

Counter-Terrorism: Vote on Draft Resolution*

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What's In Blue

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Tomorrow afternoon (31 August), the Security Council president (Indonesia) is expected to announce the result of the voting on a draft resolution on the prosecution, rehabilitation and reintegration (PRR) of foreign terrorist fighters (FTFs), initiated by Indonesia.

Counter-terrorism is one of Indonesia's priorities during its 2019-2020 term on the Council. On 12 November 2019, Belgium and Indonesia co-hosted an Arria-formula meeting focused on addressing the risk of terrorist radicalisation in prison and promoting the rehabilitation of prisoners and their reintegration into society.

The negotiations were difficult. Two permanent members, Russia and the US, have expressed their disappointment with the lack of a direct reference to the "repatriation" of FTFs and their families, as described below. If the resolution is adopted, there are likely to be abstentions.

It seems that the first draft of the resolution was circulated by Indonesia on 21 July and the first meeting of Council members on the draft took place on 24 July. Several rounds of negotiations over a number of drafts took place. On 20 August, Indonesia put the draft resolution under silence until the next day. Silence was broken by Russia. An amended version of the draft was placed under silence on 24 August until 25 August. Silence was broken by the US. Indonesia then put another draft under silence on 26 August, with the US again breaking silence. On 28 August, Indonesia decided to put the 26 August version of its draft resolution in blue and voting started the same day, to be concluded tomorrow at 2pm.

Counter-terrorism generally enjoys the support of all Council members, and related resolutions have been adopted unanimously for years. It appears that no Council member was opposed to having a resolution on PRR of FTFs. However, it also seems that some Council members, as well as stakeholders outside of the Council, questioned the added value of such a resolution. By way of example, resolution 2396 of 21 December 2017 on FTFs has a dedicated section on PRR strategies. Civil society representatives also had a number of substantive concerns.

The Draft Resolution

In its preambular part, the draft resolution recalls the Council's past resolutions on counter-terrorism, including the recognition of the threat posed by FTFs and adds that they "are using their terrorist ideology to recruit and radicalize to terrorism". It is mostly based on agreed language from previous resolutions, especially resolution 2178 of 24 September 2014 and resolution 2396, both on foreign terrorist fighters. The draft

emphasises the dangers of prisons and detention as a possible space for the recruitment of terrorists but points out that post-release programmes might provide opportunities for rehabilitation and reintegration, acknowledging the different needs of the beneficiaries in that regard. It also references resolution 2242 of 13 October 2015 on women, peace and security, which recognises the differential impact of terrorism on women and girls. The draft further recognises “the important roles played by women in preventing and countering terrorism and violent extremism conducive to terrorism”.

The operative part of the draft resolution repeats a number of measures regarding prosecution, rehabilitation and reintegration as laid out in resolution 2396. The Council reemphasises “that women associated with FTFs returning or relocating to and from conflict may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts.” The draft therefore argues that they “may require special focus when developing tailored prosecution, rehabilitation and reintegration measures.”

An element of resolution 2396 not incorporated in the current draft resolution is language that “stresses the importance of assisting women [...] associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities”. Stakeholders outside the Council had raised concerns regarding that omission, arguing that women can have different statuses in the context of terrorism. They can be victims, or even victims who later become perpetrators.

Drawing from resolution 2396, the draft in blue asks for PRR measures to include “long-term methods to counter violent extremism conducive to terrorism, and incitement to commit terrorist acts”. The measures should take into account a variety of factors, including overlapping roles of the individual concerned, public interest and what crime was committed. A whole of government and whole of society approach is encouraged as well in the draft. The draft further urges states to support women’s leadership in that regard.

The Council addresses the challenges and opportunities related to prisons also in the operative part and includes measures states can take to avoid radicalisation and recruitment. It encourages states to create a continuum between prison, rehabilitation and reintegration programs and requests UN entities’ support in that regard. The Council also calls upon states to include such programs in counter-terrorism measures.

The draft resolution further “directs the CTC [Counter-Terrorism Committee] with the support of the CTED [Counter-Terrorism Committee Executive Directorate] and in coordination with other relevant UN entities” to collect information on member states implementation of PRR measures in order to identify good practices and gaps. It also requests the CTED to integrate such considerations into its country assessments in order to identify trends and directs it to hold an open briefing by the end of December 2021 on the issue.

Negotiations

When Russia broke the first silence procedure initiated by Indonesia, its concerns related to language introduced by the US during the negotiations regarding evidence collected by the military, or “battlefield evidence”. The US’ suggestions included measures such as the development of domestic legal frameworks in order for such evidence to be admissible in court. Russia maintained such proposals were too prescriptive for member states. The draft in blue avoids the terms military or battlefield evidence and reverts back to language from resolution 2396, referring to “information and evidence obtained in conflict zones” in order to prosecute FTFs. It also notes “the importance of clear legal authorities, regulations and practices for the collection, sharing, and use of this type of evidence in national courts, in full respect for fair trial guarantees of the accused”. It seems that the initial proposal on military evidence was not accompanied by language on the right to a fair trial, raising concerns with human rights advocacy organisations.

It appears that the sharpest division among members throughout the negotiation process related to the question of the repatriation of FTFs. On one side, the European countries on the Council made clear that including the word “repatriation” in the draft resolution was a red line for them. On the other side, Russia and the US maintained that it was essential to include the issue of repatriation in the draft resolution. On 24 August, Council members held an open VTC on the Secretary-General’s 11th biannual strategic-level report (S/2020/774) on the threat posed by the Islamic State in Iraq and the Levant (ISIL or Da’esh). Acknowledging the multifaceted challenges states are facing with regard to repatriation, the Secretary-General urged states to repatriate their citizens, in line with international law, including international human rights law, humanitarian law and refugee law. In his statement, Russian Ambassador Vassily Nebenzia emphasised the importance of repatriating FTFs and their family members, and stated that “this is the battle that some of our colleagues, including in the Council, decided to withdraw from”. He further said that “any resolution of the Council” on counter-terrorism “cannot fail to recognize this problem”.

In a similar vein, US Ambassador Kelly Craft stressed the need for countries to repatriate their citizens. Craft said that it was disappointing that Council members had “stymied” Indonesia’s efforts. She asked if members would address the situation of FTFs in Iraq and Syria or dismiss this “grave threat to international peace and security”. She further compared the refusal to address this issue with the lack of support for the US-sponsored draft resolution on the Iran arms embargo, which failed to be adopted on 14 August having obtained only two affirmative votes (Dominican Republic and the US).

The draft in blue does not include the word “repatriation” and uses agreed language from previous resolutions instead, referring to the “return” of FTFs.

The issue of states stripping FTFs who are their citizens of their nationality is addressed in the draft in blue. It calls “upon all Member States to refrain from depriving a person alleged to have committed terrorist acts of his/her nationality, if such deprivation would render him/her stateless, consistent with applicable domestic and international law”. In his 11th biannual strategic-level report, the Secretary-General emphasises that actions and policies resulting in statelessness should be avoided. Stripping suspected FTFs of their nationality has been done or contemplated by some countries, including countries on the

Council. Some concerns were raised during the negotiations as this language still gives states the possibility of stripping their citizens of their nationality if the person concerned has double citizenship.

Another matter of concern for some Council members—as well as for civil society advocates— which is addressed in the draft in blue was the welfare of children associated with FTFs, especially the view that they should be treated as victims first. The Secretary-General's 11th biannual strategic-level report shows heightened concern about the fate of children associated with ISIL. He emphasises that their voluntary repatriation, protection and rehabilitation should be a matter of priority, and lays out the UN's engagement and assistance in that regard. He further underlines that children, no matter their role or affiliation, have to be treated in accordance with a state's obligations under international law, including prosecution under internationally recognised juvenile justice standards and detention as a last resort and for as short a time as possible. The report draws attention to a lack of reintegration and rehabilitation programs for children associated with terrorist groups. The draft resolution in blue addresses this issue in various parts, mostly drawing on language from resolution 2396, including the children's "possible status of victims of terrorism". Drawing on language from resolution 2178, the draft encourages states to cooperate in the prevention of radicalisation and recruitment, including of accompanying children. Cooperation in that case also includes "facilitating the return of the children to their countries of origin, as appropriate and on a case by case basis."

Post-script (31 August 2020): The draft resolution failed to be adopted because of a US veto. The 14 other Council members voted in favour of the draft.

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