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Addressing the Foreign Terrorist Fighters Phenomenon from a European Union Perspective

UN Security Council Resolution 2178, Legal Issues, and Challenges and Opportunities for EU Foreign Security and Development Policy

The issue of foreign fighters is not a new phenomenon. English poet Lord Byron was a foreign fighter in Greece in the 1820s and Osama bin Laden was battle-hardened in Afghanistan before he formed al-Qaida. What is new these days is the scale of the threat. With the outbreak of civil war and sectarian violence in Syria, Iraq, and Libya, over 15,000 men and women from more than 80 countries around the world have left their homes to become foreign fighters. The security challenge they pose is immense and there are concerns about radicalised fighters returning to their countries of origin or residence, hardened by experience and with the possible intent—and the know-how—to engage in terrorist activities.

While not all returnees will turn to violence when they return home, and many will require professional help to overcome the traumas of the battlefield, we have seen what a returning foreign fighter can do. After returning to Europe from fighting in Syria, 29-year-old Mehdi Nemmouche is now on trial on suspicion of attacking a Jewish museum in Belgium earlier this year, killing four people. Some experts fear that many more cases will emerge in the near future, with radicalised foreign fighters that are motivated by hateful ideology and willing to take the lives of innocent people.

The international community is trying to work together to stem the tide of foreign fighters, especially foreign terrorist fighters (FTFs). A growing coalition is engaged in the fight to push back the so-called Islamic State in Iraq and the Levant (ISIL). At the United Nations (UN) Security Council this autumn, President Barack Obama chaired a session in which he highlighted the need to address the threat of FTFs. On 24

September, the Security Council unanimously adopted Resolution 2178 with the support of over 120 states representing a broad cross-section of the UN membership. Resolution 2178 called on all UN member states to ensure increased border security and to screen for or arrest FTFs travelling to or returning from conflict areas. Rightly so, it also urges states to counter violent extremism by taking preventive measures, such as engaging with communities at the local level to stop the spread of extremist ideologies.

On 23 October 2014, the Global Center on Cooperative Security, the Human Security Collective, and the International Centre for Counter-Terrorism–The Hague convened an expert meeting at the European Union (EU) in Brussels to discuss the implications of the resolution and to explore appropriate and effective responses to the threat of FTFs, both within the EU and as part of the Union's foreign security and development programming.[1]

Building upon our discussion in Brussels, this policy brief is a compilation of essays from all three of our organisations on the challenges and opportunities for addressing the FTF threat. It also examines the implementation of Resolution 2178 as an integral part of national and multilateral foreign security and development policies and initiatives.

The first section will discuss some of the innovative aspects of Resolution 2178, first and foremost the emphasis on a more preventive response to violent extremism as opposed to more repressive, reactionary policies. Section two will look at the necessity of engaging communities and civil society actors to partner with governments in preventing violent extremism from taking hold. The third section will provide an analysis of the domestic legal and criminal justice-related implications of Resolution 2178 for national governments. Before concluding, section four will provide concrete recommendations for the EU's foreign security and development programming to assist in the appropriate implementation of the resolution's obligations.

Resolution 2178 and Countering Violent Extremism

In its response to the challenges posed by FTFs, Resolution 2178 is innovative for incorporating an emphasis on countering violent extremism (CVE).[2] The text can be read as an effort to foster a more balanced response to terrorism and violent extremism, attempting to combine repressive measures with preventive approaches in cooperation with the civil society actors and communities. There are concerns, however, that the sweeping latitude given to states to interpret the operative elements of the resolution and to define for themselves the meaning of "foreign terrorist fighters" with no

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[1] See for more information on this meeting: Global Center on Cooperative Security, "Addressing the Foreign Terrorist Fighters Phenomenon from an EU Perspective: UN Security Council Resolution 2178, Legal Issues, and Challenges and Opportunities for EU Foreign Security and Development Policy," http://www.globalcenter.org/events/addressing-the-foreign-terrorist-fighters-phenomenon-from-an-eu-perspective-un-security-council-resolution-2178-legal-issues-and-challenges-and-opportunities-for-eu-foreign-security-development-p/.
[2] UN Security Council Resolution, S/RES/2178, 24 September, 2014,
 Para. 15, 16, 18, 19.

geographical or timebound parameters (so-called "sunset clauses"), poses great risks to human rights and civil liberties. Communities and civil society organisations have expressed reservations, citing the possibility that in the absence of legislative clarity, states can adopt draconian measures against their citizens and constrain their space and resources in the name of fighting extremism.[3]

Unlike circumstances in 2001, however, when many felt that Security Council Resolution 1373 was controversial for imposing universally binding legal obligations, the multilateral counterterrorism framework today is the product of a broad range of member states. In the Security Council alone over the past 13 years, approximately 70 elected members have passed through (some twice) and played important roles in shaping counterterrorism resolutions and norms. In the UN General Assembly, the adoption of the UN Global Counter-Terrorism Strategy and the work of the Counter-Terrorism Implementation Task Force (CTITF) and other relevant actors reflect the broad participation of states in counterterrorism issues. Many international good practices are also informed and supported by the work of the Global Counterterrorism Forum (GCTF), an informal, multilateral platform that includes 29 countries from a broad range of regions, as well as the EU. As a result, multilateral norms and practices have stressed a comprehensive approach that spans law enforcement responses and preventive measures, including community engagement. Human rights have been underscored and figure more prominently in Resolution 2178 than they had in Resolution 1373, though experts nonetheless worry that this is in letter only, not yet sufficiently in practice. It is therefore critical that multilateral actors use the opportunity presented by Resolution 2178 to emphasise the integral relationship between human rights and responses to terrorism and violent extremism.

The adoption of the new resolution and the emphasis on preventing and countering violent extremism also presents an important opportunity to reflect on lessons learned and current challenges in terms of CVE policy and practice. As the nature of the challenge has changed over the past decade, so too must our responses. The emergence of ISIL, Boko Haram, al-Shabaab, and other extremist groups committed to the use of violence proves that responses cannot be limited to countering acts of terrorism alone, but must also address the ideologies of violent extremism, which often culminate in various human rights violations. In Pakistan, for example, the Tehrik-i-Taliban has impeded girls' education and economic development, and has fuelled sectarian tensions and violence throughout the country. Boko Haram and ISIL have violated the rights and freedoms of women and girls, minorities, and even those in their own communities who oppose their hateful ideologies and practices.[4] And yet despite these behaviours, such

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[3] See Martin Scheinin, "Back to Post-9/11 Panic? Security Council Resolution on Foreign Terrorist Fighters,"
Just Security, 23 September 2014, http://justsecurity.org/15407/post-911-panic-security-council-resolution-foreign-terrorist-fighters-scheinin.
[4] Kathy Gilsinan, "The ISIS Crackdown on Women, by Women," *Atlantic*, 25 July 2014, http://www.theatlantic.com/international/archive/2014/07/the-women-of-isis/375047; Islamic State, "The Revival of Slavery Before the Hour," *Dabiq*, Issue 4 (2014): 14–17.

groups continue to attract support. These dynamics require the international community to reflect and develop more strategic CVE responses to the current threat.

The pull of carefully crafted and dynamic extremist narratives has been exemplified by the use of social media by groups like ISIL and al-Shabaab. A more forceful, proactive, and creative effort at counternarratives and alternative narratives is necessary. States and civil society actors need to do some deep soul searching and develop a stronger knowledge base for understanding the current threat, as well as a better understanding of the grievances and processes that prompted the exodus of foreign fighters. Are ISIL and al-Qaida using the same strategies and narratives, or are we seeing in the former a qualitatively different approach? Many believe that push factors like socioeconomic deprivation, marginalisation, and inequalities are common denominators among recruits for extremist groups. Additionally, there is the question of whether and how groups like ISIL have also developed stronger pull factors that can draw foreign fighters from less deprived environments. While policymakers and practitioners need to learn the lessons from past CVE efforts, it is also imperative that previous approaches to older terrorist groups are not automatically transferred to addressing new groups and dynamics.

In order to undertake CVE efforts, Resolution 2178 encourages states to work with communities, including women, youth, educators, and religious leaders. The resolution does not, however, address the challenges of community engagement in conflict-affected regions where there may be little agreement within and among communities on groups deemed "extremist" by international actors. Furthermore, it is important that international actors, in the rush to implement the resolution, balance the need to empower and work with local actors without compromising their credibility or co-opting their work, as the next section will describe in more detail. Likewise, the search for "moderate" partners must not somehow allow human rights standards to be lowered or bartered for the sake of political expediency.

Resolution 2178 not only raises questions about the systemic response at the multilateral level, but also about the concept of "countering violent extremism" in particular. It highlights the need for deepening the knowledge base through further research and developing more nuanced and creative CVE responses. It also advocates more sustained and coordinated engagement among international actors and between the headquarters and the field. In their drive to implement the resolution and enhance CVE work, international actors should be mindful of overstretching the already limited capacities of many countries to absorb and participate in these efforts. Despite such concerns, the resolution serves as a reminder to international actors that there is a need not for less, but for a more informed, targeted CVE strategy across a broader spectrum of countries. There is also a need for more active engagement in places where the threat may appear less obvious but which may nonetheless be vulnerable to the dynamics of violent extremism and could be targeted by FTFs.

In response to the challenge posed by foreign fighters, CVE initiatives should focus on three key elements: countering the narrative posited by ISIL and other violent extremist

groups and providing positive alternatives; empowering communities and civil society organisations to operate more effectively; and providing psychological and social support for both those individuals identified as at risk of travel and for returnees attempting to reintegrate into society. How are these to be achieved? They may take the form of targeted strategic communications campaigns, both online and offline, that directly challenge the ideologies offered by ISIL. Alternatively, they may highlight negative aspects about the group, such as its brutality, even against its own community, and challenge its authority and competence in governing. The focus on countering the narrative, however, risks being only reactive; alternative messages demonstrating positive efforts to alleviate human suffering in Iraq and Syria, as well as humanitarian interventions and capacity development initiatives, should also be critical elements of any communications strategy. To do this, online interventions as well as more localised efforts drawing on local cultural, sporting, and educational resources may be used.

Additionally, more focused individualised disengagement efforts may also be needed when individuals or groups are positively identified as preparing to fight abroad or providing active support to extremist groups. Such interventions could include a mix of psychological, spiritual, vocational, or other social support. Communities are often at the front lines, undertaking grassroots efforts to challenge extremism and its negative impacts. Capacity development initiatives that provide civil society organisations access to expertise, training, and resources to boost their administrative and programmatic activities are thus critical to any CVE effort. EU projects that included CVE training for frontline development practitioners, as well as partner governments and civil society actors, have provided an innovative opportunity to develop more practical CVE cooperation. The EU-funded Strengthening Resilience to Violence and Extremism (STRIVE) programme, for example, is focussed on analysing drivers of violent extremism in the Horn of Africa, reducing violent extremism through targeted interventions and providing critical support to third country partners, including civil society actors. The EU's partnerships with nongovernmental and other actors, including the GCTF-inspired Global Community Engagement and Resilience Fund (GCERF), create important platforms to bring together all stakeholders and develop more contextually tailored initiatives.[5]

Resolution 2178 does not define the specific nature or objective of a CVE intervention, which is in fact the case for many government policies and frameworks. This is primarily because there is neither a clear typology for a violent extremist nor a clear and linear progression from expressed sympathy to actual support for violent extremism.[6]

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[5] See European Commission, "Instrument Contributing to Stability and Peace," http://ec.europa.eu/dgs/fpi/what-we-do/instrument_contributing_to_stability_and_peace_en.htm.
[6] See Will McCants and Clint Watts, "U.S. Strategy in Countering Violent Extremism: An Assessment," Foreign Policy Research Institute, December 2012, http://www.fpri.org/articles/2012/12/us-strategy-countering-violent-extremism-assessment; Will McCants, "Countering Violent Extremism, Pt.1: Definition," *Jihadica*, 24 February 2012, http://www.jihadica.com/countering-violent-extremism-pt-1-definition; and Alex Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review," International Centre for Counter-Terrorism, http://www.icct.nl/download/file/ICCT-Schmid-Radicalisation-De-Radicalisation-Counter-Radicalisation-March-2013.pdf.

Each intervention thus needs to be developed and implemented to suit the context and risk it is intended to address. People may be sympathetic to extremist groups without actively providing material or ideological support. Rather than focussing limited resources on broad campaigns that may not reach vulnerable audiences, it is important to develop a detailed risk and needs assessment, with specific emphasis on those individuals or groups actively supporting or recruiting extremists. In addition, there has been an emerging focus on the role of women in relation to ISIL and other extremist groups. Women have taken an increasingly prominent role in legitimising ISIL, and in inciting and incentivising others to join. Moreover, they are also reportedly responsible for monitoring other women on behalf of ISIL, in Ar-Raqqah, for example,[7] and there are concerns that they may be vulnerable to recruitment to carry out targeted attacks such as the recent incident at an Abu Dhabi shopping mall.[8] Terrorist groups such as Boko Haram also use women in more large-scale, offensive operations.[9] At the same time, women have played important roles in preventing radicalisation and foreign fighter travel, and in many communities mothers and women are at the forefront of discussions about youth radicalisation, rehabilitation, and reintegration efforts.[10] It is thus critical to ensure that a gender dimension is included in all phases of CVE programming, including design, implementation, and assessment. Clearly articulated objectives will also assist in more meaningful and effective evaluations and deepen understanding about what and how—or indeed if—countering violent extremism works.

Engaging Communities and Civil Society Actors

Resolution 2178 underlines the importance of involving nongovernmental actors in CVE efforts, encouraging

> 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 the conditions conducive to the spread of violent extremism, which can be

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[7] For more on women and ISIL, see Naureen Chowdhury Fink, "Counter-Terrorism Efforts Must Focus on Roles of Women," *Straits Times*, 19 September 2014, http://www.straitstimes.com/the-big-story/asia-report/opinion/story/counter-terrorism-efforts-must-focus-roles-women-20140919; Melissa Sim, "Behind the Veil of Foreign Jihadi Brides," *Sunday Times*, 14 September 2014, http://www.straitstimes.com/news/world/more-world-stories/story/behind-the-veil-foreign-jihadi-brides-20140914; and Ahmad al-Bahri, "In Raqqa, All-Female ISIS Brigade Cracks Down on Local Women," *Syria Deeply*, 15 July 2014, http://www.syriadeeply.org/articles/2014/07/5799/raqqa-all-female-isis-brigade-cracks-local-women.

[8] See "Abu Dhabi Stabbing Suspect Inspired by 'Terrorist Ideology' Found on the Internet," *Guardian*, 7 December 2014, http://www.theguardian.com/world/2014/dec/07/abu-dhabi-stabbing-suspect-internet-terrorist-ideology.

[9] See Nina Strochlic, "The New Face of Boko Haram's Terror: Teen Girls," *Daily Beast*, 13 December 2014, http://www.thedailybeast.com/articles/2014/12/13/the-new-face-of-boko-haram-s-terror-teen-girls.html.

[10] See Mark Gudmastad, "Countering Violent Extremism in Pakistan: Why Women Must Have a Role," Institute for Inclusive Security, 17 April 2014, http://www.inclusivesecurity.org/countering-violent-extremism-pakistan-women-must-role; Kristina London Couture, "A Gendered Approach to Countering Violent Extremism: Lessons Learned From Women in Peacebuilding and Conflict Prevention Applied Successfully in Bangladesh and Morocco," Brookings Institution Policy Paper, July 2014, http://www.brookings.edu/research/papers/2014/07/30-gender-conflict-prevention-countering-violent-extremism-couture; and Center for Human Rights and Global Justice, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* (New York: NYU School of Law, 2011), http://chrgj.org/documents/a-decade-lost-locating-gender-in-u-s-counter-terrorism.

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 to this kind of violent extremism and promoting social inclusion and cohesion.[11]

However, such engagement between governments and local communities, civil society actors, groups of citizens, and their community-based organisations does not simply happen overnight—especially in areas where violent extremism thrives. Several conditions need to be met to ensure success. First, engagement should be based on the principle of inclusion, inviting a broad range of individuals to participate. The greater the variety of "engaged actors," the more potential the engagement strategy has in terms of countering the threat of violent extremism within a society. Naturally, this variety will need to be managed, as it will complicate the process, and governments need to facilitate and safeguard an enabling environment for these communities and civil society actors in which to operate. Second, a shared notion of the threat should be the starting point and a common agenda to address it needs to be established through inclusive dialogue and multi-stakeholder interaction. Third, co-ownership is required on the different sides of the engagement continuum; one group cannot monopolise or instrumentalise the other. Instrumentalisation is an easy pitfall that will quickly end any engagement. Importantly, each partner needs to "earn" its license to operate—that is, it needs to acquire an appropriate track record, sufficient credibility, and adequate trust and respect within a broader group of people to deal with issues of violent extremism and foreign fighters. Most community-based groups have created these conditions by showing long-term commitment to specific groups or issues, being transparent and accountable in their goals and means, and having been proved to offer an effective alternative for people to deal with certain problems. Mistrust, vague commitments, unclear roles and responsibilities, a lack of transparency, and ineffectiveness will affect their credibility and impact drastically. Finally, it is important that all parties realise that preventing and countering violent extremism is a long-term effort that needs to be sustained even when things get difficult. Ad hoc initiatives are unlikely to have long-lasting impacts, and quick fixes are highly improbable.

The abovementioned conditions are often difficult to meet. The word "community" itself brings with it diffuse associations and definitions. Communities can be geographically defined groups or identity-based groups, formally organised or informal and unorganised in physical or virtual ways. People have multiple identities and they often belong to multiple communities. It is thus difficult to be sure that we are engaging with the most appropriate and effective communities to counter violent extremism. Furthermore, people who radicalise are in some cases not actively and/or physically part of their most immediate community. Due to perceptions of disrespect and injustice, they can quickly dissociate, as virtual networks give them ample opportunities for new engagements. At the same time, we have also witnessed very active community members—people with the skills to inspire and lead—radicalise. We must be able to

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[11] UN Security Council, S/RES/2178, 24 September 2014, para. 16.

engage on multiple levels, with nuanced understandings of communities and an appreciation of the diversity of identities, behaviours, and backgrounds.

Over the last decade, the negative impact of badly designed, interpreted, and/or implemented restrictive counterterrorism measures has become increasingly evident. A particular area of concern is in the realm of regulations relating to countering terrorism financing. Non-profit organisations are confronted with difficulties when transferring funds for their social and charitable work due to the low risk appetite of the banking sector to facilitate such transactions.[12] It is also becoming more difficult to actually cooperate with some of the communities that are best equipped to deal with radicalisation and violent extremism. This risk averseness of different segments of society—the public, the private sector, and civil society—is counterproductive; instead, more innovative and more risky engagements should be promoted to effectively prevent and counter violent extremism, as is for instance being attempted by GCERF. The zero tolerance doctrine, common in the counterterrorism domain, is almost impossible for local communities to maintain. While they can improve, they cannot be expected to be completely failure proof all the time—nor, for that matter, can governments. But sanctions on failure are too high and kill any appetite for risk. Many organisations have worked hard in recent years to minimise the negative side-effects of certain counterterrorism legislation and ensure that there is adequate space for constructive engagement, but there are fears that the lack of clarity and renewed repressive language in Resolution 2178 could undermine the achievements made thus far.

Although Resolution 2178 emphasises the importance of CVE and community engagement, it does not explicitly define or develop these concepts. There are no clear obligations or any accountability required of states and no UN entity is tasked with monitoring or supporting implementation efforts. This lack of clarity leaves room for different interpretations, some of which could provide a pretext for certain governments to introduce restrictive, disproportionate, and sometimes even counterproductive measures and regulations. Additionally, there are concerns in relation to some of the areas where the resolution is more concrete—for instance, in its calls for states to cooperate in efforts to disrupt and prevent financial support to FTFs. The next section will expand on these issues in greater detail.

As states move forward with the implementation of Resolution 2178, it is important that, instead of fully instrumentalising communities and civil society actors or only targeting them as the problem, they facilitate an open, inclusive space where different actors can work together toward a solution. Many local communities and organisations struggle with problems of incitement, radicalisation, and recruitment for terrorist activities from the inside and they should be empowered to take ownership and handle these problems on their own terms, within the boundaries of the law. Instrumentalising

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[12] See Ben Hayes, "Counter-Terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society," Transnational Institute/Statewatch, February 2012, http://www.tni.org/sites/www.tni.org/files/download/fatf_report-update_0.pdf.

or severely restricting them will only alienate them from their constituency and negate the purpose of engagement in the first place.

Resolution 2178's Domestic Legal and Criminal Justice Implications

In addition to the abovementioned consequences for CVE policy measures and the engagement of communities and civil society, the adoption of Resolution 2178 has several legal and criminal justice–related implications. The resolution in several of its operative paragraphs *decides* on certain measures:[13] since it is adopted under Chapter VII of the UN Charter, these clauses have binding force in conformity with article 25 of the Charter and could even override prior obligations pursuant to article 103.

In the resolution, member states are required to include in their legislation as serious crimes the travel or attempt to travel for the purpose of the planning or perpetration of terrorist acts, or the wilful provision or receipt of terrorist training, the provision or collection of funds to finance the travel of individuals to participate in these acts, and the wilful organisation or facilitation (including acts of recruitment) of the travel of individuals to participate in these activities (para. 6). Resolution 2178 also calls upon member states to require airlines to provide advance passenger information to the appropriate national authorities in order to detect the departure from, entry into, or transit through their territory of individuals previously identified as falling within the scope of the resolution (para. 9). States should furthermore prevent the movement and travel of terrorists through effective border control and close monitoring of the issuance of identity papers and travel documents (para. 2).

Additionally, the resolution urges member states to intensify and accelerate the exchange of operational information through bilateral and multilateral mechanisms, particularly with the United Nations (para. 3). However, it is unclear how the United Nations can facilitate the exchange of intelligence in an operational way, other than by offering technical assistance to member states to improve mechanisms within a rule of law framework and thereby facilitating the exchange of intelligence between states. Additionally, the Security Council will start blacklisting entities that support the activities of individuals on watchlists through communication technologies such as the Internet (para. 7). It is not clear whether this means that Internet providers and social media platforms such as Facebook and Twitter risk being blacklisted if they do not cooperate sufficiently.

Implementation of such measures in a national context might pose several challenges. An analysis of some national measures in response to the FTF threat (see below) shows the difference in interpretation and variations in implementation across countries even

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[13] Many have criticised this legislative character of Resolution 2178. See Bibi van Ginkel, "The New Security Council Resolution 2178 on Foreign Terrorist Fighters: A Missed Opportunity for a Holistic Approach," http://www.icct.nl/publications/icct-commentaries/the-new-security-council-resolution-2178-on-foreign-terrorist-fighters-a-missed-opportunity-for-a-holistic-approach; Scheinin, "Back to Post-9/11 Panic? Security Council Resolution on Foreign Terrorist Fighters"; Marko Milanovic, "UN Security Council Adopts Resolution 2178 on Foreign Terrorist Fighters," *EJIL Talk*, http://www.ejiltalk.org/un-security-council-adopts-resolution-2178-on-foreign-terrorist-fighters/#more-authors.

before the adoption of the resolution. One of the main criticisms of the resolution[14] relates to its broad scope. Although adopted in the context of the threat posed mainly by ISIL and al-Nusra in Syria and Iraq,[15] Resolution 2178 does not limit its scope to this conflict, but applies to any form of terrorism.[16] A delimitation related to the particular conflict, or to organisations that are otherwise blacklisted, would have diminished the danger of abuse that follows from such a broadly scoped resolution, like Resolution 1373 has shown in the past.[17] As mentioned before, Resolution 2178 furthermore lacks a definition of terrorism[18] and uses a rather opaque definition of FTFs (preambular par. 8), which could conflate terrorism and armed conflict governed by international humanitarian law (IHL). It has been argued that by including acts committed in connection to an armed conflict, the resolution renders "acts governed by IHL 'terrorist acts', without confining the term to acts prohibited by IHL."[19] On the other hand, one could also interpret this paragraph to mean that FTFs are defined as individuals with a certain terrorist purpose, whether they implement that purpose in peacetime countries or in the context of actual armed conflicts. That would mean that the "terrorist purpose" must always be present. That view would thus reject the argument that a person who commits an act in connection to an armed conflict as such (without a terrorist purpose) falls under the definition of FTFs. These opposing views show that there is definitely a lack of clarity in the definition, which could potentially cause problems for both legislation and adjudication.

In response to the threat that FTFs pose—both by contributing to external conflicts in, for example, Iraq and Syria as well as potentially executing a terrorist attack or recruiting more fighters after their return to their countries of citizenship or residence—many European states have already stepped up their policies to address this issue, ranging from prevention programmes to repressive measures and reintegration initiatives—even before the adoption of Resolution 2178. For the purpose of this policy brief, we highlight some recent examples from European states related to the revocation of residence permits, travel documents, or citizenship, and the criminalisation of travel

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[14] Ibid.

[15] In the preambular paragraph 12 of Resolution 2178, the Security Council recognises that the FTF threat *includes* individuals supporting acts or activities of al-Qaida.

[16] See preambular paragraph 1 of Resolution 2178.

[17] See Matthew Happold, "Security Council Resolution 1373 and the Constitution of the United Nations," *Leiden Journal of International Law* 16 (2003): p. 593; D.W. Bowett, "Judicial and Political Functions of the Security Council and the International Court of Justice" in *The Changing Constitution of the United Nations*, ed. H. Fox (London: British Institute for international and Comparative Law, 1997), pp. 79–80; Amnesty International, *The Backlash: Human Rights at Risk Throughout the World*, 4 October 2001, http://www.globalissues.org/article/263/amnesty-international-human-rights-backlash; Human Rights Watch, "Opportunism in the Face of Tragedy; Repression in the Name of Anti-Terrorism," http://www.hrw.org/legacy/campaigns/september11/opportunismwatch.htm.

[18] See n. 313 of the Geneva Academy Briefing No. 7, *Foreign Fighters under International Law*, October 2014, http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20breifs/ Foreign%20Fighters%20Under%20International%20Law%20Briefing%20no7.pdf; and Kai Ambos, "Our Terrorists, Your Terrorists? The United Nations Security Council Urges States to Combat 'Foreign Terrorist Fighters', but Does Not Define Terrorism," blog of the *European Journal of International Law*, 2 October 2014, http://www.ejiltalk.org/our-terrorists-your-terrorists-the-united-nations-security-council-urges-states-to-combat-foreign-terrorist-fighters-but-does-not-define-terrorism.

[19] "Foreign Fighters Under International Law," Academy Briefing No. 7, Geneva Academy, October 2014, p. 42.

for the purpose of joining terrorist organisations,[20] since these measures correspond with the obligations that follow from the resolution.

Measures related to the revocation of residence permits, travel documents, and citizenship

Under the realm of preventive measures—although with a rather repressive character—various governments have announced measures to revoke residence permits, travel documents, and even citizenship, in order to either stop individuals from travelling to conflict areas, prevent them from returning, or deport them to their country of origin. According to international law, however, one has to respect the prohibition on rendering individuals stateless after revoking their citizenship. Nationality is considered a fundamental human right, as it functions as a basic condition for the enjoyment of a wide range of other human rights.[21]

In the Netherlands, it is possible to revoke citizenship once an individual is convicted of terrorist offences (including recruitment for violent jihad), genocide, war crimes, or crimes against humanity. The respected precondition is that a person needs to possess dual nationality, as revocation of citizenship cannot lead to statelessness. In case an individual poses a threat to national security, it is also possible to revoke his or her residency permit, which can subsequently be followed by an exclusion order to impose an entry ban. Revoking passports is possible if there are good reasons to suspect that once a person has travelled abroad (for example, to Syria and Iraq), this individual will act in a way that threatens the security or other interests of the Netherlands or the security of friendly states. Finally, the Dutch government is also implementing measures to prevent the travel of minors to designated countries.

In Germany, passport laws allow for the confiscation of travel documents under certain circumstances. The authorities can prohibit German citizens from leaving the country if they are considered a threat to Germany's internal or external security, or to other significant interests. Since the adoption of Resolution 2178, initial steps have been taken by the interior minister to change the national identity card law to facilitate the revocation[22] of identity cards for suspected radical Islamic extremists and prevent them from travelling abroad. While this initiative appears to be in line with Resolution 2178 requirements for preventing the travel of FTFs, problems might arise if non-German

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[20] This information is largely based on a more elaborate paper by Edwin Bakker, Christophe Paulussen, and Eva Entenmann, *Dealing With European Foreign Fighters in Syria: Governance Challenges and Legal Implications*, December 2013, http://www.icct.nl/publications/icct-papers/dealing-with-european-foreign-fighters-in-syria-governance-challenges-and-legal-implications.

[21] See Christophe Paulussen and Laura van Waas, *UK Measures Rendering Terror Suspects Stateless: A Punishment More Primitive Than Torture*, 5 June 2014, http://www.icct.nl/publications/icct-commentaries/uk-measures-rendering-terror-suspects-stateless-a-punishment-more-primitive-than-torture.

[22] In addition to revocation of identity cards, substitution of these cards is also being considered. Since German law requires citizens to be able to identify themselves, current proposals envision that a government-issued identity card could be equipped with a blocking notice or be substituted with a replacement card. See Joint Declaration of the Federal and State Interior Ministers on 17 October 2014, http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Kurzmeldungen/gemeinsame-erkl%C3%A4rung.pdf?__blob=publicationFile.

citizens were prevented from leaving the country—a situation that is largely incompatible with the German Residence Act.

In the United Kingdom, a bill currently being deliberated would allow authorities to confiscate travel documents at the border for up to 30 days from individuals suspected of planning to leave the United Kingdom to engage in terrorism-related activities.[23] Furthermore, the new counterterrorism and security bill would create a statutory Temporary Exclusion Order, allowing authorities to "manage" the return of British citizens suspected of involvement in terrorism-related activities abroad. Some have argued that such a law might render these individuals de facto stateless while their return is managed,[24] a fear that was also strongly voiced in earlier attempts to introduce legal reforms.[25]

The Austrian parliament recently passed a law that enables residents with dual nationality to be stripped of their Austrian citizenship if they participate in armed conflicts.[26] In France, similar discussions have been taking place, with a bill passed by the Senate in autumn 2014 allowing the state to prevent citizens from leaving the country on very broad grounds, potentially violating their right to freedom of movement.[27]

On the other hand, a proposal to withdraw identity cards was rejected in Belgium because it was argued that such a measure would risk increasing the market for false and stolen identity cards.

Measures related to criminalising travel to join terrorist organisations and other measures

In 2013, a Belgian special task force established by the minister of interior tabled a proposal for the criminalisation of travel to Syria to join the fighting, but it was rejected by the core cabinet. The main arguments for the proposal's rejection were due to, among others, its limited deterrent effect, the fact that it would discourage families from reporting on their relatives, as well as expected evidentiary problems. In addition, it was argued that such a decision would not be in line with Belgium's political opposition to

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[23] Theresa May, "Speech on Counterterrorism," 24 November 2014, https://www.gov.uk/government/speeches/home-secretary-theresa-may-on-counter-terrorism.
[24] Great Britain, Home Affairs Committee, 2014, *Oral Evidence: Counter-Terrorism and Security Bill*, HC 838, 3 December 2014, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/counterterrorism-and-security-bill/oral/16038.pdf.
[25] For more information on the UK case, see Christophe Paulussen and Laura van Waas, "UK Measures Rendering Terror Suspects Stateless: A Punishment More Primitive Than Torture" *ICCT Commentary*, 5 June 2014, http://www.icct.nl/publications/icct-commentaries/uk-measures-rendering-terror-suspects-stateless-a-punishment-more-primitive-than-torture.
[26] See "Austrian Parliament Passes Anti-Terrorist Law," *Washington Post*, 11 December 2014, http://www.washingtonpost.com/world/europe/austrian-parliament-passes-anti-terrorist-law/2014/12/11/b99a0aa6-8111-11e4-b936-f3afab0155a7_story.html.
[27] French National Assembly, "Loi n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme," http://www.assemblee-nationale.fr/14/dossiers/dispositions_lutte_terrorisme.asp.

the Assad regime. The amended terrorism provisions of March 2013 do, however, criminalise taking part in, public incitement of, recruitment for, and providing training for the commission of terrorist activities.

France adopted a new counterterrorism law in 2012. The legislation made it possible to prosecute French citizens who return after having committed acts of terrorism abroad, or after training in terrorist camps with the intention of returning to France to commit terrorist attacks. Merely participating in a war is *not* a crime, however, and there is no law prohibiting travel to conflict regions in general. Yet, a new counterterrorism bill adopted in autumn 2014 prohibits travel abroad to take part in terrorist activities, war crimes, or in the theatres of operation of terrorist groups, and, while it does not criminalise these acts as such, it allows for the withdrawal of identification documents for up to two years (as described above) when an individual is suspected of such activities.[28] Moreover, the possibility exists to link individuals to blacklisted organisations and to criminalise links to those organisations.

Germany has, at the time of writing, not implemented any legislation that prohibits the travel of FTFs. German authorities make use of disruption measures when an individual is suspected to have travel plans for terrorist purposes. In general, German law includes the offences of terrorist acts, the preparations of these acts, support for and membership in, as well as training with a foreign terrorist organisation. In September 2014, Germany adopted new measures that criminalised the recruitment of jihadi fighters, the use of terrorism-related symbols including the ISIL flag, and incitement via different platforms, including social media.[29]

Like its continental counterparts, the United Kingdom faces the problem of distinguishing between those travelling for humanitarian reasons as opposed to those engaging in violent jihad. Individuals can be prosecuted for (preparation of) terrorist crimes, assisting in these activities, and participating in or providing terrorist training. For instance, four people were arrested in December 2014 on suspicion of fraud in relation to obtaining travel documents for potential FTFs. Furthermore, the United Kingdom is in discussions with France, Denmark, Belgium, Spain, Sweden, the Netherlands, and Ireland on ways to make it illegal to travel with the purpose of joining jihad, banning specific organisations, freezing bank accounts, countering incitement to violent extremism, and revoking social benefits.

In the Netherlands, the first conviction of a person who had travelled to Syria and returned was issued in early December 2014. The court found the suspect guilty of preparatory acts for murder with terrorist intent. He had also joined a jihadist group in Syria and participated in combat. After returning to the Netherlands, he had incited

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[28] Ibid., Art. 1er.
[29] Wendy Zeldin, "Germany: Prohibition of the Islamic State," *Library of Congress: Global Legal Monitor*, 31 October 2014, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404184_text.

others to commit terrorist acts.[30] In an earlier case, the court had also issued a conviction for the intention to travel to Syria to join jihad. Strictly speaking, however, this conviction specifically related to the preparatory acts for murder with the aim of travelling to Syria to participate in armed jihad against the regime of President Assad and to found an Islamic state. The latter constituted, in the opinion of the court, the terrorist context in which the crime was committed, but the court did not go so far as to convict the two suspects of a terrorist crime as such.[31]

While many of these national practices and legislative changes occurred prior to or independently of Resolution 2178, they show the wide variety of interpretations that western European countries alone have taken in relation to the perceived FTF threat. As alluded to above, the operative parts of the resolution, particularly with respect to restricting the movement and/or transit of suspected FTFs, could have serious implications for existing domestic legal frameworks. The legislative nature of the resolution means that states may need to adjust their national legislation to allow for compliance. Here it needs to be borne in mind that Resolution 2178 also calls for all action to comply with international law, including human rights, refugee law, and international humanitarian law.

Resolution 2178 and the EU's Foreign Security and Development Policy

As the previous sections have emphasised, governments across the world, including European member states, are faced with the complex challenge of implementing appropriate responses to the threat of foreign fighters participating in conflicts abroad and those returning home. Although emphasising the necessity of a comprehensive response that addresses the underlying factors conducive to violent extremism, Resolution 2178 unfortunately does not provide a concrete, inclusive set of policy tools and measures—specifically not in relation to CVE measures. Hence, states are given a considerable level of freedom in interpreting and implementing the resolution's obligations, which could provide a pretext for some to introduce highly restrictive, disproportionate, and sometimes even counterproductive measures and regulations.

It is thus vital that the EU—as an ideational, normative power—and its individual member states lead the way by introducing national policy measures and international assistance efforts that reflect these concerns. These measures should be shaped in such a way that they contain a clearly defined scope and definitions, as well as monitor and ensure compliance with international human rights and IHL obligations. With its criminal law and law enforcement-centric approach to counterterrorism and the importance placed on soft, preventive measures in its counterterrorism strategy, the EU is ideally placed to interpret and implement Resolution 2178 in a way that includes repressive measures on the one hand, and CVE and preventive interventions on the

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[30] See for more information (in Dutch) de Rechtspraak, *Syriëganger krijgt drie jaar gevangenisstraf*, 1 December 2014, http://www.rechtspraak.nl/Organisatie/Rechtbanken/Den-Haag/Nieuws/Pages/Syriëganger-krijgt-drie-jaar-gevangenisstraf.aspx.
[31] See for more information Christophe Paulussen, *The Syrian Foreign Fighters Problem: A Test Case From the Netherlands*, 2 December 2013, http://icct.nl/publications/icct-commentaries/the-syrian-foreign-fighters-problem-a-test-case-from-the-netherlands.

other. Importantly, both sets of approaches require strict human rights monitoring and adherence to the rule of law—some of the "softer" CVE measures might in fact turn out to be more intrusive and subject to abuse than the criminal justice responses.

Here, the EU can build upon the expertise of agencies such as Europol, Eurojust, and the Council's Counter-Terrorism Coordinator, which offer a breadth of experience in dealing with terrorists and FTFs with a mix of criminal justice responses, administrative sanctions, and CVE measures. The sharing of information, tools (for instance including joint investigation teams), and best practices among these organisations and with their national counterparts is the type of cooperation necessary to effectively combat the threat of violent extremism. Furthermore, the EU and many of its member states have a longstanding practice of engaging nongovernmental actors in CVE-relevant and CVE-specific programmes. This includes frontline practitioners, social workers, religious leaders, families, communities, and civil society organisations. It is vital that a clear distinction is made between those actors conducting CVE-specific activities, and others that do CVE-relevant work, not in the least because most in that latter category would not want to be associated with governmental CVE and counterterrorism policies. Moreover, civil society actors need to be engaged as genuine partners on a level playing field and with necessary autonomy and adequate room for manoeuvre—or they will lose their credibility and hence their effectiveness.

On the European level, many of these practitioners and civil society actors come together in the different thematic working groups of the Directorate General Home Affairs' Radicalisation Awareness Network (RAN) to share experiences, compare notes, identify good practices, and recognise new trends. This has led to valuable input for policymakers from the EU and its member states on a range of CVE issues, including on counternarratives, (community) policing, prison environment, and the role of the health sector. Moreover, it has brought forward good practices documents such as the 2013 *RAN Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration*,[32] which could prove inspirational beyond the European context.

As part of its foreign security and development policy and programming, the EU should incorporate attention to the FTF issue and Resolution 2178 into existing capacity-building and technical assistance instruments such as the EU's Instrument contributing to Stability and Peace (formerly the Instrument for Stability), the Strategic Framework for the Horn of Africa, and the Strategy for Security and Development in the Sahel. These programmes already place a strong emphasis on merging development and security agendas, incorporating both governmental and nongovernmental actors, and strengthening regional approaches and institutions. It is important to emphasise incorporation here: setting up fully separate and autonomous programmes and policies

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[32] "The RAN Declaration of Good Practices for Engagement With Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration," Radicalisation Awareness Network, http://www.icct.nl/download/file/RAN-Declaration-Good-Practices-for-Engagement-with-Foreign-Fighters.pdf.

to assist third countries in tackling the FTF threat run the risk of being inefficient and ineffective as a capacity-building method—they need to be embedded in more holistic and structural investments in the capacity of countries to deal with the issue of violent extremism and terrorism.

Furthermore, given the evident need for a better understanding of the phenomenon, the EU should continue to invest in country-specific analyses of the foreign fighters phenomenon, including the gathering of qualitative data (numbers, characteristics, communication lines, travel routes, and so on), as well as analysis of motivating factors, timelines, and other aspects. Each region, country, and individual requires a tailored approach to address (structural) drivers, motivations, contextual factors, and personal needs. The findings of these analyses would thus help to better tailor the promising practices and experiences in other states and those contained in the abovementioned RAN Declaration and GCTF's Hague-Marrakech Memorandum[33] to specific contextual needs and environmental drivers.

Building upon its own experiences, the EU could consider supporting regional practitioner networks for horizontal information sharing and early warning, following a setup similar to the RAN, in regions such as the Sahel, Horn of Africa, Central Asia, and Southeast Asia. Given the cross-border nature of the problem of terrorism in general and FTFs in particular, regional strategies and cooperation are necessary. The EU knows how to do this from a legal, border, and policing perspective, as well as in the radicalisation identification and prevention sphere. Furthermore, inspiring the creation of such regional practitioner networks would also facilitate essential space for civil society organisations and engage them actively in CVE policies and programmes.

Lastly, the EU should further enhance existing cooperation with other actors such as the United Nations, GCTF (including its new Working Group on FTFs), NATO, and the OSCE on countering the threat of FTFs and assisting in the appropriate implementation of Resolution 2178. It could leverage its position, for instance as co-chair of the GCTF Horn of Africa Region Capacity Building Working Group and as a board member of the GCERF, to promote an effective, balanced, and coordinated approach to the issue. One promising recent development, part of the EU's ongoing cooperation with the UN Office on Drugs and Crimes (UNODC), is the initiation of a five-year programme to assist countries in the MENA and Balkan regions in implementing the criminal justice sector measures described in Resolution 2178. However, as stressed above, it is important that this initiative is embedded in the larger (criminal justice and rule of law) capacity-building work that those two organisations are providing, to ensure that new FTF-related legislation and policies are not built upon weak foundations.

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[33] The GCTF Hague-Marrakech Memorandum, adopted in 2014, offers states a number of good practices and lessons learned relating to FTF rehabilitation and reintegration, CVE, and criminal justice and rule of law responses, "Foreign Terrorist Fighters (FTF) Initiative: The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon," Global Counterterrorism Forum (2014), https://www.thegctf.org/documents/10162/140201/14Sept19_The+Hague-Marrakech+FTF+Memorandum.pdf.

Conclusion

The unprecedented size and scope of the foreign fighters phenomenon seen today has taken many observers by surprise. Analysts, policymakers, and practitioners are now frantically seeking to gain knowledge about the backgrounds, motivations, and actions of foreign fighters and the (security) risks they present. The situation is complex, dynamic, global, and multidimensional. Though some progress is being made, there is still a lot more to be unearthed before we can draw convincing conclusions. Meanwhile, the international community has cobbled together a response in the face of a rapidly growing threat. Resolution 2178 is highly ambitious, calling on under-resourced states to take actions that will be institutionally challenging and difficult to implement without additional capacity. Furthermore, in several areas including countering violent extremism, the language of the resolution is vague, emphasising the need for concerted action on prevention, while the impact of past and ongoing CVE efforts have yet to be evaluated properly.

Manifestations of the FTF phenomenon are likely to increase over the coming years. As a consequence, policies and strategies would benefit immensely from:

1. More evidence-based research and analysis;
2. A better understanding of the drivers and motivations, including the interrelationships between the political, religious, cultural, psychological, and security dimensions at the local as well as regional and global levels;
3. A greater collaboration between governments and civil society actors, built on an inclusive, enabling environment and mutual trust between the different parties; and
4. Effective institutional arrangements that cut across traditional boundaries.

While it is important for the international community, including national governments, intergovernmental organisations, and civil society actors, to take action against the scourge of violent extremism in all its forms, in the end, the problem of foreign fighters necessitates a longer-term, sustainable, and principled approach. The tools we develop should be calibrated to adequately *prevent* as well as *respond to* the threat. Our response must also be carefully tailored to specific contexts and applied appropriately and proportionally. The EU and its member states will need to live up to that challenge at home, but also abroad with their support to third countries in their foreign security and development policy and programming. Given the nature of the problem, no one country can overcome the challenge of foreign fighters in isolation.

About the Organisations

The **Global Center on Cooperative Security (Global Center)** works with governments, international organisations, and civil society to develop and implement comprehensive and sustainable responses to complex international security challenges through collaborative policy research, context-sensitive programming, and capacity development. In cooperation with a global network of expert practitioners and partner organisations, the Global Center fosters stronger multilateral partnerships and convenes key stakeholders to support integrated and inclusive security policies across national, regional, and global levels. For further information, please see www.globalcenter.org.

The **Human Security Collective (HSC)** is a foundation with a strong background in development, conflict transformation and security. HSC connects local human security with global security, engages civil society with important security agendas on conflict prevention, counterterrorism and de-radicalisation. It enables governments to build meaningful and trustful engagement and partnership with civil society on security matters. For further information, please see www.hscollective.org.

The **International Centre for Counter-Terrorism – The Hague (ICCT)** is an independent think tank and knowledge hub that focuses on information creation, collation, and dissemination pertaining to the preventative and international legal aspects of counterterrorism. The ICCT's work focuses on themes at the intersection of preventing and countering violent extremism and human rights- and rule of law–related aspects of counterterrorism. For further information, please see www.icct.nl.