

**Security Council**

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Letter dated 7 November 2014 from the Chair of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I have the honour to submit herewith a preliminary analysis of the principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder their abilities to stem the flow of foreign terrorist fighters pursuant to Security Council resolution 2178 (2014) (see annex).

I should be grateful if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Raimonda **Murmokaitė**

Chair

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Preliminary analysis of the principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder their abilities to stem the flow of foreign terrorist fighters pursuant to Security Council resolution 2178 (2014)

I. Introduction

1. In resolution 2178 (2014), the Security Council addresses the threat posed by foreign terrorist fighters and requests the Counter-Terrorism Committee Executive Directorate to support the Counter-Terrorism Committee in three key areas:

- (a) Identification of gaps in Member States' implementation of Security Council resolutions 1373 (2001) and 1624 (2005);
- (b) Identification of good practices in States' implementation efforts;
- (c) Facilitation of the necessary technical assistance.

2. In an effort to address the first requirement, the Executive Directorate has prepared the following preliminary, non-State-specific analysis of the principal gaps that may affect the abilities of Member States to stem the flow of foreign terrorist fighters.

II. Gaps in legal and judicial frameworks

3. In its resolution 1373 (2001), the Security Council requests that States ensure that the financing, planning, preparation or perpetration of terrorist acts and support for terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such acts. In its resolution 2178 (2014), the Council requests that States ensure that they also have the necessary legal measures in place to criminalize the travel by foreign terrorist fighters to States other than their States of residence or nationality for the purpose of committing the terrorist acts mentioned above, as well as the providing or receiving of terrorist training, including in connection with armed conflict.

4. Pursuant to resolution 2178 (2014), States must determine whether their laws criminalize specific acts relating to foreign terrorist fighters in accordance with that resolution. The Executive Directorate's preliminary analysis indicates that, although many States have introduced, pursuant to resolution 1373 (2001), comprehensive legislation that could be transposed to meet the challenge of foreign terrorist fighters, others do not have adequate legislation in this respect. Some States do not yet adequately criminalize the broad range of preventive offences required by the resolution, and others have introduced overbroad legislation aimed at addressing preparatory acts related to foreign terrorist fighters. Moreover, some States lack legislation to address preparatory acts aimed at facilitating the travel of foreign terrorist fighters (such as those who provide equipment or financing for, or organize such travel). The Executive Directorate's ongoing assessment of States'

implementation of resolution 1373 (2001) provides a good indication of which States lack the legislation required in this regard.

5. On the positive side, some legal measures taken by States to implement resolution 1373 (2001) over the past decade can be used to address certain crimes committed by foreign terrorist fighters. For example, many States can now prosecute alleged terrorists, including foreign terrorist fighters, on the basis of the principle of nationality. However, some States do not adequately criminalize actions by individuals to leave their territories with the intention of joining terrorist groups abroad. Moreover, implementation of paragraph 6 of resolution 2178 (2014) means that States must adopt more precise definitions of offences relating to foreign terrorist fighters in national law, in order to ensure that enforcement action does not infringe on rights such as the rights to freedom of movement and freedom of conscience, which all Member States are obligated to uphold.

6. Some States do not criminalize travel by foreign terrorist fighters through their territories in transit for the purpose of committing terrorist acts in other States. In its resolution 1373 (2001), the Security Council requests that States deny safe haven to those who finance, plan, support or commit terrorist acts, or who provide safe havens. Although States have made considerable progress in this area, some may need to strengthen their abilities to stem the flow of foreign terrorist fighters moving through their territories.

7. Many States lack the capacity to ensure that individuals participating in activities relating to foreign terrorist fighters are brought to justice through effective prosecution, in accordance with resolutions 1373 (2001) and 2178 (2014). Bringing foreign terrorist fighters to justice poses significant practical challenges. The Committee's ongoing dialogue with Member States regarding their implementation of resolution 1373 (2001) has revealed difficulties in obtaining evidence from other countries (whether of origin, transit or destination) and has shown that few foreign terrorist fighters reveal their plans before leaving. Actions taken in isolation by terrorists acting alone make the gathering of evidence against such individuals more difficult and require the effective use of special investigative techniques that can lead investigators to Internet communications and other covert activities that have been undertaken to facilitate travel.

8. Gaps also exist in the area of effective international judicial cooperation. In its resolution 1373 (2001), the Security Council requests that States afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts. In its resolution 2178 (2014), the Council recalls this obligation and underlines the importance of its fulfilment with respect to investigations or proceedings involving foreign terrorist fighters. Experience has shown that foreign terrorist fighters will not necessarily return to their country of origin. The Executive Directorate's analysis has revealed useful information on the jurisdictional requirements of resolution 1373 (2001) in this area. Although much progress has been made since the adoption of resolution 1373 (2001), in some cases, the international infrastructure for judicial cooperation is still slow and ineffective. Reasons for this include lack of comprehensive arrangements and instruments for cooperation, inadequate capacity and training, outdated procedures that do not take account of new methods of evidence collection (in particular, special investigative techniques and electronic evidence), and lack of political will.

9. In the area of international judicial cooperation, gaps continue to exist in arrangements and mechanisms relating to extradition. Efforts by the Executive Directorate and other facilitators, including international and regional organizations, have helped to raise awareness of the strong foundation provided by the international counter-terrorism instruments for inter-State cooperation in the extradition of terrorist suspects. Nonetheless, the limited number of bilateral treaties on extradition between States of origin, transit and destination with respect to the movement of foreign terrorist fighters suggests that extradition is not always carried out in the expeditious manner required by resolution 2178 (2014).

10. The questions of recruitment (addressed in resolution 1373 (2001)) and incitement (addressed in resolution 1624 (2005)) are directly relevant to actions by States to address the threat of foreign terrorist fighters, given that messages are communicated to susceptible persons (often through the Internet and social media) with the intent of recruiting such individuals to become foreign terrorist fighters or inciting them to commit terrorist acts. Many States' legal and judicial frameworks continue to contain gaps that prevent them from taking effective action in this area, and additional efforts, including steps to strengthen international cooperation, will be required to implement these aspects of resolutions 1373 (2001) and 1624 (2005).

III. Gaps in law enforcement and border control measures

11. Important gaps of relevance to the threat of foreign terrorist fighters also exist in the areas of law enforcement and border control, which are addressed by resolutions 1373 (2001) and 1624 (2005). Regarding law enforcement, in resolution 1373 (2001), the Security Council requests that States take the necessary steps to prevent the commission of terrorist acts. Law enforcement agencies have a number of means at their disposal to accomplish this goal, including establishing a counter-terrorism strategy with a law enforcement component, supported by a centralized investigative structure and information-sharing among competent law enforcement agencies. Another means is the effective use of special investigative techniques, within a human rights and rule of law framework. As already noted, incitement and recruitment of foreign terrorist fighters often take place through social media platforms, the Internet and related communications technologies. However, many States lack adequate capacities to monitor these communications through special investigative techniques and other lawful methods in implementing the "prevention" aspect of resolution 1373 (2001).

12. Effective implementation of community policing programmes is another area in which some States lack adequate capacities. The prevention of terrorist acts (including acts relating to foreign terrorist fighters) established in resolution 1373 (2001) could be facilitated through reliance on such programmes, which help to bring together law enforcement agencies and local communities to detect and prevent terrorist activities in an atmosphere of mutual trust. The Committee's assessments have shown the existence of good practices in some States in implementing community policing programmes but significant gaps remain in other States.

13. Gaps also exist in the international exchange of information by Member States' law enforcement and intelligence agencies aimed at preventing the commission of terrorist acts and bringing terrorists, including foreign terrorist

fighters, to justice. In resolution 1373 (2001), the Security Council requests that States take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information. It further calls upon States to find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks. This form of information exchange can be vital to countering the threat of foreign terrorist fighters and needs to be enhanced.

14. Major gaps also exist in States' implementation of the border control requirements of resolutions 1373 (2001) and 1624 (2005). This presents additional obstacles to the effective implementation of resolution 2178 (2014). In resolution 1373 (2001), the Security Council requests that States prevent the movement of terrorists or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents. Many States still lack effective mechanisms for implementing these requirements. Such mechanisms include clear policies and measures to ensure the security and integrity of the identity and travel document issuance process and control measures at airports and other border crossings designed to ensure the effective screening of travellers. Such measures include risk analysis; access to or strengthened use of advance passenger information; assessment of travel patterns and verification against national alert lists; and adequate training of front-line officers and equipment.

15. Many States are either inadequately connected to, or do not fully exploit, the databases of the International Criminal Police Organization (INTERPOL), including its database on stolen and lost travel documents. In many States, communication between the INTERPOL National Central Bureau and remote border outposts is insufficient. Other persistent shortfalls include lack of information exchange among States and the lack of lawful and appropriate administrative measures preventing travel by foreign terrorist fighters. These gaps increase the risk that foreign terrorist fighters will continue to move with relative ease between States for the purpose of committing terrorist acts abroad.

16. Lastly, the porous and lengthy nature of many land borders (including those of States most affected by the foreign terrorist fighter phenomenon) and the lack of necessary equipment and professionally trained border control personnel also continue to increase States' vulnerabilities.

IV. Gaps in counter-financing of terrorism measures

17. Continued gaps in States' implementation of their obligations in the area of the counter-financing of terrorism pursuant to resolution 1373 (2001) will hinder effective implementation of resolution 2178 (2014). Some States have yet to ensure that their legal frameworks include criminalization of terrorist financing and thus ensure that they can bring the financiers of foreign terrorist fighters to justice. Some States have yet to establish mechanisms for the freezing of terrorist assets without delay in order to prevent and disrupt related financial flows. Many States still lack the ability to effectively identify and prevent the illicit cross-border movement of cash (which is one of the main methods used to finance terrorism, including the activities of foreign terrorist fighters), to regulate alternative remittances, and to

prevent the abuse of charities and non-profit organizations for the purpose of terrorist financing.

18. Although many States have made important progress in implementing these elements of resolution 1373 (2001), challenges remain. Not all States criminalize the use of licit funds in the financing of terrorism, focusing instead on the use of “proceeds of crime” laws. In some cases, relevant laws are applicable only to individuals, excluding organizations. Some national laws do not provide for the freezing of assets without delay as a preventive measure or lack established designation processes, and some States lack due process safeguards in freezing and designation procedures.

19. With respect to measures for regulating alternative remittances and preventing abuse of the non-profit organization sector, many States still face challenges in putting in place effective risk-based controls. Few States have conducted reviews of their non-profit organization sectors with respect to terrorist financing. This leaves their non-profit organization sectors underregulated and vulnerable to abuse by foreign terrorist fighters. Conversely, overregulation in some States could lead to “underground” or informal donations and fundraising, which may go undetected by the authorities. Moreover, financial institutions with an international presence and little appetite for risk may seek to comply with anti-money-laundering/counter-financing of terrorism standards by closing the accounts of legitimate charities. This may encourage increased movements of cash and non-official flows of humanitarian assistance, sometimes in the form of makeshift “humanitarian convoys”. Few States work actively with either the private sector or the non-profit organization sector to provide guidance on how to protect financial flows derived from charitable giving while ensuring that such flows are not diverted to terrorist organizations. In many States, there is inadequate interaction between Government, the formal financial sector and alternative remittance operators. In consequence, early warning signs from informal operators, including with respect to foreign terrorist fighters, may not come to the attention of oversight agencies.

20. In some States, law enforcement authorities lack the necessary knowledge and capacity to conduct effective financial investigations that can effectively track and disrupt illicit international financial flows and identify and prevent the activities of those that fund terrorism. Some States do not take adequate measures to detect and prevent the illicit physical cross-border transportation of cash. Moreover, the information generated by such measures in many States is not accessed, verified and analysed by the competent authorities to identify frequent travellers, links between travellers or other evidence. Perhaps the most critical gap in States’ ability to prevent and disrupt the financing of foreign terrorist fighters is the inadequate sharing of comprehensive, useful and timely financial information by domestic law enforcement and intelligence partners or by national agencies and their international counterparts.

V. Gaps in countering violent extremism

21. One of the most novel aspects of Security Council resolution 2178 (2014) is its emphasis on the importance of countering violent extremism. This is also of relevance in the context of resolution 1624 (2005), in which the Council calls on States to prohibit and prevent incitement to commit acts of terrorism and to counter

incitement motivated by extremism and intolerance. In both resolutions, the Council requests that States take action to confront the extremist ideas that underlie terrorist and violent extremist action through law enforcement measures, where appropriate, as well as through other policies aimed at delegitimizing the terrorist narrative within a human rights and rule of law framework.

22. Awareness of the role of countering violent extremism in successful counter-terrorism strategies has grown considerably in recent years. However, significant gaps remain in State practice. Some States have not yet taken adequate steps to initiate community policing and community engagement programmes or to develop strategies for effectively conveying counter-messages. There are also gaps in States' efforts to counter the use of information and communications technologies, including the Internet, by terrorists and their supporters to incite terrorist acts and encourage support and sympathy for terrorist groups.

23. States do not yet provide sufficient support for programmes to strengthen peace education and education in intercultural understanding, initiatives to strengthen dialogue among civilizations or, as called for by the Security Council in resolution 2178 (2014), initiatives to address conditions conducive to the spread of violent extremism, including by empowering youth, families, women, religious, cultural and education leaders, and other relevant civil society groups. Effective implementation of resolutions 1624 (2005) and 2178 (2014) could further be enhanced by strengthening efforts to develop, in accordance with resolution 2178 (2014), "non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicalization to terrorism". In these and other areas relating to countering violent extremism, significant gaps in State practice hinder States' capacities to stem the flow of foreign terrorist fighters.

24. One particular gap in many States is the lack of effective strategies and programmes for the rehabilitation and reintegration of returning foreign terrorist fighters. The development of such strategies and programmes is a specific requirement of resolution 2178 (2014), in which the Security Council also requests that States adopt prosecutorial strategies to hold foreign terrorist fighters accountable for terrorist acts, while also assessing whether alternative means exist to better facilitate their rehabilitation and reintegration.

VI. Gaps in compliance with human rights obligations and the rule of law

25. There continue to be significant gaps in States' efforts to ensure compliance with human rights and rule of law obligations in the context of counter-terrorism measures taken to implement resolutions 1373 (2001) and 1624 (2005). This may foreshadow similar gaps in the implementation of resolution 2178 (2014). The Security Council has repeatedly declared that counter-terrorism measures taken by States must comply with their obligations under international law, including international human rights law, international refugee law and international humanitarian law. In the preamble to its resolution 2178 (2014), the Council further notes that failure by States to comply with human rights and rule of law obligations contributes to increased radicalization, which may in turn result in increased criminal activity by foreign terrorist fighters.

26. The findings of United Nations human rights mechanisms make clear that significant gaps still exist in States' compliance with their obligations under international law within the framework of counter-terrorism. Some States' counter-terrorism laws lack the clarity and precision required to ensure that such laws are not used in violation of the rights to freedom of expression, opinion, belief or association.

27. Many States fail to ensure fair treatment and due process for persons accused of terrorist offences, to protect the right to freedom from discrimination or to ensure respect for personal integrity and freedom from torture and ill treatment for terrorism suspects. The gravity of the terrorist threat has prompted many States to introduce strong measures, sometimes in haste and without adequate oversight or protective mechanisms. Many States implement counter-terrorism measures without taking their human rights obligations fully into account. This can increase radicalization and serve as a condition conducive to the spread of terrorism. States will therefore need to address gaps in their compliance with human rights obligations in order to limit radicalization and help to stem the flow of foreign terrorist fighters across international borders.

28. Serious gaps also remain in connection with refugee flows and compliance with international refugee law and relevant provisions of resolutions 1373 (2001), 1624 (2005) and 2178 (2014). Conflicts in States affected by the foreign terrorist fighter threat have brought large movements of refugees and asylum seekers across borders. The number of internally displaced persons is also growing rapidly. Some States in affected regions lack effective mechanisms to manage these complex situations and face major challenges in identifying and protecting refugees while also preventing entry into their territories by individuals involved in terrorist acts, as required by international law, including the relevant Security Council resolutions.
