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Preparation Paper/Study Guide:

Security Council: Counter-Terrorism Committee (CTC)

"Foreign Terrorist Fighters - Threats to International Peace and Security Caused by Terrorist Acts"

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Introduction

This Committee has to deal with the complicated issue of Foreign Fighters, often very young persons who leave their homelands to fight side by side with radical groups in foreign countries. In this briefing we attempt to give you a brief overview of what questions are awaiting you behind the doors of the United Nations Centre in Vienna.

This study guide should provide you with the very basics of the issue at hand. It will firstly elaborate upon the committee itself, its history, foundation, membership and other information. Furthermore we will look closely on the Foreign Fighters - Threats to International Peace and Security Caused by Terrorist Acts". This material works best if paired with good background knowledge of terrorism, accompanied by diligent study of the documents listed in the Further Reading section.

Counter Terrorism Committee: primary responsibilities and goals of the committee; short history of the committee; membership; functions; working methods

At the time of its instalment in San Francisco on 24 October 1945, the Security Council (UNSC) was made up of eleven of the initially 51 Member States of the United Nations, five of which were the so-called Permanent Members (the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America). The Permanent Members have until today the power to veto an Resolution, since without their consent, no UNSC Resolution can pass. With the development of time the size of the Council was in 1963 raised to 15 members, 10 being elected every two years.

According to Chapter five to seven of the Charter of the United Nations the Security Council has the primary responsibility to ensure the maintenance of international peace and security (UN Charter 1945). Its Resolutions are, in comparison to the ones passed by the General Assembly, legally binding. All Member States of the United Nations are obliged to adopt these decisions, comply to them and carry them out.

Especially after the terror attacks of 9/11 in 2001 the Security Council has expanded its efforts to impose sanctions against named terrorists and terrorist organisations. In the aftermath of the 9/11 attacks the Counter-Terrorism Committee (CTC) was established with Resolution 1373 (2001) and its progeny (1624 (2005). This Resolution, together with Resolution 1540, which purport "to bind all states subjects to no geographic or temporal limitation", is also said to constitute a "legislative" or even "constitutional" turn for the Security Council, from being a collective enforcer of peace to being a global lawmaker¹.

The Counter-Terrorism Committee was initially established with the idea to strengthen the ability of the UN member states to to prevent terrorist acts both within their borders and across regions (UN CTC). It comprises all 15 Security Council members, and was especially tasked with the monitoring implementation of Resolution 1373 (2001), which requested countries to implement several measures like the criminalisation of the financing of terrorism, freezing of any funds related to persons involved in acts of terrorism, etc.

Under Resolution 1535 (2004) the Security Council, furthermore, established the Counter-Terrorism Committee Executive Directorate (CTED), which carries out policy decisions, conducts expert assessments of each Member State and supports countries with counter-terrorism technical assistance. The current Director of the CTED since July 2013 is Jean-Paul Laborde of France. CTED comprises 40 staff member, mainly legal experts tasked to analyse reports submitted by States on the topics of legislative drafting, the financing of terrorism, border and customs controls, police and law enforcement, refugee and migration law, arms trafficking and maritime and transportation security. The Directorate also has a senior human rights officer.

CTC's and CTED's work, furthermore, entails country visits at their request in order to monitor progress, evaluate the technical assistance needed to properly implement Resolution 1373 (2001), country reports, the encouragement of countries to apply known best practices, and the organisation of several special meeting to strengthen worldwide coordination.

Rather interesting here is the fact the CTC's work is heavily criticised for being mainly lead by experts not chosen on the basis of a need to represent all regions, cultures, religions of the world or their scholarly qualifications in international law. Also, CTC's operations are not exactly praised for their lack of concern for

¹ Alvarez, J. E. 2003: Hegemonic International Law Revisited. American Journal of International Law. October, 2003. p. 3

Human Rights as well as their secrecy, making assessments quite difficult. A once branded terrorist before the world bear the burden of proof before political bodies should they want to lift freeze orders on their property comparable to those imposed under the criminal law.²

Above all, the dossiers on those subject to financial sanctions are not made public. "Indeed, it is not clear either how much information other members of the 1267 Sanctions Committee are entitled to demand or whether they even ask for much information [...]" This criticism applies thoroughly on the work of the CTC, notwithstanding in the approach towards the topic at hand.

A UN monitoring group, established with the Council Resolution 1363, complained in its second report from 19 September 2002, that the 1267 sanctions committee listed individuals without sufficient information, failed to respond quickly to inquiries, had not clarified its procedures for submitting names or for verifying information about persons on the list, lacked guidelines for listing and de-listing, and operated without sufficient transparency to permit adequate assessment.

Foreign Terrorist Fighters - Threats to International Peace and Security Caused by Terrorist Acts

Foreign terrorist fighters shall be defined 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" by the Security Council Resolution 2178 (2014), which is so far the demonstration of the biggest efforts made by the international community to combat this dangerous phenomenon. Indeed, the continuous endeavour of the Member States of the United Nations to promote world peace and security might be thoroughly endangered or undermined by the fact, that their own citizens, often young people, come from all States, both totalitarian and liberal, rich or poor, to fight side by side with world's most feared terrorists.

Terrorism

The topic at hand is enormously tightly connected with the overall issue of international terrorism. One of the most contentious issues especially since 9/11 has been the issue of the seemingly frequent on-going happenings of terroristic acts, threatening international peace and security all around the globe. Thus the history of terrorism creates an essential grounds to understand the point of the agenda.

In the aftermath of these attacks in New York – only 17 days later - the Security Council passed Resolution 1373 (2001) as one of the first means to properly address this rather difficult international issue. This Resolution distinctly demands that states criminalize under their domestic law the "wilful provision or collection [...] of funds by nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;" It further decides that funds or other financial assets or economic resources meant to be used for terrorist acts should be freezed. The member states are to "[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens:"

Resolution 1267, furthermore, first imposed sanctions on persons identified by the Council as members of or contributors to Al Qaeda. It created procedures by which individuals or organisations believed to be associated with Al Qaeda or Taliban anywhere in the world can be denied access to their bank accounts or the right to travel overseas. The committee's procedures require an appeal to the state that initially listed the individual and that state can demand any relevant information and block any attempted de-listing.

Since 2006 the United Nations effort to counter terrorism has been guided by the United Nations Global Counter-Terrorism Strategy. This strategy in the form of a Resolution and an annexed Plan of Action has been a unique instrument (A/RES/60/288) is supposed to be an instrument to enhance national, regional and international efforts to counter terrorism. Its adoption marked the first time that all Member States of the UN have agreed to a common strategic and operational framework to fight terrorism. This Strategy rests on four "pillars of action": (1) measures to address the conditions conducive to the spread of terrorism; (2) measures to prevent and combat terrorism and to strengthen the role of the UN system in that regard; (4) and measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism. (UN Action to Counter Terrorism 2009)

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² Ibidem

³ Ibidem

A new Challenge? Foreign Terrorist Fighters

Foreign fighters, i. e. "the individuals who join insurgencies abroad and whose primary motivation is ideological or religious rather than financial," is not a new phenomenon, however unprecedented in its scale and range, which is incomparable to any other situation in the past. The most foreign fighters so far have been presumably involved in Syria⁵, however the flow has attracted young people also to Iraq (Islamic State) and Nigeria (Boko Haram) as the most striking examples.

The main two challenges identified in the foreign fighters lie in the two stages: in the foreign fighters travelling to the conflict areas to fight as well as in the returning foreign fighters, often radicalised or traumatised from the hostilities.

Joining the hostilities

According to the UN there are around 25,000 foreign terrorist fighters from more than half the countries in the world involved with listed Al-Qaida affiliates. These numbers are higher than ever, in particular in Iraq and Syria and further increasing in Lybia. (Security Council Report 2015). In relation to the conflict areas in Libya, Syria, Iraq and Afghanistan, terrorist groups have found safe haven in less stable countries, such as Yemen, Pakistan, Somalia, Sudan and Mali, whereas the terrorists leverage the inability of the receiving States to effectively combat their relocation in such areas and counter their efforts.

What has been rather peculiar about the foreign fighters in the 21st century is, among other factors, also the demographic diversity thereof - in the past these have consisted mainly of young men in the early 20s, but in Syria, these include even younger people, but those very old and women as well. This, among the general tendency describes one alarming factor as well: that the States mainly fail to implement the efforts to counter the foreign fighters phenomenon and it is already possible even for these groups of people to circumvent the obstacles posed.

The reasons why the foreign fighters decide to join the forces aiming at eliminating their own way of life so far are reportedly especially: "search for meaning, belonging, or identity that came with being part of the cause, the opportunities membership offered, or a desire to seek justice or revenge for real and perceived grievances."⁸

The Foreign Fighters thus often receive military training and instruction from the militant radicals, whereas they are acting in their own capacity, often using transit countries and making it difficult for the country of their origin to trace their whereabouts in order to counter such undertakings. This is particularly a problem, because the main way of combatting this phenomenon is the criminalisation of travel into the so-called terrorist hotspots (i.e. places where the persons concerned shall join the forces) and tracing of the suspects and potentially keeping hold of their passports (just as in case of Australia that is to be elaborated upon hereunder).

Returnees

Secondly, one of the main concerns remains that these foreign fighters join groups whose ideology is almost always hostile towards their countries of origin. Many of them, however, come after certain time period back to these countries, as for it for various reasons. Though gaining combat experience and receiving military training, these shall be capable of continuing in perpetrating violent actions even after they left the rows of jihadists or other militant groups and thus create security risk. For example, the perpetrator of 2004 Brussels

⁶ European Parliament. Foreign Fighters: Member States' responses and EU action in an international context. February, 2015. Available at: http://www.europarl.europa.eu/EPRS/EPRS-Briefing-548980-Foreign-fighters-FINAL.pdf.

⁴ European Parliament. Foreign Fighters: Member States' responses and EU action in an international context. February, 2015. Available at: http://www.europarl.europa.eu/EPRS/EPRS-Briefing-548980-Foreign-fighters-FINAL.pdf.

⁵ ICSR

Hegghamer, T. Syria's Foreign Fighters. In: *Foreign Policy*, December 9, 2013. Available at: http://foreignpolicy.com/2013/12/09/syrias-foreign-fighters/

⁸ Holmer, G. What to Do When Foreign Fighters Come Home. In: Foreign Policy. Available at: http://foreignpolicy.com/2015/06/01/what-to-do-when-foreign-fighters-come-home-isis-islamic-state-syria-iraq/

terrorist attacks has probably spent a year fighting in Syria and the perpetrators of the attacks against *Charlie Hebdo* magazine of 2015 are said to have received terrorist training in Yemen.⁹

The main issue about the returnees is again the lack of data concerning their reasons, why they decided to come back and not to further engage in the hostilities¹⁰. Some of them are actually posing a security threat and heading to the country of origin to continue fighting on domestic front. Others might just be disillusioned by the experience or even suffer long-term psychical consequences thereof. Since even the number of people leaving to join foreign fronts are roughly estimates, the situation is even worse when it comes to the statistics concerning the so-called returnees.

As the returnees may constitute a security threat, the States address their return with heavy criminal or administrative sanctions, especially concerning their travel and association, and other means of repression. Studies say, that the question whether a returnee shall further pose a security risk or not are heavily dependant upon the options presented to him or her upon their return and the treatment from the side of the society. Thus through appropriate attitude from the society, de-radicalisation and re-integration shall be reached or the returnees shall be ostracised and their options for recovery limited with the aim of minimising the risk. Many argue that the balance shall be struck between these two poles carefully, whereas for example in Nigeria and Kenya, the trauma from the violence has been reportedly just as significant and prevalent not just among the victims of the perpetrators, but also among the foreign fighters who joined the fights, especially those at young age.¹¹

The efforts to address the need of de-radicalisation of the returnees have not yet been thoroughly effective. In the 9/11 aftermath, numerous programs of that kind have taken place in Saudi Arabia, Indonesia and Yemen. These attempted to include the religious leaders of the communities to help to cease the violence, but were solely partly effective. On the other hand, Saudi Arabia attempted to create re-integration strategies with emphasis put on the social, familial and national ties of the returnees, proving bigger gains therein. Furthermore, Denmark has launched successful "Radical Jihadist Rehabilitation Programme" Similar programmes have been praised also in Germany, Norway and Sweden. Other states, such as France or Spain have adopted rather repressive approach. These programmes however have proven that any returnee fate must be assessed on the case-by-case basis, which constitutes an approach that has been widely accepted even by the European Union as whole.

Conclusions

To conclude, the Foreign Fighters constitute serious threat to the countries of origin as well as to the international community of States in, to say it so, two stages. Firstly through their active involvement in the armed hostilities in the armed conflict, where they take the side of an adversary of their homelands. Secondly through representing a considerable security threat even after their return.

International action

There are numerous resolutions that concern international terrorism, which shall be examined in relation to the issue of foreign fighters. Firstly the highly relevant Resolution 1373 (2001) that puts the Member States under an obligation to "ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice." Resolution 1624 (2005) pertains to incitement to commit acts of terrorism, calling on UN Member States to prohibit it by law, prevent

Holmer, G. What to Do When Foreign Fighters Come Home. In: Foreign Policy. Available at: http://foreignpolicy.com/2015/06/01/what-to-do-when-foreign-fighters-come-home-isis-islamic-state-syria-iraq/

¹¹ United States Institute of Peace (USIP) research on Countering Violent Extremism, available at: http://www.usip.org/sites/default/files/PB178_Creating-Spaces-for-Effective-CVE-Approaches.pdf
¹² Holmer, G. What to Do When Foreign Fighters Come Home. In: Foreign Policy. Available at:

http://foreignpolicy.com/2015/06/01/what-to-do-when-foreign-fighters-come-home-isis-islamic-state-syria-iraq/

⁹ European Parliament. Foreign Fighters: Member States' responses and EU action in an international context. February, 2015. Available at: http://www.europarl.europa.eu/EPRS/EPRS-Briefing-548980-Foreign-fighters-FINAL.pdf.

¹³ Braw, E. Inside Denmark 's Radical Jihadist Rehabilitation Programme. In: Newsweek, October 17, 2014. Available at: http://www.newsweek.com/2014/10/24/denmark-offers-returning-jihadis-chance-repent-277622.html

such conduct and deny safe haven to anyone "with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct."

The Security Council has, however, addressed the issue specifically in the binding Resolution 2178 (2014) that shall be for the purpose of this paper put under particular spotlight.

The Resolution 2178 (2014) (hereinafter referred to as "Resolution") calls on Member States to criminalise travelling abroad for terrorist purposes. In particular, Member States must:

- stop individuals believed to be "foreign terrorist fighters" from crossing their borders
- stop and ban funding or facilitating such individuals
- prosecute, rehabilitate and reintegrate "returning foreign fighters"
- stop "recruiting, organising, transporting or equipping" anyone going abroad for terrorist acts or training.

Furthermore, it puts emphasis onto gathering of operational information regarding terrorists in general, especially with a helping hand offered by the United Nations and other bilateral or multilateral mechanisms. It also deals with reaffirmation of the commitment to human rights on one hand, while combatting the terrorist activities.

The Resolution introduced an international obligation, requiring member states to establish criminal offences in order to be able to prosecute would-be terrorist fighters for their intention to travel for participating in terrorist acts. Lastly the Resolution emphasises international cooperation, countering violent extremism in order to prevent terrorism and UN Engagement on the Foreign Terrorist Fighter Threat as means of combatting this phenomenon.

The Resolution is quite detailed in its wording and has served as basis for individual actions taken by Member States. Also it underlines certain duties imposed on the CTC (to be elaborated upon hereinafter), thus it shall be highly recommended that the delegates familiarise themselves therewith thoroughly.

Bloc positions

All countries present have severely suffered by terroristic attacks, be it Boko Haram in Nigeria, ISIS and Al Qaeda in the USA, Ansar Al-Sharia in Libya or the East Turkestan Islamic Movement in China. Thus in this issue, one shall not primarily refer to blocs, than rather different approaches and policies towards the persons concerned as well as towards the issues concerning terrorism as a whole.

Highly emphasised by nearly all countries, be it European, African or Asian, etc. is the importance of the respect for human rights and fundamental freedoms and the rule of law, which need to be an integral part of the counter-terrorism strategy. The challenge to properly tackle the problem of foreign terrorist fighters raised vigorous national debates on the need to protect those individual rights. Especially the issue of data collection has sparked the discussion on the right to privacy, seemingly causing the establishment of different block-positions.

Several executions of American and European citizens, though, have sparked countries' interest to address this issue at hand in the quickest way possible. Several countries, though, have started data-collection in order to stop traveling future terrorist fighters. The European Union for example is already working on data-collection of passenger records aimed at preventing the travel and transit of foreign terrorist fighters, including also information exchange within its Schengen Information System. That has been embodied for example in the passenger name record (PNR) proposal. Also on the EU level, the Member States follow the 22 measures to address the problem in six priority areas, as proposed by the Counter-Terrorism Coordinator (better understanding of the phenomenon, prevention of radicalisation, detection of suspicious travel, investigationn and prosecution, returnees and cooperation with third countries). These have been upheld and emphasised by the European Council Conclusions of 30 August 2014. European Council has also launched strategic guidelines, that called for a reinforced cooperation with coordination role for Europol and Eurojust in this area.

Especially the United States of America as well as Great Britain, said to be the main factors within the CTC. U.S. government officials themself suggested that CTC's work was aimed at globally exporting U.S. counterterrorism legislation, particularly the U.S. Patriot Act. In this regard the United States have played an important role in pushing international guidelines. The White House still continues its effort to address this threat at home and abroad. The U.S. approach thereby combines homeland security, law enforcement, intelligence, military, capacity building, and information sharing efforts, besides. Their focus lies in

addressing the problem at its roots by countering violent extremism: "It is key that we identify interventions at every step of the foreign terrorist fighter development cycle, from initial recruitment and radicalization, to mobilization, to travel to and from a conflict zone, to return home." (Washington Institute 2015)

U.S. ideas also found root in the UN sanctions committee, which is tasked, besides, to list people linked to terroristic activities. Under political pressure from states objecting to the listing of their nationals, said committee was forced to change its procedure. In 2008, moreover, the European Court of Justice Kadi v. Council of the European Union) judged that those sanction were not consistent with individual rights granted to individuals under European law. The Court found that the European regulation implementing them was a disproportionate and intolerable interference with the individuals's property right. (Kadi, 2008 E.C.R.)

Besides national activities, some countries like France and the USA are also using their military power to address this issue at hand and are trying to reach a solution by pushing political transition in those countries.

One of the harshest means of implementation of the anti-terrorism laws has been introduced by Australia, whereas this criminalised travelling to terrorist hotspots without legitimate reason and made it easier for the government to seize and keep hold of Australian passports.¹⁴

Contrary to this idea might appear the call of some states, like China, to respect the sovereignty, independence and territorial integrity of the countries concerned. Often concerned by countries, like China, Chad, Luxembourg etc. is the fact that especially young people are pliable to the terroristic ideas of those groups. Chile noted that the most effective tools in the fight against terrorism are education, the elimination of inequalities and work among the most disaffected groups of society. Chad, for example, furthermore, raised the point that emergence of terrorism and violent extremism in Africa is nourished by widespread poverty and despair, and by youth unemployment in particular. In this regard, terrorism, is closely linked to economic conditions, rather than religious beliefs – an idea often put forward by China, France, Nigeria, etc. but also being contested.

Points the resolution should address

The final resolution should manifest the continuous endeavour of the international community, represented by the countries in CTC, to counter the issue at hand, taking into serious consideration the so-far most important document in this area, the Resolution 2178 (2014). This Resolution states as follows:

"The Security Council [...] requests the Counter-Terrorism Committee, within its existing mandate and with the support of CTED to

- identify principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder States' abilities to stem the flow of foreign terrorist fighters, as well as to
- identify good practices to stem the flow of foreign terrorist fighters in the implementation of resolutions [...], and to
- facilitate capacity-building assistance and recipients, especially those in the most affected regions, including through the development, upon their request, of comprehensive counter-terrorism strategies that encompass countering violent radicalisation and the flow of foreign terrorist fighters, recalling the roles of other relevant actors, for example the Global Counterterrorism Forum."

Also the Resolution requests that the CTC updates the UNSC on the efforts pursuant to there Resolution.

Furthermore, should the time allow to do so, more detailed strategies concerning the human rights issues connected to the fight against foreign fighters phenomenon, for example with relation to the imposed restrictions on the freedom of movement under existing human rights law obligations of the Member States. Secondly it may deal with the ways of gathering the necessary statistics and data concerning this issue, including the examination of causes of departure as well as of return of the persons, collected solely on voluntarily basis of the Member States. It may dwell upon the returnees strategies that shall be feasible in the current circumstances, given the limits of military and police solutions when dealing with the phenomenon of young people leaving their homes to join a violent extremist movement.

Finally, obligations under the Resolution requires member states that have "credible information that provides reasonable grounds to believe" that a certain individual might become a foreign terrorist fighter to

¹⁴ BBC. UNSC Resolution 2178: How easily can it be enforced? In: BBC, 26 September 2014. Available at: http://www.bbc.com/news/world-middle-east-29359901

prevent the entry or transit through their territories. What sort of information? Shall there guidelines be any guidelines? "An 18 February report by the CTC's Executive Directorate (CTED) raised some of the issues that prosecutors of cases against these fighters face, including finding admissible evidence to support such cases, proving criminal intent and converting intelligence into evidence." (Security Council Report 2015)

Further reading

Resolution S/RES/2178 (2014)

Foreign fighters - a very helpful summary made by the European Parliament, available at: http://www.europarl.europa.eu/EPRS/EPRS-Briefing-548980-Foreign-fighters-FINAL.pdf

Handful of resources put together by the International Centre for the Study of Radicalisation and Political Violence (ICSR), including statistics, available at: http://icsr.info/projects/western-foreign-fighters-syria/

United States Institute of Peace (USIP) research on Countering Violent Extremism, available at: http://www.usip.org/sites/default/files/PB178_Creating-Spaces-for-Effective-CVE-Approaches.pdf

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Global Counter Terrorism Forum: "Foreign Terrorist Fighters" (FTF) Initiative

The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, available at:

https://www.thegctf.org/documents/10162/159879/14Sept19 The+Hague-

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