



BACKGROUND PAPER ON

**COUNTERING THE INCITEMENT AND RECRUITMENT OF
FOREIGN TERRORIST FIGHTERS:
THE HUMAN DIMENSION**

**2015 OSCE-wide Counter-Terrorism Expert Conference
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INTRODUCTION

The OSCE considers that efforts to counter security threats should be undertaken in all three OSCE dimensions of security: the politico-military dimension, the economic and environmental dimension and the human dimension. The OSCE regards the protection of human rights as an integral element of security and the OSCE participating States have in particular committed themselves to take measures to prevent and combat terrorism in compliance with all obligations under international law, including human rights law.¹ Such comprehensive and cross-dimensional approach provides the OSCE participating States with a comparative advantage to address security threats effectively, by linking the respect for human rights with their duty to ensure the security of individuals within their jurisdiction.

In December 2014, the OSCE participating States have reiterated such a pledge in the OSCE Ministerial Council Declaration on the OSCE role in Countering the Phenomenon of Foreign Terrorist Fighters in the Context of the Implementation of UN Security Council Resolutions 2170 (2014) and 2178 (2014) (hereafter the OSCE Declaration on foreign terrorist fighters).² This Declaration is part of strengthened international efforts to counter the threat that foreign terrorist fighters may pose. In its Resolution 2178 (2014), the UN Security Council has defined for the first time at the international level foreign terrorist fighters as “*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, including in connection with armed conflict*”.³ The phenomenon of foreign fighters is not new and previous examples may be traced back to the 1979 war in Afghanistan, the conflicts in Bosnia and Herzegovina or Chechnya. The phenomenon of foreign terrorist fighters has recently become of growing concern within the OSCE region with regard to the conflicts in Syria and Iraq. It remains however difficult, though crucial, to assess the threat posed by foreign terrorist fighters, in particular when returning to their countries of origin or a third country within the OSCE region. Research based on past foreign fighters experiences indicates that only a small minority may engage in terrorist activities upon their return.⁴

States’ responses to the phenomenon of foreign terrorist fighters and efforts to implement the legally-binding UN Security Council Resolution 2178 may raise some concerns as to their compliance with OSCE human dimension commitments and other international human rights standards. This paper has been prepared on the occasion of the 2015 OSCE-wide Counter-Terrorism Expert Conference to highlight the importance of the human dimension in countering the phenomenon of foreign terrorist fighters and potential human rights issues that may arise in this regard. It is not aimed at analyzing the phenomenon itself but rather at stressing key international human rights standards and OSCE commitments that should guide any measure to counter this security challenge with a particular focus on the prevention of incitement and recruitment of foreign terrorist fighters which will be the focus of the event.

¹See for example, the OSCE Bucharest Plan of Action for Combating Terrorism, MC.DOC/5/14, 4 December 2001 and the OSCE Consolidated Framework for the Fight Against Terrorism, PC.DEC/1063, 7 December 2012.

²OSCE Ministerial Council Declaration on the OSCE Role in Countering the Phenomenon of Foreign Terrorist Fighters in the Context of the Implementation of UN Security Council Resolutions 2170 (2014) and 2178 (2014), MC.DOC/5/14, 5 December 2014.

³UN Security Council Resolution 2178 (2014), S/RES/2178 (2014), 24 September 2014, operative paragraph 8. The same definition is used in the OSCE Declaration on foreign terrorist fighters, *ibid.*

⁴Thomas Hegghammer, “Should I Stay or Should I Go? Explaining Variation in Western Jihadists’ Choice Between Domestic and Foreign Fighting”, *American Political Science Review* 107, No. 1, 5 February 2013, 10.

THE HUMAN DIMENSION APPROACH TO COUNTERING THE PHENOMENON OF FOREIGN TERRORIST FIGHTERS

The UN Security Council Resolution 2178 obliges states to criminalize the travel or attempts to travel abroad for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training. States should also criminalize the wilful provision or collection of funds to finance the travel of individuals to participate in these acts and the wilful organization or other facilitation (including recruitment) of such travels.⁵

The Resolution reaffirms that states must comply with their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law when implementing counter-terrorism measures.⁶ In the OSCE Declaration on foreign terrorist fighters, the OSCE participating States have reiterated their long-standing commitment to counter terrorism in full respect of international human rights standards.⁷

Some observers have however pointed out the lack of legal safeguards in UN Security Council Resolution 2178, thus fearing that measures taken in its framework may infringe on human rights.⁸ Such concerns may to a certain extent apply to measures adopted in line with the OSCE Declaration on foreign terrorist fighters, which supports the implementation of the UN Security Council Resolution 2178 at the regional level. The rapid rise of individuals leaving the OSCE region as suspected foreign terrorist fighters as well as the security threat they may pose upon their return do not provide for an exception to the human rights-based approach to security and thus, to the respect of relevant OSCE human dimension commitments and OSCE participating States' obligations under international human rights law.

Throughout the years, the OSCE participating States have committed themselves to a comprehensive catalogue of human rights and democracy norms which reflect international human rights principles, as enshrined in international treaties and other standards, and form the basis of the human dimension of security. They have repeatedly reaffirmed the utmost importance of the human dimension in preventing and countering terrorism and have pledged to fully respect international law and human rights in the fight against terrorism.

These commitments are in line with the internationally-agreed approach that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing objectives. Such approach crucially places human rights and the rule of law at the very core of any comprehensive and effective responses to terrorism.⁹

States have legitimate reasons to respond to terrorism threats, including as part of their positive obligation to protect individuals within their jurisdiction. They also have the duty to

⁵ UNSCR 2178 (2014), *Op.cit.*, note 3, operative para. 6.

⁶ *Ibid*, operative para. 7.

⁷ OSCE Declaration on foreign terrorist fighters, *Op.cit.*, note 2, operative para. 5.

⁸ See for example, 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/>>

⁹ UN General Assembly, The United Nations Global Counter-Terrorism Strategy, Doc. A/RES/60/288, 20 September 2006, OSCE Consolidated Framework for the Fight Against Terrorism, *op.cit.*, note 1, para. 15.

respect human rights and should therefore ensure that counter-terrorism measures are consistent with international standards and OSCE commitments. Far from being hindrances, human rights are useful tools to prevent and counter the threat that foreign terrorist fighters may pose. By preventing such threat, states are fulfilling their obligations to protect the right to life, as well as other human rights, of individuals within their jurisdiction.¹⁰ By implementing human rights-compliant and gender-sensitive counter-terrorism measures, states also address the conditions conducive to terrorist radicalization, thus preventing the recruitment of individuals as foreign terrorist fighters and the growth of the terrorism phenomenon.

International human rights law has been devised to satisfy both security concerns and protect human dignity and the rule of law. It allows for the limitation of certain rights, thus offering states the necessary flexibility to address security challenges while complying – provided that a number of strict conditions are fulfilled – with their human rights obligations. Any interference with a right has to be prescribed by law, pursue a legitimate purpose and respect the principles of necessity, proportionality and non-discrimination. Certain rights, such as the absolute prohibition of torture and other forms of ill-treatment can however never be restricted and no exceptional circumstances whatsoever, including terrorism threats, may be invoked as a justification for their violation.¹¹

THE HUMAN DIMENSION APPROACH TO COUNTERING THE INCITEMENT AND RECRUITMENT OF FOREIGN TERRORIST FIGHTERS

The UN Security Council Resolution 2178 underscores that countering violent extremism and radicalization that lead to terrorism, including the recruitment and mobilization of individuals into terrorist groups, is an essential element to address the threat posed by foreign terrorist fighters. It encourages states to engage with relevant communities and non-governmental actors in developing strategies countering violent extremist narratives that can incite terrorist acts. Similarly, the OSCE Declaration on foreign terrorist fighters calls on the participating States to prevent the recruitment and incitement of foreign terrorist fighters by promoting public-private partnership with civil society, the media, the business community and industry.

The pathway towards terrorism radicalization is different from individual to individual and builds upon several contextual and personal factors, combined differently in each individual instance. However, some conditions conducive to terrorism have been identified as particularly pertinent at both the UN and OSCE levels and include for instance human rights violations, lack of rule of law as well as ethnic, national and religious discrimination.¹² Specific conditions may exacerbate the process of violent radicalization of women such as gender-based inequality and discrimination, violence against women or lack of opportunities for women to exercise their civil and political rights.¹³ Youth are also considered as particularly vulnerable to violent extremism and radicalization that lead to terrorism where they may be looking for a sense of recognition, fellowship and identity or support to address

¹⁰ International Covenant on Civil and Political Rights, Article 6.

¹¹ OSCE/ODIHR, *Countering Terrorism, Protecting Human Rights: A Manual*, 2007, p. 68-71.

¹² The United Nations Global Counter-Terrorism Strategy, *Op.cit.*, note 9, Plan of Action, Pillar I - Measures to address the conditions conducive to the spread of terrorism; OSCE Ministerial Statement on Supporting the United Nations Global Counter Terrorism Strategy, MC.DOC/3/07, 30 November 2007.

¹³ *Women and Terrorist Radicalization: Final Report*, OSCE, Vienna, 2013, <<http://www.osce.org/atu/99919?download=true>>

some of their needs and grievances.¹⁴ The Internet and social media platforms as well as influential leaders are some of the methods used to recruit potential foreign terrorist fighters and incite to terrorism-related acts. Protecting and respecting human rights are therefore ways to address some of the conditions conducive to terrorism and thus, contribute to the prevention of the recruitment of foreign terrorist fighters.

In some participating States, initiatives to prevent the incitement and recruitment of foreign terrorist fighters are based on the discriminatory understanding that particular segments of the population may be more inclined to become foreign terrorist fighters, based on discriminatory assumptions about e.g. race, ethnicity, nationality, religion and/or gender. The OSCE participating States have firmly rejected the identification of terrorism with any race, ethnicity, nationality or religion.¹⁵ Discriminating against and stigmatizing particular groups is counterproductive, resulting in further alienation and allowing terrorist groups to recruit new members.

There might be a tendency by some OSCE participating States to define “early signs of radicalization” that would help detect individuals on the path to violent extremism and radicalization that lead to terrorism and presumably facilitate the prevention of their recruitment as foreign terrorist fighters. However, defining such signs is practically difficult as there is no single pathway to terrorist radicalization and no single foreign terrorist fighter profile. None of these signs considered individually would be a necessary and sufficient proof of terrorist radicalization or recruitment as foreign terrorist fighter.

Relying on such signs is also problematic from a human rights perspective. The right to hold any ideology or belief – even if they are considered to be radical or extreme – as well as to peacefully express them, is a democratic requirement protected under international law and enshrined in OSCE commitments. Holding radical or extreme views is not a crime *per se* and should not be the object of law-enforcement measures unless associated with violence or another unlawful act such as resorting to, inciting or condoning criminal activity and/or violence, as legally defined in compliance with international human rights law. Freedom of expression as protected under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and OSCE commitments¹⁶ includes the freedom to seek, receive and impart information and ideas of all kinds through any mean of communication. Measures to counter incitement to terrorism as well as to monitor or block Internet websites may interfere with this freedom and any such interference should be defined by law, necessary, proportionate to the objective of protecting national security, the rights of others and public order as well as non-discriminatory. Human rights-compliant legislation criminalizing the incitement to terrorism should therefore be precise and not using vague terminology such as “extremism”, “glorifying” or “promoting” terrorism. Such legislation should refer to two elements of intent: the intent to communicate a message and the intent that this message incite the commission of a terrorism-related offence.¹⁷

¹⁴ *Youth Engagement to Counter Violent Extremism and Radicalization that Lead to Terrorism, Report on Findings and Recommendations*, OSCE, Vienna, 2013, < <http://www.osce.org/secretariat/103352>>

¹⁵ OSCE Consolidated Framework for the Fight against Terrorism, *Op.cit.*, note 1, operative paragraph 7.

¹⁶ OSCE Conference on the human dimension of the CSCE, Copenhagen Document, Copenhagen, 29 June 1990, OSCE Conference on Security and Co-operation in Europe, Decision No. VIII, “The Human Dimension”, Budapest, 5-6 December 1994.

¹⁷ United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Report to the UN Human Rights Council, 22 December 2010, A/HRC/16/51, para. 29-32.

The right to have or adopt a religion or belief of one's choice is absolute and can therefore not be infringed on. The right to manifest one's religion, as defined in Article 18 of the ICCPR and OSCE human dimension commitments,¹⁸ may be limited under the same conditions of legality, necessity, proportionality and non-discrimination mentioned above to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. National security however is not among the grounds that may justify restrictions on the right to manifest one's religion.¹⁹ OSCE participating States have firmly affirmed that terrorism should not and cannot be associated with any race, ethnicity, nationality or religion.²⁰ Therefore, any measures to counter the phenomenon of foreign terrorist fighters should not unduly restrict the freedom of religion or belief of one or more particular communities. Moreover, they should not be discriminatory for example by resorting to profiling, identification controls, stop-and-search or large-scale data-mining exercises²¹ based only or mainly on an individual's religion, race, ethnicity or nationality in order to identify or apprehend suspected foreign terrorist fighters.

Some OSCE participating States have put individuals suspected of planning to join a conflict abroad as foreign terrorist fighters under surveillance, used special investigation techniques,²² monitored the Internet, questioned and closely monitored returnees to assess the threat they may pose. They have often granted extended powers to intelligence and law enforcement agencies without strengthening procedural and legal safeguards. Such measures may restrict the right to privacy guaranteed under Article 17 of the ICCPR and OSCE commitments²³ which protects individuals from state's arbitrary and unlawful interference with their privacy, family, home and correspondence. They may also affect the freedom of opinion and expression, the freedom of peaceful assembly and the freedom of association. The freedom of religion or belief may also be infringed on where surveillance of religious institutions for instance is conducted on the basis of stereotypical assumptions that a person or a community from a certain religious background is more likely to become a foreign terrorist fighter, be a returnee and/or provide support to aspirant foreign terrorist fighters. Similarly, surveillance is discriminatory when solely based on religious, racial, ethnic, nationality or gender grounds without factual evidence of an individual's involvement in terrorist activities. Surveillance and the use of special investigation techniques may be a legitimate and human rights-compliant policing tool when targeted, case-specific, based on law, proportionate and justified on a reasonable suspicion that an individual might be involved in the planning,

¹⁸ OSCE Conference on Security and Co-operation in Europe, Final Act, "Questions Relating to Security in Europe: 1(a) Declaration on Principles Guiding Relations between Participating States – Principle VII", Helsinki, 1975; OSCE Conference on Security and Co-operation in Europe, Concluding Document, "Questions Relating to Security in Europe: Principles", Madrid, 6 September 1983; OSCE Conference on Security and Co-operation in Europe, "Questions Relating to Security in Europe: Principles", Vienna, 1989; OSCE Copenhagen Document, *op.cit.*, note 16; OSCE Budapest Document, *op.cit.*, note 16; OSCE Ministerial Council, Decision No. 4/03, "Tolerance and Non-discrimination", Maastricht, 2 December 2003.

¹⁹ Article 18(3), ICCPR; United Nations Human Rights Committee General Comment No. 22, the right to freedom of thought, conscience and religion (Art. 18), CCPR/C/21/Rev.1/Add.4, 27 September 1993, para. 8.

²⁰ OSCE Consolidated Framework for the Fight against Terrorism, *Op.cit.*, note 15.

²¹ Data-mining consists of searching personal data sets based on presumed characteristics of suspects, OSCE/ODIHR, *Human Rights in Counter-Terrorism Investigations: A Practical Manual For Law Enforcement Officers*, 2013, p. 7.

²² SITs are techniques used to gather information, such as electronic or other forms of surveillance and undercover operations, in such a way so as not to alert the target person(s) and for the purpose of detecting and investigating offences, Council of Europe Committee of Ministers, recommendation Rec(2005)10 on "special investigation techniques" in relation to serious crimes including acts of terrorism, Strasbourg, 20 April 2005, Chapter 1. See also OSCE/ODIHR, *Human Rights in Counter-Terrorism Investigations*, *ibid*, p. 9.

²³ OSCE Conference on the human dimension of the CSCE, Moscow Document, Moscow, 3 October 1991.

preparation or perpetration of a terrorism-related offence. However, less intrusive means which can achieve the same objective should be preferred. Surveillance methods should also be subjected to prior authorization, supervision and review by the judiciary or independent bodies and officers using such methods should be properly trained, including on human rights.²⁴ Unlawful or large-scale surveillance schemes are counter-productive as they impair the trust of targeted individuals and communities more broadly towards states' agencies. These individuals and communities may become reluctant to share information that would assist the state in its counter-terrorism efforts and the violation of their rights may push them towards violent extremism and radicalization that lead to terrorism.

Measures to prevent and disrupt the travel of individuals are beyond the scope of this background paper and will not be analyzed in detail. They may include for instance the suspension of travel documents, deprivation of nationality and prosecution of individuals who allegedly travel abroad to conduct terrorist acts, preparatory acts, being trained or recruit new members. Such measures may interfere with the right to a fair trial, protected under Article 14 of the ICCPR, freedom of movement enshrined in Article 12 of the ICCPR as well as the right to a nationality defined in the Universal Declaration of Human Rights (Article 15) and the European Convention of Nationality (Article 4).

Initiatives to engage with communities (including community policing), civil society organizations or families may be crucial to prevent the incitement and recruitment of foreign terrorist fighters. Possible benefits include a better understanding of the grievances faced by particular communities, the timely identification of critical situations and enhanced relations with individuals perceived as potential foreign terrorist fighters. Communities are often best placed to develop authentic and credible counter-narratives that take into consideration the local context and the challenges and possible feelings of isolation, deprivation and lack of prospects faced by their members. Women, youth and youth organizations may play a key role in this regard. Communities and civil society organizations are most often not counting the prevention of violent extremism and radicalization that lead to terrorism among their priorities, they are rather concerned by intolerance, inequalities, lack of access to social services for example, some of which may be drivers of terrorist radicalization. In order to be successful, any engagement should therefore be built on a proper understanding of a particular community and its concerns and should be aimed at addressing these grievances. Initiatives of engagement based on security objectives and framed from a counter-terrorism perspective only will lead to counterproductive effects. Engagement should also be guided by the principle that terrorism as well as violent extremism and radicalization that lead to terrorism should not be associated with any particular religion, race, ethnicity or nationality. As community policing aims at building trust with the public in order to be aware of and tackle issues of concerns for the communities, it may facilitate the sharing of information from the public. Intelligence may emerge in this framework but should be dealt with by specialized agencies. Indeed, community policing officers should not be purposefully tasked with gathering terrorism-related intelligence, for example about aspirant foreign terrorist fighters or returnees or evidence of criminal activities. Selective engagement with specific communities may create or reinforce a perception that these are "problem communities" that are more vulnerable to terrorism and may result in their stigmatization.²⁵ Trust building and transparency are key to successful engagement.

²⁴ OSCE/ODIHR, *Human Rights in Counter-Terrorism Investigations*, *Op.cit.*, note 21, Part I.

²⁵ For a comprehensive analysis on community policing in the anti-terrorism context, see OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community Policing Approach*, 2014.

CONCLUSION

The phenomenon of foreign terrorist fighters is of growing concern for the OSCE participating States and efforts are undertaken to effectively address this security challenge. While such efforts may be legitimate, they should however remain proportionate to the threat that foreign terrorist fighters may pose, in particular upon their return. A thorough assessment and analysis of this phenomenon and its implications is therefore crucial to develop and implement targeted, proportionate and human rights-compliant measures.

In view of the rapid rise of the phenomenon of foreign terrorist fighters, some OSCE participating States have adopted or may adopt reactive measures in line with the UN Security Council Resolution 2178 and the OSCE Declaration on foreign terrorist fighters. Such reactive measures should be designed not to endanger the protection of human rights and all efforts undertaken by the OSCE participating States to anchor the fight against terrorism in the respect for human rights, democracy and the rule of law.

The OSCE-wide Counter-Terrorism Expert Conference will facilitate discussions on ways to tackle the incitement and recruitment of foreign terrorist fighters. It provides the OSCE participating States with the opportunity to reaffirm the key role played by human rights and the rule of law to successfully combat terrorism. The protection of human rights is not only a matter of principle but also vital to the success of counter-terrorism measures and to achieve genuine security. It is at the foundation of the OSCE.

In accordance with its mandate, ODIHR stands ready to assist the OSCE participating States in responding to the phenomenon of foreign terrorist fighters in compliance with international human rights standards and OSCE commitments.