[Background note]

Group III: technical sessions on criminalization, prosecution (including prosecution strategies for returnees), international cooperation, and the rehabilitation and reintegration of returnees

A. Introduction

1. The foreign terrorist fighter (FTF) phenomenon poses unique and complex challenges to Member States’ criminal-justice systems. As noted by the Security Council in paragraph 25 of its resolution 2178 (2014), the increasing and rapidly evolving threat posed by FTFs is part of the emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005). In accordance with paragraph 24 of resolution 2178 (2014) and the Council’s Presidential Statement of 19 November 2014 (S/PRST/2014/23), the Counter-Terrorism Committee, assisted by its Executive Directorate (CTED), is required to identify the principal gaps in States’ capacities to implement resolutions 1373 (2001) and 1624 (2005) that may hinder States’ abilities to stem the flow of FTFs and to identify good practices to stem their flow in the implementation of resolutions 1373 (2001) and 1624 (2005).

2. Pursuant to resolution 2178 (2014), States must ensure that persons who travel or attempt to travel to another State for the purpose of perpetration, planning, or preparation of, or participation in, terrorist acts, and persons who engage in the financing or facilitation, including recruitment, of such travel, are brought to justice. In particular, States must ensure that their domestic laws and regulations establish serious criminal offences sufficient to prosecute and penalize this conduct in a manner duly reflecting the seriousness of the offence. States must not merely adopt the necessary measures to stem the flow of FTFs, but also effectively suppress their flow. International cooperation is essential in this regard.

B. Group III technical sessions

3. The five Group III technical sessions are intended to serve as a forum for interaction and experience-sharing among Member States, stakeholders, and practitioners. The participants will focus on the analysis of gaps, as well as on effective strategies and techniques to overcome them. Many of the challenges involved in bringing FTFs to justice are addressed in the attached CTED report on “Bringing terrorists to justice: challenges in prosecution related to foreign terrorist fighters”, issued as Security Council document S/2015/123. The following are among the issues that may be taken into consideration during the discussions.

Session I: Criminalization of FTF-related acts

4. Session I is intended to facilitate open discussion of the difficulties and challenges that may be encountered by Member States in criminalizing FTF-related acts, as well as to highlight successful approaches already adopted by Member States:
   - Possibility of using existing terrorism laws to combat FTFs; advisability of adopting FTF-specific legislation; clarity of legislation; criminalization of recruitment and incitement; signature and ratification of international counter-terrorism instruments.
   - Different approaches to criminalization: criminalization of preparatory acts; defining criminal offences while respecting rights to freedom of movement and conscience.
Session II: Investigation of criminal offences

5. The Committee’s ongoing dialogue with Member States has shown that one of the main challenges faced in bringing FTFs to justice is the difficulty of generating admissible evidence (e.g., from social media, from travel facilitators, or from other States (whether of origin, transit or destination)):

- Investigating crimes committed prior to travel: preparatory acts and preventive offences; giving or receiving training; incitement and glorification of terrorist acts versus freedom of expression; investigating offences relating to terrorist propaganda; tracking of financial assistance from abroad; use of social media in FTF investigations; online undercover operations; investigation of family members of suspected FTFs.

Good practices in structures, tools and techniques: developing investigation techniques to deal with terrorists acting alone; tracking lost/stolen passports to expose movements of FTFs; involvement in early investigation of relevant tax, customs and financial authorities; prosecution of networks that facilitate travel; handling of information to ensure its admissibility in court as evidence; cooperation and coordination between law enforcement, intelligence and prosecution; online surveillance and undercover operations; building criminal-justice capacity versus building targeted counter-terrorism capacity; use of the Global Counter-Terrorism Forum’s Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector.

Session III: Prosecution of criminal offences

6. Bringing FTFs to justice poses significant practical challenges. Because of the global nature of the FTF threat, it is essential that prosecutors find innovative ways to effectively bring terrorists to justice. Several Member States have developed innovative and flexible approaches to meet the challenge of bringing FTFs to justice. The specific issues to be addressed include the following:

- Evidence against FTFs from social media and from conflict zones: converting online information into evidence; proving intent of travel; converting intelligence into evidence.
- Experience in using existing legislation and alternatives to prosecution: challenges in prosecuting offences committed prior to travel; administrative measures to prevent individuals from travelling; imposition of travel ban versus freedom of movement.

Session IV: Prosecution strategies, including prosecution of criminal offences and rehabilitation of returnees

7. A critical aspect of the special meeting is the identification of good practices and, in particular, successful prosecution strategies to stem the flow of FTFs. In this session, participants will discuss challenges and good practices in dealing with facilitators of travel, support networks, and juvenile FTFs, including in relation to the following:
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- Interdiction of travel at the border; proportionality in penalties; balance between prosecution and prevention; consideration of the unique circumstances of every case; prosecution versus rehabilitation; the role of the prosecutor in relation to rehabilitation programmes; travel of family members; challenges and incentives for successful reintegration; returning FTFs as cooperating witnesses.

Session V: International judicial cooperation

8. Paragraphs 11 to 14 of resolution 2178 (2014) call on Member States to improve international, regional and subregional cooperation to stem the flow of FTFs. In this regard, participants in this session will discuss:

- Capacity of central authorities and development of informal and formal cooperation: extradition mechanisms; reliance on different offences to prosecute FTFs; use of international conventions and treaties as basis for international cooperation.
- Cooperation in evidence collected from the Internet and social media: expediting cooperation, including through 24/7 networks, for cooperation on FTFs.