



As part of its work to support the Counter-Terrorism Committee, and as a concrete follow-up to Security Council resolution 2178 (2014), the Counter-Terrorism Committee Executive Directorate (CTED) has produced a series of documents on the implementation by Member States of that resolution. Pursuant to Security Council text S/2015/939, this publication provides the complete 35 Madrid guiding principles as a practical tool for Member States to stem the flow of foreign terrorist fighters.

Madrid Guiding Principles



**A practical tool for Member States
to stem the flow of foreign terrorist fighters**

Madrid Guiding Principles

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Preface

On 28 July 2015, the United Nations Security Council Counter-Terrorism Committee held a special meeting on stemming the flow of foreign terrorist fighters (FTFs). Hosted by the Government of Spain in Madrid, the special meeting, and a series of related technical sessions organized by the Counter-Terrorism Committee Executive Directorate (CTED), were attended by Member States from every region of the world, including those most affected by the FTF threat. Representatives of international and regional organizations, academia, and civil society also attended.

In accordance with Security Council resolution 2178 (2014), participants discussed principal gaps in the capacities of Member States to implement resolutions 1373 (2001) and 1624 (2005) that may hinder States' abilities to stem the flow of FTFs. Pursuant to their discussions, participants identified a set of guiding principles for stemming the FTF flow. The 35 Guiding Principles were subsequently adopted by the Security Council (S/2015/939). This document includes Conclusions, as well as the Declaration of the meeting of the Ministers for Foreign Affairs and of the Interior held within the framework of the special meeting.

The Guiding Principles are intended as a practical tool for use by Member States in their efforts to combat terrorism and, in particular, to stem the flow of foreign terrorist fighters in accordance with resolution 2178 (2014).



Amr Abdellatif Aboulatta
Ambassador and Permanent Representative
of Egypt to the United Nations
Chair of the Security Council
Counter-Terrorism Committee

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Guiding principles on foreign terrorist fighters

Introduction

Foreign terrorist fighters pose an acute and growing threat to international peace and security. Their activities can increase the intensity, duration, intractability and unpredictability of conflicts and pose a serious threat to their States of origin, the States through which they transit and the States to which they travel, as well as to States neighbouring zones of armed conflict in which those fighters are active. Over the past decade, the regions in which foreign terrorist fighters are active have witnessed a significant increase in violence, insecurity and instability. These fighters may be engaged in terrorism, war crimes, crimes against humanity and gender-related crimes.

Another significant risk derives from the activities of foreign terrorist fighters upon their return to their own States or upon their arrival in third States. Many fighters leave their homes with no intention of returning, and instead do so with the intention of starting a new life, building a new “State” or dying as martyrs. Not all return as terrorists, and many return precisely because they have become disillusioned and no longer wish to participate in armed conflict.

However, those who do return may have been exposed to extreme violence, sophisticated training and battlefield experience. A small number of returning foreign terrorist fighters therefore pose a very significant threat to international peace and security.

Terrorist groups also increasingly exploit information and communications technology (ICT) for the purpose of incitement, recruitment and the facilitation of terrorist activities. They use ICT to recruit not only traditional combatants but also businessmen, engineers and other professionals. This growing ICT expertise is a significant element of the foreign terrorist fighter threat.

The Security Council, in its resolution 2178 (2014), adopted on 24 September 2014 pursuant to Chapter VII of the Charter of the United Nations, acknowledges the increasing threat posed by foreign terrorist fighters and requires Member States to prevent and suppress, consistent with their obligations under international human rights law, international refugee law and international humanitarian law, the recruiting, organizing, transporting or equipping of foreign terrorist fighters, stop individuals believed to be foreign terrorist fighters from entering or transiting through their territory and ensure that their domestic laws and regulations establish serious criminal offences enabling them to prosecute and penalize prohibited conduct related to foreign terrorist fighters. The resolution represents a significant milestone in the international response to the foreign terrorist fighter phenomenon.

In the statement by the President of the Security Council of 19 November 2014 ([S/PRST/2014/23](#)), the Council encouraged the Committee to hold open meetings, with the participation of Member States and relevant international and regional organizations, and to share national and regional experiences in addressing the threat posed by foreign terrorist fighters and violent extremism. Furthermore, in the statement by the President of 29 May 2015 ([S/PRST/2015/11](#)), the Council “recognizes that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, stemming recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, which can be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation”.

Accordingly, on 28 July 2015, the Committee held a special meeting on stemming the flow of foreign terrorist fighters, which was preceded by a series of technical sessions organized by the Counter-Terrorism Committee Executive Directorate. The meeting and technical sessions were hosted by the Government of Spain in Madrid and were attended by approximately 400 participants from Member States representing every region of the world, including those most affected by the threat of foreign terrorist fighters, relevant international and regional organizations, academia and civil society. In accordance with resolution 2178 (2014), the participants discussed the principal gaps in the capacities of Member States to implement resolutions 1373 (2001) and 1624 (2005) that may hinder the abilities of Member States to stem the flow of foreign terrorist fighters.

The participants also shared effective practices and approaches to stemming the flow of foreign terrorist fighters, focusing on: (a) the detection of, intervention against and prevention of the incitement, recruitment and facilitation of foreign terrorist fighters; (b) the prevention of travel by foreign terrorist fighters; and (c) criminalization, prosecution, including prosecution strategies for returnees, international cooperation and the rehabilitation and reintegration of returnees.

The main outcomes of the special meeting and technical sessions, including specific effective practices and approaches, have been incorporated into the present set of guiding principles in an effort to assist Member States in their efforts to stem the flow of foreign terrorist fighters. The principles are intended to complement the other materials prepared by the Executive Directorate to help States to strengthen their implementation of resolutions 1373 (2001), 1624 (2005) and 2178 (2014).¹

The participants reaffirmed the need for States to ensure that all measures taken to counter the threat of foreign terrorist fighters were fully compliant with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law, and noted that efforts to do so involved numerous and significant challenges.

In order to develop an effective global response to the constantly evolving threat of foreign terrorist fighters and to ensure the effective implementation of the relevant Security Council resolutions, in particular resolution 2178 (2014), Member States, international and regional organizations, academia and civil society organizations should continue to share experiences and good practices, conduct related research and analysis and assist one another with capacity-building. It will also be necessary to strengthen the resources of Member States to implement the resolution. The challenges in implementing it are complex, and the Committee and Executive Directorate will continue to work closely with all actors concerned to help States to meet the considerable challenges involved.

¹ See the website of the Counter-Terrorism Committee (<http://www.un.org/en/sc/ctc/resources/index.html>).

The following guiding principles for the implementation of resolution 2178 (2014) were identified by the participants in the special meeting and endorsed by the Committee. Many of the guiding principles set forth in this document build upon existing good practices and the work of the Global Counterterrorism Forum, in particular its adopted comprehensive set of good practices to address foreign terrorist fighter phenomenon, the Organization for Security and Cooperation in Europe (OSCE), the European Union, the African Centre for Studies and Research on Terrorism, and the Meeting of Heads of Special Services, Security Agencies and Law-Enforcement Organizations.

I. Detection of, intervention against and prevention of the incitement, recruitment and facilitation of foreign terrorist fighters

The discussions on this topic focused on preventing the travel of aspiring foreign terrorist fighters through the creation of strategic partnerships between governmental and non-governmental actors. The participants considered the origins and nature of the problem of foreign terrorist fighters, the threat posed by the incitement and recruitment of such fighters and effective and practical tactics at the community level for stemming their flow, including with the support of youth, families, women, religious, cultural and educational leaders and other civil society groups. The participants stressed the value of adopting a comprehensive approach that combined effective law-enforcement and intelligence strategies with cooperation between governmental and non-governmental actors. Local communities can provide valuable insights into the factors that make the individuals targets of incitement and recruitment commit terrorist acts and can play a key role in preventing their travel. It is also essential to respect the independent roles of the various actors concerned and to avoid using civil society for law-enforcement purposes. Member States must ensure compliance with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law. Member States are urged to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism that can lead to terrorism, including by countering incitement to commit terrorist acts, creating counternarratives and other appropriate interventions and building their capacity to do so effectively, and to address, including by the empowerment of women, youth, religious and cultural leaders, the conditions conducive to the spread of terrorism and violent extremism that can lead to terrorism.

A. Understanding the threat and creating strategic partnerships

An effective approach to stemming the flow of foreign terrorist fighters requires the involvement of many different stakeholders, all of which should strive to build a climate of trust and to understand the issues affecting different communities. Efforts to detect and prevent the activities of foreign terrorist fighters should involve not only law-enforcement agencies but also a wide variety of community stakeholders. It is essential to identify grievances and other social or personal factors that may lead individuals to consider travel for the purpose of engaging in terrorist acts.

Guiding principle 1. Governments should recognize that terrorism and violent extremism are complex and context-specific. While religion is sometimes cited as a driving factor, other factors, including ideological, social or psychological factors, can also be decisive. States should devote greater resources to supporting social services and funding relevant research in order to strengthen their understanding of the reasons why individuals become aspiring foreign terrorist fighters. In many cases, individualized intervention may be the only effective way to address radicalization to violence.

Guiding principle 2. Because local stakeholders often have the best understanding of the nature and sources of the foreign terrorist fighter phenomenon, States should create space for civil society and develop innovative mechanisms for dialogue between the Government and local communities, youth, families, women, religious, cultural and education leaders and all other concerned groups in civil society. Constructive dialogue between the Government and communities is a crucial factor in building community resilience, identifying and addressing grievances and identifying persons targeted for recruitment by terrorists. Possible forms of dialogue include community-awareness briefings, town halls, the creation of an independent ombudsman's office, platforms for communities to express grievances and other gatherings to discuss community concerns and the creation of policy committees to counter violent extremism involving governmental and non-governmental actors. It is important that such mechanisms be put in place at the local and national levels.

Guiding principle 3. More focus should be placed on working with families, which will have a natural interest in preventing the departure of their relatives. States should strengthen communication with families, while ensuring that such interaction is voluntary and not imposed. The establishment of national or regional "hotlines" may also be an effective practice. Governments should provide support to services that engage with families; however, such services should be kept separate from security agencies. Efforts should be made to provide assistance and counselling in multiple disciplines, including psychological, social, religious and ideological counselling.

Guiding principle 4. States should devote resources to educational programmes that develop critical thinking skills and build awareness and understanding of different cultures. Critical thinking and raised awareness can be crucial to reducing the susceptibility of young people to the messages of terrorist groups and violent extremists. One area in which education is especially crucial is refugee camps, where young people are vulnerable to violent extremist messaging and terrorist recruitment.

Guiding principle 5. States should protect the right to freedom of religion or belief. Local communities are often best placed to engage with religious institutions in order to prevent their subversion by terrorists and their supporters. Consideration should also be given to promoting the greater engagement of women in this regard.

Guiding principle 6. Maintaining the memory of victims of terrorism or amplifying survivors' voices can play an important role in countering the messages of terrorists and violent extremists. States should therefore make a special effort to establish partnerships with victims and victim associations as part of their overall strategies to stem the flow of foreign terrorist fighters. Victims should have the opportunity to play a decisive role in efforts to counter violent extremism by making their voices heard if they wish to do so.

B. Community engagement and empowerment of local communities and civil society

Terrorism will not be defeated by military force, law-enforcement measures and intelligence operations alone. There is also a need to address the conditions conducive to the spread of terrorism, in accordance with pillar I of the United Nations Global Counter-Terrorism Strategy. In this respect, participants in the special meeting welcomed the provisions of resolution 2178 (2014) encouraging Member States to engage with relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narratives that can incite terrorist acts, including by empowering youth, families, women, religious, cultural and education leaders and all other concerned civil society groups. Greater efforts in this area can lead to increased success in stemming the flow of foreign terrorist fighters at the community level.

Guiding principle 7. Effective community engagement to stem the flow of foreign terrorist fighters requires action in a number of different fields. States should consider developing comprehensive strategies to counter and prevent violent extremism that include significant roles for youth, families, women, religious, cultural and educational leaders and other concerned civil society groups. Independent actors give actions to counter violent extremism a level of credibility and effectiveness that Governments generally cannot achieve alone. However, care should be exercised in delineating the respective roles of Governments and civil society actors.

Guiding principle 8. Women, especially mothers, can play a crucial role as community leaders and role models in preventing radicalization and the flow of foreign terrorist fighters. States should make greater efforts to involve women in programmes and strategies to stem the flow of foreign terrorist fighters because their participation can have a major impact, in particular where their family members are concerned. Such efforts could involve promoting the greater inclusion of women in policymaking and law-enforcement bodies to stem the flow of foreign terrorist fighters and increasing opportunities for women's civil society groups to participate in dialogue on effective approaches. States should pay close attention to the security risks encountered by women engaged in these efforts.

Guiding principle 9. Youth are often best able to recognize trends by terrorists and violent extremists in their communities to identify individuals at risk and influence their cohorts. States should therefore create mechanisms enabling young people to play a role in policy-making discussions that may be relevant to stemming the flow of foreign terrorist fighters. The engagement of young people can be facilitated through youth mentorship and skills development programmes, community service projects and enhanced educational opportunities that increase their sense of belonging. In all cases in which young people are given the opportunity to become engaged, States must take full account of their security needs.

Guiding principle 10. Engagement between government and non-governmental actors should be based on a foundation of trust and respect. There should be recognition of the leading role to be played by Governments in taking effective action to stem the flow of foreign terrorist fighters, as well as an acknowledgement of the risks faced by security forces. Governments also have an obligation to uphold their international legal obligations in all their counter-terrorism efforts. In the case of civil society and human rights defenders, this includes safeguarding the ability of non-governmental actors to operate in a secure environment and fully respecting human rights and fundamental freedoms, including the freedoms of thought, conscience, expression, religion, peaceful assembly and association.

C. Community-policing and Internet-related law-enforcement initiatives

Law-enforcement measures are essential to stemming the flow of foreign terrorist fighters. There is therefore a need to promote dialogue through methods that include engagement with communities and a commitment to transparency. One innovative approach adopted by an increasing number of States is the use of community-policing techniques. States should also pay close attention to communication related to foreign terrorist fighters, whether at public gatherings or through the Internet and other communications technologies, while ensuring respect for human rights, including freedom of expression, and recalling that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and for privacy.

Guiding principle 11. States should consider promoting greater reliance on community-policing techniques as part of their overall approach to stemming the flow of foreign terrorist fighters. Community policing is based on the development of mutual trust between law-enforcement entities and the communities they serve. States need to reduce the corrosive effect of excessive force, arbitrary detention and impunity on community relations and legitimacy. The objective should not be simply the short-term acquisition of intelligence, but rather the creation of long-term relationships that can enhance the capacity to detect and prevent the possible departure of aspiring foreign terrorist fighters. Successful community policing should not focus exclusively on counter-terrorism and countering violent extremism, but should instead address the full range of community concerns, thereby building trust.

Guiding principle 12. States should, as appropriate, include effective and swift measures to prevent and counter incitement to commit terrorist acts as part of a comprehensive strategy to stem the flow of foreign terrorist fighters, while upholding their international human rights obligations.

Guiding principle 13. States, regional organizations, the private sector and civil society should establish effective partnerships, with a view to developing improved methods for monitoring and studying terrorist content transmitted over the Internet and other communications technologies and countering incitement to commit terrorist acts, utilizing it for intelligence work and referring it, where appropriate, to relevant law-enforcement agencies. Countermessaging can also be an effective measure. All actors should enhance dialogue concerning terrorist content transmitted over the Internet and other modern communications technologies in order to ensure that the most appropriate and useful action is taken with respect to such content.

Guiding principle 14. The Internet and other modern communications technologies are a vital means to seek, receive and impart information and ideas. States must ensure that any measures, including enforcement actions taken to restrict freedom of expression, comply with their obligations under international human rights law.

II. Prevention of travel by foreign terrorist fighters, including through operational measures, the use of advance passenger information and measures to strengthen border security

In its resolution 2178 (2014), the Council reaffirmed that all States shall prevent the movement of terrorists or terrorist groups by effective border controls. The Council also encouraged States to employ evidence-based traveller risk-assessment and screening procedures in their existing authorities, including the collection and analysis of travel data, and to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, and called upon States to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of individuals designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011). The discussions during the special meeting resulted in the identification of a number of elements that would strengthen operational and practical measures aimed at stemming the flow of foreign terrorist fighters.

A. Operational measures to stem the flow of foreign terrorist fighters

1. Collection of information related to foreign terrorist fighters from various sources

In order to effectively address the cross-border flow of foreign terrorist fighters, appropriate information about the identity of existing or potential fighters, upon which border authorities can make informed decisions, should be made available in a timely manner to border posts and other relevant agencies for further action. Information on foreign terrorist fighters may be either specific or general in nature. Specific information includes information obtained from sources such as law-enforcement and intelligence agencies; advance passenger information; biometrics; national and international watch lists; notices of the International Criminal Police Organization (INTERPOL); databases, including the one of foreign terrorist fighters; diffusion notices; and analytical products; and informants. General information includes, passenger name record data and the results of trends analysis and risk assessments.

Guiding principle 15. In order to obtain information to help to identify existing or potential foreign terrorist fighters:

- (a) States should consult national, regional and international sources of information on foreign terrorist fighters;
- (b) National law-enforcement and security agencies should actively transmit relevant information that may be of use in identifying existing or potential foreign terrorist fighters;
- (c) Relevant regional and international organizations should provide the tools and the means, such as a database of foreign terrorist fighters, for the collection and dissemination of specific and general forms of information related to foreign terrorist fighters, with a focus on utilizing already existing, widely used and proven mechanisms, such as I-24/7, the secure global police-to-police communication system of INTERPOL;

(d) Information should be transmitted to officials at land, air and maritime ports of entry or to a centralized location for processing, prior to the arrival or departure of travellers, through established mechanisms;

(e) The collection, storage and sharing of information should be conducted in a non-discriminatory manner consistent with international human rights law.

2. **Reliance on analysis to make general information on foreign terrorist fighters actionable**

Information received must be processed and analysed in order to exploit its full potential to identify existing or potential foreign terrorist fighters through informed decisions. In many cases, the specific information received should be analysed for comparison against known profiles of foreign terrorist fighters and the development of new profiles to better inform future analyses, with the ultimate aim of facilitating their timely dissemination to front-line officials. A specific challenge associated with the analysis of the activities of foreign terrorist fighters is their use of evasive travel patterns, or “broken travel”, which is the deliberate use of techniques to break long-distance travel into multiple segments so that it becomes difficult to ascertain travel history and travel origin and prevent border authorities and counter-terrorism officials from accurately determining where they were prior to their arrival in a particular State. An associated challenge is distinguishing “broken travel” intended to evade counter-terrorism authorities from benign travel patterns that appear broken, but which have an innocuous purpose, such as cost savings or the redemption of frequent flyer miles.

Guiding principle 16. In order to exploit the full potential of information on the identity of existing or potential foreign terrorist fighters, States should consider:

(a) Establishing a dedicated analytical team and providing it with the tools and resources required to derive meaningful and actionable results;

(b) Ensuring that information collected about existing or potential foreign terrorist fighters is made available to the analytical team in a timely manner in order to facilitate the necessary analysis;

(c) Ensuring that risk analysis and indicator development are employed as tools to help to identify specific risks;

(d) Developing risk indicators that are gender-sensitive;

(e) Undertaking, with the assistance of relevant international organizations and other experts, specific measures to improve understanding of the use of broken travel patterns by foreign terrorist fighters.

3. **Transmitting analysis and information on foreign terrorist fighters nationally and internationally**

Information and related analyses on existing and potential foreign terrorist fighters should be shared across the security hierarchy nationally and with competent border authorities internationally through coordination and mechanisms for information exchange.

Guiding principle 17. In order to ensure the availability of relevant information to front-line officers nationally and internationally, and thus enhance efforts to detect and prevent the cross-border movement of foreign terrorist fighters, States should consider:

- (a) Enacting legislation, if necessary, and implementing procedures to gather traveller information and use known traveller information, including advance passenger information, complemented by passenger name record data, if appropriate, to inform decisions about potential travel by foreign terrorist fighters;
- (b) Ensure that procedures are in place to make certain that information on known or suspected foreign terrorist fighters is transmitted to front-line border officials for their action prior to the departure or arrival of the traveller;
- (c) Establishing mechanisms for the provision of feedback on the validity and usability of the information, as well as on the results achieved;
- (d) Encouraging the bilateral and multilateral sharing of information and analysis related to foreign terrorist fighters;
- (e) Expanding access to, and the utilization of, the global information-sharing tools and resources of INTERPOL among the national law-enforcement, immigration and border security authorities of member countries.

4. **Effective utilization of information related to foreign terrorist fighters at border points**

It is essential to provide appropriate training and updated instructions to front-line officers on the risks posed by terrorism, in particular by foreign terrorist fighters, and the manner in which available information and tools can be fully and effectively utilized to identify existing or potential fighters at border entry and departure points. Appropriate training and instructions can ensure the effective utilization of information analysis related to foreign terrorist fighters at border points.

Guiding principle 18. In order to effectively utilize information and analysis related to foreign terrorist fighters at border entry and departure points, States should consider:

- (a) Establishing at all border locations mechanisms, including technology such as I-24/7, to ensure the prompt receipt of potential travel information related to foreign terrorist fighters;
- (b) Providing at border locations the appropriate tools to produce risk assessments aimed at preventing the travel of foreign terrorist fighters;
- (c) Ensuring that relevant security and border-control officials are sufficiently trained in the practices and procedures of risk analysis and risk indicator development, and in their application, in the identification of existing or potential foreign terrorist fighters;
- (d) Facilitating greater working-level cooperation and coordination by all agencies, including those operating at the border;
- (e) Ensuring that border-control officials are adequately trained in counter-terrorism issues and that counter-terrorism agents are adequately trained in border security issues;
- (f) Raising awareness among border-control officials of the specific challenges associated with detecting female foreign terrorist fighters, including the fact that they are younger and less likely to be known to intelligence and law-enforcement officials;
- (g) Employing traveller risk assessment and screening procedures, including the collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law.

5. Addressing gaps in the use of advance passenger information and expanding its use to stem the flow of foreign terrorist fighters

An advance passenger information system enables border authorities to determine passenger risk before flights arrive on their territories, before passengers are approved for boarding in order to detect the departure from their territories or before the attempted entry into or transit of suspected foreign terrorist fighters through their territories. The use of passenger name record systems, if permissible under national law, can complement advance passenger information data and help to inform decisions on potential foreign terrorist fighters. However, advance passenger information systems are complex and require a high degree of technical capacity and skill and adequate resources.

Guiding principle 19. In order to facilitate the broader and more comprehensive use of advance passenger information, States should consider:

- (a) Implementing an advance passenger information system that complies with annex 9 to the Convention on International Civil Aviation and the guidelines on advance passenger information of the World Customs Organization, the International Air Transport Association and the International Civil Aviation Organization;
- (b) Implementing interactive advance passenger information, which analyses and responds to passenger data in real time and can prevent passengers from accessing aircraft or secure airport areas;
- (c) Using a “single window” that serves the needs of all agencies and appointing a single agency to be the primary receiver of advance passenger information data;
- (d) Ensuring the alignment and standardization of advance passenger information programme specifications and communication protocols with the standards and best practices agreed and adopted in the guidelines on advance passenger information;
- (e) Ensuring adherence to the prescribed set of data outlined in the guidelines;
- (f) Implementing a passenger name record system to complement advance passenger information in conducting risk assessment and respecting human rights in the collection, analysis, sharing, storage and use of passenger name record data;
- (g) Ensuring the availability of adequate resources to implement effective advance passenger information systems;
- (h) Integrating advance passenger information with the global indices and capabilities of INTERPOL, which include its Stolen and Lost Travel Documents database and Travel Documents Associated with Notices system.

B. Practical measures to strengthen the overall security of borders

1. Coordinated border management

Many States have turned to coordinated border management to effectively manage their borders. Participants in the special meeting noted the need for cooperation and coordination by all security institutions, where border security cannot be secured by one agency alone, as a means of strengthening the overall security of borders to stem the flow of foreign terrorist fighters. A coordinated border management approach can enable States to:

- (a) Strengthen the control and delivery of service;
- (b) Clarify responsibilities and lines of work;
- (c) Streamline operations;
- (d) Reduce redundancies;
- (e) Strengthen communication flows and information exchange;
- (f) Rationalize the use of human and financial resources;
- (g) Provide a more comprehensive and rapid response to emerging threats;
- (h) Respond more rapidly and effectively to emerging threats.

Guiding principle 20. In order to strengthen coordination among the competent authorities at border locations and thereby enhance the overall security of their borders and stem the flow of foreign terrorist fighters, States should consider:

- (a) Incorporating coordinated border management principles, as appropriate, to enhance the effectiveness of border controls aimed at stemming the flow of foreign terrorist fighters;
- (b) Implementing a coordinated border management approach by establishing appropriate legal and regulatory frameworks and institutional structures, developing the required procedures and acquiring the necessary human resources, training, infrastructure and equipment.

2. Addressing spaces between official border crossings

Spaces between official border crossings are difficult to control because they often include long and porous borders, open spaces and difficult terrain. They therefore present risks and vulnerabilities for the potential crossing by foreign terrorist fighters.

Guiding principle 21. In order to strengthen the overall security of their borders and thereby stem the flow of foreign terrorist fighters, States should consider:

- (a) Identifying the most vulnerable border stretches and implementing mitigation measures;
- (b) Establishing controls at vulnerable locations;
- (c) Establishing mobile border-processing units and/or roving patrols on the basis of risk assessment and assessed needs, and supporting them with transportable screening systems such as the Mobile INTERPOL Network Database;
- (d) Extending areas of control adjacent to official border checkpoints;
- (e) Establishing, strengthening and acting upon bilateral agreements on cross-border matters;
- (f) Increasing cooperation, coordination and information exchange with neighbouring and other States;
- (g) Introducing appropriate legal measures to deter the unauthorized crossing of borders that are compliant with all relevant obligations under international law;

- (h) Making available adequate and trained human resources to conduct border operations;
- (i) Developing and deploying cost-effective detection technologies and infrastructure, such as integrated fixed towers and mobile technologies, as appropriate;
- (j) Actively implementing bilateral and multilateral joint approaches to border-control operations;
- (k) Designating a lead coordinating and implementing agency to operationalize border-management measures related to foreign terrorist fighters.

III. Criminalization, prosecution, including prosecution strategies for returnees, international cooperation and the rehabilitation and reintegration of returnees

The five technical sessions held on this theme enabled Member States, international and regional organizations, civil society stakeholders and practitioners to share information on the analysis of gaps in all areas of the criminal justice process, as well as on effective strategies and techniques to overcome them. Many of the challenges involved in bringing foreign terrorist fighters to justice are addressed in the Counter-Terrorism Committee Executive Directorate report entitled “Bringing terrorists to justice: challenges in prosecution related to foreign terrorist fighters” (S/2015/123, annex).

A. Criminalization of acts aimed at stemming the flow of foreign terrorist fighters

Reliance on existing laws, including laws that do not deal directly with terrorist offences, has enabled many States to mount an immediate solution to the threat of foreign terrorist fighters. However, doing so also presents a number of risks and challenges, including the reluctance of courts to apply such legislation, the potential use of disproportionate penalties and difficulties in obtaining international cooperation.

Guiding principle 22. Member States should actively review the compliance of their existing legislation with resolution 2178 (2014) and update national legislation frameworks, as needed, in order to criminalize the full range of conduct related to foreign terrorist fighters, including preparatory acts and preventive offences, required by resolutions 1373 (2001) and 2178 (2014). In criminalizing such conduct, States should ensure that these criminal offences are defined clearly in their legal systems and that such criminalization is in accordance with their obligations under the applicable international law. Member States should consider taking steps to encourage the engagement of parliamentarians, civil society, relevant international and regional organizations and policymakers in the legislative process, as appropriate.

Guiding principle 23. Member States that have already begun the process of reviewing and updating their legislation should continue to share their experiences and good practices with other Member States and should seek guidance and advice from United Nations bodies and other relevant international and regional organizations. They should strive to compile and distribute new legislation in a way that is accessible to other Member States who may benefit from or require it.

Guiding principle 24. Member States and international and regional organizations may wish to consider adopting a regional approach to addressing the criminalization of acts related to foreign terrorist fighters. The Council of Europe adopted such an approach in the form of the Additional Protocol to the Convention on the Prevention of Terrorism. A regional approach may enhance implementation, harmonization and international cooperation.

B. Investigation and prosecution of criminal offences to stem the flow of foreign terrorist fighters

Generating admissible evidence and converting intelligence into admissible evidence against foreign terrorist fighters are complex and multifaceted tasks. Specific challenges in the investigation and prosecution of cases involving foreign terrorist fighters include:

- (a) Collecting evidence from countries of destination or areas where the military may play a role;
- (b) Using intelligence or the products of special investigative techniques in court without exposing sources or methods;
- (c) Generating admissible evidence from or converting intelligence into admissible evidence information obtained through ICT, including social media;
- (d) Handling cases involving incitement to commit terrorist acts and terrorist recruitment, especially when those offences are committed through the Internet;
- (e) Proving the purpose of travel and the intent behind preparatory acts committed prior to travel.

Guiding principle 25. Member States should consider reviewing national legislation to ensure that evidence collected through special investigative techniques or from countries of destination or evidence collected through ICT and social media, including through electronic surveillance, can be admitted as evidence in cases related to foreign terrorist fighters, while respecting international human rights law, including freedom of expression, and recalling that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of article 19 of the International Covenant on Civil and Political Rights and should not be subjected to arbitrary or unlawful interference with privacy. Member States should take steps to ensure that lawfully gathered intelligence that may not be used in court can serve as a basis for a criminal investigation, including the use of special investigative techniques, which could, in turn, generate admissible evidence. Member States should consider implementing the relevant good practices and work of the Global Counterterrorism Forum, as well as other organizations that may develop similar products, such as OSCE, the European Union, the African Centre for Studies and Research on Terrorism and the Meeting of Heads of Special Services, Security Agencies and Law-Enforcement Agencies.²

² See the Rabat memorandum on good practices for effective counter-terrorism practice in the criminal justice sector of the Criminal Justice Sector and Rule of Law Working Group of the Global Counterterrorism Forum, available at www.thegctf.org/documents/10162/38299/Rabat+Memorandum-English, and the recommendations of the Working Group for using and protecting intelligence information in rule of law-based, criminal justice sector-led investigations and prosecutions, available at www.thegctf.org/documents/10162/159887/14Sept19_GCTF+Rabat+GP+6+Recommendations.pdf.

Guiding principle 26. Member States should build ICT and forensic capacities and expertise within national law-enforcement agencies and strengthen the capacity of law-enforcement agencies to monitor social media content related to terrorism in order to prevent the flow of foreign terrorist fighters in a manner that is compliant with the international human rights obligations of States. Member States should build and strengthen public-private partnerships, in particular with social media service providers, while respecting international obligations and commitments regarding human rights, including freedom of expression, and recalling that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of article 19 of the International Covenant on Civil and Political Rights. In this regard, Member States should encourage the ICT industry to voluntarily develop terms of service that target content aimed at recruitment for terrorism and recruiting or inciting others to commit terrorist acts, while respecting international obligations and commitments regarding human rights.

Guiding principle 27. Member States should consider taking steps to ensure effective inter-agency coordination, including by developing multi-agency task forces and liaison officers in order to ensure a collective response.

Guiding principle 28. Member States should consider involving their financial authorities in investigations related to foreign terrorist fighters at the earliest opportunity. Financial investigations into transactions and financial crimes conducted and committed prior to departure can provide valuable information against foreign terrorist fighters and assist in proving the purpose of the travel.

Guiding principle 29. Member States should consider developing a proactive approach to the investigation of offences related to foreign terrorist fighters and involving other officials, including prosecutors, in the early stages of investigation. Member States should consider developing, as early as possible, ways to collect evidence regarding the purpose of travel that is consistent with their obligations under international human rights law. Collecting and preserving evidence, such as evidence from friends, family members, social media and the communications of foreign terrorist fighters, prior to or during travel or while the fighter is in the country of destination, facilitates timely prosecutorial decisions upon the fighter's return.

C. Prosecution and rehabilitation strategies aimed at stemming the flow of foreign terrorist fighters

The employment of rigid prosecution policies and practices against foreign terrorist fighters can be counterproductive to the implementation of comprehensive strategies to combat such fighters and violent extremism. Member States should also consider alternatives to incarceration, as well as the reintegration and possible rehabilitation of returnees, prisoners and detainees. The adoption of a comprehensive, multidisciplinary approach that involves all branches of Government, as well as community and civil society stakeholders, can be a more effective way to bring terrorists to justice and can represent an effective long-term response to the risks posed by foreign terrorist fighters. Many Member States find it difficult to determine how to respond to the potential threat posed by specific categories of travellers, including minors, family members and other potentially vulnerable individuals, providers of medical services and other humanitarian needs and disillusioned returnees who have committed less serious offences. More research and sharing of experiences is needed in order to develop effective, context-specific criminal justice responses to foreign terrorist fighters and enable the effective assessment of the risks posed by various categories of returnees. In combating the threat of foreign terrorist fighters, it is important to address the full range of serious crimes committed dur-

ing travel, in particular war crimes, crimes against humanity and gender-related crimes. Moreover, it is important to conduct an initial assessment of the foreign terrorist fighter to determine the level of culpability and thereby determine the appropriate way to handle each individual.

Guiding principle 30. Member States should ensure that their competent authorities are able to apply a case-by-case approach to returnees, on the basis of risk assessment, the availability of evidence and related factors. Member States should develop and implement strategies for dealing with specific categories of returnees, in particular minors, women, family members and other potentially vulnerable individuals, providers of medical services and other humanitarian needs and disillusioned returnees who have committed less serious offences. Prosecution strategies should correspond to national counter-terrorism strategies, including effective strategies to counter violent extremism.

Guiding principle 31. Member States should consider appropriate administrative measures and/or rehabilitation and reintegration programmes as alternatives to prosecution in appropriate cases. Such measures should be used in a manner compliant with applicable international human rights law and national legislation and should be subject to effective review.

Guiding principle 32. Member States should ensure that their criminal justice systems are capable of dealing with all serious crimes committed by foreign terrorist fighters, in particular war crimes, crimes against humanity and crimes related to gender.

D. International judicial cooperation in stemming the flow of foreign terrorist fighters

There are numerous challenges associated with effective international cooperation in stemming the flow of foreign terrorist fighters, including delays in the provision of mutual legal assistance, the rigidity of procedures and lack of capacity.

Guiding principle 33. Member States should consider reviewing national mutual legal assistance laws and mechanisms and updating them as necessary in order to strengthen their effectiveness, especially in the light of the substantial increase in the volume of requests for digital data. Member States, consistent with their national law and legal framework, should also consider establishing appropriate laws and mechanisms that allow for the broadest possible international cooperation, including effective joint investigations, the appointment of liaison officers, police-to-police cooperation, the establishment of 24/7 networks for cooperation, the transfer of criminal proceedings and the transfer of sentences.

Guiding principle 34. Member States should consider designating mutual legal assistance central authorities and ensuring that such authorities have adequate resources, training and legal authority. Member States should also consider developing and participating in regional mutual legal assistance cooperation platforms, such as the Sahel Judicial Platform and the Regional Judicial Platform of the Sahel Countries.³ They should also consider developing and enhancing arrangements for expeditious cross-regional cooperation.

Guiding principle 35. Member States should consider developing and implementing effective mechanisms for police-to-police cooperation and creative solutions to specific international cooperation challenges. Member States should consider increasing their use of electronic communication and universal templates, relying on police channels of communication or public information wherever possible. In doing so, they should ensure full respect for the fair trial rights of the accused.

³ See www.unodc.org/documents/terrorism/Leaflets/14-06860_A5_leaflet_E_ebook.pdf.