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## **Legal and Gaps Analysis Scope of Terrorist Offences / Action Plans for the Prevention of Violent Extremism / Foreign Terrorist Fighters**



### **CrimEx**

**EuroMed Justice Group of Experts in Criminal Matters**

**ALGERIA, EGYPT, ISRAEL, JORDAN, LEBANON,  
MOROCCO, PALESTINE, TUNISIA**

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# Introduction

In 2006, the UN adopted the Global Counter-Terrorism Strategy in which State Parties committed themselves to:

“make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with their obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms, and that such terrorist acts are established as serious criminal offences in domestic laws and regulations.”<sup>1</sup>

Furthermore, the recent United Nations Security Council (SC) Resolution 2322 (2016) stresses the fact that “terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States ... to impede, impair, isolate, and incapacitate the terrorist threat.”<sup>2</sup>

For the purpose of the current project and based on the responses received from SPCs and based on the comments received from SPCs on the initial draft of the present part, the focus of this part will be based mainly on how each SPC has defined and criminalized the act of terrorism, particularly in light of the International Convention for the Suppression of the Financing of Terrorism and its annex; how they have criminalized acts related to foreign terrorist fighters and the measures and cooperation put in place in this regard; as well as their policy and concrete measures for countering violent extremism particularly in light of recommendations and obligations from the UN and SC resolutions.

1. Global Counter-Terrorism Strategy, Pillar IV, 'Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism', point 5.

2. United Nations Security Council Resolution 2322(2016) adopted by the SC at its 7831<sup>st</sup> meeting, on Dec. 2016. UN Doc. S/RES/2322 (2016).

# Scope of terrorist offences

The applicable international legal framework related to counter-terrorism is contained in a range of sources, including resolutions of the General Assembly (GA) and the Security Council (SC), treaties, jurisprudence and customary international law. There is no comprehensive UN treaty on terrorism nor internationally binding definition of the term 'terrorism' however a comprehensive convention is in the process of being drafted with negotiations taking place both within the Sixth Committee of the General Assembly and the *Ad Hoc* Committee established by GA resolution 51/210. While there has been agreement on the substantive elements of what constitutes an act of terrorism, consensus has not been reached on the scope of application of the instrument.<sup>3</sup> Still under discussion is the interplay between the international criminal law instruments and international humanitarian law, in particular whether the comprehensive convention should explicitly cover acts committed by parties to an armed conflict that are not the 'regular' armed forces of a State.<sup>4</sup>

The current totality of Security Council resolutions and treaties adopted at the global level containing legally binding standards for States to prevent and counter international terrorism is referred to as the 'universal legal framework against terrorism'.<sup>5</sup> The treaties have been developed by the international community since 1963 and would remain applicable as *lex specialis* in the event of a comprehensive convention on terrorism being adopted.<sup>6</sup> With a strong emphasis on the principle of *aut dedere aut iudicare* these treaties aim to prevent safe havens for terrorists, and for those who finance and support them.<sup>7</sup> The principle further implies the need for a strong criminal justice system.<sup>8</sup> The principle is also incorporated indirectly in SC resolution 1373 (2001) in its paragraph 2 (e) requiring States to "[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice" and by virtue of paragraph 3 (d), calling upon States to "[b]ecome parties as soon as possible to the relevant international conventions and protocols relating to terrorism". Subsequent resolutions 1456 (2003) and 1566 (2004) explicitly specify that the obligation to bring terrorists to justice shall be carried out "on the basis of the principle to extradite or prosecute," and resolution 2322 (2016), which focuses on criminal justice relating to terrorism further urges States to follow this principle.

Under the universal counter-terrorism instruments, territoriality, active nationality, quasi universal jurisdiction, or *aut dedere aut iudicare* are compulsory grounds for jurisdiction, whereas other grounds, such as the passive nationality principle, are optional.

*The Legislative Guide to the Universal Legal Regime against Terrorism devotes a whole chapter to the provisions on jurisdiction to be found in the universal counter-terrorism instruments.*

*Similarly, the UNODC/Terrorism Prevention Branch (TPB) Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments provides an overview of the various grounds for jurisdiction and accompanies them with concrete illustrations taken from national legislation.*

3. UNODC, Universal Legal Framework Against Terrorism, Counter-Terrorism Legal Training Curriculum, (UN, 2017), 8.

4. *Ibid.*

5. *Ibid.*, 1.

6. *Ibid.*, 8.

7. *Ibid.*

8. *Ibid.*

*The UNODC model legislative provisions against terrorism offer drafting suggestions by listing all grounds for jurisdiction in chapter 3, article 26.*

*The UNODC electronic legal resources on international terrorism provide excerpts from the penal codes and other criminal statutes of several countries on the subject of jurisdiction in the national legal resources area of the website.*

The GA has also adopted a number of resolutions relating to terrorism which provide useful sources of soft law and have high political importance, even though they are not legally binding.

In September 2006, the General Assembly adopted in resolution 60/288 the United Nations Global Counter-Terrorism Strategy, which includes an annexed Plan of Action aimed at enhancing national, regional and international efforts to counter terrorism. The Strategy embodies the first successful attempt by all Member States to agree on a common strategic approach to prevent and suppress terrorism by resolving to take practical steps both individually and collectively. It contains four pillars of action: (a) measures to address the conditions conducive to the spread of terrorism; (b) measures to prevent and combat terrorism; (c) measures to build State capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and (d) measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

## A List of Universal Counter-Terrorism Instruments

There are 19 multilateral conventions and protocols related to terrorism requiring States parties to address specific manifestations of terrorism (including through obligations to criminalize certain types of conduct) and serving as bases for international cooperation.

The sectoral approach of these instruments reflects the response of the international community to certain serious manifestations of international terrorism as well as the need to address terrorism and terrorist acts in a pragmatic manner in view of the politically sensitive and still unaccomplished task of agreeing upon a single, globally binding instrument.<sup>9</sup> Modern international conventions on terrorism and organized crime impose a duty on states to legislate against universal definitions of crimes established by them. Its rationale is to ensure the exact fulfilment of the obligation, so that there remains no discrepancy in the laws of cooperating States leading to refusal of law enforcement cooperation based upon the non-satisfaction of dual criminality condition.<sup>10</sup>

*The UNODC website includes the text of all 19 instruments in all the official languages of the UN and provides direct access to the official record of depositaries and information on the number of ratifications for each instrument. It also contains national implementing legislation, jurisprudence, and model laws.*

9. *Ibid.*, 8.

10. Usman Hameed, *Mandatory Obligations under International Counter-Terrorism and Organized Crime Conventions to Facilitate State Cooperation in Law Enforcement*, p. 86 PhD Thesis, University of Glasgow, 2014, available online at <http://theses.gla.ac.uk/5118/> last assessed 21 November 2017.



The above mentioned 19 instruments can be arranged into the following subgroups:

- **Instruments related to civil aviation** (eight instruments adopted over a timespan of over 50 years: Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)<sup>11</sup> and amending protocol (2014);<sup>12</sup> Convention for the Suppression of Unlawful Seizure of Aircraft;<sup>13</sup> Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation<sup>14</sup> and Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;<sup>15</sup> Convention on the Marking of Plastic Explosives for the Purpose of Detection;<sup>16</sup> Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation; The Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft.)<sup>17</sup>
- **Instruments related to the status of the victim** (The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;<sup>18</sup> International Convention against the Taking of Hostages).<sup>19</sup>
- **Instruments related to terrorist bombings, financing and nuclear terrorism** (International Convention for the Suppression of Terrorist Bombings;<sup>20</sup> The International Convention for the Suppression of the Financing of Terrorism;<sup>21</sup> The International Convention for the Suppression of Acts of Nuclear Terrorism).<sup>22</sup>
- **Instruments related to maritime navigation and fixed platforms** (The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988);<sup>23</sup> The Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005) and The Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005).<sup>24</sup>

11. United Nations, Treaty Series, vol. 704, No. 10106.

12. ICAO is the depositary of both the Convention on Offences and Certain Other Acts Committed on Board Aircraft and its 2014 amending protocol. However, only the former is in force.

13. United Nations, Treaty Series, vol. 860, No. 12325; The Convention for the Suppression of Unlawful Seizure of Aircraft is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

14. United Nations, Treaty Series, vol. 974, No. 14118; The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

15. United Nations, Treaty Series, vol. 1589, No. 14118; The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

16. S/22393, annex I; see Official Records of the Security Council, Forty-sixth Year, Supplement for January, February and March 1991; The Convention on the Marking of Plastic Explosives for the Purpose of Detection is in force. The depositary is ICAO.

17. Neither the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation nor the Protocol are in force. The depositary is ICAO.

18. General Assembly resolution 3166 (XXVIII), annex; The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents is in force. The depositary is the Secretary-General of the United Nations.

19. The International Convention against the Taking of Hostages is in force. The depositary is the Secretary-General of the United Nations.

20. United Nations, Treaty Series, vol. 2149, No. 37517; The International Convention for the Suppression of Terrorist Bombings is in force. The depositary is the Secretary-General of the United Nations.

21. United Nations, Treaty Series, vol. 2178, No. 38349; The International Convention for the Suppression of the Financing of Terrorism is in force. The depositary is the Secretary-General of the United Nations. It incorporates the offences penalized in nine of the universal terrorism-related instruments that pre-date its adoption as types of conduct for which the provision or collection of funds are forbidden.

22. The International Convention for the Suppression of Acts of Nuclear Terrorism is in force. The depositary is the Secretary-General of the United Nations.

23. Both the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf are in force. The depositary is the Secretary-General of IMO.

24. Both Protocols are in force. The depositary for both is the Secretary-General of the IMO.

- **Instruments related to the physical protection of nuclear material** (The Convention on the Physical Protection of Nuclear Material and The Amendment to the Convention on the Physical Protection of Nuclear Material)<sup>25</sup>

The International Convention for the Suppression of the Financing of Terrorism, which has been widely ratified (187 states, including all the SPCs), sets out in Art. 2 the funding of which acts constitutes an offence under the Convention:

- a. An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex of the Convention; or
- b. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The annex referred to in Art. 2(a) above incorporates the offences penalized in nine of the universal terrorism-related instruments that pre-date its adoption as types of conduct for which the provision or collection of funds are forbidden

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco and Tunisia).
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (accessed/ratified/signed by Algeria, Israel, Tunisia and Jordan).
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia and the State of Palestine, Egypt, Lebanon).
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980. (2005 Amendment to the Convention on the Physical Protection of Nuclear Material (art. 11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia).
6. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Egypt, Lebanon).
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988. (complement to the 1988 Convention, art. 3, accessed/ratified/signed by Algeria, Tunisia, Egypt, Lebanon).

25. The Convention on the Physical Protection of Nuclear Material and The Amendment to the Convention on the Physical Protection of Nuclear Material are in force and the depositary is the Director General of IAEA.



9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 (accessed/ratified/signed by Algeria, Israel, Morocco, Tunisia, Egypt).<sup>26</sup>

For an act to constitute an offence set forth in the Convention, it is not necessary that the funds are actually used to carry out one of the listed offences.<sup>27</sup> Furthermore, attempts,<sup>28</sup> participation as an accomplice,<sup>29</sup> organization or direction of others to commit a listed offence<sup>30</sup> are equally offences under the Convention, as is intentionally contributing to the commission of a listed offence by a group of persons “if done with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a listed offence, or with the knowledge of the intention of the group to commit a listed offence.”<sup>31</sup>

## Regional instruments

There are other international documents relevant to the SPCs which define terrorist acts. For example, Algeria, Egypt, and Tunisia have ratified the Organization of African Unity’s Convention on the Prevention and Combatting of Terrorism, 1999,<sup>32</sup> which defines “terrorist acts” in Art. 3 as follows:

*“(a) any act which is a violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:*

- (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or*
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or*
- (iii) create general insurrection in a State;*

*(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to paragraph (a)(i) to (iii).”*

This definition is notably wider as it does not limit the acts to those that cause death or serious bodily injury but also includes acts that damage private or public property. Furthermore, it considers, for example, as one of the possible necessary intents the disruption of the delivery of any essential service or even any other public service and is not merely confined to acts which have the purpose of intimidating a population or compelling a government or international organization to do or abstain from doing an act.

26. On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in said annex.

27. Art. 3

28. Art. 4

29. Art. 5 (a)

30. Art. 5 (b)

31. Art. 4 (c)

32. OAU Convention on the Prevention and Combating of Terrorism, 1999, adopted in Algeria on 14 July 1999, entered into force 6 December 2002.

As far as the criminalization and sanctions of terrorism are concerned, it is significant to refer to the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa,<sup>33</sup> where the African Commission calls upon African States to ensure the following principles:

- a. Accountability: Individuals who engage in terrorism-related criminal activity may be prosecuted under domestic law and must be held criminally liable for serious human rights abuses, in particular, but not limited to, murder, torture, sexual violence, kidnapping and hostage taking, forced recruitment, war crimes, and crimes against humanity, or may be extradited to face trial in another jurisdiction. The criminalization and sanctioning of terrorism-related activities must be done in accordance with international human rights law.
- b. Clarity and Specificity of Law: Any criminalization of, or other punishment for, acts of terrorism must abide by the principle of legality. In particular, States must ensure that their laws criminalizing acts of terrorism are accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, and non-retroactive. Any criminalization of, or other punishment for, acts of terrorism must be directed only against acts done knowingly and with intent and in accordance with international law, including human rights law.
- c. Indirect Criminal Responsibility: Laws sanctioning indirect criminal responsibility for terrorist acts must be accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, non-retroactive, and targeted at principle acts of terrorism. Such acts must be sanctioned only when there is intent and knowledge to carry out, support, plan, or facilitate a terrorist act.
- d. Criminalization of Membership/Association: Criminal responsibility for acts of terrorism shall be individual, not collective. Individuals shall not be criminally responsible solely for membership in an organization, or association with an individual or organization, that is suspected of, or has been banned, sanctioned, accused, or punished for, engaging in acts of terrorism. States shall be prohibited from targeting an individual on the basis of discrimination of any kind, such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability, or any other status.
- e. [...]
- f. Proportionality of Punishment: Punishment shall be proportionate to the seriousness of the crime and individual criminal responsibility. Courts shall be afforded the opportunity to take fully into account the circumstances of the crime and the individual, including mitigating circumstances. In imposing a sentence of imprisonment, Courts shall deduct the time, if any, previously spent in detention in connection with conduct underlying the crime.
- g. Listing: States shall respect the principle of legality, non-discrimination, and procedural protection standards when it designates and sanctions an individual or entity as a terrorist.

33. Adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015). The Principles and Guidelines were developed on the basis of Article 45(1)(b) of the African Charter, which mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation. They are based on African regional treaty law, the case law, standards, and resolutions of this Commission; and international human rights treaty law and U.N. Security Council resolutions. The Principles and Guidelines also give consideration to other international and regional human rights decisions and special mechanisms, U.N. General Assembly resolutions, including the U.N. Global Counter-Terrorism Strategy of 2006, and the views of the Office of the United Nation High Commissioner for Human Rights.

In turn, the Arab Convention for the Suppression of Terrorism<sup>34</sup> defines terrorism in its Art. 1(2) as:

*“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources.”*

Most notably, this definition is even broader, since it makes no requirements as to the motives or purposes of the act at all.

The Convention further clarifies in Art. 1(3) that a terrorist offence is:

*“Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences: a. The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963; b. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970; c. The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984; d. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973; e. The International Convention against the Taking of Hostages, of 17 December 1979; f. The provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.”*

Article 2(a) excludes from the list of offences all cases of “struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law”. However, this exclusion does not apply to “any act prejudicing the territorial integrity of any Arab State.”

The Council of Europe Convention on the Prevention of Terrorism (CETS 196), which was opened for signature in 2005, did not define new terrorist offences in addition to those included in the existing conventions against terrorism. In Art. 1, it states that for the purposes of this Convention, ‘terrorist offence’ means any of the offences within the scope of and as defined in one of the international treaties against terrorism listed in the Appendix.<sup>35</sup> It did, however, create three new offences which may lead to the terrorist offences as defined in those conventions. These are:

34. League of Arab States, Adopted by the Council of Arab Ministers of the Interior and the Council of the Arab Ministers of Justice, Cairo, April, 1998

35. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973; International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979; Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005

- Art. 5 Public provocation to commit a terrorist offence, i.e. the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.
- Article 6 Recruitment for terrorism, i.e. to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group. The recruiter needs to have intent that the persons they recruit commit or contribute to the commission of a terrorist offence or join an association or group for that purpose.
- Article 7—Training for terrorism, i.e. to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose. The person providing the training needs to know that the skills provided are intended to be used for the commission of or the contribution to commit a terrorist offence. What are considered weapons, firearms and explosives, or noxious or hazardous substances is not defined in the offence itself, but the Explanatory Report to the Convention suggests that the term ‘explosive’ could be defined in line with Art. 1(3)(a) of the International Convention for the Suppression of Terrorist Bombings, i.e. “an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage;”<sup>36</sup> ‘firearm’ could be defined within the meaning of appendix I to the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals;<sup>37</sup> ‘other weapon’ could be understood in the sense of ‘lethal weapon’ as defined by the International Convention for the Suppression of Terrorist Bombings, Art. 1(3)(b), i.e. a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;<sup>38</sup> ‘noxious or hazardous substances’ could be interpreted in line with the meaning in Art. 1(5) of the International Maritime Organization (IMO) Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (2000), i.e. substances included in various IMO conventions and codes, such as oils, liquefied gases, etc.<sup>39</sup>

These provisions are coupled with a provision on accessory (ancillary) offences (Art. 9) providing for the criminalization of complicity (such as aiding and abetting) in the commission of all of the three aforementioned offences and, in addition, of attempts to commit an offence under Articles 6 and 7, i.e. recruiting and training.<sup>40</sup> As in the International Convention for the Suppression of the Financing of Terrorism, Art. 8 of the Convention explicitly states that these crimes do not require that a terrorist offence within the meaning of Art. 1 is actually committed.

36. Council of Europe, Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series, No. 196, paras. 118

37. *ibid.*, paras. 119

38. *ibid.*, para. 120

39. *ibid.*, para. 121

40. *ibid.*, paras. 32 and 33.

## Relevant Security Council Resolutions

Security Council resolutions may impose legally binding obligations on member States or provide 'soft law' sources of political commitments or emerging norms of international law. Most notably, Security Council resolutions adopted under Chapter VII of the Charter of the United Nations are binding on all Member States. Security Council resolution 1373 (2001) establishes a framework for countering terrorism in general and for improved international cooperation against terrorism. It requires States to:

- Criminalize the provision or collection of funds in relation to the commission of terrorist acts;
- Freeze the funds of persons who commit, or attempt to commit, terrorist acts and those of entities owned or controlled directly or indirectly by such persons;
- Prohibit persons and entities from making funds available for the benefit of others involved in the commission of terrorist acts.
- Paragraph 2 contains requirements aimed at preventing terrorist acts and bringing terrorists to justice, notably:
- Refraining from the provision of any type of support to individuals or entities involved in terrorist acts, including by suppressing the recruitment of members of terrorist groups;
- Denying safe haven to all those who plan, support or commit terrorist acts and bringing them to justice;
- Establishing terrorist acts as serious criminal offences in domestic laws;
- Providing other States with the greatest measure of assistance in connection with terrorism-related criminal investigations;
- Applying effective border controls and controls on the issuance of identity papers and travel documents.

Paragraph 3 deals extensively with international cooperation measures:

- Intensifying the exchange of operational information;
- Cooperating through bilateral and multilateral arrangements and agreements;
- Ratifying and fully implementing the universal conventions and protocols related to terrorism;
- Taking measures to ensure that asylum-seekers have not planned, facilitated or participated in the commission of terrorist acts;
- Ensuring that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts;
- Ensuring that claims of political motivation are not recognized as grounds for refusing requests for the extradition of terrorists.

The Counter-Terrorism Committee has prepared a number of documents highlighting problems, obstacles and trends related to the implementation of the above resolution with a view to identifying regional vulnerabilities, or areas where groups of States facing particular implementation difficulties might benefit from a regional or subregional approach to counter-terrorism.<sup>41</sup>

41. See Global Surveys of the implementation of Security Council resolution 1373 (2001) by Member States (see for instance, S/2016/49).

# Action plans for the prevention of violent extremism

Security Council Resolution 2178/2014 recognizes that it is essential to address underlying factors of the threat posed by terrorist fighters, including by preventing radicalization, 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. It further expresses concern over the increased use by terrorists and their supporters of communications technology for the purpose of radicalisation, recruitment and incitement, including through the internet and underlines the need for Member States to act cooperatively to prevent terrorists from exploiting said technology in this respect.

Acting under Chapter VII of the Charter of the United Nations, the Resolution:

*“Calls upon all Member States, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters.*

*Underscores that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment, and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters, and calls upon Member States to enhance efforts to counter this kind of violent extremism.*

*Encourages Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative, address the conditions conducive to the spread of violent extremism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion.*

*Calls upon Member States to cooperate and consistently support each other's efforts to counter violent extremism, which can be conducive to terrorism, including through capacity building, coordination of plans and efforts, and sharing lessons learned.*

*Emphasizes in this regard the importance of Member States' efforts to develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicalization to terrorism, and of efforts to promote peaceful alternatives to violent narratives espoused by foreign terrorist fighters, and underscores the role education can play in countering terrorist narratives.”*



On May 2017 the Security Council unanimously adopted Resolution 2354/2017 urging Member States to follow the Counter-Terrorism Committee's Comprehensive International Framework to Counter Terrorist Narratives No. S/2017/375. Further by the Resolution's terms, the Council requested the Counter-Terrorism Committee to compile existing good practices in countering terrorist narratives and maintain an up-to-date list of relevant national, regional and global initiatives, while directing it, with the support of the United Nations Counter-Terrorism Committee Executive Directorate, to hold at least one annual review meeting on counter-narratives and make recommendations to Member States on how to build capacity in that area.

While the Framework reaffirmed the recommendations and conclusions of a number of previous resolutions it also gave concrete examples of approaches that can be taken in countering the terrorist narratives, such as scholarly rebuttals by religious authorities on issues like tolerance and non-violence; contradicting evidence on life in battle zones (including the testimonies of former terrorists); personal stories of the impact of terrorism on victims and their families; and information on the scale and severity of the human rights abuses committed by terrorist groups.<sup>42</sup> The Framework additionally recognises that much depends on the context in which the narrative is communicated, including the national context as well as on the psychological profiles of targeted individuals:

*"For this reason, counter-narratives aimed at a large audience often need to be supplemented by one-on-one interventions, including through the work of community mentors, mental-health professionals and others. The level of critical thinking skills in target audiences is another factor that can greatly affect the impact of terrorist narratives. In addition, delegates commended the text's flexibility in encouraging States to design counter-narrative policies tailored to their own needs."*<sup>43</sup>

The Framework encourages States to enter more fully into the 'marketplace of ideas,' to emphasize terrorists' inhumanity, reveal the flaws in their arguments and offer alternative points of view, including positive and alternative narratives promoting a more holistic world view and non-violent ways to address grievances.<sup>44</sup> The Egyptian representative, chairing the Counter-Terrorism Committee was noticeably proud of the Resolution: "What we're doing today is not simply adopting another document to join the pile' underscoring the concrete recommendations included in the text."<sup>45</sup> Noting that a small group of States continued to violate resolutions by supporting terrorism, he stressed that the Council must deliver a message to the world and to terrorists that they were "simply dust in the eyes of humanity", representing no religion, and were ultimately "doomed to disappear".<sup>46</sup>

The UNSC Res. 2322 (2016) also calls "that all States shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and urges States to act in accordance with their obligations under international law, in order to find and bring to justice, extradite or prosecute any person who supports, facilitates, participates or attempts to participate in the direct or indirect financing of activities conducted by terrorists or terrorist groups."

42. Counter-Terrorism Committee's Comprehensive International Framework to Counter Terrorist Narratives No. S/2017/375 para. 18

43. Ibid.

44. Ibid., para. 17

45. <https://www.un.org/press/en/2017/sc12839.doc.htm>

46. Ibid.

## Counter-terrorism measures and human rights

The UN General Assembly recognized already in the 2005 World Summit Outcome that “development, peace and security, and human rights are interlinked and mutually reinforcing.”<sup>47</sup> In the UN Global Counter-Terrorism Strategy, Member States reaffirmed their obligations recognising in particular that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.<sup>48</sup> Keeping this in mind and based on contributions from agencies across the UN system the UN Office on Drugs and Crime in 2009 released the Model Legislative Provisions Against Terrorism<sup>49</sup> which states in Art. 28 that: “Any person in relation to whom proceedings are taken for any of the offences set forth in this Law shall be granted fair treatment, including enjoyment of all rights and guarantees provided by domestic or international law, in particular international human rights law, refugee law, and, when applicable, humanitarian law.”

Security Council Resolution No. 2178/2014 makes it clear that Member States must ensure that “any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, underscoring that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and noting that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity.” It is important to also recall in this regard the Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa described above.<sup>50</sup>

The respect for human rights and fundamental freedoms equally needs to be taken into account when taking national measures to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts.<sup>51</sup>

The UN General Assembly Resolution 64/168 on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism further urges States, to fully comply with their human rights and other international law obligations when countering terrorism; to ensure fundamental judicial guarantees and the protection of the law of the persons deprived of liberty and ensure interrogation techniques are in accordance with international law and reviewed to prevent abuse; to treat prisoners according to international law standards; to ensure fair trials and equality before the law, courts and tribunals.<sup>52</sup> It also reminds that

47. UN GA, 60/I. 2005 World Summit Outcome, A/RES/60/I, (24 October 2005), para. 9

48. UNODC, The Use of the Internet for Terrorist Purposes, p. 19, para. 53

49. <http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html#Terrorism>

50. Adopted by the African Commission on Human and Peoples’ Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015). The Principles and Guidelines were developed on the basis of Article 45(1)(b) of the African Charter, which mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation. They are based on African regional treaty law; the case law, standards, and resolutions of this Commission; and international human rights treaty law and U.N. Security Council resolutions. The Principles and Guidelines also give consideration to other international and regional human rights decisions and special mechanisms, U.N. General Assembly resolutions, including the U.N. Global Counter-Terrorism Strategy of 2006, and the views of the Office of the United Nation High Commissioner for Human Rights.

51. Security Council Resolution 2178/2014, para. 11

52. UN General Assembly Resolution 64/168 on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Art. 6, paras. (a-e; m-o).

certain counter-terrorism measures might have an impact on the enjoyment of human rights, including economic, social and cultural rights and thus urges States to protect these rights.<sup>53</sup> It touches upon guidelines and practices in border control operations and other pre-entry mechanisms and urges that these are clear and that States in this regard follow international law, particularly international refugee and human rights law.<sup>54</sup>

In terms of criminalization of acts of terrorism, it requires laws to be accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.<sup>55</sup> The resolution further urges States, while ensuring full compliance with their international obligations, to ensure the rule of law and to include adequate human rights guarantees in their national procedures for the listing of individuals and entities with a view to combating terrorism.<sup>56</sup>

The Resolution also requests all governments to “cooperate fully with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in the performance of the tasks and duties mandated, including by reacting promptly to the urgent appeals of the Special Rapporteur and providing the information requested, and to give serious consideration to responding favourably to his requests to visit their countries, as well as to cooperate with other relevant procedures and mechanisms of the Human Rights Council (HRC) regarding the promotion and protection of human rights and fundamental freedoms while countering terrorism.”

The Special Rapporteur has highlighted the importance of country visits in his report to the HRC and stated that they were:

*“a critical aspect of the mandate as they allow for objective fact-finding on the basis of which assistance and advice can be given to States in their efforts to respect and protect human rights while countering terrorism. The Special Rapporteur is cognizant of the sensitivities associated with such visits. Yet the obvious risk of States’ failure to respond positively to requests from the Special Rapporteur to carry out country visits is that the value of the mandate is undermined.”<sup>57</sup>*

It is thus highly regrettable that throughout his entire period of tenure, the former Special Rapporteur has only been able to carry out four country visits, i.e. to Burkina Faso, Chile, Saudi Arabia, Sri Lanka and from the SPCs, Tunisia. All requests for formal country visits addressed to States other than these four have been met with an unfavourable response, a delayed response or no response at all.<sup>58</sup> A number of requests for country visits remain outstanding, notably to Afghanistan, Algeria, Egypt, Malaysia, Nigeria, Pakistan, the Philippines, the Russian Federation, Thailand, Turkey, and the United Arab Emirates.

53. Ibid, Art. 6, para. f.

54. Ibid, Art. 6, para. g.

55. Ibid, Art. 6, para. k.

56. Ibid, Art. 10.

57. Human Rights Council, Thirty-fourth session 27 February-24 March 2017, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, para. 12

58. Ibid.

# Foreign Terrorist Fighters (FTFS)

A 'foreign fighter' has been defined as "an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship."<sup>59</sup> However, the term 'foreign terrorist fighters' is to be found in United Nations Security Council resolution 2178, which defines them 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."<sup>60</sup> Such individuals are a major concern for countries of origin, transit and destination.

One of the biggest recent phenomena in this regard has been the so-called Islamic State (also known as ISIS or ISIL) as well as groups such as the al-Nusra Front which managed to attract thousands of individuals from foreign countries to join their fight in Syria and Iraq.

There have been several estimates as to the number of such foreign fighters. The figures range from 25.000 all the way up to 40.000.<sup>61</sup> In May of 2016, the United Nations projected that around thirty-eight thousand individuals may have attempted to travel to join ISIS in Iraq and Syria.<sup>62</sup> These individuals did not only pose a significant threat to Syria and Iraq and made a mockery of the claim that the conflicts there were civil wars, but continue to pose a substantial threat to the security of the populations of the countries to which they are returning. In this context, we speak of foreign fighter 'returnees' as individuals who fight abroad and then return back to their country-of-origin. Returnees participating in combat and training abroad may commit terrorist attacks upon returning to their home countries, a phenomenon known as 'blowback'.<sup>63</sup> According to the analysis of one dataset, out of 27 attacks and 19 plots linked to ISIS in Western Europe alone, between January 2014 and July 2016, 18 are known to have involved returnees either as operatives or logisticians.<sup>64</sup> More often than not, returnees are presented as distinct from 'lone wolves' or 'lone actors' which exist separately from a structured terrorist or insurgent group. However, as pointed out by the Executive Director of the Counter-Terrorism Committee Executive Directorate (CTED), in a number of cases which were initially regarded as lone terrorist attacks, subsequent investigations showed that they had been supported, resourced, or guided from abroad or inspired by groups such as ISIS, often via internet.<sup>65</sup>

As ISIS began losing territory, the rate of returns to home countries and relocations to third states increased significantly as had the number of terrorist attacks. As of April 2017, approximately 20 to 30 percent foreign

59. Geneva Academy of International Humanitarian Law and Human Rights, *Academy Briefing No. 7 – Foreign Fighter under International Law* Geneva, 2014) 6.

60. SC Res. 2178(2014), preamble para. 9.

61. Russia Today, 'Over 40,000 foreign militants from 100 countries fighting in Syria – US State Department', (3 June 2016) <https://www.rt.com/usa/345269-40000-foreign-terrorists-syria/>.

62. U.N. Secretary-General, *Report of the Secretary General on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat*, 11 18, U.N. Doc. S/2016/501 (May 31, 2016)

63. Cory Kopitzke, Security Council Resolution 2178(2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon, (2017) *Ind. J. Global Legal Stud.* 309, 313

64. Kim Cragin, 'The Challenge of Foreign Fighters Returnees', (2017) 33 *Journal of Contemporary Criminal Justice*, 294.

65. Major challenges remain, Executive Director of CTED tells Security Council in meeting on foreign terrorist fighters, <https://www.un.org/sc/ctc/blog/2017/11/28/major-challenges-remain-executive-director-of-cted-tells-security-council-in-meeting-on-foreign-terrorist-fighters/>

fighters had left Iraq and Syria, and, as of April 2016, an estimated 30 percent of the EU foreign fighter contingent at the time had already returned to their countries of residence, equalling about 1,200 people.<sup>66</sup> On December 6<sup>th</sup> 2017, the Russian Ministry of Defense declared the liberation of Syria from ISIS stating that all territories previously under terrorist control were liberated in the final push by the Syrian Army.<sup>67</sup> The Iraqi government also announced in the same month that their fight against ISIS had been won. ISIS foreign fighters now more than ever pose a threat to their home countries or third countries they may have chosen to go to after leaving Syrian or Iraqi territory. South-East Asian countries particularly have seen not only an influx of returnees, but also a number of foreign fighters who appear to have chosen to go there rather than return to their own homes.

There have been several estimates as to the number of foreign fighters that have joined ISIS. They range from 25.000 all the way up to 40.000.<sup>68</sup>

## Security council resolutions relevant To FTFs

The sanctions regimes against the Islamic State in Iraq and the Levant (ISIL) (Da'esh), Al-Qaida and the Taliban were introduced pursuant to Security Council resolution 1267 (1999) and subsequently modified and strengthened by numerous other resolutions, the latest one having been adopted in 2015 (see Security Council resolutions 1333 (2000), 1390 (2002), 1452 (2002), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011), 2170 (2014), 2178 (2014), 2199 (2015) and 2253 (2015)).

The sanctions are established under chapter VII of the Charter of the United Nations and require that States implement three types of measures against designated individuals and entities:

- A freezing of all assets belonging to these individuals and entities, with only certain exceptions (and under certain conditions), introduced by Security Council resolution 1452 (2002), where property is needed to cover basic expenses;
- An arms embargo, whereby no arms, weapons or ammunition shall be supplied, sold or transferred to listed persons or entities (this type of sanction includes the prohibition to deliver technical advice, assistance and training related to military activities for the benefit of designated individuals and entities);
- A travel ban, which prevents listed individuals from entering into or transiting through States of which they are not nationals. Exemptions to the travel ban are envisaged, as set out in Security Council resolutions 1988 (2011), 2161 (2014) and 2253 (2015).

The Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, the Security Council Committee established pursuant to resolution 1988 (2011) and the Analytical Support and Sanctions Monitoring Team have produced a number of documents to inform States about the procedure in force for listing individuals and entities, to assist them in the interpretation of the sanctions regimes and to guide them through the delisting process.<sup>69</sup> Those documents include the following:

66. Z. Fellmann, T.M. Sanderson and M. Galperin Donnelly, 'Foreign Fighter Fallout. Their Strategic Impact', Center for Strategic and International Studies, April 2017, [http://foreignfighters.csis.org/fallout\\_foreign\\_fighter\\_project.pdf](http://foreignfighters.csis.org/fallout_foreign_fighter_project.pdf); B. van Ginkel and E. Entenmann, eds., *The Foreign Fighters Phenomenon in the European Union* (2016); International Centre for Counter-Terrorism – The Hague, *The Four Dimensions of the Foreign Fighter Threat: Making Sense of an Evolving Phenomenon*, 5.

67. Russia Today, Syria Fully Liberated from ISIS Terrorists – Russian MoD, (7 Dec. 2017) <https://www.rt.com/news/412149-syria-liberated-isis-terrorists/>.

68. <https://www.rt.com/usa/345269-40000-foreign-terrorists-syria/>

69. More information about the committees, including the resources listed here, are available from [www.un.org/sc/suborg/en/sanctions/information](http://www.un.org/sc/suborg/en/sanctions/information).

- Guidelines of the committees (including their mandates, meetings and decision-making procedures);
- Consolidated sanctions list;
- Summaries of listing criteria;
- Assets freeze: explanation of terms;
- Travel ban: explanation of terms;
- Arms embargo: explanation of terms.

INTERPOL assists with the worldwide dissemination of the consolidated lists. The INTERPOL-United Nations Security Council Special Notices<sup>70</sup> warn countries as to whether a certain individual or entity is being targeted by the sanctions regimes and informs recipients if the target of those sanctions has also been reached by a Red Notice.

The UNODC model legislative provisions against terrorism contain a section on the Al-Qaida and Taliban sanctions regimes and suggest drafting language for a wide spectrum of sanctions.<sup>71</sup> Examples of how countries have implemented the sanctions regimes can be found in the UNODC electronic legal resources on international terrorism.<sup>72</sup>

Unanimously adopted Security Council Resolution No. 2178/2014 further condemns groups such as ISIS and Al-Nusra Front (ANF) and individuals who are foreign terrorist fighters or are recruited into these groups.<sup>73</sup> It requires UN Members to take measures domestically or internationally to prevent and suppress “the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their State of residence or nationality” with the intent to commit, plan, or participate in terrorist acts or to be trained as terrorists, as well as the financing of their travel and other activities.<sup>74</sup>

Member States should require airlines flying above their territories to submit advance passenger information (API) to the national authorities in order to enable them to prevent entry into or transit through their territories of persons who are listed on the Al-Qaeda Sanctions List kept by the Committee, which was established by Resolution No. 1267/1999 and Resolution No. 1989/2011.<sup>75</sup>

Member States are also urged to improve international and regional cooperation with the aim of preventing the travel of foreign terrorist fighters from or through their territories, through the sharing of intelligence regarding actions or movements of terrorists or terrorist networks, best practices, and a deeper understanding of the patterns of travel.<sup>76</sup> The Resolution further focuses on the need for Member States to implement better border controls and issue travel documents with better care, preventing their counterfeiting, forgery or fraudulent use.<sup>77</sup>

70. Available at [www.interpol.int](http://www.interpol.int).

71. See [www.unodc.org/tldb/en/model\\_laws\\_treaties.html](http://www.unodc.org/tldb/en/model_laws_treaties.html). See, in particular, chapter 4, section 3, on restrictive measures concerning individuals, groups, undertakings and entities placed on the consolidated lists pursuant to Security Council resolution 1267 (1999) and following resolutions.

72. see the counter-terrorism legislation database in the terrorism prevention section of the UNODC website.

73. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014).

74. Ibid.

75. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014), cl. 9.

76. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014), cl. 11.

77. Para. 2.



Security Council resolution 2178 is fundamental to addressing foreign terrorist fighter threats. However, some major challenges remain in its implementation, most notably the fact that fewer than 60 States have so far introduced measures requiring airlines to provide advance passenger information (API) – meaning that for over 100 Member States verifying the possible presence of a foreign terrorist fighter onboard an aircraft is very difficult.<sup>78</sup> Furthermore, many States still require assistance in effective prosecution, rehabilitation, reintegration strategies as well as establishing the necessary connectivity between national databases and border posts.<sup>79</sup> On the other hand, international cooperation is undermined by practical and political challenges as well as by inconsistent compliance with human rights obligations.<sup>80</sup> While ‘impunity is not an option’, difficulty of collecting sufficient admissible evidence from conflict zones remains a substantive challenge.<sup>81</sup>

## **Additional protocol to the council of europe convention on the prevention of terrorism (CETS 217)**

Following Res. 2178 (2014), the Council of Europe Committee of Experts on Terrorism examined the issue of radicalization and FTF and proposed to the Committee of Ministers to draft terms of reference for a committee to be established for the purpose of drafting an Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism to supplement it with a series of provisions aimed at implementing the criminal law aspects of Res. 2178. The offences included in the Protocol are mainly of a preparatory nature in relation to terrorist acts and States Parties are required to criminalize them in their domestic legislation when committed unlawfully and intentionally:

**Art. 2 participating in an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or group.** The criminalization of passive membership of a terrorist association or a group, or the membership of an inactive terrorist association or group, is not required under this offence.<sup>82</sup> Also the attempt or the aiding or abetting of this offence do not need to be criminalized, however States Parties may do so if it is appropriate in their domestic legal systems.<sup>83</sup> The Protocol precisely defines the nature of the association or group, as criminalization ‘depends on the commission of terrorist offences by the group, regardless of its officially proclaimed activities.’<sup>84</sup>

**Art. 3 receiving training for terrorism, i.e. to receive instruction, including obtaining knowledge or practical skills, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence.** The wording here closely reflects that used in the offence of training for terrorism, including the terms ‘explosives, firearms or other weapons or noxious or hazardous substances’. Activities that would otherwise be lawful can fall under this article, as long as the person receiving the training has the criminal intent to use it to commit

78. Major challenges, *supra* note 311.

79. *Ibid.*

80. *Ibid.*

81. *Ibid.*

82. Council of Europe, Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series, No. 217, para. 33.

83. *Ibid.*, para. 35.

84. *Ibid.*, para. 37.

a terrorist offence.<sup>85</sup> Receiving training for terrorism may take place in person, or through electronic media, however merely visiting websites containing information or receiving communications, is not an offence under this article.<sup>86</sup> The perpetrator must take an active part in the training in order to come under the purview of this article by, for example, participating in interactive training via the Internet. 'Self-study' is thus not covered, but States Parties may wish to criminalize it domestically.<sup>87</sup>

**Art. 4 travelling abroad for the purpose of terrorism, i.e. travelling to a State, which is not that of the traveller's nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism** (as defined in Art. 7 of the Convention and Art. 3 of the Protocol). The travel may be direct or by transiting other States on route.<sup>88</sup> This does not require State Parties to criminalize all travels to certain destinations, or introduce administrative measures, such as withdrawal of passports, but only to criminalize travel for the stated purposes. Art. 4 applies only to travels undertaken from the territory of the State Party, or by its nationals, irrespective of their place of residence or starting point of travel.<sup>89</sup> While the Protocol uses wording slightly different from SC Res. 2178 this was not intended to detract from the meanings contained in the resolution.<sup>90</sup> Attempt to travel abroad for the purpose of terrorism is not included, however State Parties may wish to criminalize it.

**Art. 5 funding travelling abroad for the purpose of terrorism**, i.e. providing or collecting, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined in article 4, paragraph 1, of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose. The definition of 'funds' is the same as that of Art. 1(1) of the International Convention for the Suppression of the Financing of Terrorism. The criminalization of the attempt or the aiding or abetting of this offence is not required, though States Parties may do so.

**Art. 6 organizing or otherwise facilitating travelling abroad for the purpose of terrorism**, i.e. any act of organization or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in article 4, paragraph 1, of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism. 'Organization' covers conduct related to practical arrangements connected with travelling, while 'facilitation' refers to conduct that does not constitute 'organization' but which assists the traveller in reaching their destination.<sup>91</sup> The perpetrator must act intentionally, unlawfully and with the knowledge that the assistance is provided for terrorism purposes. This offence may also be criminalized as a preparatory act or as an element of aiding or abetting to the main offence.<sup>92</sup>

85. Ibid., para. 41

86. Ibid., para. 40.

87. Ibid.

88. Ibid., para. 44

89. Ibid., para. 49

90. The word 'commission' has been used instead of 'perpetration'; 'contribution' instead of 'planning' and 'preparation'; 'terrorist offences' instead of 'terrorist acts'; 'terrorist training' instead of 'training for terrorism'

91. Explanatory Report, supra note 53, paras. 60-62

92. Ibid., para. 61

# Country by country analysis

## Algeria



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

According to the questionnaire, Algeria indicated that its domestic law dealing with terrorist offences includes criminal acts within the scope of and as defined in the treaties listed in the annex to the International Convention on the Suppression of the financing of Terrorism.

On June 19, 2016 the president promulgated a new law completing Ordinance No. 66-155 of 6 June 1966 establishing the Code of criminal procedure (Act No. 16-02 of 19 June 2016, amending the Criminal Code) and expanding criminal liability in the areas of foreign terrorist fighters, those who support or finance foreign terrorist fighters, the use of information technology in terrorist recruiting and support; and internet service providers who fail to comply with legal obligations to store information for a certain period or to prevent access to criminal material. The legislation was intended to implement UN Security Council resolutions (UNSCR) 2178 (2014) and 2199 (2015) and other UNSC Resolutions aiming to counter the financing of terrorism namely resolutions 1267 (1999), 1989 (2011) and 2253 (2015) pertaining to IS, al-Qaeda's network and the persons, groups companies and various bodies that are linked to the above groups. The above-mentioned new law (Act No. 16-02 of 19 June 2016, amending the Criminal Code) also criminalizes someone's trip abroad in order to commit, organize, prepare or participate in terrorist acts as well as to provide or receive training in order to commit them.

The above-mentioned act (16-02) was promulgated in application of the UNSC resolutions on foreign terrorist fighters. As for the resolutions on terrorist financing, freezing, and the sanctions regime against Daesh and Al Qaeda, they are covered by the Act No. 05-01 amended and completed, on the prevention and the fight against money laundering and terrorist financing and by the executive decree No. 15-113 of 12/05/2015 on freezing and/or seizing of assets in the prevention and fight against terrorist financing.

Algeria's Penal Code defines terrorism broadly. Section 4 bis of the Penal Code deals with crimes qualified as terrorist or subversive (according to the ordinance No. 95-11 of 25 February 1995). Art. 87 bis considers as a terrorist or subversive act, any act which targets the security of the State, the integrity of its territory, the stability and the normal functioning of the institutions by any action which has the aim of:

- spreading panic amongst the population and creating a climate of insecurity by causing moral or physical harm to persons or putting their lives, liberty or security in danger; or causing harm to their property;
- hindering traffic or the liberty of movement on the roads and occupying public spaces with gatherings;
- violating the symbols of the nation and the Republic and insulting its burial places

- causing harm to means of communication and transportation at public and private property by taking possession of them or by unduly occupying them;
- causing harm to the environment or introducing into the atmosphere, on the ground, under the ground or into the waters which include the territorial sea, a substance which would endanger the health of persons, animals or the natural environment;
- obstructing the action of the public authorities or the free exercise of worship and the public liberties as well as the operation of the institutions contributing to public service;
- obstructing the operation of public institutions or causing harm to the life or property of their agents, or obstructing the enforcement of laws and regulations.

For the acts referred to in said article, the punishments are

- the death penalty, when life imprisonment is provided for in the law; life imprisonment when imprisonment between 10 to 20 years is provided for in the law;
- imprisonment of 10 to 20 years, when imprisonment between 5 to 10 years is provided for in the law;
- double the punishment for any other punishments not enumerated above.<sup>93</sup>

For all acts which are not related to any of the categories provided in Art. 87 bis above, the punishment is double the one provided by the penal code or other relevant texts not incorporated in it, when the facts are related to terrorism or subversion.

Art. 87 bis 3 then continues that whoever creates, funds, organises or leads any association, body, group or organization which has as its aim or its activities fall under the provisions of Art. 87 bis, shall be punished by life imprisonment. Any association or participation, in any form, in such associations, bodies, groups or organizations, with knowledge of their aims or activities, is punishable by imprisonment between 10 to 20 years.

According to Art. 87 bis 4, whoever gives apologies for, encourages or finances, by any means, the above-mentioned acts is subject to punishment of imprisonment between 5 to 10 years and a fine of between 100.000 DA – 500.000 DA.

Art. 87 bis 5 then states that whoever knowingly reproduces or circulates documents, printed materials or recordings which gives apologies for said acts is subject to imprisonment between 5 to 10 years and a fine of between 100.000 DA – 500.000 DA.

According to Art. 87 bis 10 anyone who preaches or tries to preach in a mosque or other public space designated for prayer, without being nominated, agreed upon and authorised for this purpose by the relevant public authority, is subject to imprisonment between 1 to 3 years and a fine of between 10.000 DA – 100.000 DA.

Imprisonment of 3 to 5 years applies and a fine of between 50.000 DA – 200.000 DA for anyone who preaches or by any other action undertakes an activity contrary to the noble mission of the mosque or an activity of a nature that is harmful to the cohesion of the society or to make apologies and propaganda for the above-mentioned acts.

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93. Art. 87 bis I.

## Action Plans for the Prevention of Violent Extremism

- On September 29, 2005 a referendum was held on the Charter for Peace and National Reconciliation, proposed by Algerian President and it passed with a 97% majority. The Charter aims to bring closure to the 'national tragedy' and foresees two measures: Termination of prosecution in the cases where either the proceedings are at the stage of preliminary inquiry, a judicial inquiry is opened, the case is sent, registered or under advisement before the adjudicating court, or if there is a possibility of appeal of cassation before the Supreme Court.
- Pardon, which applies to persons definitely convicted as perpetrator or accomplice of the conducts defined in the provisions of the Charter.

The above-mentioned measures do not apply to the persons who have committed, aided or abetted, or incited to commit collective massacres, rapes, or to use explosives in public spaces, nor to the persons definitely convicted for having committed, aided or abetted, or incited to commit such acts.

The Charter establishes provisions concerning compensation measures, State benefits, and professional and social rehabilitation measures. Judicial assistance is automatically applicable in the procedure of declaration of death by a court in relation with the people who have disappeared and whose corpse have not been found, following an investigation, using all the legal means, which has proved unsuccessful.

### Regional and International Cooperation

On regional and international cooperation in the field of countering violent extremism, Algeria would like to see sustained bilateral, regional and international cooperation similar to that in the field of fighting against terrorism. In 2015, it launched and hosted the International Conference on the fight against extremism and de-radicalization, where it shared its experience with the participants and sought to identify common challenges and points of cooperation within the UN system and the Global Counter Terrorism Forum. More than 50 countries and international organizations participated in the conference's first meeting.

Furthermore, it has been seeking to strengthen efforts against terrorism at the African level which has resulted in a number of international instruments and initiatives. In 2015, it has participated in the 7<sup>th</sup> meeting of intelligence and security heads in the Sahel-Sahara region, organised by the African Union. Algeria has engaged in a concerted approach through many mechanisms of cooperation, such as the Countries of the Field, the working Group on the Sahel co-chaired by Algeria and Canada under the Global Counterterrorism Forum (GCTF) of which it is a founding member, the Joint Operational General Staff Committee (CEMOC), the Fusion and Liaison Unit (UFL) mainly for sharing intelligence, and many other *fora* which are a great contribution to facilitating the deepening of security cooperation between the concerned countries. In 2016, Algeria also convened international workshops on the role of democracy in countering terrorism, and on terrorists' use of the Internet.<sup>94</sup>

94. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017 available on line at <https://www.state.gov/documents/organization/272488.pdf>, 176.

## Foreign Terrorist Fighters

A relatively very low number of foreign fighters has originated from Algeria. In this regard, the Algerian Interior Ministry has credited Algeria's success in this regard to smooth information-sharing between national counterterrorism parties, as well as government-led efforts to thwart terrorism recruitment online and in mosques.<sup>95</sup>

Algeria's border security has been a top priority in guarding against infiltration and terrorists from neighbouring countries. It has been increasing border security, installing new observer posts, reinforcing protection of energy installations, using new aerial-based surveillance technologies, upgrading communication systems, deploying additional troops and strengthening coordination with neighbouring countries with joint checkpoints and patrols, information sharing, and training and equipment programs.<sup>96</sup>

The government closely monitors passenger manifests for inbound and outbound flights and scrutinizes travel documents of visitors, employs biometric screening systems and computerized fingerprint identification to identify suspect travellers and uses Interpol channels, alerts, and fusion notices to stay informed on suspicious travellers at land, air, and maritime borders.<sup>97</sup>

The Algerian government reported it had established a regularly updated database regarding foreign terrorist fighters, which is deployed at all border posts and Algerian diplomatic missions overseas.<sup>98</sup>

The Algerian penal code has been reviewed to ensure compliance with UN Security Council Resolution 2178, by law 16/02 of 19 June 2016, which added articles 87 bis 11, 87 bis 12, and 394 bis 8.

Art. 87. bis 11 reads:

"Is punished by imprisonment from five to ten years and a fine of 100.000 DA to 500.000 DA, any Algerian or foreign national residing in Algeria legally or illegally, who goes or attempts to go to another State for the purpose of committing, organising or preparing or participating in terrorist acts or for providing or receiving training for the purpose of committing such acts.

Is punished by the same, whoever:

- provides or deliberately collects funds, by any means, directly or indirectly, for the purpose of using them or which he knows will be used to finance travel of persons which are going to another State for the purpose of committing the acts provided for in paragraph 1 of this article;

95. Counter-Extremism Project: Algeria: Extremism and Counter-Extremism Report, available at: <https://www.counterextremism.com/countries/algeria>

96. <https://www.state.gov/documents/organization/239631.pdf>, p. ibid., 160

97. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017 available on line at <https://www.state.gov/documents/organization/272488.pdf>, p. 173

98. ibid.



- finances or organises deliberately travel for persons who are going to another State for the purpose of committing, organising or preparing, or participating in terrorist acts or for providing or receiving training for the purpose of committing such acts or for facilitating the travel;
- uses information and communication technologies to carry out the acts provided for in this Article.”

Art. 87 bis 12 reads:

“Is punishable by imprisonment of five to ten years and a fine of 100,000 AD to 500,000 AD, whoever, using information and communication technology, recruits persons on behalf of a terrorist, an association, body, group or organization whose purpose or activities fall under the provisions of this section, or takes charge of its organization or supports its acts or activities or disseminates its ideas in a direct or indirect manner.”

Art. 87 bis 6 of the Algerian Penal Code (introduced through the Ordinance No. 95-11 of 25/02/1995) states that any Algerian who activates or gets enrolled abroad in a subversive or terrorist association, group or organization, whatever their form or denomination, even if their activities are not directed against Algeria, will be punished by imprisonment from 10-20 years and a fine of between 500.000 DA – 1.000.000 DA. If the acts defined above have as their objective the harming of Algerian interests, the punishment is life imprisonment.

Concerning the regime of the sanctions adopted against ISIL (Da'esh) and al-Qa'ida as provided by the UNSC resolutions, the executive decree No. 15-113 of 12 May 2015 on the procedure of freezing or seizure of assets in the prevention and fight against terrorist financing is also worth mentioning. It establishes the implementing rules of freezing or seizure of assets measures, as established by Act No. 05-01, as amended and consolidated, on the prevention and the fight against money laundering and terrorist financing in application of the relevant resolutions of the UNSC.

## Recommendations

Algeria is an example of good practice when it comes to tackling the problem of violent extremism through a multi-faceted approach, devoting special attention to de-radicalisation through several programs. Its counterterrorism efforts have been met with noteworthy success, one of which is the small number of foreign fighters emerging from the country.

## Egypt



## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

Egypt has enshrined its commitment to fighting all types and forms of terrorism and tracking its sources of funding in Article 237 of its 2014 Constitution. The legislative framework in combating terrorism includes

the Egyptian Penal Code Art. 86, the Code of Criminal Procedures, Law 94/2015 on Combating Terrorism<sup>99</sup> and Law No. 8/2015 regulating designated terrorist entities lists and Terrorists<sup>100</sup>.

The development of terrorists and terrorism entities lists as well as referring the developed lists to competent courts to take due legal actions according to the relevant law is the role of the public prosecution.

Egypt ratified almost all of the international and regional conventions on combating terrorism including the International Convention for the Suppression of Terrorist Bombings (1997); the International Convention for the Suppression of the Financing of Terrorism (1999); the Arab Convention for the Suppression of Terrorism (1998); and the Organization of African Unity Convention on the Prevention and Combating of Terrorism (1999).

Article 93 of the Egyptian Constitution of 2014 stipulates:

*“The State shall abide by the international conventions, covenants and covenants on human rights ratified by Egypt and shall have the force of law after their publication in accordance with the prescribed conditions.”*

Article 2 of Law 94/2015 on Combating Terrorism defines a terrorist act as:

*“any use of force, violence, threat, or intimidation domestically or abroad with the purpose of disturbing public order, or endangering the safety, interests, or security of the society; or harming individuals or terrorizing them or jeopardizing their lives, or freedoms, or public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; or harming national unity, social peace, or national security or damaging the environment, or natural resources, or antiquities, or funds, or buildings, or public or private properties or occupying or seizing them or preventing or impeding public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, educational institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resisting them or disabling the enforcement of any of the provisions of the Constitution, laws, or regulations.*

*A terrorist act shall likewise refer to any conduct committed with the intent to achieve any of the purposes set out in the first paragraph of this article, or for the preparation for it or instigation of it, if it is as such to harm communications, information systems, financial or banking systems, national economy, energy reserves, security stock of goods, food and water, or their integrity, or medical services in disasters and crises.”*

The punishment for any of these acts is imprisonment for no less than ten years and if the act resulted in permanent disability with no possibility for treatment, the penalty is life imprisonment. If the act results in the death of a person, the penalty is the death sentence.<sup>101</sup>

99. Law No. 94/ 2015 Related to the Enactment of Anti-Terrorism Law Official Gazette - No. 33 (bis) issued on 15 August 2015

100. Official Gazette, No. 7 (bis) (z) published on 17/2/2015

101. Art. 19

Establishing, organising, funding<sup>102</sup> or assuming leadership of a terrorist group is punishable by death or life imprisonment. Joining or participating in a terrorist group is punishable with aggravated imprisonment. The penalty shall be the aggravated imprisonment of not less than ten years if the offender receives military, security or technical training for the terrorist group to achieve its purposes.<sup>103</sup> Coercing another to join a terrorist group is punishable by life imprisonment and by death if the coercion results in the coerced person's death.<sup>104</sup>

Whoever commits a terrorism financing crime shall be punished by life imprisonment if the funding was for a terrorist and by death if the financing was for a terrorist group or a terrorist act.<sup>105</sup>

In cases where the offense is committed by a terrorist group, the person in charge of the actual management of this group shall be punished by the penalty prescribed in the preceding paragraph of this Article provided that the crime is committed on behalf of the group or to its advantage.

The terrorist group shall be punished by a fine of no less than 100,000 Egyptian pounds and no more than 3 million Egyptian pounds. It shall be jointly responsible for the payment of the financial penalties or compensation sentenced. The law also punishes attempt,<sup>106</sup> incitement<sup>107</sup> and facilitation<sup>108</sup> of terrorist acts. Attempts and incitement are punishable by the same penalty as the full offence. For incitement, it does not matter whether it is directed against a specific person or group, whether it is public or private, what were the means used or whether it actually had effect.<sup>109</sup>

## Seizure and safety of aviation and maritime navigation

### Article (24)

Whoever captures by force, violence, threat, or intimidation any means of air, land, sea, or river transport or fixed platforms installed permanently on the bottom of the sea for the purpose of discovering or exploiting resources or for any other economic purposes in order to achieve a terrorist purpose shall be punished by aggravated imprisonment for no less than seven years.

The penalty shall be life imprisonment if the means of transport or the fixed platform is for the armed forces or the police, if the perpetrator commits an act of violence against a person present in any of such installations, or if (s)he destroys or causes damage to the means of transport or fixed platform in a manner that results in a permanent or temporary disruption.

The penalty shall be the same provided for in the second paragraph of this article for whoever places on the means of transport or fixed platform, devices or materials that destroy or harm lives or property or

102. According to Art. (3), funding terrorism shall refer to the collection, receipt, possession, supply, transfer, or provision of funds, weapons, ammunition, explosives, equipment, data, information, materials or other, directly or indirectly, and by any means, including digital or electronic format, in order to be used, in whole or in part, in the perpetration of any terrorist crime. It shall also refer to the knowledge that they will be used for such purpose or to provide safe haven for one or more terrorists or for those who fund them by any of the methods mentioned above.

103. Art. 12

104. Art. 12

105. Art. 13

106. Art. 5

107. Art. 6

108. Art. 7

109. Art. 6

whoever destroys or vandalizes transportation installations and facilities or resists by force or violence the public authorities during the performance of their duty to restore the means or the fixed platform or prevents such authorities from carrying out their duties.

The penalty shall be the death sentence if the act results in the death of a person.

## Internationally protected persons

### Article (17)

Whoever enters by force or resistance the headquarters of a diplomatic or consular mission, an international or regional body or organization, or the official offices or private residences of their members in Egypt or abroad for the purpose of committing a terrorist crime shall be punished by life imprisonment or aggravated imprisonment for no less than ten years.

Whoever resorts to the use of force to attack or simply threatens to attack any of the headquarters set forth in the first paragraph of this Article or means of transport of a **person under international protection** shall be punished by the same penalty if such an attack jeopardizes the latter's security or freedom.

The penalty shall be life imprisonment if the act was carried out with the use of weapons by one or more individual. If the act results in the death of a person, the penalty shall be the death sentence.

## Hostage taking

### Article (22)

Whoever arrests, abducts, detains, imprisons, or limits the freedom of a person in any manner shall be punished by imprisonment for no less than ten years if the purpose is to force a State body or authority to take or refrain from an action or to obtain an advantage or benefit of any kind.

The penalty shall be life imprisonment if the offender commits any of the acts set forth in Article (2) of this Law or if he makes false impersonations, unduly wears an official uniform or bears a card or insignia distinctive of a profession or function, conducts a job in accordance with the requirements of these professions, presents false documents, claiming they are issued by a State authority, if the act results in an injury, if the offender resists public authorities during the performance of their function while releasing the victim. The penalty shall be the death sentence if the act results in the death of a person.

## Nuclear weapons

### Article (15)

Whoever, in any manner, directly or indirectly, and with the intent to commit a terrorist crime domestically or abroad, prepares or trains people to manufacture or use conventional or unconventional weapons, wired, wireless, or electronic means of communication, or any other technical means or teaches them martial arts, combat, technology, skills, tricks or other methods in whatever form to be used to commit a

terrorist crime or instigate to any the above shall be punished by life imprisonment or imprisonment for no less than ten years.

Whoever receives the training or education provided for in the preceding paragraph of this Article or is present in such locations in order to prepare or commit one of the offenses referred to in the first paragraph of this Article shall be punished by imprisonment for no less than seven years.

## Article (23)

Without prejudice to any other aggravated penalty, whoever makes, designs, acquires, achieves, provides, offers, or facilitates the obtaining of a conventional weapon to be used or prepared for use in the perpetration of a terrorist crime shall be punished by aggravated imprisonment for no less than ten years.

The penalty shall be life imprisonment if the weapon subject of the crime is **unconventional**.

The penalty shall be the death sentence if the use of the conventional or unconventional weapon or the material results in the death of a person.

(Note that 'unconventional weapons' here include nuclear, chemical, biological, radiological, bacteriological or any other natural or artificial solid, liquid, gas, or vaporous materials whatever their origin or method of production, that have the ability and power to cause death or serious physical or mental injuries or cause damage to the environment, buildings, and facilities.)

Egypt has put reservations and a declaration to the Convention on the Suppression of Financing of Terrorism as follows:

1. Under article 2, paragraph (a), of the Convention, the Government of the Arab Republic of Egypt considers that, in the application of the Convention, conventions to which it is not a party are deemed not included in the annex.
2. Under article 24, paragraph 2, of the Convention, the Government of the Arab Republic of Egypt does not consider itself bound by the provisions of paragraph 1 of that article.

### *Explanatory declaration:*

Without prejudice to the principles and norms of general (public) international law and the relevant United Nations resolutions, the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, paragraph 1, subparagraph (b), of the Convention.

Note that the majority of EU countries<sup>110</sup> objected to the second reservation, claiming it was contrary to the object and purpose of the Convention and that it amounted to a reservation, since it unilaterally limited its scope.

<sup>110</sup> Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom and Northern Ireland

## Designating organizations and individuals as terrorist entities

By Presidential decree in 2015 ratified by Parliament in 2016 the Terrorist Entities Law No. 8/2015 was promulgated which established a mechanism for designating organizations or individuals as terrorist entities. The development of terrorists and terrorism entities lists as well as referring the developed lists to competent courts to take due legal actions according to the relevant law is the role of the Public Prosecution.

Article 1 of the 8/2015 law defines terrorist entities as:

Associations, organizations, groups, gangs, cells or other groupings, whatever their legal or factual form, when they have advocated or are intended to advocate by any means within or outside the country the harming or terrorizing of individuals or endangering their lives or freedoms or rights or their security or causing damage to the environment or natural resources, or antiquities or communications, or land, air or sea transportation, or funds, or buildings, or public or private property, or occupying it, or seizing it, or preventing or obstructing public authorities, judicial institutions, governmental bodies, civic centres, places of worship, hospitals, institutions and educational institutes, other public facilities, diplomatic and consular missions, or regional and international organizations and institutions in Egypt obstructing them from carrying out part or all of their activities or endangering their operation by any means, or if its purpose was provoking by any means the disruption of public order or to endanger the safety of the society, its interests or security, or to disrupt the provisions of the Constitution or laws or preventing a State institution or a public authority from the exercise of their duties, or infringes personal liberty of the citizen or other freedoms and public rights guaranteed by the Constitution and the law, or harming national unity or social peace or national security.

This shall apply to the said entities and persons when they have exercised, targeted or intended to carry out any of these acts, even if they are not directed to the Arab Republic of Egypt.

The law further defines a terrorist as:

Any natural person who commits or attempts to commit or instigates or threatens or plans, at home or abroad, a terrorist offense by any means, even individually, or contributes to this crime in the framework of a common criminal enterprise, or acts as a leader, director, commander or creates or establishment or joining the membership of any of the terrorist entities provided for in Article (1) of this law, or finances it, or contributes to its activity with knowledge.

In Article 9 the law sets out the commitment for cooperation with other countries in this field:

In the field of combating the activities of terrorist entities and terrorists, the judicial bodies and the Egyptian authorities involved in terrorism affairs shall cooperate with their foreign counterparts, through the exchange of information, assistance and transfer of proceedings, the extradition of persons and proceeds of crime, the return of funds and the transfer of sentenced persons and informing states and relevant organizations on the decisions described above, and other forms of judicial and information cooperation, in accordance with the rules established by the international conventions in force in the Arab Republic of Egypt or in accordance with the principle of reciprocity.



## Potential developments to the relevant law

There are legislative amendments currently on the table at the Legislative and Legal Affairs committee of the Parliament regarding the criminal procedures law that would expedite judicial appeals procedures to ensure swift justice in terrorism-related cases. The Egyptian government planned to convene a major conference to discuss amendments to the criminal procedures law, including initiatives to allow the Cassation Court to consider cases as soon as they are appealed and issue verdicts quickly instead of referring them for retrial in criminal courts. Several politicians have also called for Parliament to refer all terrorism cases to military courts.<sup>111</sup>

## Action Plans for the Prevention of Violent Extremism

On 22 May 2017 the President of Egypt, Abdel Fattah el-Sisi revealed a four-point strategy in fighting terror at the Arab-Islamic-American summit in Riyadh.<sup>112</sup> This approach is holistic in nature and encompasses political, ideological and developmental aspects.

- Firstly, he urged for the confrontation of all terrorist organizations without discrimination in a comprehensive and simultaneous manner: 'all terrorist organizations are active on a cancerous network and are inter connected in most parts of the world by numerous bonds, including ideology, funding, as well as military, security and information sharing.'
- Secondly, he urged for a comprehensive confrontation of all dimensions of this phenomenon, including funding, arming, training as well as political and ideological support. In this context he famously asked:  
 "Where are the safe havens that are offered for terrorist organizations to train their fighters, treat their wounded, and make changes and replacements of their equipment? Who buys from them the natural resources they control, like oil? Who is involved with them in the trade of antiquities and narcotics? Where do they receive the financial donations from? How are they offered media presence through media outlets that have accepted to become a propaganda platform for terrorist organizations?  
 Everyone who does that is a key partner in terrorism. Unfortunately, there are countries involved in supporting and funding terrorist organizations and in offering them safe havens. There are also countries that refuse to share information that they have and database of the foreign terrorist fighters, even with the Interpol."
- Thirdly, the President revealed Egypt's strategy of confronting the recruitment of new fighters through a comprehensive intellectual and ideological approach, referring back to his earlier call for a 'religious revolution'.
- Notably, el-Sisi also spoke of the importance of the stability of national state institutions in the Arab region. In this regard, he stated:

111. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017 available on line at <https://www.state.gov/documents/organization/272488.pdf>

112. available at: [https://enterprise.press/wp-content/uploads/2017/05/Sisi-Speech\\_RiyadhArab-USSummit2017.pdf](https://enterprise.press/wp-content/uploads/2017/05/Sisi-Speech_RiyadhArab-USSummit2017.pdf)

*"It is no secret that we faced in the past years heavily funded systematic attempts to disintegrate our countries' institutions and to put the region into destructive vacuum. This created perfect conditions for the emergence of terrorist organizations and the exhaustion of our peoples in sectarian and ethnic conflicts.*

*Filling the vacuum, in which terrorism grows and proliferates, requires exerting every effort to restore and reinforce the unity, independence and efficiency of national state institutions in the Arab region. This includes fulfilling the peoples' aspirations and will for their country's progress. This shall take place by dedicating political, economic and social reforms, committing to the standards of good governance, respecting human rights, reinforcing the concepts of the rule of law and citizenship, respecting women and empowering the youth.*

*Egypt also fully supports all efforts aimed at resolving the region's crises so as to maintain the unity, sovereignty and territorial integrity of the national states and to protect them from the forces of extremism and sectarian fragmentation. Egypt categorically rejects all attempts of foreign intervention in the domestic affairs of Arab and Islamic countries or attempts to fuel sectarianism, which provides a fertile ground for the proliferation of terrorism and the collapse of the national State."*

## Regional and International Cooperation

Egypt is a member of the Global Coalition to Defeat ISIS and its Counter-ISIS Finance Group.<sup>113</sup> Egypt shares its security interests with most of its Gulf neighbours.

The new Anti-Terrorism Law makes it a crime for journalists to print different statistics from what the government has put out, to minimise one of the main objectives of terrorist activities which is the spread of panic and fear and the lowering of army and police morale.<sup>114</sup>

The new Anti-Terrorism Law furthermore promises protection from prosecution for security officers when they use necessary and proportionate force to perform their duties<sup>115</sup> and gives power to the Public Prosecutor or the relevant investigating authority to authorize a reasoned warrant for surveillance.<sup>116</sup>

113. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2015, Released June 2016, p. 166 available on line at <https://www.state.gov/documents/organization/258249.pdf>

114. Art. 35 Whoever intentionally, by any means, publishes, broadcasts, displays, or promotes false news or statements on terrorist acts inside the country or anti-terrorism operations contrary to the official statements released by the Ministry of Defence shall be punishable by a fine of no less than 200,000 Egyptian pounds and no more than 500,000 Egyptian pounds, without prejudice to the disciplinary penalties prescribed.

In cases where the crime is committed through a juridical person, the person in charge of the actual management of such juridical person shall be punished by the same penalty set forth in the first paragraph of this Article, provided that the crime is committed to his own account or benefit. The juridical person shall be jointly liable for the fines and compensation sentenced.

In all cases, the court shall prohibit the convicted party from practicing the profession for a period not exceeding one year if the crime is a breach to the ethics of the profession.

115. Art. 8 Enforcers of the provisions of this Law shall not be held criminally accountable if they use force to perform their duties or protect themselves from imminent danger to lives or properties, when the use of this right is necessary and adequate to avert the risk.

116. Art. 46 The Public Prosecutor or the relevant investigating authority in a terrorist crime, according to the case, may authorize a reasoned warrant for a period not exceeding thirty days to monitor and record the conversations and messages received on wired, wireless, and other means of modern telecommunications, record and film what is happening and being written in private premises or across communication and information networks or websites, and seize ordinary or electronic correspondence, letters, publications, parcels, and cables of all kinds.

The warrant referred to in the first paragraph of this Article may be renewed for one or more similar periods.

## Religious Counter-Narrative

The Egyptian government has identified the need for religious reform and the President has expressly called for a 'religious revolution' addressing the main religious establishment in Egypt, Al Azhar with a plea for joint efforts in tackling the ideology which has been 'a source of concern, danger, death and destruction to the world'. The Ministry of Religious Endowments has since been closing unofficial mosques, unifying Friday sermons and cracking down on unlicensed preachers. At the Riyadh summit Sisi reiterated his commitment to renewing the religious discourse and said he was following up on this initiative with the established religious institutions in Egypt in cooperation with intellectuals and scholars in the Arab and Islamic worlds.

Al Azhar Gand Imam Sheikh Ahmed Al Tayyeb hosted a two-day conference with dozens of Egyptian and international religious scholars aiming to discredit the theological basis of ISIS and to promote co-existence between Muslim and Christians.<sup>117</sup>

The United States Department of State Country Reports on Terrorism 2016 reports:

*'Egypt's Dar Al-Iftaa, an official body that issues religious edicts, has taken the lead in establishing a General Secretariat for Fatwa Authorities Worldwide to counter violent extremist religious messaging via religious channels. Dar Al-Iftaa sends scholars to engage communities considered vulnerable to violent messaging; trains new muftis; organizes international outreach and speaking tours throughout Muslim majority countries and the West; publishes books and pamphlets to challenge the alleged religious foundations of violent extremist ideology; runs rehabilitation sessions for former violent extremists; and confronts violent extremists in cyber space.*

*Al-Azhar University is revising its pre-university curricula by removing material that could be misinterpreted to promote violent extremism. Al-Azhar's online observatory monitors, reports on, and responds to extremist messaging and fatwas on the internet. The Ministry of Islamic Endowments (Awqaf) is legally responsible for issuing guidance to which all imams throughout Egypt are required to adhere, including weekly instructions on a provided theme that aims to prevent extremist language in sermons. The Ministry is also required to license all mosques in Egypt; however, many continued to operate without licenses. The government appoints and monitors the imams who lead prayers in licensed mosques, and the government pays their salaries.'*<sup>118</sup>

The new Anti-Terrorism Law also tackles the promotion of ideas and beliefs inciting the use of violence and using telecommunication technology for the purpose of spreading such ideas:

<sup>117</sup>. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2015, Released June 2016, p. 166 available on line at <https://www.state.gov/documents/organization/258249.pdf>

<sup>118</sup>. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2015, Released June 2016, p. 183 available on line at <https://www.state.gov/documents/organization/258249.pdf>

## Article (28)

Whoever promotes or prepares to promote, directly or indirectly, the perpetration of any terrorist crime, whether verbally, in writing, or by any other means, shall be punished by imprisonment for no less than five years.

Indirect promotion shall include the promotion of ideas and beliefs inciting the use of violence by any of the means set forth in the preceding paragraph of this Article.

The penalty shall be imprisonment for no less than seven years if the promotion occurs inside houses of worship, among members of the armed or police forces, or in locations belonging to such forces.

Whoever possesses or acquires any public means of printing or recording used or intended for use, even if temporarily, for the purpose of printing, recording, or broadcasting the aforementioned shall be punishable by the same penalty set forth in the first paragraph of this Article.

## Article (29)

Whoever establishes or uses a communications site, website, or other media for the purpose of promoting ideas or beliefs calling for the perpetration of terrorist acts or broadcasting material intended to mislead security authorities, influence the course of justice in any terrorist crime, exchange messages, issue assignments among terrorist groups or their members, or exchange information relating to the actions or movement of terrorists or terrorist groups domestically and abroad shall be punished by imprisonment for no less than five years.

Whoever unduly or illegally accesses websites affiliated with any government agency in order to obtain, access, change, erase, destroy, or falsify the data or information contained therein in order to commit an offense referred to in the first paragraph of this Article or prepare it shall be punishable by imprisonment for no less than ten years.

## Foreign Terrorist Fighters

In 2013, the former President Mohamed Morsi attended a rally at a Cairo stadium where he waved the flag of the Syrian opposition and announced that Egypt was cutting ties with Damascus.<sup>119</sup> Clerics at the rally were urging him to back their calls for Egyptians to travel to Syria and to perform jihad.<sup>120</sup> Although he did not directly address their calls, his appearance was seen as an implicit backing of this message. A senior presidential aide at the time further implied that citizens were free to travel to Syria to help rebels, and the State would take no action against them.<sup>121</sup> At least 600 Egyptians have gone to fight in Iraq and Syria, mostly joining ISIS and the Nusra Front<sup>122</sup> and some have since returned to Egypt.

119. <https://www.yahoo.com/news/egypt-seen-nod-toward-jihadis-syria-202608813.html>

120. *ibid*

121. *ibid*

122. The Soufan Group, Foreign Fighters, 'An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq' 2015 available online at [http://soufanguroup.com/wp-content/uploads/2015/12/TSG\\_ForeignFightersUpdate3.pdf](http://soufanguroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf)

The current authorities have passed new legislation limiting travel abroad. Egyptians between 18 and 40 years of age who are destined for Iraq, Syria, Qatar or Turkey must now receive government permission to travel. Egypt continues to improve its border security and the authorities check for the presence of known security features within travel documents, such as micro-printing, UV features, and digital schemes.<sup>123</sup> They further scan and cross-reference documents with criminal databases and maintain a terrorist watchlist with a simple listing provided to Egyptian immigration officials at the ports of entry and detailed information maintained by the security services.

The new Anti-Terrorism Law further includes provisions which deal with joining foreign militant groups, associations, bodies, or organizations, communicating with such entities, training people domestically or abroad for the commission of terrorist attacks, et cetera.

## Article (21)

Any Egyptians who, without written permission from the relevant authority, cooperate with or enlist in the armed forces of a foreign state or any militant groups, associations, bodies, or organizations based outside Egypt, and use terrorism, military training, military arts, combat methods, tricks or skills as means to achieve their objectives in the perpetration or preparation of terrorist crimes shall be punished by imprisonment for no less than ten years, even if the actions of these entities do not target Egypt.

If the offender receives any kind of training or education referred to in the preceding paragraph of this Article, the penalty shall be life imprisonment.

Whoever facilitates for others to cooperate, join, or transit outside Egypt in order to join the armed forces of a foreign state or any armed groups, associations, bodies, or organizations shall be punished by the same penalty set forth in the first paragraph of this Article.

## Article (14)

Whoever seeks to communicate or communicates with a foreign country or any association, body, organization, group, gang, or other entities based inside or outside Egypt or with someone who works for the benefit of such foreign state or any of the parties cited with the aim of committing or preparing for a terrorist crime inside Egypt or against any of its citizens, interests, or properties, the headquarters and offices of diplomatic or consular missions, its institutions, the branches of its institutions abroad, or against any of the employees in any of the above bodies or persons enjoying international protection shall be punished by life imprisonment.

The penalty shall be the death sentence if the terrorist crime subject of the communication or espionage attempt is carried out or attempted.

## Article (15)

Whoever, in any manner, directly or indirectly, and with the intent to commit a terrorist crime domestically or abroad, prepares or trains people to manufacture or use conventional or unconventional weapons,

<sup>123</sup> United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017 available on line at <https://www.state.gov/documents/organization/272488.pdf>

wired, wireless, or electronic means of communication, or any other technical means or teaches them martial arts, combat, technology, skills, tricks or other methods in whatever form to be used to commit a terrorist crime or instigate to any the above shall be punished by life imprisonment or imprisonment for no less than ten years.

Whoever receives the training or education provided for in the preceding paragraph of this Article or is present in such locations in order to prepare or commit one of the offenses referred to in the first paragraph of this Article shall be punished by imprisonment for no less than seven years.

## Israel



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

According to a 2016 report by the United States Department of State "Israel has a robust legal framework to counter terrorism and promote international legal assistance in the investigation and prosecution of terrorists. The Israeli Knesset passed new counterterrorism legislation in 2016 that broadened the range of activities subject to enhanced criminal sentencing. These activities include tunnel-digging, stone throwing, incitement, and planning intended to assist terrorist organizations and individuals. The Combatting Terrorism Law was designed to empower law enforcement authorities to preempt the establishment of terrorist cells and attack planning. The new provisions contained in the law codified numerous military and emergency orders issued under general emergency powers in place since the founding of the State of Israel. They include: the Anti-Terrorism Ordinance of 1948, the Anti-Terrorist finance Law of 2005, and various regulations issued under pre-statehood emergency defence authorities of 1945."<sup>124</sup>

On June 15, 2016, the Knesset passed the Combatting Terrorism Law, 5776-2016.<sup>125</sup> The new provisions introduced by the Law replace a number of counterterrorism laws and regulations, including the Prevention of Terrorism Ordinance, 5708-1948, the Prevention of Funding of Terrorism Law, 5765-2005, and various regulations under the Defence (Emergency) Regulations, 1945. The Law defines a 'terrorist action' as an action that:

1. is driven by a political, religious, or ideological motive;
2. is carried out with the goal of instilling in the public fear or anxiety, or of forcing the Israeli government or another governmental agency, including an agency of a foreign country, or an international organization to do or refrain from doing an act; or
3. involves an actual act or a real threat to inflict severe harm on one of the following:
  - a. a person's body or liberty;
  - b. public security or health;

<sup>124</sup>. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, 188-189 available on line at <https://www.state.gov/documents/organization/272488.pdf>

<sup>125</sup>. SEFER HAHUKIM [BOOK OF LAWS, the official gazette] 5776 No. 2556, p. 898, available at the Knesset website in Hebrew: [http://fs.knesset.gov.il/20/law/20\\_Isr\\_343902.pdf](http://fs.knesset.gov.il/20/law/20_Isr_343902.pdf)

- c. property, where the circumstances involved entail an intention or a real possibility to inflict severe harm on individuals or public safety and liberty;
- d. religious sites, burial places, and religious paraphernalia; or
- e. infrastructure, public systems or essential services, or the state economy or environment.<sup>126</sup>

Among the terrorism offenses defined by the Law are:

1. Leading and directing a terrorist organization, punishable on conviction by 25 years of imprisonment or life imprisonment if the organization's activity includes murder;<sup>127</sup>
2. Being a member of or recruiting members for a terrorist organization, punishable by five to seven years' imprisonment;<sup>128</sup>
3. Expressing support for or inciting to conduct terrorist acts, punishable by three years' imprisonment;<sup>129</sup>
4. Knowingly refraining from preventing a terrorist act, punishable by imprisonment for three years;<sup>130</sup>
5. Threatening to commit a terrorist act, punishable by seven years' imprisonment;<sup>131</sup>
6. Preparing for commission of a terrorist offense, punishable by half of the penalty for committing the given offense, and if the terrorist offense is punishable by a life sentence, 15 years' imprisonment;<sup>132</sup>
7. Providing training in and committing offenses involving the use or possession of weapons, punishable by nine years' imprisonment;<sup>133</sup>
8. Engaging in an activity involving a weapon with the objective of promoting the activities of a terrorist organization or the perpetration of a terrorist act, punishable by imprisonment for 20 or 25 years if the weapon involved is a chemical, biological, or other harmful weapon, or a fine;<sup>134</sup> and
9. Using or transferring property to assist, promote, or fund the perpetration of a terrorist offense or providing compensation to a person who either committed or planned on committing a serious terrorist offense, punishable by seven years' imprisonment or a fine.<sup>135</sup>

Terrorism offenses are subject to harsher penalties than the offenses for similar acts that do not involve terrorist motives.<sup>136</sup> Perpetrators of acts of mass terrorism are punishable by a life sentence. Moreover, the terms of persons sentenced to life imprisonment for committing terrorist offenses cannot be commuted during the first 15 years following the conviction or the incarceration. The Law requires that the period of a commuted sentence under such circumstances not be less than 40 years' imprisonment.<sup>137</sup>

"Israel regularly updates the list of foreign terrorist organizations and individuals involved in terrorism, to implement the UNSC ISIL (Da'esh) and al-Qa'ida sanctions regime. Israel also has a domestic sanctions regime in place with the Anti-Terrorist finance Law of 2005, which allows the Israeli Security Cabinet to

<sup>126</sup>. (Id. § 2.)

<sup>127</sup>. (§ 20)

<sup>128</sup>. (§ 22)

<sup>129</sup>. (§ 24)

<sup>130</sup>. (§ 26)

<sup>131</sup>. (§ 27)

<sup>132</sup>. (§ 28)

<sup>133</sup>. (§ 29)

<sup>134</sup>. (§ 30)

<sup>135</sup>. (§ 32).

<sup>136</sup>. (Id. §§ 37-38.)

<sup>137</sup>. (Id. § 40.)



declare a foreign organization to be classified as a foreign terrorist organization in coordination with findings presented by a foreign country or by the UNSC.”<sup>138</sup>

The Minister of Defence declares that an association is a ‘terrorist organization’ upon being convinced that the association, in a systematic and continuous plan, is:

1. perpetrating or intentionally promoting the perpetration of terrorist acts, including by conducting training or providing guidance for executing terrorist acts, or by performing an act or engaging in a transaction involving a weapon with the goal of perpetrating terrorist acts; or
2. directly or indirectly assisting or acting with the goal of advancing the activities of such an association.<sup>139</sup>

A declaration that an association is a ‘terrorist organization’ must be based on a detailed written request issued by the Head of the General Security Service (HGSS), or by heads of other security services via the HGSS, with the approval of the Attorney General. Unless it could hamper law enforcement authorities’ ability to act against such an association, the HGSS may only make the request upon finding that the association continued its activities in spite of a prior warning issued against it.<sup>140</sup>

The Law further authorizes the Prime Minister, in special circumstances, to determine that the declaration decision will be made by a ministerial committee or the government.<sup>141</sup> The Law authorizes the Minister of Defence, after filing a request to declare an association to be a terrorist organization, to issue a temporary declaration to this effect until a final decision on the request is made.<sup>142</sup> An association against which a request for a declaration was issued has the right to be heard and to argue against approval of the request.<sup>143</sup>

The Law authorizes the Ministerial Committee for National Security to declare that a foreign association is a terrorist organization if that association has been subject to a similar declaration by a foreign authority in accordance with powers granted to that authority under the relevant foreign law.<sup>144</sup> The Law provides procedures for periodic reviews of declarations as well as for appeals of declaration decisions.<sup>145</sup>

The Law makes it possible for ‘passive members’ of groups classified as terrorist organizations to be indicted.<sup>146</sup> Being convicted of membership in an outlawed group is punishable by five years in jail, while leaders will get 25 years in jail, or a life sentence if their group has committed a deadly attack.<sup>147</sup> A large number of Palestinian groups, including Hamas and Islamic Jihad, are classified as terrorist organizations in Israel, as is the leftist Popular Front for the Liberation of Palestine (PFLP) and, most controversially, the Palestinian Liberation Organization (PLO).<sup>148</sup>

138. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, 190 available on line at <https://www.state.gov/documents/organization/272488.pdf>

139. (Id. §§ 2 & 3(a).)

140. (Id. § 3(b-c).)

141. (Id. § 3(d).)

142. (Id. § 4.)

143. (Id. § 5.)

144. (Id. § 11.)

145. (Id. §§ 12-13.)

146. <http://www.middleeasteye.net/news/israel-approves-controversial-counter-terrorism-bill-1149441458>

147. *ibid*

148. *ibid*

In addition to imposing other penalties, a court that convicts a person of a certain terrorism offense may also order confiscation of property held by the terrorist organization in connection with which the person was convicted.<sup>149</sup> Under certain circumstances provided by the Law, the Minister of Defense may similarly order confiscation of property involved in or connected to the operations of a terrorist organization without seeking judicial approval.<sup>150</sup> The Combatting Terrorism Law makes it an offense to demonstrate solidarity with a terrorist organization or with an act of terrorism as well as any incitement to terrorism, including via the internet and social media.<sup>151</sup>

## Action Plans for the Prevention of Violent Extremism

The Law gives security services greater powers to detain and prosecute people in Israel. It further gives law enforcement authorities criminal and administrative powers to prevent the establishment, existence, and operation of terrorist organizations and the perpetration of terrorist actions conducted by terrorist organizations or by individuals.<sup>152</sup> The Law empowers regional police commanders to issue decrees to prevent activities by or in support of terrorist organizations, including organizing meetings, marches, or training.<sup>153</sup> The General Superintendent of the Israel Police (GSIP) may restrict the use of a place suspected of being used for activities of a terrorist organization after giving its owner the right to be heard by the GSIP. The decree may apply for three months, extendable for a total of an additional three months.<sup>154</sup>

Israel has developed powerful forces, efficient intelligence, cutting edge technologies, and various other security measures and its counterterrorism system is highly efficient preventing approximately 85% of suicide bombings and a large number of direct attacks.<sup>155</sup> The counterterrorism strategy of Israel consists of the following features;

1. Intelligence gathering and analysis;
2. Military and paramilitary actions to interject terrorist society and infrastructure;
3. Commercial aviation security;
4. Defence against chemical and biological attacks;
5. Efforts to reinforce the psychological fortitude of the civilian population.<sup>156</sup>

The system mainly focuses on pre-emptive strikes, gathering information, destroying terrorist infrastructure and preventing terrorists from entering Israel.<sup>157</sup> One of its most controversial counterterrorism policies has been covert or overt assassinations of the leaders of terrorist groups.

149. (Id. §§ 53-55.)

150. (Id. §§ 56-68.)

151. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2015, Released June 2016, p. 190 available on line at <https://www.state.gov/documents/organization/258249.pdf>

152. (Id. § 1.)

153. (Id. § 69.)

154. (Id. § 70.)

155. Jonathan B. Tucker, "Strategies for Countering Terrorism – Lessons from the Israeli Experience", Coin Central, 4 June, 2008; <https://coincentral.wordpress.com/2008/06/04/strategies-for-countering-terrorism-lessons-from-the-israeli-experience/>; "Wave of terror 2015/16", Israel Ministry of Foreign Affairs, see <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx>

156. Jonathan B. Tucker, "Strategies for Countering Terrorism – Lessons from the Israeli Experience", Coin Central, 4 June, 2008; <https://coincentral.wordpress.com/2008/06/04/strategies-for-countering-terrorism-lessons-from-the-israeli-experience/>.

157. <http://foreignpolicynews.org/2016/08/08/a-critical-analysis-of-israels-counter-terrorism-strategy/>.

Israel's airport security methods have proven to be very successful.<sup>158</sup> Apart from an array of equipment and technology used, the approach is mainly focused on the 'human factor': all vehicles pass through a preliminary security checkpoint where armed guards search the vehicle and exchange a few words with the passengers, later trained security agents question each passenger before check in whereas armed security personnel constantly patrol the terminal to keep a close eye on people entering the terminal.<sup>159</sup> Second-tier measures include luggage conciliation (matching bags to passengers who board an aircraft) and the processing of baggage and cargo through explosives-detection devices such as InVision scanners and chemical sniffers. Screened luggage that appears suspicious is diverted to an on-site laboratory at Ben Gurion airport for detailed chemical sampling and analysis. In addition, a compression chamber is used to check bags for bombs that have air-pressure fuzes.<sup>160</sup> As a third line of defence, El Al, the flag carrier of Israel, employs on-aircraft protective measures, including at least one armed sky marshal per flight, reinforced and bulletproof cockpit doors, and explosion-resistant cargo holds.<sup>161</sup>

The Israeli government has been considering legislation which would make it obligatory for companies, such as Google and Facebook to prevent the proliferation of online content inciting to terrorism.

## Foreign Terrorist Fighters

Under the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, as amended,

[a]nyone who knowingly and unlawfully leaves Israel to [go to] Lebanon, Syria, Egypt, Jordan, Saudi Arabia, Iraq, Yemen, or any other part of the Land of Israel [referring to the Biblical territory] that is outside of [the territory of] Israel, is subject to imprisonment of four years or a fine...<sup>162</sup>

In addition, the citizenship of any Israeli who has been found to have committed an act of disloyalty to the State of Israel may be voided based on a decision of an administrative court pursuant to a request by the Minister of Interior. Such a decision may be made due to a determination that the person perpetrated, assisted, or solicited an act of terrorism. Israeli citizenship under these circumstances may be voided as long as the person will not become stateless. The Law presumes that a person who lives permanently outside of Israel will not become stateless. If it is proven that the person would be stateless if found to have met the criteria for removal of citizenship, the person will be permitted to reside in Israel subject to conditions as determined by the court.<sup>163</sup>

"The Israeli Ministry of Interior maintained a voluntary biometric passport control system at Tel Aviv's Ben Gurion International Airport, which was available for Israeli passport holders over the age of 18 years. This system facilitated both entry into and exit from Israel via an automatic kiosk for Israeli citizens who successfully passed a background check and provided a scan of their hand."<sup>164</sup>

158. Daniel Wagner, "What Israeli Airport Security Can Teach the World", The Huffington Post, 17 March, 2014, see [http://www.huffingtonpost.com/entry/what-israeli-airport-secu\\_b\\_4978149.html?section=india](http://www.huffingtonpost.com/entry/what-israeli-airport-secu_b_4978149.html?section=india)

159. *ibid.*

160. Jonathan B. Tucker, "Strategies for Countering Terrorism – Lessons from the Israeli Experience", Coin Central, 4 June, 2008; <https://coincentral.wordpress.com/2008/06/04/strategies-for-countering-terrorism-lessons-from-the-israeli-experience/>

161. *ibid.*

162. Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, § 2A, 8 LAWS OF THE STATE OF ISRAEL [LSI] 133 (5714-1953/54).

163. Nationality Law, 5712-1952, §§ 11 & 11A, 6 LSI 50 (5712-1951/52).

164. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, p. 189 available on line at <https://www.state.gov/documents/organization/272488.pdf>



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

In 2006 the Anti-Terrorism Law was enacted, and it defined a terrorist act as:

*“every intentional act, committed by any means and causing death or physical harm to a person or damage to public or private properties, or to means of transport, infrastructure, international facilities or diplomatic missions and intended to disturb public order, endanger public safety and security, cause suspension of the application of the provisions of the Constitution and laws, affect the policy of the State or government or force them to carry out an act or refrain from the same, or disturb national security by means of threat, intimidation or violence.”<sup>165</sup>*

Providing, collecting, or making funds available for the commission of a terrorist attack inside the Kingdom or against the Kingdom's nationals or interests abroad is further considered as a terrorist act, as is mobilizing persons to join groups or establishing, organizing or joining groups intending to commit such acts.<sup>166</sup>

In 2014, amendments to the Law removed the requirement of a connection to an act of violence, instead including in the definition acts that ‘sow discord’ or ‘disturb public order.’ Furthermore, it broadened the definition to include such acts as ‘disturbing [Jordan’s] relations with a foreign state,’ an offence already included in Jordan’s penal code, now incurring harsher penalties.

The amendments came as a response to the influx of Jordanian fighters returning from Syria and a need to cope with this influx.<sup>167</sup>

The amendments added to the list of acts to be considered terrorism, including:

- Acts that subject the Kingdom to danger of hostile acts, disturb its relations with a foreign State, or expose Jordanians to danger of acts of revenge against them or their money (Art. 118);
- Any information system or network that facilitates terrorist acts, supports or spreads ideas of a group that undertakes an act of terrorism, or subjects Jordanians or their property to danger of hostile acts or acts of revenge;
- Possessing or handling in any way dangerous materials or weapons or working with them to use them for terrorist acts or unlawfully;
- Attacking the King or his freedom, the Queen, the crown prince, or a guardian of the throne;
- Any act committed with the intent to provoke an armed rebellion or changing the constitution in an unlawful way; and
- Forming a gang with the intent to commit thievery or infringe on people or money.

<sup>165</sup>. Art. 2, Anti-Terrorism Law No. 55 of year 2006, published on page 4264 of the Official Gazette No. 4790 of November 1, 2006

<sup>166</sup>. Art. 3

<sup>167</sup>. [http://www.washingtonpost.com/world/middle\\_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea\\_story.html](http://www.washingtonpost.com/world/middle_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea_story.html).

Art. 118 is used by the authorities to arrest and pursue security-related prosecutions against Jordanians who return from fighting in Syria.

The terrorism amendments also toughen penalties. They require the death penalty for any act that causes a death, destroys or damages a building if someone was inside, uses poisonous or other dangerous materials, or for a life-threatening attack against the king, queen, or crown prince. The law stipulates life imprisonment for provoking an armed rebellion and an attack against the king that is not life threatening. All other acts proscribed by the law are punishable by 'temporary hard labour,' between three and 20 years in prison.

Jordan's Criminal Procedure Code grants all prosecutors in Jordan the right to detain suspects at their discretion. The 2006 Anti-Terrorism Law granted several additional powers to State Security Court prosecutors including issuing the decision to:

1. place under surveillance the domicile, moves and means of communications of the suspect;
2. prohibit any suspect from travelling;
3. search the premises of the suspect and show restraint on anything related to a terrorist act as provided in the present law;
4. exercise preventive seizure of any funds suspected to be involved in terrorist activities.

These decisions can be challenged before the State Security Court and if there is a rejection decision, the defendant can challenge it before the Court of Cassation.

Jordan has indicated that the definition of terrorist offences in its domestic criminal law includes all acts within the scope of the treaties listed in the Convention on the Suppression of the Financing of Terrorism's Annex. However, like Egypt, Jordan put a declaration on the Convention, stating that it does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1(b) of article 2 of the Convention.

Jordan is not a party to the following treaties:

- a. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.
- b. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- c. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
- d. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.

Accordingly, Jordan is not bound to include, in the application of the International Convention for the Suppression of the Financing of Terrorism, the offences within the scope and as defined in such Treaties.

Crimes related to terrorism, espionage, treason, drugs, or money counterfeiting fall under the jurisdiction of the State Security Court.<sup>168</sup>

<sup>168</sup>. State Security Court Law 2014

The State Security Court (SSC) is the primary legal apparatus with jurisdiction over crimes that touch on national security, including terrorism cases. Amendments to the SSC law, adopted in 2014, attempted to limit the Court's jurisdiction to five crimes – treason, espionage, terrorism, drug-related offenses, and currency forgery, although the SSC jurisdiction was extended to a broad interpretation of these crimes. The amendments also placed civilian judges on the SSC bench, although all prosecutors remain military officers. During 2016, Jordanian authorities took legal action against numerous individuals accused of terrorism under Jordanian law. SSC verdicts related to terrorism are published almost daily in local media. Some of the more prominent cases follow:

- On July 13 charges were filed against 21 suspected ISIS affiliates in connection with the pre-emptive March raid on an alleged ISIS safe house in Irbid. The defendants were charged with carrying out terrorist acts, using weapons that resulted in the death of a Jordanian soldier, possessing weapons and explosives, and “propagating ISIS ideology,” a charge often used for online activity.
- On August 4, the SCC sentenced to death the perpetrator of the June 6 attack on a GID sub-facility near Baqa'a that resulted in the death of five security personnel. A second defendant was charged with selling a weapon to the shooter and sentenced to one year in prison.
- On December 20, the SSC sentenced to death the man accused of murdering Jordanian journalist Nahed Hattar on September 25. The attacker was charged with carrying out a deadly terrorist attack, incitement, premeditated murder, and possession of an illegal firearm.
- The SSC prosecuted several individuals in 2016 for “propagating ISIS ideology.” Sentences for such cases typically last two to three years.<sup>169</sup>

## Action Plans for the Prevention of Violent Extremism

According to experts, Jordan's Islamist groups are growing in numbers and are becoming increasingly violent. In the latter half of 2014, Jordan arrested 200 to 300 Islamist militants. Between August and September 2014, Jordan arrested 80 alleged ISIS supporters in the country. Security officials arrested six alleged supporters in a September 9, 2014, raid in Amman.<sup>170</sup>

The General Intelligence Directorate is the primary government agency responsible for counterterrorism. The Government of Jordan is implementing measures to improve interagency coordination among security agencies during responses to terrorism-related events.

### Religious Counter-Narrative

In the 'Amman Declaration', King Abdullah called for tolerance and peace within the Islamic community and rejected 'wanton aggression and terrorism'. In 2016 he noted at the UN General Assembly that the most vital battleground is the mind underlying the importance of a “counter-narrative of hope, tolerance, and peace.”<sup>171</sup>

<sup>169</sup>. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, p. 196 available on line at <https://www.state.gov/documents/organization/272488.pdf>

<sup>170</sup>. Counter Extremism Project, Jordan: Extremism & Counter-Extremism, available online at <https://www.counterextremism.com/countries/jordan>

<sup>171</sup>. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, p. 198 available on line at <https://www.state.gov/documents/organization/272488.pdf>

Jordan's action plans have included counter-messaging and religious education, awareness-raising, and rehabilitation support for former violent extremists. Jordan worked with the UN Development Programme to develop a holistic National Strategy on Preventing/Countering Violent Extremism, which is expected to establish roles and responsibilities for government entities and promote the involvement of non-governmental organizations, civil society, and the private sector in such initiatives.<sup>172</sup> In November 2014, the Ministry of Awqaf and Islamic Affairs claimed it had prevented 25 radical preachers from delivering extremist sermons.<sup>173</sup>

## Regional and International Cooperation

Jordan is a founding member of the Global Counterterrorism Forum, and is a member of the Arab League, the Organization for Islamic Cooperation, the Global Initiative to Combat Nuclear Terrorism, and the Proliferation Security Initiative. Jordan continued to host and conduct training for Palestinian Authority Security Forces and Civil Defence, in addition to other police forces from around the region.

## Foreign Terrorist Fighters

Jordan continued to reinforce its border defences and surveillance and interdiction capabilities to deter, detect, and interdict terrorist and other illicit activity on the frontier and at ports of entry. Jordan conducts official screening of travellers, including at airports, and uses biometric systems in line with international standards. Jordan also routinely provides advanced passenger information to partner nations, and shares names with INTERPOL watchlists and databases. Jordanian authorities continued to use the U.S.-provided Personal Identification Secure Comparison and Evaluation System (PISCES) at unofficial border crossing sites along the Syrian border to complement the border screening system at official ports of entry. Jordan also participated in the US Department of State's Antiterrorism Assistance program.<sup>174</sup> Salafi jihadists have nonetheless circumvented the surveillance of intelligence by deviating their trips, joining Iraq from Turkey or from other Arab countries. Such is the case for Omar Mahdi Zeidan and Saad Honeiti, according to Shehadeh.

Jordan has stepped up arrests of hard-line Islamists and moved to strengthen anti-terror legislation amid rising concern about homegrown militants returning from the battlefields in next-door Syria. The law also criminalizes the intent or act of joining, recruiting, funding or arming terrorist organizations inside or outside Jordan.<sup>175</sup> Jordan seems to have taken a more lenient approach to more 'moderate' jihadists under a *divide et impera* tactic.<sup>176</sup>

Another strategy of Jordanian intelligence has been to infiltrate radical groups, an approach noticeably more successful with Jabhat al-Nusra. "IS intelligence service is very powerful thanks to the efforts of Abu Ali Anbari," said Abu Haniya.

<sup>172</sup> Ibid. p. 198

<sup>173</sup> Counter Extremism Project, Jordan: Extremism & Counter-Extremism, available online at <https://www.counterextremism.com/countries/jordan>

<sup>174</sup> Ibid. 198

<sup>175</sup> [https://www.washingtonpost.com/world/middle\\_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea\\_story.html?utm\\_term=.181559a37c89](https://www.washingtonpost.com/world/middle_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea_story.html?utm_term=.181559a37c89)

<sup>176</sup> Jordan has dropped terrorism charges against several famous jihadists, such as Abu Qatada in 2014 and Maqdisi in 2015, both Nusra front supporters but significant critics of ISIS. This is important against the background of the Jordanian Salafist movement shifting its support from Nusra front to ISIS. <http://www.al-monitor.com/pulse/originals/2015/04/jordan-amman-is-nusra-militants-salafi-jihadists.html#ixzz4tuR6BHzC>



Analysts estimated in early 2015 that ISIS and other jihadi groups had about 9,000 to 10,000 Jordanian supporters, including 2,000 fighters who have left for Syria primarily joining Nusra.<sup>177</sup> Authorities have arrested about 400 Jordanians trying to cross into Syria to join jihadist groups. Jordan's Salafist leaders have encouraged followers to join the fighting in Syria. Abu Mohammad al-Tahawi issued a fatwa calling for jihad in Syria.<sup>178</sup> Al-Chalabi said in June 2013 that more than 500 Jordanian Salafists were fighting in Syria alongside the Nusra Front. Eighty-five percent of Jordanian fighters have reportedly switched their allegiances from the Nusra Front to ISIS as of April 2015.<sup>179</sup>

## Palestine



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

Palestinian domestic law dealing with terrorist offences includes criminal acts within the scope of and as defined in the treaties listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism. The 1960 Jordanian Penal Code No. 16 in force in the West Bank, identifies the offence of terrorism in Article 147 and imposes strict punishment on such acts under Article 148, particularly where such an offence results in death.

Article 147 identifies terrorism as all acts aimed at creating a state of panic and committed by means such as explosive devices, inflammable substances, toxic or incendiary products, and epidemiological or microbial factors that would pose a general danger. Furthermore, paragraph (4) of Article 148 stipulates that the death penalty shall be imposed if the act leads to the death of a person or the total or partial destruction of a building where one or several persons were inside.

Moreover, the state of Palestine has joined the Rome Statute of the International Criminal Court, which prohibits the targeting of civilians in armed conflicts.

### Action Plans for the Prevention of Violent Extremism

In the context of the prevention of and fight against terrorism, a decree law No. 20 of 2015 was issued on combating money laundering and the financing of terrorism. Furthermore, a Presidential Decree No. 14 of 2015 was also issued in accordance with this law, on the implementation of Security Council resolutions, particularly resolutions 1267/1999 and 1988/2011. A Committee was formed under this decree to implement immediately the Security Council Resolutions on the fight against the financing of terrorism and the SC Res. 2178 (2014) on tackling foreign terrorist combatants, as well as the establishment of a local list on terrorist persons and organizations who meet the criteria for the freezing of funds and assets. The Committee plays a role in the immediate freezing of funds belonging to terrorist persons, organizations and entities in addition to fulfilling its duty of submitting annual reports to the President of the State of Palestine on the implementation of the provisions of this decree.

177. Counter Extremism Project, Jordan: Extremism & Counter-Extremism, available online at <https://www.counterextremism.com/countries/jordan>.

178. Ibid.

179. Ibid.

The State of Palestine has signed the Arab Convention for the Suppression of Terrorism on April 1998. It grants the State of Palestine the right to request the extradition of any terrorist for the purpose of prosecution according to its applicable laws. Palestine also joined INTERPOL in order to be able to submit extradition requests for terrorists under its jurisdiction or extradite accused persons to other countries.

## Foreign Terrorist Fighters

As far as foreign terrorist fighters are concerned, The Committee for the Implementation of Security Council Resolutions mentioned above, has the duty to implement SC Res. 2178 (2014) as well as relevant resolutions against Al-Qaida, the Taliban and others. The Presidential Decree No. 14 defines terrorism and terrorist organizations, which includes Da'esh and sets out a number of measures the Committee must take against them. These measures include travel bans and other measures to prevent the transportation, recruitment, financing, and aid. The Committee sets out a local list of names of terrorist persons and organizations who meet the criteria for the freezing of funds and assets. The Palestinian Ministry of Foreign Affairs receives requests from foreign countries for the freezing of funds and assets of persons residing in the State of Palestine pursuant to the Security Council resolutions. This means that there is, indeed, a systematic approach to dealing with these issues.

## Lebanon



## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

Lebanon does not have a comprehensive counterterrorism law, but several articles of Lebanon's criminal code are used to prosecute acts of terrorism. Article 314 of the Lebanese Criminal Code, (Legislative Decree No 340 of 1 March 1943), states that:

*"Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents."*<sup>180</sup>

In addition, the Law of 11 January 1958 provides as follows:

Article 6: "Any act of terrorism shall be punishable by hard labour for life. Where the act results in the death of one or more individuals, the total or partial destruction of a building having one or more individuals inside it, the total or partial destruction of a public building, an industrial plant, a ship or other facilities, or disrupts the functioning of telecommunication or transport services, it shall be punishable by death."

Article 7: "Every person who enters into a conspiracy with a view to the commission of any of the offences contemplated in the preceding articles shall be liable to the death penalty."

<sup>180</sup>. Penal Code (Lebanon), Legislative Decree No 340 of 1 March 1943.

It is clear from these provisions, that the elements of terrorism under Lebanese law are as follows: (i) an act, whether constituting an offence under other provisions of the Criminal Code or not, which is (ii) intended “to cause a state of terror”; and (iii) the use of a means “liable to create a public danger (*un danger commun*)”.

Article 315 of the Lebanese Criminal Code, criminalizing conspiracy to commit terrorist acts, was superseded by the Law of 11 January 1958, which provides a supplementary criminalization of conspiracy, and in addition increases the penalties applicable to terrorist crimes. Article 316 of the Lebanese Criminal Code criminalizes organizations (and their founders and members) set up with a view to changing the economic, social or other fundamental institutions of society, through the perpetration of terrorist acts pursuant to Article 314.

*“While the Lebanese law does include a non-exhaustive list of the means by which the crime of terrorism can be committed, it requires the means used to be of a nature that by itself creates public danger. This has created considerable confusion among parts of the legal community. The English translation may have caused such confusion as to whether the ‘creating public danger’ is referred to the crime or to the ‘means’ used. The proper interpretation is that the Lebanese crime of terrorism requires commission by means that by their nature create public danger.”<sup>181</sup>*

*“The Arabic provision is clearer, and it confirms that the commission of the crime of terrorism takes place only by means which by themselves cause public danger. It is one of the requirements of the material element of the crime. The statutory provision is clear and the domestic jurisprudence is consistent. The probable confusion may have originated from the non-exhaustive list of the means within Article 314. The non-exhaustive list includes means such as ‘explosive devices, inflammable materials, poisonous or incendiary products or infectious or microbial agents . . .’. This list can include other means as long as they are by themselves of the nature to create public danger.”<sup>182</sup>*

The definition excludes attacks that are conducted by weapons that are not likely “to create a public danger.” For instance, the use of rifles, pistols, revolvers, guns or knives does not fall under the realm of article 314. The Lebanese Council of Justice has been relatively consistent in excluding crimes perpetrated by guns or revolvers from the ambit of the crime of terrorism. This is a restrictive element in the Lebanese definition of terrorism.<sup>183</sup>

Under Lebanese law the objective elements of terrorism are as follows: (i) an act whether constituting an offence under other provisions of the Criminal Code or not; and (ii) the use of a means “liable to create a public danger”. These means are indicated in an illustrative enumeration: explosive devices, inflammable materials, poisonous or incendiary products, or infectious or microbial agents. According to Lebanese case law, these means do not include such non-enumerated implements as a gun, a machine-gun, a revolver, a letter bomb or a knife. The subjective element of terrorism is the special intent to cause a state of terror.<sup>184</sup>

181. Nidal Nabil Jurdi, ‘The Crime of Terrorism in Lebanese and International Law’ in Amal Alamuddin et al. (eds.) *The Special Tribunal for Lebanon* (Oxford: OUP, 2014) 73-87, at 76.

182. Ibid.

183. Ibid.

184. Special tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Case No. STL-11-01/II/AC/R176bis

Some Lebanese courts have propounded a strict interpretation of Article 314. According to the Lebanese Military Court of Cassation in *Case no. 125/1964*, decision of 17 September 1964, it is not the conduct, but the *means or instrument or device used* that must be such as to create a public danger. If the means used is apt to create a public danger, then the act can be defined as terrorism. Thus, for instance, in the *Karami case*<sup>185</sup> the Court of Justice held that the use of explosive devices in a flying helicopter created a public danger and was therefore to be considered as a terrorist act.

Lebanese courts appear to have further concluded that the definition of (terrorist) 'means' is limited to those means which *as such* are likely to create a public danger, namely a danger to the general population. It would follow that the definition does not embrace any non-enumerated means referred to in Article 314 ("means... such as ...") unless these means are similar to those enumerated in their effect of creating a public danger *per se*. The means or implements which under this approach are not envisaged in Article 314 include a gun, a semi-automatic or automatic machine gun, a revolver, or a knife and perhaps even a letter-bomb. This construction was applied by the Court of Justice in the *Assassination of Sheikh Nizar Al-Halabi*, in which an act that would be considered terrorism under most national legislation and international treaties was instead categorised as simple murder. In this case, Sheikh Nizar al-Halabi was killed (on 31 August 1995) by means of Kalashnikov assault rifles by masked men in broad daylight and in a crowded street, as he was leaving his home to go to his office in Beirut. Nevertheless, according to the Court, the murder in question did *not* amount to a terrorist act because the materials or devices used were not those required by Article 314. The Court stated:

*"Article 314 of the Criminal Code defines terrorist acts as all acts aimed at creating a state of panic and committed by such means as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents that are liable to cause a public threat."*

*"While it is true that the actions of the defendants pertaining to the homicide of Sheikh Nizar al-Halabi were liable to cause a state of panic in view of the Sheikh's religious and social standing and the fact that the offence was committed in broad daylight in a street full of residents, shopkeepers and pedestrians, the offence was not committed by any of the means listed in Article 314. [Hence] the said defendants must be acquitted of the offence defined in Article 6 of the Act of 11 January 1958 [namely terrorist acts] inasmuch as its elements have not been fulfilled."*

In the *Homicide of Engineer Dany Chamoun and others* case, the same Court also held that the murder of Mr Chamoun, his wife and his two sons was not a terrorist act, but 'simply' murder, because of the means used:

*"While it may be true that the crime that is being prosecuted was intended and succeeded in creating panic, it was not perpetrated by any of the means referred to in the Article [314 of the Criminal Code], and the means used (handguns and submachine guns), the place in which they were used, a private and closed apartment, and the persons targeted were not designed to bring about a public emergency."*

185. Court of Justice, *Rachid Karami case*, decision no 2/1999, 25 June 1999, available on the STL website. (Although the English translation of the Lebanese Criminal Code on the STL's website refers to the Court of Justice as the "Judicial Council", for consistency with the French ("*Cour de Justice*") and Arabic ("*Al-majless al-adli*").

However, these kinds of interpretations are no longer in practice and the courts have since adopted a more flexible approach in defining the means possible for the perpetration of terrorist offences.

## Action Plans for the Prevention of Violent Extremism

Despite a lack of an action plan as such, the government has several programs in place which counter violent extremism, but the government does not have a national strategy in place.<sup>186</sup> The Internal Security Forces cybersecurity chief and a representative from the Foreign Affairs Ministry attended the sub-ministerial conference on counter-ISIL strategic communications in Kuwait.<sup>187</sup>

### Religious Counter Narrative

A comprehensive counter-messaging strategy is being developed that amplifies moderate voices and uses television spots, social media, billboards, and SMS texts to counter violent extremist narratives.<sup>188</sup> The government is countering ISIS messaging through online communication and social media campaigns promoting tolerance online.<sup>189</sup>

### International and Regional Cooperation

Lebanon is a member of the Global Coalition to Defeat ISIS and attended Global Counterterrorism Forum meetings. Lebanon is a member of the Organization of Islamic Cooperation and the Arab League. Lebanon continued to voice its commitment to fulfilling relevant UNSCRs, including 1559 (2004), 1680 (2006), and 1701 (2006). The Special Tribunal for Lebanon, an international body investigating the 2005 assassination of former Prime Minister Rafiq Hariri, received Lebanon's annual contribution of approximately \$32.5 million.

The Lebanese army partnered with several nations on a bilateral basis to receive training programs that focused on strengthening its counterterrorism capabilities.<sup>190</sup>

## Foreign Terrorist Fighters

Lebanon was a co-sponsor of UN Security Council Resolution 2178 regarding foreign terrorist fighters. In accordance with the Resolution, the Lebanese government increased security measures at airports, border crossings, and ports to prevent the flow of ISIS and al-Nusrah Front fighters to Syria and Iraq; however, Lebanon lacks laws criminalizing foreign terrorist fighter activity.<sup>191</sup>

186. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, pp. 205-206 available on line at <https://www.state.gov/documents/organization/272488.pdf>

187. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2015, Released June 2016, p. 190 available on line at <https://www.state.gov/documents/organization/258249.pdf>

188. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, pp. 205-206 available on line at <https://www.state.gov/documents/organization/272488.pdf>

189. *ibid*

190. United States Department of State Publication, Bureau of Counterterrorism, Country Reports on Terrorism 2016, Released July 2017, pp. 205-206 available on line at <https://www.state.gov/documents/organization/272488.pdf>

191. *Ibid.*, 203.

The Lebanese security forces sought to impede the flow of Sunni foreign terrorist fighters both to and from Syria by working to secure the border and by conducting counterterrorism operations. The services have increased security measures at airports, border crossings, and ports with a special emphasis on detecting counterfeit passports. The Directorate of General Security, under the Ministry of Interior, controls immigration and passport services, and uses an electronic database to collect biographic data for travellers at the airport; however, it does not collect biometric data at land borders. Lebanon collects and disseminates Passenger Name Records (PNR) on commercial flights and is preparing to begin collecting advanced passenger information in 2017.

The Lebanese security services disrupted multiple terrorist networks and made several high-profile arrests in 2016.

The army, the Internal Security Forces (ISF), and the Directorate of General Security were also actively engaged in monitoring potential ISIS and other Sunni extremist elements in Lebanon, disrupting their activities and networks, and arresting those suspected of plotting terrorist attacks. The ISF has worked to prevent Sunni violent extremist recruitment and the direction of terrorist activities by prison inmates and has built a new facility at Lebanon's main prison to house high-threat prisoners.

## Morocco



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

In the wake of the terrorist attacks that took place in Casablanca on 16 May 2003, the Kingdom of Morocco introduced Law No. 03-03 on the fight against terrorism, promulgated by Dahir Chérifien No. 1-03-140 of 28 May 2003.<sup>192</sup> It lays down provisions criminalizing acts relating to crimes of terrorism with recommended penalties and rules of procedure, supplemented by the provisions of the Criminal Code and the Code of Criminal Procedure, which present the general legal framework under Moroccan criminal law. In accordance with Law No. 15-53 of 20 May 2015,<sup>193</sup> the Moroccan legislator further amended and completed the provisions of the Criminal Code and Code of Criminal Procedure<sup>194</sup> on the fight against terrorism.

The following offenses constitute acts of terrorism according to Art. 218-1 of the Law No. 03-03, when they are intentionally connected with an individual or collective undertaking whose aim is to seriously infringe public order by intimidation, terror or violence:

- I. Wilfully killing or harming the integrity of persons, or their freedoms, the abduction or sequestration of persons;

192. Bulletin Officiel n° 5114 du Jeudi 5 Juin 2003 Dahir n° 1-03-140 du 26 rabii I 1424 (28 mai 2003) portant promulgation de la loi n° 03-03 relative à la lutte contre le terrorisme. Available at: <http://adala.justice.gov.ma/production/legislation/fr/penal/luttecontreterrorisme.htm>

193. Dahir n° 1-15-53 du 1<sup>er</sup> chaabane 1436 (20 mai 2015) portant promulgation de la loi n° 86-14 modifiant et complétant certaines dispositions du Code pénal et de la procédure pénale relatives à la lutte contre le terrorisme, available at: <http://adala.justice.gov.ma/FR/DocumentViewer.aspx?id=189764.htm>

194. Code Pénal - version consolidée en date du 15 décembre 2016, available at: <http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/code%20penal.pdf>

2. Counterfeiting or falsification of currencies or public credit notes, seals of the State and stamps, or forgery or falsification referred to in Articles 360, 361 and 362 of this Code;
3. Destructions, degradations or deteriorations;
4. Diversion, degradation of aircraft or vessels or any other means of transport, degradation of air, sea and land navigation facilities and destruction, degradation or deterioration of the means of communication;
5. Theft and extortion of property;
6. The manufacture, possession, transport, distribution or unlawful use of weapons, explosives or ammunitions;
7. Offenses relating to automated data processing systems;
8. The forgery or falsification of checks or any other means of payment referred to respectively by Articles 316 and 331 of the Code of Commerce;
9. Participation in an association formed or an agreement established for the preparation or commission of an act of terrorism;
10. Knowingly concealing proceeds from terrorism offenses.

An act of terrorism, in the sense of the first paragraph of Art. 218-1, equally constitutes the act of introducing or putting into the atmosphere, on the ground, the underground or in waters, including those of the territorial sea, a substance that endangers the health of persons or animals or the natural environment.<sup>195</sup>

The penalty for the acts of the first paragraph is from ten to twenty years imprisonment. If the acts resulted in mutilation, amputation, deprivation of the use of a limb, blindness, loss of an eye or any other permanent disability for one or more persons the punishment is life imprisonment. If the acts cause the death of one or several persons, the punishment is the death penalty.

In addition, the following acts are considered acts of terrorism:

- the provision, collection or management by any means, directly or indirectly, of funds, valuables or property intended to be used or in the knowledge that they will be used, in full or in part, for committing an act of terrorism, irrespective of the occurrence of such an act;
- providing assistance or advice for this purpose.

These offenses are punishable: for natural persons, from five to twenty years' imprisonment and a fine of between 500,000 and 2,000,000 dirhams; for legal persons, a fine of 1,000,000 to 5,000,000 dirhams, without prejudice to the penalties which may be imposed on their leaders or agents involved in the offenses. The penalty shall be increased to ten years and to thirty years' imprisonment and to double the fine:

- where the offenses are committed using the facilities provided for the pursuit of a professional activity;
- where the offenses are committed in organized groups;
- in case of recidivism.

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<sup>195</sup>. Art. 218-3



The person guilty of the financing of terrorism also incurs the confiscation of all or part of their property.<sup>196</sup>

The maximum penalties provided for the offenses referred to in article 218-I when the acts committed constitute terrorist offenses are as follows:

- death where the penalty is perpetual imprisonment;
- life imprisonment where the maximum penalty is 30 years' imprisonment;
- the maximum of the penalties shall be doubled, without surpassing 30 years when the penalty is imprisonment;
- where the penalty is a fine, the maximum penalty is multiplied by 100 without being less than 100,000 dirhams;
- where the author is a legal person, its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties.

Law No. 15-53 of 20 May 2015,<sup>197</sup> included in the list of terrorist acts<sup>198</sup> the following:

- joining or attempting to join individually or collectively, within an organised or unorganised framework, terrorist entities, organizations, bands or groups, whatever their form, purpose or location, even if the terrorist acts are not intended to prejudice the Kingdom of Morocco or its interests;
- receiving or attempting to receive teaching or training in any form, nature, or duration within or outside the Kingdom of Morocco, with a view to committing an act of terrorism within or outside the Kingdom, irrespective of the occurrence of such an act;
- enlisting by any means whatsoever, teaching or training or attempting to enlist, teach or train one or more persons, with a view to rallying them with entities, organizations, bands or terrorist groups inside or outside the territory of the Kingdom of Morocco.

The aforementioned acts are punishable by imprisonment of five to ten years and a fine of 5,000 to 10,000 dirhams.

The penalties provided for in the preceding paragraph shall be doubled when enrolling, teaching or training a minor, or when the oversight of schools, institutes or centres of education or training, of whatever nature, has been exploited. Where the offender is a legal person, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams as well as its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties and without prejudice to the sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

According to the amendments of Law 15-53 of 20 May 2015 persuasion, incitement and provocation are punishable by five to ten years and a fine of 5,000 to 10,000 dirhams.<sup>199</sup> The penalties shall be doubled in the case of persuasion, incitement or provocation of a minor or when supervision of schools, institutes and

196. Art. 218-4

197. *Dahir n° 1-15-53 du 1<sup>er</sup> chaabane 1436 (20 mai 2015) portant promulgation de la loi n° 86-14 modifiant et complétant certaines dispositions du Code pénal et de la procédure pénale relatives à la lutte contre le terrorisme.* available at: <http://adala.justice.gov.ma/FR/DocumentViewer.aspx?id=189764.htm>

198. Art. 218-1-I

199. Art. 218-5 (according to the previous provision, persuasion, incitement and provocation were punishable by the same penalty as the main offence)

centres of education or training, of whatever nature, has been exploited. Where the offender is a legal person, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams and its dissolution as well as the security measures provided for in Article 62 of the Penal Code, subject to the rights of third parties and without prejudice to any sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

Anyone who makes apologies for acts constituting terrorist offenses, by speech, cries or threats made in public places or assemblies or in writing, by sold printed materials, distributed or offered for sale or exhibited in public places or assemblies or by posters displayed to the public by various audio-visual and electronic means of information, shall be punished with imprisonment of 2 to 6 years and with a fine of 10,000 to 200,000 dirhams.<sup>200</sup> Anyone who, by any of the above mentioned means, does propaganda, or makes apologies for or promotes a terrorist person, entity, organization, gang or group shall receive the same punishment. Where the offender is a legal entity, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams as well as its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties and without prejudice to the sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

Apart from other instances of complicity envisioned in the law, knowingly providing arms, ammunitions, instruments, pecuniary contributions, means of subsistence, correspondence or transport, a place for meetings, accommodation or hiding, help in disposing the proceeds of terrorist misdeeds, or knowingly providing any other assistance, is punishable by ten to twenty years of imprisonment.

However, the court may exempt the parents or relatives up to and including the fourth degree from the perpetrator, co-perpetrator or accomplice of a terrorist act if they have only provided to the latter accommodation or means of personal subsistence.<sup>201</sup>

## Action Plans for the Prevention of Violent Extremism

Morocco plays an active part in the fight against terrorism, under the scope of international cooperation, particularly in respect of the United Nations and Regional Organizations.

**At the international level,** Morocco has ratified multiple international legal instruments relating to the fight against terrorism.

**At the regional level,** Morocco has also ratified conventions on the fight against terrorism adopted by:

- The League of Arab States.
- The Organization of Islamic Cooperation.
- The OAU Convention on the prevention and fight against terrorism.

200. Art. 218-2

201. Art. 218-6

The strategy adopted by the Moroccan State and all its official institutions following the events experienced in Casablanca in 2003 is specifically aimed at the prevention of terrorist attacks. Such prevention can be achieved by laying down suitable criminal legislation which guarantees the possibility of intervention and the avoidance of terrorist attacks. The Moroccan anti-terrorist law has thus envisaged a series of measures and principles concerning the procedural rules and basic rules regulating the investigation and prosecution of this type of crimes.

If an individual is placed into custody, the public prosecutor has to be notified along with details of the complete identity of the person concerned by the measure and a summary of the charges brought.

The public prosecutor can put an end to this custody at any time.

The person placed in custody has the right to demand from the legal police officer that (s)he be visited by a lawyer. The lawyer also has the right to ensure that the public prosecutor visits his or her client before expiry of the initial duration of custody. The public prosecutor must answer immediately.

The legal police officer must present the allegations to the public prosecutor so as to take suitable legal measures in this regard; either requesting an investigation before the competent magistrate to rule on terrorism or submitting the matter to the court directly (Article 73 of the Code of Criminal Procedure) or withdrawing proceedings in his or regard, if such should be justified.

As of 2011, investigators have more powers according to the amendments to the Criminal Procedure Code<sup>202</sup> when the crime being investigated is classified as a terrorist crime:

- Investigators are authorised to seize any type of documents that may prove the commission of a crime by searching the residence of those who have possession of such documents (Art. 59).
- Searches of residences are not restricted to certain times (Art. 62).
- Investigators can detain anyone who could be helpful for the investigation for a period not exceeding 96 hours, renewable for the same period twice (Art. 66).
- Searches of residences for the purpose of seizing evidence do not require the approval of the owner of the residence but can be conducted following a written order of the general prosecutor (Art. 79).
- Not merely the investigative judge, but also the public prosecutor can order the interception of telephonic and other means of communication by him/herself, although this is possible only in exceptional circumstances. Generally speaking, the public prosecutor must obtain an order in written form from the first president of the Court of Appeals for the interception of telephonic or long-distance means of communication, to register them and to either copy them or seize them, when the offence at stake undermines State security, when this is a terrorist offence or when it relates to a criminal association, homicide, poisoning, abduction, taking of hostages, counterfeit, falsification of money or of the result of public credit, drugs, psychotropic substances, weapons, ammunitions and explosives, or the protection of health.

However, the public prosecutor may, under exceptional circumstances, in case of extreme emergency, if the interests of the investigation require swiftness in order to gather evidence, order in written form the interception of telephonic or long-distance means of communication, to register them and to either copy them

202. Criminal Procedure Code, Dahir n° 1-58-261 of 1959, as amended on Oct. 27, 2011

or seize them, when the offence at stake undermines State security, when this is a terrorist offence or when it relates to drugs, psychotropic substances, weapons, ammunitions and explosives, abduction or the taking of hostages.

The public prosecutor is required to inform the first president immediately of such an order (Art. 108).

The US Department of State has characterised Morocco's counterterrorism strategy as 'comprehensive' including "vigilant security measures, regional and international cooperation, and counter-radicalization policies" and pursuing various programs aimed at improving the performance of its security forces in combating terrorism.<sup>203</sup>

## Religious Counter-Narrative and Development

Morocco has stated to the United Nations Counter-Terrorism Committee that it has accelerated the in-depth educational, religious, and cultural reforms as part of its counterterrorism strategy and that major reforms had been carried out with respect to religious activity in an effort to protect Morocco from extremism and terrorism.<sup>204</sup>

The government seeks to reinforce the influence of the Maliki School, which does not support violent extremist ideologies, by upgrading places of worship, closing unregulated mosques, rehabilitating those who have been convicted of a terror-related crime, promoting Moroccan religious values on television and radio and modernising the teaching of Islam.<sup>205</sup> A curriculum has been developed for imams for countering violent extremism; the Moroccan Council of Ulama for Europe and the Minister Delegate for Moroccans Living Abroad has been established to promote religious tolerance among Moroccans living in Europe; a new Islamic satellite channel, has been launched by the King, which directly criticises jihadist clerics and their media and promotes tolerance.<sup>206</sup>

Furthermore, Morocco provides healthcare and job training for the poor; expands rural infrastructure and improves the overall livelihood of Moroccans while paying increasing attention to human rights issues as additional components of its efforts to combat the appeal of extremism.<sup>207</sup>

203. U.S. Department of State, Country Reports on Terrorism 2013: Middle East and North Africa, ch. 2 (Apr. 2014), <http://www.state.gov/j/ct/rls/crt/2013/224823.htm>.

204. Supplementary Report of the Kingdom of Morocco to the Security Council Committee Established Pursuant to Resolution 1373 (2001), at 5, U.N. Doc. S/2004/826 (Oct. 13, 2004), <http://www.saudiembassy.net/files/PDF/Reports/Counterterrorism.pdf>.

205. Eric V. Thompson & Will McCants, Partners Against Terror: Opportunities and Challenges for U.S.-Moroccan Counter-Terrorism Cooperation 3 (2013), <http://www.cna.org/sites/default/files/research/PartnersAgainstTerrorism2.pdf>.

206. Ibid.

207. Ibid.



### Scope of Terrorism Offences and the Criminalization of Terrorist Acts

The Tunisian Organic Law No. 26 of 07/08/2015 on the Fight Against Terrorism and the Repression of Money-Laundering provides the legal criminal framework for terrorist offences.<sup>208</sup>

In Section 2 the law sets out generally the terrorist acts and the punishments provided.

According to Art. 13 a person is guilty of a terrorist offence, if they commit (with intent)<sup>209</sup> by any means and for the execution of an individual or collective project, any of the acts referred to in Articles 14-36 and the act is by its nature or context aimed at spreading terror amongst the population or to compel a State or an international organization to do something relevant to their prerogatives or to abstain from doing so.

The relevant acts are then enumerated as:

1. murder;
2. injuring or beating or committing any other acts of violence as provided for in the Articles 218-319 of the Penal Code
3. injuring or beating or committing any other acts of violence not covered by the above paragraph
4. causing damage to the seat of a diplomatic mission or international organization
5. causing harm to food security and the environment by compromising the balance of alimentary and environmental systems or natural resources or endangering the life of habitants and their health
6. intentionally opening dam barriers or dumping toxic chemical or biological products into these barriers or water installations with the purpose of endangering the population
7. Causing damage to private or public property, to means of transportation or communication, to information systems or to public services
8. Accusations of apostasy or calling to apostasy, or inciting to hatred, to animosity between the races, the doctrines and religions or giving apologies for this.

The death penalty and a fine of 200.000 dinars applies for the case of murder or if any of the other acts provided for have led to the death of a person.

Life imprisonment and a fine of 150.000 dinars applies for acts under the third paragraph or if the acts provided for in the fourth, fifth, sixth, seventh and eighth paragraphs caused bodily harm such as provided for in the third paragraph.

Imprisonment of 20 years and a fine of 100.000 dinars applies, if the acts under the fourth, fifth, sixth, seventh or eighth paragraph caused bodily harm such as provided for in the second paragraph.

208. *Journal Officiel de la République Tunisienne* — 7 août 2015 N° 63 available at: <http://www.legislation.tn/sites/default/files/news/tf2015261.pdf>

209. Note that the French version of the law lacks the words 'with intent'!

Imprisonment of 10-20 years and a fine of 50.000 dinars applies for acts under the fourth, fifth, sixth and seventh paragraph.

Imprisonment of 5 years and a fine of 5.000-10.000 dinars applies, for acts under the second or eight paragraphs.

The law has practically adopted all the offences designated in the treaties listed in the annex of the Convention on the Suppression of Financing of Terrorism, especially the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Art. 15 of the law for example details some of the terrorist offences related to aviation:

Art. 15 – A person is guilty of a terrorist offense and punishable by ten to twenty years of imprisonment and a fine of 100.000 dinars, if they commit intentionally one of the following acts:

1. Committing an act of violence against a person on board an aircraft in flight, if the act of violence falls within the provisions of Articles 218 and 319 of the Penal Code and compromises the safety of the aircraft,
2. Seizing or taking control, by any means, of a civil aircraft in service or during a flight,
3. Destroying or causing damage to a civilian aircraft in service, resulting in its inability to fly that are likely to compromise its safety in flight,
4. Placing or causing to be placed on a civil aircraft in service, by any means, devices or substances likely to destroy it or cause it to be damaged resulting in its inability to fly or that are likely to compromise its safety in flight,
5. Destroying, damaging or impeding the operation of installations of airspace navigation, which is likely to jeopardize the safety of the civil aircraft in flight,
6. Operating a civil aircraft in service or in flight for the purpose of causing bodily harm or damaging to property or the environment or vital resources. The penalty is twenty-five years of imprisonment and a fine of 120.000 dinars, if one of the acts provided for in the cases of 2 to 6 caused bodily harm within the scope of Articles 218 and 319 of the Criminal Code.

The penalty is life imprisonment and a fine of 150.000 dinars, if one of the acts provided for in the cases of 1 to 6 caused bodily harm, which does not fall within the scope of Articles 218 and 319 of the Criminal Code.

The penalty is the death penalty and a fine of 200.000 dinars, if one of these acts caused the death of a person.

Art. 16 then enumerates the transportation of which substances and materials on board a civil aircraft is considered a terrorist offence and under what circumstances (including explosives, radioactive materials, biological or nuclear weapons, etc). Art. 17 relates to acts such as dropping throwing a biological, nuclear or chemical weapon, explosive or radioactive materials, etc. from a civil aircraft resulting in the death, injury or damage to property, the environment or vital resources and Art. 18 relates to endangering the safety of a civilian airplane with the aid of an apparatus, substance or weapon.

Arts. 19-20 deal with terrorist offences related to civilian ships, Art. 21 relates to the safety of both civilian aircrafts and ships, Art. 22 deals with taking possession or control of a fixed platform located on the continental shelf, Art. 23 relates to delivering an explosive device aimed at defusing chemical or biological materials, or radiation, or radioactive materials or any other device causing death, personal injury, damage to property, the environment or to vital resources or to place, launch or explode said devices in or against a place receiving from the public or a State or public service, a public transport network or infrastructure, with intention to cause death or prejudice damage to property, property, property or the environment or vital resources; Art. 24 enumerates acts related to stealing nuclear materials or obtaining them by fraud; Art. 25 deals with violence against persons enjoying international protection which fall within the scope of Arts. 218 and 319 of the Penal Code; Art. 26 deals with the removal of such persons, their unlawful capture, arrest or imprisonment; causing damage to official buildings or private dwellings or means of transportation whereby the life or liberty of persons enjoying international protections would be endangered; Art. 27 relates to the murder of such persons. Art. 29 sets out the punishments for the capture, arrest, imprisonment or sequestration of a person without legal authorisation accompanied by threats to kill them or bring them harm or to continue the sequestration in order to constrain a third party, whether it be a State or an international organization or a physical or moral person or a group of persons, to do a particular act or to refrain from doing it as an express or tacit condition for the release of the hostage. Art. 31 provides for a punishment of one up to five years imprisonment for whoever inside or outside the Republic, publicly and expressly gives apology for a terrorist offense, its perpetrators, an organization, alliance, its members, its activities or opinions and ideas related to terrorist offenses.

## Action Plans for the Prevention of Violent Extremism

The Tunisian government has elaborated a plan of strategic action for the prevention and combatting of violent extremism. This mission has been entrusted since April 2016 to the National Commission for Combatting Terrorism, established in accordance with Art. 66 of Organic Law No. 26.

Anyone guilty of terrorist offences provided for in Organic Law No. 26 is put under supervision for a minimum period of three years.

## Foreign Terrorist Fighters

Official figures announced by the Tunisian government provide that the number of foreign fighters does not exceed 2929.

Regarding the return of terrorist combatants, Organic Law No. 26 sets out the punishment for any act that may have been committed abroad. Practice shows that many proceedings have taken place before judicial authorities, which decide on a case by case basis according to the evidence provided.

According to Art. 32, anyone who, domestically or abroad, voluntarily adheres to an organization or terrorist alliance, under whichever title, in relation to terrorist offences or receives training domestically or abroad for the commission of terrorist offences provided for in this law will be punished by imprisonment of 6-12 years and, in cases where the person formed the aforementioned organization or alliance, the punishment is 10-20 years imprisonment and a fine of 50.000 – 100.000 dinars.



Art. 33 sets the punishment between 6-12 years of imprisonment and a fine of 20.000-50.000 dinars for recruiting and training for the commission of terrorist offences domestically or abroad; using Tunisian territory to commit a terrorist offence (or preparatory acts for such an offence) against another State or its citizens; travelling abroad with a view to committing a terrorist attack or incite, receive or provide training for the commission; entering or crossing the territory of Tunisia with a view to travelling abroad for committing such acts or incite, receive or provide training for the commission.

Art. 35 deals with arranging and assisting the entry or exit from Tunisian territory for the commission of terrorist acts; obtaining materials, equipment and support to terrorists or terrorist organizations; providing them with skills and expertise in connection to terrorist offences; disclosing, providing or publishing information to the benefit of a terrorist organization or terrorists, to assist in the commission or concealment or to profit from such offenses or ensure the impunity of its authors; providing a meeting place for members of a terrorist organization or terrorist persons or to hide or promote their escape or provide them with refuge or ensure their impunity; or benefit from the proceeds of their offences; manufacturing or falsifying an identity card, passport, other permits or certificates for the benefit of a terrorist organization or terrorist persons.

Art. 36 deals with donations or other means of providing funds to said organizations, individuals or the commission of said acts, including funds for the travel abroad with a view to joining a terrorist organization or committing a terrorist act.

In response to the UN SC Res. on foreign fighters, the government has recently announced a new program to rehabilitate fighters returning from terror zones, which will be prepared by a group of ministries, including the ministries of justice, interior, foreign affairs and defence. The program will exclude terrorists found guilty of murder, slaughter or other acts that are classified as crimes against humanity.<sup>210</sup> According to the latest official statistics provided by the Tunisian Interior Ministry, the number of Tunisian terrorists abroad is estimated at 2,929 and not more than 2000 fighters are expected to return to Tunisia, since many would have been killed before.<sup>211</sup> Around 800 had already returned between 2012 and 2016.<sup>212</sup>

210. Asharq Al-awsat English: Tunisia: Government Rehabilitation Program for Returning Terrorists, available at: <https://english.aawsat.com/almunji-al-saidani/news-middle-east/tunisia-govt-rehabilitation-program-returning-terrorists>.

211. ibid

212. ibid

# Recommendations

## Recommendations on Scope of Terrorist Offences

What constitutes a terrorist offence needs a universally recognised definition. However, the definitions of the SCPs reflect the realities on the ground and the everyday battle between governments and terrorist organizations, which includes the battle over the minds of the population.

It is encouraging to see that many SPCs have included in their anti-terrorism legislations incitement and glorification of terrorism. Some have even criminalized the practice of takfir, i.e. accusations of apostasy combined with an explicit or implicit call to murder.

Most States criminalize acts of planning and preparation of terrorist acts as autonomous offences. Most also criminalize all support, such as supply of weapons to, funding, training, harbouring or hiding terrorists.

Most States have further specifically criminalized passive and active recruitment to join terrorist entities to commit acts of terrorism, and have criminalized recruitment inside and outside their territories. For example, Egypt does not specify what kind of membership in a terrorist group is punishable under Art. 12 of the Combating Terrorism definition, while the Terrorist Entities law likewise considers a terrorist anyone who becomes member of a terrorist group, be it active or passive. Jordan also does not specify whether it requires active membership or if passive membership suffices under Art. 3 of its Anti-Terrorism Law. In Israel, the law also makes it possible for passive members of groups to be classified as terrorist organizations to be indicted.<sup>213</sup> A large number of Palestinian groups, including Hamas and Islamic Jihad, are classified as terrorist organizations in Israel, as is the leftist Popular Front for the Liberation of Palestine (PFLP) and, most controversially, the Palestinian Liberation Organization (PLO).<sup>214</sup> It is better practice to exclude passive membership from such criminalization. While the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism under Art. 2 merely does not require the criminalization of passive membership, or the membership of an inactive terrorist association or group, the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa specifically state that there shall be not criminal responsibility solely for membership, since criminal responsibility for acts of terrorism shall be individual, not collective.

When it comes to designating organizations as terrorist, there needs to be a uniform standard that would apply indiscriminately. Some have thought it wise to choose the lesser evil between different terrorist groups, and take a more lenient approach to those that condemn even more radical ones. This can perhaps be a short-term approach, but it is doubtful whether it can lead to necessary changes in the society in the long-term. Worse practices consist of publicly condemning terrorism on the one hand and using 'friendly' terrorist groups as proxies on the other. This applies both to SPCs as well as many Western States. It is necessary to stop such practices and equally condemn and fight all terrorist organizations based on impartial and objective standards.

<sup>213</sup> <http://www.middleeasteye.net/news/israel-approves-controversial-counter-terrorism-bill-1149441458>

<sup>214</sup> *ibid*

## Finding the Right Balance in Defining Terrorist Acts

When defining terrorist offences, it is important to catch all relevant conduct, particularly in light of double criminality requirements in extradition and MLA. It is equally important, however, not to define such offences overbroadly, i.e. in a way that allows in practice for prosecution beyond the purpose of the relevant law and that infringes upon human rights and political freedoms. According to the Expert's Declaration submitted to the African Commission on Human and Peoples' Rights in the consideration of the Ethiopian Anti-Terror Statute,<sup>215</sup> there are certain internationally accepted elements that "accurately define terrorism and terrorist acts."<sup>216</sup> These include the four general categories of harm:

1. Serious physical harm to a person or persons, in other words, killing or injuring one or more people, or damaging public health more broadly;
2. Serious property damage, particularly damage that is likely to cause serious harm to people;
3. Harm to vital infrastructure, such as power, food, or water supplies; medical services; or monetary and electronic systems; and
4. Harm to national security, defence, or 'public order'.<sup>217</sup>

Accepted definitions of terrorism would ideally also be narrowly drawn with a purpose or intent to influence or coerce the government or to intimidate, panic, or terrorize the public or a section of the public.<sup>218</sup> For example, the Special Tribunal for Lebanon ("STL") defines terrorism as:

*"(a) the perpetration of a criminal act (such as murder, kidnapping, hostage taking, arson, and so on), or threatening such an act; (b) with the intent to spread fear among the population (which would generally entail the creation of a public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; and (c) when the act involves a transnational element."*<sup>219</sup>

The conduct must thus either intend to cause fear or directly/indirectly coerce a national or international authority.

It is important to note, however, that the Arab Convention for the Suppression of Terrorism states that the act can be done with 'whatever' motive or purpose<sup>220</sup> and it suffices if it merely seeks to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources.<sup>221</sup>

Furthermore, the proposed statute of the African Court on Justice and Human Rights defines terrorism as:

215. enacted by Proclamation 652/2009 in August 2009

216. Expert's Declaration, para. 7

217. *ibid*

218. *ibid*

219. Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, at 85., (2011)

220. League of Arab States, Adopted by the Council of Arab Ministers of the Interior and the Council of the Arab Ministers of Justice, Cairo, April, 1998, Art. I(2)

221. Art. I(2)

“Any act which is a violation of the criminal laws of the African Union or a regional economic community recognized by the African Union, or by international law, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

1. Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon any particular standpoint, or to act according to certain principles; or
2. Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
3. Create general insurrection in a State.”<sup>222</sup>

Thus, the disruption of any public service is a purpose on its own in this definition and does not require any additional purpose of intimidation of the public or coercion of government etc. However, the African Union Model Anti-Terrorism law<sup>223</sup> mirrors the limited definitions of ‘disruption of services’ in four African States,<sup>224</sup> which cover the provision of services directly related to communication infrastructure, banking and financial services, utilities, transportation, or other key infrastructure. On the other hand, States like Mauritius and Nigeria limit disruption to fundamental natural resources, such as water or electricity, and still require the disruption’s effect to endanger human life.<sup>225</sup> Mauritania bans disrupting “any public service”, yet requires that the disruption either put human lives in danger or cause considerable economic or material loss.<sup>226</sup>

The Expert’s Declaration mentioned above characterized the definition in the Ethiopian Anti-Terror Statute under consideration as too broad because it was not confined to acts that “cause a death or serious bodily injury” but included “serious risk to the safety or health of the public, serious damage to property, damage to natural resources, and serious interference or disruption of any public service” and did not include any link to acts designed to promote terror in the civilian population or coerce a national or international authority.<sup>227</sup> Furthermore the disruption of public service did not require intent to do so. The definition was thus considered:

*“so broad that a non-violent political protest that disrupts traffic may be labelled a “terrorist act,” and individuals expressing support for a peaceful political protest may be deemed terrorists. Furthermore, absent any link to acts designed to promote terror in the civilian population, the phrase ‘disruption of any public service’ is too imprecise to warrant criminal sanctions. This expansion allows for restrictions on freedom of association, religion, expression, and assembly – both criminalizing innocent acts as well as compromising citizens’ rights to due process.”<sup>228</sup>*

222. Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Art. 28(G)(A), 2014.

223. AU The African Model Anti-Terrorism Law §§ (4)(xxxix)(g)-(h), 2011.

224. Kenya Prevention of Terrorism Bill, 2012 Part I (2)(a)(viii)-(ix), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (1)(xxv)(a)(vi), Tanzania Prevention of Terrorism Act, 2002, Part II (3) (g)-(h), Zambia The Anti-Terrorism Act, No. 21 of 2007, Part I (2)(1)(h)-(i). Ghana’s definition is also close to the Model Law, covering transportation, utilities, communications, and “other essential services,” Ghana Anti-Terrorism Act, 2008 Act 762 (2)(g).

225. Mauritius Prevention of Terrorism Act, No.2 of 2002, (3)(2)(a)(viii); Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2)(c)(vii).

226. Mauritania No. 35 of 2010, Art. 5 (3) (Sasho Todorov, trans. 2016).

227. Expert’s Declaration, Para. 9

228. Expert’s Declaration, Para. 10

As such, the law lacked the requisite specificity found in internationally accepted counterterrorism statutes such as the International Convention for the Suppression of Terrorist Bombings as well as the International Convention for the Suppression of the Financing of Terrorism.

Generally speaking, imprecisions permit deviation from the intended purpose of an anti-terrorism legislation and can be used as a pretext to prevent parts of the population from enjoying their protected freedoms.<sup>229</sup> They further violate the principle of legality, which requires that criminal law be formulated clearly and precisely so that individuals have notice as to what constitutes a crime. References to the principle of legality are found throughout the African Charter; in Article 15 of the International Convention of Civil and Political Rights (ICCPR), the Anti-Terror Statute by the UN Human Rights Committee, as well as several other international documents.<sup>230</sup>

It is thus good practice to enact counterterrorism laws that specifically protect peaceful political dissent such as protests or advocacy and at least 15 governments worldwide have done so. For example, the Australian Criminal Code narrowly states that “advocating, protesting, dissenting or taking industrial action are not terrorist acts where the person doing the activity does not intend to cause serious harm to a person or create a serious risk to public safety.”<sup>231</sup>

The Canadian Criminal Code also includes a narrow provision mirroring the protection of peaceful political dissent and protects the “serious interference with or serious disruption of an essential service, facility or system...as a result of advocacy, protest, dissent or stoppage of work that is not intended to...cause death or serious bodily harm to a person by the use of violence, endanger a person’s life, [or] cause a serious risk to the health or safety of the public or any segment of the public.”<sup>232</sup>

This is in contrast to some tendencies in the US where 84 members of Congress have recently called on the Attorney General for bringing terrorism charges against peaceful protestors who oppose oil pipelines with the intent of protecting the environment from their catastrophic impact.<sup>233</sup>

African best practices also do not allow considering protests as terrorist acts solely on the basis of a disruption of services.<sup>234</sup> Botswana strictly excludes lawful protests from being considered terrorist acts, unless they are performed in conjunction with espionage, sabotage, or terrorist activity.<sup>235</sup> While Botswana does not have a formal definition of terrorist activity, its next definition of ‘national threat’ clearly points to violent, unlawful harm, and does not include disruption of services.<sup>236</sup> Five other nations protect the disruption of public services due to protest or work stoppage, as long as the protest is not intended to result in serious bodily harm to a person, the endangering of a person’s life, cause serious damage to property, or a serious risk to the health or safety of the

229. Expert’s Declaration, Para. 8

230. See, e.g. African Charter Arts. 6, 7(2), 27. See also ICCPR art. 15; UDHR art. 2; ECHR art. 7; ACPHR art. 9; ArCHR art. 15.

231. In the Name of Security: Counterterrorism Laws Worldwide since September 11, pg. 25, (June 2012). (citing Australia Criminal Code Act, No. 12, 1995, (5.3)(100.1)(3)).

232. Canada Criminal Code, (83.01)(1)(b)(ii)(E).

233. Congress of the United States, Washington, DC, 20515, October 23m, 2017, [https://buck.house.gov/sites/buck.house.gov/files/wysiwyg\\_uploaded/Protecting%20Energy%20Infrastructure.pdf](https://buck.house.gov/sites/buck.house.gov/files/wysiwyg_uploaded/Protecting%20Energy%20Infrastructure.pdf).

234. Expert’s Declaration, para. 29.

235. Botswana, Volume IV Intelligence and Security Service, Ch. 23:02(2)(a)

236. Ibid.

public.<sup>237</sup> The African Model Anti-Terrorism Law mirrors this language in its own protest clause protecting disruption.<sup>238</sup>

While many of the SPCs definitions of terrorism may appear as overbroad due to imprecise language, it is important to take note of the particular national circumstances of each country under consideration and understand the proscribed acts in this context. Poor education levels, poverty and influence from external powers prevalent in many of the SPCs make these societies less stable and the threat of radicalisation greater. The legislation dealing with terrorism thus naturally reflects the desire by many SPCs to keep cohesion in the society. Moreover, it is clear that the SPCs under consideration by and large provide multi-faceted approaches to tackling radicalisation and do not rely merely on strict legislation, showing their understanding of the root causes of violent extremism. Several good practices can be observed and should be shared among the SPCs where appropriate. In addition, most of the definitions include necessary qualifiers to avoid being overbroad. For example, Morocco limits the definition to acts whose aim is to seriously infringe public order by intimidation, terror or violence.

Algeria however does not limit terrorism to violent acts « A » but includes in the definition *any act* which targets the security of the State, the integrity of its territory, the stability and the normal functioning of the institutions, provided the act has one of the enumerated aims. The aims themselves include for example causing 'moral harm', 'hindering traffic', 'occupying public spaces with gatherings' and even 'violating the symbols of the nation and the Republic'.<sup>239</sup> Also dangerously broad is the definition of the acts prohibited under Art. 87 bis 10 « B », which include the undertaking of an activity which is harmful to 'the cohesion of the society', a vague term that could fit too many interpretations to provide for legal certainty. It is thus recommended that Algeria narrows down its definition or makes the terminology more precise in order to avoid a violation of the principle of legality and the unnecessary curtailing of political dissent.

The Egyptian definition of what constitutes a terrorist act has also been criticised as being too general and vague due to the use of wording such as "for the purpose of disturbing public order, social peace, or endangering... undermining national unity... or security... prevents or impedes public authorities" without providing a clear definition of such terms. Any of the enumerated purposes must be achieved or attempted, however by 'use of force, violence or threat to intimidate Egyptians living at home or abroad',<sup>240</sup> which substantially limits the scope of what can constitute a terrorist act.

The Jordanian definition, on the other hand, has removed the connection to an act of violence with the 2014 amendments while including acts that 'sow discord' or 'disturb public order' or even acts that disturb Jordan's relations with a foreign State. It is thus recommended that a necessary qualifier such as a nexus with 'the aim of intimidation, terror or violence' is included in the definition.

A novel approach has been taken by Tunisia and can be seen as an example of good practice in criminalizing public provocation to commit terrorist acts. Tunisia includes in its definition of terrorist acts 'accusations of apostasy (*takfir*)' as well as 'calling to apostasy (*takfir*)' which may potentially violate the freedom of ex-

237. Ghana Anti-Terrorism Act, 2008 Act 762 (3), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (3); Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(3); Tanzania Prevention of Terrorism Act, 2002, Part II (4), Zambia The Anti-Terrorism Act, No. 21 of 2007, Part I (2)(3). AU The African Model Anti-Terrorism Law § (4)(xl)(a), 2011.

238. AU The African Model Anti-Terrorism Law § (4)(xl)(a), 2011.

239. Algerian Criminal Code, Art. 87 bis

240. Law 54/2015 on Combatting Terrorism

pression. Nonetheless, the latter is not an absolute right and restriction and even derogation on it may be allowed under specific circumstances. The UN Special Rapporteur on Freedom of Opinion and Expression along with the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information, have called for countries to adopt definitions of terrorism that ensure that they do not criminalize speech that does not directly incite violent activities:

*"The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public."*<sup>241</sup>

While the Tunisian definition seems to be problematic from the point of view of freedom of expression, it must be considered that it requires a nexus with the aim of spreading terror among the population or compelling a State or international organization to do something relevant to their prerogatives or abstain from doing so, thus it satisfies the requirement laid down by the Special Rapporteur.

When drafting the Council of Europe Convention on the Prevention of Terrorism Art. 5 on public provocation to commit a terrorist offence, opinions of the Parliamentary Assembly and of the Commissioner for Human Rights of the Council of Europe, which considered that "the dissemination of messages praising the perpetrator of an attack, the denigration of victims, calls for funding for terrorist organizations or other similar behaviour" which could constitute indirect provocation to terrorist violence could be covered by the provision.<sup>242</sup> A generic formula was eventually used, requiring State Parties to criminalize the distributing or otherwise making available of a message to the public advocating terrorist offences, whether done directly or indirectly. An example of indirect provocation (or public provocation) can be, releasing a video featuring a person talking about the heresy of the Western world when it comes to celebrating New Year's eve, and calling believers to, in the name of God, actively take part in jihad and do everything they can to 'teach the Westerners a lesson,' accompanied by clips of explosions in cafes and attacks on squares.<sup>243</sup>

There are two elements to the offence of public provocation contained in article 5; first, there has to be a specific intent to incite the commission of a terrorist offence, which is supplemented with the requirements that the provocation be committed unlawfully and intentionally (article 5 (2)).

Second, the result of such an act must be to cause a danger that such an offence might be committed. When considering whether such danger is caused, the nature of the author and of the recipient of the message, as well as the context in which the offence is committed shall be taken into account.<sup>244</sup> The significance and the credible nature of the danger should be considered when applying this provision in accordance with the requirements of domestic law.

241. The U.N. Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, "Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation," December 9, 2008, <http://www.osce.org/fom/35639?download=true>.

242. Council of Europe, Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series, No. 196, para. 95. For further information on the Council of Europe Committee of Experts on Terrorism see [www.coe.int/en/web/counter-terrorism](http://www.coe.int/en/web/counter-terrorism), and Council of Europe, Opinion of the Commissioner for Human Rights, Alvaro Gil-Robles, on the draft Convention on the Prevention on Terrorism, 2 February 2005.

243. UNODC, Manual for Judicial Training Institutes South-Eastern Europe, (Vienna, 2017), p. 16.

244. Council of Europe, Explanatory Report, supra note, 229, paras. 97-100.



The purpose of criminalizing public provocation to commit a terrorist offence is to make the provocation punishable even if it is not acted upon by anyone, as long as it created a real risk that the terrorist offence may be committed.<sup>245</sup>

The above-mentioned criminalization of ‘accusations of apostasy (*takfir*)’ as terrorist acts fits under the context of public provocation. Such accusations imply a call for the murder of the individual accused or *ji-had* against an accused society, thus they create a real risk for the commission of a terrorist offence. The element of intent to incite the commission of a terrorist offence is also implied with the required intention to spread terror. Furthermore, the restriction on freedom of expression here is necessary to protect the right of life of those accused of apostasy.

Most SPCs do not limit terrorist acts to acts done by particular enumerated means. For example, the wording used in the Algerian Criminal Code defining terrorist acts reads as follows: “*any act which targets... by any action which has the aim of...*” The Egyptian law on Combatting Terrorism also does not limit the scope of terrorist acts to particular means used. The Jordanian law specifically states that the act can be “committed by any means” as does the relevant Tunisian law. On the contrary, the definition in Art. 148 of the Penal Code in force in the State of Palestine is limited to acts committed by “means such as explosive devices, inflammable substances, toxic or incendiary products, and epidemiological or microbial factors that would pose a general danger”. The Lebanese definition similarly limits the means to those “liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.”<sup>246</sup> This has led to interpretations in the past that did not even consider guns, revolvers or even submachine guns as a means of committing a terrorist attack. Such definitions are unnecessarily restrictive, especially in the light of terrorists continuously changing their *modi operandi* to avoid detection and prevention of their attacks. It is important to note, however, that in more recent practice, Lebanese courts no longer interpret the law in such a restrictive manner.

‘A’, ‘B’ and ‘C’; the definition adopted by the Algerian penal code limits terrorist acts by their objectives and in accordance with the provisions of the international instruments regarding the fight against terrorism ratified by Algeria.

## Recommendations on Anti-Extremism Policy

The analysed SPCs each have their own approaches and strategies for countering terrorism and violent extremism reflecting their individual situations. Best practices seem to include the strict monitoring of religious venues, imams, and sermons.

Another essential element is a forceful counter-narrative to extremist ideology, disseminated through different media, involving scholars and religious authorities.

<sup>245</sup>. Manual for Judicial Training Institutes South-Eastern Europe, supra note 230, p. 16.

<sup>246</sup>. Lebanese Penal Code, Art. 314.

Full engagement with the society on a number of levels to prevent its vulnerable members from falling prey to extremist propaganda is also crucial. Genuine grievances of the population need to be addressed and while countering terrorism, care needs to be taken not to violate human rights and further antagonize groups of the population susceptible to radicalisation. Economic development further needs to take centre stage in the fight against extremism, as does education. The illiteracy rate in certain SPCs is still alarming and needs to be addressed as a matter of urgency.

Furthermore, especially when the number of terrorists in a society is high, opportunities need to be given to these individuals to turn their lives around. The Algerian Charter for Peace and National Reconciliation is an example of good practice in this regard and it includes provisions on social rehabilitation measures. Jordan likewise offers such programs as does Egypt through the sessions of Dar Al-Iftaa for former violent extremists.

A successful strategy further requires the involvement of local communities and non-governmental actors in its development and implementation and the promotion of community policing as a means to prevent terrorist recruitment.

The investigation and prosecution of alleged terrorists is an integral part of any counter-terrorism strategy. Some States have established special procedures and have granted additional powers to relevant authorities when dealing with allegedly terrorist acts. In this context, national capacity-building is needed to strengthen the effectiveness of rule of law and human rights-based investigations, prosecutions and adjudication of terrorist cases, through the provision of specialized training and exchange of experience with foreign counterparts.<sup>247</sup>

It is hard to assess to what degree human rights are respected in counter-terrorist actions, proceedings, and detentions. Although not included in the present report, many SPCs have received substantive criticism from various human rights organizations in the context of their anti-terrorism activities. Independent bodies to oversee law enforcement counter-terrorism activities need to be established to ensure that human rights are respected at all times. Only Tunisia has allowed the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms to conduct a country visit there.

Security Council resolutions 1373 (2001) and 1624 (2005) emphasize the need to strengthen international cooperation in countering the use of the Internet and social media for terrorist purposes. However, efforts to achieve a global legal consensus continue to be undermined by significant differences between member States' relevant domestic legislation and the limited capacity of investigators and prosecutors to access electronic evidence.

Effective mutual legal assistance in criminal matters as well as extradition arrangements are further essential in the global fight against terrorism as is international cooperation in general. Furthermore, an effective exchange of information and intelligence between the countries needs to be ensured by establishing mechanisms to centralize and process intelligence.

247. United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), Global Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States, Compiled by the CTED in 2016, p. 25. para. 77.

## Recommendations on Confronting the Issue OF FTFs

All SPCs have implemented at least some legal and security measures to tackle the phenomenon of FTFs. Only Lebanon lacks laws criminalizing foreign terrorist fighter activity, despite being a co-sponsor of SC Res. 2178 and taking several measures to prevent the flow of ISIS and al-Nusrah Front fighters to Syria and Iraq.

A further essential policy of several SPCs in this regard has been the counter-propaganda and religious counter-narrative which forms part of the general policy against radicalisation and recruitment.

In compliance with Security Council Resolution 1373/2001, most SPCs have in one way or another criminalized under terrorist offences the travel or attempted travel, to another State with the intent to commit, plan, prepare, or participate in terrorist acts or with the intent to be trained.

While the SC Res. 1373 speaks of such travel on the part of their nationals *and other individuals*, some SPCs have only covered their own nationals under said provisions.

For example, Egypt criminalizes the joining of a foreign terrorist entity for Egyptian citizens only under Art. 21 of its Anti-Terrorism Law. Merely seeking to communicate with such an entity is criminalized under Art. 14 but only when the aim is committing a terrorist crime inside Egypt, against its citizens, interests, properties, etc. Only facilitating for others to join such entities under Art. 21, as well as training others or receiving training in any form for the commission of a terrorist crime under Art. 15 are equally criminalized for Egyptians as well as non-Egyptians.

This potentially creates a gap in terms of those non-Egyptians who travel to another State to join a terrorist entity without necessarily having received training to commit a terrorist crime.

The SPCs have furthermore mostly criminalized receiving and providing training in or outside the territory for the perpetration, planning or preparation of, or participation in, terrorist acts; the wilful organization of travel for individuals travelling abroad for the purpose of preparing terrorist acts, or participating in, providing, or receiving training or facilitating the commission of terrorist acts, including recruitment; financing of travel and entering or crossing the territory with a view to travelling to another territory to commit terrorist offences. All States have criminalized joining a terrorist group inside and/or outside the territory.

Some have furthermore put additional restraints on travelling to certain areas which apply to individuals of a specific age group.

Apart from the necessary criminal legislation, another essential part in the fight against foreign terrorist fighters is border security and the thorough monitoring of travellers entering or leaving the country. Most SPCs have been improving their border security as well as increasing cooperation of neighbouring countries, introducing new databases and systems of screening to identify suspected travellers.

The SPCs are encouraged to continue to improve their border security and monitoring and strengthen cooperation and information sharing with neighbouring countries. In terms of legislation, SPCs are encouraged to criminalize all conduct relevant to foreign terrorist fighters as included in Security Council resolutions both in terms of nationals and other individuals.

## Priority issues/recommendations

- Define acts of terrorism to capture all relevant conduct without defining it too broadly;
- Designate groups as terrorist based on objective criteria;
- Ensure the prosecution of domestic and foreign terrorist fighters and programs for their reintegration and rehabilitation;
- Ensure investigations and prosecutions are compliant with rule of law standards;
- Ensure that all elements of the security sector respect human rights standards;
- Monitor mosques, imams, sermons, and prayers;
- Ensure quality education and tackle illiteracy;
- Provide effective counter-narrative especially within the language of the religion;
- Engage local communities and non-governmental actors in governmental violent extremism strategies;
- Promote community policing as a means to prevent the recruitment of individuals into terrorist groups;
- Provide opportunities for employment and economic development for the poorest sectors of society.