



BACKGROUND NOTE

PREPARED BY THE GLOBAL CENTER ON COOPERATIVE SECURITY

EXPERT-LEVEL ROUNDTABLE

UN SECURITY COUNCIL RESOLUTION 2178 AND THE PROSECUTION, DETENTION, REHABILITATION, AND REINTEGRATION OF RETURNING FOREIGN TERRORIST FIGHTERS: IDENTIFYING CHALLENGES, PRIORITIES, AND LESSONS LEARNED

This background note is a resource for a closed-door, informal roundtable event hosted by the Permanent Mission of Italy. The event will explore the role of the Security Council and its Counter-Terrorism Committee (CTC) in supporting the implementation of Security Council resolution 2178 (2014) and addressing the challenges posed by returning foreign terrorist fighters (FTFs).

This informal roundtable is intended for experts of the Security Council Member States. It aims to take stock of the implementation of resolution 2178 (2014) in relation to the potential challenges posed by returning FTFs. The discussion will provide an opportunity for Council members to reflect on strategic engagement on the issue of returning FTFs between UN entities (Headquarters and in the field), as well as with other multilateral actors and stakeholders such as the Global Counterterrorism Forum (GCTF), the African Union, the European Union, and the Collective Security Treaty Organization.

Security Council Resolution 2178 (2014)

The UN and its Member States are confronted with the challenges posed by an increasingly transnational terrorist threat and the outflow of FTFs who will in many cases return to their countries of residence or nationality. Over the last decade and a half, the UN and its Security Council have played a central role in globalizing the fight against terrorism, including by strengthening international cooperation and capacities to take proactive measures to address the threat posed by FTFs, who by most estimates number over thirty thousand. As part of these efforts, the Security Council unanimously adopted resolution 2178 (2014), recalling resolution 1373 (2001) and reiterating that all Member States shall ensure that any person who participates in the financing, planning, preparation, or perpetration of terrorist acts or in supporting terrorist acts be brought to justice.

Since then, the UN Counter-Terrorism Committee Executive Directorate (CTED) has conducted three reviews of Member States' implementation of the resolution.¹ The reviews address trends and challenges of Member States' efforts in bringing FTFs to justice at the national, regional, and international levels. Acting on behalf of the CTC, CTED facilitated a series of seminars on the challenges of prosecuting terrorism cases.² In 2015, the Terrorism Prevention Branch of the UN Office on Drugs and Crime (UNODC) launched an initiative aimed at bolstering States' criminal justice responses to the FTF phenomenon.³ Other actors have carried out regional initiatives and national-level programs aimed at strengthening States' criminal justice responses to FTFs,

¹ See: [Implementation of Security Council resolution 2178 \(2014\)](#) by States affected by foreign terrorist fighters (S/2015/683 of 2 September 2015); [Implementation of Security Council resolution 2178 \(2014\)](#) by States affected by foreign terrorist fighters (S/2015/338 of 14 May 2015); and [Implementation of Security Council resolution 2178 \(2014\)](#) by States affected by foreign terrorist fighters (S/2015/975 of 29 December 2015).

² Workshops and seminars were held at the UN Headquarters in December 2010, Ankara in July 2011, Algiers in June 2012, Dar es Salaam in February 2013, Tunis in December 2013, and Valletta in December 2014.

³ Launched in Valletta, Malta in March 2015 and to run until 2019.

including in correctional settings.⁴

Challenges and responses in dealing with returning FTFs

Maximizing the UN's contributions, however, has not been without its challenges – in part because resolution 2178 (2014) predominantly focuses on stemming the outflow of FTFs, not on managing their return, at a time when the outflow of FTFs has generally decreased and the number of returning FTFs is increasing. On this issue, resolution 2178 (2014) specifically calls upon Member States, in accordance with their obligations under international law, to develop and implement strategies for the prosecution, rehabilitation, and reintegration of returning FTFs.⁵ A growing number of activities have been directed to support States' capacities to address security implications of returning FTFs and other special considerations they pose, for example through the GCTF's *Addendum to The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, with a focus on Returning FTFs*.

Potential legal, security, and social challenges upon FTFs' return concern evidentiary issues in prosecution and special considerations relating to their management in prison and their successful rehabilitation and reintegration into society.

Evidentiary challenges in the investigation of returning FTFs primarily arise where the bulk of the evidence is found outside of the territorial jurisdiction, especially in a conflict zone such as Syria. Issues include the collection and admissibility of evidence obtained abroad or from foreign agencies, converting intelligence into admissible evidence, and corroborating evidence about intent to engage in terrorism acts against suspected returning FTFs. Few States have introduced criminal offenses for the prosecution of FTF-related preparatory or accessory acts.⁶ States primarily rely on existing domestic legislation to prosecute returning FTFs, including provisions relating to terrorism, organized crime, immigration, and threats to national security.

The effective prosecution of returning FTFs, however, requires robust international cooperation and relations to manage trans-border elements in the countries of origin, transit, and destination. Although terrorist organizations can operate across borders with relative ease, criminal justice systems are bound by strict jurisdictional limits and must rely on mechanisms of international cooperation, which often struggle to keep pace with evolving challenges. Difficulties in implementing judicial cooperation measures may be compounded by the deterioration or absence of diplomatic relations in the situs of the crime. In recognition of this critical limitation, the Security Council unanimously adopted resolution 2322 (2016), requiring Member States to strengthen effective international cooperation on terrorism-related offences. In this regard, it is important to stress that UNSCR 2322 (2016) calls upon all States to exchange information, in accordance with international and domestic law, and to cooperate on administrative, police, and judicial matters to prevent the commission of terrorist acts and to counter the FTF threat, including returnees; to consider the possibility of allowing, through appropriate laws and mechanisms, the transfer of criminal proceedings in terrorist-related cases; and to enhance cooperation to prevent terrorists from benefiting from transnational organized crime, and to investigate and to build the capacity to prosecute such terrorists and transnational organized criminals working with them.⁷

Returning FTFs pose additional challenges in the detention environment, the correctional setting, and society in general upon their return. This does not just comprise individuals that harbor violent extremist ideologies, but

⁴ See for instance the Global Center's [Countering Violent Extremism in Prisons \(CVE-P\) Program](#), established in cooperation with the GCTF Detention and Reintegration Work Group in 2015.

⁵ UN Security Council resolution 2178 (2014), para. 4.

⁶ See 2016 implementation survey report on resolution 1373 (2001), para. 19.

⁷ UNSCR 2322 (2016), para 9.

also those who have received weapons training or participated in active conflict. They include questions on how to develop intake and risk assessments appropriate to this group; design effective interventions; provide post-release support; and monitor and evaluate the effectiveness of programs to a diverse group of returnees that may include minors, dependent family members, defectors, persons coping with trauma, and other potentially vulnerable individuals. There is also a growing concern that returning FTFs could influence or even recruit other prisoners to their violent extremist ideology, and that subpar prison conditions may further reinforce their radicalization to violent extremism.

It is vital that efforts to strengthen State capacities' treatment of returning FTFs are anchored within the framework of human rights and the rule of law. Resolution 2178 (2014) in its preamble recognizes that the failure to comply with international human rights obligations is one of the factors contributing to increased radicalization to violent extremism and fosters a sense of impunity. Correctional facilities can both positively and negatively impact the threat of violent extremism, and a number of international instruments and guidance documents have been developed that elaborate rights-compliant prison standards and encourage the positive engagement with detainees to meet this challenge.⁸

The risk posed by increasing numbers of returning FTFs have helped inspire programs to address their return, including measures to rehabilitate and reintegrate them. Some prisoner rehabilitation programs focus on helping officials manage the potential threat posed by violent extremist offenders and develop an environment conducive to their rehabilitation and, ultimately, their reintegration back into the community. Other programs have involved former FTFs in counseling positions, as they can provide powerful voices that serve as testaments to the possibility of leaving terrorist groups and pursuing new avenues of life. Finally, alternative measures to incarceration also offer an opportunity for low-risk individuals to redirect away from harmful trajectories toward more legitimate activities, providing longer-term opportunities to break the cycle of violence.

Another new issue that is emerging is the return of minors. These minors, at times the children of FTFs, have often been born in conflict zones and may be returning with their parents to their parents' country of origin. The return of minors poses various challenges with regards to the issuance of identification papers, rehabilitation, and reintegration.⁹

Expert Roundtable

The closed roundtable is intended as a private, informal forum for Security Council members to exchange ideas on how it can support Member States' efforts on the prosecution, detention, and rehabilitation of returning FTFs. Participants are invited to consider the following questions:

1. What role can the Security Council, in cooperation with relevant UN entities and other international organizations and forums, play in supporting current efforts to prosecute, detain, rehabilitate, and reintegrate returning FTFs?
2. What additional standards for best practices and cooperation need to be developed, if any, to confront the challenges posed by returning FTFs to Member States?
3. What lessons may be derived from Member States' experiences in rehabilitating and reintegrating individuals convicted of terrorism and violent extremism offences?

⁸ See, for example, the GCTF [Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders](#) (Rome: GCTF, 2012), and the UNODC, [Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons](#) (New York: UN, 2016).

⁹ See, for example, Melissa Lefas and Junko Nozawa, [Rehabilitating Juvenile Violent Extremist Offenders in Detention: Advancing a Juvenile Justice Approach](#), Global Center on Cooperative Security and International Centre for Counter-Terrorism – The Hague, December 2016.