Res 60/288 (n 29).

⁶¹ Final Report Poelgeest Seminar, ‘Counter-Terrorism Strategies, Human Rights and International Law: Meeting the Challenges’ (2007) 54 *Netherlands International Law Review* 571, 574.

⁶² Rikoslaki [1889] 19.12.1889/39 chapter 34a.

⁶³ *ibid* chapter 34a(1).

⁶⁴ *ibid* chapter 34a article 6.

⁶⁵ UNSC Res 1566 (8 October 2004) UN Doc S/Res71566.

⁶⁶ *ibid*.

⁶⁷ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism [2008] OJ L330/21 art 1.

which the term ‘*oikeudettomasti*’ is used and can freely be translated into ‘unjustifiably’. However, who decides what is unjustifiable and not? Consider for example the on-going conflict in Spain: is a referendum in Catalonia an act of terrorism as it fundamentally alters the social structures of Spain? The proper reading of paragraph 3 therefore necessitates reading the law in accordance with well-established international legal standards so as to avoid excessive enthusiasm in the application of counter-terrorism measures.⁶⁸

On May 24 2017, the Pirkanmaa District Court gave its verdict in one of Finland’s largest terrorism case⁶⁹ thus far, in which twin brothers, *A. and D.*, born in 1992, were suspected of involvement in the ISIS Camp Speicher killings in 2014.⁷⁰ The brothers were charged with murder with terrorist intent (article 1(2), 6(1), chapter 34a) and for complicity in murder with terrorist intent (article 6(1)(2), chapter 34a; article 1(1) chapter 21; article 6, chapter 5) as well as for a war crime of killing (article 6 and 5(1)(1) chapter 11; article 4 of APII GC 1949) or alternatively complicity in war crime of killing (article 6 and 5(1)(1)(8), chapter 11; article 6, chapter 5; article 4 APII GC 1949). Four Iraqi witnesses were called to provide testimonies via video links anonymously. The said witnesses were victims or relatives of victims of IS terror.⁷¹ The testimony of the four witnesses was central for the prosecutor’s case as they all identified the brothers. However, anonymity means limitations to the procedural rights of defence to adequately cross-examine a witness. In accordance with ECHR article 6(3)(d), in order to ensure the fair trial rights of the defendant, where the anonymous witness testimony is the sole or main evidence for conviction, sufficient counterbalancing is required. This includes strong procedural safeguards and proper assessment of reliability of the evidence.⁷² Instead, in the present case, the evidence was not sufficiently reliable as the witnesses’ identification of the Iraqi brothers took place 2.5 years after the Camp Speicher incident and as a result, guilt could not be proven beyond reasonable doubt.⁷³ The Iraqi brothers case therefore demonstrates the complexity of prosecution in cases of terrorist crimes committed

⁶⁸ C Martin, ‘Terrorism as a Crime in Domestic and International Law: Open Issues’ in L Van de Herik and N Schrijver (eds), *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges Order* (Cambridge University Press 2013) 639, 656.

⁶⁹ *KO:2017:17/121401* [2017] (KO).

⁷⁰ *ibid* p 3 para 9.

⁷¹ *ibid* p 27.

⁷² *Pesukic v. Switzerland* App no 25088/07 (ECHR, 6 December 2012) para 44; *ibid* p 15.

⁷³ *ibid* p 26; ECHR (n 17) art 6(3)(d).

abroad, particularly in regions controlled by IS, where investigation of a crime can be especially difficult.

Criminal justice responses for acts of terrorism and VE committed abroad will therefore remain rare. This is especially so with regards to children, who in most cases cannot be held criminally accountable due to their young age. Nevertheless, children too play an active role in conflict and the question is therefore raised as to how to best cope with the challenges posed by minors who engage in extremist movements.

3.2 Child Terrorists: A Contradiction in Terms?

The notion of ‘child terrorist’ defies moral senses. Namely, the ‘child’ is perceived as particularly vulnerable, as opposed to the ‘terrorist’ who is regarded as inherently damaging.⁷⁴ Referring to a child as a terrorist delegitimizes his/her actions and enables us to view the child as a criminal rather than a minor in need of special care. Nevertheless, Prime Minister Juha Sipilä reported on 3 September 2017 that recruitment efforts in Finland have taken place in an attempt by IS to particularly radicalize youth,⁷⁵ raising the difficult question on children’s participation in extremist movements.

The pressing question in today’s CT and CVE discourse is whether children can be considered a threat. Only time will tell as to what scale children are truly affected by VE though meanwhile, the time to develop solutions to properly help radicalized children is dire. Children will in time become adults. Thus, ignoring these issues will only worsen the situation when children reach adulthood. In this regard, theory and practice can be derived from the issue of child soldiers but with the caveat that terrorism must be understood as a different, and perhaps a more complex ideological threat, compared to traditional warfare.

3.2.1 Children as Victims of Terrorism

⁷⁴ I Derluyn, W Vandenhoe, S Parmentier and C.Mels ‘Victims and/or Perpetrators? Towards an Interdisciplinary Dialogue on Child Soldiers’ (2015) 15 BMC International Health and Human Rights 2.

⁷⁵ K Karvala, ‘Radikalisoitumiseen kipinä netistä tai moskeijasta’ (*Iltalehti*, 24 September 2017) <http://m.iltalehti.fi/kotimaa/201709242200415437_u0.shtml> accessed 23 November 2017.

The participation of children in armed conflicts has long been a reality and at any given time it is estimated that hundreds of thousands of child soldiers exist worldwide.⁷⁶ However, the legal issue of child soldiers is rarely discussed in the context of terrorist conflict.⁷⁷ As such, there is a lack of a specific discourse afforded to so-called child terrorists.

CRC Preamble states that ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care [...]’⁷⁸. The need for particular care for a child has been repeatedly highlighted in other international instruments as well. The Geneva Declaration of the Rights of the Child of 1924, article 25 UDHR, articles 23 and 24 of the ICCPR and article 10 of the ICESCR all call for special measures to protect childhood and children. Equally, law number 60/1991 of Finland confirms the need for special safeguards for children.⁷⁹

Deriving from the particular vulnerability, and right to special care of children; the legal framework on protecting a child from conflict has also been firmly established in law. Article 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Rome Statue (RS) prohibit the conscription of children under 15 years of age to armed forces, similar to Additional Protocols I⁸⁰ and II⁸¹ to the Geneva Conventions (1949) and article 38(3) CRC.⁸² Finland has however in the 27th International Conference of the Red Cross and Red Crescent in 1999 pledged to support raising the age limit to 18⁸³ and indeed, under Finnish national law the minimum age for conscription is set at 18.⁸⁴ The Optional Protocol to CRC on children in armed conflict (OPAC)(2000) article 4(1) seeks to end military exploitation of children, prohibiting the

⁷⁶ For example, the Ugandan Lord’s Resistance Army comprised almost exclusively of child combatants. PW Singer, *Children at War* (University of California Press 2006) 20.

⁷⁷ M Pasupathi and C Wainryb, ‘Developing Moral Agency in the Midst of Violence: Children, Political Conflict and Values’ in IA Karawan, W Mc Cormak and SE Reynolds, *Values and Violence: Intangible Objects of Terrorism* (Springer 2008) 169,180-182; A LoCierco and SJ Sinclair, *Creating Young Martyrs: Conditions that Make Dying in A Terrorist Attack Seem Like a Good Idea* (Praeger Security International 2008) 32-44.

⁷⁸ CRC (n 31) preamble; Declaration of the Rights of the Child (adopted 20 November, 1959 UNGA 1386)

⁷⁹ Asetus lapsen oikeuksia koskevan yleissopimuksen voimaansaattamisesta sekä yleissopimuksen eräiden määräysten hyväksymisestä annetun lain voimaantulosta [1991] 60/1991.

⁸⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 1125 UNTS 3 (8 June 1977) (AP I) art 77(2).

⁸¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts 1125 UNTS 609 (7 December 1978) (AP II) art 4(3)(c).

⁸² CRC (n 31) art 38(3).

⁸³ JM Henckaerts and L Doswald-Beck, ‘Volume I: Rules’ in International Committee of the Red Cross, *Customary International Humanitarian Law* (Cambridge University Press 2005) 488.

⁸⁴ Asevelvollisuuslaki [2007] 28.12.2007/1483 art 2.

conscription of children under the age of 18 as well as prohibiting the voluntary recruitment of children by non-state armed groups (NSAGs).⁸⁵ In addition, in 1997, the Cape Town Principles on child soldiers⁸⁶ came about, that do not distinguish between those that voluntarily join armies compared to those children that are forcibly recruited as all are protected.⁸⁷ Moreover, the 2007 Paris Principles⁸⁸ reaffirm that child soldiers should primarily be viewed as victims and not perpetrators.⁸⁹ Finally, Finland's initial report of 2004 to CRC, under article 8(1) of OPAC, unequivocally stated that 'children in the midst of international conflicts and civil wars require special protection. Child soldiers, like other children affected by war, are victims.'⁹⁰

It is nowadays also generally accepted that NSAGs, including IS, are legally bound by international humanitarian law ('IHL')⁹¹ and all customary rules applicable to them without simultaneously vesting NSAGs with international legal personality. This has been confirmed in case *Kallon and Kamara* before the Special Court for Sierra Leone.⁹² As such, laws prohibiting recruitment of children bind IS in its entirety. All in all, reading article 8(2)(e)(vii) RS together with article 4(1) OPAC and the Finnish Criminal Code article 5(1)(5), Chapter 11 which provides that any person who 'takes or recruits children below the age of 18 years into military [...] groups in which they are used in hostilities [shall be] sentenced for a war

⁸⁵Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May, 2000 UNGA 263) art 4(1).

⁸⁶ UNICEF, 'Cape Town Principles and Best Practices' (Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Cape Town, 27-30 April 1997) 1.

⁸⁷ *ibid*, definitions.

⁸⁸ UNICEF, 'Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups' (Free Children from War Conference, Paris, February 2007).

⁸⁹ *ibid* art 3.6; S Martinez-Squiers, 'How the Law Should View Voluntary Child Soldiers: Does Terrorism Pose a Different Dilemma?' (2015) 68 SMU Law Review 567, 573-574.

⁹⁰ JS Pictet, *The Geneva Conventions of 12 August 1949: Commentary IV, Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Commentary IV)* (ICRC 1960) 37.

⁹¹ *ibid*; A Sheppard, 'Child soldiers: Is the Optional Protocol Evidence of an Emerging "straight-18" Consensus?' (2000) 8(1) *The International Journal of Children's Rights* 53; S Yun, 'Breaking Imaginary Barriers: Obligations of Armed Non-State Actors under General Human Rights Law - the Case of the Optional Protocol to the Convention on the Rights of the Child' (2014) 5 *Journal of International Humanitarian Legal Studies* 213.

⁹² "[T]here is now no doubt that [Common Article 3] is binding on States and insurgents alike, and that insurgents are subject to international humanitarian law [...] [a] convincing theory is that [insurgents] are bound as a matter of customary international law to observe the obligations declared by [Common Article 3] which is aimed at the protection of humanity". *Kallon, Kamara: Lomé Accord Amnesty* (Decision on Challenge to Jurisdiction) SCSL-04-15-PT- 060 (13 March 2004) paras 45-47.

crime [...]’⁹³ demonstrate the illegality of recruitment of children to NSAGs⁹⁴ and the victimhood of a child in times of conflict.⁹⁵

Prosecutor Bensouda of the International Criminal Court (ICC) addressed the victimhood of child soldiers in her opening statement for the case of Dominic Ongwen.⁹⁶ Bensouda was concerned by the fact that ‘[c]hild abusers consistently reveal that they have been abused themselves as children.’⁹⁷ Nevertheless, the past victimization of a child does not justify nor excuse victimizing others. Bensouda says that ‘each human being’⁹⁸, without explicitly distinguishing between a child and an adult, are all endowed with ‘moral responsibility for their actions.’⁹⁹ However, in practice ICC excludes itself from exercising jurisdiction over any person under the age of 18 years, further supporting the victimhood of children in conflict.¹⁰⁰

Already in 1996, researchers Taylor and Horgan predicted that the deliberate victimization of children could become a major future trend in violence by NSAGs in an attempt to broaden the acceptable limits of terrorism.¹⁰¹ The most disturbing side of such victimization, has indeed been the recruitment of children into terrorist groups, such as IS. Study in psychology highlights child soldiers to be victims of institutionalized child abuse and subjected to in-group socialization processes.¹⁰² Horgan, in his study into child recruitment by IS, describes the use of children by IS to be more than a mere shock factor. Instead, it is the norm.¹⁰³

⁹³ Rikoslaki (n 62) chapter 1 art 5(1)(5); ICRC, ‘Practice Relating to Rule 136. Recruitment of Child Soldiers’ <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule136> accessed 24 November 2017.

⁹⁴ JM Henckaerts and C Wiesener, ‘Human Rights Obligations of Non-state Armed Groups: a Possible Contribution from Customary International Law?’ in R Kolb and G Gaggioli (eds), *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar 2013) 146, 148.

⁹⁵ Henckaerts and Doswald-Beck (n 83) 482-485.

⁹⁶ *The Prosecutor v Dominic Ongwen* ICC-02/04-01/15.

⁹⁷ Office of the Prosecutor, ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of Trial in the Case Against Dominic Ongwen’ (*ICC*, 6 December 2016) <<https://www.icc-cpi.int/Pages/item.aspx?name=2016-12-06-otp-stat-ongwen>> accessed 24 November 2017.

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 26.

¹⁰¹ J Horgan, *The Psychology of Terrorism* (Routledge 2014) 24.

¹⁰² *ibid.* 122.

¹⁰³ J Horgan, ‘The Lost Boys’ (*Centre for Research and Evidence on Security Threats*, 5 July 2017) <<https://crestresearch.ac.uk/comment/the-lost-boys/>> accessed 24 November 2017.

Children are recruited via different pathways, some forcibly abducted¹⁰⁴ while others voluntarily recruit.¹⁰⁵ In 2015, a total of 274 cases of recruitment and use of children by IS in Syria¹⁰⁶ and 19 in Iraq¹⁰⁷ were verified by the UN. Although, the real number of child recruitment is likely to be much higher. What is striking, is the gradual institutionalization of both child recruitment and the in-group socialization of children into IS, turning children from passive bystanders to active participants of the organization through informal social learning.¹⁰⁸ This systematic campaign to lure children in, preying on their vulnerability, supports the victim discourse of so-called child terrorists.

3.2.2 Children as Perpetrators of Terrorism

*“[children as] incapable victims of adults’
abusive compulsion, [...] and without
any accountability,
[...] does not fully represent the
broad range of [children’s]
own perceptions of their role”¹⁰⁹*

In light of the conclusions engendered by the guilt-free victim discourse, what other alternative would better capture the complexity of a child’s experience in IS?¹¹⁰ A victimized child is not always void of capacity for decision-making. Children too possess various degrees of ability to exercise discretion and judgment.¹¹¹ This predicament is increasingly appreciated in light of today’s precarious security arena. Therefore, enhanced recognition of a child’s participation in conflict is needed.

¹⁰⁴ UNSC Res 2225 (18 June 2015) UN Doc S/Res/2225 p 2.

¹⁰⁵ The Lost Boys (n 103).

¹⁰⁶ UN Secretary General, ‘Children and Armed Conflict’ (2016) Un Doc A/70/863 para 149.

¹⁰⁷ *ibid* para. 59.

¹⁰⁸ The Lost Boys (n 103).

¹⁰⁹ Derluyn et al (n 74) p 1.

¹¹⁰ MA Drumbl, *Re-imagining Child Soldiers in International Law and Policy* (Oxford University Press 2012) 94-95.

¹¹¹ *ibid*.

In accordance with the Paris Principle 2.1,¹¹² anyone under the age of 18 is a child soldier.¹¹³ Therefore, this is the basic starting point in any discussion on the perpetrator-hood of a child and the law has been shown, in chapter 3.2.1, to emphasize a child's victimhood in conflict situations. Nonetheless, while the recruitment of children is condemned, the accountability of a child is left for each State to decide. The CRC merely encourages a minimum age of criminal responsibility (MACR) that is not 'too low'.¹¹⁴ Moreover, nothing under Finnish law suggests the inability of a child to commit crimes of terrorism. In fact, the legal basis for accountability of children, over 15-years of age, suspected of terrorist crimes is no different from that of adults.¹¹⁵ In all instances however, a strong emphasis on restorative justice and social rehabilitation is preferred¹¹⁶ and where possible, alternatives to judicial proceedings must be sought.¹¹⁷

The case of Dominic Ongwen is raising existential questions as to the competing narratives of an innocent victim and a guilty perpetrator. Ongwen is charged with the same crimes he himself was a victim to. A strict instrumental rationality of human agency in positioning a child as either as a victim or perpetrator however leaves little space to discuss individuals who blur such boundaries.¹¹⁸ Ongwen fought as a child soldier and gradually became an admired commander, capable of brutal violence. He is currently charged with 70 counts of crimes against humanity and war crimes.¹¹⁹ The case stands in contrast to what ICC has expressed in the case of Thomas Lubanga,¹²⁰ where the lifelong trauma child soldiers are destined to experience was emphasized.¹²¹ In fact, Ongwen's case reflects the complexity of competing

¹¹² The Paris Principles (n 88) 2.1.

¹¹³ Cape Town Principles (n 86) 1.

¹¹⁴ Committee on the Rights of the Child, 'General Comment No 10 on Children's Rights in Juvenile Justice' (25 April 2007) UN Doc CRC/C/GC/10 para 32.

¹¹⁵ Rikoslaki (n 62) art 4.

¹¹⁶ The Paris Principles (n 88) 3.6; Ministry of Interior, *Ehdotus viranomaisten yhteistyön järjestämiseksi toiminnassa taistelualueilta palaajien kanssa* (133/2017, 2017) (Palaajat) 33.

¹¹⁷ *ibid* Paris Principles 3.7; UN, 'Guidelines for the Prevention of Juvenile Delinquency' (14 December 1990) UN Doc A/45/49 (The Riyadh Guidelines).

¹¹⁸ C Biddolph, 'Navigating the Victim/perpetrator Complex At the International Criminal Court: The case of Dominic Ongwen' (*The Organization for World Peace*, 17 December 2016) <<https://theowp.org/reports/navigating-the-victimperpetrator-complex-at-the-international-criminal-court-the-case-of-dominic-ongwen/>> accessed 24 November 2017.

¹¹⁹ Rome Statute (n 100) art 7, 8.

¹²⁰ *The Prosecutor v. Thomas Lubanga Dyilo* (Trial Judgment) ICC-01/04-01/06 (14 March 2012).

¹²¹ Biddolph (n 118).

identities under criminal law.¹²² Nevertheless, in practice, recognizing a dual status of such children, similar to children recruited by IS, is a dilemma unaddressed by transitional justice.

Debates within feminist legal theory may be instructive in understanding the participatory-hood of a child. Feminist scholars have noted that the essentialization of the role of women in conflict has perpetuated stereotypes of women as possessing weak and passive civic roles.¹²³ Women are often viewed as unable victims of male aggression, yet not all women recognize themselves in the unitary image of victimization. By treating female subjects as wholly incapable of self-direction whom the law must rescue, the law may unconsciously recreate stigma.¹²⁴ Equally, the constrained, yet salient capacity of children in circumstances characterized by conflict, must be addressed while simultaneously taking account of the underlying conditions of a child's vulnerability and immaturity.¹²⁵

The question on a child's participatory-hood therefore boils down to agency. In fact, children affected by conflict do not constitute a homogenous group of helpless objects of law but possess agency of their own.¹²⁶ Agency refers to the scope of discretion an individual possesses in a subordinated social situation.¹²⁷ The agency of a child in a conflict setting is also known as the agency of the weak.¹²⁸ However, children's rights experts have oscillated between the competing ideas of protection and autonomy of a child.¹²⁹ This tension is not legal but rather one caused by the different notions of childhood. CRC can be seen as reconciling the two schools of thought of protection versus autonomy of a child. On one hand, children are seen to be in need of special care and safeguards¹³⁰ while on the other hand,

¹²² *ibid.*

¹²³ Drumbl (n 110) 95; K Abrams, 'Sex Wars Redux: Agency and Coercion in Feminist Legal Theory' (1995) 95 *Columbia Law Review* 304.

¹²⁴ *ibid* Drumbl.

¹²⁵ *ibid* 94-95.

¹²⁶ *ibid* 96; A Holwana, *Child Soldiers in Africa* (Penn Press 2005) 4.

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ C Breen, *Age Discrimination and Children's Rights: Ensuring Equality and Acknowledging Differences* (Martinus Nijhoff 2006) 36.

¹³⁰ CRC (n 31) preamble.

children are considered to be autonomous individuals and independent beneficiaries of human rights.¹³¹

Research on psychosocial approaches have shown that children possess a degree of agency and can be held accountable for their acts commensurate to their active involvement, all within a general context of vulnerable offenders.¹³² Such accountability is understood to be geared towards avoiding secondary victimization or re-traumatization.¹³³ Recognizing such agency carries weight beyond judicial accountability as understanding the root causes of a child joining IS or the ability of a child to grasp complex religious ideologies will dictate the appropriate rehabilitative treatment for radicalized children. A child's agency and consequent accountability must however be approached with caution. Can it really be said that a 15-year-old boy, recruited by ISIS, commits violent acts in pursuit of a religious ideology or is the boy rather shaped and moulded by the adult world around him? No certain answer can be given and assessment must always be conducted on a case-by-case basis as to a minor's mental and physical development, and in light of legislative safeguards imposed by CRC. In any event, describing a child as a terrorist continues to pose a paradox and contradiction in terms; juxtapositioning the innocence of childhood with the evil of terrorism.

The need to understand the involvement of children in terrorism should ultimately be emphasized not in terms of what children do but in terms of the identity choices and the cultural forces ISIS offers them. A child is both affected and affects the environment he/she is in.¹³⁴ This relationship is multidimensional and reciprocal.¹³⁵ In a Western model this environment is typically considered to be a family unit. However, for a child in IS, the environment is one defined by conflict. A child has agency to shape and mould his/her environment and to actively and reactively interact with it.¹³⁶ Therefore, the proper question from CVE perspective should focus rather on who the child *is* rather than what the child *does*

¹³¹ R Hinton, 'Children's Participation and Good Governance: Limitations of the Theoretical Literature' (2008) 16 *International Journal on Children's Rights* 285–300; Derluyn et al (n 74) 4.

¹³² Derluyn (n 74) 8.

¹³³ *ibid.*

¹³⁴ C Joyce, O Lynch and A Veale, 'Victims and Perpetrators: A Clinician's Account of Ex-child Soldiers and the Child Development Process in Sri Lanka' in J Argomaniz (eds), *International Perspectives on Terrorist Victimization* (Palgrave MacMillan 2015) 76, 80.

¹³⁵ *ibid.*

¹³⁶ *ibid.* 82.

and de-radicalization efforts must focus on the identity a child familiarizes with.¹³⁷ As children's' identity development is in flux, their reliance on experiences of culture and belonging they associate with and live in is central. Therefore, rehabilitation of a child calls for identity transition away from conflict.¹³⁸

3.3 Children, Radicalism and Violent Extremism

Violent extremism does not always equate terrorism. As FinCVE highlights, 'all acts of terrorism are a form of violent extremism but not all violent extremism constitutes acts of terrorism.'¹³⁹ Possessing radical or extremist views is not a criminal act itself. VE is rather the use of or threat of violence, inciting other to commit violence or promoting violence that is justified by an ideology, such as extreme religious views. Such violence is different from other forms of 'traditional' violence as VE is not only an attack against the direct victims and their family but it is an attack against democracy.¹⁴⁰ Therefore, CVE has been embraced as a theory of its own separate from CT. Both the Finnish Strategy on NS and FinCVE highlight the prevention of VE to be important for ensuring NS and HS in Finland.¹⁴¹

FinCVE highlights the growing inflow of asylum seekers, from conflict regions of Syria and Iraq, as a factor raising the threat of VE.¹⁴² The same concerns have been echoed on a European level as EU Radicalism Awareness Network (RAN) recommended States to implement a policy on identifying children in need of intervention.¹⁴³ Children arriving from Syria are presumed to have experienced efforts of indoctrination from multiple sources and may well have incorporated this ideology in their 'sense of self, their conceptions of community and their perceptions of the west'.¹⁴⁴ This argument bases itself on the assumption that all such children have experienced trauma and may be indoctrinated on this basis alone. This seems to be in line with the idea of institutionalized child abuse by ISIS, victimizing

¹³⁷ Child Returnees (n 15) 11.

¹³⁸ R Punamäki, 'Can Ideological Commitment Protect Children's Psychosocial Well-Being in Situations of Political Violence?' (1998) 67 Child Development 55-69.

¹³⁹ FinCVE (n 28) p 11 para 1.1.

¹⁴⁰ *ibid* 9-11.

¹⁴¹ *ibid* 9.

¹⁴² *ibid* 10.

¹⁴³ Child Returnees (n 14) 3.

¹⁴⁴ *ibid*.

children in conflict. Intervention is therefore key for a successful de-radicalization effort. In fact, Finland has set as one of its long-term CVE goals, the prevention of youth joining VE groups or movements.¹⁴⁵

Accountability has been discussed in detail and forms one branch of intervention commensurate to the child's level of development and maturity though Finnish NS experts have repeatedly highlighted that criminal justice alone will not solve the threats faced.¹⁴⁶ The potential for a child to return to violence and their volatility makes it imperative to study the deeper underpinnings of integration and de-radicalization success in a post conflict context.¹⁴⁷ Children must thus learn the fundamental principles of community living and de-radicalization by nature revolves around a complex series of interrelated processes. In this regard, the area where research is needed is to identify factors contributing to or hindering de-radicalization. This includes policies of integration and the political environment on reception of asylum seeking children.¹⁴⁸ Therefore, the next chapter will move from the discussion on children's participation in IS towards the treatment of asylum seeking children in Finland; identifying areas where main intersecting points between RL, RoC and NS cross.

4 THE RECEPTION OF RADICALIZED CHILDREN SEEKING INTERNATIONAL PROTECTION

The right to asylum and NS have a shifting and complex relationship to one another. Finland has a responsibility to protect its citizens from VE but equally an obligation to comply with HR, RL and IHL.¹⁴⁹ These obligations stem from CIL, applicable to all States and has been clearly established by, for example, the ICJ in *inter alia* the *Nicaragua* case.¹⁵⁰ In addition, Finland is bound by international treaties to which it is party to as laid out in article 34 of the

¹⁴⁵ FinCVE (n 28) 15.

¹⁴⁶ Palaajat (n 116) 19.

¹⁴⁷ A Özerdem and S Podder, *Child Soldiers: From Recruitment to Reintegration* (Palgrave MacMillan 2011) 6.

¹⁴⁸ *ibid.*

¹⁴⁹ Children and Armed Conflict (n 106) para 13.

¹⁵⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 1986 paras 172-201.

Vienna Convention on the Law on Treaties.¹⁵¹ Respect for HR in a NS policy is not only an obligation but also a well-established best practice.¹⁵² As such, the relationship between RL, RoC and NS must be viewed as one of complementarity as both contain mutually reinforcing goals.

The Government's report on NS, released in May 2016, highlighted the shifting security environment globally, as affected by the crisis in Syria, and the refugee crisis as one of the main factors in a decreasing feeling of safety in Finland,¹⁵³ while the new immigration program of 2018 will address the concerns on the increased inflow of immigrants which has nearly doubled in the 21st century.¹⁵⁴ In this regard, concerns may rise on the lack of a harmonious development of the new NS strategy and the immigration program. This is especially so due to hardened asylum laws in past years, suggesting an *over-emphasis* on security, on the expense of HR.

Asylum matters in Finland are governed by the Asylum Act. Children are subjected to the same principal rules and legislation on asylum as adults and children too can be denied international protection (IP). IP means either to be granted refugee status under article 87 or secondary protection¹⁵⁵ under article 88 of the Asylum Act. If IP is not granted, a child can nevertheless be given a continuous residence permit on basis of individual humanitarian grounds, such a child's health or strong ties to Finland.¹⁵⁶ Alternatively, a temporary residence permit, renewable each year, may be granted due to inability to return a child asylum seeker to their country of origin.¹⁵⁷

This chapter resists the temptation to analyse the full scope of Finnish asylum legislation but rather focuses on three topics of particular interest; the best interests of a child in a

¹⁵¹ Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 34.

¹⁵² UNGA Res 64/168 (18 December 2009) UN Doc A/Res/64/168 para 6(f).

¹⁵³ Ministry of Interior, *Sisäisen Turvallisuuden Selonteko* (8/2016, 2016) 11.

¹⁵⁴ Ministry of Interior, *Valtioneuvoston Periaatepäätös Maahanmuuton Tulevaisuus 2020-Strategiasta* (13/6/13, 2013) 6.

¹⁵⁵ Secondary protection is given to individuals who do not meet the criteria on a refugee as laid out in article 1(A)(2) of the 1951 Convention yet cannot be sent back home due to a threat to their life or health in their country of origin. Secondary protection is not given to a child

¹⁵⁶ Aliens Act (n 16) art 52.

¹⁵⁷ *ibid* art 51.

rehabilitative context, family reunification and the status of a child. The chapter builds upon the notion of a child's victim-participatory-hood in IS while shifting focus to a post-conflict context.

4.1 The Best Interests of a Child in a Rehabilitative Context

*All measures to assure the release of children,
their protection and the prevention of
the recruitment of children shall be
determined by the best interests of such children.*¹⁵⁸

The best interests of a child must be considered in all actions affecting a child.¹⁵⁹ The best interests -principle should guide the asylum procedure of a child and be a primary consideration of the asylum decision taken by MIGRI.¹⁶⁰ The principle has been expressly highlighted in the Aliens Act article 6, as well as in article 3(1) of CRC and article 24(2) of the EU Charter of Fundamental Rights.¹⁶¹ The Aliens Act does not define what constitutes best interests of a child nor could it be described exhaustively as it will depend on the particular circumstances of each case.¹⁶² Moreover, ECHR does not oblige the observation of the best interest of a child although the European Court of Human Rights (ECtHR) has incorporated this obligation in its case law. In case *Ignaccolo-Zenide v. Romania* (2000) ECtHR reaffirmed that 'the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child[...].'¹⁶³ The principle thus constitutes one of the fundamental values of the CRC, applied as a dynamic concept and a self-executing principle.¹⁶⁴ The UNSC Res. 2225 stresses that the best interests of a child, together with their needs and vulnerabilities, must be taken account of when planning and carrying out actions

¹⁵⁸ Paris Principles (n 88) 3.40.

¹⁵⁹ CRC (n 31) art 3.

¹⁶⁰ Maahanmuuttovirasto, *Lapsen asian käsittely ja päätöksentekomaahanmuuttovirastossa* (MIGdno/2013/1307, 2010) 1.

¹⁶¹ Charter of Fundamental Rights of the European Union [2012] OJ C326/391 art24(2).

¹⁶² Committee on the Rights of the Child, 'General Comment No 14 on right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)' (29 May 2013) UN Doc CRC/C/GC/14 ('GC 14') para 32.

¹⁶³ *Ignaccolo-Zenide v. Romania* App no 31679/96 (ECHR, 25 January 2000) para 94.

¹⁶⁴ GC 14 (n 162) p 2.

regarding children in armed conflict.¹⁶⁵ Therefore, the need for timely and appropriate rehabilitative assistance to children is vital.¹⁶⁶ The best interests concept pre-dates the CRC as it was already recognized in paragraph 2 of the Declaration of the Rights of the Child (1959) as well as in the Convention on the Elimination of All Forms of Discrimination against Women (1979)¹⁶⁷, articles 5 (b) and 16(1)(d).¹⁶⁸ The Committee on CRC in General Comment No. 14 provides detailed guidelines as to the interpretation and application of the principle, recalling that there is no hierarchy of rights in the CRC and an adult's judgment on the best interests of a child cannot override the rights obtained under CRC. The Committee underlines the concept to be a three-fold principle: a substantive right, a fundamental interpretative legal principle and a rule of procedure.¹⁶⁹

The FinCWA article 4¹⁷⁰ provides guidance as to the realization of the best interests of a child. Nevertheless, the Committee on the Rights of the Child in its Concluding Observations on Finland's fourth periodic report, released in 2011,¹⁷¹ notes with regret the lack of a comprehensive reference to the principle in other Finnish legislation, such as the Aliens Act. Overall, the Committee finds there to be an inadequate understanding of the principle in decisions affecting the child.¹⁷² The legal office of Finnish Refugee Advice Centre (FRAC) noted in its study on the judiciary argumentation of the best interests of a child in court rulings in 2014, concerning asylum seeking children, that out of the 41 rulings before Finnish administrative courts, 30 (70%) did not even mention the best interests of a child. Moreover, the study found that half of the cases where the best interests of a child was mentioned, the principle was dealt with narrowly.¹⁷³

¹⁶⁵ Res 2225 (n 104) p 3 para 2.

¹⁶⁶ *ibid* para 4.

¹⁶⁷ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

¹⁶⁸ *ibid* art 5(b), 16(1)(d).

¹⁶⁹ GC 14 (n 162) p 3; KHO:2017:81.

¹⁷⁰ FinCWA (n 32) art 4.

¹⁷¹ Committee on the Rights of the Child, 'Concluding Observations: Finland' (3 August 2011) UN Doc CRC/C/Fin/CO/4.

¹⁷² *ibid* para 27.

¹⁷³ Pakolaisneuvonta, 'Lapsen Etu Jää Usein Arvioimatta Turvapaikka- ja Perhesidepäätöksissä' (*Pakolaisneuvonta Ry*, 16 March 2015) <<http://www.pakolaisneuvonta.fi/?cid=434&lang=suo>> accessed 24 November 2017.

In case *KKO:2016:65*¹⁷⁴ the Finnish Supreme Court set a precedent by deciding upon the return of a 6 year old child to Belarus, who together with her father had obtained international protection in Finland. The father had unlawfully removed the daughter from Belarus and the question before the Court is whether or not her return to Belarus, would be legal.¹⁷⁵ The importance of the best interest of a child was highlighted as a central principle though not discussed against the facts of the case by the Court. The Court eventually came to rule on the immediate return of the child.¹⁷⁶ The case supports earlier findings of FRAC on a narrow interpretation of the best interests -principle and stands in contrast to CRC Committee GC No. 14 requiring the best interest of a child to be a *primary* consideration in a decision affecting a child. Moreover, removing a young child to a country where they have earlier been recognized to be in a serious risk of facing an imminent risk of persecution¹⁷⁷ does not fulfil article 4(4) of FinCWA on ensuring every child a safe growth environment, including physical and mental immunity.¹⁷⁸

The general weakness in Finland on upholding the best interests of a child therefore leads to consider the relationship between the principle and NS. To explore this relationship, reference can first be made to CRC Committee GC No. 14 where the term ‘concerning’ is explained.¹⁷⁹ The Committee recognizes that all measures by a Government affect children in one way or another.¹⁸⁰ As such, it must be understood that also CT legislation, NS strategies, CVE programs and criminal justice responses require an appreciation of the effect such measures have on a child or a group of children seeking asylum in Finland. Nevertheless, a lack of standardization on what the principle entails in practice, serves as a backdoor for ignorance. Therefore, three mutually complementary pillars, known as the ‘3P’s’ of protection, provision and participation are introduced,¹⁸¹ underpinning and giving detailed content to the overarching principle of the best interests of the child.¹⁸²

¹⁷⁴ *KKO:2016:65* [2016].

¹⁷⁵ *ibid* para 7.

¹⁷⁶ *ibid* para 28.

¹⁷⁷ GC 14 (n 162) paras 36-40; *KKO:2016:65* (n 171) para 1.

¹⁷⁸ FinCWA (n 32) art 4(4).

¹⁷⁹ GC 14 (n 162) para 19-20.

¹⁸⁰ *ibid*.

¹⁸¹ G Van Beuren, *The International Law on the Rights of the Child* (Martinus Nijhoff 1998) 15.

¹⁸² *ibid*; L Alanen and M Bardy, *Lapsuuden Aika ja Lasten Paikka: Tutkimus lapsuudesta yhteiskunnallisena ilmiönä* (Sosiaalhallitus 1990) 10.

4.1.1 Protection

Protection is an indivisible rights in the best interest of a child in accordance with Paris Principle 3.40.¹⁸³ In practice, protection entails removing a child from harm.¹⁸⁴ Harm on the other hand can be physical or emotional and simply put, all children are entitled to a life free from violence and abuse.¹⁸⁵ ISIS recruitment is a form of institutionalized child abuse and recruitment of children into NSAGs is illegal.¹⁸⁶ Thus, children from IS, upon arrival, must receive adequate protection from ISIS violence. Protection needs may be abstract or physical. Abstract protection in a CVE context is to protect a child from extremist propaganda by means of fostering non-violent counter narratives.¹⁸⁷ In some instances, protection is needed from blame as a way of promoting integration through forgiveness. Ishmael Beah, a former child soldier in Sierra Leone, in his biography describes how he was able to recover from his experiences after rehabilitation workers assured him it was not his fault.¹⁸⁸ This may particularly be so for children under the MACR. In other cases, protection needs are physical, protecting a child from violent extremist groups and individuals. This in turns means that obligations of non-refoulement, particularly in instances where a child is not granted international protection under articles 87 or 88 of the Aliens Act, must be properly met.

4.1.1.1 Non-Refoulement

The principle of non-refoulement, under article 147 of the Aliens Act, is the prohibition to send an individual back to a situation where they face a risk of a threat to his/her life or freedom, risk of being subjected to persecution, torture or any other form of cruel, inhuman or degrading treatment.¹⁸⁹ Scholars Lauterpacht and Betlehem have argued that the treaty based norm of non-refoulement enjoys wide and representative State support and stimulates

¹⁸³ Paris Principles (n 88) 3.40.

¹⁸⁴ J Masson, 'Child Protection', in H Montgomery and M Kellett (eds), *Children and Young People's Worlds: Developing frameworks for Integrated Practice* (The Policy Press 2009) 145.

¹⁸⁵ CRC (n 30) art 19.

¹⁸⁶ Horgan (n 101) 122; For example OPAC (n 85) art 4(1), Cape Town (n 86) 1.

¹⁸⁷ I Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (McMillan 2007) 160.

¹⁸⁸ *ibid.*

¹⁸⁹ Aliens Act (n 16) art 147.

consistent relevant practice and as such, is a principle of CIL.¹⁹⁰ However, the exact scope of the principle is subject to on-going scholarly debate.¹⁹¹ In practice, non-refoulement is unconditional under Finnish law and bases itself on article 9(4) of the Finnish Constitution¹⁹² and article 3 ECHR. It has been confirmed by ECtHR in cases *Soering v. UK* (1989)¹⁹³ and *Chahal v. UK* (1996).¹⁹⁴ The right of non-refoulement has been further recognized in the 1951 Convention article 33(1), article 7 of the ICCPR and under article 3 of the Convention Against Torture.¹⁹⁵ The principle is thus a fundamental HR from which no derogation is permitted.¹⁹⁶ Nevertheless, a serious challenge to HR, ever since the years following the 9/11 terrorist attack in USA, has been the questioning by States of the principle of non-refoulement.

The Finnish Supreme Administrative Court (KHO) gave its verdict in decision *KHO:2017:99*¹⁹⁷ on 14 June 2017, concerning the return of A. to the Democratic Republic of Congo. A. was a former child soldier, who spent 4 years (1996-2000) at a child soldier training camp, and had as a result suffered physical effects of torture. The Court highlighted the serious lingering psychological effects A. experiences due to past traumatization as a child, caused by forcible recruitment into a military group at only 11 years-old.¹⁹⁸ KHO, despite some inconsistencies in the applicant's statements, gave A. the benefit of the doubt and upheld the obligation of non-refoulement and considered the issuance of residence permit on basis of individual compassionate grounds to be preferable.¹⁹⁹

¹⁹⁰ E Lauterpacht and D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement' in E Feller, V Türk and F Nicholson, *Refugee Protection in International Law* (Cambridge University Press 2003) 89, paras 196-253.

¹⁹¹ JC Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005) 363.

¹⁹² Suomen Perustuslaki [1999] 11.6.1999/731 ('Finnish Constitution') art 9(4).

¹⁹³ *Soering v. United Kingdom* App. No 14038/88 (ECHR, 7 July 1989) para 91.

¹⁹⁴ *Chahal v. United Kingdom* App. No 22414/93 (ECHR, 15 November 1996) para 74.

¹⁹⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 3.

¹⁹⁶ G Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford University Press 2007) 354; R Wallace, 'The Principle of Non-Refoulement in International Refugee Law' in V Chetail and C Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 417, 435.

¹⁹⁷ *KHO:2017:99* [2017].

¹⁹⁸ *ibid* ch 2.7 para 12.

¹⁹⁹ *ibid*; Aliens Act (n 16) art 52.

A child who may have previously taken part in an extremist movement, cannot be sent back to their country of origin if such a return would lead to re-victimization by a NSAG, such as IS.²⁰⁰ However, the valid question may be raised as to the breadth of the principle as no derogations for NS grounds are permitted under Finnish law.²⁰¹ The *Naseer* case²⁰² in UK, concerned a Pakistani national, who was suspected of planning acts of terrorism, but the UK Government was unable to return him to Pakistan or hold him accountable before a criminal court.²⁰³ It is cases like this, that raise the question on the reconciliation of State obligations of non-refoulement with security. In fact, non-refoulement of children, as discussed by the CRC Committee in its GC No. 6, states that a child shall not be returned to a country ‘where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.’²⁰⁴ This is one of the most expansive definitions on the principle under international law where the risk of ‘irreparable harm’ refers to a broad set of rights, deriving from the 1951 Convention, CRC and OPAC.²⁰⁵ Moreover, the obligation of non-refoulement under CRC, article 37, does not require State perpetration for an act to be considered as torture or cruel or degrading treatment unlike in CAT article 1. In fact, prohibitions under CRC article 37 include unlawful or arbitrary deprivation of liberty,²⁰⁶ such as victimizing children through illegal recruitment by NSAGs.²⁰⁷ Therefore, protecting a child from harm calls for the unequivocal respect for obligations of non-refoulement in accordance with the RoC when such a child is, following a denial of protection under articles 87 or 88 of the Aliens Act, at a substantial risk of recruitment by IS, when returned to their country of origin.

4.1.2 Provision

²⁰⁰ Paris Principles (n 88) 3.40; Committee on the Rights of the Child, ‘Treatment of Unaccompanied and Separated Children Outside Their Country of Origin’ (3 August 2011) UN Doc CRC/GC/2005/6 para 28.

²⁰¹ VM Padmanabhan, ‘To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-refoulement’ (2011) 88 Fordham Law Review 73, 85–89.

²⁰² *Naseer v. Secretary of State for the Home Department*, [2010] No. SC77/80/21/82/83/09 (Special Immigration Appeals Committee).

²⁰³ Padmanabhan (n 201) 75-76.

²⁰⁴ GC 6 (n 200) para 27.

²⁰⁵ *ibid* para 26-30.

²⁰⁶ *ibid* para 27.

²⁰⁷ *ibid* para 28.

Provision of care means having access to resources and services for children to rebuild physically and psychologically. Reception of radicalized children centres around holistically treating children for trauma. It must be delivered in a way so as to engender a coherent counter-narrative to a child's identity in conflict he/she has previously familiarized with.²⁰⁸

Arguably some children have made a seemingly rational choice to radicalize and actively participate in conflicts. Regardless of whether a child of any age volunteers or is recruited, hardship will always follow. This in turn leads to a crucial point on the reception of radicalized children: *all* children from ISIS controlled region must be treated as having been exposed to a varying degree of radicalization efforts.²⁰⁹ In fact, serious negative, long-term implications, may result to children if the particular hardships experienced by children of IS regions are not properly dealt with early on. In other words, failing to help radicalized children can be indicative of such children growing into adult criminals as 'psychological trauma is a long-term condition affecting your mental health.'²¹⁰ The problems may however not appear immediately but in some instances behavioural challenges materialize after several years.²¹¹ Henrik Elonheimo, from the University of Turku, in his study on youth crime came to show that crime risks can already be predicted in childhood as crime and psycho-social problems co-vary and accumulate in a small group of individuals and predictive factors, such as a child's conduct problem and hyperactivity, can be identified that may lead to future youth criminality.²¹²

Psychosocial research on child soldiers has shown that State efforts have typically focused on so-called DD(R)R –programmes²¹³ of disarmament, demobilization, rehabilitation and reintegration, where a heavy emphasis on 'repairing' a child from presumed damaged caused by traumatic experiences is relied upon.²¹⁴ Nevertheless, criticism has followed that focusing on psychological symptomatology has failed to recognize the difficulties children may

²⁰⁸ M Bardy, 'The Three P's of Children's Rights: Protection, Provision and Participation (*International Child and Youth Care Network*, 16 May 2000) <<http://www.cyc-net.org/cyc-online/cycol-0500-threepees.html>> accessed 12 November 2017 part 1.

²⁰⁹ Palaaajat (n 116) 3, 5-6.

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² Henrik Elonheimo, 'Nuorisorikollisuuden Esiintyvyys, Taustatekijät ja Sovittelu' (PhD Theses, University of Turku, 2010) 6.

²¹³ Derluyn (n 74) 6.

²¹⁴ *ibid.*

nevertheless continue to face in areas such as education and mental health due to on-going issues of stigmatization or discrimination.²¹⁵ Stigma in turn derives from the civilian population's reaction to such children; a radicalized child is viewed upon both as a victim but and also a perpetrator, or an ideological supporter, of terrorism.²¹⁶ Chapters 3.2.1. and 3.2.2. have discussed how children can be considered as both victims and perpetrators of violence although, arguably the law emphasizes children's victimhood.²¹⁷ The law on the victimhood of children nevertheless revolves around criminalizing recruitment of children,²¹⁸ instead of fully understanding the nuances of how children are truly victimized both during conflict and at a post-conflict rehabilitation -stage.²¹⁹ As such, the legal understanding of children as victims in times of conflict is problematic from the perspective of post-conflict re-integration efforts where children struggle with the discrimination caused by past images of participatory-hood in ISIS. As such, protecting a child from blame and harm must be achieved through the provision of care where the child's conflict history is properly taken account of.²²⁰

4.1.3 Participation

Participation of a child in ensuring their best interest means to be actively involved in decisions involving their life, in accordance with article 4(6) FinCWA and article 12 CRC.²²¹ The Alien's Act requires children above the age of 12 to be heard and children younger than 12 can be heard if they possess the requisite maturity.²²² Meaningful participation of a radicalized child in their post-conflict rehabilitation efforts is one of the most effective ways

²¹⁵ T Betancourt, R Brennan, J Rubin-Smith, G Fitzmaurice and S Gilman, 'Sierra Leone's Former Child Soldiers: a Longitudinal Study of Risk, Protective Factors, and Mental Health' (2010) 49 *Journal of the American Academy of Child and Adolescent Psychiatry* 606, 607; T Betancourt, J Agnew-Blais, SE Gilman, DR Williams and BH Ellis, 'Past Horrors, Present Struggles: the Role of Stigma in the Association Between War Experiences and Psychosocial Adjustment Among Former Child Soldiers in Sierra Leone (2010) 70 *Social Science & Medicine* 17.

²¹⁶ *ibid.*

²¹⁷ OPAC (n 85) art 4(1); AP II (n 81) art 4(3)(c); Rikoslaki (n 62) chapter 1 art 5(1)(5).

²¹⁸ *ibid.*

²¹⁹ S Amaro, *Crianças Vítimas de Violência: das Sombras Do Sofrimento à Genealogia da Resistência. Uma Nova Teoria Científica* (AGE 2003) 27; Derluyn (n 74) 6-8.

²²⁰ *ibid.*

²²¹ FinCWA (n 32) art 4(6).

²²² Aliens Act (n 16) art 6(2); Committee on the Rights of the Child, 'General Comment No 12 on the Right of the Child to be heard' (20 July 2009) UN Doc CRC/C/GC/12 para 123-124.

to take account of a child's identity in conflict. This in turn recognizes children's agency over their own future, fostering a feeling of security in a child's mind.²²³

Case *KHO:2017:81*²²⁴ confirms that the best interests of the child must be considered as a whole, taking into account a child's individual needs, wishes and opinions. It is central for a decision-maker to find out what outcome is in the best interest of the particular child involved.²²⁵ Therefore, the involvement of a child must result in actual input for the outcome of their case rather than taking the form of 'tokenistic consultation'.²²⁶ The Court had to decide upon the legality of MIGRI's decision on an asylum application where the son of the applicant, aged 13, was not heard. The Court came to rule that hearing a child above age of 12 is the principal rule and any derogations must be narrowly interpreted.²²⁷ In doing so, KHO refers to CRC article 12 and 3(1) as well as article 6(3) of the Finnish Constitution²²⁸ in which children are required to be involved in decisions concerning themselves. The Constitution however does not set any age limit on such participation, suggesting all children should be given a possibility to be involved in actions concerning their own life. The decision to not hear the child was thus contrary to Finnish law.²²⁹ The Court bases this ruling on the inseparable connection between CRC articles 12 and 3(1); linking the right of children to be heard to the realization of the best interests of the child. The two complement each other in a way that is crucial for a fair judicial or administrative decision.

CRC GC no. 12, para 29, emphasizes that a child's ability to express their views will depend, in addition to age, on their support network, past trauma as well as social and cultural expectations. A child's asylum status must also be accounted for as a factor exacerbating a child's vulnerability. This thesis considers the Finnish Aliens Act to provide an inadequate

²²³ T Muukkonen and H Tulensalo, *Kohtaavaa lastensuojelua. Lapsikeskeisen lastensuojelun Sosiaalityön Tilannearvion Käsikirja* (Helsingin Kaupungin Sosiaalivirasto 2004) 67.

²²⁴ *KHO:2017:81* [2017].

²²⁵ *ibid* para 1(2).

²²⁶ M Kellett 'Children and Young People's Participation' in H Montgomery and M Kellett (eds), *Children and Young People's Worlds: Developing Frameworks for Integrated Practice* (Bristol Policy Press 2009) 43, 51.

²²⁷ *KHO:2017:81* (n 224) para 3(2).

²²⁸ Finnish Constitution (n 192) art 6(3).

²²⁹ *KHO:2017:81* (n 224) para 3(5).

framework for the participatory rights of radicalized children.²³⁰ The participatory rights of children, in their post-conflict de-radicalization and integration efforts, is problematized in two distinct ways.

First, age limits on participation must be broken down. The Aliens Act, has set a minimum age on when a child must be heard.²³¹ As case *KKO:2017:81* has highlighted; no age limits are outlined in CRC articles 3(1) and 12 nor in article 24(1) of the Charter of the EU²³² or article 6(3) of the Finnish Constitution. Children of all ages, including toddlers 3-years of age,²³³ are recruited by IS, necessitating proper understanding of the participatory roles and experiences of all children, irrelevant of age. In May 2011, Finland submitted its written reply to the Committee of CRC on its 4th periodic report in which the age limit on the right of a child to be heard was touched upon. Finland held that a child of 12 or older must be heard, while a ‘child younger than this *may* be heard if he or she is mature enough to warrant due consideration of [their] views and wishes.’(emphasis added)²³⁴ MIGRI’s guidelines on the realization of the best interests of a child²³⁵ produce little added guidance as to the participatory rights of children below the age of 12. In fact, the right of a child to be heard is described as ‘not absolute’²³⁶ and ‘challenging from a decision-maker’s perspective’.²³⁷ What is most troubling however is how under the Asylum Act, the right of a child to be heard may be deemed unnecessary when such children arrive with their parents.²³⁸ However, ‘family can be a source of strength or the reason a child is brought up with a violent ideology’²³⁹ further re-instating the need to hear all children. As such, better account should be taken of the changing nature of conflicts through time, and with it the nature of (young) children’s

²³⁰ A Parsons, *Selvitys lapsen edun toteutumisesta turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä* (6, 2010) 78.

²³¹ Aliens Act (n 16) art 6(2).

²³² *KHO:2017:81* (n 224) para 3(4).

²³³ *Palaajat* (n 116) 19.

²³⁴ Committee on the Rights of the Child, ‘Written Replies by the Government of Finland to the list of issues in connection with the consideration of the fourth periodic report of Finland’(16 May 2011) CRC/C/FIN/Q/4/Add.1 para 20.

²³⁵ *Maahanmuuttovirasto* (n 160).

²³⁶ *ibid* chapter 4.1.1.1 para 3.

²³⁷ *ibid*.

²³⁸ *ibid*.

²³⁹ *Palaajat* (n 116) 20.

involvement in them.²⁴⁰ Legislation must meet this challenge.

The second pertinent issue is a lack of agency of children and youth in their post-conflict rehabilitative efforts. The victim-participatory-hood of a child in NSAGs sheds light on not only the victimhood but also the agency children possess in times of conflict. Children are considered capable of being agents of violence and agents of complex religious ideologies in times of conflict.²⁴¹ Yet, trapping children in a protracted state of victimhood in post-conflict rehabilitation efforts, risks overlooking the needs and views of children and the youth.²⁴² The logic of assuming children to be a potential security threat, stands in stark contrast to the lack of agency children are assumed to possess as capable to take part in decisions concerning their own life. Making children bystanders over their own life, chains them in images of victimhood or pathways of survival criminality.²⁴³ Conclusively, children and youth should not be mere recipients of help but must be given the opportunity to meaningfully collaborate in efforts to fully realize both their rights and obligations as children under national and international law.²⁴⁴

4.2 Family Reunification: Fostering National and Human Security

*Recognizing that the child,
for the full and harmonious
development of his or her personality,
should grow up in a family environment[.]*²⁴⁵

Family is ‘the natural and fundamental group unit of society.’²⁴⁶ CRC explicitly refers to family reunification in article 10 and considers it to be in the best interests of a child.²⁴⁷

²⁴⁰ *ibid* para 29-30.

²⁴¹ A Schnabel and A Tabyshalieva, *Escaping Victimhood: Children, Youth and Post-Conflict Peacebuilding* (United Nations University Press 2013) 32-66.

²⁴² *ibid*.

²⁴³ *ibid*; C Väliavaara, Sijoitettu lapsi tunnepyörässä: Menetelmiä ja välineitä lapsilähtöiseen lastensuojeluun (Kopijyvä 2004) 12.

²⁴⁴ C Mollica, ‘Youth Engagement in the Solomon Islands TRC Process’ in R Jeffery (eds), *Transitional Justice in Practice: Conflict, Justice and Reconciliation in the Solomon Islands* (Palgrave MacMillan 2017)171, 193-194.

²⁴⁵ CRC (n 31) preamble.

²⁴⁶ UDHR (n 9) art 16(3).

ECHR article 8 lays out the right to a family life and the ECtHR has on numerous occasions reaffirmed the right of a parent to be reunited with his/her child.²⁴⁸ Moreover, EU Directive 2003/86/EC on the right to family reunification allows for third-country nationals, lawfully residing in a MS, to be joined by family members.²⁴⁹ In case *Keegan v. Ireland* (1994) ECtHR reiterated that the essential object of article 8 ECHR is to protect an individual against an arbitrary action by authorities.²⁵⁰ The respect for family life contains positive obligations for a State in order for the right to be fully effective. However, the Court further notes that a fair balance must be struck between the competing interests of the child with community interests as a whole. The Court therefore reiterates that a State enjoys a margin of appreciation in weighing family reunification right against NS.²⁵¹ In case *Gül v. Switzerland* (1996), ECtHR further came to consider the relationship between article 8 and immigration and held that ‘a State has the right to control the entry of non-nationals into its territory.’²⁵² The obligation of a State to facilitate family reunification is therefore not absolute.

The Finnish Strategy on NS considers family a factor in strengthening HS, which in turn reinforces NS.²⁵³ Nevertheless, family reunification has been hardened in year 2016.²⁵⁴ This is in line with an overall strengthened Finnish immigration policy and is characterized as limiting ‘pull factors’ of immigration into Finland.²⁵⁵ In fact, in 2010, family reunification legislation was already intensified²⁵⁶ and generally, the Finnish understanding on ‘family’ is narrowly construed in global comparison as a family member is only considered to be an adult’s legal spouse, a child or a child’s guardian.²⁵⁷ Therefore, recent amendments to family reunification rights have been a foreseeable continuation of increased security and defence policies ever since the 2009 Report on Finnish Defence and Security with its appraisals of

²⁴⁷ GC 6 (n 200) paras 81-83; CRC (n 31) art 10.

²⁴⁸ *Hokkanen v Finland* App no 25159/94 (ECHR, 23 September 1994) para 55.

²⁴⁹ Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification [2003] OJ L251/12.

²⁵⁰ *Keegan v Ireland* App no 16969/90 (ECHR, 26 May 1994) para 49.

²⁵¹ *ibid.*

²⁵² *Gül v Switzerland* App no 23218/94 (ECHR, 19 February 1996) para 38.

²⁵³ Finnish Strategy on National Security (n 21) 22.

²⁵⁴ Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta [2016] HE 43/2016.

²⁵⁵ *ibid* preamble.

²⁵⁶ Laki Ulkomaalaislain muuttamisesta [2010] HE 549/2010.

²⁵⁷ Aliens Act (n 16) art 37.

international security concerns affecting Finland.²⁵⁸ In February 2016, the Central Union for Child Welfare in Finland released a statement in relation to the legislative amendments in 2016, expressing not only its concerns on the negative effects of limited family unification possibilities on children but also notes with worry that no family or child organization in Finland was invited to comment on the proposed legislative changes. The impact of family reunification restrictions has deep felt effects on children and by not inviting children's rights authorities to express its expert opinion, suggests a security oriented narrative on family unification rights.

Under the current legislation,²⁵⁹ family unifier may only receive their family in Finland once an application is lodged within 3 months, by the family members looking to enter Finland. This application must be lodged at the nearest Finnish Embassy abroad. If an application is not submitted within the time limit, and the unifier has received secondary protection under article 88 of the Aliens Act, then the unifier must prove a secured income. This rule in theory applies to adult and child unifiers alike.²⁶⁰ Case *KHO2014:51*²⁶¹ affirmed that best interests of a child alone does not call for deviating from the requirement of a secured income. In fact, denial of family reunification, leading to a child being separated from his/her parent, is not sufficient grounds to deviate from the main rule. Instead, divergence from the rule, in the best interests of a child, will require pressing individual circumstances.²⁶²

When does a child's right to family unity outweigh a State's interest in ensuring its NS?²⁶³ Family unity is 'an interest with constitutional import'²⁶⁴ while NS is a genuine Governmental interest in keeping the public safe.²⁶⁵ In a way, the right for family unification is a culmination of the shifting and complex relationship that security and HR possess in today's public discourse. In fact, the right to maintain family unity is clearly established under international

²⁵⁸ Ministry of Interior, *Turvallinen ja moniarvoinen Suomi- sisäinen turvallisuus ja maahanmuutto 2020* (25, 2010) 1-10.

²⁵⁹ Aliens Act (n 16) art 114.

²⁶⁰ 'Perheenyhdistäminen' (*Refugee Advice Centre*) <<http://www.pakolaisneuvonta.fi/?lid=137>> accessed 24 November 2017.

²⁶¹ KHO:2014:51 [2014] para 5(5).

²⁶² *ibid.*

²⁶³ K Abrams, 'Family Reunification and the Security State' (2017) 32(2) *Constitutional Commentary* 247, 248.

²⁶⁴ *ibid* 248.

²⁶⁵ *ibid.*

law as CRC recognizes both the child's right to family unity and a right to family reunification.²⁶⁶ Circumstances of conflict are traumatic for a child, no matter whether recruitment was voluntary or forced. When adding also the trauma of forced relocation; the recovery and rehabilitation of a child is at special risk.²⁶⁷ Separating a child from their immediate family will therefore create additional hardship that States must deal with in a 'positive, humane and expeditious manner'²⁶⁸. Based upon this notion, the EU QD requires that EU MS 'shall ensure that family unity can be maintained'²⁶⁹. However, reading it together with the narrow understanding of 'family' under Finnish law²⁷⁰ and the systematic hardening of family reunification legislation, it becomes apparent that not all children benefit of family reunification rights. Family unity rights under Finnish law and the QD are amenable to be applied but also derogated from in a way that ultimately undermines the family unity for all children.²⁷¹

The limitations imposed on family reunification forms one of the clearest examples of how emotion negatively impact decision-making regarding child asylum seekers in Finland; it is a demonstration of politics of fear.²⁷² This means that decision-makers use people's assumptions of danger, in this case the assumption of danger posed by radicalized children, to achieve certain goals under the auspices of NS.²⁷³ The right to family unity, under article 8 ECHR, can be derogated from when such limitation is in 'in the interests of national security'.²⁷⁴ The choices to consistently and determinately harden family unification can indeed be partially explained through a statement made by Finnish politician Eerola in 2016: "family reunification must be made as hard as possible [...] We are currently receiving more people all the time, crumbling down our national security"²⁷⁵. Therefore, while a threat from

²⁶⁶ CRC (n 31) preamble, art 8(1), article 10.

²⁶⁷ EF Abram, 'The Child's Right to Family Unity in International Immigration Law' (1995) 17(4) Law & Policy 397, 398.

²⁶⁸ CRC (n 31) art 10(1).

²⁶⁹ QD (n 45) art 23(1).

²⁷⁰ Aliens Act (n 16) art 37.

²⁷¹ C Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 150.

²⁷² DL Altheide, *Terrorism and the Politics of Fear* (Rowman & Littlefield 2017) 2.

²⁷³ Hirvonen (n 14) 249-50.

²⁷⁴ ECHR (n 17) 8(2).

²⁷⁵ M Rinne, 'Eerola: "Perheenyhdistäminen tehtävä mahdollisimman vaikeaksi – Suomi voisi kerrankin toimia ensimmäisenä"' (*Suomen Uutiset*, 24 January 2016) <www.suomenuutiset.fi/eerola-perheenyhdistaminen-tehtava-mahdollisimman-vaikeaksi-suomi-voisi-kerrankin-toimia-ensimmaksena/> accessed 24 November 2016

abroad may be realized, equating family reunification itself with a threat to NS, is both misleading and stigmatizing upon a child. It may ultimately play into the hands of further conflict. Instead, NS stems from HS and this in turn must root itself in the idea of family unity, when such unity is in the best interests of the radicalized child.

4.3 The Status of the Child

The third and final point of discussion is the status of children seeking asylum in Finland. CRC is universal and belongs to *all* children. Article 2 calls for the respect by States for the rights set forth in the Convention to each child within its jurisdiction without discrimination of any kind²⁷⁶ as '[a]ll human beings are born free and equal in dignity and rights'²⁷⁷. As such, equality is not a mere passive right but necessitates positive measures by State for its realization.

The 2020 Strategy on immigration reports a negative image of native Finns towards immigration,²⁷⁸ where asylum seekers are generally considered as 'outsiders'. This is known as a process called *othering*, a theory commonly used in civil rights and sexual minority discourses. Cultural geographer Crang describes othering as a process where 'identities are set up in an unequal relationship.'²⁷⁹ Discursive psychology considers othering and (de)humanisation to be a process whereby a State actively constructs a reality and delineates groups from one another, assigning the out-group certain characteristics to protect 'us'.²⁸⁰ Othering thus identifies a superior self-group in contrast to an inferior out-group.²⁸¹ An asylum-seeking child, put in the out-group, thus questions the human and national security of a Finn. It is the choice of response to this sense of insecurity which will in itself dictate the achievement of HR for all.

²⁷⁶ CRC (n 31) art 2.

²⁷⁷ UDHR (n 9) art 1; *ibid* art 2.

²⁷⁸ 2020 Strategy (n 154) 8.

²⁷⁹ M Crang, *Cultural Geography* (Routledge 1998) 61.

²⁸⁰ S Kirkwood, 'The Humanisation of Refugees: A Discourse Analysis of UK Parliamentary Debates on the European Refugee 'Crisis' (2017) 27 *Journal of Community & Applied Social Psychology* 115, 116-117; S Reicher, SA Haslam and R Rathm 'Making a Virtue of Evil: A Five-step Social Identity Model of the Development of Collective Hate' (2008) 2 *Social and Personality Psychology Compass* 1313.

²⁸¹ L Brons, 'Othering: An Analysis' (2015) 6 *A Journal of Global Science* 69, 70.

Law HE 78/2009 vp,²⁸² moved the reception of asylum seekers under the responsibility of the MoI. MIGRI operates under MoI's direction. Therefore, currently both the decision making and care giving process falls under the same organ. The absence of the Social and Healthcare sector (SHS) in the reception, integration and treatment of asylum seeking children is therefore concerning. In fact, the latest follow-up report on FinCVE, released in September 2017, mentions as one of its future challenges the involvement of SHS in preventing violent extremism.²⁸³ The active participation of SHS is central yet currently implemented on an individual case basis only.²⁸⁴ RAN Network report on radicalized children has urged States to treat all children arriving as refugees from conflict regions for some degree of trauma. Now, if these children, who are *prima facie* believed to have experienced extreme hardship, do not require the immediate and full support networks of child welfare services then who do? Treating children primarily as asylum seekers hence, subjecting them principally to ever more restrictive asylum policies, strips such children of their main depiction as a child and limits such children's access to rights under the FinCWA. CRC article 2(2) calls for State Parties to ensure that all children are protected against all forms of discrimination on basis of their status²⁸⁵ whereas article 39 calls for States to take 'appropriate measures to promote physical and psychological recovery and social integration'²⁸⁶ of a child victim of armed conflict or of any form of exploitation or abuse.²⁸⁷ Read together, and bearing in mind the principles of non-discrimination, the de-radicalization and recovery of a child is in fact dependant on the status of the child and as such, is at odds with CRC.

Societies become anesthetized to the news on suffering of children, while simultaneously European States are hesitant to welcome more refugees, leading to the exacerbation of the suffering of refugee children stuck in transit countries.²⁸⁸ Concerns on security, stand in the

²⁸² Hallituksen esitys Eduskunnalle eräiden tehtävien siirtämistä Maahanmuuttovirastoon koskevaksi lainsäädännöksi [2009] HE 78/2009vp.

²⁸³ Ministry of Interior, 'Vuosisraportti 2017' (September 2017, 2372017) 18.

²⁸⁴ *ibid.*

²⁸⁵ CRC (n 31) art 2(2).

²⁸⁶ *ibid* art 39.

²⁸⁷ *ibid.*

²⁸⁸ UNICEF, Refugee and Migrant Children Stranded in European Transit Countries Suffer in the Face of Uncertain Future (4 May 2017) <https://www.unicef.org/media/media_95938.html> accessed 24 November 2017.

way of exposing children to their full rights as a child.²⁸⁹ However, the problem does not have to be complicated; these children are not someone else's problem. Instead, better allocation of responsibilities among government departments, local authorities and civil society and as such, better structures for cooperation will create for a more legitimate process where MIGRI is not both the decision maker and care giver of asylum seeking children. It will also create for a more just system, recognizing the special needs of children from IS controlled regions.²⁹⁰ Opponents may however argue for a security risk involved. Nonetheless, considering that NS is built upon HS; ignoring the needs of a child now, othering them and systematically treating them as a threat, will only re-instate in a child's mind a mode of survival through conflict. Ultimately such treatment will only magnify problems later in a child's life.²⁹¹

PART II – RECONCILING SECURITY WITH THE RIGHTS OF THE CHILD

Security and HR have competing interests but share mutual goals. Security does not have to compromise individual rights nor does the respect for the RoC inevitably lead to a weakened security within a State.²⁹² Part II will therefore draw on the theoretical background of a child's dual status as both victim and perpetrator of VE and the particular challenges asylum seeking children face in a rehabilitative context. Chapter 5 will break down the group of children while chapter 6 will consecutively lay out the legal basis on security and HR as opposing norms and mutually enforcing laws.

5 CHILDREN ARE A HETEROGENOUS GROUP

Not all children are alike. Children means anyone under the age of 18²⁹³ and at the outset, it must be re-instated that all children require special care and assistance and no child should be equated with an adult. The reality on children in a CVE framework is however not so

²⁸⁹ Hirvonen (n 14) 50.

²⁹⁰ Maahanmuuttovirasto (n 160) para 1.

²⁹¹ Crang (n 279) 61.

²⁹² UNGA 'Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All' (2005) UN Doc A/59/2005 p 5.

²⁹³ CRC (n 31) art 1(1).

simple.²⁹⁴ This thesis therefore calls for the re-imagination of children and the issue of children's participation in extremism. Traditional 'reflexive'²⁹⁵ responses, stemming from laws on child soldiers, has good intentions but does not fully correspond to the particular challenges posed by VE, as it is both a physical and an ideological threat.²⁹⁶ Therefore, the time is right for something new; a child specific policy on CVE. This in turn will necessitate the disaggregation of experiences of children in situations of terrorist conflict.²⁹⁷ This thesis has identified age and gender as two inalienable and fundamental characteristics, serving as the foundation of children as a heterogenous group.²⁹⁸

5.1 Age

Children of all ages may have been recruited by IS.²⁹⁹ Toddlers as young as 3-years-old are known to have actively participated in IS³⁰⁰ yet the nature of a child's participatory-hood and consequent criminal responsibility may vary on basis of a child's age.

Finnish MACR is set at 15.³⁰¹ CRC GC No. 10 considers a MACR of 15-years to be on a 'commendable level'³⁰². Nevertheless, several European States continue to have a lower MACR; Netherlands has set a MACR at age 12,³⁰³ while UK and Switzerland³⁰⁴ at age 10. In case *T. and A. v. United Kingdom* (1999), ECtHR had to decide upon the fair trial rights, under articles 6(1) and 3 ECHR, of applicants T and A. The two boys killed a 2-year-old toddler at the age of 10, and were subsequently tried in public, with the formality of an adult trial. ECtHR held that while MACR 10 is at the lower end of the scale it does however not

²⁹⁴ FinCVE (n 28) 12.

²⁹⁵ Reflexive responses in this regard means to use 'familiar tools and work them even faster'. Drumbl (n 110) 1-2.

²⁹⁶ *ibid.*

²⁹⁷ Özerdem (n 147) 10.

²⁹⁸ *ibid.*

²⁹⁹ Palaajat (n 116) 19.

³⁰⁰ *ibid.*

³⁰¹ Rikoslaki (n 62) art 4.

³⁰² GC 10 (n 104) para 30.

³⁰³ Wetboek van Stafrecht (Penal Code) [1881] art 77a.

³⁰⁴ Children and Young Persons Act [1933] section 50; Loi fédérale régissant la condition pénaledes mineurs, [2003] art 3(1).

disproportionately differ from other European States.³⁰⁵ The discrepancies in MACR among States, and the wide margin of appreciation afforded to States by the ECtHR, well demonstrate that fixed age limits are (un)reliable predictors of a child's perceived agency to commit crimes.³⁰⁶

Criminal culpability, according to the well-established notion by scholar Hart,³⁰⁷ involves both a *cognitive* and *volitional* element.³⁰⁸ Hence, a so-called child terrorist should both understand their actions and have a genuine opportunity to do otherwise. Can age alone dictate such abilities? It is probable that a 3-year-old toddler does not possess the requisite cognitive and volitional elements for acts of VE but the line gets blurred the older the child becomes. MACR on national levels is however so extremely variable, and complex ideological crimes,³⁰⁹ by nature, require children to be able to possess agency to commit acts in furtherance of a religious aim, that age alone seems to fall short of determining a child's ability to commit violent acts of religious extremism. The passing of an individual from childhood to youth and eventually adulthood, is so dependent on a individual variables that determining appropriate de-radicalization and rehabilitation processes cannot be dictated by age alone.

In light of the foregoing, and considering the inherent difficulty to conceptualise an age where a child has the capacity to understand the meaning of religious extremism, age must be complimented by other characteristics, when disaggregating experiences of children in IS.

5.2 Gender

³⁰⁵ *V and T v United Kingdom* App no 24888/94 (ECHR, 16 December 1999).

³⁰⁶ HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2edn., Oxford University Press 2008) 190; SC Grover, *Child Soldiers Victims of Genocidal Forcible Transfer* (Springer 2012) 116-118.

³⁰⁷ *ibid* Grover 133.

³⁰⁸ N Lacey, *State Punishment: Political Principles and Community Values* (Routledge 1988) 63.

³⁰⁹ M Happold, 'The Age of Criminal Responsibility for International Crimes Under International Law' in K Arts and V Popovski (eds), *International Criminal Accountability and the Rights of Children*, (Hague Academic Press 2006) 69-84.

Girls are often portrayed as passive victims, subordinate to their male counterparts.³¹⁰ This in turn has consistently enforced gender stereotypical roles of the female experience of VE. UNSC Res. 2225 on children in armed conflicts recognizes the specific rehabilitative needs of girls,³¹¹ shedding light on the countless girls who fall victim to abductions, rape, forced marriages and other forms of sexual violence by IS.³¹² Moreover, the 7th periodic report of Finland to the CEDAW, lays out the particular challenges of the female experience of immigrant women in Finland.³¹³ This weak status was partially explained by ‘existing internal norms of the minority communities regarding the status of women.’³¹⁴ Therefore, not only will asylum seeking girls face general discrimination as an immigrant but their position is further weakened due to pronounced gender roles in immigrant communities. RAN Network of Excellence touches upon the female experience by identifying several push and pull factors that IS exploits to recruit girls. A powerful push factor is the exploitation of feeling of alienation, inequality and racism.³¹⁵ Girls, who have possibly faced serious Sex and Gender Based Violence (SGBV), including forced marriage or rape, should receive treatment appropriate to their needs.³¹⁶ Combatting SGBV, and recognizing issues with a particular female perspective, will require implementation of the ‘3 Ps’, catered to the particular needs of girls.³¹⁷

Gender perspectives do not however only concern girls. In context of today’s increasingly complex security environment and nature of conflicts, a more nuanced understanding of gender roles in relation to violent extremism is required. Gender based violence (GBV)³¹⁸ has emerged as a salient topic in the field of human security but principally in relation to violence

³¹⁰ M Hart and N Puechguirbal, ‘From Helplessness to Agency: Examining the Plurality of Women’s Experiences in Armed Conflict (2010) 92 International Review of the Red Cross 103, 109.

³¹¹ Res2225 (n 104) p 3 para 4.

³¹² *ibid.*

³¹³ Committee on the Elimination of Discrimination Against Women, ‘Seventh Periodic reports of State Parties: Finland’ (18 February 2013) UN Doc CEDAW/C/FIN/17 para 39-40.

³¹⁴ *ibid* para 39.

³¹⁵ Radicalization Awareness Network, *The Role of Gender in Violent Extremism* (4 December 2015) 4.

³¹⁶ *ibid* 4-5.

³¹⁷ International Committee of the Red Cross, *Addressing the Needs of Women Affected by Armed Conflict* (Geneva 2004) 7.

³¹⁸ “[G]ender-based violence is an umbrella term for any harm that is perpetrated [and is the] result of gendered power inequities that exploit distinctions between males and females, among males, and among females” J Ward, ‘If Not Now, When: Addressing Gender-Based Violence in Refugee, Internally Displaced, and Post-Conflict Settings’ (Reproductive Health for Refugees Consortium 2002) 8-9.

against girls.³¹⁹ GBV should nevertheless be understood as an inclusive concept, in which a range of harms are addressed as a threat to HS.³²⁰ For example, the Liu Institute's (2005) report on HS³²¹ describes the 'male vulnerability to death, indirect death, and displacement in war zones, and [the] sex-selective killing'³²² to be a type of GBV directly affecting boys. The UNSC has taken a range of measures to re-conceptualize GBV, starting with UNSC Res. 1325, calling for special measures to protect girls from GBV.³²³ UNSC Res. 1325 is a continuation of earlier women's rights movements, linking GBV to the HS discourse.³²⁴ This linkage therefore demonstrates a trend towards re-conceptualizing GBV as a security threat in itself.³²⁵ The expansion of the security arena has not however involved a re-imagination of the gender roles underpinning GBV.³²⁶ This thesis however argues that a range of harm, including sex-selective targeting and forced recruitment of boys as fighters, qualify conceptually as GBV.³²⁷ Recruitment of children by NSAGs is prohibited by OPAC article 4(1), to which particularly boys fall victim to. As a consequence, a radical reconstitution of the idea of security is called for, recognizing the particular rehabilitative needs of boys.

Conclusively, greater attention is called for the recognition of issues of pronounced gender identity in order to combat GBV of children in a CVE context. Further victimization and discrimination on basis of perceived understandings of femininity and masculinity serve both as factors conducive to extremism, and seriously undermine the realization of the right to equality and non-discrimination of every child.³²⁸

³¹⁹ CEDAW (n 167) art 1; RC Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations' (2006) 37 Security Dialogue 83; UNSC Res 1325 (31 October 2000) UN/Doc/S/Res/1325

³²⁰ *ibid* Carpenter 84.

³²¹ Liu Institute, *2005 Human Security Report: 2005 Human Security Report: War and Peace in the 21st Century* (Oxford University Press 2005).

³²² *ibid* 118.

³²³ Res1325 (n 319) para 10.

³²⁴ Carpenter (n 319) 85; J Joachim, 'Framing Issues and Seizing Opportunities: The U.N, NGOs and Women's Rights' (2003) 47(2) *International Studies Quarterly* 247, 260.

³²⁵ Carpenter (n 319) 85.

³²⁶ *ibid*.

³²⁷ *ibid* 85-86.

³²⁸ RAN (n 315) 4.

6 SECURITY AND HUMAN RIGHTS: OPPOSING NORMS OR MUTUALLY ENFORCING LAWS?

*“The chances of any of us dying in a terrorist incident
is very, very, very small
[...] But no one sees the world like that”³²⁹*

NS has created a wave of anxiety in which people are unable to put to context the terror around them.³³⁰ It takes attention away from other pressing issues in a society. And while the threat of VE cannot and should not be downplayed, it should equally not be overstated. This chapter argues that emotional over-reactions, to a perceived threat from abroad, are not only costly but often play into the hands of further conflict. Instead, a forward-looking policy for a safer Finland calls for rational decision-making and inclusive policies of cooperation.³³¹

In theory, HR and security exist to fulfil mutually agreeable goals of safety and well-being of all. Kofi Annan, in his report called the ‘Larger Freedom’ (2005), aptly describes the relationship to be one of mutual re-enforcement where the ‘denial of human rights may not be said to “cause” [...] terrorism [although it] greatly increase the risk of instability and violence.’³³² The close bond between NS and HR has been widely recognized and the Finnish Council of State Report on Human Rights in Finland (2009) acknowledged the relationship as firmly rooted in both theory and practice.³³³ Yet, advances in NS have at times called for weakened HS. Can citizens in Finland however be blamed for being afraid? No. Fear is a natural reaction to reoccurring acts of terrorism across Europe. The proper question rather becomes: How to best respond to such a fear. VE calls for decisive counter-actions. However, as NS builds upon HS, such action can and should be rooted in HR itself, as they are flexible enough to accommodate both competing, yet mutually re-enforcing, needs.³³⁴

³²⁹ JE Mueller, *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them* (Free Press 2006) 1.

³³⁰ Hirvonen (n 14) 249-251.

³³¹ *ibid.*

³³² In *Larger Freedom* (n 292) p 5.

³³³ Finnish Government (n 19) 35.

³³⁴ UN Development Programme (n 13) 22-24

The ECtHR has recognized a high degree of sensitivity when dealing with applications related to terrorism so as to recognize the difficulties States must overcome in order to combat terrorism both lawfully and efficiently.³³⁵ That being said, ECHR has however clearly and uniformly held that measures combating terrorism or VE do not warrant exceptional or extra-legal interpretations of the rights in the Convention.³³⁶ The Court has therefore systematically dismissed the exceptional and has refused to reconcile NS security imperatives and the crimes committed by an individual.³³⁷ Instead, ECtHR calls for the respect of human rights in all instances.³³⁸ This position must be appreciated to the highest possible degree when children are concerned.

Ever since UNSC Res. 1373 (2001), condemning acts of terrorism as constituting a threat to international peace and security,³³⁹ there has been a proliferation of CT and CVE legislations, all with an impact on the enjoyment of HR.³⁴⁰ In midst of swift legislative amendments, the call for respect for HR in Res. 1373 has been at times forgotten.³⁴¹ However, while fundamental HR, such as the right to life³⁴² or prohibition of torture or inhumane treatment,³⁴³ are absolute, other rights may legitimately be derogated from. Such rights include for example the right to religion,³⁴⁴ right to freedom of movement³⁴⁵ and respect for one's private and family life.³⁴⁶ However, in doing so certain conditions must be met. The derogation must be prescribed by law, in pursuance of a legitimate aim as well as be necessary in a democratic

³³⁵ A Salinas de Frias, *Counter-Terrorism and Human Rights in the Case Law of the European Court of Human Rights* (Council of Europe Publishing 2012) ch 9; Y Arai and Y Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECtHR* (Intersentia 2002) 104-105.

³³⁶ *Ramirez Sanchez v France* App no 59540/00 (ECHR, 4 July 2000) para 115-117; *Al-Adsani v the United Kingdom* App no 35763/97 (ECHR, 21 November 2001) para 59-60; *Nada v Switzerland* App no 10593/08 (ECHR, 12 September 2012) para 167-198.

³³⁷ *ibid.*

³³⁸ Frias (n 335) ch 9.

³³⁹ UNSC Res 1373 (28 September 2001) UN Doc S/Res/1373 para 1.

³⁴⁰ Office for the United Nations High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism: Fact Sheet No 32' (*Office for UNCHR*, July 2008) <<http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>> accessed 4 November 2017, 19-20.

³⁴¹ Res 1373 (n 339) para 3(f).

³⁴² UDHR (n 9) art 3.

³⁴³ CAT (n 194) art 3.

³⁴⁴ ECHR (n 17) art 9.

³⁴⁵ *ibid* art 2.

³⁴⁶ *ibid* art 8.

society.³⁴⁷ Moreover, any limitation must respect the principles of equality and non-discrimination.³⁴⁸ Each element can be briefly prescribed as follows. For a derogation to be prescribed by law, ‘(a) the law must be adequately accessible so that individuals have an adequate indication of how the law limits their rights and (b) the law must be formulated with sufficient precision so that individuals can regulate their conduct.’³⁴⁹ Second, the meaning of pursuing a legitimate aim varies depending the rights being limited. Common legitimate aims are national security, public safety and the human rights and freedoms of others.³⁵⁰ Thirdly, ‘necessary in a democratic society’ requires a test of necessity and proportionality to be taken. Necessity calls for a limitation to be in pursuance of a pressing objective and the impact of the limitation must be proportional to the nature of the objective.³⁵¹

Former Finnish President Tarja Halonen speaks of the respect for human rights metaphorically as repairing an old house; once one part is fixed, another one breaks.³⁵² However, this does not always have to be so. Upholding human rights does not in return lead to the breakdown of security. One does not take away from another. While the complexity of VE and the magnitude of the threat it poses to a State should not be downplayed, human rights law is shown to be flexible enough to address the issue effectively.

It is consequently the reactive consequences to a perceived threat, that generate one of the main problems presented by VE today.³⁵³ Consecutively, this begs the final question of the thesis. What is the greater threat: violent extremism or our reactions against it? No definite answer can be given but, this thesis has consistently held that any long-term successful CVE policy, particularly when concerning children, needs to be rooted in the full respect for the RoC as well as the particular rights of a child under the 1951 Convention, Asylum Act and FinCWA. However, it must also be rooted in reason. VE is a pressing threat and the call for

³⁴⁷ *The Observer and The Guardian v. The United Kingdom* App no 13585/88 (ECHR, 26 November 1991) paras 49-71.

³⁴⁸ Fact Sheet No 32 (n 340) 23-24.

³⁴⁹ *Sunday Times v United Kingdom* App no 6538/74 (ECHR, 26 April 1979) para 49.

³⁵⁰ Fact Sheet No 32 (n 340) 24.

³⁵¹ *ibid.*

³⁵² T. Halonen, ‘Ihmisoikeudetkin Ovat Kokonaisuus’ (*Perustuslakiblogi*, 1 October 2016) <<https://perustuslakiblogi.wordpress.com/2016/10/01/presidentti-tarja-halonen-ihmisoikeudetkin-ovat-kokonaisuus/>> accessed 4 November 2017.

³⁵³ Hirvonen (n 14) 249-251.

actions to protect citizens against such a threat is undeniable. Nonetheless, it is a threat amongst other threats and as ECtHR has insisted: there needs to be a dismissal of the exceptional.³⁵⁴ Only then will true reconciliation be found between HR and NS.

7 CONCLUSIONS AND RECOMMENDATIONS

There is no reason to assume that IS will confine itself in the future use of children to carry out violence in Europe as the recruitment of children by IS has become the norm. This is a reality that States now must learn to cope with and work against. Knowledge on a child's participation and indoctrination in IS-held territories is therefore vital to accurately estimate how such children are best treated in the event they enter Finland.

To what extent a radicalized child may pose a threat to Finnish society, remains largely unknown. Children are victims of unlawful recruitment by ISIS³⁵⁵ but also possess agency to perpetrate violence. Assisting and providing asylum to a radicalized child is likely an unpopular policy choice but one required by law,³⁵⁶ as a child should not be returned to circumstances of irreparable harm.³⁵⁷

This thesis therefore concludes that the treatment of radicalized asylum-seeking children must root itself within the boundaries prescribed by law, in particular the RoC. Extra-legal measures must be eradicated and radicalized children must be primarily recognized for who they are; minors in need of special care. The innocence of childhood cannot be equated with the evil of terrorism and security measures to counter-act a potential threat posed by a child must centre around a holistic treatment in the best interest of a child. Restrictive policies, rooted in vague notions of 'security', risk not only re-victimizing a child but also may result in long-term negative effects of childhood trauma. Instead, measures to rehabilitate and re-integrate a child must focus on providing a child with a new sense of belonging, removed from violence and extremism. This in turn, is best realized through the full respect for human rights law.

³⁵⁴ *Ramirez Sanchez v France* (n 336).

³⁵⁵ OPAC (n 85) art 4(1).

³⁵⁶ GC 6 (n 200) para 27; CRC (n 31) art 38; Asevelvollisuuslaki (n 84) art 2.

³⁵⁷ *ibid.*

Finally, this thesis will conclude by providing 6 recommendations, aiming to better recognize the particular vulnerability of children in the Finnish CVE context.

First, a study should be produced by the Government on both the short- and long-term effects that the Finnish asylum legislation has on radicalized children. In particular, the long-term (negative) consequences of hardened family unification legislations must be better understood.

Second, greater involvement of the social and health sector is needed. Radicalized children need the immediate and full support networks of child welfare services as well as all necessary care to recover from past trauma. Ignoring the particular needs of radicalized children may carry serious negative long-term implications in a child's life.

Third, a child-specific CVE strategy is called for in which the best interests of a child are fully taken account of, by way of assuring the protection, provision and participation of all children in their asylum and de-radicalization processes.

Fourth, measures to combat violent extremism among children must take greater account of the different groups of children affected by violent extremism. A child-specific CVE policy must therefore recognize the particular hardship asylum seeking children may face as their vulnerability is exacerbated due to forced migration.

Fifth, the rights of the child must be meaningfully considered in all national security measures. This is so because all security measures directly or indirectly affect children. In this regard, the active participation of children's rights experts and organizations in all legislative processes affecting a child must be guaranteed.

Sixth, enhanced national mechanisms must be set up to guarantee greater consistency with international and regional human rights standards.

Table of reference

European Legal Instruments

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
- Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification [2003] OJ L251/12
- Council Directive 2004/84/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304/12
- Council Framework Decision 2002/475/JHA of 28 November 2002 Amending Framework Decision 2002/475/JHA on Combating Terrorism [2002] OJ L330/21
- Charter of Fundamental Rights of the European Union [2012] OJ C326/391
- European Council and the Parliament Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/96
- European Parliament and Council Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180/31

International Legal Instruments

- League of Nations, Convention for the Prevention and Punishment of Terrorism (1937)
- Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI
- Universal Declaration of Human Rights (adopted 10 December, 1948 UNGA Res 217 A(III))
- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137
- Declaration of the Rights of the Child (adopted 20 November, 1959 UNGA 1386)
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1973) 993 UNTS 3
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of international Armed Conflicts (AP I) 1125 UNTS 3 (8 June 1977)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (AP II) 1125 UNTS 609 (7 December 1978)
- Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331
- Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85
- United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (1989)
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May, 2000 UNGA 263)
- UNSC Res 1325 (31 October 2000) UN/Doc/S/Res/1325
- UNSC Res 1373 (28 September 2001) UN Doc S/Res/1373
- UNSC Res 1377 (12 November 2001) UN Doc S/Res/1377
- Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90
- UNSC Res 1566 (8 October 2004) UN Doc S/Res/1566
- UNGA Res 60/288 (8 September 2006) UN Doc A/60/288
- UNGA Res 64/168 (18 December 2009) UN Doc A/Res/64/168
- UNSC Res 2225 (18 June 2015) Un Doc S/Res/2225

National Legal Instruments

- Wetboek van Strafrecht (Penal Code) [1881]
- Rikoslaki [1889] 19.12.1889/39
- Children and Young Persons Act [1933]
- Asetus lapsen oikeuksia koskevan yleissopimuksen voimaansaattamisesta sekä yleissopimuksen eräiden määräysten hyväksymisestä annetun lain voimaantulosta [1991] 60/1991
- Suomen Perustuslaki [1999] 11.6.1999/731
- Laki Rikoslain Muuttamisesta [2003] 17/2003
- Loi fédérale régissant la condition pénale des mineurs [2003]
- Ulkomaalaislaki [2004] 301/2004
- Hallituksen esitys Eduskunnalle eräiden tehtävien siirtämistä Maahanmuuttovirastoon koskevaksi lainsäädännöksi [2009] HE 78/2009vp
- Laki Ukomaalaislain muuttamisesta [2010] HE 549/2010
- Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta [2016] HE 43/2016
- Asevelvollisuuslaki [2007] 28.12.2007/1483
- Lastensuojelulaki [2007] 13.4.2007/417
- Laki kansainvälistä suojelua hakevan vastaanotosta [2011] 746/201
- Yhdenvertaisuuslaki [2014] 1325/2014

Judicial Decisions before European Courts

- *Sunday Times v United Kingdom* App no 6538/74 (ECHR, 26 April 1979)
- *Soering v. United Kingdom* App. No 14038/88 (ECHR, 7 July 1989)
- *The Observer and The Guardian v. The United Kingdom* App no 13585/88 (ECHR, 26 November 1991)
- *V and T v United Kingdom* App no 24888/94 (ECHR, 16 December 1999)
- *Keegan v Ireland* App no 16969/90 (ECHR, 26 May 1994)
- *Hokkanen v Finland* App no 25159/94 (ECHR, 23 September 1994)
- *Gül v Switzerland* App no 23218/94 (ECHR, 19 February 1996)
- *Chahal v. United Kingdom* App. No 22414/93 (ECHR, 15 November 1996)
- *Ignaccolo-Zenide v. Romania* App no 31679/96 (ECHR, 25 January 2000)
- *Ramirez Sanchez v France* App no 59540/00 (ECHR, 4 July 2000)
- *Al-Adsani v the United Kingdom* App no 35763/97 (ECHR, 21 November 2001)
- *Nada v Switzerland* App no 10593/08 (ECHR, 12 September 2012)
- *Pesukic v Switzerland* App no 25088/07 (ECHR, 6 December 2012)

Judicial Decisions before International Courts and Tribunals

- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 1986
- *Kallon, Kamara: Lomé Accord Amnesty* (Decision on Challenge to Jurisdiction) SCSL-04-15-PT- 060 (13 March 2004)
- *Ayyash et al* (Interlocutory Decision) STL-11-01/PT/T26 (16 February 2011)
- *The Prosecutor v. Thomas Lubanga Dyilo* (Trial Judgment) ICC-01/04-01/06 (14 March 2012)
- *The Prosecutor v Dominic Ongwen* ICC-02/04-01/15

Judicial Decisions before National Courts

- *Naseer v. Secretary of State for the Home Department*, [2010] No. SC77/80/21/82/83/09 (Special Immigration Appeals Committee) (UK)
- *KHO:2014:51* [2014]
- *KKO:2016:65* [2016]
- *KO:2017:17/121401* [2017]
- *KHO:2017:99* [2017]
- *KHO:2017:81* [2017]

Academic Papers

- Henrik Elonheimo, 'Nuorisoriikollisuuden Esiintyvyys, Taustatekijät ja Sovittelu' (PhD Theses, University of Turku, 2010)

Books

- L Alanen and M Bardy, *Lapsuuden Aika ja Lasten Paikka: Tutkimus lapsuudesta yhteiskunnallisena ilmiönä* (Sosiaalhallitus 1990)
- DL Altheide, *Terrorism and the Politics of Fear* (Rowman&Littlefield 2017)
- S Amaro, *Crianças Vítimas de Violência: das Sombras Do Sofrimento à Genealogia da Resistência. Uma Nova Teoria Científica* (AGE 2003)
- Y Arai and Y Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECtHR* (Intersentia 2002)
- I Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (McMillan 2007)
- G Van Beuren, *The International Law on the Rights of the Child* (Martinus Nijhoff 1998)
- C Breen, *Age Discrimination and Children's Rights: Ensuring Equality and Acknowledging Differences* (Martinus Nijhoff 2006)
- M Crang, *Cultural Geography* (Routledge 1998)
- JC Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005)
- S Detrick, *Commentary on the United Nations Convention on the Rights of the Child* (Brill Nijhoff, 1999)
- MA Drumbl, *Re-imagining Child Soldiers in International Law and Policy* (Oxford University Press 2012)
- MJ Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004)
- G Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford University Press 2007)
- SC Grover, *Child Soldiers Victims of Genocidal Forcible Transfer* (Springer 2012)
- HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2edn, Oxford University Press 2008)
- JM Henckaerts and L Doswald-Beck, 'Volume I: Rules' in International Committee of the Red Cross, *Customary International Humanitarian Law* (Cambridge University Press 2005)
- A Holwana, *Child Soldiers in Africa* (Penn Press 2005)
- J Horgan, *The Psychology of Terrorism* (Routledge 2014)
- International Committee of the Red Cross (ICRC), *Addressing the Needs of Women Affected by Armed Conflict* (Geneva 2004)
- N Lacey, *State Punishment: Political Principles and Community Values* (Routledge 1988)
- Liu Institute, *2005 Human Security Report: 2005 Human Security Report: War and Peace in the 21st Century* (Oxford University Press 2005)
- A LoCierco and SJ Sinclair, *Creating Young Martyrs: Conditions that Make Dying in A Terrorist Attack Seem Like a Good Idea* (Praeger Security International 2008)
- JE Mueller, *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them* (Free Press 2006)
- T Muukkonen and H Tulensalo, *Kohtaavaa lastensuojelua. Lapsikeskeisen lastensuojelun Sosiaalityön Rilanearvion Käsikirja* (Helsingin Kaupungin Sosiaalivirasto 2004)
- P Niemelä and A Lahikainen, *Inhimillinen Turvallisuus* (Vastapaino 2000)
- JS Pictet, *The Geneva Conventions of 12 August 1949: Commentary IV, Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Commentary IV)* (ICRC 1960)
- B Ramcharan, *Human Rights and Human Security* (Martinus Nijhoff 2002)
- A Salinas de Frias, *Counter-Terrorism and Human Rights in the Case Law of the European Court of Human Rights* (Council of Europe Publishing 2012)
- A Schnabel and A Tabyshalieva, *Escaping Victimhood: Children, Youth and Post-Conflict Peacebuilding* (United Nations University Press 2013)
- PW Singer, *Children at War* (University of California Press 2006)
- C Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014)
- C Väliavaara, *Sijoitettu lapsi tunnepyörässä: Menetelmiä ja välineitä lapsilähtöiseen lastensuojeluun* (Kopijyvä 2004)
- A Özerdem and S Podder, *Child Soldiers: From Recruitment to Reintegration* (Palgrave McMillan 2011)

Edited Books

- A Van Engeland, 'Statehood, Proto State and International Law: New Challenges, Looking at the Case of ISIS' in J. Crawford, A Koroma, S Mahmoudi and A Pellet (eds), *The International Legal Order: Current Needs and Possible Responses: Essays in Honour of Djamchid Momtaz* (Brill Nijhoff 2017) 78-79
- M Happold, 'The Age of Criminal Responsibility for International Crimes Under International Law' in K Arts and V Popovski (eds), *International Criminal Accountability and the Rights of Children*, (Hague Academic Press 2006) 69
- JM Henckaerts and C Wiesener, 'Human Rights Obligations of Non-State Armed Groups: a Possible Contribution from Customary International Law?' in R Kolb and G Gaggioli (eds), *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar 2013) 146
- C Joyce, O Lynch and A Veale, 'Victims and Perpetrators: A Clinician's Account of Ex-child Soldiers and the Child Development Process in Sri Lanka' in J Argomaniz (eds), *International Perspectives on Terrorist Victimization* (Palgrave MacMillan 2015) 76
- M Kellett 'Children and Young People's Participation' in H Montgomery and M Kellett (eds), *Children and Young People's Worlds: Developing Frameworks for Integrated Practice* (Bristol Policy Press 2009) 43
- E Lauterpacht and D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement' in E Feller, V Türk and F Nicholson, *Refugee Protection in International Law* (Cambridge University Press 2003) 89
- C Martin, 'Terrorism as a Crime in Domestic and International Law: Open Issues' in L Van de Herik and N Schrijver (eds), *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges Order* (Cambridge University Press 2013) 639
- J Masson, 'Child Protection', in H Montgomery and M Kellett (eds), *Children and Young People's Worlds: Developing frameworks for Integrated Practice* (The Policy Press 2009) 145
- C Mollica, 'Youth Engagement in the Solomon Islands TRC Process' in R Jeffery (eds), *Transitional Justice in Practice: Conflict, Justice and Reconciliation in the Solomon Islands* (Palgrave MacMillan 2017)171
- M Pasupathi and C Wainryb, 'Developing Moral Agency in the Midst of Violence: Children, Political Conflict and Values' in I.A. Karawan, W Mc Cormack and SE Reynolds, *Values and Violence: Intangible Objects of Terrorism* (Springer 2008) 169
- C Ragni, 'The Contribution of the Special Tribunal for Lebanon to the Notion of Terrorism: Judicial Creativity of Progressive Development of International Law?' in N Boschiero, T Scovazzi, C Pitea and C Ragni (eds) *International Courts and the Development of International Law* (Asser Press 2013) 671
- M Virally, 'Le rôle des 'principles' dans le développement du droit international' in M Batelli and P Guggenheim (eds), *Recueil d'études de droit international en hommage à Paul Guggenheim* (Genève 1968) 542
- R Wallace, 'The Principle of Non-Refoulement in International Refugee Law' in V Chetail and C Bauoz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 417

Journal Articles

- EF Abram, 'The Child's Right to Family Unity in International Immigration Law' (1995) 17(4) Law & Policy 397
- K Abrams, 'Sex Wars Redux: Agency and Coercion in Feminist Legal Theory' (1995) 95 Columbia Law Review 304
- K Abrams, 'Family Reunification and the Security State' (2017) 32(2) Constitutional Commentary 247
- T Betancourt, R Brennan, J Rubin-Smith, G Fitzmaurice and S Gilman, 'Sierra Leone's Former Child Soldiers: a Longitudinal Study of Risk, Protective Factors, and Mental Health' (2010) 49 Journal of the American Academy of Child and Adolescent Psychiatry 606
- T Betancourt, J Agnew-Blais, SE Gilman, DR Williams and BH Ellis, 'Past Horrors, Present Struggles: the Role of Stigma in the Association Between War Experiences and Psychosocial Adjustment Among Former Child Soldiers in Sierra Leone (2010) 70 Social Science & Medicine 17
- M Bloom, J Horgan, and C Winter, 'Depictions of Children and Youth in the Islamic State's Martyrdom Propaganda' (2016) 9 CTC Sentinel 2
- L Brons, 'Othering: An Analysis' (2015) 6 A Journal of Global Science 69
- RC Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations' (2006) 37 Security Dialogue 83
- W Connor, 'A Nation is a Nation, Is a State, Is an Ethnic Group...' (1978) 4 Ethnic and Racial Studies 37

- I Derluyn, W Vandenhoele, S Parmentier and C.Mels 'Victims and/or Perpetrators? Towards an Interdisciplinary Dialogue on Child Soldiers' (2015) 15 BMC International Health and Human Rights 1
- Final Report Poelgeest Seminar, 'Counter-Terrorism Strategies, Human Rights and International Law: Meeting the Challenges' (2007) 54 *Netherlands International Law Review* 571
- M Hart and N Puechguirbal, 'From Helplessness to Agency: Examining the Plurality of Women's Experiences in Armed Conflict' (2010) 92 *International Review of the Red Cross* 103
- R Hinton, 'Children's Participation and Good Governance: Limitations of the Theoretical Literature' (2008) 16 *International Journal on Children's Rights* 285
- A Hirvonen, 'Fear and Anxiety: The Nationalist and Racist Politics of Fantasy' 28 *Law and Critique* (2017) 249
- J Joachim, 'Framing Issues and Seizing Opportunities: The U.N, NGOs and Women's Rights' (2003) 47(2) *International Studies Quarterly* 247
- S Kirkwood, 'The Humanisation of Refugees: A Discourse Analysis of UK Parliamentary Debates on the European Refugee 'Crisis' (2017) 27 *Journal of Community & Applied Social Psychology* 115
- S Martinez-Squiers, 'How the Law Should View Voluntary Child Soldiers: Does Terrorism Pose a Different Dilemma?' (2015) 68 *SMU Law Review* 567
- VM Padmanabhan, 'To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-refoulement' (2011) 88 *Fordham Law Review* 73
- R Punamäki, 'Can Ideological Commitment Protect Children's Psychosocial Well-Being in Situations of Political Violence?' (1998) 67 *Child Development* 55
- S Reicher, SA Haslam and R Rathm 'Making a Virtue of Evil: A Five-step Social Identity Model of the Development of Collective Hate' (2008) 2 *Social and Personality Psychology Compass* 1313
- A Sheppard, 'Child soldiers: Is the Optional Protocol Evidence of an Emerging "straight-18" Consensus?' (2000) 8(1) *The International Journal of Children's Rights* 53
- L Zedner, 'The Concept of Security: An Agenda for Comparative Analysis' (2003) 23 *Legal Studies* 153
- S Yun, 'Breaking Imaginary Barriers: Obligations of Armed Non-State Actors under general Human Rights Law - the Case of the Optional Protocol to the Convention on the Rights of the Child' (2014) 5 *Journal of International Humanitarian Legal Studies* 213

Finnish Reports

- A Parsons, *Selvitys lapsen edun toteutumisesta turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä* (6, 2010)
- Maahanmuuttovirasto, *Lapsen asian käsittely ja päätöksentekomaahanmuuttovirastossa* (MIGdno/2013/1307, 2010)
- Ministry of Interior, *Turvallinen ja moniarvoinen Suomi- sisäinen turvallisuus ja maahanmuutto 2020* (25, 2010)
- Ministry of Interior, *Valtioneuvoston Periaatepäätös Maahanmuuton Tulevaisuus 2020-Strategiasta* (13/6/13, 2013)
- Finnish Government, *Valtioneuvoston Selonteko Suomen Ihmisoikeuspolitiikasta* (VNS 7/2009vp, 2009)
- Ministry of Interior, *Kansallinen väkivaltaisen radikalisoitumisen ja ekstremismin ennalta ehkäisyn toimenpideohjelma* (15/2016, 2016)
- Ministry of Interior, *Sisäisen Turvallisuuden Selonteko* (8/2016, 2016)
- Ministry of Interior, *Hyvä elämä – turvallinen arki: Valtioneuvoston periaatepäätös sisäisen turvallisuuden strategiasta* (15/2017, 2017)
- Ministry of Interior, *Ehdotus viranomaisten yhteistyön järjestämiseksi toiminnassa taistelualueilta palaajien kanssa* (133/2017, 2017)
- Ministry of Interior, *Väkivaltaisen Ekstremismin Tilannekatsaus* (3/2017, 2017) ('Tilannekatsaus')
- Ministry of Interior, 'Vuosiraportti 2017' (September 2017, 237/2017)

Guidelines

- UN, 'Guidelines for the Prevention of Juvenile Delinquency (14 December 1990) UN Doc A/45/49 ('The Riyadh Guidelines')
- UNICEF, 'Cape Town Principles and Best Practices' (Symposium on the Prevention of Recruitment of Children Into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Cape Town, 27-30 April 1997)
- UNICEF, 'Paris Principles and Guidelines on Children Associated With Armed Forces or Armed Groups' (Free Children from War conference, Paris, February 2007)

Other Reports

- UN Development Programme, 'Human Development Report' (1994) 22-25; Commission on Human Security, 'Human Security Now' (2003) <<http://www.humansecurity-chs.org/finalreport/FinalReport>> accessed 17 November 2017
- UNGA 'Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All' (2005) UN Doc A/59/2005
- The Council of the European Union 'The European Union Counter-Terrorism Strategy' (30 November 2005) 14469/4/05 REV4
- Committee on the Rights of the Child, 'General Comment No 10 on Children's Rights in Juvenile Justice' (25 April 2007) UN Doc CRC/C/GC/10
- Committee on the Rights of the Child, 'General Comment No 12 on the Right of the Child to be Heard' (20 July 2009) UN Doc CRC/C/GC/12
- Office of the Ombudsman for Children, 'Report to the UN Committee on the Rights of the Child' (January 2011) 2011:11
- Committee on the Rights of the Child, 'Written Replies by the Government of Finland to the list of issues in connection with the consideration of the fourth periodic report of Finland' (16 May 2011) CRC/C/FIN/Q/4/Add.1
- Committee on the Rights of the Child, 'Treatment of Unaccompanied and Separated Children Outside Their Country of Origin' (3 August 2011) UN Doc CRC/GC/2005/6
- Committee on the Elimination of Discrimination Against Women, 'Seventh Periodic Reports of State Parties: Finland' (18 February 2013) UN Doc CEDAW/C/FIN/17
- Committee on the Rights of the Child, 'General Comment No 14 on right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)' (29 May 2013) UN Doc CRC/C/GC/14
- UN Secretary General, 'Children and Armed Conflict' (2016) Un Doc A/70/863
- J Ward, 'If Not Now, When: Addressing Gender-Based Violence in Refugee, Internally Displaced, and Post-Conflict Settings' (Reproductive Health for Refugees Consortium 2002)

Websites

- M Bardy, 'The Three P's of Children's Rights: Protection, Provision and Participation (*International Child and Youth Care Network*, 16 May 2000) <<http://www.cyc-net.org/cyc-online/cycol-0500-threepes.html>> accessed 12 November 2017
- C Biddolph, 'Navigating the Victim/perpetrator Complex At the International Criminal Court: The case of Dominic Ongwen' (*The Organization for World Peace*, 17 December 2016) <<https://theowp.org/reports/navigating-the-victimperpetrator-complex-at-the-international-criminal-court-the-case-of-dominic-ongwen/>> accessed 24 November 2017
- T. Halonen, 'Ihmisoikeudetkin Ovat Kokonaisuus' (*Perustuslakiblogi*, 1 October 2016) <<https://perustuslakiblogi.wordpress.com/2016/10/01/presidentti-tarja-halonen-ihmisoikeudetkin-ovat-kokonaisuus/>> accessed 4 November 2017
- J Horgan, 'The Lost Boys' (*Centre for Research and Evidence on Security Threats*, 5 July 2017) <<https://crestresearch.ac.uk/comment/the-lost-boys/>> accessed 24 November 2017
- ICRC, 'Practice Relating to Rule 136. Recruitment of Child Soldiers' <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule136> accessed 24 November 2017
- K Karvala, 'Radikalisoitumiseen kipinä netistä tai moskeijasta' (*Iltalehti*, 24 September 2017) <http://m.iltalehti.fi/kotimaa/201709242200415437_u0.shtml> accessed 23 November 2017
- Office of the Prosecutor, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of Trial in the Case Against Dominic Ongwen' (*ICC*, 6 December 2016) <<https://www.icc-cpi.int/Pages/item.aspx?name=2016-12-06-otp-stat-ongwen>> accessed 24 November 2017
- Office for the United Nations High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism: Fact Sheet No 32' (*Office for UNCHR*, July 2008) <<http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>> accessed 4 November 2017
- UNHCR, 'Figures at a Glance' (17 November 2017) <<http://www.unhcr.org/figures-at-a-glance.html>> accessed 17 November 2017

- UNICEF, Refugee and Migrant Children Stranded in European Transit Countries Suffer in the Face of Uncertain Future (4 May 2017) < https://www.unicef.org/media/media_95938.html > accessed 24 November 2017
- Pakolaisneuvonta, 'Lapsen Etu Jää Usein Arvioimatta Turvapaikka- ja Perhesidepääöksissä' (*Pakolaisneuvonta Ry*, 16 March 2015) < <http://www.pakolaisneuvonta.fi/?cid=434&lang=suo> > accessed 24 November 2017
- 'Perheenyhdistäminen' (*Pakolaisneuvonta Ry*) < <http://www.pakolaisneuvonta.fi/?lid=137> > accessed 24 November 2017
- M Rinne, 'Eerola: "Perheenyhdistäminen tehtävä mahdollisimman vaikeaksi – Suomi voisi kerrankin toimia ensimmäisenä' (*Suomen Uutiset*, 24 January 2016) < www.suomenuutiset.fi/erola-perheenyhdistaminen-tehtava-mahdollisimman-vaikeaksi-suomi-voisi-kerrankin-toimia-ensimmaksena/ > accessed 24 November 2016
- Sisäministeriö, 'Sisäministeriön strategiassa korostuu yhdessä tekeminen' (7 September 2017) < http://intermin.fi/artikkeli/-/asset_publisher/sisaisen-turvallisuuden-strategiassa-korostuu-yhdessa-tekeminen > accessed 21 November 2017
- Sisäministeriö, 'The Fight against Terrorism is Spearheaded by cooperation between authorities' (*Ministry of Interior*) < www.intermin.fi/en/police/counter-terrorism > accessed 21 November 2017
- Supo, 'Terrorist Threat Assessment' (*Suojelupoliisi*, 14 June 2017) < www.suojelupoliisi.fi/counterterrorism > accessed 21 November 2017

Working Papers

- Radicalization Awareness Network Centre of Excellence, *The Role of Gender in Violent Extremism* (4 December 2015)
- Radicalization Awareness Network Centre of Excellence, *Child Returnees from Conflict Zones* (November 2016)