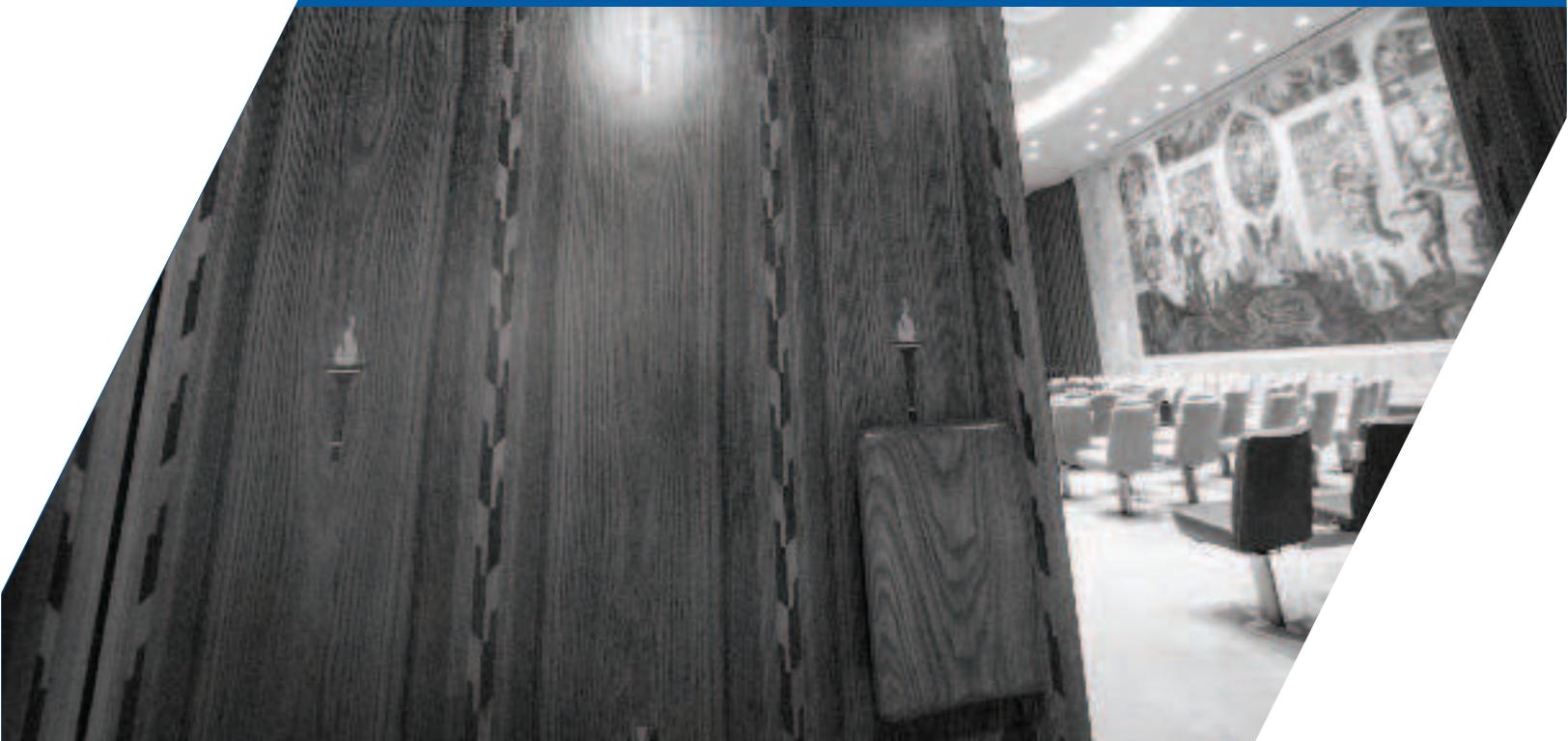




UNITED NATIONS SECURITY COUNCIL
COUNTER-TERRORISM COMMITTEE
EXECUTIVE DIRECTORATE (CTED)

Technical guide to the implementation of Security Council resolution 1373 (2001) and other relevant resolutions



Compiled by the Counter-Terrorism Committee
Executive Directorate (CTED) in 2017



UNITED NATIONS SECURITY COUNCIL
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INTRODUCTION

1. In accordance with Security Council resolutions 1373 (2001), 1535 (2004), 1624 (2005) and 2178 (2014), the Counter-Terrorism Committee Executive Directorate (CTED) is required to assist the Counter-Terrorism Committee to monitor, facilitate and promote the implementation by Member States of Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014). In this regard, the Committee requested CTED to update its 2009 Technical Guide to reflect the requirements of the relevant successor resolutions of the Council. The Guide is intended as a reference tool to help ensure consistent analysis of States' implementation efforts.
2. The Guide addresses each paragraph of resolutions 1373 (2001) and 1624 (2005) and identifies critical provisions of 2178 (2014). The Guide also takes into account the requirements set forth in resolutions 2129 (2013), 2133(2014), 2178 (2014), 2195 (2014), 2220 (2015), 2242 (2015), 2253 (2015), 2309 (2016), 2322 (2016), 2331 (2016), 2341 (2017) and 2354 (2017), in order to reflect the additional elements prescribed in these resolutions.
3. The Guide was prepared by CTED and does not purport to impose any obligations upon States apart from those that already exist by virtue of the relevant Council resolutions and decisions, international treaties, customary international law, or other voluntarily undertaken obligations. Discussion on the international counter-terrorism treaties does not purport to establish when States Parties are or are not fulfilling their obligations under the treaties. It addresses those aspects of international law (in particular international human rights, refugee and humanitarian law) that are relevant to the implementation of the relevant Council resolutions.

The Guide addresses the requirements of the Security Council relating to the work of the Committee and CTED in the following areas:

- A. Comprehensive and integrated counter-terrorism strategies;
 - B. Counter-financing of terrorism;
 - C. Border security and arms trafficking;
 - D. Law enforcement;
 - E. General legal issues, including legislation, criminal justice and international cooperation;
 - F. Human rights aspects of counter-terrorism in the context of resolutions 1373 (2001), 1624 (2005) and 2178 (2014);
 - G. Prohibition of incitement to terrorism and countering violent extremism in accordance with resolutions 1624 (2005), 2178 (2014) and 2354 (2017).
4. The present Guide also reflects the ongoing work of the United Nations to strengthen efforts to integrate the gender dimension into peace and security efforts, including counter-terrorism, as highlighted in resolutions 2122 (2013), 2242 (2015) and 2354 (2017). Good practices in integrating a gender dimension into security, including peacekeeping operations, are also considered, where relevant to CTED's mandate.

The general framework for each area is as follows:

A. COMPREHENSIVE AND INTEGRATED COUNTER-TERRORISM STRATEGIES

5. Pursuant to paragraph 6 of Security Council resolution 1963 (2010) and paragraph 18 of Security Council resolution 2129 (2013), CTED is requested to engage in a dialogue with Member States aimed at advising them, as appropriate, on the development of comprehensive and integrated national counter-terrorism strategies and the introduction of implementing mechanisms that include attention to the factors that lead to terrorist activities. Terrorists are increasingly able to bypass law enforcement measures and employ other methods, such as recruitment via the Internet and social media. This poses significant challenges to law enforcement and increases the overall threat.

6. States are therefore encouraged to consider, as part of their National strategies, measures to strengthen the resilience of the population through a balanced, multidisciplinary and holistic approach that integrates law enforcement measures and measures to address the socio-economic, political, educational, developmental, human rights, gender and rule-of-law dimensions.

B. COUNTER-FINANCING OF TERRORISM

7. Security Council resolutions 1373 (2001), 2178 (2014) and 2253 (2015) require States to criminalize terrorism financing and to take a number of measures to prevent and suppress it. Security Council resolution 2341 (2017) contains additional provisions on the financing of a terrorist attack intended to destroy or disable critical infrastructure. Analysis of Member States' implementation of those measures is guided by the provisions of the relevant United Nations conventions and by relevant international instruments, standards and good practices of the relevant international and regional bodies (particularly the 40 Recommendations of the Financial Action Task Force (FATF), as revised in February 2012, including Recommendation 5 ("Terrorist Financing" Offence), Recommendation 6 ("Targeted Financial Sanctions Related to Terrorism and Terrorist Financing"), and the related guidance.
8. In its resolution 1617 (2005), the Council strongly urges Member States to implement the FATF Recommendations and notes that particular attention should be paid to the related Interpretive Notes and best practices papers, as well as to the assessment methodology developed to assist the members of FATF and FATF-style regional bodies (FSRBs) to implement resolutions 1373 (2001), 2178 (2014) and 2253 (2015). The methodology focuses on assessing the effectiveness of measures through evaluation of the implementation of immediate outcomes. FATF regularly updates the Recommendations and methodology to reflect new threats or vulnerabilities.

C. BORDER SECURITY AND ARMS TRAFFICKING

9. The border-security-related obligations set forth in resolution 1373 (2001) require action in a number of areas, including immigration and customs control and aviation, maritime and cargo security. The resolution also calls upon all States to take the necessary steps to prevent the commission of terrorist acts; to intensify and accelerate the exchange of operational information; to cooperate in preventing trafficking in arms, explosives and sensitive materials; and to ensure that asylum and refugee procedures are not abused by persons involved in terrorist acts. Effective border management is of particular importance with respect to FTFs, as reflected in resolution 2178 (2014).
10. The instruments, standards and other practices proposed in the present Guide should be used in the assessment of Member States' implementation efforts. Border security includes controls on the movement of people (immigration) and goods (customs) across borders, as well as prevention of unlawful interference in civil aviation, maritime navigation and international cargo movement. In most of these areas, international instruments and standards have been developed by specialized international organizations such as the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the World Customs Organization (WCO).
11. The principal sources of international standards relating to prevention of trafficking in small arms and light weapons (SALW) are the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the United Nations International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons; the United Nations Office on Drugs and Crime (UNODC) Legislative guide to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the United Nations Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; and other references developed by the United Nations Development Programme (UNDP), the United Nations Office for Disarmament Affairs (UNODA) and the United Nations Institute for Disarmament Research (UNIDIR).

D. LAW ENFORCEMENT

12. There are no internationally agreed standards for law enforcement in the field of counter-terrorism. However, United Nations bodies have adopted numerous “soft law” instruments governing the conduct of law enforcement bodies and the treatment of individuals who come into contact with them. In most States, law enforcement authorities have the primary responsibility for countering terrorism. They are therefore key to the effective implementation of Security Council resolutions on terrorism.
13. Police forces increasingly take part in efforts to prevent terrorism. In its resolution 2322 (2016), the Council calls on States to continue sharing information on ongoing international counter-terrorism cooperation, including among special services, security agencies and law enforcement organizations and criminal justice authorities. In its resolution 2341 (2017), the Council calls upon Member States to explore ways to exchange relevant information and to cooperate actively in the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure.
14. Law enforcement plays a role in several other areas covered by the present Guide, which refers to observations of the Madrid Guiding Principles identified at the Committee’s special meeting of July 2015, as well as actions encouraged by other relevant international instruments, standards and good practices, including the relevant memorandums of the joint UNCCT/CTITF - GCTF document on “Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the flow of Foreign Terrorist Fighters,” the International Criminal Police Organization (INTERPOL) Guidelines on Combating Terrorism, Integrated Border Management, and Standards Concerning the Provision of 24/7 Support to Policing and Law Enforcement Services by the INTERPOL General Secretariat to its member States via the INTERPOL National Central Bureaus (NCBs), as well as practices of the European Police Office (Europol) Working Group on Terrorism and other regional police associations, the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (*Havana, 1990*).

E. GENERAL LEGAL ISSUES, INCLUDING LEGISLATION, CRIMINAL JUSTICE AND INTERNATIONAL COOPERATION

15. In its resolutions 1373 (2001) and 2178 (2014), the Security Council imposes legal obligations on United Nations Member States in a number of areas and calls on States to take additional measures related to their general legal frameworks, including codification of the international counter-terrorism instruments, denial of safe haven, recruitment, jurisdiction, bringing terrorists to justice, and international legal cooperation.
16. The Council also calls on States to identify existing good practices among international, regional and subregional organizations (including practices developed by UNODC in its Model Legislative Provisions against Terrorism). The provisions of the 19 international counter-terrorism instruments and additional amendments also set forth specific measures relating to codification, investigation, prosecution, adjudication, jurisdiction, international cooperation, and denial of safe haven. In addition, many provisions contained in the terrorism-related conventions and protocols expressly require compliance with various aspects of international human rights, refugee and humanitarian law, including the right to fair treatment, and the rule of law. These measures will, if comprehensively introduced, enhance implementation of resolutions 1373 (2001), 1624 (2005), and 2178 (2014).
17. In its resolution 2322 (2016), the Council adds additional requirements aimed at strengthening international cooperation, including by investigators, prosecutors and judges, in order to prevent, investigate and prosecute terrorist acts. Those requirements are described in the present Guide. Council resolution 2341 (2017) also calls on Member States to explore ways to exchange relevant information and to cooperate actively in the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure. The resolution calls on States to ensure that they have established criminal responsibility for terrorist attacks intended to destroy or disable critical infrastructure, as well as the planning of, training for, and financing of, and logistical support for, such attacks.
18. The present Guide also addresses a number of practical and institutional issues. Paragraph 2 (e) of resolution 1373 (2001), for example, requires States to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. This requirement lends itself to a review of the extent to

which the related legislation is being effectively implemented by Member States. A similar approach is followed with respect to international cooperation.

F. HUMAN RIGHTS, REFUGEE AND HUMANITARIAN LAW ASPECTS OF COUNTER-TERRORISM IN THE CONTEXT OF RESOLUTIONS 1373 (2001), 1624 (2005) AND 2178 (2014)

19. The Security Council has stressed that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular, international human rights, refugee and humanitarian law. The Council has directed CTED, in accordance with its mandate, to advise the Committee on issues relating to such law in connection with the identification and implementation of effective measures to implement resolutions 1373 (2001) 1624 (2005) and 2178 (2014). In policy guidance on human rights adopted in 2006, the Committee set out its position on human rights, directing CTED to take relevant issues into account, including in analysing States' implementation of the resolution.¹
20. In its resolution 2178 (2014), the Security Council underscored that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort. It noted the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity.²
21. The present Guide has been prepared in recognition of the fact that human rights obligations undertaken by States around the world differ. Some States are not party to certain of the universal human rights instruments and many are parties to regional human rights instruments that differ in certain respects. There are also differing understandings with respect to the incorporation of international human rights standards into domestic law. Nonetheless, human rights are inherent to all human beings and are universal, interrelated, interdependent and indivisible. Moreover, certain human rights may never be suspended or restricted, including in times of public emergency.³ Non-derogable rights include the right to life,⁴ freedom from torture,⁵ freedom from enslavement or servitude,⁶ freedom of thought, conscience and religion.⁷ Some principles, such as the absolute prohibition of torture, are considered to have attained the status of *jus cogens*, meaning that they may never be subject to derogation by any State.
22. Key sources of human rights guidance include the findings of the United Nations special procedures mechanisms and the jurisprudence of United Nations treaty bodies. In implementing their obligations pursuant to the aforementioned resolutions, States must also have due regard to international refugee law, including the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

1 S/AC.40/2006.

2 S/RES/2178 (2014), preamble.

3 The International Covenant on Civil and Political Rights (ICCPR) article 4 states that: "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made (including) ... in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed." In its General Comment 29 (derogations during a state of emergency), the United Nations Human Rights Committee recognized several examples of peremptory norms from which States can never derogate, beyond those listed in Article 4 of the International Covenant on Civil and Political Rights, including fundamental principles of fair trial (including the presumption of innocence), freedom from arbitrary deprivation of liberty, and prohibition of collective punishments.

4 Universal Declaration of Human Rights (UDHR), article 3; ICCPR, article 6.

5 UDHR, article 5 and ICCPR, articles 7 and 4 (2).

6 UDHR, article 4 and ICCPR, articles 8 and 4 (2).

7 UDHR, article 18 and ICCPR article 18 and 4 (2).

G. PROHIBITION AND PREVENTION OF INCITEMENT TO TERRORISM AND COUNTERING VIOLENT EXTREMISM IN ACCORDANCE WITH RESOLUTIONS 1624 (2005) AND 2178 (2014)

23. The Security Council, in its resolution 1624 (2005), calls on Member States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to prohibit by law incitement to commit a terrorist act or acts, prevent such conduct,⁸ and take measures to counter incitement of terrorist acts motivated by extremism and intolerance.⁹ Within the framework of the country visits conducted on behalf of the Committee and in other dialogue with Member States, CTED has urged Member States to consider taking a comprehensive approach to the effective implementation of resolutions 1624 (2004) and 2178 (2014) through legal and law enforcement measures, as well as other relevant initiatives, to address the threat of incitement to commit terrorist acts.
24. In its resolution 2178 (2014), the Council encourages Member States to “engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment and promoting social inclusion and cohesion”.¹⁰ Countering violent extremism (CVE) initiatives may include the establishment of interreligious and intercultural dialogue mechanisms, educational and religious initiatives, community-engagement programmes, or development of national CVE strategies.
25. In its resolution 2354 (2017), the Security Council urged Member States to implement the “Comprehensive International Framework to Counter Terrorist Narratives” that was submitted by the Counter-Terrorism Committee to the Council in April 2017 (S/2017/375), with recommended guidelines and good practices to effectively counter the ways that ISIL (Da’esh), Al Qaida and associated individuals, groups, undertakings and entities use their narratives to encourage, motivate, and recruit others to commit terrorist acts.

8 S/RES/1624 (2005), para. 1 (b).

9 S/RES/1624(2005), para. 3.

10 S/RES/2178 (2014), para. 16.

CHAPTER I: SECURITY COUNCIL RESOLUTION 1373 (2001), PARAGRAPH 1

In paragraph 1 of the resolution, the Security Council decides that all States shall:

- a) Prevent and suppress the financing of terrorist acts;
- b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities; and
- d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

A. CRIMINALIZATION OF TERRORISM FINANCING

Comments:

1. Terrorism financing should be both a predicate offence to money-laundering and a standalone offence. Offences such as aiding and abetting are not adequate substitutes.
2. The scope of the offence, as set forth in article 2 of the International Convention for the Suppression of the Financing of Terrorism, is worth noting. It refers to the terrorist acts criminalized under not only all the offences set forth in the various counter-terrorism instruments mentioned in the 1999 Convention, but also to the generic offence. Thus, the terrorism-financing offence should also apply in relation to the 15 offences contained in the 19 international counter-terrorism instruments. Intent and purpose are required for the generic acts, but not for the "Convention and other universal instruments" offences. Legal frameworks that cover only the self-contained "generic" definition of terrorist acts are unlikely to capture fully the offences set forth in treaties. Analysts should ascertain both whether a State has criminalized the financing of the acts described in the treaties (to the extent that such State is a party to the treaties) and the financing of acts as defined in paragraph 2(c)(ii) of the Interpretive Note.
3. FATF Recommendation 5 and its Interpretive Note (which was revised in October 2016) go beyond the obligations contained in the 1999 International Convention for the Suppression of the Financing of Terrorism in requiring States to also criminalize the financing of terrorist organizations and individual terrorists on a broader basis without requiring a link to a specific terrorist act or acts. This obligation was reaffirmed in paragraph 17 of resolution 2253 (2015), in which the Council notes that Recommendation 5 applies to the financing of terrorist organizations and individual terrorists for any purpose, including, but not limited to, recruitment, training, or travel, even in the absence of a link to a specific terrorist act. FATF has published detailed guidance¹¹ on the criminalization of terrorism financing in accordance with its Recommendation, which examines how both United Nations and FATF requirements can be implemented in the context of different legal traditions, including all the elements set out below.
4. Terrorism-financing offences should extend to any funds, whether deriving from a legitimate or illegitimate source. A definition of funds should be included in the law or in the criminal code and should comply with the definition contained in the 1999 "Terrorism Financing" Convention. The definition of "funds" must be broad and must include assets that may potentially be used to obtain goods and services, as well as trade resources. In October 2016, FATF revised the Interpretive Note to Recommendation 5.

¹¹ FATF Guidance: Criminalizing Terrorist Financing (Recommendation 5), October 2016.

The revisions replace the term *funds* with the expression *funds or other assets* in order to explicitly cover the provision of “economic resources” (oil, oil products, modular refineries and related material, other natural resources) in accordance with Council resolutions 2161 (2014), 2199 (2015) and 2253 (2015).

5. Terrorism-financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).
6. The person providing or collecting the funds should have the knowledge or the unlawful intention that the funds are to be provided to a terrorist organization or an individual terrorist for any purpose. It is not necessary, however, that the financier have any specific knowledge of how these funds ought to be used or are intended to be used.
7. States should ensure that the intent and knowledge required to prove the terrorism-financing offence may be inferred from objective factual circumstances.
8. States shall establish as a criminal offence the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, and or participation in, terrorist acts or the providing or receiving of terrorist training.¹²
9. In order to supplement an incomplete criminal offence of terrorism financing, particularly with regard to the financing of a terrorist organization or individual terrorist, some States have used the offence of breaching asset-freezing requirements. It is required in this case that the prohibition from making funds, financial assets or economic resources or other related services available, directly or indirectly, to terrorist organizations or individual terrorists, for any purpose, even in the absence of a link to a specific terrorist act (as set forth in paragraph 1 (d) of resolution 1373 (2001) and reaffirmed in paragraph 20 of resolution 2253 (2015)) is made a criminal offence.
10. Criminalization should be in accordance with article 6 of the 1999 Convention (i.e., criminal acts cannot be justifiable by considerations of a political, philosophical, ideological, racial, ethnic or religious nature).

Issues for consideration:

1. Is terrorism financing criminalized as a standalone offence?
2. Is every element of the offence covered?
3. Is the collection of funds criminalized independently of the provision of funds?
4. Is terrorism financing listed as a predicate offence to the money-laundering offence?
5. Does the definition of “funds” provided for in domestic law cover any funds, whether deriving from legitimate or illegitimate source?¹³
6. Is the definition of “funds” inclusive and does it cover the provision of economic resources as set forth in resolutions 2161 (2014), 2199 (2015) and 2253 (2015) and in accordance with FATF Recommendation 5 and its Interpretive Note?
7. Does the “terrorism financing” offence in domestic law apply even in the absence of a link to a specific terrorist act?
8. Does the “terrorism financing” offence in domestic law cover the financing of both an individual terrorist or a terrorist organization, for any purpose?¹⁴
9. Does the “terrorism financing” offence cover the financing of all offences created pursuant to the 19 international counter-terrorism instruments?

¹² S/RES/2178 (2014), para. 6 (b).

¹³ CTED Detailed Implementation Survey (DIS) template 1.1.6.

¹⁴ DIS 1.1.7.

10. Does the “terrorism financing” offence apply to the financing of travel to another country by a foreign terrorist fighter for the purpose of the perpetration, planning, or preparation of, or participation in terrorist acts or the providing or receiving of terrorist training?
11. Does the “terrorism financing” offence apply to financing a terrorist attack intended to destroy or disable critical infrastructure?

The following FATF Recommendations should be consulted:

1. Provisional measures (Recommendation 4).
2. “Terrorism financing” offence (Recommendations 5 and its Interpretive Note and Immediate Outcome 9) and guidance 2015 Guide on the criminalization of terrorism financing.
3. Implementation of relevant international instruments (FATF Recommendations 36-39).

B. FREEZING TERRORISTS’ ASSETS WITHOUT DELAY

Comments:

1. One of the most effective ways to combat terrorism is to prevent terrorists and terrorist entities from accessing the funds necessary for recruitment, training, travel, and the planning and the commission of terrorist acts, including for the planning of, training for, and financing of, and logistical support for, terrorist attacks intended to destroy or disable critical infrastructure.
2. The obligation to freeze, without delay, funds and assets linked to terrorist organizations or individual terrorists is a key element of resolution 1373 (2001). All elements of the provision set forth in paragraph 1 (c) should be in place, and the State should be able to freeze funds, other financial assets or economic resources without delay.
3. States should have in place a legal provision that provides for the freezing of terrorist funds and assets pursuant to resolution 1373 (2001) and establish a designating mechanism with adequate due process consideration, as well as a dedicated mechanism to address foreign asset-freezing requests. The freezing decisions must be communicated to the private sector in order to identify and detect any funds or financial assets held by designated person or entities. Regular reviews of the designations to ensure that the persons and entities whose assets have been frozen still represent a terrorist threat to the State could be considered.¹⁵
4. A complementary requirement to the asset-freezing requirement is to prohibit anyone from making funds, financial assets or economic resources and other related services available to terrorists and terrorist entities, as set forth in paragraph 1 (d) of resolution 1373 (2001). Paragraph 1 (d) should be treated, together with the asset-freezing requirement set forth in paragraph 1 (c), as a prohibition. Once an individual or an entity (“who/which commits, or attempts to commit a terrorist act”) has been designated, it should be prohibited from providing any funds, assets, economic resources, financial or other related services to those individuals or entities. States are not required to criminalize breaches of this prohibition (although many do criminalize wilful breaches as either a sanctions offence or a terrorism-financing offence). Most Member States have introduced administrative or monetary fines as sanctions for anyone contravening the prohibition or for institutions failing to exercise adequate due diligence to avoid breaches.
5. Paragraph 19 of Council resolution 2253 (2015) stresses that the prohibition in 1 (d) should be strict and inclusive. No funds (apart from the exemptions duly authorized by the State that designates the person or entity) may be provided to a designated individual or entity even if the funds are not intended to be used for a terrorist purpose. This provision was further reinforced in Council resolution 2322 (2016).
6. States should employ best practice in respect of guarantees of due process in their asset-freezing systems. The Security Council has stressed that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law. Pursuant to article 17 of the “Terrorism Financing” Convention, “any person who is taken into

¹⁵ FATF International Best Practices on Targeted Financial Sanctions Related to Terrorism and Terrorism Financing 2013, Recommendation 6, para 31.

custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.” Applicable law may, depending on the State’s international obligations, include provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as provisions of the Universal Declaration of Human Rights. Among other considerations, it is necessary to consider whether judicial or other remedies that are effective, independent and impartial are available to persons or entities to challenge decisions to freeze assets. In compliance with resolution 1452 (2002), persons and entities designated under resolution 1373 (2001) may request from the State partial access to funds and resources for basic and extraordinary expenses.

7. The mechanism to be established pursuant to resolution 1373 (2001) differs from the requirements set forth in Council resolutions 1267 (1999), 1989 (2011) and 2253 (2015), which also establish the United Nations lists. Asset-freezing mechanisms may be of an administrative or criminal nature, provided that the State can freeze without delay and on an ex parte basis. Many States have in recent years adopted mechanisms to identify the persons and entities whose funds and assets should be frozen without delay. However, these mechanisms have rarely been tested. This can make assessment of effectiveness difficult. In order to facilitate the processing of third-party requests for asset-freezing under resolution 1373 (2001), CTED has developed an asset-freezing contact database, which provides the following information: name of authority designated to receive terrorist asset-freezing requests from foreign jurisdictions; e-mail address; telephone number; fax number; acceptable languages; website address, where available; and request form, if any. To facilitate requests to its members, FATF maintains a handbook that lists, for each country, point of contact, procedures, legal tests, and evidential requirements for implementing asset-freezing.

Issues for consideration:

1. How does the State implement the asset-freezing requirements of resolution 1373 (2001)?
2. Does the State freeze assets without delay?
3. Can the State freeze funds ex parte or without prior notice?¹⁶
4. How does the State identify and designate the names of persons and entities whose funds and assets are to be frozen under resolution 1373 (2001)?
5. Does the State have a mechanism to address third-party asset-freezing requests, which differ from mutual legal assistance procedures?
6. How does the State provide guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets?
7. What legal provisions does the State have in place to allow a person or entity whose funds or other assets have been frozen to challenge the freezing measure before a court or other competent authority?¹⁷
8. How does the State communicate to the private sector actions taken under the freezing mechanism?
9. How does the State monitor compliance with the relevant asset-freezing requirements, and impose civil, administrative or criminal sanctions for failure to comply?
10. Are requests to unfreeze funds or other assets dealt with in a timely manner?
11. Can funds or other assets of persons or entities inadvertently affected by a freezing mechanism be unfrozen upon verification that the person or entity is not a designated person?

¹⁶ DIS 1.2.2.

¹⁷ DIS 1.2.7.

12. Does the State authorize access to funds or other assets that were frozen pursuant to resolution 1373 (2001) if such access is determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with Security Council resolution 1452 (2002)?
13. How does a person or entity whose funds or other assets have been frozen challenge that measure with a view to having it reviewed by a court or other independent administrative body?
14. Has the State used its asset-freezing mechanism to disrupt and prevent financial support to FTFs?¹⁸
15. Has the State frozen any assets pursuant to resolution 1373 (2001)?¹⁹

The following international instruments, standards and good practices provide guidance in this area:

1. Security Council resolutions 1373 (2001) and 1267 (1999) and successor resolutions.
2. Targeted financial sanctions related to terrorism and terrorism financing (FATF Recommendation 6 and its Interpretive Note and Immediate Outcome 10).
3. FATF International Best Practices: Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6), as revised in June 2013. (Provides practices that could assist States to implement the targeted financial sanctions to prevent and suppress terrorism financing in accordance with the relevant Council resolutions.)

C. PREVENTIVE MEASURES TO BE TAKEN BY FINANCIAL INSTITUTIONS AND NON-FINANCIAL BUSINESSES AND PROFESSIONS

Comments:

1. The private sector, financial institutions and non-financial businesses and professions can be misused for terrorism-financing purposes, but also play a pivotal role in reporting suspected terrorism financing, mapping networks of associates, and building financial profiles of suspected financiers, terrorists, or FTFs. States need to determine its own terrorism-financing risks and ensure the implementation of preventive measures against terrorism financing, accordingly.
2. Terrorism financing is difficult to detect because it may involve small amounts of money. In consequence, it can be difficult for the private sector to determine that the money, which may be legitimate, could in fact be used by a terrorist or a terrorist entity or for terrorist purposes. In response to the threat posed by terrorist organizations such as the Islamic State of Iraq and the Levant (ISIL, also known as Da'esh), private and public partnerships should be strengthened and adequate terrorism-financing risk indicators made available to the private sector.²⁰
3. There should be formal or informal mechanisms in place to strengthen exchange of information on terrorism financing between the private sector and the Government, as well as within private-sector entities themselves.
4. International instruments and standards on customer due diligence, the reporting obligations that arise from it, and the penalties attached to non-compliance, are exhaustive. They arise from the need for financial institutions and other businesses and professions to ensure that they can identify their customers and their customers' activities, keep relevant records, and report any activity (even in the case of attempted transactions) that gives grounds for suspicion.

Issues for consideration:

1. Does the State and all relevant authorities properly understand its terrorism financing risk? Has the State conducted a national risk assessment?

¹⁸ S/RES/2178 (2014), para. 4.

¹⁹ DIS 1.2.4.

²⁰ S/RES/2253 (2015), para. 24.

2. What sectors are at risk for terrorism financing, and have risk indicators been disseminated to the private sector?
3. Does the State impose a legal obligation on all financial institutions and designated non-financial businesses and professions (DNFBPs) to identify their customers, including beneficial owners, and keep records?
4. Does the State impose an explicit and direct obligation to report suspicious activity related to terrorism financing and money-laundering?
5. Does the State impose a reporting obligation on (i) financial institutions and (ii) other intermediaries? (Check each “designated non-financial businesses and profession” listed by FATF.)
6. What sanctions for breach of compliance targeted at reporting entities are provided for, and are they effective, proportionate, and dissuasive?
7. Has the State established an authority responsible for regulating and supervising reporting entities’ compliance with their anti-money-laundering/counter-financing of terrorism (AML/CFT) obligations?
8. What mechanisms for public/private sector information-sharing on terrorism financing has the State put in place?

The following international instruments, standards and good practices provide guidance in this area:

1. Customer due diligence and record-keeping (FATF Recommendations 10,11,12, 16-17, 19, 22, 23 and Immediate Outcome 4).
2. Reporting of suspicious transactions, tipping-off and confidentiality (FATF Recommendations 20, 21 and Immediate Outcome 4).
3. Internal controls (FATF Recommendation 18).
4. Monitoring transactions (FATF Recommendation 11).
5. Transparency and beneficial ownership of legal persons and arrangements (FATF Recommendations 24-25 and Immediate Outcome 5).
6. Regulation and supervision (FATF Recommendations 26-28 and Immediate Outcome 3).

D. INSTITUTIONAL AND OTHER MEASURES NECESSARY IN SYSTEMS FOR COMBATING MONEY-LAUNDERING AND TERRORISM FINANCING

Comments:

1. The financial intelligence unit (FIU) is an important element of an anti-money-laundering/counter financing of terrorism (AML/CFT) regime because it is responsible for receiving, analysing and disseminating reports on suspicious transactions/activities and other relevant information regarding suspected money-laundering and terrorism financing. It is usually (but not always) a key interlocutor between the authorities and the private sector and, as such, often plays a role in providing the private sector with guidance, training and feedback.
2. The FIU should be able to obtain additional information from reporting entities and should have timely access to the financial, administrative and law enforcement information that it requires in order to undertake its functions properly.
3. An effective FIU can therefore serve as an important catalyst to the establishment of a dynamic AML/CFT regime. Much depends on the relations that the FIU is able to develop with other authorities and with the private sector. Apart from the need to ensure that it complies with the core functions detailed below, there is no single model for an FIU. Some carry out an investigative or prosecutorial role, while others are purely administrative (or a hybrid model). Most States have established an FIU, but the range and effectiveness of their powers vary considerably. The FIUs of more than 150 States and jurisdictions have joined the Egmont Group (an organization dedicated to FIUs) in order to provide, inter alia, a secure platform for the exchange of specific information in relation to money-laundering and terrorism financing.
4. States should ensure that designated law enforcement authorities have responsibility for money-laundering and terrorism-financing investigations within their national AML/CFT framework. There should be a proactive financial-investigation component

in most terrorism investigations. Moreover, when conducting investigations into money-laundering, associated predicate offences, and terrorism financing, the competent authorities should be able to ask for all relevant information held by the FIU.

5. States that have not yet done so should develop the expertise of their FIUs to analyse cases of trafficking in persons that finance terrorism and should work with other States to develop this capacity, as called for in paragraph 5 of Council resolution 2331 (2016).
6. States should have in place measures to ensure that any person who participates in the financing of terrorist acts is brought to justice and the ability to prosecute and penalize in a manner that duly reflects the seriousness of the offence.²¹

Issues for consideration:

1. Does the State have an FIU established in law?
2. Is the FIU operationally effective in exercising its powers?
3. Is it receiving, analysing and disseminating STRs and other relevant information regarding suspected money-laundering or terrorism-financing activities, as well as fulfilling the other core functions of an FIU?
4. How many reports have been received and processed?
5. What level of (financial and human) resources is dedicated to the FIU?
6. What is the relationship between the FIU and the reporting parties (including provision of guidance regarding the manner of reporting and feedback)?
7. Does the State require financial institutions to report suspicious transactions relating to terrorism financing to the FIU?²²
8. Does the State have legal provisions in place to protect reporting entities from liability when reporting to the FIU?²³
9. Does the State prohibit reporting entities, by law, from disclosing the fact that an STR or other information has been submitted to the FIU?²⁴
10. Does the law provide that the FIU may obtain additional information from reporting entities?²⁵
11. Can the FIU suspend suspicious transactions suspected of being related to money-laundering and terrorism financing?
12. Is there a provision in domestic law that allows the FIU access to financial, administrative and law enforcement information?²⁶
13. How do the FIU and financial investigators contribute to the counter-terrorism efforts of the State?
14. Has the FIU participated in the development of the national counter-terrorism strategy (if any)?

The following international instruments, standards and good practices provide guidance in this area:

1. Financial Intelligence Units (FIUs), responsibilities and powers of law enforcement and investigative authorities (FATF Recommendations 29, 30, 31 and Immediate Outcomes 4 and 6).
2. Other forms of international cooperation (FATF Recommendation 37 & 40 and Immediate Outcome 6).
3. Reporting of suspicious transactions (FATF Recommendation 20 and Immediate Outcome 4).
4. Power to request further information from any reporting entities on the sole basis of a foreign request (i.e., without the existence of a national STR as a prerequisite).

²¹ S/RES/2178 (2014), para. 6 (b).

²² DIS 1.4.3.

²³ DIS 1.4.4.

²⁴ DIS 1.4.5.

²⁵ DIS 1.4.6.

²⁶ DIS 1.4.7.

5. Reporting of cross-border wire transfers without thresholds.
6. Central bank accounts register (European Commission Action Plan for Strengthening the Fight against Terrorism Financing, February 2016).
7. Cooperation among Financial Intelligence Units (FIU), Law enforcement agencies (LEAs) and Intelligence Services.

Additional useful resources on effective FIUs:

1. Suspending Suspicious Transactions (World Bank, 2013).
2. Egmont Group of Financial Intelligence Units Operational Guidance for FIU Activities and the Exchange of Information (July 2013).
3. Egmont Group of Financial Intelligence Units Principles for Information Exchange between Financial Intelligence Units (October 2013).

E. MONEY OR VALUE TRANSFER SERVICES, INCLUDING ALTERNATIVE REMITTANCE SYSTEMS (e.g., HAWALA)

Comments:

1. Money or Value Transfer Services (MVTs) include non-bank institutions that perform money transfers or remittances, such as exchange houses. They range from large, global networks to small operators active only in specific remittance “corridors”. MVTs also include alternative remittance systems (ARS) such as Hawala, which is traditionally associated with a money transfer mechanism that operates with ties to specific geographic regions or ethnic communities that generally operate outside formal banking channels, frequently without oversight by the authorities. This can make them vulnerable to abuse. MVTs can provide an attractive option for individuals who want to transfer or exchange currency because MVTs providers often offer lower costs and greater speed than banks or allow consumer to use without accounts, a particular benefit for the unbanked. They are frequently used in regions with limited or no banking services.
2. MVTs providers should: (i) be subject to monitoring for AML/CFT compliance; (ii) ensure that their agents are licensed or registered by a competent authority and maintain an updated list of their agents; and (iii) include their agents in their AML/CFT programmes and monitor them for compliance with those programmes.
3. States should take action identify natural or legal persons that provide MVTs without a licence or registration and applying proportionate and dissuasive sanctions to them.
4. MVTs providers should be required to comply with all the relevant preventive and reporting AML/CFT requirements, particularly with regard to customer due diligence, record-keeping, and reporting suspicious transactions.
5. It is not necessary for States to make ARS illegal, but States should have the capacity to monitor and regulate their activities.

Issues for consideration:

1. Does the State regulate and effectively supervise money value transfer services?
2. Are persons or legal entities that provide money or value transfer services, whether formal or informal, obliged to be licensed or registered?²⁷
3. Are persons or legal entities that provide money or value transfer services, whether formal or informal, subject to AML/CFT obligations?²⁸
4. Does the State have the means to identify persons or legal entities carrying on this activity without being licensed or registered?

²⁷ DIS 1.5.1.

²⁸ DIS 1.5.2.

5. Are persons or legal entities that perform this service illegally subject to appropriate administrative, civil or criminal sanctions?²⁹
6. Has the State conducted awareness-raising campaigns towards private-sector entities regarding the terrorism-financing risks associated with alternative remittance systems?³⁰

The following instruments, standards and good practices provide guidance in this area:

1. Money or Value Transfer Services (MVTs) (FATF Recommendations 10, 11, 12, 14, 15, 17, 22 and 23 and their Interpretive Notes, and Immediate Outcome 4).
2. FATF, Money-Laundering Through Money-Remittance and Currency-Exchange Providers, June 2010.
3. FATF, The Role of Hawala and Other Similar Service Providers in Money-Laundering and Terrorism Financing (October 2013)³¹.
4. FATF, Guidance for a Risk-based Approach "Money or Value Transfer Services", February 2016.

F. WIRE TRANSFERS

Comments:

1. The use of wire transfers and other instruments offered by the regular financial system can be an effective way to launder illicit proceeds or to move licit money for terrorism-financing purposes or for the generic support of terrorist activities. Terrorist individuals usually conduct structured transactions below applicable thresholds in order to avoid reporting and record-keeping obligations.
2. Financial institutions should be required to ensure that all cross-border wire transfers of USD/EUR 1,000 or more are always accompanied by: (i) required and accurate originator information; and (ii) required beneficiary information. For domestic wire transfers, the information accompanying the transaction should include originator information, such as the name of the originator; the originator account number (or, in the absence of an account, a unique transaction reference number that permits traceability); and the originator's address, national identity number, customer identification number, or date and place of birth.
3. Beneficiary financial institutions should be required to: (i) take reasonable measures to identify cross-border wire transfers that lack originator/beneficiary information; (ii) verify the identity of the beneficiary, if it has not been previously verified, and maintain this information (in case of cross-border wire transfers of USD/EUR 1,000 or more); and (iii) have risk-based policies and procedures in place to determine: (a) when to execute, reject, or suspend a wire transfer lacking originator/ beneficiary information; and (b) the appropriate follow-up action.

Issues for consideration:

1. Does the State ensure that financial institutions include full and accurate originator information and full and meaningful beneficiary information in electronic funds transfers and related messages?³²
2. Does the State oblige financial institutions to include, throughout the payment chain, the originator and beneficiary information linked to the electronic-funds transfer?³³
3. What measures does the State have in place for enhanced scrutiny of wire transfers without such originator/beneficiary information?

²⁹ DIS 1.5.3.

³⁰ DIS 1.5.4.

³¹ FATF (2013), *The Role of Hawala and other Similar Service Providers in Money Laundering and Terrorist Financing*, FATF, Paris: <http://www.fatf-gafi.org/media/fatf/documents/reports/Role-of-hawala-and-similar-in-ml-tf.pdf>

³² DIS 1.6.1.

³³ DIS 1.6.2.

The following international instruments, standards and good practices provide guidance in this area:

1. Wire transfers (FATF Recommendation 16 and its Interpretive Note).

G. CASH COURIERS

Comments:

1. Physical cross-border transportation of cash and bearer negotiable instruments (BNI) remains widespread owing to the heavy reliance on cash in many States.
2. Paragraph 1 (a) of resolution 1373 (2001) directs Member States to prevent and suppress the financing of terrorist acts and paragraph 2 (g) requires States to prevent the movement of terrorist groups through effective border controls. The 1999 International Convention for the Suppression of the Financing of Terrorism requires States Parties to consider introducing measures to detect or monitor the physical cross-border transportation of cash and BNI.
3. States are required to implement measures to detect and monitor the physical cross-border transportation of currency and bearer negotiable instruments (BNI), fully covering both incoming and outgoing cross-border transportations of currency and BNI, including through containerized cargo.
4. Since the physical transportation of cash or BNI across international borders involves at least two States, customs and other similar border authorities clearly have a significant role to play in combatting this phenomenon and in enhancing effective international cooperation. However, States' customs authorities are often more concerned about capital flight than money-laundering and terrorism financing and thus do not adequately gather related intelligence or cooperate with the FIU.
5. States must have in place either a declaration or disclosure system for incoming and outgoing cross-border transportations of currency and BNI. States can use either a declaration or disclosure system; it is not necessary to have both. In a declaration system, all persons making a physical cross-border transportation of currency or BNI of a value exceeding a pre-set, maximum threshold of USD/EUR 15,000 should be required to submit a truthful declaration to the designated competent authorities. In a disclosure system, travellers should be required to give a truthful answer and provide the authorities with appropriate information upon request, but are not required to make an upfront written or oral declaration.
6. States must ensure that their competent authorities have the legal power to stop or restrain currency or BNI that are suspected to be related to terrorism financing or money-laundering or that are falsely declared or disclosed. They should also ensure that effective, proportionate and dissuasive sanctions may be imposed on persons who make false declarations or disclosures, and adopt measures to confiscate currency or BNI related to terrorism financing or money-laundering. In addition, States should strengthen their capacities to develop customs risk indicators at both the "pre-arrival" and "arrival" stages, raise awareness of the requirements to declare/disclose, and put in place record-keeping systems to collect, gather and share traveller information.

Issues for consideration:

1. Does the State have in place either a disclosure or declaration system, or other measures, to detect the illicit physical cross-border transportation of currency and BNI?³⁴
2. Do these measures apply to incoming and outgoing physical cross-border transportation of currency and BNI made by a person, through mail, or in containerized cargo?
3. If the State does have a declaration system in place, is the threshold for declaration equivalent to, or below EUR/US \$15,000?³⁵
4. Do the border authorities have the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing?³⁶

³⁴ DIS 1.7.1.

³⁵ DIS 1.7.4.

³⁶ DIS 1.7.6.

5. Has the State adopted measures to confiscate currency or BNI related to terrorism financing or money-laundering?
6. Are there proportionate and dissuasive civil administrative or criminal sanctions in place for making a false declaration or disclosure?³⁷
7. Is information that is obtained through the declaration/disclosure system shared with the FIU and, if so, what kind of information is shared with the FIU?³⁸
8. Does the State engage in efforts to raise awareness of the requirements to declare/disclose (e.g., signage, pamphlets, and forms)?³⁹
9. Does the State have in place record-keeping systems to gather and share traveller information?
10. Do the measures put in place by the State respect the freedom of capital movements?
11. Does the State have an enforcement capacity to prevent and detect the illegal cross-border movement of cash and BNI (information and intelligence, risk analysis, targeting, inspection)?⁴⁰

The following international instruments, standards and good practices provide guidance in this area:

1. Cash couriers (FATF Recommendation 32 and Immediate Outcomes 6 and 7).
2. Confiscation and provisional measures (FATF Recommendation 4).
3. FATF, International Best Practices: Detecting and Preventing the Illicit Cross-Border Transportation of Cash and Bearer Negotiable Instruments, February 2010.
4. FATF, Money-Laundering Through the Physical Transportation of Cash, October 2015.
5. WCO, Customs Enforcement Guidelines on Countering Money Laundering and Terrorist Financing, 2015.

H. NON-PROFIT ORGANIZATIONS

Comments:

1. Non-profit organizations (NPOs) play a vital role in the world economy.
2. Given the variety of NPO legal forms, FATF has adopted a “functional” definition of NPO under Recommendation 8 (revised in October 2016), which refers to “a legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’”. Some NPOs (those covered by the FATF definition) may be vulnerable to terrorism-financing abuse for a variety of reasons, including: (i) NPOs enjoy the public trust, have access to huge sources of funds, and are often cash-intensive; and (ii) some NPOs operate within or near areas that are most exposed to terrorist activities.
3. Measures put in place by Member States to protect NPOs from potential abuse should be tailored and in accordance with a risk-based approach. It is imperative that States implement such measures in a manner that respects their obligations under the Charter of the United Nations and international human rights law.
4. Since not all NPOs are inherently high-risk, States should first understand their domestic NPO sector and the terrorist financing risks facing this sector in order to identify which subsets are at higher risk for terrorism financing and fall within the definition provided by FATF. Having identified the subsets most vulnerable to terrorism-financing abuse, States should review the adequacy of laws and regulations related to them and work closely with the sector to determine the level of measures required to ensure its protection from abuse.

³⁷ DIS 1.7.7.

³⁸ DIS 1.7.8 and 1.7.9.

³⁹ DIS 1.7.10.

⁴⁰ DIS 1.7.11.

5. There is a diverse range of approaches to identifying, preventing and combating terrorist financing abuse of NPOs. An effective approach should involve all four of the following elements: (i) sustained outreach; (ii) targeted risk-based supervision or monitoring; (iii) effective investigation and information gathering; and (iv) effective mechanisms for international cooperation.
6. States should encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse. States should work with NPOs to develop and refine best practices to address terrorist financing risks and vulnerabilities in order to protect them from terrorist financing abuse.
7. There should be targeted risk-based supervision or monitoring. NPOs may, for instance, be licensed and registered, issue annual financial statements on their incomes and expenditures, have appropriate controls in place, and make publicly available relevant information about their objectives, control and management. States should put in place effective mechanisms for international cooperation (appropriate points of contact and procedures to respond to international request for information regarding particular NPOs suspected of terrorism financing or involvement in other forms of terrorist support).
8. States are required to identify and take effective and proportionate action against NPOs that either are exploited by, or knowingly supporting, terrorists or terrorist organisations taking into account the specifics of the case. Countries should aim to prevent and prosecute, as appropriate, terrorist financing and other forms of terrorist support. Where NPOs suspected of, or implicated in, terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support. Actions taken for this purpose should, to the extent reasonably possible, minimise negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs.
9. Focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote accountability and engender greater confidence among NPOs, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of accountability, integrity and public confidence in the management and functioning of NPOs are integral to ensuring they cannot be abused for terrorist financing.

Issues for consideration:

1. Has the State identified which subset(s) of NPOs fall(s) within the FATF definition?
2. Has the State conducted a risk assessment or terrorist-financing review of the subset(s) of NPOs that fall(s) within the definition provided by FATF?
3. Has the State reviewed the adequacy of its non-profit sector laws and regulatory framework with regard to risks associated with terrorism financing?⁴¹
4. Does the review of its non-profit sector laws and regulatory framework ensure respect for the right of NPOs to freedom of association and for the legitimate role played by NPOs in the collection and distribution of funds?⁴²
5. Has the State engaged with the sector in conducting its national risk assessment?
6. How does the State involve the NPO sector into the development of risk-based targeted measures to prevent terrorism financing abuse?
7. Is there a domestic regulatory agency for NPOs?⁴³

⁴¹ DIS 1.8.1.

⁴² DIS 1.8.2.

⁴³ DIS 1.8.3.

8. Does the State maintain a central NPO database or similar, centralized register of information (name, purpose, activities, director etc.)?⁴⁴
9. Are there sanctions on NPOs that contravene the regulatory and supervisory framework?⁴⁵
10. Can the information about NPOs contained in NPO registers be made available to law enforcement agencies and to the FIU?⁴⁶
11. Does the State have effective mechanisms in place to respond to international requests for information regarding NPOs suspected of terrorism financing or involvement in other forms of terrorist support?

The following international instruments, standards and good practices provide guidance in this area:

1. Non-profit organizations (FATF recommendation 8, its Interpretive Note and Immediate Outcome 10).
2. FATF, Risk of Terrorist Abuse in Non-Profit Organizations, June 2014.
3. FATF, Best Practices “Combating the abuse of non-profit organizations”, June 2015.

I. NEW TECHNOLOGIES

Comments:

1. In its resolution 2253 (2015), the Security Council expresses concern at the increased use by terrorists and their supporters of new information and communications technologies (ICT), in particular the Internet, to facilitate terrorist acts, and condemns their use to incite, recruit, fund, or plan terrorist acts.⁴⁷
2. Online fundraising, under the pretext of legitimate humanitarian assistance, has been abused for terrorist financing.⁴⁸
3. The use of crowdfunding techniques also represents an emerging terrorism-financing risk.⁴⁹ Crowdfunding is an Internet-enabled way for businesses, organizations or individuals to raise money, from donations or investments, from multiple individuals.
4. Prepaid cards, credit cards, and Internet payment systems have been used to transfer funds online for terrorism-financing purposes.
5. Virtual currencies such as bitcoins can be exploited by criminal groups. This technology allows anonymous transfer of funds internationally, which could be used for terrorism financing. Terrorist groups are actively promoting their use.⁵⁰
6. New technologies using decentralized and distributed structures like “Blockchain”-related technologies can be used and leveraged by various parties to exchange, move, withdraw, or account for, various classes of assets outside classical financial networks.
7. Social networks and third-party payment or communications software is used to facilitate consumer-to-consumer payments.

Issues for consideration:

1. Has the FIU or another national competent authority conducted a national threat assessment regarding new technologies that could be abused for terrorism financing?
2. Do the law enforcement authorities monitor social media trends to identify new technologies used for terrorism financing?

⁴⁴ DIS 1.8.5.

⁴⁵ DIS 1.8.7.

⁴⁶ DIS 1.8.8.

⁴⁷ S/RES/2253 (2015), preamble.

⁴⁸ FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris: www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html, p. 34.

⁴⁹ *Ibid.*, p. 6.

⁵⁰ *Ibid.*, p. 35-36.

3. Has the Government created public-private platforms for communication with the private sector and civil society organizations to discuss the evolving threat of new technologies regarding terrorism financing?
4. Is online fundraising monitored for terrorism-financing purposes?
5. Are prepaid cards and credit cards subject to AML/CFT legal regimes?
6. Are Internet payment systems subject to AML/CFT legal regimes?
7. Are virtual currencies and exchange platforms subject to AML/CFT legal regimes?
8. Are current methodologies and tools used by the FIU and regulators adapted to the emergence of decentralized new technologies?
9. How do the authorities responsible for the implementation of asset-freezing measures deal with the issue of virtual currency?

The following international instruments, standards and good practices provide guidance in this area:

1. New Technologies (FATF Recommendation 15 and Immediate Outcome 4).
2. FATF, Emerging Terrorist Financing Risks (October 2015).
3. FATF, Virtual Currencies: Key Definitions and Potential AML/CFT Risks (June 2014).
4. 2001/413/JHA: EU Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.
5. League of Arab States, 2010, Arab Convention on Combating Information Technology Offences.
6. Communication from the Commission to the European Parliament and Council on an Action Plan for Strengthening the Fight against Terrorist Financing (COM(2016)50) 2 February 2016.
7. European Commission Fourth Anti-Money-Laundering Directive.

CHAPTER II: SECURITY COUNCIL RESOLUTION 1373 (2001), PARAGRAPH 2

In paragraph 2 of the resolution, the Security Council decides that all States shall:

- a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; and
- g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

A. SUPPRESSION AND PREVENTION OF RECRUITMENT

Comments:

1. Recruitment methods employed by terrorist organizations and individuals affiliated with terrorism have evolved in accordance with the evolution of terrorist threat. In paragraph 2 (a) of resolution 1373 (2001), the Council decides that Member States shall suppress recruitment of members of terrorist groups. The Council expanded this requirement in its resolution 2178 (2014), deciding that States shall, consistent with international human rights law, international refugee law and international humanitarian law, prevent and suppress the recruiting of FTFs.
2. Criminalization is key to the suppression of terrorist recruitment. Pursuant to resolution 2178 (2014), States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and penalize in a manner duly reflecting the seriousness of the offence,⁵¹ including the wilful organization of, and acts of recruitment of, FTFs as acts to be suppressed under legislation. Effective enforcement is the second step in suppression.
3. In addition to suppression of recruitment, the Council calls on States to prevent the recruitment of terrorists. This would normally entail the development and implementation of a broader recruitment-prevention strategy. Other counter-recruitment tools include awareness-raising strategies and outreach to various communities.

Issues for consideration:

1. Does the State have in place legislative provisions to suppress the recruitment of terrorists and FTFs?⁵²

⁵¹ S/RES/2178 (2014), para. 6.

⁵² DIS 2.1.2.

2. Does the State criminalize recruitment as an autonomous offence?
3. Is the implementation of the criminalization of recruitment and of the national strategy based upon the principles of necessity and proportionality, and does it exclude any form of arbitrariness or discrimination?
4. Does the implementation of the criminalization of recruitment and of the national strategy provide full respect for the rights of individuals, including, in particular, the rights to freedom of association, freedom of expression, freedom of religion, and privacy?
5. Does the State have in place a national strategy for suppression of recruitment strategy?⁵³
6. Does the State have in place practical (operational) measures to suppress the recruitment of terrorists?⁵⁴
7. Does the strategy address vulnerable communities and places where people could be recruited for terrorism, including places of education or religious training and worship, and prisons?
8. Does the State have in place a specific programme to detect and eliminate recruitment and training techniques with respect to prospective candidates for suicide missions (“Talent spotting”), also employing special methods of psychological indoctrination at the training camps as are purposefully set up to that effect?⁵⁵
9. Does the State have an awareness-raising and outreach programme for community education, community policing⁵⁶ and creation of partnerships in self-sustaining community safety and security measures with local populations?
10. Does the State integrate considerations of gender into efforts aimed at suppressing recruitment?

Comments:

(1) Terrorist recruitment via the Internet

1. It has become relatively easy for individuals wishing to join a terrorist organization or travel to a conflict zone to make direct, anonymous contact with a terrorist recruiter.⁵⁷ In order to address this threat, there is an urgent need to strengthen national, regional and international cooperation in countering the use of the Internet and social media for terrorist purposes, in particular FTF recruitment.⁵⁸
2. The vast reach of the Internet provides terrorist organizations and sympathizers with a global pool of potential recruits. States, regional organizations, the private sector and civil society should establish effective partnerships with a view to developing improved methods for monitoring and studying terrorist content transmitted over the Internet and other communications technologies and countering incitement to commit terrorist acts, utilizing it for intelligence work and referring it, where appropriate, to relevant law enforcement agencies.⁵⁹
3. Member States should also review their legal framework aimed at the blocking, filtering or removal of illegal Internet content to assess whether they are addressing the threat in a manner compliant with their obligations under international law and, in particular, human rights law, including fundamental freedoms.

Issues for consideration:

1. If the legal system allows for blocking, filtering or removal of content, what requirements and safeguards are in place?
2. What requirements and safeguards does the legal framework set for such actions?

⁵³ DIS 2.1.1.

⁵⁴ DIS 2.1.3.

⁵⁵ Meeting of Heads of Special Services, Security Agencies, and Law-Enforcement Organizations: Best Practices in Countering Suicide Terrorism.

⁵⁶ Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (S/2015/939).

⁵⁷ S/2015/683, p. 3.

⁵⁸ S/2015/683, para. 16.

⁵⁹ S/2015/939, p. 11.

3. What human rights obligations and principles are taken into account in the implementation of enforcement measures in this field?
4. Has the State established a formal or informal public-private partnership framework with ICT firms whose mandate includes counter-terrorism for monitoring and studying terrorist content over the Internet, utilizing it for intelligence work and referring it, when appropriate, to relevant law enforcement agencies?⁶⁰
5. Does the strategy against recruitment address use of ICT for recruitment?⁶¹
6. Has the State introduced measures to address the recruitment and trafficking by terrorist groups of women and girls, particularly through the Internet?⁶²

The following international instruments, standards and good practices provide guidance in this area:

1. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (S/2015/939).
2. Second Counter-Terrorism Committee report on the implementation of Security Council resolution 2178 (2014) by States affected by Foreign Terrorist Fighters, September 2015 (S/2015/683).
3. Third Counter-Terrorism Committee report on the implementation of Security Council resolution 2178 (2014) by States affected by Foreign Terrorist Fighters, December 2015 (S/2015/975).
4. 2016 Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2016/501).
5. Global Survey of the Implementation of Security Council resolution 1373 (2001), January 2016 (S/2016/49).
6. The Meeting of Heads of Special Services, Security Agencies, and Law-Enforcement Organizations: Best Practices in Countering Suicide Terrorism (para 4b on "Talent spotting").

B. ELIMINATING THE SUPPLY OF WEAPONS TO TERRORISTS

Comments:

1. Security Council resolution 1373 (2001) requires States to refrain from providing any form of support to entities or persons involved in terrorist acts, including by eliminating the supply of weapons to terrorists.⁶³ The diversion of weaponry is a significant problem in many parts of the world, enabling terrorist groups to considerably increase their military power.⁶⁴ An influx of FTFs increases the probability that weapons and ammunition will be moved across borders.⁶⁵ Diversion may occur as a result of a transfer without proper controls, unauthorized retransfer, theft from poorly secured stockpiles, handouts to armed groups, or barter involving natural resources.

Member States should put in place an appropriate legislative framework.

Issues for consideration:

1. With respect to production, does the State define which small arms and light weapons (SALW) are subject to controls; specify the national authorities and mechanisms required for the production, acquisition, ownership and controls; require the marking

⁶⁰ S/2015/939, p. 11.

⁶¹ S/2015/683, para. 16.

⁶² S/RES/2331 (2016) and S/2016/501, pp. 45-47.

⁶³ S/RES/1373 (2001), para. 2 (a).

⁶⁴ Report of the Secretary-General on Small Arms and Light Weapons, 27 April 2015.

⁶⁵ Report of the Secretary-General on Small Arms and Light Weapons, 27 April 2015, para. 25.

of SALW; designate licensed manufacturers; establish mechanisms for the verification of marking; and designate the national authorities responsible for verification?

2. With respect to possession, does the State set rules and regulations governing civilian acquisition, possession, transportation, licensing of dealers, record-keeping, and tracing of the various categories of SALW, and rules requiring the reporting of lost or stolen SALW, and does the State ban all transfers of man-portable air defence systems (MANPADS), their essential components and explosives to non-State end-users?
3. With respect to brokering, has the State introduced legislation regulating the activity of brokers and sellers of SALW and explosives, as well as arms brokering?
4. With respect to import/export, does the State designate a national body to review requests to export SALW; verify weapons shipped and the relevant documentation; and prohibit the sale and/or transfer of SALW, components, ammunitions and explosives to any non-State actors?
5. Does the State establish specific offences, if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the general principles on deactivation included in article 9 of the Firearms Protocol to the United Nations Convention on Transnational Organized Crime (UNTOC)?
6. Does the State criminalize illicit manufacturing of, and trafficking in, SALW and explosives, the illicit obliteration of their markings, as well as tampering with firearm markings; and the illegal moving of SALW, explosives and MANPADS across borders?

The following international instruments, standards and good practices provide guidance in this area:

1. Security Council resolutions on arms embargoes, including the embargo imposed by the Security Council Committee established pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and other entities.
2. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.
3. United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW), Amended Protocol II, and Protocol V.
4. Relevant modules on legislation from the International Small Arms Control Standards (ISACS) developed by the United Nations Coordinating Action on Small Arms (CASA, led by the United Nations Office for Disarmament Affairs).
5. United Nations International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.⁶⁶
6. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps, and Other Devices (Amended Protocol II), to the Convention on Certain Conventional Weapons.
7. Meeting of Heads of Special Services, Security Agencies, and Law-Enforcement Organizations: Best Practices in Countering Suicide Terrorism (para. 7).
8. The work of the Informal Group of Experts on Improvised Explosive Devices (IEDs) of UNODA.
9. United Nations Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

Member States should have in place specific procedures as part of operational measures in order to eliminate the supply of weapons to terrorists.

⁶⁶ See also additional programmes including the UN International Small Arms Control Standards (ISACS), at: <http://www.smallarmsstandards.org/>.

Issues for consideration:

1. Does the State have procedures in place to mark SALW?
2. Does the State have procedures in place to ensure the controls of manufacturers and verification of production, storage, security, and transfers?
3. Does the State ensure that weapons held by defence and security forces are properly stored and controlled?
4. Does the State have procedures in place to enable the registration of brokers and established mechanisms to control their activities and detect and arrest those who violate United Nations Security Council arms embargoes, including on the Internet?
5. Does the State have procedures in place to carry out the management of stockpiles and destruction or disposal of confiscated, seized or collected SALW and MANPADS?
6. Does the State have procedures in place to enable the regulation of civilian possession and identification of owner?
7. Does the State have in place security measures to counter the potential threat of MANPADS targeting civil aviation?
8. Do the national systems and procedures in place to trace lost or stolen firearms include international tracing?
9. Do the State's relevant national law enforcement agencies have access to the INTERPOL iARMS databases and the INTERPOL Ballistics Information Network (IBIN)?
10. Does the State have in place practical measures and controls on the illicit manufacturing, trafficking or alteration of firearms or the illicit obliteration of their markings?

The following international instruments, standards and good practices provide guidance in this area:

1. International Small Arms Control Standards (ISACS) (Relevant modules on legislation, developed by the United Nations Coordinating Action on Small Arms (CASA, led by the United Nations Office for Disarmament Affairs).
2. United Nations Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects.
3. United Nations Demobilization, Disarmament and Reintegration (DDR) Programmes.
4. ICAO Aviation Security Manual Doc 8973, Appendix 27, which contains technical recommendations and procedures to minimize the risk of an aircraft's being hit by MANPADS, and supplementary guidance material available to ICAO Contracting States via secure website.

Member States should also have in place an enforcement programme for the control of arms and explosives on their territory.

Issues for consideration:

1. Does the State have in place national systems and procedures to trace lost or stolen firearms?
2. Is the State taking national measures to prevent terrorists from exploiting ICT for the building of improvised explosive devices (IEDs) and the trafficking of SALW?
3. Does the State have in place national procedures to trace illicit SALW, which make full use of the INTERPOL Illicit Arms Records and Tracing Management System (iARMS)?
4. Is the State taking national steps to enable the identification and targeting of the individuals or groups implicated in the illegal trafficking of weapons, including deactivated firearms?
5. Does the State have in place national measures for the detection, collection, seizure and disposal of illegal arms and explosives?
6. Has the State established a network of national points of contact on IEDs?

7. Is the State taking national measures to prevent the smuggling and illicit diversion of precursor chemicals that could be used to build IEDs?
8. Does the State conduct frequent risk and threat assessments of illegal trafficking in the State, through law enforcement work (risk, pervasiveness, types of arms, statistics, impact on law and order)?
9. Has the State established national law enforcement coordinating mechanism among concerned agencies to counter arms trafficking?
10. Does the State join regional and international law enforcement cooperation mechanisms to prevent and combat arms trafficking (e.g., police working groups; regional police agencies)?
11. Does the State utilize the INTERPOL I-24/7 network and the WCO CENcomm network, wherever possible, in order to enhance coordination and information-sharing both between Member States and between Governments and the private sector, to prevent the flow of IED components such as chemical components, detonators, and detonating cords?

Member States should have in place a customs border-control programme to detect and prevent smuggling of SALW and explosives:

Issues for consideration:

1. Has the State implemented a risk-management programme?
2. Has the State established links to licensing authorities to verify the validity of issued licences?
3. Is the State able to receive advance electronic information from importers and exporters?
4. Has the State put in place an inspection programme, and does this programme include verification of markings?
5. Does the State have the resources and capacity to establish special mechanisms or facilities, where needed, to screen women and girls? Has the State introduced a programme to recruit more women in the security sector to enhance border-security mechanisms?
6. Has the State put in place comprehensive import/export/transit movement control for arms, ammunition and explosives administered by customs?
7. Has the State established cross-border cooperation between customs administrations? (See chapter II, section 13, "Coordination with regional and international partners")
8. Has the State established trade partnership programmes?
9. Does the State prevent the use of Internet and IT tools to print 3D illicit firearms, their parts and components, and ammunition?

For issues relating to employee integrity programmes, see chapter II, section 13, "Strategy and awareness"

C. TAKE THE NECESSARY STEPS TO PREVENT THE COMMISSION OF TERRORIST ACTS, BY PROVISION OF EARLY WARNING

(1) *Preventing the commission of terrorist acts*

Comments:

1. Member States should have in place a comprehensive and integrated national strategy, policy or Government-wide programme to prevent the commission of terrorist acts. The national counter-terrorism strategy should state how the Government intends to counter terrorism and should incorporate both "prevention" and "response" elements. The strategy should also define an institutional structure comprised of all agencies with a counter-terrorism mandate, establish clear roles for each, and provide for their coordination. The strategy should also include measures to inform other levels of Government, civil society, and other States, of how the Government seeks to prevent terrorism.

2. In many Member States, police and other law enforcement agencies play a critical role in the prevention of terrorist acts. A number of strategies, policies, and good practices employed by Member States could be used by national law enforcement organizations to prevent the commission of terrorist acts. A robust, intelligence-led law enforcement capacity assists in the identification and disruption of terrorist threats. The effectiveness of the law enforcement response will also rely on prevention, which is most effective when law enforcement works closely with local communities through measures such as community policing.
3. In its resolution 2341 (2017), the Council calls on Member States to consider developing or further improving their strategies for reducing risks to critical infrastructure from terrorist attacks, which should include, inter alia, assessing and raising awareness of the relevant risks, taking preparedness measures (including effective responses to such attacks), promoting more effective interoperability in security and consequence management, and facilitating effective interaction of all stakeholders involved. The resolution further calls on States to cooperate actively in the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure.
4. In its resolution 2322 (2016), the Council has called on all States to exchange information in accordance with international and domestic law and to cooperate in administrative, police and judicial matters in order to prevent the commission of terrorist acts and counter the FTF threat, including returnees.⁶⁷ The Council has also encouraged Member States and international, regional and subregional organizations to consider the possibility of developing 24/7 counter-terrorism networks, taking into account their existing cooperation arrangements.⁶⁸

Member States should put in place operational measures for the adoption of an appropriate structure to prevent the commission of terrorist acts:

1. A central high-level committee or agency for the development and coordination of a national counter-terrorism policy.
2. A central body (National Counter-Terrorism Centre) to integrate, analyse and evaluate all operational and strategic information provided by all national law enforcement agencies with a counter-terrorism mandate. The National Counter-Terrorism Centre should bring together representatives of all relevant national law enforcement agencies with a counter-terrorism mandate to fuse intelligence and flag instances where information from one agency would be useful to other agencies.
3. A forensic-science capacity and access to equipment and facilities to process physical evidence.
4. A dedicated, highly specialized counter-terrorism unit within the police or relevant law enforcement agency, supported by clear command and control mechanisms.
5. A national intelligence capacity that can clearly understand and depict the national and international terrorism situation, conduct terrorism threat assessments and, where applicable, transfer relevant terrorism-threat-related intelligence that may be of use in identifying terrorists, including FTFs, to the competent law enforcement authorities of the same State or with authorities of a foreign State, in accordance with national law and international human rights law.
6. Policies, mechanisms and procedures to ensure effective exchange of information, including information obtained from intelligence agencies, concerning the identity and activities of terrorists, including FTFs, among all relevant national law enforcement agencies.
7. Measures to establish or strengthen national, regional and international partnerships with stakeholders, both public and private, as appropriate, to share information and experience in order to prevent, protect, mitigate, investigate, respond to, and recover from, damage from terrorist attacks on critical infrastructure facilities, including through joint training, and the use or establishment of relevant communication or emergency-warning networks.
8. A central counter-terrorism database accessible, on a need-to-know basis, to all relevant law enforcement agencies with oversight mechanisms and appropriate limitations on use of the information, in accordance with human rights principles.
9. Access to international counter-terrorism databases for all relevant law enforcement and security agencies.

⁶⁷ S/RES/2322 (2016), para. 9 (a).

⁶⁸ *Ibid.*, para. 18.

10. An alert/arrest message capacity at the national level, including border police, which is operational on a 24/7 basis.
11. Legislative mandates and oversight of the activities of law enforcement and intelligence agencies in order to prevent the misuse of authority or abuse of discretion; and
12. Public telephone line (“hotline”) or website to report suspicious behaviour or activity.

Member States should also have in place an enforcement programme for preventing the commission of terrorist acts:

1. Does the State have in place a comprehensive and integrated counter-terrorism strategy that engages a wide range of stakeholders (e.g., academia, media, civil society) beyond law enforcement agencies?
2. Does the State have in place a mechanism for implementing such a strategy?
3. Does the State have in place a national law enforcement strategy to counter terrorism?⁶⁹
4. Does the State have in place a law enforcement structure for the implementation of the national law enforcement strategy to counter terrorism?⁷⁰
5. Is the law enforcement structure supported by technology and equipment (including, inter alia, databases, biometrics and communications)?⁷¹
6. Are criminal investigators able to collect evidence via special investigative techniques?⁷²
7. Do the State’s law enforcement agencies conduct threat and risk assessments relating to terrorism,⁷³ including on the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure?
8. Is the State’s relevant law enforcement agency capable of monitoring, collecting, and analysing data from social media platforms in order to advance investigations or to prevent the flow of FTFs in a manner that is compliant with States’ international human rights obligations?⁷⁴
9. Does the State have in place a 24/7 alert/arrest message capacity at the national level, including with border police?⁷⁵
10. Is there an existing regional and/or subregional arrangement for police cooperation or 24/7 network to counter terrorism and, if so, is the State taking part in it, or considering doing so?⁷⁶

(For issues relating to community policing, see also chapter II, section 1, “Suppression and Prevention of Recruitment”; For issues relating to exchange of information among law enforcement agencies, see also chapter III, section 1, “Exchange of information; For issues relating to inter-agency coordination, see also chapter II, section 13, “Coordination with regional and international partners.”)

The following international instruments, standards and good practices provide guidance in this area:

1. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (2015) (S/2015/939), Guiding Principles 11, 15, 16, 17, 18, 19, 25, 26, 27.
2. “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight” (A/HRC/1446).
3. Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169).

⁶⁹ DIS 2.3.2.

⁷⁰ DIS 2.3.3.

⁷¹ DIS 2.3.4.

⁷² Madrid Guiding Principle 25 (S/2015/939).

⁷³ DIS 2.3.7.

⁷⁴ Madrid Guiding Principles 25 and 26 (S/2015/939).

⁷⁵ Madrid Guiding Principle 17 (S/2015/939).

⁷⁶ S/RES/2322 (2016), para. 18.

4. Organization for Security and Co-operation in Europe (OSCE), Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach.
5. Radicalization Awareness Network (RAN), Collection of Approaches and Practices, in particular on CVE infrastructure.
6. GCTF, Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (Good Practice 10).

(2) Early warning

Comments:

1. Member States should actively communicate information about potential terrorist threats with counterparts in other Member States. States should also share relevant information to prevent cross-border movement of terrorists, including FTFs, such as details of their identity, travel documents, or means of travel, upon which border authorities and other relevant agencies can make timely and informed decisions for further action.⁷⁷ In order to ensure a centralized approach and to avoid duplication of efforts, Member States should designate a law enforcement office to serve as the focal point for counter-terrorism-related requests. States should also develop the capacity to monitor threats and evaluate information (“analysis function”) and strive to communicate information that would be useful to other States.
2. Member States should make full use of existing mechanisms to alert other States. The INTERPOL I-24/7 secure global police communications system is available through the INTERPOL National Central Bureaus (NCBs) to access, receive, share, check and disseminate police information in real time throughout the world. Member States should seek to extend the I-24/7 system beyond the NCBs⁷⁸ to counter-terrorism units and other law enforcement agencies, enabling all relevant authorities to access international databases, including nominal data on criminals, stolen and lost travel documents, fingerprints, DNA, and stolen motor vehicles, maintained by INTERPOL.⁷⁹ States should seek to transmit through INTERPOL communication tools critical crime-related information, including information on wanted individuals, known or suspected FTFs, possible threats, dangerous materials, and criminals’ modus operandi using the organization’s system of international color-coded notices, as well as the INTERPOL-Security Council Special Notice.⁸⁰
3. Member States should share information related to cargo security and other customs matters through the Customs Enforcement Network (CEN) secure platform and the Regional Intelligence Liaison Office (RILO) network of WCO.

Issues for consideration:

1. Does the State utilize early-warning systems regarding terrorism and other related criminal activities?⁸¹
2. Does the State have access to national, regional and international sources of information on FTFs?⁸²
3. Do the police or the relevant law enforcement agency seek to communicate information about potential terrorist threats, terrorists (including FTFs) or terrorists activities with counterparts in other Member States?⁸³
4. Do the national law enforcement and security agencies actively transmit relevant information that may be of use in identifying existing or potential FTFs?⁸⁴

77 S/RES/2178 (2014), S/RES/2322 (2016) and Madrid Guiding Principles (S/2015/939) II (3).

78 S/RES/2322 (2016), para. 17.

79 S/RES/2322 (2016), para. 17.

80 To alert law enforcement agencies to individuals and entities that are subject to United Nations sanctions because of their affiliation with Al-Qaida or the Taliban.

81 DIS 2.3.10.

82 Madrid Guiding Principle No.15. (S/2015/939).

83 *Ibid.*

84 *Ibid.*

5. Does the State seek to expand access to, and ensure the effective utilization of, the global information-sharing tools of INTERPOL among national law enforcement, immigration and border agencies?⁸⁵

(For issues relating to law enforcement agencies' capacity, see also chapter III, section 1, "Exchange of Information"; For issues relating to the use of the Custom Enforcement Network (CEN) secure platform and the Regional Intelligence Liaison Office (RILO) network of WCO, see chapter III, section 1, "Exchange of information")

The following international instruments, standards and good practices provide guidance in this area:

1. *Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters* (2015) S/2015/939, Guiding Principles 15, 16, 17, 18 and 19.
2. African Union Continental Early Warning System: The CEWS handbook, 2008.
3. GCTF, Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, Good Practice 10.

D. DENIAL OF SAFE HAVEN

Comments:

1. Security Council resolution 1373 (2001) requires States to deny safe haven to those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.⁸⁶ In this regard, there are several measures that need to be considered collectively with due respect for human rights. These include legislative measures criminalizing provision of safe haven and measures providing adequate jurisdiction for the prosecution of such offences. Practical and legal measures on immigration, border control and exchange of information⁸⁷ should be in place to ensure that States have the capacity to deny safe haven and bring to justice those who harbour terrorists and those who finance, plan, facilitate, incite terrorist acts.⁸⁸
2. The United Nations counter-terrorism instruments provide that any person who is taken into custody for purposes of extradition on charges of terrorist offences "shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights."⁸⁹

Issues for consideration:

1. Has the State criminalized the harbouring of terrorists?⁹⁰
2. Does the law contain a clear definition of "harbouring" (e.g., "intentionally concealing, hindering or preventing the apprehension of a person who has committed or is planning to commit a terrorist act or is a member of a terrorist group")?
3. Does the State have in place legislation to penalize persons or organizations involved in intentionally concealing, hindering or preventing the apprehension of any person in the knowledge that such person has committed or is planning to commit a terrorist act or is a member of a terrorist group?⁹¹
4. Does the State have in place adequate legal measures on jurisdiction? (See also chapter II, section 9, "Investigation, Prosecution and Adjudication of Terrorist Acts".)

⁸⁵ Madrid Guiding Principle No. 17 (S/2015/939).

⁸⁶ S/RES/1373 (2001), para. 2 (c).

⁸⁷ S/RES 1373 (2001), para. 2 (b).

⁸⁸ S/RES/1373 (2001), para. 2 (c); S/RES/1624 (2005), para. 1 (c).

⁸⁹ See article 17 of the 1999 Convention for the Suppression of the Financing of Terrorism, article 14 of the 1997 Convention for the Suppression of Terrorist Bombings, and article 15 of the International Convention for the Suppression of Acts of Nuclear Terrorism.

⁹⁰ DIS 2.4.1.

⁹¹ DIS 2.4.2.

5. Does the State have in place legal measures facilitating the gathering of information and mechanisms for domestic and international exchange of information? (See also chapter III, section 1, "Exchange of Information".)

E. PREVENTING THE USE OF TERRITORY FOR THE PURPOSE OF TERRORIST ACTS

Comments:

1. Security Council resolution 1373 (2001) requires Member States to take measures to prevent those who finance, plan, facilitate, or commit terrorist acts from using their territories for the purpose of such acts against other States or their citizens.⁹²
2. Furthermore, Council resolution 2178 (2014) requires States to ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize the wilful organization or other facilitation, by their nationals or in their territories, of the travel of individuals to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.⁹³ In this regard, in order to prevent use of territory for purpose of terrorist acts, Member States should take into consideration cooperation on border- security measures with neighbouring States.

Issues for consideration:

1. Is it possible to prosecute any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory?⁹⁴ (See also chapter II, section 9, "Investigation, Prosecution and Adjudication of Terrorist Acts")
2. Is the State able to combat fraudulent travel documents in order to strengthen the security of its international borders? (See also chapter II, section 13, "Documentation")

The following international instruments, standards and good practices provide guidance in this area:

1. Convention against Transnational Organized Crime, 2001.
2. IOM, The Passport Examination Procedure Manual.
3. WCO/IATA/ICAO, Guidelines on Advance Passenger Information.
4. ICAO, Guidelines on Passenger Name Records (PNR), Data (Doc. 9944).
5. UNHCR, Addressing Security Concerns without undermining Refugee Protection, December 2015.
6. OSCE, Further measures to prevent the criminal use of lost/stolen passports and other travel documents.

See also chapter II, section 13, "Effective border controls and related issues".

F. CODIFICATION

Comments:

1. Security Council resolution 1373 (2001) calls on States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism.⁹⁵ Member States should criminalize the offences that are outlined in the relevant international counter-terrorism legal instruments to which they are a party or that are required by the relevant Council resolutions.

⁹² S/RES/1373 (2001), para. 2 (d).

⁹³ S/RES/2178 (2014), para. 6 (c).

⁹⁴ DIS 2.5.1.

⁹⁵ S/RES/1373 (2001), para. 3 (d).

2. In its resolution 2322 (2016), the Council recognizes the important role of national legislation in enabling international judicial and law enforcement cooperation on terrorist related-offences and calls upon Member States to enact and, where appropriate, review their respective counter- terrorism laws in view of the evolving threat posed by terrorist groups and individuals.⁹⁶ The resolution also urges, as a matter of priority, that Member States consider, as appropriate, ratifying, acceding to, and implementing other relevant international conventions to support international cooperation in criminal matters, such as the United Nations Convention against Transnational Organized Crime of 2000 and the Protocols thereto.⁹⁷
3. Member States' legislation should also criminalize the attempt to commit the offences, acting as an accomplice and/or being a party to the offence, through an offence of conspiracy or otherwise; and impose penalties that reflect the serious nature of the offences. Additional elements that Member States should also take into consideration include the precision with which the terrorist acts are defined (whether these are overly broad or vague) or have the potential for human rights abuse. Shortcomings in these areas may detract from the actual implementation and/or effectiveness of the overall measures.
4. Depending on their respective legal traditions, Member States may approach codification differently (e.g., through the use of specific counter-terrorism legislation, amendments to the Criminal Code, or amendments across different pieces of legislation).
5. The UNODC has developed model laws as technical assistance tools to assist Governments to incorporate their obligations under international treaties into national legislative provisions. The model provisions are meant to assist with, but not to substitute for, the meticulous process of drafting a law. To the extent permitted by the relevant international conventions, individual States will need to make adjustments to the text to more accurately reflect the fundamental principles of their legal systems and constitutions.
6. With regard to the international counter-terrorism instruments, resolution 1373 (2001) contains two distinct requirements. This section addresses the establishment of terrorist acts as serious criminal offences in domestic laws, as required in paragraph 2 (e) of the resolution. Thus, this section deals only with the criminal requirements of the international instruments.
7. Since some elements of these instruments are non-criminal in nature, it is not sufficient simply to assess criminalization. Therefore, paragraph 3 of the resolution calls on States to become a party to, and implement, the international instruments. (*Non-criminal requirements of the international counter-terrorism instruments are addressed in chapter III, section 3, "Ratification"*)

Issues for consideration:

1. Does the State's domestic law criminalize all the offences set forth in the international counter- terrorism instruments?
2. Does the State's domestic law criminalize all the offences set forth in the international counter- terrorism instruments to which it is a party?
3. If the State defines terrorist acts in its legislation, is the definition sufficiently clear and precise so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments (i.e., acts said to threaten national security or stability without further elaboration, conventional crimes, or non-violent acts of protest or dissent)?
4. Does the State criminalize acts of directing and/or organizing terrorist acts?⁹⁸
5. Does the State criminalize knowingly assisting an offender to evade investigation, prosecution or punishment?⁹⁹
6. Does the State criminalize attempts to commit a terrorist act?
7. Does the State criminalize making a threat to commit an offence when the circumstances indicate that the threat is credible?¹⁰⁰ (*See also chapter II, section 8, "Criminalization of FTF-associated acts"*)

⁹⁶ S/RES/2322 (2016), para. 4.

⁹⁷ S/RES/2322 (2016), para. 11.

⁹⁸ Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

With respect to the 19 international counter-terrorism instruments, Member States should note, in particular, the following:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963

Does not contain criminal requirements. Its implementation is addressed in chapter III, section 3, "Ratification".

2. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970

Requires States Parties to:

- Criminalize the seizing of, or exercising control of, an aircraft, unlawfully, by force, threat or intimidation, by a person on board an aircraft.

3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971

Requires States Parties to:

- Make it an offence for any person on board an aircraft in flight to unlawfully, by force or threat thereof, or any other form of intimidation, to seize or exercise control of that aircraft or to attempt to do so.
- Make hijackings punishable by severe penalties.
- Take custody of offenders and to either extradite the offender or submit the case for prosecution and assist each other in connection with criminal proceedings brought under the Convention.

4. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988

Requires States Parties to criminalize:

- Unlawfully and intentionally performing an act of violence against a person at an airport serving international civil aviation which causes, or is likely to cause, serious injury or death.
- Intentionally destroying or seriously damaging the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupting the services of the airport, if such an act endangers, or is likely to endanger, safety at that airport.

5. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010

Requires States Parties to criminalize:

- Using civil aircraft for the purpose of causing death, serious bodily injury or serious damage.
- Using civil aircraft to release or discharge any biological, chemical or nuclear (BCN) weapon or similar substances to cause death, serious bodily injury or serious damage.
- Using any BCN weapon or similar substances on board or against civil aircraft.
- Using civil aircraft to unlawfully transport any BCN weapon, related material or other dangerous material.
- Committing cyber-attacks on air navigation facilities.
- Directing and organizing such offences.

6. Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 2010 supplements the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970

Requires States parties to:

- Make it an offence to hijack an aircraft through technological means.
- Direct and/or organize such an offence.

7. Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft, 2014

- Expands jurisdiction over offences and acts committed on board aircraft from the State of Registration of the aircraft to the State of the Operator and the State of Landing.

8. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

Requires States parties to criminalize:

- Intentionally murdering, kidnapping or committing another attack upon the person or liberty of an internationally protected person.
- Committing a violent attack upon official premises, private accommodations, or the means of transport of such person.
- Threatening, attempting or acting as an accomplice to commit such an attack.

9. International Convention against the Taking of Hostages, 1979

Requires States Parties to:

- Make it an offence to seize or detain and threaten to kill, to injure, or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do, or abstain from doing, any act as an explicit or implicit condition for the release of the hostage.

10. Convention on the Physical Protection of Nuclear Material (1980)

Requires States Parties to criminalize:

- Unlawful receipt, possession, use, transfer, alteration, disposal, dispersal, robbery, embezzlement or fraudulent obtaining of nuclear material.
- Demanding of nuclear material by threat or use of force or by any other form of intimidation.
- Threatening to use nuclear material to cause death, serious injury or substantial property damage and the threat to commit the theft or robbery of nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from doing any acts.

11. Amendments to the Convention on the Physical Protection of Nuclear Material, 2005

See also chapter III, section 3, "Ratification".

12. International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

Requires States Parties to criminalize:

- Unlawful possession of radioactive material or making or possessing a device with the intent to cause death or serious bodily injury, or to cause substantial damage to property or to the environment.
- Use of radioactive material or devices to damage a nuclear facility in a manner which releases or risks the release of radioactive material with the intent to cause death, serious bodily injury, substantial damage to property or the environment, or to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.
- Threatening, under circumstances which indicate the credibility of the threat, to commit the above-mentioned act.
- Unlawfully demanding radioactive material, devices or facilities by threat or force.

13. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

Requires States Parties to criminalize:

- Unlawfully and intentionally seizing or exercising control over a ship by force, threat, or intimidation.
- Performing an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship.

- Placing a destructive device or substance aboard a ship.
- Committing other acts against the safety of ships.

14. Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2005

Requires States Parties to criminalize:

- Using a ship as a device to further an act of terrorism.
- Knowingly transporting on board a ship various materials intended to be used to cause, or in a threat to cause, death or serious injury or damage to further an act of terrorism, or persons who have committed an act of terrorism.

15. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988

- Provides that Articles 5, 7 and 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, including exercise of jurisdiction, the *aut dedere aut judicare* rule and extradition, shall apply mutatis mutandis to the offences defined in the Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.¹⁰¹
- Requires State Parties to criminalize unlawfully and intentionally:
 - Seizing or exercising control over a fixed platform by force or threat of force or any other form of intimidation.
 - Performing an act of violence against a person on board a fixed platform if that act is likely to endanger its safety.
 - Destroying a fixed platform or causing to it damage that is likely to endanger its safety.
 - Placing or causing to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety, or injuring or killing any person in connection with the commission or the attempted commission of any of the above offences.
 - Attempting, abetting, or acting as an accomplice in, any of the above offences.
 - As provided for under national law, compelling a physical or juridical person to do or refrain from doing any act, to threaten, with or without a condition, that he or she will commit the offences above, provided the threat is likely to endanger the safety of the fixed platform.

16. Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 2005

- Adapts the changes to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation to the context of fixed platforms located on the continental shelf.

17. Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991

Does not contain criminal requirements. Its implementation is addressed in chapter III, section 3, "Ratification".

18. International Convention for the Suppression of Terrorist Bombings, 1997

- Parties are required to establish jurisdiction over and criminalize the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent

¹⁰¹ Although the definition of "fixed platform" refers only to the seabed, the preamble, articles 1(1), 3, and 4, and indeed the title of the Protocol, all speak of the 'continental shelf'. Article 76 of the United Nations Convention on the Law of the Sea 1982 defines the continental shelf of a coastal State as comprising 'the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance'. The 'continental margin' is defined in the same article as 'the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor...' These terms are further explained in R. Churchill and A. Lowe, *The Law of the Sea* (3rd ed., Manchester, 1999), on pages 141 to 159, and with an illustration on p. 30.

to cause extensive destruction of a public place. Parties are also required to criminalise attempting, or participating as an accomplice to, such an offence.

19. International Convention for the Suppression of the Financing of Terrorism, 1999

Requires States Parties to:

- Criminalize the direct or indirect, unlawful and wilful, provision or collection of funds with the intention that they should be used, or in the knowledge that they are to be used, in full or in part, in order to carry out any act which constitutes an offence within the scope and as defined in the treaties annexed to the convention¹⁰² or any other acts intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act, and to cooperate in the prevention of those acts.
- Afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in the Convention, including assistance in obtaining evidence in their possession necessary for the proceedings.

For further requirements, see also chapter I.

G. PREVENTIVE OFFENCES AND PREPARATORY ACTS

Comments:

1. A core requirement of resolution 1373 (2001) is that Member States shall ensure that their domestic laws and regulations establish terrorist acts as serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence.¹⁰³ Further, pursuant to resolution 1373 (2001), States must ensure that their domestic legal systems establish as offences acts involving the participation, financing, planning, preparation, perpetration or support of terrorist acts.¹⁰⁴ Council resolution 2178 (2014) reaffirms States' obligations under 1373 (2001) and further adds that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities,¹⁰⁵ including by the establishing as serious criminal offences travel or attempted travel for any of those purposes, wilful provision or collection, by any means, directly or indirectly, of funds with the intention or in the knowledge that they are to be used to finance travel for any of those purposes, and the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of travel for any of those purposes.¹⁰⁶
2. In its resolution 2341 (2017), the Council calls on States to ensure that they have established criminal responsibility for terrorist attacks intended to destroy or disable critical infrastructure, as well as the planning of, training for, and financing of, and logistical support for, such attacks.

¹⁰² The Annex lists: Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; International Convention against the Taking of Hostages 1979; Convention on the Physical Protection of Nuclear Material, 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 10 March 1988; International Convention for the Suppression of Terrorist Bombings, 1997.

¹⁰³ S/RES/1373, para. 2 (e).

¹⁰⁴ *Ibid.*

¹⁰⁵ S/RES/2178 (2014), para. 5.

¹⁰⁶ S/RES/2178 (2014), para. 6.

3. The criminalization of preparatory acts and preventive offences is a critical component of an effective prevention-based counter-terrorism strategy and will assist the State to effectively bring terrorists to justice.¹⁰⁷ Preparatory or preventive offences do not require, as an element of the offence, that a terrorist attack be attempted or successfully executed. Even though States may differ as to how exactly these offences are defined, establishing clear offences for preparatory acts committed either by the individual or by any other person, association or group will greatly facilitate early intervention by the criminal justice system and increase the potential to reduce violence and thwart attacks.¹⁰⁸ In the criminalization of these acts, Member States should ensure that offences are defined clearly and precisely, in compliance with the principle of legality.¹⁰⁹
4. In its resolution 2331 (2016), the Council urges all States to ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and penalize in a manner duly reflecting the seriousness of the offence of trafficking in persons committed with the purpose of supporting terrorist organizations or individual terrorists, including recruitment for the commission of terrorist acts.¹¹⁰

Issues for consideration:

1. Does the State criminalize acts of planning as an autonomous offence?
2. Does the State criminalize acts of preparation as an autonomous offence?
3. Does the State criminalize acts of support as an autonomous offence?
4. Does the State criminalize acts of providing training as an autonomous offence?
5. Does the State criminalize acts of receiving training as an autonomous offence?
6. Does the State criminalize FTF-related offences? (See also following section on criminalization of FTF offences.)¹¹¹
7. Does the State criminalize terrorist attacks intended to destroy or disable critical infrastructure and other related offences?¹¹²
8. Has the State criminalized the offence of trafficking in persons committed with the purpose of supporting terrorist organizations, or individual terrorists, including through the financing of and recruitment for the commission of terrorist acts?¹¹³
9. Does the State criminalize all forms and aspects of trafficking in cultural property and related offences that benefit or may benefit terrorist or terrorist groups?¹¹⁴
10. Does the State's legislation comply with the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights (ICCPR), such that criminal liability is narrowly and clearly defined?¹¹⁵

The following international instruments, standards and good practices provide guidance in this area:

1. The European Convention on the Prevention of Terrorism and its Additional Protocol.

¹⁰⁷ S/2015/123.

¹⁰⁸ *Ibid.*

¹⁰⁹ A/HRC/31/65

¹¹⁰ S/RES/2331 (2016), para. 7.

¹¹¹ S/RES/2178 (2014).

¹¹² S/RES/2341 (2017).

¹¹³ S/RES/2331 (2016), para. 7, in line with resolution 1373, recalls the decisions to ensure that domestic laws and regulations establish serious criminal offence sufficient to provide the ability to prosecute and penalize [...] the offence of trafficking in persons committed with the purpose of supporting terrorist organizations, or individual terrorists, including through the financing of and recruitment for the commission of terrorist acts. S/RES/2322 (2016) para. 11 "urges also as a matter of priority that Member States consider, as appropriate, ratifying, acceding to, and implementing other relevant international conventions to support international cooperation in criminal matters, such as the UN Convention against Transnational Organized Crime of 2000 and the Protocols thereto, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

¹¹⁴ S/RES/2322 (2016), para. 12.

¹¹⁵ Special Rapporteur A/HRC/31/65.

H. CRIMINALIZATION OF FTF-ASSOCIATED ACTS

Comments:

1. Pursuant to Council resolution 2178 (2014), Member States are required to prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of travel and of their activities.
2. Reiterating the requirement that terrorists are to be brought to justice, the Council, in its resolution 2178 (2014), requests Member States to establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence:
 - a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
 - b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,
 - c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

Issues for consideration:

1. Does the State criminalize travel by nationals for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts?
2. Does the State criminalize travel by nationals for the purpose of providing or receiving terrorist training?
3. Does the State criminalize travel by nationals for the purpose of facilitation, including organizing, transporting and equipping of FTF travel?
4. Does the State criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training? (*For issues relating to the criminalization of financing of terrorism, see chapter I, section 1.*)
5. Does the State criminalize wilful organization, or other facilitation, including acts of recruitment, by its nationals or in its territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training?
6. How does the State address the movement of minors (e.g., parents' taking children to ISIL- controlled territory), especially young girls who may be vulnerable to sexual violence, forced marriage, and denial of education, upon arrival?

The following international instruments, standards and good practices provide guidance in this area:

1. Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, 2015.

I. INVESTIGATION, PROSECUTION AND ADJUDICATION OF TERRORIST ACTS

Comments:

1. Security Council resolution 1373 (2001) does not require that States establish special criminal procedures to investigate or prosecute terrorism-related cases. Some States have chosen to deal with terrorism-related matters through their ordinary criminal procedures. Others have established special procedures on the grounds that terrorism-related cases pose exceptional challenges to law enforcement. Such procedures may include exceptional rules governing detention, evidence and other trial matters, and the establishment of special or military courts. Although such measures may have rational foundations, it is essential to consider whether they comply with the principles of legality, necessity and proportionality and whether they are accompanied by appropriate safeguards. In rare circumstances, States may declare states of exception or emergency due to the perceived threat of terrorism. Such actions must be carried out in conformity with applicable international law including, for States parties, the requirements of article 4 of the ICCPR.
2. Special criminal procedures should be distinguished from special investigative techniques, which are broadly accepted as a law enforcement tool and are obligatory under a number of international conventions related to serious crimes. The Security Council, in its resolution 2322 (2016), notes the significant increase in requests for cooperation in gathering digital data and evidence from the Internet and stresses the importance of considering the re-evaluation of methods and best practices, as appropriate, in particular related to investigative techniques and electronic evidence.¹¹⁶
3. In its resolution 2341 (2017), the Council underlines the need for States to develop the capacity to prevent and disrupt terrorist plots against critical infrastructure, where possible, minimizing impacts and recovery time in the event of damage from a terrorist attack, identifying the cause of damage or the source of an attack, preserving evidence of an attack, and holding those responsible for the attack accountable.¹¹⁷
4. The processing of FTFs in the criminal justice system, in some instances, may complicate some aspects of established criminal procedures and evidentiary standards relating to the adjudication of suspected terrorists. The Council, in its resolution 2178 (2014), calls for cooperation in evidentiary matters in stating that States will assist one another in connection with criminal investigations, including assistance in obtaining evidence.¹¹⁸

1. Investigation

(a) Special investigative techniques

1. “Special investigative techniques” are broadly accepted¹¹⁹ and should be distinguished from exceptional criminal procedures. Special investigative techniques are techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aimed at gathering information in such a way as not to alert the subjects of the investigation.
2. The use of special investigative techniques is not required under international standards in all cases. Nonetheless, it has been recognized as a possible component of an effective strategy against serious crimes, including acts of terrorism. States are encouraged to conclude bilateral or multilateral agreements or arrangements, as appropriate, for using such techniques in the context of international cooperation. The Council has called upon all States, in conformity with international law, to consider establishing appropriate laws and mechanisms that allow, inter alia, the creation/use, where appropriate, of joint investigation mechanisms and enhanced coordination of cross-border investigations in terrorism cases.¹²⁰

¹¹⁶ S/RES/2322 (2016), preamble.

¹¹⁷ S/RES/2341 (2017).

¹¹⁸ S/RES/2178 (2014), para. 12.

¹¹⁹ See for example article 20 of the Convention against Transnational Organized Crime, 2001 S/2016/49 and Madrid Guiding Principle 25 (S/2015/939).

¹²⁰ S/RES/2322 (2016), para. 15.

3. The use of these techniques could infringe on fundamental rights and freedoms, partly because of their covert nature. States should therefore develop the necessary mechanisms to ensure effective oversight of their use. In all circumstances, recourse to special investigative techniques should be guided by the principles of legality, necessity, proportionality and non-discrimination.

Issues for consideration:

Enabling legislation

1. Does the State's legislation allow for the use of special investigative techniques?
2. Is the legislation sufficiently broad to cover the available special investigative techniques?
3. Are the circumstances under which special investigative techniques may be used clearly defined in law?
4. Is there adequate control of their use by judicial authorities or other independent bodies through prior authorization, supervision during the investigation, and ex post facto review?
5. Which is the competent authority for deciding, supervising, or using special investigation techniques?
6. Is there a time limit on the use of special investigative techniques?
7. What are the provisions or systems in place, through a legislative body or otherwise, to review both draft and existing counter-terrorism legislation, including any amendments to ordinary criminal procedures, in order to ensure that they comply with human rights obligations?¹²¹
8. Do the laws and procedures in place take into account new technologies?
9. Does the national legislation grant a power to enable competent authorities to order or similarly obtain the expeditious preservation of specified digital data?¹²²
10. Do national laws include an obligation for Internet Service Providers (ISP) and other ICT firms to retain client data for a specified period?¹²³
11. Do national laws explicitly empower the competent authorities to order a person on its territory to submit data under its possession or control?¹²⁴
12. Does the national legislation explicitly include a power to search computer hardware or data?¹²⁵
13. Do national laws explicitly provide for a power to seize computer hardware or data?¹²⁶
14. Does the national legislation explicitly include a power to obtain real-time collection of data?¹²⁷
15. Do national laws explicitly provide for a power to intercept content data?¹²⁸

121 DIS 2.7.7.

122 African Union Convention on Cyber Security and Personal Data Protection, art. 31(3); Commonwealth 2002 Model Law on Computer and Computer Related Crime, art. 17; Council of Europe 2001 Convention on Cybercrime and Additional Protocol to the Convention on Cybercrime, arts. 16 and 17(1)a; ITU/CARICOM/CTU 2010 Model legislative Text on Cybercrime/e-crimes, art. 23.

123 S/2016/49.

124 S/2016/49.

125 African Union Convention on Cyber Security and Personal Data Protection, art. 31(3); Commonwealth 2002 Model Law on Computer and Computer Related Crime, art. 12; Council of Europe 2001 Convention on Cybercrime and Additional Protocol to the Convention on Cybercrime, art. 19; ITU/CARICOM/CTU 2010 Model legislative Text on Cybercrime/e-crimes, art. 20.

126 S/2016/49.

127 African Union Convention on Cyber Security and Personal Data Protection, art. 31(3); Commonwealth 2002 Model Law on Computer and Computer Related Crime, art. 12; ITU/CARICOM/CTU 2010 Model legislative Text on Cybercrime/e-crimes, art. 26.

128 S/2016/49.

16. Do national laws explicitly provide that electronic evidence/records are admissible in court proceeding and provide for a process for authentication rules?¹²⁹
17. Do national laws explicitly include a power to obtain subscriber information?¹³⁰
18. Does the law ensure that competent authorities apply less intrusive investigative methods than special investigative techniques, if such methods are adequate for the offence to be detected, prevented or prosecuted?
19. How does the State take into account the need to prevent arbitrary or unlawful interference with privacy?
20. Are there procedural rules governing the production and admissibility of such evidence and safeguarding the rights of the accused to a fair trial?

International cooperation in the field of special investigative techniques

1. Does the State have in place domestic mechanisms to allow for international cooperation in special investigative techniques, including, as appropriate, creation/use of joint investigation mechanisms?
2. Does the State have in place bilateral and multilateral arrangements for international cooperation in special investigative techniques (especially with neighbouring States)?

(b) Forensic capacity

1. Forensic capacity is an important component, not only of modern criminal investigations, but also of the entire criminal justice system. During the investigative phase, evidence is collected at a crime scene or from a person (e.g., suspect, victim, or witness), analysed by applying scientific methods, and presented in a court of law. In the context of a terrorism-related investigation, forensic science can assist prosecutors and investigators in, for instance, linking a person to a specific activity or event, place, material, or to another person. The type of evidence collected and analysed by applying forensics will vary according to the type of offence being investigated and may include, inter alia, biological evidence (such as DNA), latent print evidence, digital evidence, ballistics, trace evidence, etc. Likewise, the provision of forensic services will vary according to the type of national legal system.
2. In response to terrorists' increasing use of ICT for various purposes, the Madrid Guiding Principles recognize that Member States should build ICT and forensic capacities and expertise within national law enforcement agencies and strengthen the capacity of law enforcement agencies to monitor social media content related to terrorism in order to prevent the flow of FTFs in a manner that is compliant with States' international human rights obligations.¹³¹

Issues for consideration:

1. Does the police force or relevant law enforcement agency have the capacity to apply forensic science to collect and analyse physical evidence?
2. Do the police have a dedicated scientific police or forensic science laboratory with access to proper equipment, facilities/laboratories, and training, to process physical evidence?
3. Has the State built ICT and forensic capacities and expertise within national law enforcement agencies?¹³²
4. Has the State strengthened the capacity of these agencies to monitor social media content related to terrorism in order to prevent the flow of FTFs in a manner that is compliant with States' international human rights obligations?¹³³

129 S/2016/49.

130 S/2016/49.

131 Madrid Guiding Principle 26 (S/2015/939).

132 Madrid Guiding Principle 26 (S/2015/939).

133 *Ibid.*

The following international instruments, standards and good practices provide guidance in this area:

1. United Nations Office on Drugs and Crime, Vienna, 2009 Crime scene and physical awareness for non-forensic personnel (ST/NAR/39).
2. Madrid Guiding Principles on Stemming the Flow of FTFs (2015) (S/2015/939), Guiding Principles 26-27.
3. United Nations Office for Disarmament Affairs information hub on IEDs¹³⁴.
4. INTERPOL, Guidelines concerning transmission of Fingerprint Crime Scene Marks.
5. INTERPOL Handbook on DNA Data Exchange and Practice: Recommendations from the INTERPOL DNA Monitoring Expert Group, Second Edition 2009.
6. European Network of Forensic Science Institutes, Best Practice Manual for the Forensic Examination of Digital Technology, ENFSI-BPM-FIT-01, November 2015.
7. Organization for Security and Co-operation in Europe, Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers.
8. Good Practice Guide for Computer-Based Electronic Evidence, Association of Chief Police Officers (United Kingdom), Available from INTERPOL Guidelines concerning Fingerprints Transmission.

(c) Detention

1. Any form of detention must take place in accordance with procedures established in law. Arbitrary detention is impermissible in any circumstances. Although some States have instituted special procedures for extended investigative detention in terrorism-related cases, pre-trial detention is nonetheless considered under international human rights law to be the exception, rather than the rule. It must not last for prolonged or indefinite periods and must be closely supervised by an independent judicial mechanism. The presumption of innocence has been qualified as a non-derogable right.

Issues for consideration:

1. Has the State instituted special procedures allowing for extended investigative detention in terrorism-related cases?
2. Is detention subject to prompt and periodic review by an independent and impartial tribunal?
3. Does the State assure the accused the right to prepare an effective defence, including meaningful access to counsel?
4. Does the State have in place special provisions for extended or indefinite administrative detention without trial? How have international human rights mechanisms assessed such arrangements?

2. Prosecution

1. The Counter-Terrorism Committee has recognized that the prosecution of terrorists has become increasingly complex and highly specialized. Prosecutors need to know typologies of incitement and of recruitment, and they need specialization, understanding of charity laws, finance, ICT and methods of work of terrorist organizations, as well as an understanding of the range of special investigative techniques that are available. This process requires a degree of training, knowledge, skill and sophistication. They need to be able to guide, instruct, and supervise the work of the investigatory agencies. The present Guide incorporates a number of recommendations to assess the practical elements on effective implementation for the prosecution and judiciary.

In order to be able to bring terrorists to justice, States must put in place an effective prosecution system.

1. Does the State's prosecution system have the capacity and expertise to handle complex cases (involving conspiracy, charity law, finance, human rights)?

¹³⁴ Available at: www.un.org/disarmament/convarms/ieds/

2. Has the State established a special prosecutors' unit or designated public prosecutors to deal exclusively with terrorism cases or with serious crimes, including terrorism cases?¹³⁵

Does the State's prosecution system have the capacity and expertise to correctly seek mutual legal assistance and extradition requests and, to effectively cooperate with the State central authority or, as appropriate, other relevant criminal justice authorities in order to prevent, investigate and prosecute terrorist acts?

1. Does the State's prosecution system have the capacity and expertise to supervise the use of special investigative techniques by investigative agencies?
2. Does the State's prosecution system have the capacity and expertise to handle intelligence collected by investigative agencies and convert it, where appropriate, and subject to the arrangements of its legal system, into admissible evidence?
3. Does the State's prosecution system have the capacity and expertise to handle evidence collected by different States?
4. Does the State's prosecution system have access to appropriate training?
5. Does the State's prosecution system have the capacity to integrate and utilize financial intelligence with other types of information?¹³⁶
6. Does the State's prosecution system have the capacity and expertise to handle counter-financing of terrorism measures (freezing, confiscation etc.)?
7. Does the State's prosecution system have the capacity and expertise to prosecute terrorists benefitting from transnational organized crime and transnational organized criminals working with them¹³⁷ and to handle recruitment and incitement offences?
8. Does the State's prosecution system have the capacity and expertise to consistently update training and evidence collection and special investigative techniques so as to incorporate new ICT?¹³⁸
9. Does the State's prosecution system have the capacity and expertise to cooperate internationally (formally and informally) on these issues?
10. Does the State's prosecution system have the capacity and expertise to coordinate action among Government agencies, including in the ICT and law enforcement sectors?
11. Does the State's prosecution system have informal coordination mechanisms between the different sections of a prosecution service, as well as with other agencies (i.e., law enforcement agencies)?

3. Judiciary

In order to be able to bring terrorists to justice, States must put in place an effective judicial system.

1. Does the State's court system have the capacity and expertise to handle complex cases (involving conspiracy, charity law, finance, human rights)?
2. Does the State's court system provide judges with training in forensic, technological and financial aspects of investigation and prosecution?
3. Does the State's court system have the capacity and expertise to cooperate internationally (formally and informally)?
4. Can the State's court system control the use of special investigative techniques by investigative and prosecutorial agencies?

¹³⁵ DIS 2.7.1.

¹³⁶ S/RES/2322 (2016).

¹³⁷ S/RES/2322 (2016), para. 9 (c).

¹³⁸ S/2014/807.

5. Does the State's court system provide for access to classified or national security information by judges and if so how the rights of the accused to fair trial are guaranteed?
6. Does the State's court system have the capacity and expertise to fight transnational crimes that can support or facilitate terrorist activity?
7. Does the State's court system have sufficient human resources?
8. Does the State's court system have, where appropriate, access to special gender-sensitive training or educational programmes for judges and courts concerning counter-terrorism, money-laundering and terrorism-financing offences?
9. Does the State court system provides training on sentencing specific to terrorism, taking into account issues related to rehabilitation and reintegration?
10. Does the State court system provide training on juvenile issues?
11. Does the judiciary exercise regular and independent oversight of counter-terrorism measures in order to ensure fair treatment and due process?

(a) Special courts and court procedures

1. Some States have conferred jurisdiction on special courts to deal with terrorism-related cases. Some States have also instituted special provisions relating to court procedures, including with respect to forms of evidence that are admissible. In its General Comment No. 32 on article 14 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee reaffirmed that trial of civilians by military courts should be considered exceptional.¹³⁹ In accordance with article 10 of the Universal Declaration of Human Rights, everyone is entitled "in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Although certain aspects of the right to fair trial may be subject to certain restrictions in exceptional situations, all such measures must be guided by the principles of legality, necessity, proportionality and non-discrimination. The Human Rights Committee has also stated that fundamental requirements of fair trial must be respected in all cases. Public hearings may be limited for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court of special circumstances where publicity would be prejudicial to the interests of justice.¹⁴⁰ However, with respect to cases where the death penalty could be imposed, the Committee has stated that all fair-trial obligations should be respected, due to the non-derogable nature of the right to life.

Issues for consideration:

1. Are terrorism cases tried by independent judges appointed or elected by normal procedure (i.e., non-military, non-emergency measures)?¹⁴¹
2. Has the State instituted special legal procedures in cases involving terrorism charges? If so, how has it ensured that all human rights obligations are complied with in practice?
3. In cases in which capital punishment may be imposed, does the State rigorously ensure compliance with all fair-trial obligations?
4. Are terrorism trials legally guaranteed to be open to the public, in principle?¹⁴²

The following international instruments, standards and good practices provide guidance in this area:

1. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
2. United Nations Basic Principles on the Independence of the Judiciary.

¹³⁹ Human Rights Committee, General Comment No. 32 (para. 22).

¹⁴⁰ Human Rights Committee, General Comment No. 32 (paras. 27 and 28).

¹⁴¹ DIS 2.7.2.

¹⁴² DIS 2.7.3.

3. United Nations Guidelines on the Role of Prosecutors.
4. United Nations Human Rights Committee, General Comment No. 29 (States of Emergency); General Comment No. 32 (Fair Trial); General Comment No. 35 (Liberty and Security of Person).
5. Reports of the United Nations Working Group on Arbitrary Detention.
6. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters.
7. CTITF, Basic Human Rights Reference Guide on the Right to a Fair Trial and Due Process in the Context of Counter-Terrorism.
8. CTITF, Basic Human Rights Reference Guide on Detention in the Context of Counter-Terrorism.
9. CTITF, Basic Human Rights Reference Guide on Conformity of National Counter-Terrorism Legislation with International Human Rights Law.
10. GCTF, especially the Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offences and Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector.
11. OSCE Office for Democratic Institutions and Human Rights (ODIHR), especially “*Countering Terrorism, Protecting Human Rights*”.
12. African Centre for Studies and Research on Terrorism, especially *Research Handbook on International Law and Terrorism*.

(b) Safeguards for criminal justice personnel

1. In many Member States, those involved in the investigation and prosecution of organized crime and terrorism cases are directly exposed to security risks. The ability to participate in law enforcement investigations and/or judicial proceedings without fear of intimidation or reprisal is essential to maintaining a fair and effective criminal justice system.¹⁴³ Member States should have programmes in place to protect law enforcement, prosecutors, the judiciary, and other relevant persons involved in the investigation and prosecution of terrorists.¹⁴⁴

Issues for consideration:

1. Is there an appropriate State authority responsible for providing public prosecutors, law enforcement officials, judges, and their families with information, training, and advice concerning personal safety?¹⁴⁵
2. Has the State criminalized the use of physical force, threats, or intimidation to interfere with the exercise of official duties by a justice or law enforcement official?¹⁴⁶
3. Is the judiciary able to exercise its judicial function independently on the basis of facts and in accordance with the law, without any restrictions, pressures, threats or interferences?¹⁴⁷
4. If prosecutors, judges, law enforcement officials, or their families, are subjected to violence or threats of violence, or are harassed, stalked, intimidated, or coerced in any manner, are there safeguards to ensure that such incidents are fully investigated, that those at risk are informed concerning the outcome of the investigation, that steps are taken to prevent recurrence, and that those at risk and their families receive any necessary counselling or psychological support?¹⁴⁸
5. Does the State ensure that public prosecutors, law enforcement officials, judges, together with their families, are physically protected by the appropriate State authorities when their personal security is threatened as a result of a proper discharge of their functions?

¹⁴³ Guidelines on Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990 (4) and GCTF, *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*, Good Practice 1.

¹⁴⁴ DIS 2.6.7.

¹⁴⁵ International Association of Prosecutors Declaration on Minimum Standards concerning the Security and Protection of Public Prosecutors and their Families (5).

¹⁴⁶ United Nations Convention against Transnational Organized Crime.

¹⁴⁷ Bangalore Principles of Judicial Conduct 2002, adopted by the Judicial Group on Strengthening Judicial Integrity, Endorsed by UNODC, referenced in UN Social and Economic Council Resolution 2006/23, Value 1, Independence.

¹⁴⁸ International Association of Prosecutors Declaration on Minimum Standards concerning the Security and Protection of Public Prosecutors and their Families (8).

6. Does the State provide the workplace and homes of relevant prosecutors and judges with appropriate security devices and personal protection devices?
7. Does the State ensure the safety of all stakeholders involved, including victims, civil society actors, women, and youth?

The following international instruments, standards and good practices provide guidance in this area:

1. *Bangalore Principles of Judicial Conduct 2002* (adopted by the Judicial Group on Strengthening Judicial Integrity and endorsed by UNODC).
2. International Association of Prosecutors (IAP), Declaration on Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families.

(c) Security and safety in the courtroom

1. In order to be able to bring terrorists to justice, Member States should ensure the safety and security of the courtrooms so that judges, witnesses, victims, law enforcement and prosecutors will not be subject to intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, criminal or other liability.¹⁴⁹

Issues for consideration:

1. Does the State ensure the presence of security guards or police protection for judges who may become, or are, victims of serious threats?¹⁵⁰
2. Has the State considered putting in place an increased police or other security presence, both in and outside the courtroom?
3. Has the State considered the use of security checkpoints and screening procedures, metal detectors, X-ray scanning devices, and other screening technology at public entrances to courthouse and courtroom?
4. Has the State considered prohibiting the possession (or use) of cell phones and other electronic devices in the courthouse and courtroom?
5. Has the State considered separate and secure parking entrances for judges, prosecutors, and court personnel?¹⁵¹

The following international instruments, standards and good practices provide guidance in this area:

1. UNODC, "The Status and Role of Prosecutors (2014)", *Criminal Justice Handbook Series*.
2. Judges: independence, efficiency and responsibilities, Recommendation CM/Rec(2010)12 and explanatory memorandum (adopted by the Committee of Ministers of the Council of Europe).
3. International Association of Prosecutors (IAP), Declaration on Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families.
4. GCTF, Hague Memorandum on Good Practices for the Judiciary, in Adjudicating Terrorism Offences.

(d) Witness protection

In some areas of criminality, including terrorism, there is an increasing risk that witnesses will be subjected to intimidation. States should therefore provide protection to witnesses and to collaborators of justice.

Issues for consideration:

1. Does the State provide physical and social protection to witnesses and collaborators of justice and people close to them before, during and after the testimony is given, as the case merits?

¹⁴⁹ Guidelines on Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990 (4).

¹⁵⁰ Security measures to protect judges, Recommendation No. R(94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges, adopted on 13 October 1994 at the 518th meeting of the Minister's Deputies, principle III.2.

¹⁵¹ GCTF, Hague Memorandum on Good Practices for the Judiciary, in Adjudicating Terrorism Offences.

2. Does the State allow the admissibility of evidence while permitting, where appropriate, non-disclosure of, or limitations on the disclosure of, information concerning the identity and whereabouts of such witnesses? How does it safeguard the rights of the defence in such cases?
3. Has the State developed a witness-protection programme that includes an autonomous agency, with sufficient resources, able to deal with urgent cases while also guaranteeing the confidentiality of the witness?
4. Has the State developed international cooperation arrangements in order to provide protection to witnesses, where appropriate, and to enable them to give their testimony in a secure location?
5. Does the State provide adequate training to criminal justice personnel, develop guidelines to deal with cases in which witnesses might require protection measures or programmes, and ensure adequate resourcing of such measures/programmes?

(e) Rights of victims in criminal proceedings

1. The Security Council has expressed profound solidarity with the victims of terrorism and their families and has encouraged CTED to take into account the important role that victims and survivor networks play in countering terrorism.¹⁵² Acknowledgement of victims of terrorism in criminal proceedings is an important part of recognizing the humanity of the victims, thereby publicly reinforcing the human costs of terrorism.¹⁵³
2. Victims are essential in the investigation and prosecution of acts of terrorism. They often serve as important witnesses in investigation and trials. Legal procedures and practical measures should be in place to protect them.¹⁵⁴ The ability to participate without fear of intimidation or reprisal is essential to maintaining the rule of law¹⁵⁵ and strengthens the ability of States to bring terrorists to justice.
3. Women and girls are often directly targeted by terrorist groups and subjected to gender-based violence in the form of rape, forced prostitution, forced marriage, forced pregnancy, and human trafficking. As noted in the Secretary-General's report on Sexual Violence in Conflict, of 23 March 2015 (S/2015/203), sexual and gender-based violence has become a standard tool for controlling territory, dehumanizing victims and recruiting new supporters.

Issues for consideration:

1. Does the State have adequate safeguards and security measures in place to ensure protection of victims' right to life, physical security, and privacy?¹⁵⁶
2. Does the State have a support system in place to assist victims of terrorism and their families throughout the criminal justice process?¹⁵⁷
3. Does the State allow for the participation of victims or their next-of-kin in proceedings against the perpetrator?¹⁵⁸
4. Has the State implemented a legal framework establishing rights and roles for victims during the criminal justice process?¹⁵⁹
5. Has the State provided sensitivity training to judges and other participants in the criminal justice system?¹⁶⁰

152 S/RES/2129 (2013), para. 16.

153 S/RES/2129 (2013), para. 39.

154 Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, Good Practice 9.

155 *Ibid.*

156 A/HRC/20/14, para. 67 (g).

157 *Ibid.*, para 37.

158 *Ibid.*, para 39.

159 Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, Good Practice 3.

160 Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, Good Practice 11.

6. Does the State provide for the interpretation of information related to the investigation or criminal proceedings?¹⁶¹
Does the State prevent secondary and repeat victimization within the criminal justice process by providing sensitivity training (including gender sensitivity) to judges and other participants in the criminal justice system?¹⁶²

The following international instruments, standards and good practices provide guidance in this area:

1. UNODC, Handbook on Criminal Justice Responses to Support Victims of Acts of Terrorism (A/66/310).
2. GCTF Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings.
3. Convention of the Shanghai Cooperation Organization against Terrorism, article 7 (8).

J. PROSECUTION, REHABILITATION AND REINTEGRATION STRATEGIES FOR RETURNING FTFs

Comments:

1. In its resolution 2178 (2014), the Security Council calls on States, in accordance with their obligations under international law, to cooperate to address the threat posed by FTFs, including by developing and implementing prosecution, rehabilitation and reintegration strategies for returning FTFs.¹⁶³
2. In its Madrid Guiding Principles, the Committee notes that Member States should ensure that their competent authorities are able to apply a case-by-case approach to returnees, on the basis of risk assessment, the availability of evidence and related factors. Member States should develop and implement strategies for dealing with specific categories of returnees, in particular minors, women, family members and (other) potentially vulnerable individuals. Prosecution strategies should correspond to national counter-terrorism strategies, including effective strategies to counter violent extremism.¹⁶⁴
3. The Committee also notes, in its Madrid Guiding Principles, that Member States should consider appropriate administrative measures and/or rehabilitation and reintegration programmes as alternatives to prosecution in appropriate cases. Such measures should be used in a manner compliant with applicable international human rights law and national legislation and should be subject to effective review.¹⁶⁵
4. In developing and implementing prosecution, rehabilitation and reintegration strategies, two main issues should be taken into consideration. Firstly, Council resolution 2178 (2014) requires Member States to “ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness” of the FTF-related offences listed in paragraph 6 of the resolution. In combating the FTF threat, it is important to address the full range of serious crimes committed during travel, in particular war crimes, crimes against humanity, and gender-related crimes.¹⁶⁶ Assessments should be conducted to determine the level of culpability and thereby determine the appropriate way to handle each individual.¹⁶⁷ Whether rehabilitation and reintegration programmes can be introduced during differing stages of criminal proceedings as an alternative to incarceration or, in addition to incarceration, including as part of a reduced sentence, depends on the national legislation and criminal justice system of each State. Secondly, prosecution, rehabilitation and reintegration strategies must comply with applicable international human rights law and humanitarian law, as well as with domestic law, including in cases where such programmes are used as alternatives in different stages of criminal proceedings, and also, on a voluntary basis, in cases where returning FTFs have been acquitted, charges have been dropped, or where the case

¹⁶¹ *Ibid*, para. 40.

¹⁶² Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, Good Practice 15.

¹⁶³ S/RES/2178 (2014), para. 4.

¹⁶⁴ Madrid Guiding Principle 30 (S/2015/939).

¹⁶⁵ Madrid Guiding Principle 31.

¹⁶⁶ Madrid Guiding Principle 32.

¹⁶⁷ Madrid Guiding Principles, pp. 19-20.

does not meet the threshold for prosecution, whether due to lack of evidence or because of the age of the offender or other individual considerations.

Issues for consideration:

1. Has the State developed a strategy for handling cases related to returning FTFs that includes appropriate administrative measures and/or rehabilitation and reintegration programmes that are in compliance with domestic and international law, including applicable international human rights and international humanitarian laws and standards? If so, does the State implement this strategy?¹⁶⁸
2. Is the State able to implement administrative measures and/or rehabilitation and reintegration programmes as alternatives to prosecution, in appropriate cases?¹⁶⁹
3. Do prosecution strategies correspond to national counter-terrorism strategies, including effective strategies to counter violent extremism?¹⁷⁰
4. Are the competent authorities able to apply a case-by-case approach to returnees, on the basis of risk assessment, the availability of evidence, and related factors?¹⁷¹
5. Has the State developed strategies to deal with specific categories of returnees, in particular minors, women and family members and (other) potentially vulnerable individuals?
6. Does the State have in place norms and standards on juvenile justice to deal appropriately with juvenile returnees?¹⁷²
7. Are legal safeguards in place to ensure that participants have provided their consent to measures imposing any obligations on them, applied before, or instead of, formal proceedings or trial or on a voluntary basis?¹⁷³ Are participants properly informed of their rights to end their participation, as appropriate, and the procedures for doing so, and are those measures in compliance with international human rights law?
8. Are legal safeguards in place to ensure that decisions on the imposition of non-custodial measures are subject to review by a judicial or other competent independent authority, upon application by the offender?¹⁷⁴
9. Are legal safeguards in place to ensure that the participant is able to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights?¹⁷⁵
10. Are appropriate mechanisms in place to provide recourse for and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights in the implementation of administrative measures and/or rehabilitation and reintegration programmes?¹⁷⁶
11. Do measures exist to ensure that programmes aimed at addressing participants' beliefs and ideologies ensure adequate protection of international human rights, including freedom of thought, religion, expression and privacy?
12. Is the State able to combine rehabilitation and reintegration programmes and other non-criminal measures with monitoring/reporting, supervision, probation, fixed addresses, restraining orders, surrender of passport/identification, travel bans or other measures, as appropriate, and do those programmes and measures comply with national and international law, including human rights and humanitarian law?

168 Madrid Guiding 30 (S/2015/939).

169 Madrid Guiding Principle 31.

170 Madrid Guiding Principle 30.

171 Madrid Guiding Principle 30.

172 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 1985; Madrid Guiding Principle 30; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (JDL), 1990; United Nations Convention on the Rights of the Child (art. 37), (1989); Committee on the Rights of the Child, General Comment No. 10 (2007) Children's rights in Juvenile Justice.

173 III. Alternatives to imprisonment and restorative justice, 12. United Nations Standard Minimum Rules for Non-custodial Measures ("Tokyo Rules") (3.4).

174 *Ibid.*, (3.5).

175 *Ibid.*, (3.6).

176 III. Alternatives to imprisonment and restorative justice, 12. United Nations Standard Minimum Rules for Non-custodial Measures ("Tokyo Rules") (3.7).

13. Does the State have in place appropriate structures to ensure proper coordination and clear leadership in developing and implementing inter-agency/multi-stakeholder/multi-disciplinary platform models, as appropriate?
14. Are all actors who may be involved in implementing prosecution, rehabilitation and reintegration strategies provided with adequate, predictable and long-term resources, support, guidance and oversight and the opportunity to consult with the competent authority?¹⁷⁷
15. Does the State have in place appropriate mechanisms to assess the willingness and abilities of receiving communities, including local government and authorities, local communities, and families, as appropriate, to reintegrate returnees and prepare communities to receive returnees, as required?
16. Are local governments consulted, as appropriate, on relevant issues for which they may be responsible, including housing issues, education, and employment prospects?

The following international instruments, standards and good practices provide guidance in this area:

1. Madrid Guiding Principles of the Counter-Terrorism Committee on Stemming the Flow of FTFs,¹⁷⁸ including (in particular, Guiding Principles 30-32).
2. United Nations Standard Minimum Rules for the Treatment of Prisoners.
3. United Nations Standard Minimum Rules for Non-Custodial Measures (“Tokyo Rules”), 1990.
4. United Nations Basic Principles on the use of restorative justice programmes in criminal matters, 2002.
5. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL), 1990.
6. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”), 2006.
7. United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), 2010.
8. United Nations Convention on the Rights of the Child (art. 37), (1989).
9. Committee on the Rights of the Child, *General Comment No. 10* (“Children’s rights in Juvenile Justice”).
10. International Covenant on Civil and Political Rights (arts. 9 and 14), 1966.
11. UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, at: http://www.unodc.org/pdf/criminal_justice/Handbook_on_VEps.pdf.
12. Council of Europe Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism.
13. European Commission’s Radicalisation Awareness Network (RAN)’s Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration.

K. JURISDICTION AND AUT DEDERE AUT JUDICARE

Comments:

1. Security Council resolution 1373 (2001) requires States to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.¹⁷⁹ Council resolution 1566 (2004) calls on States to do so on the basis of the principle to “extradite or prosecute” (*aut dedere aut judicare*).¹⁸⁰ However, it is extremely

¹⁷⁷ *Ibid.*

¹⁷⁸ S/2015/939.

¹⁷⁹ S/RES/1373 (2001), para. 2 (e).

¹⁸⁰ S/RES/1566 (2004), para. 2.

difficult to secure the conviction of arrested persons if all the witnesses and the evidence are abroad. Member States should therefore consider revising laws so that nationality or citizenship is not a basis to deny extradition.¹⁸¹

2. In its resolution 1624 (2005) the Security Council recalls that all States must cooperate fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens.
3. The international counter-terrorism instruments call on States to establish territorial jurisdiction over offences if such offences are committed within its territory or committed by nationals. (See also chapter III, section 3. "Ratification") States must also establish jurisdiction over the offences to either prosecute or extradite an alleged offender present in the territory of the State.¹⁸²

Issues for consideration:

1. Has the State established its jurisdiction over terrorism offences committed by its own nationals, regardless of the location of the offences committed?¹⁸³
2. Has the State established its jurisdiction over terrorism offences committed in its territory and on board aircraft/vessels registered in the State?¹⁸⁴
3. In the event that the State does not extradite a terrorist, does the State without exception and regardless of whether or not the terrorism offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with its laws, provided that the alleged offence falls within the scope of the international counter-terrorism instruments?¹⁸⁵
4. Does the State effectively implement the extradite or prosecute principle, including by implementing the measures set forth in Council resolution 2322 (2016) concerning extradition?
5. Does national legislation provide jurisdiction over misuse of cyberspace for terrorist purposes?

L. INTERNATIONAL LEGAL COOPERATION

Comments:

1. Security Council resolution 1373 (2001) requires States to undertake a number of measures for the purpose of international legal cooperation in the fight against terrorism. Member States shall provide one another the greatest measure of assistance in the prosecution of acts of terrorism, wherever they occur.¹⁸⁶ Council resolution 2178 (2014)¹⁸⁷ recalls resolution 1373 (2001) in calling on States to afford one another the greatest measure of assistance, specifically with respect to such investigations or proceedings involving FTFs.¹⁸⁸
2. Member States should also afford one another assistance in obtaining evidence in their possession necessary for the proceedings.¹⁸⁹ States should therefore consider establishing appropriate laws and mechanisms to provide the broadest possible

¹⁸¹ S/2015/975, para. 34.

¹⁸² 2009 *Technical Guide to the Implementation of Security Council Resolution 1373 (2001)*, Comment on Chapter II, Section 8 "Jurisdiction", at: https://www.un.org/sc/ctc/wp-content/uploads/2016/01/technical_guide_2009.pdf

¹⁸³ DIS 2.8.1.

¹⁸⁴ DIS 2.8.2.

¹⁸⁵ DIS 2.9.3.

¹⁸⁶ S/RES/1456 (2003), para. 2 (b).

¹⁸⁷ S/RES/2178 (2014), para. 12.

¹⁸⁸ S/RES/1373 (2001), para. 2 (f); S/RES/2133 (2014), para. 5; S/RES/2253 (2015), para. 12.

¹⁸⁹ S/RES/1373 (2001), para. 2 (f).

international judicial cooperation¹⁹⁰ and to provide more efficient and more effective cooperation.¹⁹¹ Member States should also dedicate the resources necessary to make existing international cooperation mechanisms effective.¹⁹² States should be aware of, and strengthen their responses to, the numerous challenges associated with effective international cooperation in combating terrorism, including time involved in the provision of mutual legal assistance (MLA), procedural rigidities, and lack of capacity.¹⁹³

3. In its resolution 2322 (2016), the Council calls on all States to undertake a number of additional measures aimed at strengthening MLA and extradition, including considering strengthening and, where appropriate, reviewing the possibilities for enhancing effectiveness of their respective bilateral and multilateral treaties concerning extradition and MLA in criminal matters related to counter-terrorism; cooperating, as appropriate, on the basis of reciprocity or on a case-by-case basis; enacting and, where appropriate, reviewing and updating extradition and MLA laws, as well as their respective bilateral and multilateral treaties concerning MLA and extradition, in connection with terrorism-related offences, consistent with their international obligations, including their obligations under international human rights law; considering ways to simplify extradition and MLA requests while recognizing the need for due consideration, in light of the need to uphold relevant legal obligations; designating central authorities or other relevant criminal justice authorities to handle MLA and extradition matters and ensuring that such authorities have adequate resources, training and legal authority, in particular for terrorism-related offences; updating current practices on MLA regarding acts of terrorism, including considering, where appropriate, the use of electronic transfer of requests to expedite proceedings, with full respect for existing treaty obligations; considering submitting to the UNODC repository database contact information and other relevant details of designated authorities; and considering developing and participating in regional MLA cooperation platforms and developing and enhancing arrangements for expeditious cross-regional cooperation in respect of terrorism-related offences.

1. Extradition issues for consideration

(a) Legal framework

1. Does the State have in place a legal framework covering extradition (Acts of Parliament, bilateral and multilateral treaties, international counter-terrorism instruments, regional and subregional agreements)?
2. Has the State enacted and, where appropriate, reviewed and updated extradition and MLA laws in connection with terrorism-related offences, consistent with its international obligations, including its obligations under international human rights law?
3. Has the State reviewed and updated as necessary its national MLA laws and mechanisms in order to strengthen their effectiveness, especially in the light of the substantial increase in the volume of requests for digital data?¹⁹⁴
4. Is the State able to use applicable international instruments to which it is a party as a basis for extradition in terrorism cases?¹⁹⁵
5. Is the State able to cooperate on the basis of reciprocity or on a case-by-case basis, in the absence of applicable conventions or provisions?¹⁹⁶
6. Is the legislative framework sufficiently broad to cover the obligations under resolution 1373 (2001)? (with respect in particular to codification of offences and jurisdictional elements such as the principle *aut dedere aut judicare*).
7. Are the extraditable offences clearly defined in legislation or by reference to applicable treaties?
8. Does the State impose impediments to extradition where both States have criminalized the underlying conduct?

190 S/RES/2322 (2016), para. 15.

191 S/2015/975, para. 31.

192 S/2015/975, para. 44.

193 S/2106/501, para. 52.

194 S/RES/2322 (2016), 13 (b).

195 S/RES/2322 (2016), 13 (a).

196 S/RES/2322 (2016), 13 (a).

9. Are the offences set forth in the international counter-terrorism instruments or required under resolutions 1373 (2001) and 2178 (2014) deemed to be included as extraditable offences in any extradition treaty existing between the Contracting States?
10. Does the State have in place legal provisions requiring denial of extradition requests made by foreign jurisdictions where there are substantial grounds for believing the person concerned would be in danger of being subjected to torture?¹⁹⁷
11. Does the State provide for appeal or review of decisions to extradite?
12. Does the State's legal framework include grounds for refusal such as:
 - Double jeopardy;
 - Improper grounds for prosecution;¹⁹⁸
 - Risk of refoulement under international human rights or refugee law;
 - Absence of minimum guarantees in criminal proceedings;
 - For States that have abolished the death penalty, absence of adequate guarantees.

(b) Practical application

Comments:

1. Whereas multilateral and bilateral treaties provide the basis for extradition, domestic legislation and institutions often set out the related procedural aspects. In its resolution 2322 (2016), the Council calls on all States to use applicable international instruments to which they are parties as a basis for MLA and, as appropriate, for extradition in terrorism cases, and encourages States, in the absence of applicable conventions or provisions, to cooperate, where possible, on the basis of reciprocity or on a case-by-case basis.¹⁹⁹
2. Review whether a State has established practices, procedures and criteria relating to extradition.

Issues for consideration:

1. Has the State designated central authorities or other relevant criminal justice authorities to handle MLA and extradition matters?²⁰⁰
2. Has the State ensured that such authorities have adequate resources, training and legal authority, in particular for terrorism-related offences?²⁰¹
3. Is there a clear procedure to be followed upon the acceptance of a request for extradition?
4. Has the State taken steps to strengthen implementation, and where appropriate, review possibilities for enhancing the effectiveness of its bilateral and multilateral treaties concerning extradition in criminal matters related to counter-terrorism?²⁰²
5. Has the State considered, within the framework of the implementation of existing applicable international legal instruments, ways to simplify extradition and MLA requests in appropriate terrorism-related cases, while upholding relevant legal obligations, including the need for due consideration?²⁰³
6. Is there available written information concerning the procedures, which can be provided to requesting States to facilitate extradition?
7. Are there procedures in place for the arrest of the individual?

¹⁹⁷ DIS 2.9.11.

¹⁹⁸ See e.g., International Convention for the Suppression of the Financing of Terrorism, art. 15.

¹⁹⁹ S/RES/2322 (2016), para. 13 (a).

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.* para. 13 (c).

²⁰³ S/RES/2322 (2016), para. 13 (d).

8. Are procedures in place for appeal/judicial review?
9. Is return prohibited where there are “substantial grounds for believing” that the subject of an extradition request would be in danger of being subjected to torture if returned to his/her State of origin, or any other State?
10. Is the State able to transmit the items of evidence in its possession to the prosecuting State, in the case of a State refusing extradition?²⁰⁴
11. Have there been extraditions for terrorism-related cases or other cases?

2. Mutual legal assistance

Has the State implemented legislation authorizing a competent authority to:

1. Assist in ensuring the availability of detained persons or others to give evidence or assist in investigations?
2. Effect service of judicial documents?
3. Execute searches and seizures?
4. Examine objects and sites?
5. Provide information and evidentiary items?
6. Enhance the coordination of joint investigations?²⁰⁵
7. Provide documents and records, including bank, financial, corporate or business records in admissible form for use in criminal judicial proceedings?
8. Conduct search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons?
9. Take evidence or statements from persons?
10. Facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting State?
11. Provide unsolicited information/exchange of information to foreign counterparts?²⁰⁶
12. Identify, freeze, seize, or confiscate assets used for, or intended to be used for, terrorism financing, as well as the instrumentalities of such offences, and assets of corresponding value?²⁰⁷
13. Transfer criminal proceedings, as appropriate, in terrorism-related cases?²⁰⁸

Does the State’s legislation allow for:

1. The use of applicable international instruments to which the State is a party as a basis for MLA in terrorism cases, and cooperation where possible on the basis of reciprocity or on a case-by-case basis, in the absence of applicable conventions or provisions?²⁰⁹
2. Effective implementation of its respective bilateral and multilateral treaties concerning extradition and MLA in criminal matters related to counter-terrorism?²¹⁰

²⁰⁴ UNODC Manual on International cooperation in Criminal Matters related to Terrorism, Module 1.C.1. p. 30.

²⁰⁵ CTC Policy Guidance on International Cooperation, para. 2.

²⁰⁶ S/RES/1373 (2001), para. 3 (a); 2001 Council of Europe Convention on Cybercrime, art. 26; LAS 2010 Arab Convention on Combating Information Technology Offences, art. 33; EU Framework decision 2005/222/JHA, art. 11; EU Framework Decision 2001/413/JHA, art. 12.

²⁰⁷ International Convention for the Suppression of the Financing of Terrorism, 1999.

²⁰⁸ S/RES/2322 (2016), para. 9 (b).

²⁰⁹ *Ibid*, para. 13 (a).

²¹⁰ *Ibid* para. 13 (c).

3. Simplified extradition and MLA requests in terrorism-related cases, within the framework of the implementation of existing applicable international legal instruments, while ensuring that relevant legal obligations are upheld and, in particular, the need for due consideration?²¹¹
4. The broadest possible international cooperation, including the appointment of liaison officers, police-to-police cooperation, the creation/use, when appropriate, of joint investigation mechanisms, and enhanced coordination of cross-border investigations in terrorism cases, and the use of electronic communication and universal templates, in full respect for the fair-trial guarantees of the accused?²¹²
5. The transfer of criminal proceedings, as appropriate, through appropriate laws and mechanisms, in terrorism-related cases?²¹³
6. Evidence to be taken by videoconference in the requested party if it is not possible or desirable, for another reason, for the person in question to appear at proceedings in the requested party?
7. Provisions on temporary transfer of detained persons to the requested State for the purpose of investigation?
8. Spontaneous transmission of information?
9. Provision of assistance, both in the absence of, and pursuant to, a treaty arrangement?
10. Empowering the central authority to enforce conditions and limitations on request?
11. MLA in the context of:
 - Special investigative techniques?
 - Provisions on admissibility of evidence gathered in other jurisdictions, when appropriate?
 - Access to/collection of/disclosure of computer data at the request of a foreign State?²¹⁴

3. Central authority

Comments:

1. In its resolution 2322 (2016), the Security Council calls on States to designate central authorities or other relevant criminal justice authorities to handle MLA and extradition matters and to ensure that such authorities have adequate resources, training and legal authority, in particular for terrorism-related offences.²¹⁵
2. The resolution further calls on States to take measures, where appropriate, to update current practices on MLA regarding acts of terrorism, including considering, where appropriate, the use of electronic transfer of requests to expedite proceedings between central authorities or, as appropriate, other relevant criminal justice authorities, with full respect for existing treaty obligations.²¹⁶
3. Member States are also called upon to consider submitting to the UNODC repository database contact information and other relevant details concerning its designated authorities.²¹⁷

Issues for consideration:

1. Has the State designated a central authority or other relevant criminal justice authority to handle MLA and extradition matters?²¹⁸

²¹¹ *Ibid*, para. 13 (d).

²¹² *Ibid*, para. 15.

²¹³ *Ibid*, para. 9 (b).

²¹⁴ S/RES/1373 (2001), para. 3 (a); arts. 30-34 2001 Council of Europe Convention on Cybercrime; arts. 38-42, LAS 2010 Arab Convention on Combating Information Technology Offences.

²¹⁵ S/RES/2322 (2016), para. 13 (e).

²¹⁶ *Ibid*, para. 13 (f).

²¹⁷ *Ibid*, para. 13 (g).

²¹⁸ *Ibid*, para. 13.

2. Do such authorities have adequate resources, training and legal authority, in particular for terrorism-related offences?²¹⁹
3. Is the central authority able to use applicable international instruments to which the State is a party as a basis for MLA and, as appropriate, for extradition in terrorism cases and, in the absence of applicable conventions or provisions, to cooperate where possible on the basis of reciprocity or on a case-by-case basis?²²⁰
4. Has the State put in place appropriate mechanisms that allow for the broadest possible international cooperation, including the appointment of liaison officers, police-to-police cooperation, the creation/use, when appropriate, of joint investigation mechanisms, and enhanced coordination of cross-border investigations in terrorism cases, and the use of electronic communication and universal templates, in full respect for the fair-trial guarantees of the accused?²²¹
5. Has the State ensured the use of up-to-date MLA practices, including, where appropriate, the use of electronic transfer of requests to expedite proceedings between central authorities or, as appropriate, other relevant criminal justice authorities, with full respect for existing treaty obligations?²²²
6. Has the State submitted to the UNODC repository database contact information and other relevant details concerning its designated authorities?²²³
7. Is the central authority able to train officials, judges and prosecutors in drafting and executing MLA and extradition requests?
8. Does the central authority coordinate seizure and confiscation actions with other States?
9. Has the central authority concluded effective bilateral or multilateral arrangements and channels to cooperate with other authorities (central, judicial, prosecutorial and law enforcement)?
10. Has the central authority concluded effective bilateral or multilateral arrangements and channels to coordinate cross-border investigations and prosecutions?
11. Has the central authority concluded bilateral or multilateral arrangements on controlled delivery, covert investigations and joint investigation teams?
12. Has the central authority established mechanisms for cooperation and consultation before refusal of an MLA or extradition request or before postponing execution of such a request?
13. Does the State participate in regional MLA cooperation platforms and has it taken steps to develop or enhance, as appropriate, arrangements for expeditious cross-regional cooperation for terrorism-related offences?²²⁴
14. Does the central authority have adequate resources, training and legal authority, particularly for terrorism related offences?
15. Has the central authority the capacity to serve as a 24/7 network point of contact for in the absence of a distinct established 24/7 focal point?²²⁵
16. Is the central authority able to disseminate guidance on national MLA and extradition requirements both to domestic practitioners and to foreign authorities?
17. Is the central authority able to make use of alternatives to MLA and extradition (and does it in fact do so)?
18. Has the central authority the capacity to take practical measures with a view to facilitating the rapid execution of a request?

²¹⁹ *Ibid.*, para. 13 (e).

²²⁰ *Ibid.*, para. 13 (a).

²²¹ *Ibid.*, para. 15.

²²² *Ibid.*, para. 13 (f).

²²³ *Ibid.*, para. 13 (g) and CTC Policy Guidance on International Cooperation, para. 2 (k).

²²⁴ S/RES/2322 (2016), para. 13 (h).

²²⁵ S/RES/1373 (2001), para 3 (a); 2001 Council of Europe Convention on cybercrime art. 35; EU Framework decision 2005/222/JHA art. 11; LAS 2010 Arab Convention on Combating Information Technology Offences, art 43.

19. Is the central authority able to transfer criminal proceedings?²²⁶

The following international instruments standards and good practices provide guidance in this area:

1. *Madrid Guiding Principles* (Principles 33-35, on international cooperation).
2. Counter-Terrorism Committee, Policy Guidance on International Cooperation²²⁷.
3. UNODC, Manual on International Cooperation in Criminal Matters related to Terrorism.
4. UNODC, Mutual Legal Assistance Request Writer Tool.
5. UNODC, Model Laws on International Cooperation.
6. FATF Recommendations 36 to 40.
7. African Union-Sahel Fusion and Liaison Unit (UFL)²²⁸.
8. European Union, Model Agreement for Setting Up a Joint Investigation Team (JIT)²²⁹.
9. International Association of Prosecutors (IAP) Counter-Terrorism Prosecutors' Network (CTPN).
10. Practical Guide to Extradition and Mutual Legal Assistance for Member States of the Indian Ocean Commission.
11. Practical Guide on Carrying out Effective Extradition and Mutual Legal Assistance Requests in Criminal Matters for States of the Sahel Regional Judicial Platform.

M. EFFECTIVE BORDER CONTROLS AND RELATED ISSUES²³⁰

Comments:

1. Effective border management is essential in countering terrorism because it constitutes the first line of defence against the cross-border movement of terrorists and of illicit goods and cargo.²³¹ Security Council resolution 1373 (2001) requires States to prevent the movement of terrorists or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents.²³² Similarly, in its resolution 1624 (2005), the Council calls on all States to cooperate to strengthen the security of their international borders, including by combating fraudulent documents and enhancing screening measures.²³³ Effective border management is of particular importance with respect to FTFs, as reflected in resolution 2178 (2014).²³⁴ In its resolution 2322 (2016), the Council reiterates the obligation of States to prevent the movement of terrorists and terrorist groups, in accordance with applicable international law, and underlines the importance of strengthening international cooperation in stemming the flow of FTFs.²³⁵
2. In order to effectively screen travellers at ports of entry, a combination of several mechanisms needs to be in place, depending on whether the border is an air, maritime or land border. At airports, key mechanisms include advance passenger information (API), passenger name records (PNR), biometric technology, and INTERPOL databases.²³⁶ A further element in ensuring effective

²²⁶ S/2015/975, para. 40.

²²⁷ CTC Policy Guidance on International Cooperation, para. 2 (f).

²²⁸ S/RES/2199 (2015), para. 4.

²²⁹ S/RES/1963 (2010).

²³⁰ DIS 2.10.1, 2, 11 & 23.

²³¹ S/2016/49, para. 424.

²³² S/RES/1373 (2001), para. 2 (g).

²³³ S/RES/1624 (2005), para. 2.

²³⁴ S/RES/2178 (2014), paras. 2, 8, 9 & 11.

²³⁵ S/RES/2322 (2016), preamble.

²³⁶ S/RES/2178 (2014), paras. 9, 13; S/PRST/2015/11; S/2015/975, p. 3; S/2016/49, para. 426.

border control is implementation of the WCO Framework of Standards, which enables States to balance security controls with trade facilitation through risk analysis and targeted inspections.²³⁷

3. Airports continue to be targeted by terrorist groups. The Chicago Convention on International Civil Aviation and its annexes provide important standards for ensuring the safety of civil aviation facilities worldwide.²³⁸ In its resolution 2309 (2016), the Council expresses concern that terrorist groups continue to view civil aviation as an attractive target and identifies a number of steps to be taken by Member States in order to strengthen implementation of the ICAO standards.²³⁹
4. The design and implementation of comprehensive border-management strategies continue to be challenging for many States.²⁴⁰ Porous borders remain a significant concern, as they can allow terrorists to enter a State without passing through official border points and thereby avoid the examination of documents and screening against national and international watch lists. The monitoring of vast open spaces requires significant resources. Geological and climatic conditions in some States further complicate efforts to control entry to and exit from the territory.²⁴¹ The lack of necessary infrastructure at border posts limits officials' access to relevant databases and is often compounded by the fact that officials at one border post may be required to monitor extensive areas beyond official crossing points.²⁴²
5. The efficacy of any border-management system will depend on adequate coordination and information-sharing by various Government entities, both within States and between States. It is essential that States continue to focus on these operational issues, including the need for information on persons and goods entering and exiting the State to be shared between officials working at border-crossing points and those in other parts of the State.²⁴³ The Council reiterates the importance of considering these issues in its resolution 2322 (2016).²⁴⁴
6. Security Council resolution 2178 (2014) requires States to take steps to prevent the entry into, or transit through, their territories of any suspected FTFs. In addition to criminalization, some States have imposed administrative measures to this end, including the imposition of travel bans or withdrawal of travel documents. Such measures must be implemented in a manner consistent with international human rights law and with appropriate due-process protections.
7. In its resolution 2341 (2017), the Council notes the increasing interdependency of States' cross-border critical infrastructures, such as those used for generation, transmission and distribution of energy; air, land and maritime transport; banking and financial services; water supply; food distribution; and public health. It also recognizes that protection efforts entail multiple streams of efforts, including on risk management for protection programmes and activities and for supply-chain integrity and security. It also calls on Member States to enhance their cooperation to protect critical infrastructure, including regional connectivity projects and related cross-border infrastructure, from terrorist attacks, as appropriate, through bilateral and multilateral means in information sharing, risk assessment, and joint law enforcement.

In implementing these border control measures, Member States must also comply with international human rights and refugee law.²⁴⁵ (See also chapter III, section 4.)

²³⁷ S/2016/49, para. 430.

²³⁸ S/2016/49, para. 430.

²³⁹ S/RES/2309 (2016).

²⁴⁰ S/2016/501, para. 63.

²⁴¹ S/2015/683, para. 66; S/2015/975, paras. 71, 87, 96, 133.

²⁴² S/2015/975, paras. 55, 68.

²⁴³ S/2015/975, paras. 70, 84, 134, 156(c); GCTF, *Hague-Marrakech Memorandum*, Good Practice 10.

²⁴⁴ S/RES/2322 (2016), preamble.

²⁴⁵ S/RES/1624 (2005), para. 4; S/RES/2178 (2014), para. 5.

*Issues for consideration:***1. Legal framework**

1. Does the State have in place legislation to prevent illegal entry by terrorists?²⁴⁶
2. Does the State have in place legislation to prevent the smuggling of terrorists?²⁴⁷
3. Does the State regulate inter-agency cooperation through official acts and/or memorandums of understanding (MoUs) in order to provide a clear definition of activities, tasks and responsibilities covering the whole spectrum of border security and management (BSM)?²⁴⁸

2. Strategy and awareness

1. Does the State have in place a coordinated border-management strategy which clearly formulates the goals to be achieved for a period of three to five years?²⁴⁹
2. Has the State established a National Action Plan (NAP) in the context of BSM describing relevant specific activities in the area of counter-terrorism?²⁵⁰
3. Do the competent authorities use decision analysis tools, such as a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis or Force Field diagram, to facilitate the development of BSM and the NAP?
4. Are all relevant stakeholders meant to facilitate, lead and supervise implementation of the NAP (neighbouring State's public administration, internal organizations involved in BSM, readmission and reintegration, and border traffic at international airports) identified?
5. Has the State designated an Inter-Agency Working Group (IAWG) responsible for the implementation of the NAP and consisting of relevant ministries and their departments?
6. Has the State taken measures to raise border guards' awareness of the FTF phenomenon?²⁵¹
7. Have border guards received training on the definition of FTFs, with particular reference to the preparatory nature of the conduct criminalized in resolution 2178 (2014)?
8. Have border guards received training in how to identify FTFs?
9. Have border guards received training on the specific challenges associated with identifying female FTFs?²⁵²
10. Has the State adopted a border community-policing-oriented approach?²⁵³
11. Are border authorities engaged on the basis of partnership and dialogue with border communities to raise awareness border communities' awareness of the threat posed by terrorism?
12. Have the border authorities established a dialogue with all elements of border communities (including tribal chiefs, ethnic groups, religious leaders, and nomads) and representatives of civil society?
13. Do the border authorities involve border communities in the development, implementation and evaluation of various BSM related strategies and action plans, policies and measures?
14. Are national BSM authorities available, visible, and accessible for border communities and nomad tribes?

²⁴⁶ DIS 2.10.1.

²⁴⁷ DIS 2.10.2; S/2016/49, para. 427.

²⁴⁸ GCTF, Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters, Good Practice 2.

²⁴⁹ Madrid Guiding Principles (S/2015/939) 20, 21.

²⁵⁰ GCTF, Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters, Good Practice 13.

²⁵¹ S/2015/939, Annex 1, Group II (a), p. 3. & Madrid Guiding Principle 18.

²⁵² S/2015/939, Annex II, Principle 18 (f); S/2015/975, para. 27.

²⁵³ GCTF Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters, Good Practice 5.

15. Are the competent authorities able to analyse the evolution of threats likely to affect the security of external borders and set the priorities for action accordingly?
16. Are the competent authorities able to develop strategic plans for the implementation of operational and tactical plans?
17. Are the competent authorities able to anticipate needs relating to human resources and equipment in order to ensure security at external borders, in accordance with the level of risk in different areas?
18. Do the State's Government and border services adopt a focused approach in tackling corruption in certain key areas, such as identity verification, travel documentation, detection of criminal offences, and monitoring of cross-border commerce?²⁵⁴
19. Has the State's Government considered developing national anti-corruption strategies and action plans to cultivate an anti-corruption culture in BSM-related issues?

3. Documentation

1. Has the State developed a set of objective criteria for the placement of an individual on watch lists and no-fly lists?²⁵⁵
2. Has the State developed processes to ensure that the personal data contained in such lists is complete, accurate and up to date?²⁵⁶
3. Does the State have the necessary safeguards in place to ensure that information contained on watch lists and no-fly lists is not misused in a manner that threatens human rights and is maintained with full respect for the right to privacy?²⁵⁷
4. Does the State have the capacity to prevent and detect fraudulent use of identity and travel documents?²⁵⁸
5. Does the State issue secure ICAO-compliant machine-readable travel documents (MRTDs)?²⁵⁹
6. Does the State issue secure "breeder" primary documents?²⁶⁰
7. Does the State have the capacity to confirm the authenticity of "breeder" primary documents before issuing travel documents (i.e., through verification with civil registries, electronically, or by other means)?²⁶¹
8. Does the State incorporate into its travel documents unique and distinctive designs and materials that are difficult to counterfeit?²⁶²
9. Does the State regularly include stolen and lost travel documents (SLTDs)/passports in national watch lists and alerts?²⁶³
10. Does the State regularly communicate relevant data on stolen and lost passports to INTERPOL?²⁶⁴
11. Does the State revoke travel documents of suspected FTFs? If so,
 - What is the duration of such measures?
 - Does the State record this revocation in a national database?
 - Does the State inform international partners of this revocation (e.g., by recording it in the INTERPOL Stolen and Lost Travel Document (SLTD) database)?
 - What procedures are in place for the affected individuals to challenge these measures?

254 GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 15.

255 S/2015/338, para. 36.

256 S/2015/338.

257 S/2015/338.

258 DIS 2.10.7; S/RES/2178 (2014), para. 2.

259 DIS 2.10.12.

260 DIS 2.10.13(A).

261 DIS 2.10.13(B).

262 DIS 2.10.13(C).

263 DIS 2.10.14.

264 DIS 2.10.15.

4. National practices to prevent FTF movement

1. Does the State have in place measures to prevent FTFs from crossing its national borders (e.g., travel ban or withdrawal of travel documents)?
2. Does the State know the prerequisites for those measures?
3. Does the State have procedures in place to safeguard due process and the right to freedom of movement?
4. Does the State have in place a procedure to ban potential or suspected FTFs from travelling to conflict zones?
5. Does the State have in place a procedure to apply a court decision to ban potential or suspected FTFs from travelling, with confiscation of their passport, including when a passport is not needed to travel to some destinations? (*See also chapter II, section 13, "Documentation"*)

5. Screening prior to arrival in the destination State

1. Does the State have the intelligence and analytical capacity to detect potential terrorists?²⁶⁵
2. Do the State's consulates and embassies abroad check visa applicants' details against national and international watch lists?
3. Does the State have in place measures for the advance screening of persons travelling from States benefitting from visa-free or visa-upon-arrival arrangements?²⁶⁶
4. Does the State have personnel and facilities for the screening of women and girls in contexts where separate facilities and personnel may be necessary?
5. Does the State have access to pre-arrival traveller information (through Advance Passenger Information (API) systems) for risk-assessment purposes?²⁶⁷
6. Does the State receive Passenger Name Record (PNR) regarding passengers travelling by air?²⁶⁸
7. If so, is this information utilized and stored in a manner consistent with international human rights law?²⁶⁹
8. Has the State implemented a "single-window" system, with a single agency identified as the primary receiver of API and/or PNR?²⁷⁰
9. Is this information (API and/or PNR) checked against national watch lists?²⁷¹
10. Has the State established a dedicated analytical team for the timely review of information relating to existing or potential FTFs?²⁷²
11. Does the State have in place procedures to prevent suspected FTFs from transiting through airports within its territory?²⁷³

For issues relating to information management consistent with international human rights law, see chapter IV, section 2, "Measures with respect to entry and asylum screening for people that may have been guilty of incitement to commit a terrorist act".

6. Screening upon arrival at the border

1. Has the State considered establishing joint border-crossing points with the competent authorities of partner States to address the crossing of external borders?

²⁶⁵ DIS 2.10.7. & Madrid Guiding Principles 15, 16, 17, 18, 19.

²⁶⁶ S/2015//338, para. 43 & Madrid Guiding Principles 15, 16, 17, 18, 19.

²⁶⁷ DIS 2.10.7; S/RES/2178 (2014), para. 9; S/PRST/2015/11; S/2015/975, para. 156(d). & Madrid Guiding Principle 19 (API).

²⁶⁸ S/2015/939, Principle 19 (f); GCTF, *Hague-Marrakech Memorandum*, Good Practice 12; S/PRST/2015/11.

²⁶⁹ Madrid Guiding Principle 19 (f).

²⁷⁰ Madrid Guiding Principle 19.

²⁷¹ S/2015/377, paras. 35-36.

²⁷² Madrid Guiding Principle 16.

²⁷³ S/2015/338, para. 42.

2. Does the State consistently and effectively screen persons for potential links to terrorism prior to their entry into its territory?²⁷⁴
3. Does the State conduct threat assessments with respect to passengers benefitting from visa-free or visa-upon-arrival arrangements?²⁷⁵
4. Do border guards utilize biometrics in the screening of persons seeking to enter and exit the State's territory? If so, what safeguards are in place with respect to data protection and human rights standards?²⁷⁶

For issues relating to the compliance of screening procedures with international human rights and refugee law, see chapter III, section 4, "Measures with regard to refugees and asylum".

7. Border guards' access to information

1. Is the State's immigration-screening process connected at the frontline to national watch lists and alerts?²⁷⁷
2. Is the State's immigration-screening process connected at the frontline to the INTERPOL "I-24/7" Stolen and Lost Travel Documents (SLTD) database and Red Notices for suspected criminals and wanted persons, as well as the Al-Qaida Sanctions Lists?²⁷⁸
3. Does the State use the Mobile INTERPOL Network Database (MIND) and the Fixed INTERPOL Network Database (FIND)?²⁷⁹
4. Does the State authenticate electronic Machine-Readable Travel Documents (eMRTDs) using the ICAO Public Key Directory (PKD)?
5. Has the State access to the UNODC goCASE system?²⁸⁰
6. Has the State developed and implemented BSM information-exchange programmes and mechanisms, both at border-crossing points and along borders?
7. Has the State considered adopting a broader format to exchange relevant information that involves the information systems of the Ministry of the Interior and Ministry of Finance and their various agencies (i.e., criminal police, organized-crime units, intelligence services, immigration services, visa authorities)?
8. Has the State considered downgrading for official use intelligence threat data on FTFs and individual terrorists in order to provide such information to frontline screeners such as immigration, customs and border security, where appropriate?²⁸¹
9. Has the State put in place mechanisms to ensure the efficiency and reliability of the four categories of information exchange ("on request", "ad hoc", "periodic", and "continuous") through joint databases?
10. Does the State assign experts to conduct effective risk-analysis assessments to address and minimize gaps between risks and capabilities? If so:
 - Is the joint risk analysis process systematic and continuous, with agreed upon and clearly defined content, matrix structure, and measures to process relevant information?
 - Do customs officers perform checks and surveillance at external borders in accordance with national legislation and international law, including bilateral and multilateral treaties?
 - Are relevant data categorized by border type (land, air and sea)?
 - Are all collected data analysed on a weekly, monthly, quarterly and annual basis?

²⁷⁴ DIS 2.10.3; S/RES/2178 (2014), para. 2.

²⁷⁵ S/2015/338, para. 43.

²⁷⁶ S/2015/975, para. 8; S/2015/939, Principle 15 (e).

²⁷⁷ DIS 2.10.4.

²⁷⁸ DIS 2.10.5.

²⁷⁹ DIS 2.10.6; GCTF, *Hague-Marrakech Memorandum*, Good Practice 13.

²⁸⁰ GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 3.

²⁸¹ S/RES/2322 (2016), para. 5.

11. Does the risk analysis include development and understanding of common key indicators, such as:
 - Detection of illegal border crossings across green and blue borders or bypassing BCPs;
 - Refusal of entry/exit for travellers;
 - Detection of illegal stay, both inland and at the exit border;
 - Detection of traffickers in human beings and smugglers of people;
 - Recognition of forged travel documents and visas;
 - Administrative decisions for return and readmission and/or expulsion; and
 - Data on asylum applications?
12. Does the State involve a broad range of Government agencies and ministries in joint risk analysis?
13. Is the State able to identify the lead BSM agency in risk assessment for a range of threat scenarios?
14. Do border guard function units receive updated information on new methods used by FTFs to cross borders, including broken travel patterns?²⁸²
15. Have the competent authorities put in place hotline numbers?
16. Is the hotline infrastructure able to triage incoming calls so that information is immediately actionable, treated with the highest priority, and directed to the correct operational agency almost immediately?
17. Do border guards systematically add information on FTFs to national and international watch lists?²⁸³

For issues relating to the use of the Custom Enforcement Network (CEN) secure platform and the Regional Intelligence Liaison Office (RILO) network of WCO, see chapter II, section 2, “Early warning”.

8. Screening after arrival in the State

1. Does the State systematically seek to identify individuals who have no legal basis for remaining in the State?²⁸⁴
2. Does the State have effective in-country screening measures (i.e., prior to adjustment of legal status, issuance of work permit, permanent residence or citizenship, etc.) to prevent the extension of residency to terrorists?²⁸⁵

9. Intra-agency cooperation

1. Are formal written arrangements developed, inter alia, in the areas of standard operational procedures, reporting and communication, analysis methods, and coordination of workflow mechanisms?²⁸⁶
2. Are informal arrangements developed for unit-to-unit or person-to-person exchange of information, consultations, opinions, or advice during daily operations?

10. Coordination with other State agencies

1. Do border guards share with other State agencies information obtained on individual cases or on evolving FTF profiles?
2. Do relevant State agencies (customs, FIU, police) proactively share information with border guards regarding suspected FTFs (i.e., before such persons attempt to exit the territory)?

²⁸² S/2015/338, paras. 40-41.

²⁸³ S/PRST/2015/11; S/2015/939, Principle 17; GCTF, *Hague-Marrakech Memorandum*, Good Practice 14.

²⁸⁴ DIS 2.10.9.

²⁸⁵ DIS 2.10.10.

²⁸⁶ GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 1.

3. Has the State considered enhancing inter-agency cooperation by common communication platforms to facilitate the sharing of information and intelligence (e.g., IT systems)?
4. Are all the ministries involved in the area of BSM (e.g., Ministry for Foreign Affairs, Defence, Health, etc.) included in inter-agency coordination structures?
5. Are there procedures in place for border guards to provide feedback on the validity and utility of information on FTFs received from other State agencies, as well as information on results achieved?
6. Have the national authorities considered aligning border-crossing facilities and procedures with those of neighbouring or contracting authorities (i.e., joint border-crossing points, “one-stop-shop” border-crossing points)?
7. Does the State record and store (in an automated system) the entry and exit of persons crossing its borders?²⁸⁷
8. Is there robust collaboration between non-security services (border guards, border police) and customs agencies, as well as with security services (police and defence forces)?²⁸⁸
9. Has the State concluded bilateral or multilateral agreements to establish Border Cooperation Centres as joint cooperation centres for border law enforcement agencies?
10. When border guards identify a suspected FTF, are there standard procedures in place for referral of such cases to law enforcement bodies?

11. Coordination with regional and international partners

1. Does the State have in place measures to cooperate with other States to, inter alia, strengthen the security of their international borders, including by combating fraudulent travel documents and by enhancing terrorist screening and passenger-security procedures?²⁸⁹
2. In the absence of an agreement, is the State involved in a procedure to resolve issues of delimitation and demarcation of borders on a bilateral (or multilateral where applicable) governmental basis?²⁹⁰
3. Have neighbouring States considered arranging inter-agency task forces or fusion centres to handle intergovernmental and interdepartmental efforts to strengthen BSM?
4. Does the State conduct joint and coordinated cross-border patrols, as well as joint multi-agency and interdisciplinary operation exercises?
5. Has the State concluded bilateral or multilateral agreements to enable cross-border operational engagement through joint operations?²⁹¹
6. If so, do such joint operations involve the patrolling and surveillance of borders through joint mobile units?
7. If so, are there agreements that address central points, including:
 - The permissible distance into the neighbouring State under which cross-border operational engagement can take place;
 - How a State may seek the transfer of an apprehended suspect from the other State;
 - Information exchange in relation to the progress of the investigation and cross-border operational activity.
8. Has the State appointed and assigned Border Liaison Officers in order to build external relations through face-to-face coordination and knowledge exchange?

²⁸⁷ DIS 2.10.8.

²⁸⁸ GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 2.

²⁸⁹ DIS 2.10.16; S/RES/2178 (2014), para. 3; S/2015/975, para. 71.

²⁹⁰ GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 3.

²⁹¹ GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 11 and & Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (2015) (S/2015/939), Guiding Principles 20, 21.

9. Does the State consult regional and international sources of information on FTFs?²⁹²
10. Has the State undertaken, with the assistance of relevant international organizations and other experts, specific measures to improve understanding of the use of broken travel patterns by FTFs?²⁹³
11. Has the State taken measures to share information and experiences on FTFs with neighbouring States?²⁹⁴
12. Is the State involved in the INTERPOL project on FTFs?²⁹⁵

12. Movement of goods

1. Has the State developed integrated procedures for the processing of goods at points of entry, including operations such as goods classification, carrier and goods inspection, revenue collection, and transaction verification?²⁹⁶
2. Does the State implement the “single-window” and “one-stop-shop” systems?
3. Does the State receive data (electronic transmission) regarding cargo/container shipments prior to their arrival?²⁹⁷
4. Does the State conduct risk assessments regarding cargo/containers?²⁹⁸
5. Does the State have the capacity (technology, equipment and trained officers) to conduct non- intrusive inspections of cargo entering, exiting and transiting/transhipped through its territory?²⁹⁹
6. Does the State implement customs-to-customs cooperation that includes conducting requested inspections?³⁰⁰
7. Does the State have in place customs-to-business partnerships to implement cargo security standards, including an Authorized Economic Operator (AEO) programme?³⁰¹

13. Civil aviation security

National level

1. Has the State adopted a Regulatory Framework and an Aviation Security Oversight System which encompasses the national obligation to:
 - a) establish and properly staff a security organization;
 - b) develop laws, regulations, programmes, policies and procedures;
 - c) ensure that these requirements are effective, are being implemented, and are sustainable?
2. Has the State adopted the relevant programmes, including:
 - National Civil Aviation Security Programme (NCASP) (authority, responsibility, and State’s aviation security policy and associated regulations, standards, measures, practices and procedures necessary to safeguard against acts of unlawful interference);

292 S/2015/939, Principle 15 (a).

293 S/RES/2178 (2014), para. 11; S/2015/939, Principle 16 (c).

294 GCTF, *Hague-Marrakech Memorandum*, Good Practice 10.

295 S/2015/975, paras. 85, 97, 156(b); GCTF, *Hague-Marrakech Memorandum*, Good Practice 10.

296 GCTF, *Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorist Fighters*, Good Practice 13.

297 DIS 2.10.17 (A).

298 DIS 2.10.17 (B).

299 DIS 2.10.17 (C).

300 DIS 2.10.17 (D).

301 DIS 2.10.17 (E).

- National Civil Aviation Security Quality Control Programme (NCASQCP) (authority, responsibility, and a mechanism for conducting audits, tests, surveys and inspections of all aviation security measures implemented by all agencies, authorities, aircraft operators and other entities concerned);
 - National Civil Aviation Security Training Programme (NCASTP) (the State's overall aviation security training objectives and policy, identification of training resources and responsible organization, a framework for selection, training, certification and testing of security personnel – screeners and aviation security instructors; in order to achieve and maintain an acceptable level of effectiveness and efficiency);
 - National and Airport Contingency Plans (comprehensive contingency plans and security and emergency instructions developed at the national level and for each airport, including details on policy, responsibilities and lines of command, communications from the highest level to the on-site command and control)?
3. Has the State designated an appropriate Government authority for the implementation and maintenance of the NCASP?³⁰²
 4. Has the State made available AVSEC resources at the national level? (Need to ensure that an effective and sustainable aviation-security system is in place.)
 5. Has the State adopted written policies requiring cooperation with other States on various aspects of aviation security?
 6. Has the State established policies for international cooperation on aviation security on a bilateral and/or multilateral basis?³⁰³
 7. Has the State implemented such policies?³⁰⁴
 8. Has the State implemented an oversight mechanism in order to determine compliance with Annex 17 to the Chicago Convention on International Civil Aviation at both the national and airport levels? Critical elements of a State's security oversight system shall include:
 - Primary Aviation Security Legislation;
 - Aviation security programmes and regulations;
 - Appropriate State authority for aviation security and its responsibilities;
 - Personnel qualifications and training;
 - Provision of technical guidance, tools and security critical information;
 - Certification and approval obligations;
 - Quality control obligations;
 - Resolution of security concerns.
 9. Does the State conduct regular threat and risk assessments, audits, tests, and inspections to verify compliance and rectify deficiencies?³⁰⁵
 10. Does the State have a programme to assist other States in aviation security capacity development, training and other necessary resources, technical assistance, technology transfers and programmes?

Airport level

1. Does the State ensure that an airport security programme is developed and implemented at every airport serving civil aviation?³⁰⁶
2. Are measures in place at airports in the State's jurisdiction risk-based? Are these measures regularly and thoroughly assessed to reflect the ever-evolving threat picture and in accordance with ICAO Standards and Recommended Practices?

302 DIS 2.10.18 (A).

303 S/RES/2309 (2016), para. 6 (f).

304 DIS 2.10.18 (A).

305 DIS 2.10.18 (B).

306 DIS 2.10.18 (C).

3. Does the State promote effective aviation security culture? If so, how?
4. Does the State ensure that persons implementing security controls are subject to background checks and obtain necessary training and certification?³⁰⁷
5. Do the security measures in place take into account the potential role of those with privileged access to areas or knowledge or information that may assist terrorists in planning or conducting attacks?³⁰⁸
6. Does the State have in place an identification system for persons and vehicles prior to granting access to airside and restricted areas at civil aviation airports, in order to prevent unauthorized entry?³⁰⁹ (See also chapter III, section 3, "Documentation".)
7. Does the State regularly verify security of perimeter fences around such restricted areas?
8. Does the State screen the cabin and hold baggage of originating and transfer passengers prior to boarding or loading of the aircraft and ensure that each piece of hold baggage is individually identified as accompanied or unaccompanied before acceptance for carriage?³¹⁰
9. Does the State screen originating and transfer passengers prior to boarding or loading of aircraft?
10. Does the State subject to screening and security controls persons other than passengers, together with items carried, prior to entry into airport security restricted areas?
11. Does the State have measures in place for vehicles being granted access to security restricted areas?
12. Does the State have measures in place to address landside security, cyber security and MANPADS?
13. Has the State taken steps to fully utilize new technologies and innovative techniques to detect explosives and other threats to civil aviation?³¹¹
14. Does the State have measures in place for aircraft and in-flight security?
15. Does the State have measures in place for cargo, catering, and mail security?
16. Does the State have in place contingency arrangements for response to acts of unlawful interference?

14. Maritime security

1. How do State bodies involved in maritime security (e.g., coastguard, port security, customs, immigration, and maritime police) coordinate and cooperate among themselves and with other border-management agencies?³¹²
2. Has the State designated a national authority responsible for ship security?³¹³
3. Is there a national legislative basis for implementation of the International Ship and Port Facility Security (ISPS) Code of the International Maritime Organization (IMO), including legislative authority to promulgate regulations and take all other steps necessary (such as inspection and enforcement) to give full and complete effect to the security directives of the State?
4. Has the State designated a national authority responsible for port facility security?³¹⁴

³⁰⁷ DIS 2.10.18 (D).

³⁰⁸ S/RES/2309, para. 6 (c).

³⁰⁹ DIS 2.10.18 (E).

³¹⁰ DIS 2.10.19.

³¹¹ S/RES/2309 (2016), para. 6 (e).

³¹² DIS 2.10.23.

³¹³ DIS 2.10.20 (A).

³¹⁴ DIS 2.10.20 (B).

5. Are all the port facilities within the States' territory (and ships entitled to fly the flag of the State and to which the ISPS Code apply) in full compliance with the relevant provisions of the International Convention for the Safety of Life at Sea (SOLAS) Chapter XI-2 and the ISPS Code?
6. Has the State designated recipients of ship-to-shore security alerts?³¹⁵
7. Has the State established a Recognized Security Organization (RSO)?³¹⁶
8. Has the State designated recipients of maritime-security-related communications from other contracting Governments?³¹⁷
9. Has the State designated recipients of requests for advice or assistance to ships and an agency to which ships can report concerns?³¹⁸
10. Does the State conduct regular threat assessments, audits, tests, and inspections to verify compliance and rectify deficiencies, including updating of security plans?³¹⁹
11. Does the State implement a seaport security programme at every seaport used in international trade?³²⁰
12. Does the State ensure that persons implementing security controls are subject to background checks and obtain necessary training and certification?³²¹
13. Does the State have in place a system for checking persons and vehicles before granting them access to seaports, in order to prevent unauthorized entry?³²²
14. Has the State set up a port security committee at all relevant seaports?³²³
15. Does the State have in place procedures to register and issue seafarers' manifests/ID documents?³²⁴
16. Has the State established the necessary procedures to:
 - Set applicable security levels (including issuance of appropriate instructions to ship and port facilities that may be affected)?
 - Ensure that ship and port facility assessments are conducted, reviewed, and approved in accordance with the relevant provisions of the ISPS Code?
 - Determine the port facilities that are required to designate a port facility security officer?
 - Determine when a Declaration of Security is required?
 - Ensure that Ship and Port Facility Security Plans are developed, reviewed, approved and implemented in accordance with the relevant provisions of the ISPS Code?
 - Test the effectiveness of approved Ship and Port Facility Security Plans?
 - Issue and renew International Ship Security Certificates?
 - Exercise ship control and compliance measures?
 - Receive ship security alerts and subsequent notifications?
17. Has the State delegated any of its security-related duties under SOLAS chapter XI-2 and the ISPS Code to an RSO? If so, does the State conduct oversight of delegated tasks and duties? Has the State communicated all relevant information to the IMO, as

315 DIS 2.10.20 (C).

316 DIS 2.10.20 (D).

317 DIS 2.10.20 (E).

318 DIS 2.10.20 (F).

319 DIS 2.10.20 (G).

320 DIS 2.10.20 (H).

321 DIS 2.10.20 (I).

322 DIS 2.10.20 (J).

323 DIS 2.10.21.

324 DIS 2.10.22.

required by SOLAS regulation XI-2/13, for the information of companies and ships? Is the information up-to-date and reviewed periodically?

18. Does the State ensure that port facility security officers and appropriate port facility security personnel have knowledge and have received training, taking into account the guidance set forth in Part B of the ISPS Code?
19. Has the State implemented any security measures in addition to those required by SOLAS chapter XI-2 and Part A of the ISPS Code (e.g., establishment of port or national security committees)?

15. Critical infrastructure

1. Does the State ensure the coherence of its efforts to protect critical infrastructure, including on risk management for protection programmes and activities?
2. How does the State address the issues of assessing and raising awareness of the relevant risks, taking preparedness measures, including effective responses to an attack on critical infrastructure at civil aviation, maritime and land borders?³²⁵
3. Does the State address supply-chain integrity and security?
4. Is there any form of cooperation to protect critical infrastructure, including with regional connectivity projects and related cross-border infrastructure?³²⁶
5. Is there any dedicated network for cooperation between relevant border agencies, private sector agencies, and border communities?
6. Is consideration given to bilateral and multilateral means of information-sharing, risk assessment, and joint law enforcement?

The following international instruments, standards and good practices provide guidance in this area:

Movement of persons

1. UNHCR, Addressing Security Concerns without Undermining Refugee Protection, 2015.
2. UNHCR, Refugee Protection and Mixed Migration: the 10-Point Plan in Action, 2016.
3. UNODC, Basic training manual on investigating and prosecuting the smuggling of migrants.
4. International Covenant on Civil and Political Rights, 1966.
5. Human Rights Committee, General Comment No. 16, art. 17 ('Right to Privacy').
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
7. Convention against Transnational Organized Crime, 2001.
8. Convention on the Status of Refugees 1951 and its 1967 Protocol.
9. Convention on the Reduction of Statelessness 1961.
10. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders.
11. ICAO, Guidelines on Passenger Name Records (PNR) Data (Doc. 9944).
12. ICAO, Machine-Readable Travel Documents (Doc 9303).
13. ICAO, Annex 9 Facilitation, Chapter 3, Entry and Departure of Persons and their Baggage.
14. ICAO, Annex 9 Facilitation, Chapter 5, *Inadmissible Persons and Deportees*.

³²⁵ S/RES/2341 2341 (2017).

³²⁶ *Ibid.*

15. IOM, Handbook on how to implement a One-Stop Shop for Immigration.
16. IOM, Passport Examination Procedure Manual.
17. IOM, Training for Border and Migration Management Officials.
18. CTITF, *Basic Human Rights Reference Guide*, "The Stopping and Searching of Persons".
19. CTITF, *Basic Human Rights Reference Guide*, "Security Infrastructure".
20. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/13/37).
21. WCO/IATA/ICAO, Guidelines on Advance Passenger Information.
22. OSCE, Further measures to prevent the criminal use of lost/stolen passports and other travel documents.
23. GCTF, Good practices in the area of Border Security and Management in the Context of Counter-Terrorism and Stemming the Flow of Foreign Terrorist Fighters.
24. Frontex, Common Core Curriculum EU Border Guard Basic Training.
25. INTERPOL, FIND and MIND.
26. INTERPOL, Global Police Communication System I-24/7.
27. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108) and its Additional Protocol regarding supervisory authorities and trans-border data flows (CETS 181).
28. Council of Europe Guidelines on Human Rights and the Fight against Terrorism.
29. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (2015) (S/2015/939), Guiding Principles 15, 16, 17, 18, 19, 20, 21.

Movement of goods

1. UNODC-WCO Container Control Programme.
2. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993.
3. ICAO, Annex 9 to "Chicago Convention" ("Facilitation"), Chapter 4, "Entry and Departure of Cargo and Other Articles".
4. WCO Global Information and Intelligence Strategy (Customs Compendium).
5. WCO Customs Risk Management Compendium.
6. WCO Integrated Border Management Compendium.
7. WCO Integrated Supply Chain Management Guidelines.
8. WCO SAFE Framework of Standards.
9. GCTF, Good Practices in the area of Border Security and Management in the Context of Counter-Terrorism and Stemming the Flow of Foreign Terrorist Fighters.

Civil-aviation security

1. Chicago Convention on International Civil Aviation, 1944.
2. *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963 (Doc 8364, Tokyo Convention).
3. *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (Doc 8920, The Hague Convention).

4. *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montréal on 23 September 1971 (Doc 8966, Montréal Convention).
5. *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montréal on 23 September 1971*, signed at Montréal on 24 February 1988 (Doc 9518, Montréal Protocol).
6. *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, Done at Montréal on 1 March 1991 (Doc 9571, MEX Convention).
7. *Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation*, Done at Beijing on 10 September 2010.
8. *Protocol for the Suppression of Unlawful Seizure of Aircraft*, Done at Beijing on 10 September 2010. (Also referred to as the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*).
9. *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* done at Montréal on 4 April 2014 (or “Protocol to amend the Tokyo Convention”).
10. ICAO, Annex 2 — Rules of the Air, establishes communications procedures with air traffic services units for an aircraft subjected to an act of unlawful interference.
11. ICAO, Annex 6 — Operation of Aircraft, Part I — International Commercial Air Transport — Aeroplanes (requires the flight crew compartment door to be capable of being locked from the inside, provides for a search procedure checklist to be included on board an aircraft for use when searching for a bomb, and establishes security training requirements for crew members).
12. ICAO, Annex 8 — Airworthiness of Aircraft, (provides considerations in aircraft design to deter the concealment of weapons, explosives or other dangerous objects on board an aircraft, and to minimize the effects of a bomb on the structure of an aircraft).
13. ICAO, Annex 9 — Facilitation, (addresses the standardization of travel documents and the rationalization of border clearance systems and procedures for both passengers and cargo).
14. ICAO, Annex 10 — Aeronautical Telecommunications, Volume IV — Surveillance and Collision Avoidance Systems, (addresses reply codes).
15. ICAO, Annex 11 — Air Traffic Services, (delineates the air traffic services to be provided to an aircraft known or believed to be the subject of an act of unlawful interference).
16. ICAO, Annex 13 — Aircraft Accident and Incident Investigation, (requires the States concerned to be immediately notified in the event that an investigation discloses that an aircraft has or may have been subjected to an act of unlawful interference).
17. ICAO, Annex 14 — Aerodromes, Volume I — Aerodrome Design and Operations, (addresses the isolated aircraft parking position and aerodrome emergency planning).
18. ICAO, Annex 17 — Security: Safeguarding Civil Aviation against Acts of Unlawful Interference; and
19. ICAO, Annex 18 — The Safe Transport of Dangerous Goods by Air, (addresses the transportation of hazardous materials and dangerous goods).
20. ICAO A39 Cybersecurity Resolution.
21. ICAO, Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference (Doc 8973).
22. ICAO, Facilitation Manual (Doc 9957).
23. ICAO *Aviation Security Oversight Manual: “The Establishment and Management of a State’s Aviation Security Oversight System”* (Doc 10047).
24. ICAO, Manual on the Implementation of the Security Provisions of Annex 6 (Doc 9811 — Restricted).
25. ICAO, Aerodrome Design Manual (Doc 9157).
26. ICAO, Aircraft Operations (Doc 8168).

27. ICAO, Airport Planning Manual (Doc 9184).
28. ICAO, Human Factors in Civil Aviation Security Operations (Doc 9808).
29. ICAO, Human Factors Training Manual (Doc 9683).
30. ICAO, Risk Context Statement.
31. A Risk-Management Framework to Support Counter-Terrorism Objectives: Coordinated Border Management in the Air Travel Cycle (initiative of the CTITF Working Group on Border Management and Law Enforcement relating to Counter-Terrorism).
32. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (2015) (S/2015/939), Guiding Principles 19 (API).

Maritime security

1. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its 1995 Protocols.
2. Convention for the Safety of Life at Sea (SOLAS), 1974.
3. SOLAS Chapter XI-2 – Special Measures to Enhance Maritime Security:
 - Regulation XI-2/2 – International Ship and Port Facility Security (ISPS) Code, Part A, Mandatory Requirements;
 - Regulation XI-2/3 – Security levels;
 - Regulation XI-2/7 – Threats to ships;
 - Regulation XI-2/10 – Port facility security assessments;
 - Regulation XI-2/12 – Equivalent security arrangements;
 - Regulation XI-2/13 – Communication of information;
 - ILO and IMO, Code of Practice on Security in Ports;
 - ILO, The Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185);
 - ILO, SID-2002, Finger minutiae-based biometric profile for seafarers’ identity documents gives guidelines for incorporation of minutiae-based fingerprint biometric technology into the SID in accordance with the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185);
 - IMO, International Ship and Port Facility Security (ISPS) Code;
 - IMO, Maritime Security Circulars
 - MSC/Circ. 1097, Guidelines for the implementation of SOLAS chapter XI-2 and the ISPS Code;
 - MSC/Circ. 1106, Implementation of SOLAS chapter XI-2 and the ISPS Code to port facilities;
 - MSC/Circ. 1110, Matters related to SOLAS regulations XI-2/6 and XI-2/7;
 - MSC/Circ. 1111, Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code;
 - MSC/Circ. 1132, Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code;
 - MSC/Circ. 1155, Guidelines on training and certification for company security officers;
 - MSC/Circ. 1188, Guidelines on training and certification for port facility security officers;
 - MSC/Circ. 1192, Guidelines on voluntary self-assessment by SOLAS contracting Governments and by port facilities;
 - MSC/Circ. 1193, Guidance on voluntary self-assessment by administrations and for ship security;
 - MSC/Circ. 1194, Effective implementation of SOLAS chapter XI-2 and the ISPS Code.

Critical infrastructure

1. Security Council resolution 2341 (2017).
2. Commission of the European Communities, European Programme for Critical Infrastructure Protection, 2006.
3. Commonwealth of Independent States Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999, Article 5, paragraph 1 (e).

4. Inter-American Committee against Terrorism (CICTE) Declaration on Protection of Critical Infrastructure from Emerging Threats, 2015 (CICTE/doc.1/15).
5. Organization for Security and Co-operation in Europe, Good Practices Guide on Non-Nuclear Critical Energy Infrastructure Protection (NNCEIP) from Terrorist Attacks Focusing on Threats Emanating from Cyberspace.

CHAPTER III: SECURITY COUNCIL RESOLUTION 1373 (2001), PARAGRAPH 3

In paragraph 3 of the resolution, the Security Council calls upon all States to:

- a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
- e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
- f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
- g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

A. EXCHANGE OF INFORMATION

Comments:

1. Member States should have in place procedures and mechanisms to encourage appropriate exchange of operational information by relevant law enforcement agencies. States should also be able to consult international and regional sources of law enforcement information in order to identify existing or potential FTFs. National law enforcement and security agencies should actively transmit relevant information that may be of use in identifying existing or potential FTFs.³²⁷
2. The Council has called on States to share, where appropriate, information about FTFs and other individual terrorists and terrorist organizations, including biometric and biographic information, via bilateral, regional and global law enforcement channels, and has stressed the importance of providing such information to national watch lists and multilateral screening databases.³²⁸
3. The Council has called on States to consider, where appropriate, downgrading for official use intelligence threat data on FTFs and individual terrorists, to appropriately provide such information to frontline screeners, such as immigration, customs and border security officials, and to appropriately share such information with other concerned States and relevant international organizations, in compliance with international and domestic national law and policy.³²⁹
4. In its resolution 2341 (2017), on the protection of critical infrastructure from terrorist attacks, the Council recognizes that protection efforts entail multiple streams of efforts, such as planning; public information and warning; operational coordination;

³²⁷ Madrid Guiding Principle 15.

³²⁸ A/RES/2322 (2016), para. 3.

³²⁹ A/RES/2322 (2016), para. 5.

intelligence and information-sharing; interdiction and disruption; screening, search and detection; access control and identity verification; cybersecurity; physical protective measures; risk management for protection programmes and activities; and supply-chain integrity and security. The Council also calls on States to explore ways to exchange relevant information and to cooperate actively in the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure.

5. The Council has recognized the proven effectiveness of the INTERPOL I-24/7 secure global communications system and encouraged States to increase the capacity of their NCBs to utilize it and to designate a 24 hour/seven days a week point of contact for this network.³³⁰
6. The Council has also encouraged States to consider extending access to and, where appropriate, integrate into their national systems, the INTERPOL I-24/7 system, beyond NCBs to other national law enforcement entities at strategic locations such as remote border crossings, airports, customs and immigration posts, or police stations.³³¹

Based on observations made during the Committee's comprehensive and focused country visits, Member States' reports to the Committee on their implementation of resolution 1373 (2001), and the *Madrid Guiding Principles*, the following practices encourage appropriate exchange of information:

1. A national counter-terrorism strategy that comprises international cooperation, intelligence-sharing and coordination at the national, regional and global levels.
2. Procedures and tools for international police and customs cooperation (databases, secure communication systems), operational "24/7", including mechanisms to alert law enforcement agencies to the INTERPOL-Security Council Special Notices on individuals and entities subject to United Nations sanctions regimes because of their affiliation with Al-Qaida.
3. The maintenance of a sufficiently comprehensive integrated counter-terrorism database.
4. Multilateral and bilateral networks, such as INTERPOL NCBs, WCO RILOs, regional networks, and membership in INTERPOL and regional law enforcement groups or associations.
5. Focal points for the purpose of information exchange and cooperation.
6. System or process for communication and transmittal of information, operating "24/7".
7. Joint Investigation Teams between two or more States, as required, on the basis of legal agreements.
8. Regional arrest warrant to facilitate extradition between States within a region, where applicable.
9. Consultation with other Member States' intelligence and security services, including through regional forums.
10. A dedicated programme to coordinate and cooperate actively, at the national and regional levels, in the prevention, protection, mitigation, preparedness, investigation, response to, or recovery from, terrorist attacks planned or committed against critical infrastructure.
11. Cooperative measures to work with INTERPOL in monitoring and preventing the transit of terrorists, including FTFs, including by extending access to the INTERPOL I-24/7 system to counter-terrorism units and other relevant law enforcement agencies with a counter-terrorism mandate. States should also actively contribute to the population of INTERPOL operational databases, including those on known terrorists, FTFs, stolen and lost travel documents, stolen firearms, explosives, etc.
12. Safeguards linked to the right to privacy and presumption of innocence, as well as practices that collect, store, and share information in a non-discriminatory manner consistent with international human rights law.

Issues for consideration:

1. Do law enforcement agencies cooperate, coordinate and exchange information with counterparts in other States?

³³⁰ *Ibid*, para. 16.

³³¹ *Ibid*, para. 17.

2. Is the national police force an active member of a regional network of law enforcement agencies?
3. Does the State seek to engage, in addition to formal means of cooperation, in informal (police-to-police) cooperation through multilateral and bilateral channels in order to foster “real-time” exchange of information?
4. Does the State collect biometric and biographic information and, if so, does it share this information via bilateral, regional and global law enforcement channels and provide such information to national watch lists and multilateral screening databases?
5. Does the State exercise downgrading for official use intelligence threat data on FTFs and individual terrorists? If so, is such information available to frontline screeners, such as immigration, customs and border security officers, and does the State share such information with other concerned States and relevant international organizations?
6. Is there a designated 24 hour/seven days a week point of contact for law enforcement communication and cooperation in countering terrorism and FTFs?
7. Does the State maintain an integrated counter-terrorism database that includes input from authorized relevant law enforcement agencies?³³²
8. Is the integrated counter-terrorism database sufficiently comprehensive? Does it include information from abroad? Is the database accessible by all relevant law enforcement agencies?
9. Does the database contain information from INTERPOL?³³³
10. Does the State alert law enforcement agencies to the INTERPOL-Security Council Special Notices on individuals and entities subject to United Nations sanctions regimes because of their affiliation with Al-Qaida?³³⁴
11. Are the databases connected to the INTERPOL “I-24/7” system?³³⁵
12. Are law enforcement agencies equipped with the legal and operational mechanisms required to engage in international cooperation against terrorism?³³⁶
13. Are the State’s law enforcement agencies equipped with bilateral and multilateral tools for cooperation in investigations related to acts of terrorism and terrorist organizations?³³⁷
14. Are all the relevant law enforcement agencies with a counter-terrorism mandate able to access the INTERPOL police databases on known terrorists, (including FTFs), stolen and lost travel documents, stolen firearms, etc., available via the I-24/7 system?³³⁸
15. Are there procedures and tools in place to ensure access to the aforementioned databases by frontline law enforcement officers, as well as at border entries and departure points?³³⁹
16. Are there measures and procedures in place to actively populate international police databases such as the INTERPOL police databases?³⁴⁰
17. Are the relevant law enforcement agencies making use of the WCO Customs Enforcement Network (CEN) secure platform and RILO network?

³³² DIS 3.1.1.

³³³ DIS 3.1.2.

³³⁴ DIS 3.1.3.

³³⁵ DIS 3.1.4.

³³⁶ DIS 3.2.1.

³³⁷ DIS 3.2.2.

³³⁸ S/RES/2178 (2014), para. 13.

³³⁹ S/RES/2178 (2014), para. 13; Madrid Guiding Principle 17.

³⁴⁰ Madrid Guiding Principle 15.

Member States should strive to have in place databases and related information-sharing procedures and mechanisms related to the following:

1. Information-sharing related to terrorists and transnational organized crime.³⁴¹
2. Information-sharing for the purpose of identifying smuggling routes (such as those used by ISIL and Jabhat Fath al-Sham).³⁴²
3. The sharing of operational information regarding trafficking in arms.³⁴³
4. Information-sharing mechanisms, especially cross-border customs cooperation and networks for information sharing, to prevent the illicit transfer, accumulation and misuse of small arms and light weapons.³⁴⁴
5. The sharing of information and operational information on suspected traffickers and trafficking routes of SALW.³⁴⁵
6. Data-collection and national risk-assessment criteria concerning how women and children are impacted by illicit SALW proliferation.³⁴⁶
7. Information-sharing capabilities and practices within and between Governments to effectively counter terrorism financing.³⁴⁷
8. The exchange of information regarding actions or movements of terrorists or terrorist networks, including FTFs, through bilateral or multilateral mechanisms,³⁴⁸ including the sharing of best practices and improved understanding of FTF travel patterns.³⁴⁹
9. Are law enforcement agencies able to prevent, protect, mitigate, investigate, respond to, and recover from, damage from terrorist attacks on critical infrastructure facilities, including via:
 - Bilateral and multilateral means in information-sharing?
 - Bilateral and multilateral means in information-sharing?
 - Risk assessment and joint law enforcement?
 - Joint training?
 - Use or establishment of relevant communication?
 - Emergency warning networks?

For issues relating to advance passenger information and watch lists, see chapter III, section 13, “Screening prior arrival in the destination State”.

For issues relating to small arms and light weapons, see chapter II, section 2, “Eliminate the supply of weapons to terrorists”.

The following international instruments, standards and good practices provide guidance in this area:

1. Guidelines for reporting on implementation of the United Nations Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.
2. UNODC, Legislative guide to the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime.
3. Fact sheet: Databases, INTERPOL, COM/FS/2016-03/GI-04.

³⁴¹ S/RES/2195 (2014), para. 8.

³⁴² S/RES/2199 (2015), para. 14.

³⁴³ S/RES/2199 (2015), para. 24.

³⁴⁴ S/RES/2220 (2015), para. 1.

³⁴⁵ S/RES/2220 (2015), paras. 11; 19.

³⁴⁶ S/RES/2220 (2015), para. 16.

³⁴⁷ S/RES/2253 (2015), para. 25.

³⁴⁸ S/RES/2178 (2014), para. 3.

³⁴⁹ S/RES/2178 (2014), para. 11.

4. Fact sheet: Connecting police:I-24/7, INTERPOL, COM/FS/2015-02/GI-03.
5. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters (2015) (S/2015/939), Guiding Principles 15, 17, 19.
6. Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999, article 11 Convention of the Shanghai Cooperation Organization against Terrorism, article 11.

B. MULTILATERAL AND BILATERAL AGREEMENTS

Comments:

1. In its resolution 1373 (2001), the Council calls on States to cooperate on judicial matters.³⁵⁰ The Council identifies bilateral and multilateral arrangements and agreements as effective methods of facilitating international cooperation.³⁵¹ Moreover, the creation of judicial cooperation networks has shown the utility of regional mechanisms in enhancing formal and informal cooperation.³⁵²
2. The *United Nations Counter-Terrorism Committee Policy Guidance on International Cooperation*, 2010, encourages States to increase their bilateral cooperation on extradition and MLA and to share information about the process and results of MLA.³⁵³ Member States are also called upon to become parties to relevant subregional and regional instruments on these matters³⁵⁴ and to implement regional and international best practices.³⁵⁵ The *Madrid Guiding Principles* encourage States to consider developing and participating in regional MLA cooperation platforms to address the FTF threat.

Issues for consideration:

1. Has the State concluded bilateral agreements with other States on legal cooperation matters, especially extradition and MLA?³⁵⁶ (See also chapter II, section 12, “International legal cooperation”)
2. Has the State ratified the relevant multilateral treaties on organized crime, drug trafficking, human rights and other issues related to the fight against terrorism?³⁵⁷
3. Has the State considered establishing multilateral, regional or bilateral treaties as a legal basis to determine the content of a request for MLA?³⁵⁸
4. Has the State concluded bilateral agreements with other States on criminal matters?³⁵⁹
5. Does the State rely on bilateral or multilateral treaties regulating the execution of search and seizure of evidence in another State?³⁶⁰
6. Has the State considered establishing bilateral exchanges with interested States to clarify de-listing petition issues?³⁶¹

³⁵⁰ S/RES/1373 (2001), para. 3 (b).

³⁵¹ S/RES/1373 (2001), para. 3 (e).

³⁵² *Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international security and the range of United Nations efforts in support of Member States in countering the threat* (S/2016/501), para. 54.

³⁵³ *CTC Policy Guidance on International Cooperation*, para. 2 (b).

³⁵⁴ *CTC Policy Guidance on International Cooperation*, para. 2 (c).

³⁵⁵ *CTC Policy Guidance on International Cooperation*, para. 2 (f).

³⁵⁶ *CTC Policy Guidance on International Cooperation*, para. 2 (b).

³⁵⁷ *GCTF, Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*.

³⁵⁸ *UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism*, Module 2.D.1., p. 113.

³⁵⁹ *UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism*, Module 1.B.4., p. 21.

³⁶⁰ *UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism*, Module 2.B.3., p. 84.

³⁶¹ *UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism*, Module 2.B.3., p. 103.

7. Has the State considered establishing bilateral or multilateral agreements for the sharing of the proceeds of crime on a regular or case-by-case basis?³⁶²
8. Does the State, as State of destination, origin or transit, plan to conclude bilateral agreements on the transfer of FTFs to the States of their nationality?³⁶³
9. Does the State work closely with regional organizations to strengthen judicial and other relevant networks and cross-regional cooperation?³⁶⁴

The following international instruments, standards and good practices provide guidance in this area:

1. Counter-Terrorism Committee, Policy Guidance on International Cooperation.
2. UNODC, Manual on International cooperation in Criminal Matters related to Terrorism, Modules 1 & 2.

C. RATIFICATION OF THE INTERNATIONAL COUNTER-TERRORISM INSTRUMENTS

Comments:

1. In paragraph 3 of its resolution 1373 (2001), the Council calls on States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism,³⁶⁵ including the 1999 International Convention for the Suppression of the Financing of Terrorism. In 2010, the *Counter-Terrorism Committee Policy Guidance on International Cooperation* reiterated this requirement.³⁶⁶
2. With regard to the international counter-terrorism instruments, resolution 1373 (2001) contains two distinct requirements. Paragraph 2 (e) obliges all Member States to ensure that terrorist acts are established as serious criminal offences in domestic law (*this aspect of the resolution is addressed in chapter II, section 6, "Codification"*). Paragraph 3 of the resolution calls on States to become parties to, and implement, the international instruments. As some elements of the instruments are non-criminal in nature, it is not adequate simply to assess criminalization. For example, neither the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963) nor the Convention on the Marking of Plastic Explosives for the Purposes of Detection (Montreal, 1991) creates criminal offences, but their status of implementation by States must be assessed.

Issues for consideration:

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963

Powers of the aircraft commander:

1. Has the State put in place measures to confer special powers to the commander of an aircraft in respect of offences or acts committed, or about to be committed, by a person on board an aircraft in flight in the airspace of a Party other than the State of registration, that is, in foreign airspace?
2. Has the State put in place measures to confer special powers to the commander of an aircraft in respect of offences or acts committed, or about to be committed, by a person on board an aircraft in flight in the airspace of the State of registration?
3. Has the State put in place measures to confer special powers to the commander of an aircraft in respect of offences or acts committed, or about to be committed, by a person on board an aircraft in flight over the high seas or any other area outside the territory of the State, if:

³⁶² UNODC *Manual on International Cooperation in Criminal Matters Related to Terrorism*, Module 2.C.7., p. 111.

³⁶³ S/2015/975, para. 43.

³⁶⁴ S/2015/975, para. 159 (b).

³⁶⁵ S/RES/1373 (2001).

³⁶⁶ CTC *Policy Guidance on International Cooperation*, para. 2 (a).

4. The last point of take-off, or the next place of intended landing, is situated in a State other than that of registration?
5. The aircraft subsequently flies in the airspace of a State other than that of registration?
6. Does the State allow the commander of an aircraft — when the commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft an offence or act contemplated by the Convention — to impose reasonable measures, including restraint, as are necessary to protect the safety of the aircraft or of persons or property on board?
7. Does the State allow the commander of an aircraft — when the commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft an offence or act contemplated by the Convention — to impose reasonable measures, including restraint, as are necessary to maintain good order and discipline on board?
8. Does the State allow the commander of an aircraft to deliver a person to competent authorities when the commander has reasonable grounds to believe that this person has committed, or is about to commit, on board the aircraft an offence or act contemplated by the Convention?
9. Does the State allow the commander of an aircraft to deliver a person to competent authorities when the commander has reasonable grounds to believe that this person has committed, or is about to commit, on board the aircraft an offence or act contemplated by the Convention?
10. Does the State allow the commander of an aircraft to disembark a person when the commander has reasonable grounds to believe that this person has committed, or is about to commit, on board the aircraft an offence or act contemplated by the Convention?
11. Does the State have all measures in place to enable the commander to require or authorise the assistance of other crew members to restrain any person whom he or she is entitled to restrain?
12. Does the State have all measures in place to enable the commander to request (but not require) or authorize the assistance of passengers to restrain any person whom he or she is entitled to restrain?
13. Does the State have all measures in place to enable any crew member or passenger to take reasonable preventive measures without the authorization of the commander when or she has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft or of persons or property on board?
14. Can the State ensure that neither the commander, nor the members of the crew, the passengers, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed, is to be held responsible for actions taken in accordance with the Convention in any proceedings on account of the treatment undergone by the person against whom the actions were taken?

Unlawful seizure of aircraft^{367/368}

1. Is the State able to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his or her control of the aircraft when a person on board an aircraft has unlawfully committed by force, or threat of force, an act of interference, seizure or other wrongful exercise of control of an aircraft in flight, or when such an act is about to be committed?

*Powers and duties of Parties in relation to disembarkation and delivery*³⁶⁹

1. Does the State pay due regard to the safety and other interests of air navigation when taking any measures for investigation or arrest, or otherwise exercising jurisdiction, in connection with any offence committed on board an aircraft?
2. Do the State's authorities have all procedures in place to receive from the commander the notification of the fact that a person on board is under restraint, and why?

³⁶⁷ *Implementation Kits for the International Counter-Terrorism Conventions*, Commonwealth Secretariat, 2002, chapter 2, p. 17.

³⁶⁸ *UNODC Guide for the Legislative Incorporation of the Universal Anti-Terrorism Instruments*, 2006, p. 76.

³⁶⁹ *Implementation Kits for the International Counter-Terrorism Conventions*, Commonwealth Secretariat, 2002, chapter 2, pp. 17-18.

3. Has the State allowed the commander of an aircraft registered with another Party to disembark a person on its own territory if his territory is where the aircraft lands?
4. Does the State take delivery of any person who the commander delivers?

*Treatment of other passengers and the crew*³⁷⁰

1. In the case of the unlawful seizure of an aircraft, is the State able to take appropriate measures to permit the passengers and crew to continue their journey as soon as practicable?³⁷¹
2. Can the State ensure that it is able to accord to a person who wants to continue the journey a treatment which is no less favourable for protection and security than that accorded to nationals of the State in like circumstances?

International Convention against the Taking of Hostages, 1979³⁷²

Issues for consideration:

1. Is the State able to take all measures it considers appropriate to ease the situation of the hostage being held and, in particular, to secure release and aid with departure?
2. Did the State return as soon as possible to the former hostage any object which an offender obtained as a result of the hostage-taking and which came into custody of the State?

Convention on the Physical Protection of Nuclear Material, 1980³⁷³

Issues for consideration:

1. Can the State — as exporting State or State authorizing the export of the nuclear material — ensure that the nuclear material is not exported unless the State has received assurances that during international nuclear transport the nuclear material will be protected at the levels described by Annex 1 of the Convention?
2. Can the State ensure that nuclear material is not imported into its territory from a non-Party without an assurance that during international nuclear transport it will be protected at the levels described in Annex 1 of the Convention?
3. Does the State apply the same protection when nuclear material is transported from one part of its territory to another part of it through international waters or airspace?

Amendments to the Convention on the Physical Protection of Nuclear Material, 2005 Issues for consideration:

1. Does the State protect nuclear facilities and material in peaceful domestic use, storage as well as transport?
2. Does the State participate in expanded cooperation with other States regarding rapid measures to:
 - Locate and recover stolen or smuggled nuclear material;
 - Mitigate any radiological consequences or sabotage; and
 - Prevent and combat related offences?

Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991

Issues for consideration:

1. Is the State able to destroy all unmarked explosives in its territory or to render them ineffective within a period of three to fifteen years from the entry into force of the Convention?³⁷⁴

³⁷⁰ *Implementation Kits for the International Counter-Terrorism Conventions*, Commonwealth Secretariat, 2002, chapter 2, p. 18.

³⁷¹ *UNODC Guide for the Legislative Incorporation of the Universal Anti-Terrorism Instruments*, 2006, p. 76.

³⁷² *Implementation Kits for the International Counter-Terrorism Conventions*, Commonwealth Secretariat, 2002, chapter 7, p. 147.

³⁷³ *Implementation Kits for the International Counter-Terrorism Conventions*, Commonwealth Secretariat, 2002, chapter 8, p. 165.

³⁷⁴ *UNODC Legislative Guide to the Universal Legal Regime against Terrorism*, 2008.

International Convention for the Suppression of the Financing of Terrorism, 1999³⁷⁵

Issues for consideration:

1. Has the State taken appropriate measures for the identification, detection and freezing or seizure of funds used or allocated for the purpose of committing financing offences and for the eventual forfeiture of such funds? (*See also chapter I.*)
2. Has the State taken appropriate measures for the identification, detection and freezing or seizure of any funds derived from or obtained, directly or indirectly, through the commission of a financing offence? (*See also chapter I.*)
3. Has the State entered into bilateral agreements on the sharing of funds derived from forfeitures?
4. (*See also chapter I.*)
5. Has the State established mechanisms by which forfeited funds could be used to compensate victims of terrorism?
6. Can the State ensure that the above measures can be carried out without prejudice to the rights of third parties?

Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005

Issues for consideration:

1. Does the State have legislation enabling a legal entity to be held civilly, administratively or criminally liable when a person responsible for its management or control has, in that capacity, committed an offence established by the Convention?³⁷⁶

The following international instruments, standards and good practices provide guidance in this area:

1. UNODC, Guide for the legislative incorporation and implementation of the universal anti- terrorism instruments, 2006.
2. UNODC, Legislative Guide to the Universal Legal Regime against Terrorism, 2008.
3. Commonwealth Secretariat, Implementation Kits for the International Counter-Terrorism Conventions, 2002.

D. MEASURES WITH RESPECT TO REFUGEES AND ASYLUM

Comments:

1. In its resolution 1373 (2001), the Security Council calls upon States to take appropriate measures to ensure that persons who have planned, facilitated or participated in the commission of terrorist acts are not granted refugee status and that refugee status is not abused by perpetrators, organizers or facilitators of such acts.³⁷⁷ In its resolution 2178 (2014), the Council calls on States to also take such measures with respect to FTFs.³⁷⁸ Such measures, as with all measures taken to counter terrorism, must comply with international law, including international human rights and refugee law.³⁷⁹ The Council reiterated these calls in its resolution 2322 (2016).³⁸⁰
2. The 1951 Refugee Convention establishes clear criteria for determining who is a refugee and is therefore entitled to international protection. It also stipulates that such protection shall not be afforded to any person where there are serious reasons for considering that he or she has committed a war crime, a crime against humanity, or a serious non-political crime, or is guilty of acts contrary to the purposes and principles of the United Nations.³⁸¹

³⁷⁵ S/RES/1373 (2001), para. 3 (f)-(g).

³⁷⁶ S/RES/2178 (2014).

³⁷⁷ S/RES/1624 (2005), para. 4; S/RES/2178 (2014), para. 5.

³⁷⁸ S/RES/2322 (2016), para. 10.

³⁷⁹ S/RES/1624 (2005), preamble; 1951 Convention Relating to the Status of Refugees, arts. 1F(b)-(c).

³⁸⁰ 1951 Convention Relating to the Status of Refugees, art. 2.

³⁸¹ 1951 Convention Relating to the Status of Refugees, art. 32.

3. However, States often encounter difficulties in identifying such persons in a timely manner, particularly in situations of large-scale flows of migrants, refugees and asylum-seekers. A robust capacity to receive, register and screen arrivals can support counter-terrorism efforts by enabling States to distinguish between different categories of persons and by allowing for the early identification of individuals who may pose a security risk.
4. International refugee law further stipulates that refugees are bound to abide by the laws of their host country. They are not immune from prosecution for any crimes committed on the territory of the host country and their status does not preclude appropriate measures where an individual is found to pose a security risk.³⁸² The 1951 Refugee Convention includes express provisions which permit expulsion of refugees on grounds of national security or public order under certain circumstances.³⁸³
5. The Council has emphasized the obligation of non-refoulement, as enshrined in the 1951 Refugee Convention.³⁸⁴ Pursuant to article 33 of the Convention, no State “shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”, although the benefit of this provision “may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”. Independently of these provisions, human rights law imposes an absolute prohibition on returning an individual to a State where there are substantial grounds for believing that he or she might be subjected to torture. This prohibition applies irrespective of whether that individual has sought, or been granted, refugee status.³⁸⁵

Issues for consideration:

1. Is the State a Party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol?
2. Does the State have in place a refugee status-determination system?³⁸⁶
3. Does the State have in place the necessary legal provisions and procedures to ensure respect for the principle of non-refoulement and other human rights limitations to extradition and expulsion, such as substantial risk of human rights violations if a suspect is extradited or expelled?³⁸⁷
4. Are border officials trained to identify refugees and refer them to appropriate procedures?
5. Does the State have in place procedures for dealing with large-scale influxes of migrants, refugees and asylum seekers?³⁸⁸
6. Does the refugee status-determination procedure prevent the granting of asylum to an individual who has planned, facilitated or participated in a terrorist act?³⁸⁹
7. Does the State’s asylum law provide for the revocation of refugee status where an individual granted that status is subsequently involved in acts criminalized under the international counter- terrorism instruments?³⁹⁰
8. Does the State have a specialized exclusion unit within the agency responsible for refugee- status determination to carry out these specialized assessments?³⁹¹

382 S/RES/1624 (2005), preamble; 1951 Convention Relating to the Status of Refugees, art. 33(1); 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, art. II(3).

383 1984 Convention Against Torture, art. 3 (1). See also 1950 European Convention on Human Rights, art. 3.

384 DIS 3.4.3; S/2015/338, par. 48; S/2015/975, para. 41.

385 DIS 3.4.1.

386 S/2015/975, para. 41.

387 DIS 3.4.3; S/RES/1373 (2001), para. 3 (g); S/2015/975, para. 41; GIS 2016 (S/2016/49), para. 428.

388 UNHCR, *Addressing Security Concerns Without Undermining Refugee Protection*, para. 27.

389 UNHCR, *Addressing Security Concerns Without Undermining Refugee Protection*, para. 13.

390 DIS 3.4.4.

391 Montreal Convention on Civil Aviation, 1971, art. 7; “Hostages” Convention 1979, art. 8; Rome Convention on Maritime Safety 1988, art. 10; “Terrorist Bombing” Convention 1998, art. 7; “Terrorism Financing” Convention, art. 10.

9. Are exclusion and expulsion procedures for asylum seekers and refugees in compliance with international human rights standards and appropriate safeguards:
 - Right to respond to evidence or information;
 - Right to legal assistance;
 - Right to an interpreter;
 - Right to appeal, and to protection against, removal until all legal remedies have been exhausted.³⁹²
10. Where persons are excluded from refugee status (or have that status revoked) for involvement in terrorist-related acts, does the State refer the cases to its prosecuting authorities in accordance with the international counter-terrorism instruments, where appropriate?³⁹³
11. Does the State issue secure MRTDs to recognized refugees?³⁹⁴

For issues relating to people that may have been guilty of incitement to commit a terrorist act, see chapter IV, section 2, "Measures with respect to entry and asylum screening for people that may have been guilty of incitement to commit a terrorist act."

The following international instruments, standards and good practices provide guidance in this area:

1. International Covenant on Civil and Political Rights, 1966.
2. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
3. Convention Relating to the Status of Refugees 1951 and its 1967 Protocol.
4. Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.
5. Convention on the Reduction of Statelessness 1961.
6. OHCHR, Basic Human Rights Reference Guide: The Stopping and Searching of Persons.
7. UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, 2011.
8. UNHCR, Addressing Security Concerns without undermining Refugee Protection, December 2015.
9. UNHCR, Refugee Protection and Mixed Migration: The 10-Point Plan in action (2016).
10. European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

E. NON-APPLICATION OF "POLITICAL OFFENCE" DOCTRINE

Comments:

1. Security Council resolution 1373 (2001) calls on States to ensure that, in conformity with international law, claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.³⁹⁵ Legislation providing that terrorist offences that qualify as terrorist acts under international legal norms and principles will not be considered excused or exempt from international cooperation on grounds that they are political should therefore be in place. This requirement should be distinguished from the parallel obligation of States to refuse cooperation where it is evident that the transfer of an individual is being requested for the purpose of improper prosecution.

³⁹² DIS 3.4.5.

³⁹³ S/RES/1373 92001), para. 3 (g).

³⁹⁴ DIS 3.5.1.

³⁹⁵ DIS 3.6.1.

Issues for consideration:

1. Are terrorism offences excluded from offences of a political nature for which extradition or MLA in criminal matters may be refused?³⁹⁶

F. DENIAL OF COOPERATION ON GROUNDS OF IMPROPER PROSECUTION*Comments:*

1. The international counter-terrorism instruments address this requirement. For example, article 15 of the International Convention for the Suppression of the Financing of Terrorism States: “Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition [or for mutual legal assistance] has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person’s position for any of these reasons”. It is possible, in such cases, that the affected person would have a legitimate claim to refugee status.

Issues for consideration:

Are there legal provisions in place to refuse extradition where there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion, or that compliance with the request would cause prejudice to that person’s position for any of these reasons?³⁹⁷

396 S/RES/1624 (2005), para. 1 (b).

397 S/RES/1624 (2005), para. 3.

CHAPTER IV: SECURITY COUNCIL RESOLUTION 1624 (2005)

In the resolution, the Council calls on States to:

- a) Adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to:
 - (i) Prohibit by law incitement to commit a terrorist act or acts;
 - (ii) Prevent such conduct; and
 - (iii) Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.
- b) Cooperate, inter alia, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of the conduct in paragraph 1 (a) from entering their territory;
- c) Continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters; and
- d) Ensure that any measures taken to implement paragraphs 1, 2 and 3 of the resolution comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

A. PROHIBITION AND PREVENTION OF INCITEMENT TO COMMIT TERRORIST ACTS

Comments:

1. The Security Council, in its resolution 1624 (2005), calls on Member States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to prohibit by law incitement to commit a terrorist act or acts, prevent such conduct,³⁹⁸ and take measures to counter incitement of terrorist acts motivated by extremism and intolerance.³⁹⁹
2. In resolution 1624 (2005), the Council also calls upon all States to deny safe haven to any persons about whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such incitement, and to strengthen international cooperation, including through enhanced border security and screening measures, with a view to preventing those guilty of such incitement from entering their territories.
3. States face a significant, threat from the abuse of information and communications technologies (ICTs) for terrorist purposes. The exploitation of ICT – and of the Internet and social media platforms, in particular – has notably enabled terrorists to transmit their propaganda, share training materials, engage in the illicit trade in weapons, identify potential recruits, generate funds, and carry out attacks. Messages are conveyed not only through mainstream social media applications but also through encrypted channels and the “dark web”.
4. States, regional organizations, the private sector, and civil society should establish effective partnerships, with a view to developing improved methods for monitoring and studying terrorist content transmitted over the Internet and other communications technologies and countering incitement to commit terrorist acts, utilizing it for intelligence purposes and referring it, where appropriate, to relevant law enforcement agencies. Counter-narratives and positive messaging can also be an effective measure.

³⁹⁸ S/RES/1624 (2005), para. 4.

³⁹⁹ S/RES/2242 (2015), para. 13.

5. States must ensure that any measures taken to implement the resolution comply with all their obligations under international law, in particular international human rights law, refugee law and humanitarian law.⁴⁰⁰
6. In developing effective measures to address incitement and promote dialogue, States should consider the roles of women in the context of promoting and inciting terrorism, as well as in countering terrorist narratives and develop appropriate capacity-building measures to address this phenomenon.

Issues for consideration:

1. Does the State have in place clear and precise legislation prohibiting incitement to commit a terrorist act or acts?⁴⁰¹
2. Do the legislation and related measures comply with the States' obligation to ensure respect for the right to freedom of expression, as recalled in the preamble of Security Council resolution 1624 (2005) and furthermore take into account that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of article 19 of the International Covenant on Civil and Political Rights (ICCPR)?
3. What examples can the State provide to show it sought to prevent incitement to commit a terrorist act or acts through law enforcement strategies or other measures?⁴⁰²
4. What steps has the State taken to prevent terrorists from exploiting information and communication technologies, in particular the Internet?⁴⁰³
5. Does the State act cooperatively with other States to prevent terrorists from exploiting sophisticated technology, communications and resources to incite support for criminal acts?⁴⁰⁴
6. Has the State established partnerships with international and regional organizations, the private sector and civil society to improve methods for monitoring and studying terrorist content transmitted over the Internet and other communications technologies, utilizing it for intelligence work and referring it, where appropriate, to relevant law enforcement agencies?⁴⁰⁵

The following international instruments, standards and good practices provide guidance in this area:

1. OHCHR, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012).
2. OSCE, "Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach." (2014).
3. Council of Europe Convention on the Prevention of Terrorism (2005), art. 5 (the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has cited article 5 as a good practice in criminalizing terrorist).

400 DIS for S/RES/1624 (2005), 1.

401 DIS for S/RES/1624 (2005), 3.

402 S/2016/50, para. 16.

403 DIS for S/RES/1624 (2005), 7.

404 S/RES/2178 (2014), para. 11.

405 S/RES/1624 (2005), preamble.

B. MEASURES WITH RESPECT TO ENTRY AND ASYLUM SCREENING FOR PEOPLE WHO MAY HAVE BEEN GUILTY OF INCITEMENT TO COMMIT A TERRORIST ACT

Comments:

1. Pursuant to resolution 1624 (2005), States are called upon to adopt measures to deny safe haven to any person with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act.
2. The resolution also recalls the right to seek and enjoy asylum reflected in article 14 of the Universal Declaration of Human Rights.⁴⁰⁶ It reaffirms that the “acts, methods, and practices of terrorism” are contrary to the purposes and principles of the United Nations and that the protections afforded by the 1951 Convention Relating to the Status of Refugees and its Protocol shall not extend to any persons guilty of such acts.⁴⁰⁷ *For a discussion of asylum processes and the application of the 1951 Refugee Convention’s exclusion clauses, see Chapter III(4), above.*
3. As with other aspects of border management, international cooperation is critical. Council resolution 1624 (2005) calls on States to cooperate with other States, inter alia, to strengthen the security of their international borders, including by combatting fraudulent travel documents and, to the extent attainable, by enhancing terrorist-screening and passenger-security procedures with a view to preventing those guilty of incitement from entering their territory.⁴⁰⁸ Border control and passenger screening is particularly relevant in the case of FTFs who may seek asylum in, or entry into, a Member State.

Issues for consideration:

1. Does the State have in place measures facilitating the denial of safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?⁴⁰⁹
2. Does the State cooperate with other States, inter alia, to strengthen the security of its international borders, including by combatting fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of incitement to commit a terrorist act from entering their territory?⁴¹⁰
3. Does the State employ evidence-based traveller risk-assessment and screening procedures, including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law?⁴¹¹
4. Does the State safeguard the right to seek and enjoy asylum while ensuring that asylum is not extended to any person with respect to whom there are serious reasons for considering that he or she has been guilty of incitement to commit a terrorist act, as properly defined?⁴¹²

For issues relating to the security of international borders, see chapter II, section 13, “Effective border controls and related issues”.

For issues relating to the exchange of information regarding actions or movements of terrorists, chapter III, section 1, “Exchange of information”.

⁴⁰⁶ S/RES/1624 (2005), preamble.

⁴⁰⁷ S/RES/1624 (2005), preamble.

⁴⁰⁸ S/RES/1624 (2005), para. 2.

⁴⁰⁹ S/RES/1624 (2005), para. 1 (c).

⁴¹⁰ S/RES/1624 (2005), para. 2.

⁴¹¹ S/RES/1624 (2005), paras. 2 and 4; A/HRC/16/51, paras. 29-32; UDHR, article 7. Article 5 (public provocation) of the Council of Europe Convention on the Prevention of Terrorism States that “it is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed”.

⁴¹² S/RES/1624 (2005), para. 1 (c) and 4 and UDHR, article 14.

The following international instruments, standards and good practices provide guidance in this area:

1. UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, 2011.
2. UNHCR, Addressing Security Concerns without undermining Refugee Protection, December 2015.
3. UNHCR, Refugee Protection and Mixed Migration: The 10-Point Plan in action (2016); I-24/7, Madrid Guiding Principles.
4. Universal Declaration of Human Rights, Article 14.
5. Convention Relating to the Status of Refugees (1951) and its 1967 Protocol.
6. CTITF, Basic Human Right Reference Guide: “Security Infrastructure”.
7. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders.
8. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26).
9. INTERPOL, secure global police-to-police communication system.

C. ENHANCEMENT OF DIALOGUE, BROADENING UNDERSTANDING AND THE DEVELOPMENT OF A COMPREHENSIVE APPROACH TO PREVENTING THE SPREAD OF TERRORISM

Comments:

1. In its resolution 1624 (2005), the Council calls on States to continue international efforts to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures.⁴¹³ Constructive dialogue between Governments and communities is a crucial factor in building community resilience, identifying and addressing grievances, and working to prevent recruitment.⁴¹⁴ Enhancing dialogue and deepening the understanding of drivers of violent extremism can help States develop comprehensive and coordinated approaches to preventing the spread of terrorism and violent extremism.⁴¹⁵ Security Council resolution 2178 (2014) also highlights the importance of engaging relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts and addressing the conditions conducive to the spread of violent extremism, which can be conducive to terrorism.⁴¹⁶ States should consider devoting greater resources to supporting social services and funding relevant research in order to strengthen their understanding of the reasons why individuals become aspiring FTFs. In many cases, individualized intervention may be the only effective way to address radicalization to violence.⁴¹⁷
2. To enhance the quality of the evidence base for policy and programming responses, Security Council resolution 2242 (2015) calls on CTED, within its existing mandate and in collaboration with UN Women, to “conduct and gather gender-sensitive research and data collection on the drivers of radicalization for women, and the impacts of counter-terrorism strategies on women’s human rights and women’s organization, in order to develop targeted and evidence-based policy and programming responses”. In this regard, the State should ensure that outreach to civil society and key partners allows for the meaningful participation of women and women’s groups as part of a whole-of-society and whole-of-Government approach to developing national regional strategies to counter terrorism and violent extremism. Efforts to strengthen measures to prevent and counter violent extremism, as set forth in resolution 2178 (2014), can also support implementation of resolution 1624 (2005).

⁴¹³ S/RES/1624 (2005), para. 3.

⁴¹⁴ Madrid Guiding Principle 2.

⁴¹⁵ S/RES/2129 (2013), para. 19.

⁴¹⁶ S/RES/2178 (2014), para. 16.

⁴¹⁷ Madrid Guiding Principle 1.

Issues for consideration:

1. Has the State participated in international efforts to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?⁴¹⁸
2. Is the State engaged in national, subregional or regional counter-terrorism strategies which might address issues raised in resolution 1624 (2005)?⁴¹⁹
3. Has the State considered developing communications strategies in order to strengthen its understanding of the nature and appeal of violent extremist ideologies and promote non-violent alternative avenues for conflict prevention and resolution?⁴²⁰
4. Has the State considered supporting relevant research in order to strengthen its understanding of the reasons why individuals become aspiring FTFs?⁴²¹
5. Does the State engage in, or encourage, community-awareness briefings, town halls, advisory committees, and other platforms for communities to express grievances and discuss community concerns among both governmental and non-governmental actors?⁴²²

The following international instruments, standards and good practices provide guidance in this area:

1. Madrid Guiding Principle 8.
2. Hedayah, Guidelines and Good Practices for Developing National CVE Strategies.

D. ENHANCED ENGAGEMENT WITH AND EMPOWERMENT OF THE MEDIA, CIVIL AND RELIGIOUS SOCIETY, LOCAL COMMUNITIES, THE BUSINESS COMMUNITY, YOUTH, FAMILIES, WOMEN AND OTHER RELEVANT NON-GOVERNMENTAL ACTORS TO COUNTER INCITEMENT AND VIOLENT EXTREMISM

Comments:

1. Security Council resolution 1624 (2005) stresses the importance of the role of the media, civil and religious society, the business community, and educational institutions in efforts to enhance dialogue and broaden understanding, promoting tolerance and coexistence, and fostering an environment that is not conducive to incitement of terrorism. Council resolution 2178 (2014) encourages States to engage relevant local communities and non-governmental actors, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopting tailored approaches to countering recruitment to violent extremism that can incite terrorist acts, as well as promoting social inclusion and cohesion.⁴²³ Local communities can provide valuable insights into the factors that make individuals targets of incitement and recruitment to commit terrorist acts, and thus can play a key role in prevention.⁴²⁴ To further this objective, States should work to create space for civil society and develop innovative mechanisms for dialogue between the Government and local communities, youth, families, women, religious, cultural, and education leaders, and other concerned groups.⁴²⁵ Council resolutions 2122 (2013)

418 DIS for S/RES/1624 (2005), 6.

419 S/RES/2129 (2013), para. 7; S/PRST/2014/23 "encourages Member States to continue cooperating with the Counter-Terrorism Committee and CTED on the development of comprehensive and integrated national, subregional and regional counter-terrorism strategies".

420 S/2015/975, para 157 (a): "Encourage States to develop effective communications strategies, strengthen their understanding of the nature and appeal of extremist ideologies and promote alternatives in order to counter incitement and violent extremism".

421 Madrid Guiding Principle 1.

422 Madrid Guiding Principle 2.

423 S/RES/2178 (2014), para. 19: "develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicalization to terrorism, and [undertake] efforts to promote peaceful alternatives to violent narratives espoused by foreign terrorist fighters, [keeping in mind] the role education can play in countering terrorist narratives[.]".

424 Madrid Guiding Principle 8.

425 Madrid Guiding Principle 9.

and 2242 (2015) highlight the potential roles of women, underscoring the principles outlined in Council resolution 1325 (2000) and applying them to international counter-terrorism efforts, particularly those to implement resolutions 1373 (2001), 1624 (2005) and 2178 (2014).

2. Council resolution 2178 (2014) emphasizes the importance of States' efforts to develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicalization to terrorism and of efforts to promote peaceful alternatives to violent narratives espoused by FTFs, keeping in mind the role education can play in countering terrorist narratives.⁴²⁶
3. Council resolution 2354 (2017), urges Member States to consider implementing the "Comprehensive International Framework to Counter Terrorist Narratives" that was submitted by the Counter-Terrorism Committee to the Council in April 2017 (S/2017/375), with recommended guidelines and good practices to effectively counter the ways that ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities use their narratives to encourage, motivate, and recruit others to commit terrorist acts. The comprehensive framework proposed by the Committee consists of three core elements: (i) Legal and law enforcement measures in accordance with obligations under international law and consistent with United Nations resolutions; (ii) Public-private partnerships; and (iii) Development of counter-narratives. The resolution also emphasizes that, in developing and implementing counter-narratives and programs, States should consider: (i) Tailoring counter-narratives and programs to the specific circumstances of different contexts on all levels; (ii) Engaging with a wide range of actors, including youth, families, women, religious, cultural, and education leaders, and other concerned groups of civil society; (iii) Supporting efforts aimed at raising public awareness regarding counter terrorist narratives through education and media, including through dedicated educational programs to pre-empt youth acceptance of terrorist narratives; (iv) Aiming not only to rebut terrorists' messages, but also to amplify positive narratives, to provide credible alternatives and address issues of concern to vulnerable audiences who are subject to terrorist narratives; (v) Taking into account the gender dimension, and developing narratives that address the specific concerns and vulnerabilities of both men and women; and (vi) Supporting continued research into the drivers of terrorism and violent extremism. The resolution reiterates that all measures taken by Member States to counter terrorism, including to counter terrorist narratives, must comply with their obligations under international law, including international human rights law, international refugee law, and international humanitarian law.

Issues for consideration:

1. What measures has the State taken to counter incitement of terrorist acts motivated by extremism and intolerance, including with the participation of local communities, the private sector, civil society, media, and other relevant non-governmental actors?⁴²⁷
2. What measures has the State taken to promote greater inclusion of women in policymaking and law enforcement bodies, as well as in civil society, to counter incitement and violent extremism?⁴²⁸
3. How has the State endeavoured to ensure that counter-terrorism and CVE efforts do no harm, particularly regarding women and youth?⁴²⁹
4. What steps has the State taken to meaningfully engage youth in counter-incitement and CVE efforts?⁴³⁰
5. Has the State considered establishing partnerships with victims and victim associations?⁴³¹

426 Madrid Guiding Principle 6.

427 S/RES/2178 (2014) para. 16; S/RES/2354 (2017), preamble and para. 2 (f) and Madrid Guiding Principles, 1. B.

428 Madrid Guiding Principle 8 and S/RES/2354 (2017), preamble and para. 2(f) and (k).

429 Madrid Guiding Principle 8 and 9.

430 S/RES/2178 (2014), para. 16 and Madrid Guiding Principle 9.

431 PRST/2016/6 and Madrid Guiding Principle 6.

6. Is the State effectively collaborating with ICT industry actors in order to implement effective strategies to counter the threat of online radicalization?⁴³²
7. Does the State delineate the respective roles of Governments and civil society actors in countering violent extremism?⁴³³
8. Has the State developed programmes to strengthen the engagement of young people in countering violent extremism, such as youth-mentorship and skills-development programmes, community-service projects, and enhanced educational opportunities that increase their sense of belonging?⁴³⁴
9. Does the State engage in communication with families while ensuring that such interaction is voluntary and not imposed, and does the State provide support to services that engage with families, provided that such services are kept separate from security agencies?⁴³⁵
10. Has the State considered the role of victims of terrorism in countering radicalization to violence, particularly in the form of counter-messaging efforts to counter terrorist narratives and online recruitment attempts?⁴³⁶
11. Is the State engaged in or has the State explored efforts to counter terrorists' narratives, in accordance with the approach and guidelines set out in Security Council resolution 2354 (2017) and related documents? Have any initiatives been undertaken in partnership with youth, families, women, religious, cultural, and education leaders, or other concerned groups of civil society?
12. What legal and law enforcement measures are used by the State to address the problem of terrorist narratives?⁴³⁷
13. Has the State explored the development of public-private partnerships in order to strengthen its approach to countering terrorist narratives?⁴³⁸
14. How does the State seek to ensure that its initiatives in the area of countering terrorist narratives comply with its obligations under international law, including international human rights law, international refugee law, and international humanitarian law?⁴³⁹
15. Has the State sought technical assistance in this area from international or regional organizations, such as UNESCO, UNDP, or other CTITF member entities, Member States, international civil society organizations or other relevant assistance provider?

The following international instruments, standards and good practices provide guidance in this area:

1. OROLSI/DPKO, *United Nations Police Gender Toolkit*, 2015.
2. Radicalization Awareness Network (RAN), *Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration*.
3. Radicalization Awareness Network (RAN) PREVENT Working Group, *Holding Difficult Conversations*.
4. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

432 Council resolution 2354 (2017), urges Member States to consider implementing the "Comprehensive International Framework to Counter Terrorist Narratives" that was submitted by the Counter-Terrorism Committee to the Council in April 2017 (S/2017/375). The comprehensive framework proposed by the Committee consists of three core elements: legal and law enforcement measures in accordance with obligations under international law and consistent with United Nations resolutions; public-private partnerships; and development of counter-narratives. See also: Madrid Guiding Principle 26.

433 Madrid Guiding Principles 7; S/RES/1624 (2005), para. 3: "take all measures as may be necessary and appropriate and in accordance with their obligations under international law ... to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters[.]"

434 S/RES/2178 (2014), para. 16; S/RES/2354 (2017), preamble and para. 2(f) and (g); and Madrid Guiding Principle 2, 7 and 9.

435 S/RES/2178 (2014), para. 16; S/RES/2354 (2017), para. 2 (f); Madrid Guiding Principle 2; and S/2015/338, para. 3 ("promoting political and religious tolerance, economic development and social cohesion and inclusiveness").

436 Madrid Guiding Principle 6.

437 Council resolution 2354 (2017), urges Member States to consider implementing the "Comprehensive International Framework to Counter Terrorist Narratives" that was submitted by the Counter-Terrorism Committee to the Council in April 2017 (S/2017/375). The comprehensive framework proposed by the Committee consists of three core elements: legal and law enforcement measures in accordance with obligations under international law and consistent with United Nations resolutions; public-private partnerships; and development of counter-narratives.

438 Madrid Guiding Principle 26 and S/RES/2354 (2017).

439 S/RES/2354 (2017), preamble and para. 2 (e).

E. PREVENTING THE SUBVERSION OF EDUCATIONAL, CULTURAL AND RELIGIOUS INSTITUTIONS BY TERRORISTS AND THEIR SUPPORTERS

Comments:

1. Security Council resolution 1624 (2005) calls on States to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters.⁴⁴⁰
2. States are also obliged under international human rights law to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Local communities are often best placed to engage with religious institutions in order to prevent their subversion by terrorists and their supporters.
3. Consideration should also be given to promoting greater engagement of women in this effort.⁴⁴¹

Issues for consideration:

1. What measures have been taken by the State to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters?⁴⁴²
2. Has the State considered engaging religious leaders to provide a platform for intra- and interfaith dialogue and discussions through which to promote tolerance and understanding between communities?⁴⁴³
3. Has the State developed any specific measure aimed at supervising the nomination and training of religious leaders?⁴⁴⁴
4. Does the State supervise, via appropriate channels, the drafting of religious and non-religious school curriculums?⁴⁴⁵
5. Has the State considered devoting resources to educational programmes that develop critical thinking and build awareness and understanding of different cultures?⁴⁴⁶
6. Has the State developed any programme aimed at strengthening the teaching of religious tolerance in schools at all levels?⁴⁴⁷
7. How has the State endeavoured to ensure that its efforts in this field are consistent with its obligations under international law, including respect for the right to freedom of thought, conscience and religion, and freedom to manifest one's religion or beliefs, subject only to certain permissible limitations as provided for under international law?⁴⁴⁸

The following international instruments, standards and good practices provide guidance in this area:

1. Universal Declaration of Human Rights, Art. 18; International Covenant on Civil and Political Rights, arts. 18, 20.
2. Human Rights Committee General Comment 22, Art. 18 ("Freedom of Thought, Conscience or Religion").
3. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

440 DIS for S/RES/1624 (2005), 11: "examples of measures taken by the State, as necessary and appropriate and in accordance with its obligations under international law, to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters[?]"

441 S/2016/50, para. 57.

442 Madrid Guiding Principle 4.

443 S/2016/50, para. 57.

444 S/2016/50, para. 57.

445 S/RES/2178 (2014), para. 18: "cooperate and consistently support [other States] efforts to counter violent extremism, which can be conducive to terrorism, including through capacity building, coordination of plans and efforts, and sharing lessons learned[.]".

446 S/2015/683, para. 5, Introduction: "there is a need for strengthening judicial cooperation regarding violent extremist content, especially when Internet servers are hosted abroad".

447 S/RES/2178 (2014), para. 12: "measure[s] of assistance [has the State afforded other States] in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts[?]".

448 S/RES/1624 (2005), para. 4: "must ensure any measures taken to implement . . . [this guidance] comply with all of . . . [its] obligations under international law, in particular international human rights law, refugee law, and humanitarian law[.]".

4. Reports of the United Nations Special Rapporteur on Freedom of Religion or Belief.

F. INTERNATIONAL COOPERATION

Comments:

1. In its resolution 2178 (2015), the Council notes the importance of international cooperation in the context of countering violent extremism and calls on States to cooperate and consistently support other States' efforts to counter violent extremism, which can be conducive to terrorism, including through capacity-building, coordination of plans and efforts, and sharing of lessons learned.⁴⁴⁹

Issues for consideration:

1. Has the State considered strengthening international legal cooperation regarding content intended to incite terrorist acts or radicalize individuals to violence, considering Internet servers might be hosted abroad?⁴⁵⁰
2. What measures of assistance has the State afforded other States in connection with investigations or proceedings relating to incitement to commit terrorist acts?⁴⁵¹
3. Does the State facilitate cooperation across key stakeholder agencies and ministries, as well as experts and practitioners, to foster regional approaches to countering incitement and violent extremism?

The following international instruments, standards and good practices provide guidance in this area:

1. Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters, Guiding Principle 24.
2. Council of Europe Convention on the Prevention of Terrorism, art. 4.

G. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS LAW, REFUGEE LAW, AND HUMANITARIAN LAW

Comments:

1. Security Council resolution 1624 (2005) stresses that States must ensure any measures taken to implement paragraphs 1, 2 and 3 of the resolution comply with all their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.⁴⁵² Among other measures, States are under an obligation to safeguard the ability of non-governmental actors to operate in a secure environment with full respect for the peaceful exercise of human rights and fundamental freedom, including the freedoms of thought, conscience, expression, religion, peaceful assembly and association.⁴⁵³
2. The State must ensure that any measures taken to prevent and counter incitement and violent extremism comply with all its obligations under international law, in particular international human rights law, international refugee law and international humanitarian law,⁴⁵⁴ bearing in mind that shortcomings in States' efforts in this regard may be exploited by terrorists for recruitment purposes.⁴⁵⁵

449 Madrid Guiding Principle 10.

450 Human Rights Council Resolution 30/15.

451 S/2016/49, para. 397.

452 S/RES/1624 (2005), para. 4.

453 Madrid Guiding Principle 10.

454 Human Rights Council Resolution 30/15.

455 S/2016.49, para. 397.

Issues for consideration:

1. What laws, policies and measures has the State put in place to protect the right to freedom of expression and opinion while countering terrorist incitement,⁴⁵⁶ both offline and online?
2. What laws, policies and measures has the State put in place to protect the right to freedom of religion or belief while countering terrorist incitement?⁴⁵⁷
3. What laws, policies and measures has the State put in place to protect the right to freedom of peaceful assembly and association while countering terrorist incitement?⁴⁵⁸
4. What are examples of challenges encountered by the State in its efforts to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?⁴⁵⁹
5. Are there ongoing efforts to engage with civil society, traditional and faith leaders, women and youth groups, to help ensure the protection of their rights in the context of efforts to counter incitement and violent extremism?⁴⁶⁰

The following international instruments, standards and good practices provide guidance in this area:

1. *Madrid Guiding Principles on Stemming the Flow of Foreign Terrorist Fighters* (Guiding Principle 2).
2. *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*.
3. *Johannesburg Principles on National Security, Freedom of Expression, and Access to Information*.
4. Human Rights Council, Resolution A/HRC/RES/32/13 on “The promotion, protection and enjoyment of human rights on the Internet”.

456 S/RES/1624 (2005), preamble.

457 S/RES/1624 (2005), preamble.

458 S/RES/1624 (2005), preamble and para. 4.

459 DIS for S/RES/1624 (2005), 10: “[What are] examples of [] challenges encountered by the State in its efforts to ensure that any measures taken to implement paras. , 2 and 32 of resolution 1624 (2005) comply with all its obligations under international law, in particular international human rights law, refugee law and humanitarian law []?”.

460 S/RES/2178 (2014) and Madrid Guiding Principle 7.



UNITED NATIONS SECURITY COUNCIL
COUNTER-TERRORISM COMMITTEE
EXECUTIVE DIRECTORATE (CTED)



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In accordance with Security Council resolutions 1373 (2001), 1535 (2004), 1624 (2005), and 2178 (2014), the Counter-Terrorism Committee Executive Directorate (CTED) is required to assist the Counter-Terrorism Committee to monitor, facilitate, and promote the implementation by Member States of relevant resolutions. In this regard, the Committee requested CTED to update its 2009 Technical Guide to reflect the relevant provisions of those resolutions, as well as additional elements contained in relevant Security Council resolutions adopted since. The Technical Guide is intended to assist CTED and Member States within the framework of the country assessments prepared by CTED on behalf of the Committee.