



The International Institute for
Justice and the Rule of Law

THE ROLE OF PARLIAMENTARIANS IN NEXUS WITH THE CRIMINAL JUSTICE SECTOR IN COUNTERING TERRORISM

*A Handbook for Parliamentarians and
Criminal Justice Practitioners*





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The International Institute for Justice and the Rule of Law

Inspired by the Global Counterterrorism Forum (GCTF), the IJ was established in 2014 as a neutral platform for training and capacity-building for lawmakers, judges, prosecutors, law enforcement, correction officials, and other justice sector practitioners to share and promote the implementation of good practices and sustainable counter-terrorism approaches founded on the rule of law.

The IJ is an intergovernmental organisation based in Malta with an international Governing Board of Administrators representing its 13 members: Algeria, France, Italy, Jordan, Malta, Morocco, the Netherlands, Nigeria, Tunisia, Turkey, the United Kingdom, the United States, and the European Union. The IJ is staffed by a dynamic international team headed by an Executive Secretary, who are responsible for the day-to-day operations of the IJ.

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¹ It is worth noting that the process of post-legislative scrutiny could be seen as part of the legislative process as it feeds into the revision of a law for better regulation as well as part of the oversight role of parliamentarians. In the beginning of the appearance of this concept, it was linked to parliaments and the legislative process. The ultimate benefit of this exercise is improving the accountability of governments for legislation and lead to better and more effective laws. In this Handbook, we chose to put this under the legislative process for structural and flow purposes. See: House of Lords Select Committee on the Constitution, 14th Report, (2003-04), Parliament and the Legislative Process, HL 173-I, para 180.

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Parliament of Bahrain, House of Representatives of Tunisia, Benin, Bosnia and Herzegovina, Chad, Ethiopia, European Parliament, France, Hungary, Iraq, Italy, Jordan, Kenya, Lebanon, Libya, Mali, Parliament of Malta, Morocco, NATO Parliamentary Assembly, the Netherlands, Nigeria, Pan African Parliament, Palestine, Senegal, Serbia, Spain, Sweden, Tunisia, Turkey and Uganda.

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Credits

Mr. Valerio de Divitiis, a former IJ Program Manager, and Ms. Miriam Shafik, IJ Program Manager, provided valuable contributions to this Handbook. Ms. Sandrine Mangion and Ms. Sarah Cachia, IJ Program Assistants, also provided valuable logistical support to the workshops and meetings with parliamentarians and criminal justice experts under the IJ Parliamentarians Initiative.

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Forward

Parliamentarians are the backbone in developing domestic counter-terrorism legislation. Their participation in the field of counter-terrorism also increases the effectiveness of such policies, which benefit from enhanced accountability mechanisms, good governance, civic participation, resources, and adherence to international good practices as well as promoting resilience in society. Counter-terrorism policies are, therefore, an opportunity for strengthening rule of law and human rights.

Parliamentarians should equally collaborate with criminal justice practitioners and security agencies to ensure the fundamental measures of the rule of law are in place to protect their citizens. Many states and international actors are updating their legislation to ensure that their national laws are in conformity with international legal standards.

To address these challenges, in 2015 the International Institute for Justice and the Rule of Law (IJJ), with generous support from the European Union, launched the IJJ Parliamentarians Initiative, bringing together more than 250 parliamentarians from 31 countries and 11 regional inter-parliamentary fora from the Middle East, and North, East and West Africa. Building on the first phase of the initiative that led to the development of the Global Counterterrorism Forum (GCTF) *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*, the IJJ – in partnership with parliamentarians and judicial practitioners – developed this Handbook on ‘The Role of Parliamentarians in Nexus with Criminal Justice Practitioners in Countering Terrorism’.

To assist in guiding the important work of both parliamentarians and criminal justice practitioners in counter-terrorism, the Handbook focuses on four key areas:

1. Key counter-terrorism policies which require, and benefit from, strong engagement by parliamentarians.
2. The role of parliamentarians in implementing international counter-terrorism good practices at the national level, which has direct bearing on the success and efficacy of international judicial cooperation.



3. The role of parliamentarians in providing oversight of security and intelligence services in counter-terrorism, including the work of parliamentary committees in preventing human rights violations in the context of intelligence activities.
4. The role of parliamentarians in responding to current counter-terrorism issues, such as engagement with civil society organisations, developing counter-narratives, and addressing the threats of returning Foreign Terrorist Fighters and Homegrown Terrorism.

The IJJ wishes to warmly thank the European Union for its generous support in the elaboration of this Handbook, the Organization for Security and Co-operation in Europe (OSCE) Parliamentary Assembly for their active participation in this project, and Dr. Dina Melhem for developing this product as the lead expert.

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Introduction

Terrorism in all its forms and manifestations is a global threat to peace, stability and the development of states. In the last decade, the incidence of terrorism spread to an increasing number of countries. According to the 2017 Global Terrorism Index, 77 countries incurred fatalities from terrorism in 2017, an increase from 65 the year before. Two thirds of all countries experienced terrorist attacks in 2016², while more than 110 countries reported having citizens travel to conflict zones in recent years to support terrorist groups³.

Furthermore, we are witnessing new trends and constant change in terrorists' tactics and strategies. Terrorist groups now have different motives, organisation structures and tools⁴. The global geographical distribution of terrorists and the spread of local franchises, the dependency on cyberspace, and the use by terrorists of information and communications technology, all present challenges to the conventional wisdom on terrorists and terrorism.

It is worth clarifying the difference between '*international terrorism*', which refers to terrorism that goes beyond national boundaries in terms of the methods used, the people who are targeted or the places from which the

² The Global Terrorism Index (GTI) is an annual report by the Institute for Economics and Peace (IEP). The GTI provides a comprehensive summary of the key global trends and patterns in terrorism since 2000, based on data from the Global Terrorism Database (GTD), which is collected and collated by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland. <http://globalterrorismindex.org/>. See: Global Terrorism Index 2017: Measuring and Understanding the Impact of Terrorism, Institute for Economics and Peace, 2017, p. 2. <http://visionofhumanity.org/app/uploads/2017/11/Global-Terrorism-Index-2017.pdf>.

³ Richard Barrett, 'Beyond the Caliphate: Foreign Fighters and the Threat of Returnees', The Soufan Center, November 2017, p.7. <http://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf>.

⁴ NATO Parliamentary Assembly, Technology and Terrorism Sub-Committee on the Proliferation of Military Technology. <https://www.nato-pa.int/content/science-and-technology-committee>.



terrorists operate⁵, and '*national terrorism*', which refers to internally-based terrorism. If a group is founded in a country and contains its activities to within those borders, then it is classed as a domestic group⁶.

However, there is some blurring lines in some cases, depending on the structure of the terrorist group and the support they receive.

The nature of terrorist attacks can also be differentiated⁷ by the following:

- **Inspired attacks** – attacks carried out by groups and or individuals who are inspired or have pledged allegiance to an international terrorist group such as, but not limited to, ISIL and al Qaeda, regardless of whether or not formal ties exist.

- **Directed attacks** – attacks by operatives of the 'core' of an organisation. These are normally coordinated attacks with support from terrorist groups.
- **Affiliated or Enabled attacks** – those attacks that receive various degrees of support and technical guidance from organised terrorist groups, but without formal affiliation.

All of this underscores the fact that analysing threats and assessing threat levels are more difficult with the new emerging terrorist patterns and strategies.

For a long time, terrorism has been perceived through the lens of being a threat to national security. Yet, terrorism impacts all aspects of life, including social, political and economic structures. Moreover, political, social, cultural and economic conflicts can lead to violent extremism and states are encouraged to adopt national strategies,

⁵ Human Rights, Terrorism and Counter-Terrorism, Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 32. <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

⁶ The United States Code (18 U.S.C. § 2331) offers a specific definition of 'international' and 'domestic' terrorism. 'International' terrorism refers to activities with the following three characteristics:

- Involve violent acts or acts dangerous to human life that violate federal or state law
- Appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping
- Occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

'Domestic' terrorism refers to activities with the following three characteristics:

- Involve acts dangerous to human life that violate federal or state law
- Appear intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping
- Occur primarily within the territorial jurisdiction of the United States. 18 U.S.C. § 2331 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 2331. Definitions. <https://www.law.cornell.edu/uscode/text/18/2331>.

⁷ Background Report, Patterns of Islamic State-Related Terrorism, 2002-2015, National Consortium for the Study of Terrorism and Responses to Terrorism (START), University of Maryland, 2016. https://www.start.umd.edu/pubs/START_IslamicStateTerrorismPatterns_BackgroundReport_Aug2016.pdf.

that includes measures to strengthen the resilience of the population through a balanced, multidisciplinary and holistic approach that integrates measures to address the socio-economic, political, educational, developmental, human rights, gender and rule-of-law dimensions.⁸

All states, in every region, large or small, strong or weak, are vulnerable to terrorism and its consequences. International organisations and states are under pressure to tackle the complex challenges posed by the threat of terrorism. Identified as one of the greatest threats to national security, terrorism requires multiple counter-measures to stem its proliferation.

In recognition of the threat, the international community has developed a set of international instruments on countering terrorism and called for enhanced cooperation to strengthen states' efforts to deploy the necessary measures to prevent and combat terrorism. Strong institutions are critical to be able to deliver results of such efforts.

At the national level, states have adopted multiple strategies and policies to address this evolving threat. Parliamentarians' participation in the field of counter-terrorism increases the effectiveness of counter-terrorism policies that will benefit from enhanced accountability mechanisms, civic participation, and adherence to international good practices.⁹

Terrorism presents a fundamental violation of human rights. At the same time, the counter-terrorism strategies developed in response to terrorism can also put human rights at risk, especially the right to protest, the freedom of assembly, association or expression, the right to privacy, the freedom of movement, the right to be free from torture or other ill-treatment, and the right to fair trial.

Sustainable counter-terrorism approaches should be based on the rule of law and protection of human rights. The response of states to terrorism is a key test of their commitment to the effective preservation and implementation of human rights and to democracy. Respect for human rights and the rule of law must be the foundation of the global fight against terrorism. This requires the development of national counter-terrorism

strategies that seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.¹⁰

The issues facing parliamentarians in the counter-terrorism context are necessarily cross-cutting, reflecting their overarching role in counter-terrorism legislation, counter-terrorism policy and its implementation, as well as counter-terrorism law enforcement and intelligence oversight, countering violent extremism and public outreach, counter-terrorism budgeting and overall good governance and rule of law.¹¹

Parliament is one of the principal institutions that upholds the rule of law and human rights. As representatives of citizens, parliamentarians play critical roles in the formation of legislation, its oversight and in protecting individual liberties, as well as collective security. Their role in determining counter-terrorism policies that are both effective and in compliance with the law is, and will continue to be, central.

Parliamentarians play a key role in integrating universal and regional counter-terrorism instruments into national legislation. Their engagement includes ratifying relevant international treaties, and developing harmonised and effective legal frameworks to ensure overall consistency and synergy between national and international counter-terrorism policies.

Parliamentarians are supported by key other actors, mainly in the judicial system, who play an indispensable role in the counter violent extremism efforts of individual countries and the international community. Parliamentarians work closely to establish effective justice sector institutions and interagency bodies, in addition to promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases.¹²

⁸ Technical Guide to the Implementation of Security Council Resolution 1373 (2001) and Other Relevant Resolutions, Compiled by the Counter-Terrorism Committee Executive Directorate, 2017, p.4. <https://www.un.org/sc/ctc/wp-content/uploads/2017/08/CTED-Technical-Guide-2017.pdf>.

⁹ Brief – A Symposium within the EU-Supported Project 'Enhancing the Role of Parliamentarians in Building Effective Counter-Terrorism Systems within a Rule of Law Framework', 1-2 March, Brussels. https://ec.europa.eu/europeaid/sites/devco/files/news-summary-counter-terrorism-seminar-ep-01032016_en.pdf.

¹⁰ Human Rights, Terrorism and Counter-Terrorism, Office of the United Nations High Commissioner for Human Rights, Fact Sheet Number 32, 2008, p.1. <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

¹¹ Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism, Global Counterterrorism Forum (GCTF), 2016. <https://theij.org/wp-content/uploads/English-Valletta-Recommendations.pdf>.

¹² Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism, Global Counterterrorism Forum (GCTF), 2016. <https://theij.org/wp-content/uploads/English-Valletta-Recommendations.pdf>.

Purpose of the Handbook

This Handbook is primarily intended for parliamentarians, to assist them in their role in developing and implementing counter-terrorism legislation and its oversight. Its principal purposes are to:

- Promote awareness among parliamentarians about their important role in CT.
- Enable greater and more informed engagement on the part of parliamentarians in the development and implementation of counter-terrorism policies which balance the interests of security and human rights.
- Prepare parliamentarians in formulating responses to the evolving threats in unpredictable and unstable security environments.
- Promote greater awareness among parliamentarians of the role of the judicial system in the adjudication terrorism offenses within a rule of law and human rights framework.
- Promote greater awareness among parliamentarians of the complexities of evolving forms of terrorism and counter-terrorism at the national, regional and international levels.
- Encourage parliamentarians to engage in inclusive processes aimed at developing and implementing comprehensive counter-terrorism national policies in line with international and regional policies and within the legal framework.
- Promote greater cooperation between parliamentarians and the judiciary system to ensure the adoption of good legislation and its implementation in compliance with international standards and commitments.
- Promote greater awareness among international, regional and national authorities of the role of parliamentarians in ensuring an effective, comprehensive and inclusive approach to counter-terrorism.

The Handbook will also serve as a useful tool for parliamentary staff, civil society organisations (CSOs), the media, judicial systems¹³, other criminal justice practitioners and actors involved in the counter-terrorism field seeking to understand how to engage with parliamentarians on this topic in order to support their efforts in the formation and implementation of counter-terrorism strategies.

It is also envisioned that the Handbook will serve as a useful reference for new members of parliaments to help normalise expectations and build consensus around the fundamental role parliamentarians play in building and overseeing counter-terrorism frameworks. It is intended to present means and ways parliamentarians can engage with counter-terrorism policies as part of their mandate and in their legislative and oversight roles, as well as their responsibilities to represent the interests and rights of their constituents.

The Handbook refers to good practices and lessons learned about contributions of parliaments and parliamentarians to advancing counter-terrorism policies and provides recommendations to Parliamentarians for best fulfilling their role and meeting their responsibilities to deliver strengthened counter-terrorism policies and practices based on the rule of law.

The Handbook has, in part, been designed *by parliamentarians for parliamentarians*. It draws on contributions from members of Parliaments who participated in the IJ-led regional workshops that contributed to the Global Counterterrorism Forum (GCTF) *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*.¹⁴ This Handbook could be also used by criminal justice practitioners, as it highlights areas of cooperation between parliamentarians and criminal justice practitioners within the counter-terrorism context.

¹³ The judicial system (including prosecutors, investigating magistrates, investigators, and trial judges) may also benefit widely from this Handbook. In the law-making process, information is absorbed from different sectors including the judicial sector. When drafting legislation, it is important to include judges and prosecutors in the consultation process, noting that they will be using the law on a daily basis.

¹⁴ As part of an EU-funded project, the International Institute for Justice and the Rule of Law (IJ) convened regional workshops with parliamentarians in Malta in May 2015, Morocco in October 2015, Brussels in March 2016, Turkey in April 2016, Egypt in 2017, Brussels in 2018, Egypt in 2018, etc. At these workshops, more than 250 parliamentarians from countries facing terrorism concerns, gathered to work together with the European Parliament and 11 inter-parliamentary fora and networks to share their good practices and experiences. The conclusions of the meetings held in 2015 and 2016 contributed to the development of the Global Counterterrorism Forum (GCTF) *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*, endorsed by GCTF Members in September 2016. The Valletta Recommendations reflect the perspectives and experiences of the parliamentarians and parliamentary experts who participated in the IJ-led regional workshops. The Valletta Recommendations are non-binding in nature, and complementary of other documents discussed during the above-mentioned workshops and good practices contained in other GCTF memoranda, such as the *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector* and the *Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism*. Conclusions of these workshops and documents have been all taken into consideration in this Handbook.

Organisation of the Handbook

The Handbook is divided into four chapters.

The first chapter presents key areas of engagement for parliamentarians' efforts in the context of security and counter terrorism policies, and provides definitions and references to international and regional frameworks used in the development of counter-terrorism measures.

The second chapter details parliamentarians' capacity to enable the implementation of international counter-terrorism obligations and good practices at the national level and to support judicial cooperation.

The third chapter describes the role of parliamentarians in the oversight of the security and intelligence services and limitations.

Chapter four covers cross-cutting issues and the role of parliamentarians in preventing the root causes of violent extremism.





CHAPTER 1:

Parliamentarians' Work in the Context of Security and Counter-Terrorism Policies

There is a growing recognition of the role of parliaments in supporting international and national efforts to face the challenge of terrorism.¹⁵

'National parliaments, through which people may hold their Governments to account, can be pivotal partners in our collective efforts to leave no one behind...This is because parliaments are uniquely placed to ensure coherence between national and international agendas.'

Secretary-General Antonio Guterres, Report of the United Nations Secretary-General on Interaction Between the United Nations, National Parliaments and the Inter-Parliamentary Union.¹⁶

Pursuant to United Nations Security Council Resolution 1373¹⁷, States are called on to ensure that *'terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts'*. Parliamentarians are responsible for taking these requirements forward.

The United Nations General Assembly has recognised the work of the Inter-Parliamentary Union (IPU) in mobilising parliamentary action to implement the 2030 Sustainable Development Goals including combating and preventing terrorism under Sustainable Development Goal 16.¹⁸ Moreover, United Nations Resolution A/72/L acknowledges the role of parliamentarians and national parliaments, by virtue of their mandate to adopt comprehensive legislation and facilitate inclusive decision-making processes, in helping to prevent conditions conducive to the rise of violent extremism and to ensure that legislation to combat terrorism is comprehensive and compliant with relevant international norms and standards.

Box 1: Goal 16, 2030 Sustainable Development Goals

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels



Targets

- 16.1 Significantly reduce **all forms of violence and related death** rates everywhere
- 16.2 **End abuse, exploitation, trafficking** and all forms of violence against and torture of children
- 16.3 Promote **the rule of law** at the national and international levels and ensure equal access to justice for all
- 16.4 By 2030, significantly reduce **illicit financial and arms flows**, strengthen the recovery and return of stolen assets and combat **all forms of organised crime**
- 16.5 Substantially reduce corruption and bribery in all their forms
- 16.6 Develop effective, accountable and transparent institutions at all levels
- 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels
- 16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance
- 16.9 By 2030, provide legal identity for all, including birth registration
- 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
- 16.11 **Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime**
- 16.12 Promote and enforce non-discriminatory laws and policies for sustainable development

¹⁵ United Nations General Assembly, A/72/L.54, Seventy-Second Session Agenda Item 126, Interaction Between the United Nations, National Parliaments and the Inter-Parliamentary Union, 15 May 2018. The United Nations General Assembly adopted a resolution, co-sponsored by over 90 United Nations member states, on the interaction between the United Nations, parliaments and the Inter-Parliamentary Union. (IPU), reaffirms the commitment of all parties to continue efforts to bridge the democracy gap between the international agenda and its implementation at the national level. <https://www.ipu.org/sites/default/files/documents/res72l54.pdf>.

¹⁶ Report of the United Nations Secretary-General on Interaction Between the United Nations, National Parliaments and the Inter-Parliamentary Union, A/72/791, 14 March 2018. <https://ipu.org/news/news-in-brief/2018-05/un-resolution-strengthens-role-parliaments-in-global-governance>.

¹⁷ United Nations Security Council Resolution S/RES/1373 (2001), 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹⁸ Report of the United Nations Secretary-General on Interaction Between the United Nations, National Parliaments and the Inter-Parliamentary Union, A/72/791, 14 March 2018. <https://ipu.org/news/news-in-brief/2018-05/un-resolution-strengthens-role-parliaments-in-global-governance>.

This chapter examines parliamentarians' roles in formulating and overseeing counter-terrorism policies.

1.1 The Role of Parliamentarians in the Development and Implementation of Counter-Terrorism Policies: Key Areas of Engagement

Parliaments are the institutions that represent people's interests and their rights. Whether in a parliamentary or presidential system, legislators pass laws, provide oversight of the executive and government agencies, and represent their constituencies.

A democratic parliament is essential to ensure that the rule of law prevails, human rights are safeguarded, the goal of gender equality is promoted, and the economy is regulated to promote sustainable growth. While aspects of work in these areas are shared with the executive and judicial sector, the absence of a strong, effective and democratic parliament will deny the state legitimacy.¹⁹

Under the principle of division of power, the parliament, the executive and the judicial sector have defined areas of responsibility and reciprocate their powers of accountability over each other in a series of checks and balances. The relationship between these institutions varies. Under Napoleonic systems there is typically a clear separation of power between the different state institutions. In other systems the relationship is seen more as a balance of power, and there may be some overlap between institutional roles. In the Westminster system there is an increasing tendency for a clearer separation of powers.²⁰

To ensure comprehensive and effective international and national counter-terrorism policies, solid parliamentary engagement and support is essential. The role of parliamentarians in counter-terrorism is being increasingly highlighted at the international, regional and national levels. Parliamentarians are increasingly seen to be in the forefront of promoting counter-terrorism within the rule of law and human rights framework.

States' approaches to counter-terrorism have evolved over time. Traditionally, States' responses to security threats and crises, including terrorism, ranged from public diplomacy and constructive engagement, international cooperation, engagement to physical security enhancement, sanctions, and the use of military force. These were tools used to prevent and counter, particularly, state supported terrorism. States' actions to counter terrorism could be distinguished between legal and judicial measures and non-judicial measures, such as military and state security focused measures. Parliamentarians have an active role in both areas. In some countries, military actions to combat terrorism are required to be authorised by parliament. The right of parliament to decide on the war on terror differs from country to another depending on the political system.²¹

In response to the rising threat of terrorism and the spread of transnational non-state actors, approaches and tools to counter terrorism at both the international and national level changed to include enhanced intelligence and security services, increased judicial powers, and the creation of a body of counter-terrorism legislation.

¹⁹ Common Principles for Support to Parliaments, Inter-Parliamentary Union (IPU), 2014. http://archive.ipu.org/pdf/publications/principles_en.pdf,

²⁰ There are broadly two forms of parliamentary democracies: the Westminster Parliamentary System and the French Parliamentary (Napoleonic) System. The Westminster System or Model tend to be found in Commonwealth of Nations countries. These parliaments tend to have a more adversarial style of debate and the plenary session of parliament is relatively more important than committees. The French Parliamentary System tends to have a more consensual debating system, and have hemi-cyclical debating chambers. The committees of these parliaments tend to be more important than the plenary chamber.

²¹ In the United Kingdom, there is no codified parliamentary procedure that formally requires the Government to seek approval before taking military action. The Prime Minister and Cabinet retain the constitutional right to decide when and where to authorise action. In practice governments in modern times have usually ensured parliamentary debate. In France, the President has the right to declare war without having to pass by Parliament. In the United States, the President seeks Congress' vote on multiple occasions.

This handbook will focus on the role of parliamentarians in countering terrorism with regard to legal and judicial measures.

Counter-terrorism is a multi-faceted and multi-disciplinary phenomenon that cannot be moved forward without the interaction of different actors and institutions within the State with an effective coordination of efforts. Beyond government agencies, there are a wide range of actors and stakeholders with important roles and responsibilities that could contribute to the development and implementation of a comprehensive counter-terrorism policy, including the parliament, local government, the criminal justice sector, the private sector, non-governmental organisations, independent oversight institutions and regulatory bodies, the media, as well as academia. These could help present new perspectives and understanding of the complex issues and challenges officials are facing, which if leveraged effectively could lead to better overall outcomes.

The executive branch has the ultimate responsibility for national security and developing corresponding national strategies, including counter-terrorism strategies. Typically, governments' national security governance systems include committees, relevant ministries, law enforcement, security and intelligence agencies, military, border and immigration agencies. Under national plans, governments provide leadership and guidance and coordinate actions, especially ensuring inter-agency coordination, to deal with terrorism threats.

At the national level, parliamentarians' participation increases the effectiveness of counter-terrorism policies, which benefit from enhanced accountability mechanisms, good governance, civic participation, resources, and adherence to international human rights standards and good practices, as well as promoting resilience in society.²²

Box 2: The Important Role Parliamentarians Play in Countering Terrorism²³

- Acting as 'enablers', whereby they shape the legislative counterterrorism framework and establish the mandate of security-related bodies.
- Serving as 'controllers', whereby they ensure a balance between efficient counterterrorism measures and the respect of fundamental freedoms, including through the oversight of counter-terrorism bodies.
- 'Building bridges' at all levels, whereby they promote constructive exchanges between civil society and state authorities, as well as inter-parliamentary co-operation.

Source: Factsheet, OSCE Parliamentary Assembly Ad Hoc Committee on Countering Terrorism

²² Valletta Recommendations Relating to Contributions by Parliamentarians In Developing an Effective Response to Terrorism, Global Counterterrorism Forum (GCTF), 2016. <https://theijj.org/wp-content/uploads/English-Valletta-Recommendations.pdf>.

²³ The OSCE Parliamentary Assembly Ad Hoc Committee on Countering Terrorism was established in July 2017 to bring an increased parliamentary perspective to the OSCE's counter-terrorism work. <https://www.oscepa.org/documents/factsheet/3614-osce-pa-ad-hoc-committee-on-countering-terrorism-factsheet/file>.

Many countries adopted national counter-terrorism policies that set out the framework for counter-terrorism arrangements, including structure, governance and operational responsibilities of the government and agencies engaged in countering terrorism.

By virtue of their main functions, there are four areas in which parliamentarians can contribute to national counter-terrorism policies: law-making function, budgetary function, accountability/oversight function, and representation function²⁴.

This chapter will focus on the three first roles. Chapter four will address the representative role of parliamentarians in terms of engaging with their constituents through continuing dialogue to understand their views and perspectives²⁵.

1.1.1 Law-Making Function: Parliamentarians' Role in Developing Counter-Terrorism Legal Frameworks

Enactment of legislation is one of the important functions of parliamentarians. Although most of the bills are submitted by the executive, it is the legislature that has the power to initiative legislation, debate, and vote to formally approve all legislation.

Parliamentarians are the backbone in developing domestic counter-terrorism legislation. They have the responsibility to enact sound and well drafted laws. More than 140 states have passed counter-terrorism legislation since the attacks of September 11, 2001, in the United States, or amended existing legislation and other related legislation, expanding their legal framework over time.

The rules of the legislative process are normally stated in the Constitution and the Rules of Procedure of Parliament. Typically, parliamentarians exercise their legislative powers in two phases: pre-legislative scrutiny leading to the passage of the bill and post-legislative scrutiny²⁶.

1.1.2 Parliamentarians' Pre-Legislative Scrutiny of Counter-Terrorism Laws

Pursuant to UNSC Resolution 1373²⁷, which calls on states to ensure that *'terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts'*, the United Nations Counter-Terrorism Committee (CTC), assisted by the Counter-Terrorism Committee Executive Directorate (CTED), supports states in developing their national legal frameworks, conducts expert assessments of each member state, and facilitates counter-terrorism technical assistance to countries.

There also exists some guidelines to assist states in developing sound and effective counter-terrorism legislation, such as the United Nations Model Law and the Africa Model Law. CTC provides technical support to many states on developing such laws, as well as the transfer of expertise from relevant international and regional entities to help draft legislation in line with international human rights standards.

Adequate time should be provided for developing counter-terrorism legislation allowing public engagement for its review. When laws are passed too hastily, compliance with international standards and good practice is more likely to be compromised. Enacting timely anti-terrorism laws while respecting human rights and fundamental freedoms is crucial. Yet, far too often, parliamentarians are under pressure to react by adopting new laws to reassure the public after other acts of terrorism.²⁸

²⁴ The European Union Commission-adopted this division of parliamentary functions. See: Engaging and Supporting Parliaments Worldwide Strategies and Methodologies for EC Action in Support to Parliaments, Reference document No 8, European Commission, October 2010, p.51. https://ec.europa.eu/europeaid/sites/devco/files/methodology-tools-and-methods-series-engaging-and-supporting-parliaments-200810_en_2.pdf.

²⁵ Parliamentary Function of Representation, AGORA (parliamentary development knowledge platform), <https://agora-parl.org/resources/aoe/representation>.

²⁶ It is worth noting that the process of post-legislative scrutiny could be seen as part of the legislative process as it feeds into the revision of a law as well as the oversight role of parliamentarians. This Handbook addresses it under the legislative process for structural and flow purposes.

²⁷ United Nations Security Council Resolution S/RES/1373 (2001), 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

²⁸ Such as the United States Congress Act 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001', passed in October 2001 and signed by the president on 26 October 2001 following the attacks of September 11, 2001. Other laws have been adopted by the Executive on urgency through the delegated legislation power. For example, less than a week after the October 2002 Bali Bombings that killed more than 200 people, Indonesia enacted an antiterrorism law as an executive regulation.

The pre-legislative scrutiny process provides an opportunity for parliamentarians to have real input into, and help shape, the draft legislation, and to help build consensus around its content and passage. The way the bill is examined depends on the structure of each parliament and its system and mode of operation. However, the following are common steps of any law-making process, including counter-terrorism legislation:

The drafting of counter-terrorism bills is another compound issue. The process of legislative drafting should follow common guidelines and certain norms of technical and linguistic quality. The language of legal texts should be as clear as possible. It should be consistent, comprehensible and accessible for users.²⁹

The introduction of counter-terrorism bills normally happens through the government. It is rare that a counter-terrorism bill is submitted by an individual or a group of parliamentarians as a private member bill. This is possibly due to the fact that such bills are multidisciplinary and complex, and deal with many facets of counter-terrorism legislation that requires extensive technical capacity and skill normally available to government rather than the parliament.

The review and debate of counter-terrorism bills is conducted by the relevant parliamentary committee. Pre-legislative scrutiny could comprise steps beyond the actual deliberation of a bill. In some parliaments, it might involve an assessment of the possible impact of the drafted legislation. Multiple vehicles for the clarification of objectives of the bill³⁰ are possible, such as the purpose clauses on the face of the bill that could be used as a basis for measuring its effectiveness. A number of countries require, at the pre-legislative phase of any legal provisions, to ensure that consideration of human rights and equality issues is integral in the policy, necessitating to carry out equality proofing of all included legislation.³¹ A detailed Explanatory Note to the draft law could be introduced to set out a brief summary of the government's analysis of the draft law's compatibility with human rights in addition to an accompanying document on equality impacts. This is seen as a retrospective evaluation that helps to create a more solid basis for prospective evaluation, in the form of post-legislative scrutiny.

²⁹ Drafting Legislation Against Terrorism and Violent Extremism, University of Stellenbosch, 7-11 May 2018. <https://africacenter.org/wp-content/uploads/2018/05/3-Jacobs-EN.pdf>.

³⁰ This Handbook uses the terminology of bill or draft law interchangeably.

³¹ This is normally achieved through 'equality impact assessments' processes, such as the case in the United Kingdom, in Uganda, etc.

Box 3: Key Guidelines for Well Drafted Legislation³²

- a common basic structure for the legislation
- precision and clarity in the words used and consistent terminology
- simplicity in the legislative design and a uniform numbering system
- clear explanatory notes accompanying proposed legislation that describe the intention of the lawmaker, the reasons for the legislation, the policy behind it, its purpose, and a simple description of its major components
- effect on existing rights, privileges or obligations
- attending to transitional issues – dealing with questions arising about the change from the current situation to the situation that will exist under the new legislation
- effect on existing legislation: amending other legislation as required to resolve conflict or inconsistency between laws
- adherence to constitution
- adherence to international commitments, including human rights obligations
- financial implications ensuring that any new legislation is backed by adequate resources
- human resources and administrative implications
- enforcement and compliance techniques
- expected impact of the new legislation on all stakeholders, etc.

Key Questions for Scrutinising Counter-Terrorism Bills

- What is the problem under consideration? Why is government intervention necessary?
- What are the policy objectives and the intended effects?
- Is the existing legal framework, including the criminal law and connected laws able to respond to terrorism?
- What policy options have been considered, including any alternatives to law-making?
- Did the government provide the necessary supportive evidence and analysis and ex-ante impact assessment?
- Are the social and financial costs and benefits clearly set out?
- Have there been appropriate public consultations and hearings?³³

³² David Elliot, Drafting Legislation: Challenges and Improving Ways, Workshop at the Lebanese Parliament, Westminster Foundation for Democracy, Beirut, Lebanon, 16 February 2012.

³³ Public consultations and hearings are essential to the legislative drafting process as they enhance transparency of the policy in hand and its legitimacy.

Box 4: Case Study on Pre-Legislative Scrutiny

Counter-Terrorism and Border Security Bill Inquiry by the UK Joint Human Rights Committee³⁴

The United Kingdom's Joint Human Rights Committee called for evidence on the human rights implications of the *Counter-Terrorism and Border Security Bill*, which was introduced in the House of Commons on 6 June 2018 and had its Second Reading debate on 11 June 2018.

Summary: Counter-Terrorism and Border Security Bill

The Bill follows the Government's review of its counter-terrorism strategy (CONTEST) and legislation, which was launched in June 2017. The bill aims to:

- amend certain terrorism offences for the digital age and to reflect contemporary patterns of radicalisation;
- increase the maximum penalty for certain offences, ensuring the punishment better reflects the crime and better prevents re-offending;
- manage offenders following their release from custody;
- strengthen powers of the police to prevent and investigate terrorist offences; and
- harden the United Kingdom's defences at the border against hostile state activity.

The Bill contains a range of counter-terrorism measures, many of which update, amend and add to those already set out in existing legislation. For example, the Bill would³⁵:

- criminalise the expression of support for a proscribed terrorist organisation when the individual is 'reckless' as to whether it would encourage parties to the expression to support such an organisation;
- create an offence of streaming certain terrorism-related material over the internet;
- make it an offence to enter or remain in certain areas as designated by the Secretary of State (e.g. areas controlled by certain terrorist groups);
- extend extra-territorial jurisdiction and the maximum sentences applicable to certain offences;
- extend the powers of local authorities in connection to the Prevent strategy; and
- amend provisions in relation to retention of biometric data.

On introduction of the Bill in the House of Commons, the Home Secretary made a statement under Section 19(1) (a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the European Convention for Human Rights.

³⁴ Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 30. <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1208/1208.pdf>

³⁵ Library Briefing: *Counter-Terrorism and Border Security Bill*, HL Bill 131 of 2017–19, House of Lords, 3 October 2018. <http://researchbriefings.files.parliament.uk/documents/LLN-2018-0097/LLN-2018-0097.pdf>



Inquiry Process

The Committee launched an inquiry on the Counter-Terrorism and Border Security Bill, taking the following steps:

1. terms and references of the inquiry and the key questions it will be addressing;
2. inviting witnesses and written submissions from interested parties and calling for written submissions;
3. conclusions and recommendations;
4. declaring parliamentarian's interests;
5. draft report on the inquiry;
6. submit report for review;
7. provide final report; and
8. receive government response.

Joint Committee on Human Rights Report: Key Findings and Recommendations

1. Proposed a total of 27 amendments to the *Counter Terrorism and Border Security Bill* for parliament's consideration.
2. The government must justify extensive powers being proposed.
3. Raised 'serious concerns' that the bill did not comply with fundamental rights, including the risk of undermining free speech.

Status of the Bill

The Counter-Terrorism and Border Security Bill completed its legislative stages in the House of Commons, and was introduced in the House of Lords on 12 September 2018³⁶.

³⁶ At the time of the preparation of this Handbook, the bill was at the Committee stage at the House of Lords, which involves detailed line by line examination of the separate parts (clauses and schedules) of a bill.

1.1.3 Parliamentarians' Post-Legislative Scrutiny³⁷ of Counter-Terrorism Laws

Once adopted, the implementation and application of counter-terrorism legislation should be monitored closely to establish whether legislation requires updating. Parliamentarians have the power and responsibility to monitor the extent to which the laws passed are implemented as intended and have the expected impact. Despite its importance for the respect of the rule of law, it is not uncommon for the process of reviewing the implementation of legislation to be overlooked. In several countries, there is the risk that laws are passed but not applied, secondary legislation is not adopted, or there is insufficient information to assess the actual state of a law's implementation and its effects³⁸.

Therefore, post-legislative scrutiny, also referred to as ex-post assessment or review of the implementation of legislation, is an important tool for improving the legislative process and the review of bills, and strengthening the enforcement of the rule of law.

Post-legislative scrutiny is a broad concept, consisting of two dimensions. The first dimension addresses the enactment of the law, and whether the legal provisions of the law have been brought into force. The second dimension examines the impact of legislation, whether intended policy objectives have been met, if implementation and delivery can be improved, and if lessons can be learned identifying good practices. It is recommended that parliaments look at both dimensions of post-legislative scrutiny.

The implementation of the legislation, as well as its compliance with changing societal environments and international requirements, should be monitored on a regular basis. In the context of the evolving terrorism landscape, this is even more crucial, and requires an assessment of existing legislation to determine whether it has achieved its intended outcome, in addition to assessing its effects on human rights and compliance with the rule of law. Such a review should also take into consideration both national and international legal developments.

While the executive branch is usually more engaged in these kind of legislative and technical reviews, which often require very detailed information and expertise not readily available to parliamentarians, parliaments are increasingly showing interest in developing such capacity within its committee structure or administration³⁹. The aim of such ex-post evaluation is to ensure better regulation and law regardless of differences in national structures, legal systems and institutional arrangements.

³⁷ It is worth noting that the process of post-legislative scrutiny could be seen as part of the legislative process as it feeds into the revision of a law for better regulation as well as part of the oversight role of parliamentarians. In the beginning of the appearance of this concept, it was linked to parliament and the legislative process. The ultimate benefit of this exercise is improving the accountability of governments for legislation and lead to better and more effective law. In this Handbook, we chose to put this under the legislative process for structural and flow purposes. See: House of Lords Select Committee on the Constitution, 14th Report, (2003-04), Parliament and the Legislative Process, HL 173-I, para 180.

³⁸ See tools developed by the Westminster Foundation for Democracy (WFD) on post-legislative scrutiny: Comparative Study on Post-Legislative Scrutiny in Parliaments in 10 Countries, 2017, <https://www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf>; Principles for Post-Legislative Scrutiny by Parliament, 2018, <https://www.wfd.org/wp-content/uploads/2018/07/Principles-of-Post-Legislative-Scrutiny-by-Parliaments.pdf>; Post-Legislative Scrutiny: Guide for Parliaments, 2017, (https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf).

³⁹ For example, in Belgium, the Federal Parliament created a parliamentary committee for the ex-post evaluation of legislation. In the United Kingdom, the Westminster Parliament (House of Commons and House of Lords) adopt the model where there is a freedom for all Committees to conduct post-legislative scrutiny work. In the Scottish Parliament, committees conduct post-legislative scrutiny as part of their regular work in holding the executive to account. In Indonesia, the House of Representatives (DPR) established a Centre for Post-Legislative Scrutiny Unit. In Lebanon, the Parliament established a Special Committee on Post-Legislative Scrutiny. In South Africa, the Parliament has commissioned an external panel of senior experts to conduct a systematic examination of the effects of laws passed by the National Assembly since non-racialised majority-rule was established in 1994. In Switzerland, the constitution establishes a direct obligation for the Parliament to evaluate the effectiveness of the legislation and other measures adopted. The Federal Parliament set up in 1991 the Parliamentary Control of the Administration (PCA), a specialised service which carries out evaluations on behalf of the Parliament. See: Franklin de Freize and Victoria Hasson, Post-Legislative Scrutiny: Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for its place in Democracy Assistance, London, 2017, Westminster Foundation for Democracy. <https://www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf>.

Box 5: Examples of Building Post-Legislative Scrutiny Mechanisms into Counter-Terrorism Legislation

In Canada, the Anti-Terrorism Act 2001 obligated the parliament to create a review committee after three years.⁴⁰

Similarly, the Canadian Security Intelligence Service Act 1985⁴¹ and the Security Offences Act 1984⁴² specifically required the parliament to establish a committee to review these acts after they had been in existence for five years. The statutory review committees are tasked with scrutinising intelligence legislation once that legislation has been in operation for several years.

New Zealand's Intelligence and Security Act 2017⁴³ also requires periodic reviews:

'A review of the intelligence and security agencies and this Act must, in accordance with the terms of reference specified under section 236(3) (a), be—

(a) commenced as soon as practicable after the expiry of the period of 5 years beginning on the commencement of this section; and

(b) afterwards, held at intervals not shorter than 5 years and not longer than 7 years.⁴⁴

Parliamentarians should follow up on report findings and its recommendations. An obligation to regularly review counter-terrorism legislation can be enshrined in the domestic law. This would make it easier for the reviewing body to take into consideration changing circumstances. Reviewing the implementation of legislation is a responsibility of parliament closely linked to its legislative and oversight functions.

The Role of the Justice Sector in Post-Legislative Scrutiny

Coordination with the justice sector on the review of laws is an important step in ensuring the proper review and implementation of legislation. The judiciary has a role in post-legislative scrutiny as they are responsible for the interpretation of legislation. Judges shed light on key challenges, such as difficulties in interpretation, limitation of application, or the nature of the delegated legislation made under its authority.

⁴⁰ Anti-Terrorism Act, S.C.2001, c. 41. <https://laws-lois.justice.gc.ca/eng/acts/a-11.7/page-1.html>.

⁴¹ Canadian Security Intelligence Service Act, R.S.C., 1985, c. C-23. <https://laws-lois.justice.gc.ca/eng/acts/c-23/FullText.html>.

⁴² Security Offences Act, R.S.C., 1985, c. S-7. <https://laws-lois.justice.gc.ca/eng/acts/S-7/page-1.html>.

⁴³ Intelligence and Service Act, Public Act 2017 No 10. <http://www.legislation.govt.nz/act/public/2017/0010/37.0/DLM6920823.html>.

⁴⁴ Part 7, Section 235: Requirement to Hold Periodic Reviews, Intelligence and Service Act, Public Act 2017 No10, <http://www.legislation.govt.nz/act/public/2017/0010/37.0/DLM6920823.html>.

Box 6: Post-Legislative Scrutiny at the Regional Level

Post-Legislative Scrutiny in the European Union

The EU approach to *better law-making* has been advanced in the last two decades. In 2016, the Inter-Institutional Agreement between the European Parliament, the Council and the Commission on Better Law-making agreed to improve the quality of law-making by means of a series of initiatives and procedures⁴⁵.

The three institutions consider that public and stakeholder consultation, ex-post evaluation of existing legislation and impact assessments of new initiatives will help achieve the objective of better law-making (Art.6).

This statement embedded the culture of ex-post evaluation at the European level and provides a link between evaluation and the quality of legislation, in the sense of its substance – whether it is effective, and its form – whether it is clear and simple.

The agreement describes the tools for better law-making, including ex-post evaluation of existing legislation and implementation and application of European Union legislation. The agreement recognises the value of systematic post-legislative scrutiny.

It is requested from the Commission to the European Parliament and the Council of its multiannual planning of evaluations of existing legislation and will, to the extent possible, include in that planning their requests for in-depth evaluation of specific policy areas or legal acts. The Commission's evaluation planning will respect the timing for reports and reviews set out in Union legislation.

The Commission will report annually to the European Parliament and the Council on the application of Union legislation. The Commission's report includes, where relevant, reference to the information mentioned in paragraph 4.3⁴⁶. The Commission may provide further information on the state of implementation of a given legal act.

Post-Legislative Scrutiny by the OSCE Parliamentary Assembly: Post-Legislative Scrutiny on Border Control and Information Sharing in the Context of Countering-Terrorism and Violent Extremism

The OSCE Parliamentary Assembly (OSCE PA) launched a new parliamentary initiative that brings a distinct parliamentary contribution to the implementation of relevant commitments in the field of border security and information sharing, a very important area in modern counter- terrorism efforts and one (among others) of the key 'thematic fields' identified by the OSCE Ad Hoc Committee on Countering Terrorism (CCT) as a potential area for added value.

Although this is being operated at the international level, this recent CCT initiative does post-legislative scrutiny of the implementation of legal frameworks on border control and information sharing in the context of countering terrorism and violent extremism.

The initiative requires members of OSCE PA to officially inquire with their respective Governments (through pertinent national procedures) about the status of the implementation of Advance Passenger Information (API), Passenger Name Records (PNR) and biometrics in their systems. In doing so, OSCE Parliamentarians will transfer the action from the international level to national parliaments, fully exercising their constitutional post-legislative scrutiny and oversight functions in an effort to help their respective Governments to assess:

1. the level of implementation of relevant international commitments in the counter-terrorism context; and
2. the potential need for technical assistance, which could then be provided by the OSCE Executive Structures, with whom the OSCE PA cooperates in this context.

⁴⁵ Inter-Institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016. Official Journal of the European Union. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG&toc=OJ:L:2016:123:TOCP.37. https://sas-space.sas.ac.uk/241/1/Lydia_Clapinska_MA_THESIS.pdf

⁴⁶ The three institutions call upon the member states, when they adopt measures to transpose or implement Union legislation or to ensure the implementation of the Union budget, to communicate clearly to their public on those measures. When, in the context of transposing directives into national law, member states choose to add elements that are in no way related to that Union legislation, such additions should be made identifiable either through the transposing act(s) or through associated documents. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making. OJ L 123, 12.5.2016, p. 1–14. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG&toc=OJ:L:2016:123:TOC.

Box 7: Key Steps and Questions Addressed in Post-Legislative Scrutiny⁴⁷

The steps involved in conducting post-legislative scrutiny differs between parliamentary systems, but may include, amongst others⁴⁸:

- Define objectives for conducting post-legislative scrutiny and public hearings.
- Identify and review the role of implementing agencies.
- Identify relevant stakeholders.
- Collect background information and relevant data.
- Conduct post-legislative scrutiny stakeholder consultations.
- Review the effects of delegated legislation.
- Conduct analysis of post-legislative scrutiny review findings.
- Draft the report.
- If appropriate, adapt the legislation on the basis of the retrospective evaluation.

Key questions when conducting a narrow form of post-legislative scrutiny:

- Have all the provisions been brought into force?
- Has the legislation given rise to difficulties of interpretation?
- Has secondary legislation been adopted?
- Has the legislation had unintended legal consequences?

Key questions when conducting a broader form of post-legislative scrutiny that would address the question whether the law has delivered what was intended in practical as well as legal terms:

- Have the policy objectives been achieved?
- Has the legislation had unintended economic or other consequences?
- Has implementation been affected, adversely or advantageously, by external factors?
- Have any significant, unexpected side effects resulted?
- Do any steps need to be taken to improve its effectiveness and/or operation?
- Have things changed so that the law is no longer needed?
- How did the law affect women and vulnerable groups?
- What improvements could be made to the law and its implementation that might make it more effective and/or cost-efficient?

1.1.4 Oversight Function: The Role of Parliamentarians in Overseeing National Counter-Terrorism Policies

Parliaments are responsible for ensuring accountability and transparency of government through oversight of activities of the executive branch.⁴⁹ National security policy, including counter-terrorism measures, has been generally considered a difficult and security-sensitive policy area that is normally subject to lower standards of parliamentary oversight.

⁴⁷ Franklin de Freize, *Guide on Post-Legislative Scrutiny for Parliamentarians*, 2017, London, Westminster Foundation for Democracy. https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf. See also: Law Commission Consultation Paper No 178 (2006), *Post-Legislative Scrutiny*, p 47.

⁴⁸ Franklin de Freize, *Guide on Post Legislative Scrutiny for Parliamentarians*, 2017, London, Westminster Foundation for Democracy. https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf.

⁴⁹ Unit 6: Government Accountability and Parliamentary Committees, World Bank. <http://siteresources.worldbank.org/PSGLP/Resources/CommitteesUnit6.pdf>.

However, parliamentarians hold the right to scrutinise security policies using available parliamentary procedures and processes to ensure that these policies are developed, implemented and overseen effectively and efficiently, according to the original intent, and within the parameters of the rule of law.⁵⁰

Different countries will have their own structures for undertaking parliamentary scrutiny of counter-terrorism policies in line with their own constitutions and parliamentary powers. Nevertheless, common mechanisms for carrying out parliamentary oversight exist. Parliamentary oversight on counter-terrorism policies can be implemented using three main methods:

- committee oversight
- parliamentary questions
- public policy evaluation

Committees Responsible for Oversight of Counter-Terrorism Policies

In addition to their function of studying legislation, discussed above, parliamentary committees typically play a major oversight role. The purpose of parliamentary oversight is to hold governments accountable for the implementation of policies, identifying challenges and proposing remedial actions.⁵¹

Parliamentarians exercise their role in scrutinising government counter-terrorism policies through a robust committee system. Parliaments in most countries have a number of specialised committees to deal with specific issues in security, agriculture, defence, education, health, etc.

Box 8: Examples of Different Committee Systems

Parliaments in Continental Europe (Napoleonic tradition):

- permanent legislative and oversight committees
- non-permanent or ad-hoc committees
- joint committees
- committees of investigation

Parliaments in the Westminster tradition:

- legislative committees
- select committees
- special committees
- joint committees

In some parliaments, counter-terrorism policies are addressed by select or departmental committees, normally the security and defence or armed forces committee. The mandate of these already existing parliamentary committees is sometimes required to include intelligence and counter-terrorism matters.⁵²

⁵⁰ For further details, see *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Handbook, Geneva 2003. <https://www.ipu.org/resources/publications/handbooks/2016-07/handbook-parliamentarians-parliamentary-oversight-security-sector-principles-mechanisms-and-practices>.

⁵¹ *Engaging and Supporting Parliaments Worldwide Strategies and Methodologies for EC Action in Support to Parliaments*, October 2010, Reference Document No 8, European Commission, p.61. https://ec.europa.eu/europeaid/sites/devco/files/methodology-tools-and-methods-series-engaging-and-supporting-parliaments-200810_en_2.pdf.

⁵² For further details see: *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Handbook, Geneva 2003. <https://www.ipu.org/resources/publications/handbooks/2016-07/handbook-parliamentarians-parliamentary-oversight-security-sector-principles-mechanisms-and-practices>.

In other systems, special committees can be established to look into issues of particular concern such as counter-terrorism. These might be subcommittees of standing (permanent) committees, such as the example of the U.S. House of Representatives Subcommittee on Counterterrorism and Intelligence, which is a sub-committee of the House of Representatives Homeland Security Committee, or they could be special committees established to address a single issue, such as the French parliamentary commission of inquiry on the control of intelligence techniques (Commission nationale de contrôle des techniques de renseignement, CNCTR).⁵³ It is worth noting that other committees within these parliament may address the issue from a different platform, mainly the Human Rights committee. In some cases, investigative committees could be established. The division of mandate emanate from the fact that terrorism should not only be looked at from a defence and security lens or a home affairs lens.

Box 9: EU Parliamentary Committees Addressing Terrorism

Committee on Civil Liberties, Justice and Home Affairs (LIBE)⁵⁴:

The LIBE Committee is responsible for the vast majority of the legislation and democratic oversight of justice and home affairs policies. While doing so, it ensures the full respect of the European Union's Charter of Fundamental Rights (CFR), the European Convention on Human Rights (ECHR) and the strengthening of European citizenship. The Committee, while fully respecting the national legal order, looks at justice and home affairs policies aimed at tackling issues of a common interest at the European level, such as: the fight against international crime and against terrorism; the protection of fundamental rights; ensuring data protection and privacy in the digital age; and fighting against discrimination based on racial or ethnic origin, religion, belief, disability, age or sexual orientation.

The Committee carries out its work in daily interactions with the European Commission (representing the European interest), the Council of Ministers (representing the 28 member states' governments and national interests), and in close cooperation with national parliaments. Regular exchanges also take place with representatives from the judiciary, law-enforcement authorities, academics, and civil society.

Special Committee on Terrorism (TERR)⁵⁵:

Established in 2017, the remit of this Special Committee is to make a significant contribution to improving the efficiency of Europe's capacity to respond to and combat terrorism. The Committee's mandate included consulting with and hearing statements from the main actors involved in the EU institutions and national experts on counter terrorism, in all areas of activity, and also specialists in the prevention of radicalisation and in support for victims of terrorism. The Committee was set up for 12 months. At the end of its mandate, the Special Committee will draw up a report containing proposals for submission to the Council and the Commission.

Subcommittee on Human Rights (DROI) (sub-committee of the Committee on Foreign Affairs (AFET)⁵⁶:

The Subcommittee's main responsibilities include all matters relating to human rights, the protection of minorities, and the promotion of democratic values, and its geographical remit covers countries outside of the European Union.

Security and Defence Subcommittee (SEDE) (sub-committee of the Committee on Foreign Affairs (AFET)⁵⁷:

This Subcommittee was established as a key forum for fostering debate and examining the European Union's Common Security and Defence Policy (CSDP) in terms of institutions, capabilities and operations. It is an essential tool for holding to account CSDP decision-makers and for ensuring that the policy is understood by EU citizens.

⁵³ Commission Nationale de Contrôle des Techniques de Renseignement. <https://www.cnctr.fr/>.

⁵⁴ Rules of Procedure of the European Parliament, XVII. Committee on Civil Liberties, Justice and Home Affairs (Annex V: Powers and Responsibilities of Standing Committees) <http://www.europarl.europa.eu/sides/getLastRules.do?language=en&reference=RESP-LIBE>.

⁵⁵ European Parliament, Special Committee on Terrorism (TERR). <http://www.europarl.europa.eu/committees/en/terr/home.html>.

⁵⁶ Subcommittee on Human Rights (DROI), Sub-Committee of the Committee on Foreign Affairs (AFET), European Parliament. <http://www.europarl.europa.eu/committees/en/droi/home.html>.

⁵⁷ Security and Defence Subcommittee (SEDE), Sub-Committee of the Committee on Foreign Affairs (AFET), European Parliament. <http://www.europarl.europa.eu/committees/en/sede/home.html>.

Irrespective of the committee's status, its oversight function involves the duty to review the activities of the ministries and relevant agencies covered by its mandate. Committee hearings and plenary hearing sessions are also used. Committee work allows parliamentarians from all parties to work together in a consensual rather than adversarial way, their work should be, in principle, characterised by independence and policy neutrality.

Committee work can provide an important platform for public participation and involvement, during meetings as well as when conducting public hearings and through communication with the public. Committees can invite interested parties to hearings including members of the public to provide evidence or written submissions. Public hearings held by parliamentary committees have the potential to raise the awareness of the public on policy issues and the parliament's role in those issues.⁵⁸ This has wider impact when committee meetings are public. The question of whether committee meetings can be held publicly may be governed by a country's constitution or its legislature's rules of procedure.⁵⁹

There are a significant number of parliaments who open their proceedings and committee meetings to the media and the public. However, provisions for permitting committees to meet in private are made for specific reasons, such as to protect individual privacy or national security issues. Increased transparency can help to build trust in parliament, especially when it comes to areas such as budgeting, security and defence. Open proceedings also allow the media to report on parliamentary debates and the legislative process. This gives individual parliamentarians and parliamentary committees a channel for making their views heard.⁶⁰

Box 10: Main Challenges to Committees' Scrutiny of Counter-Terrorism Policies

1. Lack of follow up on the recommendations of committees and implementation by government.
2. Provision of information: parliamentarians require sufficient and timely information to enable full consideration of government departments' and agencies' performance in carrying out policies, functions and programmes.
3. Balance between dealing with sensitive information and the need for public transparency.
4. Limited subject-matter expertise and financial resource to address complex issues.
5. Debate on counter terrorism becomes partisan for political or electoral ends.

⁵⁸ Hironori Yamamoto, A Comparative Study of 88 National Parliaments, Inter-Parliamentary Union (IPU), 2007, p. 11. <http://archive.ipu.org/PDF/publications/oversight08-e.pdf>.

⁵⁹ Committees in Legislatures: A Division of Labour, National Democratic Institute for International Affairs, Legislative Research Series, Paper #2, 1996, p. 14. https://www.ndi.org/sites/default/files/030_ww_committees.pdf.

⁶⁰ Unit 6: Opening up the Parliamentary Process, World Bank. <http://siteresources.worldbank.org/PSGLP/Resources/budgetunit6.pdf>.

Parliamentarians' Right to Questions

Parliamentarians usually have a variety of mechanisms through which to exercise their right to questions, such as parliamentary debates, interpellations, written or oral questions and parliamentary inquiries.

Interpellations and questions to ministers are the most effective procedure because ministers are called directly to account. The rules governing who can call ministers to appear vary from parliament to parliament.⁶¹

Questions can usually be posed either verbally or in writing. Where technical answers are required, the written question format is used, allowing the minister and the relevant department time to gather the necessary data and respond. Most parliamentary systems establish time limits between one to two months for an answer, normally determined in the rules of procedure. Governments can refuse to provide information to parliamentarians if the topic is related to information classified as confidential (see Chapter 2). The grounds for this will be narrower with the growing tendency towards the passing of the bill providing public rights to access to information.

Other oversight tools are available for parliamentarians, such as 'opposition days'⁶², when they exist in some parliamentary procedures, as well as public petitions to take a view on a matter of public interest or concern; to change existing legislation or to introduce a new one. These could be submitted via their constituency parliamentarian or online.

⁶¹ In the Westminster model, where the minister is a member of parliament, ministers are expected to respond to questions on a regular basis. In the Napoleonic system, there is normally a process of interpellation in which ministers can be called to account for activities in their department. Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Handbook, Geneva 2003, p. 78.

⁶² An opposition day is a day in a legislature using the Westminster system in which an opposition party sets the agenda. For example, pursuant to United Kingdom House of Commons Standing Order No.14, 'opposition days' are days where the main subject of business is chosen by the opposition parties. 20 days in each session are made available to the opposition, of which: 17 days are allocated to the Leader of the official opposition, and 3 days to the Leader of the second largest opposition party who shares the time with smaller parties in the House of Commons. The Government may also make additional days available; these are noted as 'unallotted days'. Compiled by Sarah Priddy, Briefing Paper, House of Commons Library, Number CBP06315, 24 May 2018, <http://researchbriefings.files.parliament.uk/documents/SN06315/SN06315.pdf>.

Box 11: Examples of Detailed Questions Parliamentarians ask about Counter-Terrorism Policies in the United Kingdom⁶³

Question asked by Mr. Liam Byrne (Birmingham, Hodge Hill)

Asked on: 2 July 2018

Home Office

Counter-terrorism: Departmental Responsibilities

To ask the Secretary of State for the Home Department, if he will publish the (a) roles and (b) responsibilities of his Department for (a) Prevent and (b) counter-extremism strategies.

Answered by Mr Ben Wallace (Wyre and Preston North)

Answered on: 5 July 2018

Our updated and strengthened CONTEST strategy comprises Prevent, Pursue, Protect and Prepare work strands, each reducing an element of the risk from **terrorism** (intent, capability, vulnerability and impact), and collectively providing a balanced and comprehensive end to end response to the threat we face.

Prevent safeguards and supports people vulnerable to radicalisation, to stop them from becoming terrorists or supporting **terrorism**. Our 2015 Counter-Extremism Strategy tackles the non-terrorist harms that ideologically driven extremism causes in communities. The Home Office has lead responsibility for delivering both strategies and coordinating work across government.

Question asked by Mr. Henry Smith

Asked on: 21 May 2018

Ministry of Justice

Prisoners: Radicalism

To ask the Secretary of State for Justice, what steps his Department has taken to prevent the further radicalisation of (a) terrorist and (b) terrorist-related offenders in prison.

Answered by Ms. Lucy Frazer

Answered on: 29 May 2018

Her Majesty's Prison and Probation Service (HMPPS) works closely with a range of partners to tackle **terrorism** and extremism of all ideologies. HMPPS have a wide range of interventions available to deal with such prisoners including transfer to other prisons, wing moves and where appropriate, segregations. In addition, the Government opened its first Separation Centre in June 2017. A second centre open in March 2018. The centres have been established in order to hold the most subversive extremist prisoners, and safeguard the mainstream population from terrorist and extremist influences. HMPPS also has a strong multi-faith Chaplaincy dedicated to working with prisoners on all faith matters including providing a proper understanding of religion. In addition, over 14,000 prison staff have received specialist extremism awareness training since January 2017.

⁶³ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-07-02/159528/>.



Box 12: Different Types of Oversight Mechanisms

Through its core oversight function, parliament holds the government to account. Across the world, parliaments are performing their oversight role in a variety of ways. The commonalities and differences between parliamentary tools in 88 countries are analysed and supported with a wealth of examples on definition of parliamentary oversight: *'the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation'*.

Source: Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments, Written and edited by Hironori Yamamoto, Inter-Parliamentary Union (IPU), 2007, <http://archive.ipu.org/PDF/publications/oversight08-e.pdf>.

Parliamentary Inquiries and Public Hearings

Most parliamentary systems provide for a parliamentary inquiry to be set up to examine a particular problem or to gather information about pending legislation or controversial policy issues or to conduct oversight of the government's activities within their jurisdiction. Usually, a parliamentary inquiry will produce a report addressing the issue, with recommendations for changes. This report from a parliamentary inquiry may or may not be publicly released, although there is a tendency towards greater transparency.⁶⁴ When a committee conducts an inquiry it will often invite written or oral evidence from interested parties. However, this mechanism must operate within the framework of the Constitution and national regulations in force.

⁶⁴ Engaging and Supporting Parliaments: Worldwide Strategies and Methodologies for EC Action in Support to Parliaments, European Commission, October 2010, p. 107-108. https://ec.europa.eu/europeaid/sites/devco/files/study-engaging-supporting-parliaments-worldwide-201010_en_2.pdf.

Box 13: Belgium's Special Committee on Terrorism

Outcome of the Belgian Chamber of Representatives' parliamentary inquiry responsible for examining the circumstances leading up to the terrorist attacks of 22 March 2016, in particular at Brussels-National Airport⁶⁵

On 11 April 2016, the main political formations in the Belgium House of Representatives drafted a common proposal on the establishment of a Parliamentary Investigation Committee on the Terrorist Attacks.⁶⁶ To carry out its mission, the committee was given wide range of powers and possibilities: hearing and confronting witnesses, on-the-spot observations, setting up international contacts, examining judicial and administrative dossiers, and getting assistance from experts. If the investigation committee meets behind closed doors, the members are bound to secrecy.

The Justice Committee adopted this proposal unanimously on 14 April, so that it could be examined and adopted by the plenary of the House. Only the initiating parties were represented in the Investigation Committee. The Committee was assisted by four experts.

The Investigation Committee was given the task of making '*a chronological and historical reconstruction of all the facts which led to the attacks of 22 March 2016; analysing the first response to the victims; ensuring that all the relevant departments had worked in an adequate manner to deal with a terrorist threat; analysing the root causes of the development of radicalism; analysing the evolution of the existing national system of criminal law and its application in the framework of the fight against terrorism*'. It was explicitly stated that the Investigation Committee should not attempt to act as a substitute for the judiciary's investigations. The work of the Investigation Committee fell into three main parts - emergency response and victims, security architecture, and radicalism - that is reflected in the four interim reports.

At the end of its work, the Investigation Committee concluded that terrorist threats constantly evolve and that continued vigilance is required. Attention should also be paid to the implementation of the recommendations. Therefore, the Investigation Committee recommended the creation of a follow-up committee. This recommendation, too, was then unanimously adopted.

The Investigation Committee took on its mission on 14 April 2016 and met for the last time on 23 October 2017. On 26 October 2017, the plenary assembly of the House of Representatives held a long and in-depth debate on the four interim reports.⁶⁷

The Role of Parliamentarians in Evaluating the Effectiveness of Counter-Terrorism Policies

Policy-making is not a smooth sequential process. It is a multi-layered and multidisciplinary process, especially when addressing a complex issue such as counter-terrorism. Often there will be issues arising, including unexpected events, or new information, which will cause the reconsideration of previous stages in the policy development process.⁶⁸ The principles of accountability, good governance and transparency must guide every aspect and step of public policy-making, including those relating to security and counter-terrorism.

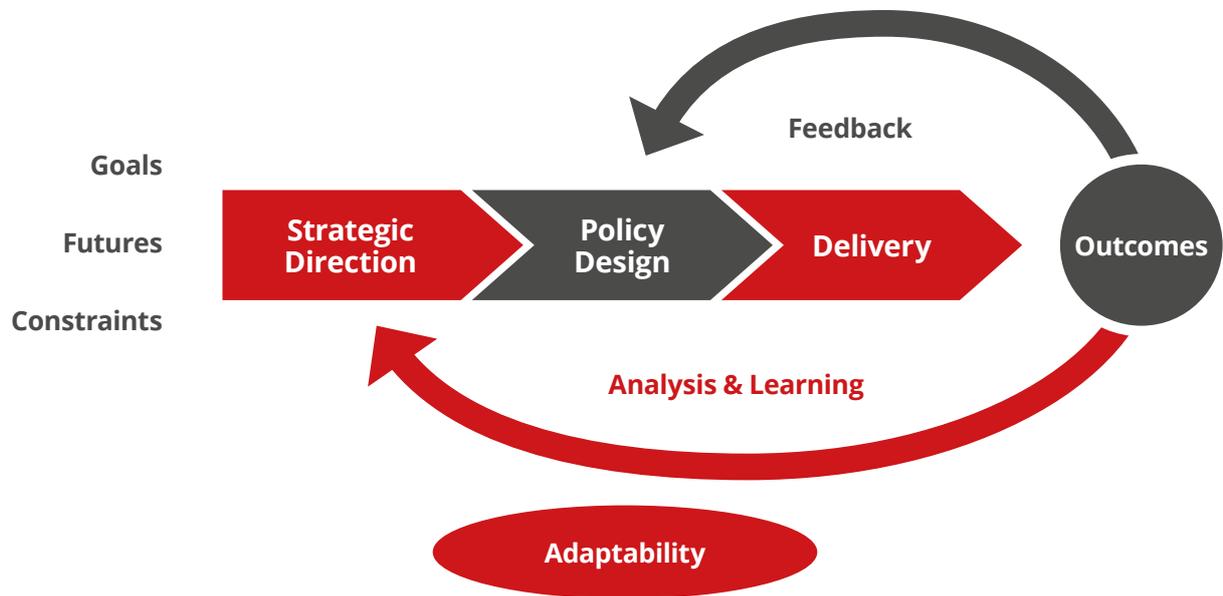
⁶⁵ Investigation Committee Terrorist Attacks, 22 March 2016: Summary of the Activities and Recommendations, Belgium House of Representatives, 2018. https://www.dekamer.be/kvvcr/pdf_sections/publications/attentats/Brochure_Terrorists_Attacks.pdf.

⁶⁶ Common Proposal on the Establishment of a Parliamentary Investigation Committee, DOC 54 1752/001. See: Investigation Committee Terrorist Attacks, 22 March 2016: Summary of the Activities and Recommendations, Belgium House of Representatives, 2018.

⁶⁷ Investigation Committee Terrorist Attacks, 22 March 2016: Summary of the Activities and Recommendations, Belgium House of Representatives, 2018, citing DOC 54 plen192.

⁶⁸ Anders Hanberger, What is the Policy Problem?: Methodological Challenges in Policy Evaluation, Umeå University, Sweden, Evaluation, SAGE Publications (London 2001).

Typically, the policy-making cycle covers four stages, in addition to the provision of strategic guidance, inception, implementation and delivery, and evaluation⁶⁹.



Developed from UK Prime Minister's Strategy Unit

Parliamentarians can play a role at each of the policy-making steps. This can include: 1) raising issues of individual constituents; 2) playing active role in specialised committees of parliament by questioning, 3) scrutinising the work of government; 4) amending legislation; and 5) conducting public policy evaluation. In the above-sections, we have touched upon the first four key aspects of engagement in policy development.

It is noteworthy to shed light on the role of parliamentarians in public policy evaluation, which is part of parliamentarians' role to oversee the work of the government, allowing prospects for introducing appropriate, timely amendments to policies to make sure they are properly managed and successful.

In general, the role of parliamentarians in public policy evaluation is gaining interest distinctively from other forms of parliamentary oversight. Some parliaments have developed specific structures for this emerging function for parliamentarians.⁷⁰ Other parliaments conduct public policy evaluation as part of their other oversight roles, especially through committees. Parliamentarians could inquire about the key dimensions of the policy: relevance, internal coherence, impact, utility, effectiveness, efficiency, sustainability, and external coherence. Evaluations may be conducted either prior to the adoption of policy (ex-ante), during their implementation (mid-term), in particular with multi-annual programmes, or after implementation (ex-post).

Counter-terrorism strategies provide a framework for the country's policies. Such strategies tend to be complemented by an implementation plan and the way to monitor its progress and its evaluation as well as information about financial aspects and the resources allocated for implementation.

⁶⁹ Geoff Langdon. *Towards Participatory and Transparent Policy-Making, Tools and Techniques for Policy Development*, Joint Publication, Westminster Foundation for Democracy and Issam Fares Institute for Public Policy and International Affairs, 2017, p. 67-68.

⁷⁰ Such as the examples of: the Moroccan Parliament, as both houses of the Parliament established public policy evaluation committees, ad hoc thematic committees, to pursue the role of Parliament in public policy evaluation pursuant to Article 70 of the Constitution of 2011. The Swiss Federal Assembly (parliament) has also an advanced system of public policy evaluation, through a specialised committee called the Parliamentary Control of the Administration, created in 1992, to evaluate the legality, expediency and effectiveness of selected public policies. In France, the Commission for the Assessment and Monitoring of Public Policies (CEC) was set up by the reform of the Rules of Procedure of 27 May 2009. It enables the National Assembly to implement the mission of monitoring and assessment.

The evaluation of counter-terrorism strategies is underdeveloped and daunting, not least because of the ‘national security’ issues surrounding the data⁷¹. To conduct an effective evaluation of counter-terrorism policies, access to information and availability of reliable data is imperative.

Box 14: Questions for Parliamentarians

Evaluating Counter-Terrorism Policies

- **Does the policy have clear objectives and goals?** Is the problem well-identified and the policy statement and objectives address the problem?
- **Is the policy comprehensive and integrated?** Do government agencies that have responsibilities or information relevant to counter-terrorism cooperate and coordinate? Does the policy provide a framework for functioning coordination structures?
- **Is the policy inclusive?** Does the policy or practice provide for different rules for different groups or types of people? Does the law, policy or practice have a greater impact on certain groups of people? If so, has the government provided a reasonable, objective and legitimate reason to justify the distinction?
- **Is the policy based on evidence?** Has the government provided credible evidence to support their reason for distinction and the weight of their justification?
- **Has the government followed a participatory approach** in policy-making and involved external and internal stakeholders in the identification of the challenges and in the formulation, adoption, implementation and monitoring of policies.
- **Is the policy affordable, economically efficient and financially sustainable?**
- **Has the policy been communicated effectively?** The policy should be known and understood by all who are affected.
- **Is the policy harmonised?** Is it aligned with other related policies? National counter-terrorism and countering violent extremism strategies should be in alignment with other national action plans (NAPs) and strategies that are related in terms of common objectives or stakeholders.
- **Is the policy in breach of any international human rights standards or obligations?** What is required to ensure that the policy advances human rights and the rule of law?

⁷¹ Erika Brady, An Analysis of the UK's Counter-Terrorism Strategy, CONTEST, and the Challenges in its Evaluation, Aktualisiert am 10. October 2016 Von gast Kommentieren. <https://www.sicherheitspolitik-blog.de/2016/10/10/an-analysis-of-the-uks-counter-terrorism-strategy-contest-and-the-challenges-in-its-evaluation/>.



1.1.5 Budgetary Oversight Function: The Role of Parliamentarians in Overseeing the Financing of Counter-Terrorism Policies

Parliamentary scrutiny of government finance is one of the key functions of a parliament and a vital part of its role in holding the government to account. Parliament has a unique status in providing the authorisation for government to raise revenue and spend it on behalf of the public. In such a role, parliamentarians combine their simple oversight role and policy-making function.

The budgetary powers of parliamentarians are affected by institutional context and the parliamentary tradition the country follows. The two most important parliamentary committees established on a continuing basis for the purpose of financial oversight are, in the Napoleonic tradition, the Committee on Finance or Committee on Budgets and, in the Westminster tradition, the Public Accounts Committee (PAC).

Parliamentarians can oversee the budget and resources allocated to counter-terrorism by using the budgetary oversight powers and the available institutional arrangements to oversee the budget process. Overall, budgetary oversight of the security sector tends to be challenging. Some governments do not detail the security and defence budget in the overall budget bill. The budget allocated to counter-terrorism efforts is normally dispersed in multiple departments. The key challenge in the case of security and counter-terrorism policies, is ensuring parliamentarians' access to timely and detailed financial information at every phase.

In principle, parliamentarians' engagement in budget oversight can take place at the following stages of the budget oversight process:

1. at the budget formulation phase⁷²;
2. during the scrutiny of the budget bill⁷³; and
3. during the audit of the expenditure⁷⁴.

To ensure proper oversight of counter-terrorism budgets, parliamentarians should have the opportunity to contribute to the debate at specific points in the budgetary cycle in addition to the role in debating and voting on all of the counter-terrorism-related legislation and their financial impact. Opportunities could be carved for parliamentarians to fulfil this role, focusing on structural and content inputs.

At the structural and institutional level, parliamentarians can:

- question the accuracy of the provided financial information;
- ensure the allocation of sufficient time for debating the budget and inclusion of the public in the process;
- create opportunities to engage civil society and seek contributions to the budget debate; and
- request access to the technical skills and support needed to fulfil their role.

At the content level, parliamentarians can:

- emphasise Performance Audits (sometimes called Value for Money Audits or VFM Audits);
- study the thematic approach taken, and reports prepared by, the International Organisation of Supreme Audit Institutions (INTOSAI);
- identify if the government programme or activity has exceeded its budget; and
- identify if the government programme or activity has not delivered the expected benefits⁷⁵.

The International Organisation of Supreme Audit Institutions (INTOSAI) has developed Performance Audit⁷⁶ standards and guidance. A Performance Audit is defined as: *'an independent and objective examination of government undertakings, programs or organisations, relating to one or more of the three aspects of economy, efficiency and effectiveness, with the aim of leading to improvements'*.

⁷² According to a survey conducted by the Inter-Parliamentary Union (IPU) and the World Bank Institute, parliamentarians have generally limited powers for parliamentarians to influence the budget preparation process. In presidential systems are generally more involved in the preparation of the budget than legislatures in either parliamentary or semi-presidential systems. In general, there is a growing interest for parliamentarians to get involved at the preparation phase of the budget cycle. However, when debating the budget bill, parliamentarians have considerable power to influence and shape the budget. Each parliament's ability to examine, amend, modify, confirm, and approve the budget is constrained by both institutional and political factors. Most parliaments have the budget amendment rules without the ability to increase the budget. For example, in the United Kingdom, Parliament can amend tax proposals, but cannot increase spending. On the other hand, there are countries, such as Belgium and Canada, where there are no institutional limits on Parliament's ability to amend the budget. While such conditions might imply extensive legislative participation, there are, however, fairly obvious political limits to such potential interference. See: Joachim Wehner, *Legislative Arrangements for Financial Scrutiny: Explaining Cross-National Variation*, pp.2-13, *The Role of Parliaments in the Budget Process*, Edited by Riccardo Pelizzo, Rick Stapenhurst and David Olson, World Bank Institute Washington, D.C.2005.

⁷³ About 40% of OECD countries have specialist budget committees to examine the government's budget expenditure and most Westminster style countries have a Public Accounts Committees (PAC) to scrutinise budget outcomes. The when and how expenditure reports prepared by Supreme Audit institutions are presented is important for effective control. The relationship between parliamentarians and supreme audit institution, tasked to assist in the supervision of the proper use of public money is key. When insufficient time is devoted to control of the expenditure, parliamentary control thus suffers. See: Interparliamentary Committee meeting, European Parliament – National Parliaments, Brussels, 2013. <http://www.europarl.europa.eu/document/activities/cont/201311/20131108ATT74169/20131108ATT74169EN.pdf>.

⁷⁴ The control of public expenditure by parliament allows for the assessment of the manner in which the estimates contained in the initial finance law were effectively executed.

⁷⁵ ISSAI 3100 - Performance Audit Guidelines: Key Principles, Appendix, International Organisation of Supreme Audit Institutions (INTOSAI), Approved at XXth Congress of INTOSAI, Johannesburg 2010. <http://www.issai.org/issai-framework/4-auditing-guidelines.htm>.

⁷⁶ It is worth noting that some Supreme Audit Institutions use the term 'Value for Money Audit' or 'VFM Audit' rather than 'Performance Audit'.

1.2 Terrorism: Definition and Aspects

The study of terrorism and counter-terrorism policies is multifaceted. Research in this field has made considerable progress since the early 1970s. It is widely recognised that terrorism is difficult to analyse. In their book, Crenshaw and LaFree identified three key areas that proved to be challenging for the academic analysis of terrorism: crafting a definition; specifying causes and evaluating outcomes.⁷⁷

Absence of a Universal Definition⁷⁸

There remains no international agreement by United Nations member states on the definition of 'terrorism'. The term continues to be contested and is one of the main reasons why the adoption of an international comprehensive treaty on terrorism⁷⁹ remains deadlocked. There are, however, several international treaties that deal with various crimes that are defined as falling under the rubric of terrorist offences. These are complemented by a series of resolutions that address terrorism.

Box 15: Status of the Draft Comprehensive Convention on International Terrorism

The United Nations has been working on developing a Comprehensive Convention on International Terrorism (CCIT) for more than three decades. The Ad Hoc Committee on Terrorism, established in December 1996, was tasked with drafting a CCIT.

Since 2002, the Ad Hoc Committee's working definition of the offence of terrorism has included:

- death or serious bodily injury to any person;
- serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- damage to property, places, facilities or systems ... resulting or likely to result in major economic loss.

When the intent is:

- to intimidate a population; or
- compel a government or international organisation to do, or abstain from doing, any act.

Obstacles to the adoption of a CCIT:

- Disagreement on whether the CCIT should include acts of terrorism carried out by states (state-sponsored terrorism) and whether it should apply to a state's armed forces.
- Disagreement on the exclusion of acts in armed struggles against foreign occupation, aggression or colonialism, such as national liberation movements.

Current status of CCIT negotiations: deadlocked.

This Handbook does not expand on the debate of the definition of terrorism, and instead presents the common elements in some existing definitions in literature and in international and regional legal frameworks on countering terrorism.

⁷⁷ Martha Crenshaw and Gary LaFree, *Countering Terrorism: No Simple Solutions*, Brookings Institution Press on 3 January 2017, p.30. <https://www.brookings.edu/book/countering-terrorism-no-simple-solutions/>.

⁷⁸ R. Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and its Influence on Definitions in Domestic Legislation*. *Boston College International and Comparative Law Review*, 2006, pp. 29, 23.

⁷⁹ Daniel O'Donnell, *International Treaties against Terrorism and the Use of Terrorism During Armed Conflict and by Armed Forces*, Volume 88, Number 864, December 2006, *International Review of the Red Cross*, https://www.icrc.org/eng/assets/files/other/irrc_864_odonnell.pdf.

The Oxford English Dictionary defines terrorism as *'the unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims.'*⁸⁰

The Arabic Dictionary, Al Muagam, describes terrorism as giving rise to *'horror due to violent acts, such as murder, bombing or sabotage.'*⁸¹

In his book, *Inside Terrorism*, Dr. Bruce Hoffman defines terrorism as *'violence or the threat of violence used and directed in pursuit of, or in service of, a political aim.'*⁸² Hoffman highlights the need to differentiate between *'violent extremism'* and *'terrorism'*. All terrorism may be considered violent extremism, but the latter is a broader category, as it denotes the support for, or perpetration of acts of, violence with the purpose of advancing a socio-political agenda.⁸³

It is worth noting that the inclusion of a political aim is a key characteristic in the above definitions of terrorism, except in the Arabic Dictionary, which does not specify the nature of what motivates violent acts described as terrorism.

The Study of Terrorism and Responses to Terrorism (START) Consortium at the University of Maryland uses the following definition for its Global Terrorism Database (GTD)⁸⁴: *'the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation.'*

It also provides three main criteria:

1. The act must be aimed at attaining a political, economic, religious, or social goal.
2. There must be evidence of an intention to coerce, intimidate, or convey some other message to a larger audience (or audiences) than the immediate victims.
3. The action must be outside the context of legitimate warfare activities.

Dr. Martha Crenshaw, Professor of Political Science at Stanford University, California, argues that terrorist groups make calculated decisions to engage in terrorism, and moreover that terrorism is a political behaviour resulting from the deliberate choice of a basically rational actor.⁸⁵

What seems fundamental, including any approach that attempts to define terrorism, is that it must clearly and unequivocally underline the criminal aspect of any terrorist activity. Furthermore, it is also important to emphasise that any definition of terrorism must not in any case call into question the right of peoples to resist foreign occupation in accordance with the provisions of international law.

1.2.1 Legal Definitions Adopted at the International Level

Despite the deadlock on the establishment of a Comprehensive Convention on International Terrorism (CCIT), the United Nations has nevertheless provided some useful definitions, specifically in the **Draft Convention for the Prevention and Punishment of Terrorism** (Draft Convention) of 1937.⁸⁶ This defined terrorist acts as *'all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the public.'* Although the Draft Convention never came into force it represents one of the few drafted international definitions of terrorism which could serve as a template for a Comprehensive Convention (CCIT).

⁸⁰ <https://en.oxforddictionaries.com/definition/terrorism>.

⁸¹ <http://almougem.com/mougem/search/الارهاب>

⁸² Bruce Hoffman, *Inside Terrorism: Revised and Expanded Edition*, New York, Columbia University Press, 2006.

⁸³ Naureen Chowdhury Fink and Rafia Bhulai, *Development and Countering Violent Extremism*, SDGs: Delivering Change, United Nations Association-United Kingdom (UNA-UK). <https://www.sustainablegoals.org.uk/development-countering-violent-extremism>.

⁸⁴ Global Terrorism Database (GTD), National Consortium for the Study of Terrorism and Responses to Terrorism (START), University of Maryland. The GTD is an open-source database including information on terrorist events around the world from 1970 through 2017 (with additional annual updates planned for the future). Unlike many other event databases, the GTD includes systematic data on domestic as well as transnational and international terrorist incidents that have occurred during this time period and now includes more than 180,000 cases. For each GTD incident, information is available on the date and location of the incident, the weapons used and nature of the target, the number of casualties, and--when identifiable--the group or individual responsible. <https://www.start.umd.edu/gtd/about/>.

⁸⁵ Martha Crenshaw and Gary LaFree, *Countering Terrorism: No Simple Solutions*, Brookings Institution Press on 3 January 2017, p.28. <https://www.brookings.edu/book/countering-terrorism-no-simple-solutions/>.

⁸⁶ Draft Convention for Prevention and Punishment of Terrorism, Report to the Council, adopted by the Committee on 15 January 1936, and Report, adopted by the Council on 23 January 1936. <https://www.legal-tools.org/doc/502186/pdf/>.

United Nations General Assembly Resolution 49/60 of 1994⁸⁷ on Measures to Eliminate International Terrorism describes terrorism as: *'the criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them'*.

The International Convention for the Suppression of the Financing of Terrorism of 1999⁸⁸, which gained a high level of acceptance by states (185 parties), provides that terrorism constitutes:

'Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

Any ... 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.'

United Nations Security Council Resolution 1566 of 2004, describes terrorism as: *'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons ..., intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism ...'*⁸⁹

1.2.2 Legal Definitions Adopted at the Regional Level

There is greater consensus within regions about the definition of terrorism. For example, the **Council of Europe Framework Decision on Combatting Terrorism** of 2002, affirms that *'terrorism constitutes one of the most serious violations of the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms and the principles of democracy and of the rule of law'*.⁹⁰ It goes on to identify terrorist offences as:

- a) attacks upon a person's life which may cause death;
- b) attacks upon the physical integrity of a person;
- c) kidnapping or hostage taking;
- d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e) seizure of aircraft, ships or other means of public or goods transport;
- f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- i) threatening to commit any of the acts listed in a) to h).

⁸⁷ United Nations General Assembly Resolution 49/60, adopted on 9 December 1994. <https://www.un.org/documents/ga/res/49/a49r060.htm>.

⁸⁸ International Convention for the Suppression of the Financing of Terrorism, Resolution 54/109, adopted by the General Assembly of the United Nations on 9 December 1999. <https://www.un.org/law/cod/finterr.htm>.

⁸⁹ United Nations Security Council Resolution 1566, S/RES/1566 (2004), adopted 8 October 2004. <https://www.un.org/ruleoflaw/files/n0454282.pdf>. See also: Press Release – Security Council Acts Unanimously to Adopt Resolution Strongly Condemning Terrorism as One of Most Serious Threats to Peace, 8 October 2004. <https://www.un.org/press/en/2004/sc8214.doc.htm>.

⁹⁰ For example, the Council of Europe Framework Decision on Combatting Terrorism, 2002/475/JHA, Committee on Civil Liberties, Justice and Home Affairs (LIBE), 13 June 2002. http://euromed-justice.eu/files/repository/20100909161723_COUNCILFRAMEWORKDECISION4752002ONCOMBATINGTERRORISM2002UE.pdf. See also: Briefing Implementation Appraisal: Framework Decision 2002/475/JHA on Combatting Terrorism, European Parliamentary Research Service (EPRS), May 2016. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581393/EPRS_BRI\(2016\)581393_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581393/EPRS_BRI(2016)581393_EN.pdf).

This definition, albeit regional, was one of the first definitions of terrorism to be drafted following the attacks of September 11, 2001, in the United States, and provides an example of a more general and comprehensive definition of terrorism.

The **Arab Convention for the Suppression of Terrorism**⁹¹ defines terrorism 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 jeopardise national resources.'

The Organisation of the African Union (OAU) defines terrorism in its **Convention on the Prevention and Combating of Terrorism** of 1999⁹² as acts which:

'(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.'

However, the OAU Convention emphasises that acts pursuing the legitimate right of peoples for self-determination and independence do not constitute terrorism specifying that: *'[t]he struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts'*

A theme common to a number of conventions is agreement on the offences that constitute terrorism.

The Organisation of American States (OAS) in the **Inter-American Convention Against Terrorism** of 2002 defines acts that constitute terrorism by referring to 'offences' already identified in international instruments, such as:

- a) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.
- b) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
- c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the United Nations General Assembly on 14 December 1973.
- d) International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979.
- e) Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.
- f) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.
- g) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988.
- h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988.
- i) International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997.
- j) International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999.

Similarly, the Association of Southeast Asian Nations (ASEAN) **Convention on Counter Terrorism** of 2007⁹³ also defines offences that constitute terrorism as those already existing in international conventions and protocols.

⁹¹ Arab Convention for the Suppression of Terrorism, adopted by the Council of Arab Ministers of Interior and the Council of Arab Ministers of Justice of the League of Arab States on 22 April 1998, entered into force on 7 May 1999. https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf.

⁹² OAU Convention on the Prevention and Combating of Terrorism, adopted by the OAU on 24 May 2017, entered into force on 6 December 2001. <https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>.

⁹³ ASEAN Convention on Counter Terrorism, adopted on 13 January 2007, entered into force 27 May 2011. <https://asean.org/storage/2012/05/ACCT.pdf>.

The Organisation of Islamic Conference (OIC) **Convention on Combating International Terrorism** of 1999⁹⁴ defines terrorism as:

'Any act of violence or threat thereof notwithstanding its motives or intentions ... with the aim of terrorising people or threatening to harm them or imperilling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.'

The OIC Convention also identified crimes which constitute terrorism as those already existing in conventions and protocols.

The OIC Convention reaffirms the OAU's assertion that the legitimate right of peoples to self-determination and independence does not constitute terrorism - made explicit in Article 2: *'Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.'*

1.2.3 Limitations of Current Definitions of Terrorism

The nature and scope of terrorist acts differs among countries and regions, but above all, it is the perception of the threat posed by terrorism that varies the most. Definitions of terrorism share common elements, namely that it is politically motivated violence perpetrated against non-combatant targets that instils fear.

There has been clear avoidance on the part of international organisations to adopt definitions that are too broad, and which could be used to outlaw legitimate acts of peaceful expression and association.

Key issues that remain under discussion:

1. Whether to include in the definition of terrorism, state terrorism – those acts carried out by states against their own people.
2. Establishing a definition that accurately reflects the evolving nature of terrorist acts.
3. Establishing a definition that covers motives other than political, such as using violence for financial profit.
4. Distinguishing acts of terrorism from legitimate struggles of people for self-determination and against foreign occupation; *'one person's terrorist is often another person's freedom fighter'*.
5. Whether the definition should include threats to use violence as well as acts of violence.⁹⁵
6. Distinguishing acts of terrorism from other acts and the need to not criminalise speech that does not directly incite violent activities.⁹⁶
7. Distinguishing terrorist acts from legitimate acts of protest and political dissent, or minor crimes at most.

*'The adoption of overly broad definitions of terrorism carries the potential for deliberate misuse of the term — including as a response to claims and social movements of indigenous peoples — as well as unintended human rights abuses. Failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.'*⁹⁷

Source: United Nations Special Rapporteur on Human Rights While Countering Terrorism, Ten Areas of Best Practices in Countering Terrorism⁹⁸

⁹⁴ OIC Convention on Combating International Terrorism, adopted on 1 July 1999. <https://www.refworld.org/docid/3de5e6646.html>.

⁹⁵ The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). A/CONF.183/9 The Rome Statute does not in its definition include 'threat', but Article 25 limits the criminal responsibility for those who commit, whether individually or with others, orders, solicits, or induces the commission of a crime. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

⁹⁶ United Nations 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, 9 December 2008, <http://www.osce.org/fom/35639?download=true>.

⁹⁷ Report of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Dr. Martin Scheinin (A/HRC/16/51), 22 December 2010, para. 26. <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/a-hrc-16-51.pdf>.

⁹⁸ <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/a-hrc-16-51.pdf>.

1.3 Forms of Terrorist Offences

As seen in the definition section, there are various types of terrorism, terrorism crimes and terrorist-related offences. Box 16 (below) lists the offences constituting conventional forms of terrorism already defined and criminalised in conventions and protocols.

Box 16: Offences Constituting Terrorism - Conventions and Protocols

- Financing terrorism - International Convention for the Suppression of the Financing of Terrorism
- Terrorist bombing - International Convention for the Suppression of Terrorist Bombing
- Unlawful seizure of aircraft - Convention for the Suppression of Unlawful Seizure of Aircraft
- Unlawful acts against the safety of civil aviation - Convention for the Suppression of Unlawful Acts against Civil Aviation
- Unlawful acts of violence at an airport serving international civil aviation - Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving Civil Aviation
- Offences against internationally protected persons - Convention on the Prevention and Punishment of Crimes against International Protected Persons
- Taking of hostages - International Convention against the Taking of Hostages
- Nuclear terrorism: offences related to nuclear material - Convention on the Physical Protection of Nuclear Material
- Unlawful acts against the safety of maritime navigation - Convention for the Suppression of Unlawful Acts Committed against the Safety of Maritime Navigation
- Unlawful acts against the safety of fixed platforms, meaning an artificial island, installation, or structure permanently attached to the sea bed for the purpose of exploration or exploitation of resources or for other economic purposes - Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf

Other kinds of terrorism are criminalised such as:

1. Incitement to terrorism, pursuant to United Nations Security Council Resolution 1624 (2005)⁹⁹ and in compliance with Article 20 of the International Covenant on Civil and Political Rights¹⁰⁰.
2. Obtaining or viewing material over the internet¹⁰¹.
3. Non-terrorist criminal activities that precede or accompany terrorist acts and that are often associated with acts of terrorism.

⁹⁹ United Nations Security Council Resolution S/RES/1624, adopted on 14 September 2005. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1624%20%282005%29 UNSCR 1624 called on all states to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to: (a) prohibit by law incitement to commit a terrorist act or acts; (b) prevent such conduct; (c) deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.

¹⁰⁰ Stating that: 1. Any propaganda for war shall be prohibited by law; 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁰¹ The United Nations Special Rapporteur recommended, to ensure compliance with the European Convention on Human Rights (ECHR) (Article 10), and the International Covenant on Civil and Political Rights (ICCPR) (Article 19), that Clause 3 be amended to require a viewer to have the intention of and the viewing to have the effect of encouraging or facilitating the commission of terrorism acts.

1.4 International and Regional Policies Addressing Terrorism

Since the early twentieth century, the international community has been engaged in fighting terrorism. In response to the assassination of the King of Yugoslavia and the French Minister of Foreign Affairs in 1934, the League of Nations, the United Nations' predecessor, established a Special Committee that aimed to make recommendations on international cooperation for the suppression of terrorism. These efforts led to the development of the Draft Convention for the Prevention and Punishment of Terrorism, which was published by the Special Committee in 1937. As noted, the Draft Convention, which never came into force, defined terrorist acts as:

*'All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.'*¹⁰²

United Nations' efforts to establish international measures to eliminate terrorism began to gain support from the 1960s onwards when a number of international conventions were developed targeting specific acts of terrorism albeit with few ratifications from member states. The threat of terrorism evolved from being considered a domestic problem, to constitute a **threat to international peace and security** – one requiring collective international actions.

With the increase in the scale of the threat, came the beginnings of a United Nations counter-terrorism policy that started to gather momentum in the 1990s with a focus on the development of a comprehensive legal framework on counter-terrorism and effective collaboration between organisations and states.

Countering terrorism has become a clear priority for the United Nations and for regional organisations such as the European Union, the African Union, the Arab League, the Organisation for Security and Cooperation in Europe, the Shanghai Cooperation Organisation and the Organisation of Islamic Cooperation.

At first international efforts focused on dealing with state support for terrorism. Subsequently, the framework expanded to deal with terrorism perpetrated by non-state actors with United Nations Security Council Resolution 1267 of 1999 aimed at the actions of the Taliban in Afghanistan, marking formal recognition by the United Nations that terrorism or threats from non-State actors are considered future obstacles to international peace and security. The issue has become more prominent on the international agenda after the attacks of September 11, 2001, in the United States.

¹⁰² Draft Convention for Prevention and Punishment of Terrorism, Report to the Council, adopted by the Committee on 15 January 1936, and Report, adopted by the Council on 23 January 1936. <https://www.legal-tools.org/doc/502186/pdf/>.

Box 17: Guiding Principles in the Global Legal Regime to Counter Terrorism¹⁰³

1. Importance of the criminalisation of terrorist offences; making them punishable by law and calling for the prosecution or extradition of the perpetrators.
2. Eliminate legislation that establishes exceptions to such criminalisation on political, philosophical, ideological, racial, ethnic, religious or similar grounds.
3. Call for member states to take action to prevent terrorist acts.
4. Need for member states to cooperate, exchange information and provide each other with the greatest measure of assistance in the prevention, investigation and prosecution of terrorist acts.
5. Eliminate safe havens for perpetrators of terrorist crimes.

This section presents counter-terrorism policies established by legal frameworks against terrorism and relevant international and regional organisations.

1.4.1 United Nations Global Counter-Terrorism Strategy

On 8 September 2006, the United Nations General Assembly adopted the Global Counter-Terrorism Strategy¹⁰⁴ in order to enhance national, regional and international efforts to counter terrorism. The adoption of the strategy fulfilled the commitment made by world leaders at the 2005 September Summit and builds on the recommendations for a global counter-terrorism strategy submitted by the United Nations Secretary General with an emphasis on specific proposals for strengthening the capacity of the United Nations to combat terrorism.

The United Nations General Assembly reviews the Strategy every two years, making it a living document attuned to member states' counter-terrorism priorities. The Sixth Review of the United Nations Global Counter-Terrorism Strategy took place in June 2018 and was adopted by the 72nd Session of the General Assembly¹⁰⁵.

The United Nations Global Counter-Terrorism Strategy is essentially composed of four pillars:



¹⁰³ Preventing Terrorist Acts: A Criminal Justice Strategy Integrating Rule of Law Standards in Implementation of United Nations Anti-Terrorism Instruments, Technical Assistance Working Paper, Terrorism Prevention Branch, United Nations Office on Drugs and Crime, 2009, p. 10. www.unodc.org/pdf/terrorism/TATS/en/3IRoLen.pdf.

¹⁰⁴ United Nations General Assembly Resolution A/RES/60/288, adopted on 8 September 2006. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/288&referer=/english/&Lang=E.

¹⁰⁵ United Nations General Assembly Resolution A/RES/72/284, adopted on 26 June 2018. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/284.

1.4.2 Relevant Resolutions and Targeted Sanctions by the United Nations Security Council Related to Terrorism

The United Nations has adopted a set of resolutions that address terrorism. The United Nations Security Council has adopted more than 34 resolutions, including Resolution 1373¹⁰⁶, adopted by the Security Council seventeen days after the attacks of September 11, 2001, in the United States. Resolution 1373 contains several obligations, binding on all United Nations member states¹⁰⁷ that could easily also be found within an international convention, such as:

1. Calls upon states to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.
2. Calls upon states to prevent the commission of terrorist acts and deny safe haven to terrorists and their supporters.
3. Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and United Nations Security Council Resolutions 1269 (1999) and 1368 (2001).
4. Set up a system to monitor implementation of this resolution through a Committee of the Security Council, consisting of all the members of the Council, with the assistance of appropriate expertise, and calls upon all states to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution.
5. Requires that states prosecute and punish terrorists, cooperate with other states in criminal and investigative proceedings involving terrorism, improve effective border controls, suppress recruitment and prevent the attainment of weapons and explosives.
6. Outlines that states should criminalise terrorist fund raising, freeze assets of terrorists and prevent terrorists and their supporters from using financial institutions.

United States Security Council Resolution 1624¹⁰⁸ differs from Resolution 1373¹⁰⁹ in specifically reminding states of their obligations concerning international human rights. On the other hand, what must be regarded as a missing element in these international efforts is the absence of any resolution, convention or protocol criminalising the payment of ransom due to kidnappings perpetrated by terrorist groups.

¹⁰⁶ United Nations Security Council Resolution S/RES/1373 (2001), adopted on 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹⁰⁷ Pursuant to Article 25 of the United Nations (UN) Charter, '[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. Unlike the recommendations of the UN Security Council (UNSC), its decisions have binding force. The binding effect of the UNSC resolutions includes, *ratione material*, operational matters and covers, *ratione personae*, all member states. *Ratione material*, the binding effect of UNSC resolutions belongs to the realm of international peace and security and includes enforcement under Chapter VII of the UN Charter. Whether a specific UNSC resolution is binding is determined by the language used in it, the discussions leading to it, the Charter provisions invoked, etc., all with the purpose of establishing the intent of the UNSC. The precise content of the binding effect is left to the UNSC itself, but the Court has found certain 'implicit' legal effects and, inversely, put some limits on the effects when these conflict with the principles and purposes in Chapter I of the UN Charter. *Ratione personae*, an UNSC decision may bind all UN member states, including 'those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council'. As for non-member states, the most coherent interpretation of a difficult passage in the Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, International Court of Justice (ICJ), 21 June 1971, rejects any direct binding effect. This interpretation respects the basic principle that treaties only bind parties, and avoids the difficult question of whether the UN Charter is subject to special rules within the law of treaties. It also leads to the same practical outcome since just about every state is now a member of the UN. See Marko Divac Öberg, The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ, *The European Journal of International Law* Vol. 16 no. 2006, p. 884-885.

¹⁰⁸ United Nations Security Council Resolution S/RES/1624, adopted on 14 September 2005. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1624%20%282005%29.

¹⁰⁹ United Nations Security Council Resolution S/RES/1373 (2001), adopted on 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

1.4.3 Approaches and Tools to Counter Terrorism at the Regional Level

There are seven plurilateral treaties adopted at regional levels to combat terrorism. Most regional treaties define and set in place a framework for cooperation in the prosecution of terrorists. Unlike the multilateral treaties, they do not necessarily identify and focus on a kind of illegal action, for this purpose they normally refer to international-specific treaties. Regional treaties present a coordinated regional framework to increase the effectiveness of existing international texts and promote counter-terrorism measures.

1. Organization of American States Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance 1971 (OAS Convention)
2. European Convention on the Suppression of Terrorism 1977 (European Convention)
3. South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism 1987 (SAARC Convention)
4. Arab Convention on the Suppression of Terrorism 1998¹¹⁰
5. Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism 1999 (CIS Treaty)
6. Convention of the Organisation of the Islamic Conference on Combating International Terrorism 1999 (OIC Convention)
7. Organisation of African Unity Convention on the Prevention and Combating of Terrorism 1999 (OAU Convention)¹¹¹

¹¹⁰ An Arab document to combat terrorism was adopted at the third conference of the Arab Parliament and the Speakers of Arab Parliaments on 10 February 2018. <http://www.ammonnews.net/article/355365>.

¹¹¹ This Convention is part of an overall African Union Counter Terrorism Framework that includes, in addition, Resolution on the Strengthening of Cooperation and Coordination Among African States (AHG/Res.213 (XXVIII)); Declaration on the Code of Conduct for Inter-African Relations (AHG/Del.2 (XXX)); African Union Plan of Action on the Prevention and Combating of Terrorism African Centre for the Study and Research on Terrorism (ACSRT); Additional Protocol to the 1999 OAU Convention on the Prevention and Combating of Terrorism (2004); African Union Special Representative for Counter-Terrorism Cooperation; African Model Law on Counter Terrorism (Assembly/AU/Dec.369 (XVII)). <http://www.peaceau.org/en/page/64-counter-terrorism-ct>.



CHAPTER 2:

**Parliamentarians' Capacity to Enable
the Implementation of International
Counter-Terrorism Law at the National
Level in Support of Judicial Cooperation**

Parliamentarians play a key role in translating universal and regional anti-terrorism instruments into national legislation. Their engagement includes ratifying relevant international treaties, and developing harmonised and effective legal frameworks to ensure overall consistency and synergy between national and international counter-terrorism policies.

Equally, parliamentarians are catalysts in upholding human rights at all levels, including in the security sector and in counter-terrorism. This is in line with United Nations Security Council Resolutions related to counter-terrorism, such as 1373 (2001)¹¹² and 2178 (2014)¹¹³, which require governments to take such action as is necessary to prevent and prosecute terrorism but only if such action conforms with international human rights, humanitarian and refugee law.

The judiciary complements parliamentarians' efforts so that laws do not undermine the existing guaranteed protections of human rights.

Besides, the right of individuals to security is a basic human right. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.

The implementation of counter-terrorism policies on national and international levels should form a coherence between public protection (national security) and human rights and civil liberties.

This chapter looks at the role of parliamentarians in implementing states' international obligations and their responsibilities to ensure the compliance of national security policies with international commitments on counter-terrorism. It will also shed light on the implementation of counter-terrorism legislation and policy in line with international human rights law, including their cooperation with the judiciary. Across this chapter, the crucial role of judicial system will be highlighted.

2.1. The Role of Parliamentarians in Integrating International and Regional Counter-Terrorism Norms in National Legislation

Parliamentarians play a key role in integrating international law in national norms through the following specific steps:

1. ratifying international treaties and promoting the signature of key CT treaties;
2. revising national law to be in compliance with international and regional CT instruments; and
3. scrutinising treaty implementation by holding governments to account for the enforcement of laws in compliance with international standards.

2.1.1. The Role of Parliamentarians' in Promoting Signature of and Ratifying International Counter-Terrorism Treaties

The development, negotiation and signature of treaties, legally binding agreements between states, are usually led by governments. Parliamentarians have a primary role in ratifying international and regional treaties. They cannot, however, make changes to the text of a treaty or amend it as they are not customarily involved in the negotiation and consultation phase, except in some cases (such as in the United States¹¹⁴ and the European Union).

¹¹² United Nations Security Council Resolution S/RES/1373 (2001), adopted on 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹¹³ United Nations Security Council Resolution S/RES/2178 (2014), adopted 24 September 2014. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20%282014%29.

¹¹⁴ In the United States, the Senate or Congress can influence treaties through advice and consultation. Moreover, the Senate Committee on Foreign Relations can propose amendments to a treaty. The United States President and the other countries negotiating the treaty must then decide whether to accept the conditions, renegotiate or abandon the treaty. Article II of the United States Constitution states that the President may enter the United States into treaties, but the treaties are not effective (i.e. binding) until ratified by an affirmative vote of two-thirds of the Senators present. However, the Constitution is not very explicit about the termination of treaties. The method of terminating a treaty has raised serious controversy within the United States twice in contemporary history. In 1978, President Carter terminated the defence treaty with the Republic of China without the concurrence of either the Senate or Congress. See: Robert Schütze, *Parliamentary Democracy and International Treaties*, Special Issue Article, Durham University, p. 19.

Box 18: Various Stages of the Treaty-Making Process

The various stages of the treaty-making process include initiation, negotiation, conclusion, ratification, entry into force, implementation, oversight, modification, and termination.

Pursuant to the Vienna Convention on the Law of Treaties of 1969 or as otherwise indicated below, the consent of a party to be bound by a treaty differs between:

- Signature ad referendum: Art.12 (2) (b)
- Signature subject to ratification, acceptance or approval: Arts.10 and 18
- Definitive signature: Art.12
- Acceptance and approval: Arts.2 (1) (b) and 14 (2)
- Ratification: Arts.2 (1) (b), 14 (1) and 16
- Accession: Arts.2 (1) (b) and 15
- Act of formal confirmation: Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986
- Adoption: Art.9
- Reservation¹¹⁵, unless the treaty prohibits reservations or only allow for certain reservations to be made: Arts.2 (1) (d) and 19-23

Source: Glossary of Terms Relating to Treaty Actions. https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml.

However, parliamentary powers over treaties have been growing recently and parliamentarians can influence the treaty development process. Parliamentarians can take on a greater role in treaty negotiations and promoting international standards. This could include providing oversight of the government's contributions to the negotiation of draft treaties; providing inputs to draft treaties in international and regional forums; conducting study days about the treaty and allowing wider consultation to be carried out. Parliamentarians could also pioneer and initiate ideas for new treaties, lobby for its development, submit drafts, and follow closely the process of its negotiation and adoption.

Members of regional Parliaments can also encourage regional entities to adhere to international treaties.¹¹⁶ Regional parliaments, such as the European Union Parliament and the African Union Parliament, normally ratify treaties in their capacity as elected bodies and the need to ensure that regional law is in line with international standards. They also have a special role to play in developing the architecture of regional bodies that can further support operational and information sharing processes to foster regional and inter-regional CT cooperation and response to the threat.¹¹⁷

The role of parliamentarians in ratifying a treaty is usually framed by states' constitutions and national legislation. In most cases, treaty ratification involves the legislature, which may be constitutionally required to approve all treaties or some categories of treaties before they are ratified by the executive branch.

¹¹⁵ It is worth noting that two regional counter-terrorism treaties do not allow parties to express reservations about their obligations, the OAU and European Conventions.

¹¹⁶ Kristina Grosek and Giulio Sabbati, *Ratification of International Agreements by EU Member States*, Briefing November 2016, European Parliamentary Research Service (EPRS).

¹¹⁷ *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*, Global Counterterrorism Forum (GCTF), 2016. <https://theijj.org/wp-content/uploads/English-Valletta-Recommendations.pdf>.

Treaties requiring parliamentary approval or, in some cases, requiring a referendum are defined in the domestic legislation. Parliamentary approval normally involves the procedure for the adoption of an act or, in some cases, Parliament needs only not to object to the government's ratification of the treaty¹¹⁸. Furthermore, in some countries, treaties might be subject to judicial review by the competent court, normally the constitutional court, to examine their consistency with the constitution prior to their ratification.

The processes parliaments follow for ratification can vary, especially in a bicameral system, where the following options could apply:

- approval first by one and then the other chamber of parliament, with the prevalence of one chamber in case of disagreement; and
- approval by only one chamber of parliament.

The pattern of states in ratifying international security and crimes treaties, including counter-terrorism treaties varies country by country. Where the legislature is involved, it can take a long time between the executive authority signing the treaty and the legislature ratifying it. Parliamentarians should be aware of the status of states' signature of treaties.

In some cases, states have ratified treaties as an act of compliance with global efforts to combat terrorism. States might also ratify certain treaties depending on the treaties' relative legal and political importance. For example, the International Convention for the Suppression of the Financing of Terrorism, which was adopted in 1999 and entered into force on 10 April 2002, has been ratified by 188 states¹¹⁹. In contrast, the Comprehensive Convention on International Terrorism is still pending and remains subject to constant delays.

In their review of counter-terrorism treaties for ratification, it is important that parliamentarians are equipped with the necessary technical capacity and expertise to ratify the treaty or implement legislation. Conducting a human rights assessment is also beneficial to ensure the treaties under discussion are in line with states' other international commitments.

In addition to treaties, states also have the legal obligation to implement United Nations Security Council resolutions, such as 1373. While these resolutions do not have the same status as treaties, they normally impose legal obligations on United Nations member states in a number of areas.

¹¹⁸ In the United Kingdom, the Government must lay most treaties it wishes to ratify, along with an Explanatory Memorandum, before Parliament for 21 sitting days. During that time either the House of Commons or the House of Lords (or both) may pass a motion objecting to ratification. If neither House objects, the Government may ratify the treaty. If the House of Lords objects but the House of Commons does not, the Government can ratify the treaty. But it must first lay before Parliament a Ministerial statement explaining why the Government considers that the treaty should nevertheless be ratified. If the Commons objects (regardless of the Lords' position), the Government must lay such a statement before Parliament, but the Commons then has another 21 sitting days in which it may object again. This process can be repeated indefinitely, in effect giving the Commons the power to block ratification. If there is no outstanding objection from the Commons, the Government can ratify the treaty. The treaty enters into force for the United Kingdom according to the provisions in the treaty. Arabella Lang, Parliament's Role in Ratifying Treaties, House of Commons Library, Number 5855, 17 February 2017. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05855>.

¹¹⁹ This includes all but eight member states of the United Nations (Burundi, Chad, Eritrea, Iran, Lebanon, Somalia, South Sudan, and Tuvalu).

Box 19: Mandatory Requirements Arising from United Nations Security Council Resolution 1373¹²⁰

Criminalisation:

- criminalisation of terrorist acts
- penalisation of acts of support for or in preparation of terrorist offences
- criminalisation of the financing of terrorism
- depoliticisation of terrorist offences

Measures to ensure effective criminalisation:

- refusal of asylum rights for terrorists
- border controls and prevention of the forgery of travel documents and identity papers
- freezing of funds of persons who commit or attempt to commit terrorist acts
- prohibition on placing funds or financial services at the disposal of terrorists

International cooperation in criminal matters:

- mutual assistance between states
- intensification of exchanges of operational information
- use of bilateral and multilateral agreements to prevent and eradicate terrorism
- prevention of abuse of refugee status
- rejection of all politically motivated grounds to justify refusal of an extradition request

Following the ratification of counter-terrorism treaties, governments and parliamentarians are required to carry out legislative changes necessary to comply with the treaty's commitments and strengthen the country's ability to combat terrorism.

2.1.2 The Role of Parliamentarians in Incorporating International and Regional Counter-Terrorism Instruments into Domestic Law

In principle, each international treaty requires its parties to comply with the obligations in the treaty, pursuant to Article 27 of the Vienna Convention on the Law of Treaties (1969). Parliamentarians play an essential role in applying international law to domestic law.

There is an increasing number of treaties that are concerned with specific types of terrorist acts¹²¹, which place obligations on participating states. While the scope of these treaties is generally limited to acts that have an international dimension, they establish obligations on states to incorporate crimes defined in these treaties into the domestic law. Those conventions also contain provisions that facilitate cooperation in preventing, investigating, and prosecuting such offences.¹²²

These obligations are without prejudice to other international obligations of the state party, including those related to human rights. Notably, most of the treaties on counter-terrorism contain dispositions concerning the protection of human rights. States should find a balance between national implementation of counter-terrorism treaties and human rights treaties. National counter-terrorism legislation needs to conform with international human rights law, and states should ensure that the implementation of this legislation is similarly in compliance with human rights¹²³.

¹²⁰ United Nations Office on Drugs and Crime (UNODC), Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments, 2006, p. 11. www.unodc.org/pdf/terrorism/TATS/en/2LIGen.pdf.

¹²¹ See Annex I.

¹²² See: International Institute for Justice and the Rule of Law (IJ), *IJ Prosecutors Outline*, to be published in 2019, p. 46.

¹²³ Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law, United Nations Counter-Terrorism Implementation Task Force, CTITF Working Group on Protecting Human Rights While Countering Terrorism, October 2014, United Nations Office of the High Commissioner on Human Rights. Page 3. <https://www.ohchr.org/EN/newyork/Documents/CounterTerrorismLegislation.pdf>.

'The response to terrorism and violent extremism must respect human rights and comply with international law. That is not just a question of justice, but of effectiveness. When counter-terrorist policies are used to suppress peaceful protests and legitimate opposition movements, shut down debate, target human rights defenders or stigmatize minorities, they fail and we all lose. Indeed, such responses may cause further resentment and instability and contribute to radicalization.'

Mr. António Guterres, United Nations Secretary-General, Opening remarks at the first ever global High-Level Conference of Heads of Counter-Terrorism Agencies of the Member States of the United Nations, 28 June 2018

In incorporating international and regional counter-terrorism instruments into domestic law and in compliance with human rights, parliamentarians should take into consideration the legal context and the following general principles:

I - Relationship between International and National Law – the Distinction between Monist and Dualist Traditions

States should describe the power of international law within the framework of their internal legal order. In general, the authority of international law is often placed at the top of the hierarchy of legal norms, having either the same power as constitutions or a greater power than national laws. However, domestic law, starting with constitutional law, is often imprecise as to the authority of international law. Usually, international and national law distinguish between **monist** and **dualist** theories¹²⁴. A monist approach towards international law means that international law will be automatically part of national law when government and parliament ratify treaties. While a dualist tradition means that when the government ratifies a treaty – even with parliamentary involvement – it does not become effective as domestic law until legislation is enacted. However, in practice, laws are often necessary, even in monist countries, for implementing the provisions of international treaties.

II - Nature of Human Rights: the Distinction between Absolute and Derogable Rights

Limitations on the exercise of human rights could be permissible by states in some specific cases despite the principles of universality, impartiality and indivisibility that apply to all human rights. Some rights are absolute, whereby states cannot impinge upon them or derogate from them in any circumstances. For example, the prohibition on torture, inhuman and degrading treatment and the prohibition of slavery applies regardless of any perceived threat to public safety or national or global security. By contrast, international and domestic human rights law generally recognises that in some circumstances, certain rights, such as freedom of expression, balanced against privacy or the right to a fair hearing, the right to liberty and security of person, could be limited in order to meet certain narrowly defined legitimate public interests or to respect the competing rights of others. Limitation clauses in international treaties or constitutions permits states to take measures derogating from certain treaty protections under narrowly-prescribed situations of emergency and generally identify rights which are derogable. In addition, some restrictions could be prescribed by law that are necessary to protect public safety, public order, health, or morals, or the rights or freedoms of others. The right to liberty may lawfully be limited when individuals who have committed serious criminal offences are lawfully convicted and sentenced to a prison term. In combatting terrorism, the permissibility of security measures to limit individuals' rights should be defined under the overarching conditions of legality, necessity, proportionality and non-discrimination.

¹²⁴ Dr. Sunil Kumar Agarwal, Implementation of International Law in India: Role of the Judiciary http://dl4a.org/uploads/pdf/SK_Agarwal.pdf.

States should clarify and justify these limitations, which must¹²⁵:

- be prescribed by a sufficiently accessible, clear and precise law;
- be necessary for reaching a legitimate aim (e.g. public safety);
- be proportional to the aim pursued;
- allow for effective remedies and safeguards against abuses; and
- be non-discriminatory.

International and regional texts, with the exception of the African Charter on Human and Peoples' Rights, contain a general derogation clause as well as specific limitations to a particular right which they strive to regulate and restricting implementation and consequences¹²⁶.

Box 20: List of Main Human Rights that could be at Risk in Counter-Terrorism Policies

The right to:

1. a fair hearing by an independent and impartial tribunal
2. life
3. be free from torture, inhuman and degrading treatment or punishment
4. to not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.
5. privacy, family, home and correspondence
6. freedom of expression, association and assembly.
7. an effective, legal remedy
8. liberty and security
9. freedom of speech
10. freedom of religion
11. due process and to a fair trial

For example, the International Covenant on Civil and Political Rights (ICCPR) permits states to limit some rights for legitimate and defined purposes even when the threat of terrorism does not amount to a 'public emergency' for the purposes of Article 4. For example, Article 19 of the ICCPR protects the right to freedom of expression. However, the effect of Article 19(3) is that this right is subject to such restrictions that are necessary and proportionate to protect national security in a democratic society.¹²⁷ For example, if laws which limit freedom of expression are so vague as to be incapable of precise application it will be difficult to characterise the laws as necessary and proportionate. The application of the **proportionality principle**, regarded as a fundamental element of regulatory policy and public administration, in the context of anti-terrorism law is key.

¹²⁵ Pursuant to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4, (1984) Annex, paras. 39-41).

¹²⁶ Christopher Michaelsen, The Proportionality Principle, Counter-Terrorism Laws and Human Rights: A German–Australian Comparison, Reprinted from City University of Hong Kong Law Review Volume 2, 1 July 2010, pp 19–43.

¹²⁷ Incorporating Human Rights Principles into National Security Measures, HE Hon John von Doussa, President, Human Rights and Equal Opportunities Commission, International Conference on Terrorism, Human Security and Development: Human Perspectives, City University of Hong Kong, 16-17 October 2007. <https://www.humanrights.gov.au/news/speeches/incorporating-human-rights-principles-national-security-measures>.

Box 21: Pre-Trial Detention of Individuals Charged with Terrorism Offences ¹²⁸

Parliamentarians should ensure that laws and law enforcement practices on the pre-trial detention of individuals charged with terrorism offenses are lawful and not in breach of rights to fair trial and right of people to liberty.

Prosecutors, investigating magistrates, and other appropriate officials should consider seeking pre-trial detention of individuals charged with terrorism offences if they present a security risk to the community or a risk that they will flee before the trial, if released.

1. Compliance with National Law

Pre-trial detention of a person charged with a terrorism offence, based upon national law and procedures that are consistent with international human rights law, is an effective way for prosecutors and investigators to protect the public. Lawful pre-trial detention will prevent an accused person from repeating his/her criminal activities and reduce his/her opportunities to pressure, intimidate or threaten witnesses. The detention may also be justified based on the possibility that the person will abscond. Furthermore, the length of pre-trial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.

2. Detention for Reasonable Time Only

A person may be kept in pre-trial detention only for a 'reasonable time' in order to bring him/her before the court for a trial. What constitutes a 'reasonable time' has been subject to much discussion and many decisions of national and international human rights authorities. Long delays between arrest and trial cannot be justified by the usual delays inherent in a system in which proceedings are written, or based on time needed for the prosecution to gather evidence, or general budgetary considerations of an overburdened criminal justice system. On the other hand, if delays result from the accused person's own actions (i.e., filing motions attacking the investigation or prosecution, seeking evidence for his/her defence from foreign witnesses, or submitting requests to delay the trial to allow his/her defence to better prepare), the prosecution and the court should not be held responsible for any harm that results to the defendant.

3. Continuing Justification Needed for Prolonged Detention

Even if initially justified, pre-trial detention cannot be prolonged unless the reasons for it continue to exist or new reasons appear.

III – The principle of legality is also a key criterion, as there is no punishment without the law. In the context of criminal proceedings, Article 15 of the ICCPR codifies the principle of legality, requiring that for a conviction to be valid, the criminal offence with which the person is charged must constitute a criminal offence under national or international law at the time when the act was committed. This is an essential element of the rule of law and forms part of customary international law. In its 2013 resolution on protecting human rights and fundamental freedoms, the General Assembly *'urges States, while countering terrorism [t]o ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.'*¹²⁹ It is an absolute and non-derogable right, which means that national counter-terrorism legislation must comply with the principle at all times¹³⁰.

¹²⁸ International Institute for Justice and the Rule of Law (IIJ), *IIJ Prosecutors Outline*, to be published in 2019, p.60-61.

¹²⁹ United Nations General Assembly Resolution A/Res/68/178, adopted on 18 December 2013, para. 6(m). https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/178&referer=/english/&Lang=E

¹³⁰ Submission on the Effects of Terrorism on the Enjoyment of all Human Rights in Preparation of the Forthcoming Report for the 34th Session of the UN Human Rights Council. <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/WCADP.pdf>.

Measures and Tools to bring Domestic Counter-Terrorism Laws in line with Relevant International Treaties and Policies

After ratifying universal legal instruments against terrorism, governments must conduct a review of national laws and bills regarding counter-terrorism. For this purpose, each State must opt for what it considers the most appropriate implementation mechanism. In general, states could follow multiple practices:

1. A comprehensive review of national criminal law and its relevant provisions, followed by amending legislation.
2. The inclusion in a state's criminal law of a special section of its criminal code. Sometimes this a good option for a State that intends to undertake broader reforms to its criminal law.
3. The adoption of an autonomous law containing all the elements required by inter- national conventions.

Measures and Tools to Align Counter-Terrorism Laws with International Human Rights Treaties

The human rights compliance of a counter-terrorism bill should not be disregarded and overlooked due to the timing of legislative debate and adoption. The scrutiny of counter-terrorism policy and its compliance with international human rights standards falls particularly within the remit of human rights committees in parliaments. A legislative analysis of a counter-terrorism bill could be conducted to assess synergies of the bill with the national constitutional and legal human rights, including human rights acts or national human rights charters, where they exist.

'... compromising human rights ... facilitates achievement of the terrorist's objective – by ceding to [them] the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits. Upholding human rights is not merely compatible with successful counter-terrorism strategy. It is an essential element.'

United Nations Secretary General Kofi Annan, Address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, delivered in Madrid, Spain' (Press Release, 10 March 2005).

Box 22: Eight Principles and Guidelines Concerning the Conformity of National Counter-Terrorism Legislation with International Human Rights Law

1. States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, including international human rights law.
2. National counter-terrorism legislation should aim to address conditions conducive to the spread of terrorism and must, to that end, be compliant with the rule of law and human rights.
3. All counter-terrorism measures must comply with the principle of legality. In the absence of an internationally agreed comprehensive definition of terrorism, where states link counter-terrorism measures to a definition of terrorism (or acts of terrorism) in their domestic legislation, this definition must be clear and precise. It must not be overly broad. Conviction on any terrorism offence must relate to a crime that constituted a criminal offence under national or international law at the time when the act was committed. A convicted person shall benefit from any lighter sentence applicable since the time of the offence and shall not be made subject to more severe penalties than those applicable at the time when the offence was committed.
4. States must ensure consistency between national counter-terrorism legislation and international human rights and refugee law, as well as, when applicable, international humanitarian law. This includes the need to ensure that the conduct of State agencies involved in the countering of terrorism is in compliance with international law. Counter-terrorism powers should be conferred, to the greatest extent possible, upon law enforcement authorities, with appropriate measures to ensure that discretionary powers are not exercised arbitrarily or unreasonably.
5. States should establish independent mechanisms for the regular review of the operation of national counter-terrorism law and practice.
6. States should establish national systems of assistance to promote the needs of victims of terrorism and their families. Victims of terrorism who have suffered violations of their basic rights are entitled to material, legal and psychological assistance. Mechanisms for providing compensation to victims of terrorism should be implemented in a way that ensures the greatest possible consistency in the admissibility of claims and in the award of compensation.
7. States have an obligation to conduct prompt, independent and effective investigations into credible allegations of human rights violations, including those allegedly perpetrated during counter-terrorism operations, whether by law enforcement officials, intelligence services or non-State actors.
8. Any person whose human rights or fundamental freedoms have been violated in the course of any action to counter terrorism must be provided with access to effective remedies and reparation.

Source: Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law, United Nations Counter-Terrorism Implementation Task Force, CTITF Working Group on Protecting Human Rights while Countering Terrorism¹³¹, October 2014, United Nations Office of the High Commissioner on Human Rights.¹³²

¹³¹ The CTITF Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism was established to support efforts by United States member states to ensure the promotion and protection of human rights and the rule of law in the context of countering terrorism. The Working Group supports the implementation of Pillar IV of the United Nations Global Counter-Terrorism Strategy, as well as the mainstreaming of human rights and the rule of law into the other three pillars of the strategy. The Working Group seeks to facilitate information exchange on human rights and rule of law capacity building and good practice examples on the promotion and protection of human rights and the rule of law in the context of counter-terrorism and identify gaps and weaknesses in counter-terrorism approaches taken by states and develop proposals for strengthening support to member states on the promotion and protection of human rights and the rule of law in the context of countering terrorism at the national, regional and global levels. See generally: <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/Terrorism>.

¹³² <https://www.ohchr.org/EN/newyork/Documents/CounterTerrorismLegislation.pdf>.

Box 23: Case Study – South Africa’s Commitment to Uphold the Rule of Law in Counter-Terrorism

An Inclusive Process to Adopt a Model Law Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004

South Africa’s counterterrorism policy was adopted in 1994 following its liberation and end of Apartheid history. After the 9\11 attacks in the United States, the President of the Republic reconfirmed the government’s commitment to counter terrorism stemming from the country’s liberation history and constitutional values. The President also rejected acts of vengeance directed against individuals, communities and nations simply because of their faith, language, and colour. In 1994, the Parliament of South Africa adopted the Safety Matters Rationalisation Act of 1996, which repealed 34 precisions.

The South African Law Commission led a project focused on reviewing the Internal Security Act of 1982. During the project, in-depth comparative legal research and research into international law and obligations was undertaken. The proposals of the Law Reform Commission were introduced into a bill that was submitted by the Minister of Safety and Security before the South African Parliament in 2003.

The main areas of controversy were:

- its broad definition of terrorism; and
- a provision providing the minister to ban an organisation and classify it as a terrorist organisation by a notice in the Gazette if this organisation was listed as an international terrorist.

The Committee on Safety and Security was tasked to scrutinise the bill and introduced extensive amendments following a series of thorough public hearings. Civil society organisations, media networks, business and labour, the religious sector and research institutions contributed directly to the design and shape of the bill.

The bill was renamed the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33, and was enacted on 19 May 2005. The final version of the law:

- provided detailed definition of terrorism excluding from it struggles for national self determination;
- deleted the power of the minister to declare an organisation a terrorist organisation;
- included parliamentary supervision of any notice issued by the President pursuant to resolutions from the United Nations Security Council; and
- renamed the bill to show the shift in the political thinking from an approach preoccupied with the ‘war on terror’ to one aimed at defending human rights and constitutional democratic and social order as stated in the preamble.

The law was praised by the Special Rapporteur of the United Nations on the Promotion of Human Rights and Freedom while Countering Terrorism during his visit to South Africa on 16-27 April 2007. He encouraged South Africa to monitor the implementation of the Act to ensure that its interpretation did not suggest a threat to human rights.

The United Nations (UN) Security Council Counter-Terrorism Executive Directorate (CTED) visited South Africa from 2-9 June 2009 (in pursuance of CTED’s mandate to conduct visits to United Nations member states in order to monitor the implementation of UN Security Council Resolution 1373 (2001)). CTED praised the adoption of the law and mentioned that the Act, and supporting legislation, could serve as a model for other jurisdictions.

A review of the law was in process at the date of this Handbook’s publication. Issues that might be considered in the review are an update to the references in the Act to international instruments to which South Africa has become a state party to since 2004.

2.1.3 The Role of Parliamentarians in the Enforcement of Laws in Compliance with International Standards

The government has the primary responsibility for carrying out treaties and ascertaining that other parties fulfil their obligations after they enter into force. In addition to legislation, parliaments are responsible for steps taken by the State to protect the rights guaranteed by the treaty.

The role of the judiciary is important in ensuring the implementation of states' obligations under international treaties, especially in the field of human rights. While the process of implementation of international law at the national level varies between the different countries, courts play a proactive role in using international conventions as reference in the absence of a domestic law in the field. Many of the counter-terrorism conventions contain provisions that facilitate the cooperation in the prevention, investigation, and prosecution of those offences. The judicial system should be able to understand how to use these clauses as well as to apply the relevant treaties.

Counter-terrorism treaties represent a key element of the overall national counter-terrorism policy. For this purpose, parliamentarians could play an important role in overseeing the implementation of such treaties.

Overseeing the Implementation of a Treaty

Parliamentarians can use the following means to exercise oversight of treaty implementation:

- *Review reports from government:* At the time of ratification, parliamentarians can require the government to report to parliament on the implementation of the treaty, even if there is no such requirement in the treaty itself.
- *Hold an inquiry addressing the human rights concerns arising from the government's counter-terrorism policy and the implementation of treaties:* Parliamentarians can review actions under treaties and other international agreements as part of its responsibilities for overseeing executive branch activities. Methods for oversight include hearings, investigations, consultations, and reviewing reports. Parliamentarians could also create a dedicated treaty scrutiny committee.
- *Use the strengthened parliaments' role and engagement regarding the implementation of Universal Periodic Review (UPR) recommendations:* More than half of the of recommendations stemming from UPRs require legislative action. Parliamentarians have increasingly become key stakeholders in the United Nations Universal Periodic Review process pursuant to a United Nations Human Rights Council Resolution in support of stronger cooperation with parliaments adopted on 23 June 2017.¹³³
- *Strengthen engagement between parliaments and national human rights institutions,* pursuant to the Belgrade Principles¹³⁴ and its guidance on the relationship between parliaments and national human rights institutions.
- *Engage with other international and regional human monitoring mechanisms,* including treaty bodies and the Special Procedures of the Human Rights Council. The Special Procedure mandate holders include the work of the Special Rapporteur on the Protection and Promotion of Human Rights while Countering Terrorism, and periodic reports to the relevant treaty body on the implementation of the obligations under each instrument. One of the core functions of the treaty bodies is to review these reports and to issue 'Concluding Observations', which include recommendations on what legislative, policy and other measures should be taken to ensure the enjoyment of the rights and freedoms set out in the relevant treaty.

¹³³ <https://www.ipu.org/news/press-releases/2017-06/ipu-applauds-un-human-rights-council-move-boost-cooperation-with-parliaments>.

¹³⁴ Belgrade Principles on the Relationship between Human Rights Institutions and Parliaments, Belgrade, Serbia, 22-23 February 2012. <https://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>.

Inter-Parliamentary Cooperation in Counter-Terrorism

Inter-parliamentary efforts can provide a critical bridge to permit greater international cooperation. Inter-parliamentary dialogue and engagement is instrumental to strengthen:

1. mutual trust: parliamentarians stand in a position to open dialogues to develop the necessary levels of trust and cooperation with their international counterparts often with more flexibility than executive structures;
2. a better understanding of existing international commitments, challenges and trends;
3. more frequent exchanges of good practices and, even more importantly, of lessons learned: parliamentarians can establish points of contact and exchange existing good practices with other countries and ways to maintain a balance with legal safeguards protecting human rights;
4. targeted policy guidance; and
5. coordination of national parliamentary efforts.

The existence of a multitude of inter-parliamentary fora is an asset for mutual understanding and increasing the effectiveness of counter-terrorism policies through inter-parliamentary action. Existing regional and international parliamentary assemblies and networks can support these efforts¹³⁵ and convene regularly to discuss counter-terrorism policies and their commitments as part of the parallel bilateral and multilateral diplomacy. Inter-parliamentary entities have been actively engaged in adopting resolutions that would support greater role for parliamentarians and inter-parliamentary cooperation.

¹³⁵ Excerpt from Valletta Recommendation 11: Promote inter-parliamentary exchange of information and cooperation. *Valletta Recommendations Relating to Contributions by Parliamentarians In Developing an Effective Response to Terrorism*, Global Counterterrorism Forum (GCTF), 2016. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Valletta-Recommendations-ENG.pdf>.

Box 24: OSCE Parliamentary Assembly Ad Hoc Committee on Countering Terrorism¹³⁶

The OSCE Parliamentary Assembly (PA) established, during its Annual Session in 2017, the Ad Hoc Committee on Countering Terrorism (CCT). The CCT is composed of 11 Parliamentarians from 11 different OSCE participating states.

The idea behind this initiative was to build on previous work carried out by the PA and provide an avenue to better include a parliamentary perspective into the OSCE's comprehensive efforts in this domain.

The official mandate of the Ad Hoc Committee is as follows:

- Advance OSCE PA's efforts in the field of countering terrorism with a special emphasis on cross-dimensional issues, explore innovative approaches in the OSCE region and report back to the President and the Standing Committee.
- Consider terrorism trends in the OSCE region and develop forward-looking policy recommendations aimed at enhancing the role of the OSCE and supporting participating states' efforts to develop effective and human rights-compliant counter-terrorism responses.
- Promote inter-parliamentary dialogue and the exchange of best practices and lessons learned on issues related to countering terrorism.
- Work closely with the OSCE executive structures and with relevant external partners on issues related to countering terrorism to improve the visibility and impact of the OSCE action.
- Promote the follow-up to OSCE PA recommendations in the field of countering terrorism.

OSCE Parliamentary Assembly Resolution on Preventing and Countering Terrorism and Violent Extremism and Radicalisation that Lead to Terrorism (VERLT) Adopted at the twenty-seventh annual session in Berlin 7-11 July 2018

The resolution acknowledges the role that national parliaments can play in the field of countering and preventing terrorism and VERLT, especially by: 1) developing targeted counter-terrorism legislation in line with international law, including human rights law, 2) by promoting the full implementation of existing international legal frameworks, 3) by providing effective oversight of governmental counter-terrorism policies and authorities, and 4) by fostering greater inclusion of local communities and civil society in national counter-terrorism efforts, in accordance with the principle of national ownership of counter-terrorism strategies and programmes.

The resolution also recognises that international parliamentary forums, such as the OSCE Parliamentary Assembly, can serve as useful platforms for promoting political dialogue and facilitating the exchange of innovative ideas, lessons learned and good practices on counter-terrorism legislation and policy, thereby providing a distinct contribution to the global fight against terrorism by promoting greater policy coherence and international co-operation.¹³⁷

2.2. The Role of Parliamentarians in Supporting Judicial Cooperation

Counter-terrorism laws are enacted by parliaments, enforced by governments and upheld by the judiciary. The latter are in charge of interpreting the law in line with the intention of the parliament, as well as resolving disputes.

As part of the separation of power, the three key powers act as a check and balance on the others. The judiciary have a critical role in finding a balance between ensuring the security of the country and safeguarding human rights. In this outlook, there is a central link between the judiciary and the parliament.

¹³⁶ Ad Hoc Committee on Countering Terrorism, First Report of the Chair of the OSCE PA Ad Hoc Committee on Countering Terrorism, Vienna, 23 February 2018.

¹³⁷ <https://www.oscepa.org/documents/all-documents/annual-sessions/2018-berlin/declaration-26/3742-berlin-declaration-eng/file>.

The judicial approach to counter-terrorism and issues of national security is complex. The criminal justice system is a composite system comprised of several interdependent actors: law enforcement, the prosecution, the defence, and the judiciary. It also comprises the public in some judicial systems, including the common law system¹³⁸. The role and power of each of these actors, as well as their relationships with each other, varies depending on the legal system.

The criminal justice sector plays a role in prosecution, as well as in the prevention of terrorism. Usually, national counter-terrorism laws (as well as international instruments) include enhanced judicial authority to comply with the need for international cooperation and ability to respond effectively. Alongside any added powers, such laws need to provide additional safeguards as counter-terrorism measures could present challenges to various components of the criminal justice sector. These challenges particularly include criminal procedural law in terms of the extent of detention without charge and deportations.

A rule of law-based criminal justice system is required for responding to terrorism. This should be outlined by national law and stated commitment to international law. According to the United Nations Global Counter-Terrorism Strategy and Plan of Action, states are required to undertake:

'..every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with 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.'

Parliamentarians play an active role in establishing and overseeing the running of such a system.

This chapter outlines the role of parliamentarians in enhancing a rule of law-based approach to international cooperation in criminal justice and a rule of law-based judiciary.

2.2.1 The Role of Parliamentarians in Enhancing the International Criminal Justice Cooperation in the Context of Counter-Terrorism

With the amplified transnational nature of terrorism, international cooperation is a key tool in the global fight against terrorism. This is emphasised by many international instruments on counter-terrorism, as well as by the United Nations Convention against Transnational Organized Crime.¹³⁹

United Nations Security Council Resolution 1373 (2001)¹⁴⁰ calls on states to 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. This includes assistance in obtaining evidence in their possession necessary for the proceedings. That provision is binding for all states, including states that have not ratified all or some of the universal counter-terrorism instruments.

In 2016, the United Nations Security Council adopted Resolution 2322 (2016)¹⁴¹, aimed at strengthening international judicial cooperation in order to prevent, investigate and prosecute terrorist acts. The Council called on all states to consider establishing appropriate laws and mechanisms that allow for the broadest possible international cooperation, including the appointment of liaison officers, police-to-police cooperation, the creation and use, when appropriate, of joint investigation mechanisms, and enhanced coordination of cross-border investigations in terrorism cases. This resolution contributed to setting standards for good practices on international cooperation.¹⁴²

¹³⁸ Richard Benwell and Oonagh Gay, *The Separation of Powers*, Standard Note: SN/PC/06053, 2011, House of Commons Library, Section Parliament and Constitution Centre.

¹³⁹ United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, entered into force 29 September 2003. <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html#Fulltext>.

¹⁴⁰ United Nations Security Council Resolution S/RES/1373 (2001), 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹⁴¹ United Nations Security Council Resolution S/RES/2322 (2016), 12 December 2016. <http://unscr.com/en/resolutions/doc/2322>.

¹⁴² For example, International Institute for Justice and the Rule of Law, *IJ Good Practices for Central Authorities*, 2018. https://theij.org/wp-content/uploads/IJ-Good-Practices-for-Central-Authorities_September-2018.pdf.

Box 25: Methods of International Cooperation in Criminal Matters

Several interdependent forms of international cooperation in criminal matters can be identified from an analysis of legal practice and doctrine:

- extradition
- mutual legal assistance
- transfer of criminal proceedings
- execution of foreign sentences
- recognition of foreign criminal judgements
- confiscation of the proceeds from crime
- collection and exchange of information between intelligence and law enforcement services
- regional and sub-regional legal forums
- access to justice

Of all these types of cooperation, the universal counter-terrorism conventions and protocols focus on extradition and mutual legal assistance. These are also the best-known and most common forms of cooperation in practice.

Sources: Module 3 – International Cooperation in Criminal Matters: Counter-Terrorism, Counter Terrorism Legal Training Curriculum.¹⁴³

Inter-state cooperation on multiple levels, including the judiciary, requires enhanced mandate and capacity. Parliamentarians should evaluate legal frameworks and adopt legal reforms to develop the criminal justice capacity and its mandate to be effectively active in international cooperation in the fight of terrorism. The main areas and mechanisms parliamentarians can support for enhanced international cooperation among judicial systems are discussed below.

Amendments to Criminal Procedural Law

The law of criminal procedure regulates the modes of apprehending, charging, and trying suspected offenders; the imposition of penalties on convicted offenders; and the methods of challenging the legality of conviction after judgment is entered.¹⁴⁴ These actions and regulations become more complex when they address terrorism threats and transnational crimes or offences. To ensure effective actions against terrorism on national and international levels, there is, customarily, a need to make specific amendments to procedural law. This allows judicial systems to facilitate international cooperation and to give law enforcement the ability to intercede rapidly to a specific threat within the framework of the protection of individual rights and the safeguarding of the rule of law. Universal instruments against terrorism created, in some instances, obligations for parties to adopt substantive criminal and procedural measures to counter various acts of terrorism, as well as administrative measures to combat the financing of terrorism.¹⁴⁵

Legal Frameworks for Extradition

Extradition¹⁴⁶, the act of transferring an accused from one state to another seeking the prosecution of the accused, is required by all counter-terrorism treaties to which their state is party. Under the requirement of dual criminality, extradition is possible only when the act is punishable under the law of both the requested and the requesting states. Parliamentarians could exert their legislative functions in connection with this issue through the ratification of international

¹⁴³ https://www.unodc.org/documents/terrorism/Publications/Training_Curriculum_Module3/Module3_EN.pdf.

¹⁴⁴ <https://www.britannica.com/topic/procedural-law/Criminal-procedure>.

¹⁴⁵ For example, the Convention on Offences and Certain Other Acts Committed On Board Aircraft requires contracting states to take custody of offenders and to return control of the aircraft to the lawful commander; Similarly, the Convention for the Suppression of Acts of Nuclear Terrorism stipulates that offenders shall be either extradited or prosecuted and encourages states to cooperate in preventing terrorist attacks by sharing information and assisting each other in connection with criminal investigations and extradition proceedings. See full table in p.13-14-15, Handbook on Criminal Justice Responses to Terrorism, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime. https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf.

¹⁴⁶ For an elaborated definition of extradition: extradition is the procedure whereby a sovereign state, referred to as the requested state, agrees to hand over an individual to another sovereign state, referred to as the requesting state, for prosecution by it or, if that person has already been tried and convicted, for enforcement of the sentence. Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments, United Nations Office on Drugs and Crime. https://www.unodc.org/documents/terrorism/Publications/Guide_Legislative_Incorporation_Implementation/English.pdf.

law instruments on issues, such as mutual legal assistance, extradition, signing a bilateral agreement with another country or adopting specific extradition acts or laws (such as in Zambia, Vanuatu, United Kingdom, Uganda, Thailand, Sudan and South Africa); other countries define their position towards these issues in their constitution (Slovenia, Yemen, Russia, Portugal, Moldova) or detail the procedure in their criminal law or criminal procedural law (France, Morocco, Italy, Guinea, and Ethiopia)¹⁴⁷. At the regional level, there are also a multitude of extradition agreements such as the European Convention on Extradition of the Council of Europe of 1957 and the Arab Convention on Extradition of 1953.

In any case, the criminalisation of defined terrorist acts and their incorporation into national criminal law is a central element of the relevant universal legal instruments against terrorism, as well as extradition provisions. The model law on extradition developed by United Nations Drugs Office and Crimes UNDOC is a useful model to support the development of national legislation.¹⁴⁸ The main challenge in extradition is when a State does not have the assurance that the accused will have the right to a fair trial and due process. For this purpose, the International Convention for the Suppression of the Financing of Terrorism provides a good example where Article 15 expressly permits states to refuse extradition or mutual legal assistance, if there are reasonable grounds that the requesting State is acting for the purpose of prosecuting or punishing a person on prohibited grounds of discrimination¹⁴⁹.

Box 26: Council of Europe Guidelines on Human Rights and the Fight Against Terrorism

'...the extradition of a person to a country where he/she risks being sentenced to the death penalty or risks being subjected to torture or inhuman or degrading treatment may not be granted.'

'States may never [...] derogate from the right to life as guaranteed by these international instruments, from the prohibition against torture or inhuman or degrading treatment or punishment, from the principle of legality of sentences and of measures, nor from the ban on the retrospective effect of criminal law.'

Source: Human Rights and the Fight Against Terrorism, Council of Europe Guidelines, 2005.¹⁵⁰

Legal Frameworks for Mutual Legal Assistance

Developing stronger bilateral and multilateral agreements and treaties on mutual legal assistance, a method of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences, is key in particular in terms of investigation and prosecution of international terrorist offences pursuant to United Nations Security Council Resolution 1373 (2001)¹⁵¹ that obliges states to offer each other such assistance. National law framework that enable mutual legal assistance should be put in place. To facilitate these efforts, the General Assembly adopted General Assembly Resolution A/RES/45/117 – A Model Treaty on Mutual Assistance in Criminal Matters. Compatibility between international requirements for mutual legal assistance and the legal framework to allow or support lawful and effective exchanges of data on an international basis is key. This would include, minimising the grounds upon which assistance may be refused; reducing limitations on the use of evidence in response to a request for mutual assistance; ensuring that national legal framework does not provide fortuitous opportunities for third parties to unduly delay cooperation or completely block the execution of a request for assistance on technical grounds.¹⁵² For example, the case of the requirement under Article 12, paragraph 2, of the Financing of Terrorism Convention 1999, whereby mutual legal assistance may not be refused on the ground of bank secrecy and national law in that matter.

¹⁴⁷ Laws on Extradition of Citizens, U.S. Library of Congress, 2013. <http://www.loc.gov/law/help/extradition-of-citizens/chart.php/extradition-of-citizens-chart.pdf>.

¹⁴⁸ United Nations Commission on Crime Prevention and Criminal Justice, Draft Model Law on Extradition, E/CN.15/2004/CRP.10 May 10, 2004.

¹⁴⁹ <http://english.dipublico.org/254/international-convention-for-the-protection-of-all-persons-from-enforced-disappearance/>.

¹⁵⁰ http://www.echr.coe.int/NR/rdonlyres/176C046F-C0E6-423C-A039-F66D90CC6031/0/LignesDirectrices_EN.pdf.

¹⁵¹ The United States Security Council decided that all states should 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. That provision is binding for all states, including states that have not ratified all or some of the universal counter-terrorism instruments. United Nations Security Council Resolution S/RES/1373 (2001), 28 September 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹⁵² https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf.

Legal Frameworks to Enhance Wider Law Enforcement

International law enforcement cooperation can be enhanced through the development of more effective systems of information sharing at the regional and international levels as required by international treaties or multilateral agreements. These would include:

1. Facilitating the exchange of data base and analysis of information and the protection of sensitive information received through such exchanges.
2. Establishing an effective capacity to investigate and prosecute transnational crimes of all sorts through trends such as joint investigative teams or law enforcement liaison officers.
3. Enhancing trust among law enforcement agencies as well as the difference between legal frameworks and practices.

Legal Frameworks for International Cooperation in the Protection of Victims and Witnesses

Witness protection is an indispensable tool in the fight against organised crime and terrorism. Witness testimony is crucial to the proper functioning of the criminal justice system in any state upholding the rule of law. It is essential for the effective investigation and prosecution of organised crime and terrorism, as it contributes to the dismantling of powerful criminal organisational structures, including transnational ones.¹⁵³ Numerous international declarations reaffirm the duty of states to provide a remedy for victims of human rights abuses, violations of international humanitarian law and or refugee law and those who are harmed who are likely to be harmed because of their collaboration with the criminal justice system.

A number of procedural measures can be considered in order to better protect victims, witnesses and informants whose assistance is essential to the prevention, investigation and prosecution of terrorist crimes, including witness protection programs to provide security to at-risk witnesses.¹⁵⁴ The protection should also be extended to undercover law enforcement agents, juries, investigators, prosecutors, defence counsel/attorneys, and judges managing terrorism cases to ensure their ability to participate in law enforcement investigations and/or judicial proceedings without fear of intimidation or reprisal to maintain the rule of law.¹⁵⁵ Developing the capacity of authorities to cooperate at the international level in the protection of victims, their compensation for the harm they suffer, and their safe repatriation when necessary is essential. The ability of countries to exchange protected witnesses in times of increased threat or to relocate them under a new identity in another country are important means of enhancing the capacity of national witness protection programmes.¹⁵⁶ A comprehensive articulation of this duty is found in the United Nations General Assembly Declaration of Basic Principles on Justice for Victims.¹⁵⁷ The Declaration provides guidance on measures that should be taken at the national, regional and international levels to improve access to justice and fair treatment, restitution, compensation, protection and assistance for victims of crimes and abuse of power. Some regional instruments have been adopted which specifically seek to promote, among its member states, for victims and witnesses' protection standards in terrorism cases. These include, but are not limited to, the Council of Europe Guidelines on the Protection of Victims of Terrorist Acts (2005)¹⁵⁸ and the European Convention on the Compensation of Victims of Violent Crimes¹⁵⁹.

¹⁵³ Committee on Legal Affairs and Human Rights, Witness Protection as an Indispensable Tool in the Fight Against Organised Crime and Terrorism in Europe, Draft Resolution, Parliamentary Assembly, <http://website-pace.net/documents/19838/166208/20141030-WitnessProtection-EN.pdf/ced4664d-1ea6-4200-9af5-1ebcb77b3981>.

¹⁵⁴ http://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good_Practices_for_the_Protection_of_Witnesses_in_Criminal_Proceedings_Involving_Organized_Crime.pdf.

¹⁵⁵ *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*, Global Counterterrorism Forum (GCTF), 2012., p. 3. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rabat-Memorandum-ENG.pdf>.

¹⁵⁶ *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*, Global Counterterrorism Forum (GCTF), 2012. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rabat-Memorandum-ENG.pdf>.

¹⁵⁷ General Assembly Resolution 30/3452, 9 December 1975, Annex. <https://daccess-ods.un.org/TMP/9789828.0620575.html>.

¹⁵⁸ Council of Europe Guidelines on the Protection of Victims of Terrorist Acts, adopted by the Committee of Ministers on 2 March 2005. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dabe5.

¹⁵⁹ European Convention on the Compensation of Victims of Violent Crimes, Treaty No. 116, adopted on 24 November 1983, entered into force 1 February 1988. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680079751>.

Box 27: Useful Links and Resources

- Legislative Guide to the Universal Legal Regime against Terrorism, UNODC (available at www.unodc.org/documents/terrorism/LegislativeGuide2008.pdf)
- Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (available at www.unodc.org/pdf/terrorism/TATs/en/2LIGen.pdf)
- Manual for International Legal Cooperation against Terrorism, UNODC (available at https://www.unodc.org/documents/terrorism/Publications/Manual_Int_Coop_Criminal_Matters/English.pdf)
- Preventing Terrorist Acts: A Criminal Justice Strategy Integrating Rule of Law Standards in Implementation of United Nations Anti-Terrorism Instruments (available at www.unodc.org/pdf/terrorism/TATs/en/3IRoLen.pdf)
- Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (available at www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html)
- Model Legislative Provisions against Terrorism (available at www.thecommonwealth.org/law/model.html)
- Model Law on Extradition (prepared jointly with the Treaty and Legal Assistance Branch of the United Nations Office on Drugs and Crime) (available at www.unodc.org/pdf/model_law_extradition.pdf)
- Mutual Legal Assistance Request Writer Tool (prepared by the Treaty and Legal Assistance Branch of the United Nations Office on Drugs and Crime) (available at www.unodc.org/mla)
- Criminal Justice Assessment Toolkit (available at www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-JusticeToolkit.html)
- Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (available at http://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good_Practices_for_the_Protection_of_Witnesses_in_Criminal_Proceedings_Involving_Organized_Crime.pdf)
- 2017 Operational Guidelines on the Preparation and Implementation of EU-Financed Actions Specific to Countering Terrorism and Violent Extremism in Third Countries available at https://ec.europa.eu/europeaid/sites/devco/files/eu_ct_cve_guidelines.pdf

2.2.2 The Role of Parliamentarians in Enhancing Counter-Terrorism Judicial Systems based on the Rule of Law

The role of an independent judiciary in implementing and overseeing the application of counter-terrorism laws is essential as well as in ensuring consistency with international human rights obligations.

The cooperation between parliamentarians and the judiciary in the response to terrorism is key.

The judiciary has a role in laying down the law or providing advice on laws. They can join the parliament in exercising oversight over policy-making and implementation by the executive branch and ensuring adequate checks and balances.

On the other hand, parliamentarians have a role in reviewing the judicial system to comply with key trends and needs to respond quickly and effectively. They are also well positioned to meet the requirements for reinforced criminal justice system (judiciary, police, national intelligence) in the fight against terrorism. In this context, a number of countries follow different options, such as establishing specialised chambers within the ordinary courts or special courts to deal with terrorism-related offences, while others establish military tribunals, emergency courts, etc.

The United Nations High Commissioner has observed that an important way of preserving the right to a fair trial is to retain '*effective judicial control over qualifications by the executive branch that certain information may not be disclosed in order to protect national security*'¹⁶⁰. However, there are risks that counter-terrorism measures and laws unduly fetter the discretion of judges to protect the features of a fair trial, including the right to know what you are alleged to have done.¹⁶¹ It is important when parliamentarians initiate legislative changes to sharpen the instruments of judiciary professionals to strengthen the rule of law compliant justice systems and support the existence of an independent¹⁶², competent, impartial¹⁶³, and efficient criminal justice system that is based on the rule of law. Key structures are essential in this perspective:

- Protecting the judicial system and securing the fundamental principles of a fair trial in the context of countering terrorism, including built in safeguards.
- Encouraging suitable administration of justice that sets the norms that are applicable in all trials, whether of alleged terrorists or otherwise.
- Enhancing judicial scrutiny over the new executive decision-making powers especially when the executive gains new powers to operate outside the framework of the criminal justice system.
- Empowering the role of prosecutors, judges and other criminal justice professionals such as law enforcement officials in safeguarding the prohibition on torture, inhuman and degrading treatment.
- Protecting children's rights in the justice system and the essential role that must be played by judges, prosecutors and lawyers in upholding children's human rights and applying international human rights norms, standards and principles at the domestic level.
- Limiting the use of military or special courts to be the exception and taking all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in Article 14 of the International Covenant on Civil and Political Rights¹⁶⁴.

¹⁶⁰ United Nations General Assembly, Protecting Human Rights and Fundamental Freedoms while Countering Terrorism: Report of the Secretary General, 24 August 2007, A/62/150, 11.

¹⁶¹ Hon John Von Doussa QC, Incorporating Human Rights Principles into National Security Measures, International Conference on Terrorism, Human Security and Development: Human Rights Perspectives, City University of Hong Kong, 16-17 October 2007. <https://www.humanrights.gov.au/news/speeches/incorporating-human-rights-principles-national-security-measures>.

¹⁶² Independence requires that courts or tribunals trying criminal cases be structurally and institutionally independent of the executive, which requires there to be safeguards in place to protect this independence. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. See: International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners Guide. International Commission of Jurists, Practitioners Guide Series N. 1, Geneva, 2003, p.2. <http://www.mafhoum.com/press7/230S24.pdf>.

¹⁶³ There are a number of requirements imposed by the idea of impartiality. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them. Impartiality requires that any conviction be based solely on the evidence before the court and the facts it finds proven. See: International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners Guide. International Commission of Jurists, Practitioners Guide Series N. 1, Geneva, 2003, p.3. <http://www.mafhoum.com/press7/230S24.pdf>.

¹⁶⁴ While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The United Nations Working Group on Arbitrary Detention has laid down clear rules on military tribunals, when it considered that 'if some form of military justice is to continue to exist, it should observe four rules:

- It should be incompetent to try civilians;
- It should be incompetent to try military personnel if the victims include civilians;
- It should be incompetent to try civilians and military personnel in the event of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime;
- It should be prohibited from imposing the death penalty under any circumstances.'

The Committee of the International Covenant on Civil and Political Rights also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials. Moreover, the Special Rapporteur on the Independence of Judges and Lawyers confirms that in regard to the use of military tribunals to try civilians, international law is developing a consensus as to the need to restrict drastically, or even prohibit, that practice. See also: International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners Guide. International Commission of Jurists, Practitioners Guide Series N. 1, Geneva, 2003, p.11. <http://www.mafhoum.com/press7/230S24.pdf>.



CHAPTER 3:

The Role of Parliamentarians in Overseeing the Security and Intelligence Services' Work in Counter-Terrorism

Box 28: Excerpts from Valletta Recommendations 8, 9, and 10

Overseeing law enforcement and intelligence services to secure citizens' rights; balancing effective oversight, operational security, and the benefits of public disclosure.

- Parliaments should establish the legal framework that sets the powers and defines the limits of law enforcement and intelligence agencies. Parliamentary oversight committees need selection mechanisms to bear the responsibility of this unique role. Parliamentarians should further proactively ensure that the oversight mechanisms are timely and adapted to evolving circumstances.
- Parliamentarians should reach a protocol with other parts of the government to ensure that sufficient levels of information are disclosed while maintaining the needed level of secrecy for the government to lawfully exercise its functions with regard to CT objectives.
- Legislators need to define the overall legal framework for state information classification. A specialised parliamentary committee can assess the level of details to be disclosed to the public.
- Information should remain classified only so long as it serves a legitimate need of state security or to protect sources and methods and the confidentiality of ongoing investigations; classified materials should be reviewed regularly to determine whether classification is still required.

Source: Valletta Recommendations Relating to Contributions by Parliamentarians In Developing an Effective Response to Terrorism, Global Counterterrorism Forum (GCTF), 2016.¹⁶⁵

The role of security and intelligence services in counter-terrorism efforts is substantial with the aim to protect national security and to respond to the evolving threats of terrorism.

The security and intelligence services¹⁶⁶ main purpose is to collect, analyse and disseminate information to detect threats to national security and interests, including terrorism. Security and intelligence services aim to assist policy-makers and other public entities in taking measures to protect national security. For this purpose, usually these agencies have 'extended powers'¹⁶⁷ that include the power to intercept communications, conduct covert surveillance and the use of secret informants. These powers need to be used in a way that does not violate human rights.

The intelligence services are organised in different agencies based on their mandate. Most intelligence services have their own structure and organisation, independent of the police and other law enforcement authorities.¹⁶⁸

¹⁶⁵ <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Valletta-Recommendations-ENG.pdf>.

¹⁶⁶ 'Intelligence services' are agencies focusing on external threats (they have a foreign mandate), while 'security services' are agencies focusing on domestic threats, with a domestic mandate. Usually, the distinction between security and intelligence services rests more in the type of work they do, than on the typology (or origin) of threat they look at. In fact, there are frequent overlaps in this field. In this sense, one could argue that security services usually include law-enforcement and other specialized agencies dealing with security issues in a more operational way, while intelligence agencies deal with data gathering and processing to better inform counter-terrorism activities and policies. For the purpose of this handbook we will use 'intelligence services' for both. This approach follows that taken by the EU and the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. See: Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, Mapping Member States' Legal Frameworks, Volume I: Member States' Legal Frameworks, Study by the EU Agency for Fundamental Rights (FRA), p.13. <http://fra.europa.eu/en/publication/2015/surveillance-intelligence-services>.

¹⁶⁷ Parliamentary Oversight of Security and Intelligence Agencies in the European Union, Directorate General of Internal Policies, Policy Department C: Citizens Rights and Constitutional Affairs, European Parliament, 2011, <http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>.

¹⁶⁸ 'Internal security services should not be authorised to carry out law enforcement tasks such as criminal investigations, arrests, or detention. Due to the high risk of abuse of these powers, and to avoid duplication of traditional police activities, such powers should be exclusive to other law enforcement agencies..' Noted by the Parliamentary Assembly of the Council of Europe (PACE), Report on the Control of Internal Security Services in Council of Europe Member States, 1999.

'In a democracy, intelligence services should strive to be effective, politically neutral (non-partisan), adhere to a professional ethic, operate within their legal mandates, and in accordance with the constitutional-legal norms and democratic practices of the state.'

Source: Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices. Inter-Parliamentary Union (IPU)-Geneva Centre for the Democratic Control of Armed Forces (DCAF) Handbook, 2003, p.63.

The size and powers of these agencies have increased around the world significantly since the attacks of September 11, 2001, in the United States and the increased threat of terrorism. Intelligence agencies cooperate with other national security bodies that are responsible for investigations, especially regarding the financing of terrorism.

In this context, parliamentarians have three critical roles in terms of intelligence services¹⁶⁹:

1. To debate and adopt legislation

The first role that parliamentarians play regarding these bodies is debating and adopting intelligence and security legislation that regulates the roles and responsibilities of these agencies as well as their relationships with other stakeholders. Some parliaments pass more detailed legislation than others. Parliamentary committees, and specialised ones where they exist, establish the legal frameworks that sets the scope of power and defines the limitations on law enforcement and intelligence agencies. It is recommended that legal frameworks include provisions on oversight of security and intelligence services as well as clear terms of access to information.

2. To approve and oversee the expenditure of public funds by security and intelligence agencies

Parliament is the primary source of control of public finance. Parliamentarians have the responsibility to scrutinise and approve the release of public funds to cover the cost of an intelligence service's activities.

In terms of the oversight of intelligence agencies' funds, the following challenges exist:

- Lack of detailed information on the budget of intelligence agencies and how it is spent, subsequently.
- Committees responsible for this work differs from one parliament to another. Parliamentarians' power vis-à-vis intelligence agencies depends on the practice of financial oversight of each parliament, whether they follow the Napoleonic or Westminster-based models, and the respective Committee systems in each of the two parliamentary traditions. Therefore, it is important to enhance the emphasis on the scrutiny of the budget bill and the appropriation of funds for an agency (ex-ante oversight) and the scrutiny of how the budget is spent (ex-post oversight).
- Poor links between the oversight of intelligence agencies' finances and other areas of their work.

It is crucial for parliamentarians to take a holistic approach to the oversight of intelligence agencies that combines strong ex-ante and ex-post control. The 'power of the purse' is a crucial tool for requesting a change in the policies, procedures or activities of intelligence agencies.

Parliaments could adopt an effective use of its budgetary oversight powers in terms of intelligence agencies that provides the level of information needed to review its management of the funds to ensure a balance between the demands of secrecy and the need for scrutiny. The German model offers a beneficial example in this regard.

¹⁶⁹ Taking into account the sovereignty of the State and the requirements related to public order.

Box 29: Confidential Committee of the Budget Committee

The German Bundestag Example

The Bundestag established the Confidential Committee of the Budget Committee (Confidential Committee), which is a body comprising members of the Bundestag Budget Committee to which the budgets of the intelligence services must be submitted for approval.

The Confidential Committee's main task is to decide, in the course of the annual budgetary procedure, on the operating budgets of the three federal intelligence services and to check during the year how the funds granted are being spent. The Committee also acts on behalf of Public Accounts Committee as far as scrutiny of the execution of the budget.

The members of this committee are elected by the Bundestag for the duration of an electoral term and are legally bound to secrecy.

The committee deliberates budgets behind closed doors and communicates the final figures it has approved for the intelligence services' budgets to the Budget Committee. The latter accepts the figures without debate, incorporating them into its recommendation for a decision on the federal budget to the House, which then adopts them together with the other parts of the budget.

There is no plenary debate on the budgets for the intelligence services.¹⁷⁰ The Confidential Committee can require the surrender of files, interview staff of the intelligence services, enter their official premises at any time and, in individual cases, commission experts to conduct investigations.

In other cases, parliaments delegate the responsibility of the finance of intelligence agencies to the relevant intelligence committees, such as the case in Italy where COPASIR¹⁷¹ exercises an ex-post review of the financial management of the intelligence agencies.

Similarly, the New Zealand Intelligence and Security Parliamentary Committee scrutinises intelligence agencies' policies, administration and expenditures, pursuant to the Intelligence and Security Act of 2017.

The French parliamentary oversight body – the Parliamentary Intelligence Delegation (Delegation Parlementaire au Renseignement, DPR) oversees the finances of the intelligence services through an annual report prepared by the National Intelligence and Fight Against Terrorism Coordinator and through an annual report prepared by the Audit Commission on Special Funds. The DPR has had its powers widened relatively recently (created in 2007, strengthened in December 2013), though it still faces certain restrictions. It examines and assesses governmental policy in the area of intelligence. It does not oversee the services directly, and may conduct hearings and request reports, and can make recommendations to the President of the Republic and the Prime Minister.¹⁷²

3. To hold intelligence agencies and government to account for its actions or inaction.

In general, the oversight of the security and intelligence agencies has long been a matter of concern for parliaments. The accountability of security and intelligence services is central, particularly to oversee efforts involved in implementing counter-terrorism policies.

Most commonly the security and intelligence services around the world work under the purview of the ministries of interior. However, the heads of these services often report directly to the prime minister.

¹⁷⁰ Parliamentary Oversight of Security and Intelligence Agencies in the European Union, Directorate General of Internal Policies, Policy Department C: Citizens Rights and Constitutional Affairs, European Parliament, 2011, p. 225 – 226. <http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>.

¹⁷¹ The Parliamentary Committee for the Intelligence and Security Services and for State Secret Control (COPASIR), however, does not have any a priori control on the resources assigned the intelligence apparatus, which is provided by the yearly budgetary law.

¹⁷² Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU Volume II: Field Perspectives and Legal Update, European Union Agency for Fundamental rights, 2017. P. 64. file:///C:/Users/dina/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/fra-2017-surveillance-intelligence-services-vol-2_en%20(1).pdf. See also: Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, Volume I: Member States' Legal Frameworks, p. 60. file:///C:/Users/dina/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/fra-2015-surveillance-intelligence-services-vol-1_en%20(1).pdf.

As is the case with any other public sector agencies, the activities of the security and intelligence services should be open to both external and internal accountability. Internal accountability exists within any organisation and ranges from formal management and reporting structures to the relationship between a staff member and supervisor.

External accountability refers to the obligations for accountability imposed by external forces, such as legislation, parliament, ministers, superior agencies, investigative bodies, the courts, the media, and the public¹⁷³. These are key requirements to sound democracy and advance a framework based on a system of checks and balances; to uphold the rule of law, and to ensure the effectiveness and efficiency of service activity.

The form of oversight of security and intelligence services is normally outlined by the State's legal traditions, political system and historical factors. Most states have a range of parliamentary and specialised oversight bodies that are responsible for scrutinising various aspects of the work of intelligence agencies.

These bodies can be divided into three main categories¹⁷⁴:

1. general parliamentary committees;
2. specialised parliamentary oversight committees; and
3. specialised non-parliamentary oversight bodies¹⁷⁵.

This chapter focuses on the modalities of parliamentary oversight over intelligence services and the key limitations to an effective parliamentary oversight.

3.1 The Role of Parliamentary Committees in Overseeing Intelligence Agencies

The mandate of parliamentarians in overseeing the work of intelligence agencies differs from one system to another. Commonly, parliamentarians seek to examine the effectiveness and efficiency of these agencies, as well as the compliance of agencies' efforts in safeguarding human rights and rule of law.

Parliamentarians apply parliamentary control over the intelligence services through traditional oversight mechanisms as well as through specialised mechanisms and ad hoc-committees.

Within the parliament structure, many committees can examine and oversee aspects of intelligence agencies' work. These include committees responsible of interior affairs, security and defence, justice, human rights, as well as finance committees and public accounts committees responsible for overseeing the finances of intelligence agencies.

Parliaments can also establish specialised permanent committees or ad-hoc committees with a clear mandate to examine the work of intelligence agencies. Many of the latter's have been established by parliaments as a response to increased threats levels, such as terrorism and organised crime. Such committees have also been set up to respond to cases where intelligence agencies were found to have exceeded their legal mandates and powers.¹⁷⁶

¹⁷³ Government Accountability and Parliamentary Committees, Unit 6, <http://siteresources.worldbank.org/PSGLP/Resources/CommitteesUnit6.pdf>. For an overview of the role played by these different actors see, inter alia: Venice Commission Report 2007.

¹⁷⁴ Parliamentary Oversight of Security and Intelligence Agencies in the European Union, Directorate General of Internal Policies, Policy Department C: Citizens Rights and Constitutional Affairs, European Parliament, 2011, <http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>.

¹⁷⁵ These may be created in addition to some form of parliamentary oversight committee (e.g. in The Netherlands) or in the absence of any specific parliamentary committee for the oversight of intelligence agencies (e.g. Canada). It should be noted that there are examples of 'hybrid' bodies which combine features of parliamentary and non-parliamentary oversight committees. These bodies are usually committees (such as the Belgian Standing Intelligence Agencies Review Committee – Committee I) or individual commissioners supported by a staff (e.g. the United Kingdom's Intelligence and Interception of Communications Commissioner). Specialised non-parliamentary oversight bodies are permanent bodies, established through legislation, which conduct oversight on an ongoing and even full-time basis. These bodies are generally organisationally and operationally independent from parliament and the political executive. Another existing approach is the establishment of inspectors general (IGs) through legislation. Parliamentary Oversight of Security and Intelligence Agencies in the European Union, Directorate-General of Internal Policies, Policy Department C: Citizens Rights and Constitutional Affairs, European Parliament, 2011, p.90. <http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>.

¹⁷⁶ Peter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11th*, Geneva, January 2003, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper No 103, p. 1. https://warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/gill_103.pdf.

In addition, parliaments could choose to establish specialised bodies with a specific mandate to oversee intelligence agencies. Few select parliamentary committees have been granted extensive powers that go beyond the more traditional role of parliament as an overseer. Among its other powers, for instance, Hungary's parliamentary committee may receive complaints on illegal activity of the intelligence services.¹⁷⁷

Members of relevant parliamentary committees examining issues related to intelligence agencies deal with complex and technical issues. There is a need to ensure that parliamentarians are provided with the necessary technical knowledge of intelligence matters, as well as with access to expert staff. Moreover, parliamentary intelligence oversight committees should be guaranteed access to information. Information gathered by intelligence services is sensitive and require safeguards to guarantee that it will be dealt with accordingly. The effectiveness of the parliamentary oversight role over intelligence agencies depends on parliamentarians' ability to access reliable and timely information and documents. This is necessary to make informed decisions and carry out their role.

The ability of parliamentarians to access relevant information related to intelligence agencies varies between countries. While some parliaments have established mechanisms for dealing with classified information, others are still determining how to deal with and protect the secrecy of information and its levels.

The handling of classified information is usually regulated by legislation. Usually, there are limitations placed on parliamentary committees' access to classified information, which are official information that requires protection in the interest of national security. Access to classified information by oversight bodies is inextricably linked to their mandate.

The balance between sharing information with parliamentarians for effective oversight and encouraging transparency, while protecting its confidentiality, is crucial. It is important that parliamentarians have access to the following:

- *Information about levels of security threats:* The nature, scope and level of the terrorist threat are important information to be shared with parliamentarians. This ensures that elected members of parliament are aware of the security situation and kept up-to-date on any change.
- *Information about how classified information are levelled*¹⁷⁸: Parliamentarians should have visibility of the structures within parliament that have access to different levels of classified information.
- *Legal foundation for access to classified information by oversight body:* Normally, intelligence services legislation provides a description of what could be shared with parliamentarians and establishes restrictions on reports and information.

¹⁷⁷ Peter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11th*, Geneva, January 2003, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper No 103, p. 35. https://warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/gill_103.pdf.

¹⁷⁸ Systems of levels of classification vary from country to another. Most have levels corresponding to the following: top secret, secret, confidential and official.

Box 30: EU Parliamentary Committees with Access to Classified Information

There is a big number of national parliaments in the European Union (eight) in which any parliamentarian can, in principle, have access to classified information and including information classified as 'Top Secret.' In a slightly higher number of parliaments (ten) all parliamentarians may access information classified 'Secret' (or lower); and in twelve parliaments all parliamentarians may access information classified as 'Restricted'¹⁷⁹.

At the EU parliamentary level, while the roles of these committees vary, the powers that committees have to examine matters within their mandate are broadly equivalent. Ex-post oversight and ex-ante oversight of intelligence by the relevant oversight body is recommended.

Specialised parliamentary committees are often granted far-reaching powers, which may include any or all in the following (non-exhaustive) list:

- the power to access classified information;
- the power to receive and review annual and other reports produced by the intelligence services;
- the power to summon executive and intelligence officials to testify under oath;
- the power to invite external experts and other members of the public to testify under oath;
- the power to meet periodically with the responsible ministers and/or the directors of the services;
- the power to conduct both regular and ad hoc inspections and to visit the premises of the intelligence services;
- the power to conduct hearings to obtain information from intelligence officials, independent experts, and another respondent;
- the power to receive and investigate complaints concerning intelligence service activities; and
- the power of referral, which authorises the oversight body to refer a finding of misconduct to an internal body (such as an inspector general) for disciplinary action.

Source: Hans Born and Aidan Wills (edit), *Overseeing Intelligence Services: A Toolkit*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2012, p. 12.

¹⁷⁹ However, these statistics need to be read with caution; it does not mean that all MPs can access any classified information at will. Conditions and caveats cited above normally apply to access to information by parliamentarians (see also, section 4.5.3.). Hans Born and Aidan Wills (edit), *Overseeing Intelligence Services: A Toolkit*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2012, p. 12. http://www.dcaf.ch/sites/default/files/publications/documents/Born_Wills_Intelligence_oversight_TK_EN_0.pdf.



3.2 The Role of Parliamentarians in Preventing Fundamental Rights Violations in the Context of Intelligence Activities

Parliamentarians should integrate in the legal frameworks related to intelligence agencies' activities safeguards for upholding fundamental rights. The risk of violation of human rights by intelligence services is a constant reason for concern. This can arise from practices such as extraordinary rendition, mass surveillance programmes, the operation of secret detention centres, and using torture to obtain information¹⁸⁰.

Given limited public accountability and the need for secrecy, it is of utmost importance that legislative, ministerial and judicial controls are sufficient to ensure that the security and intelligence sectors respect civil liberties and human rights.

The first element of oversight is to consider whether the activities of an intelligence service are lawful and conducted within the rule of law. The use of extended powers to collect intelligence should include rigorous complaints and investigation processes that promote high levels of public trust. Parliamentary committees responsible for overseeing intelligence agencies are usually charged with:

- overseeing the use of covert and intrusive methods by intelligence agencies;
- monitoring the budget and use of funds by intelligence agencies;
- scrutinising the legal framework regulating the work of intelligence agencies to ensure that it contains sufficient safeguards to protect human rights; and
- ensuring that the intelligence services comply with the relevant legal framework.¹⁸¹

¹⁸⁰ Edited by Hans Born and Aidan Wills, *Overseeing Intelligence Services A Toolkit*, 2012, p. 70. http://www.dcaf.ch/sites/default/files/publications/documents/Born_Wills_Intelligence_oversight_TK_EN_0.pdf, Geneva Centre for the Democratic Control of Armed Forces (DCAF).

¹⁸¹ Lauren Hutton, *Overseeing Information Collection*, in *Overseeing Intelligence Services: A Toolkit*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2012, Edited by Hans Born and Aidan Wills, 97. http://www.dcaf.ch/sites/default/files/publications/documents/Born_Wills_Intelligence_oversight_TK_EN_0.pdf.

The second element addresses challenges of effective communication and coordination between intelligence services and the judiciary, which could arise from the nature of the relationship between the intelligence services and the judicial system. In some countries, intelligence services are prohibited by law to interfere with courts and prosecutions and need to request authorisation to carry out an unlawful activity¹⁸².

Box 31: Case study – Parliamentary Oversight of Intelligence Agencies

The United Kingdom’s Intelligence and Security Committee’s Inquiry on Rendition and Detainee Mistreatment

The Intelligence and Security Committee of Parliament (ISC) was established in 1994 in order to scrutinise and oversee the work of the intelligence services of the United Kingdom. It has investigated the activities and policies of the Security Service (MI5), the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ).

In 2013, the Justice and Security Act increased the committee’s powers by expanding its oversight remit to include the wider intelligence and security activities of government. This has enabled the committee to scrutinise other parts of the United Kingdom intelligence apparatus including the Office for Security and Counter-Terrorism in the Home Office and Defence Intelligence at the Ministry of Defence.

The committee derives its powers from its access to highly classified material and intelligence agency personnel as well as its prerogative to determine its own work agenda.

In June 2018, the Committee published the results of its inquiry into the actions of United Kingdom’s intelligence services in the practice of rendition and the mistreatment of detainees. This resulted in two reports: *Detainee Mistreatment and Rendition: 2001-2010* and *Detainee Mistreatment and Rendition: Current Issues*. These reports followed a three year investigation examining to what extent Britain’s intelligence agencies were aware of the mistreatment of terrorism suspects. The Committee uncovered new evidence and concluded that the intelligence agencies colluded in the mistreatment – torture – of detainees and the practice of rendition. See the Committee’s key findings below.

The practice of rendition breaches international law in a number of ways as it involves the transfer of an individual to face detention and interrogation in locations where due process of law is unlikely to be respected. Article 3 of the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984* (UNCAT) prohibits the expulsion of a person to a state where he will be subject to torture. States also become culpable under the Convention if they are deemed complicit in assisting rendition.

Sources: How Democratically Accountable are the UK’s Security and Intelligence Services?, By Democratic Audit UK.¹⁸³

¹⁸² Some countries give this role to the judiciary, or the government such as the New Zealand, Intelligence and Security Act 2017. <http://www.legislation.govt.nz/act/public/2017/0010/latest/DLM6921054.html>.

¹⁸³ <http://eprints.lse.ac.uk/80810/1/democraticaudit.com-How%20democratically%20accountable%20are%20the%20UKs%20security%20and%20intelligence%20services.pdf>.



INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT



Committee's Inquiry on Rendition and Detainee Mistreatment, June 2018

Key findings:

- Direct involvement of UK intelligence personnel in detainee mistreatment administered by others and first-hand witnessing of detainee mistreatment.
- Hundreds of cases of UK personnel continuing to supply questions when they knew or suspected that detainees had been or were being mistreated.
- The 'outsourcing' of torture: UK intelligence services made, or offered to make, financial contribution to others to conduct rendition operations that ran the risk of torture or cruel, inhuman or degrading treatment of the detainees.
- Breaches of Article 3 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
- Estimates of the number of detained interviews in which UK personnel were involved between 2,000-3,000;
- UK agencies informed of the mistreatment of detainees which should have made clear that these were not isolated cases but part of a widespread and systematic abuse of detainees.
- UK agencies supported the US rendition programme by endorsing plans, providing intelligence and enabling renditions. They were active in their support for the programme. They also condoned renditions through their conspicuous failure to take action to prevent renditions – in particular of British nationals and residents.
- Legal advice across government departments and intelligence agencies regarding rendition was confused and poorly disseminated from the outset.
- No clear understanding in HMG as to what was meant by the term 'rendition', and no clear policy (or even recognition of the need for one).

Amongst others, the two key rights at risk by intelligence agencies' activities are the right to privacy and to data protection. The right to privacy is enshrined, at the international level, in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights¹⁸⁴.

However, these rights are not absolute. It is permissible that the use of investigative methods could limit human rights, including the right to privacy. There is a clear tension between the right to privacy and, on the other hand, the right to security. However, this should be defined clearly in the legal framework within which the intelligence services operate and it should be based on a narrow interpretation of the phrase 'national intelligence and security' and the principle of proportionality vis-à-vis to the objective sought. Moreover, the legal framework should create clear authorisation procedures regulating the use of covert and intrusive methods of intelligence collection. Oversight bodies can ensure that intelligence services use personal data in compliance with the governing law.

¹⁸⁴ At the EU level, the rights to privacy and data protection are enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the Charter). The right to data protection is also laid down in Article 16 of the Treaty on the Functioning of the European Union (TFEU), and in Article 39 of the Treaty on the European Union (TEU). See: Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Therefore, we observe a constant tension between the right to security and, on the other hand, the right to security. This tension is increased by the international cooperation that leads to data sharing and that allows governments to bypass constitutional standards on privacy. Agency for Fundamental Rights (FRA), p.10. <http://fra.europa.eu/en/publication/2015/surveillance-intelligence-services>.

A trend emerged lately, inspired by the need to develop and amend the existing rules, but also jurisprudence of international human rights, courts and bodies in order to create a binding international instrument on general right to data protection and to provide more particular rights to individuals, similar to Article 1 of the Council of Europe's Convention on Data Protection aimed *'to secure ... for every individual ... respect for his fundamental rights and freedoms, and in particular his right to privacy...'*.

Box 32: United Nations Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism

In 2010, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism presented a compilation of thirty-five elements of good practice concerning the legal basis, oversight and accountability, respect for human rights, and intelligence functions.

The list below only refers to good practices concerning national laws and parliamentarian's role in regulation of intelligence work and the oversight of its work and common.

- National security and its constituent values to be clearly defined in legislation adopted by parliament. (Practice 1)
- The mandates of intelligence services are narrowly and precisely defined in a publicly available law. Mandates are strictly limited to protecting legitimate national security interests as outlined in publicly available legislation or national security policies and identify the threats to national security that intelligence services are tasked to address. If terrorism is included among these threats, it is defined in narrow and precise terms. (Practice 2)
- National law prohibits intelligence services from engaging in any political activities or from acting to promote or protect the interests of any political, religious, linguistic, ethnic, social or economic group. (Practice 12)
- Constitutional, statutory and international criminal law applies to members of intelligence services as much as it does to any other public official. Any exceptions allowing intelligence officials to take actions that would normally violate national law are strictly limited and clearly prescribed by law. (Practice 15)
- National laws provide for criminal, civil or other sanctions against any member, or individual acting on behalf of an intelligence service, who violates or orders an action that would violate national law or international human rights law. (Practice 16)
- National law outlines the types of collection measures available to intelligence services; the permissible objectives of intelligence collection; the categories of persons and activities which may be subject to intelligence collection; the threshold of suspicion required to justify the use of collection measures; the limitations on the duration for which collection measures may be used; and the procedures for authorising, overseeing and reviewing the use of intelligence collection measures. (Practice 21)

...

...

- Publicly available law outlines the types of personal data that intelligence services may hold, and which criteria apply to the use, retention, deletion and disclosure of these data. Intelligence services are permitted to retain personal data that are strictly necessary for the purposes of fulfilling their mandate. (Practice 23)
- Intelligence services are not permitted to use powers of arrest and detention if they do not have a mandate to perform law enforcement functions. They are not given powers of arrest and detention if this duplicates powers held by law enforcement agencies that are mandated to address the same activities. (Practice 27)
- If intelligence services have powers of arrest and detention, they are based on publicly available law. Intelligence services are not permitted to deprive persons of their liberty simply for the purpose of intelligence collection. The use of any powers and arrest and detention by intelligence services is subject to the same degree of oversight as applies to their use by law enforcement authorities, including judicial review of the lawfulness of any deprivation of liberty. (Practice 28)
- Intelligence-sharing between intelligence agencies of the same State or with the authorities of a foreign State is based on national law that outlines clear parameters for intelligence exchange, including the conditions that must be met for information to be shared, the entities with which intelligence may be shared, and the safeguards that apply to exchanges of intelligence. (Practice 31)
- National law outlines the process for authorising both the agreements upon which intelligence-sharing is based and the ad hoc sharing of intelligence. (Practice 32)
- Intelligence services are explicitly prohibited from employing the assistance of foreign intelligence services in any way that results in the circumvention of national legal standards and institutional controls on their own activities. (Practice 35)

Source: United Nations Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies While Countering Terrorism, including on their Oversight, United Nations Document A/HRC/14/46, 17 May 2010.¹⁸⁵

¹⁸⁵ <https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.46.pdf>.



CHAPTER 4:

The Role of Parliamentarians in Preventing and Countering Violent Extremism: Addressing Conditions Leading to the Spread of Terrorism

States' counter-terrorism policies have evolved in recent years, highlighting an increasingly key issue related to addressing conditions leading to terrorism and violent extremism. The emergence of the term 'violent extremism', as a field of policy and practice, is closely related to the ambiguous and contentious nature of the term 'terrorism'. The concept of violent extremism is considered as broad and more expansive than terrorism, since it accommodates any kind of violence as long as its motivation is deemed extremist.¹⁸⁶

Over the past two decades, the international community has sought to address violent extremism primarily within the context of security-based counter-terrorism measures adopted to 'counter' violent extremism (CVE). Recently, it has been widely acknowledged, at the national, regional and international levels, that countering terrorism and violent extremism using force and judicial measures are no longer sufficient. Counter-terrorism efforts should include procedures that strengthens societal resistance and reduces the benefits for terrorists.

In United Nations Security Council Resolution 2178 (2014)¹⁸⁷, the Council drew an explicit link between violent extremism and terrorism, underscoring the importance of measures being in line with international norms. It also recognised the need for a plan of action to prevent violent extremism (PVE)¹⁸⁸. Several policies now combine the two measures, through commonly named P/CVE policies and initiatives. Many others name their policies 'CVE', but will often include some elements of prevention.

In January 2016, the United Nations Secretary-General presented a Plan of Action to Prevent Violent Extremism to the General Assembly.¹⁸⁹ Subsequently, the General Assembly adopted on 1 July 2016, Resolution A/RES/70/291 on the Fifth Review of Global Counter-Terrorism Strategy. The Resolution reinforced a global consensus on the need for a focus on prevention in the fight against terrorism and violent extremism.¹⁹⁰ The Plan of Action encouraged United Nations member states to '*consider developing a national plan of action to prevent violent extremism which sets national priorities for addressing the local drivers of violent extremism and complements national counter-terrorism strategies where they already exist.*' Regional and national initiatives followed this lead, and key resolutions in this regard were adopted by the European Union, African Union, Organisation for Security and Cooperation (OSCE)¹⁹¹, Arab League, North Atlantic Treaty Organization (NATO), and other entities.

At the national level, states' counter-terrorism strategies have started reflecting the PVE 'whole-of-society' approach and there has been a proliferation of CVE and P/CVE policies. Several states have completed their plans and commenced implementation; others remain in the design phase, while some countries have yet to begin. Action plans have been adopted either as part of wider counter-terrorism and CVE strategies or as a stand-alone strategy.

This chapter will address the role of parliamentarians in developing national P/CVE action plans and strategies and adopting a 'whole-of-society' approach to counter-terrorism, that promotes the development of counter-narratives and fosters inclusive and public understanding.

¹⁸⁶ Professor Peter R. Neumann, Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region, 28 September 2017, p. 15, <https://www.osce.org/chairmanship/346841?download=true>.

¹⁸⁷ United Nations Security Council Resolution 2178, S/RES/2178 (2014), 24 September 2014. <http://unscr.com/en/resolutions/doc/2178>.

¹⁸⁸ Plan of Action to Prevent Violent Extremism (A/70/674), Report of the Secretary-General, General Assembly, Seventieth Session Agenda Items 16 and 117: Culture of Peace, United Nations Global Counter-Terrorism Strategy, p.2. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674/.

¹⁸⁹ This Plan is a call for a comprehensive approach encompassing not only essential security-based counter-terrorism measures but also systematic preventive steps (PVE) to address the factors that make individuals join violent extremist groups. See: Plan of Action to Prevent Violent Extremism (A/70/674), Report of the Secretary-General, General Assembly, Seventieth Session Agenda Items 16 and 117: Culture of Peace, United Nations Global Counter-Terrorism Strategy, p.2. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674/.

¹⁹⁰ The Resolution addressed explicitly prevention and foresaw balanced implementation across all of the Global Strategy pillars: (a) tackling conditions conducive to terrorism; (b) preventing and combating terrorism; (c) building countries' capacity to combat terrorism and to strengthen the role of the United Nations system in that regard; and (d) ensuring respect for human rights for all and the rule of law while countering terrorism.

¹⁹¹ This has been recognised by multiple instruments such as: OSCE Consolidated Framework for the Fight Against Terrorism, Decision No. 1063, PC.DEC/1063, 7 December 2012. <https://www.osce.org/pc/98008?download=true>.

4.1 The Role of Parliamentarians in the Development of P/CVE Policies

Parliamentarians, as representatives of the people, are best placed to promote the ‘whole-of-society’ approach to counter-terrorism. Parliamentarians can contribute to each stage of the P/CVE policy-making cycle, which includes actions similar to those in other areas of public policy: assessment, policy development, implementation, and evaluation.

It is worth noting that the *assessment phase* in elaborating a P/CVE policy is crucial as it incorporates identifying the problem and understanding the factors that lead to political violence. The importance of considering the national specific context is, and requires a deep knowledge of both, the source of the problem and the responses required. These would include, as outlined by the United Nations Global Counter-Terrorism Strategy 2006:

- prolonged unresolved conflicts;
- dehumanisation of victims of terrorism;
- a lack of the rule of law and violations of human rights;
- ethnic, national and religious discrimination;
- political exclusion;
- socio-economic marginalisation; and
- a lack of good governance.

Box 33: Lessons Learned from the First Wave of P/CVE Policy Implementation¹⁹²

1. Know your audience.
2. Avoid stigmatising communities.
3. Send clear messages about what P/CVE is and is not.
4. Form real partnerships between government agencies and civil society and community groups.

At each of these stages, parliamentarians can ensure that P/CVE policies are implemented in an integrated and effective way and within agreed goals. These goals might include, for instance, strengthening societal resiliency against violent extremism.

Parliamentarians can play a crucial role to ensure that P/CVE policies:

- have the necessary legal frameworks in place;
- benefit from lessons learned and good practices;
- are derived from evidence-based scientific analyses;
- do not risk exacerbating the divisions and grievances on which extremism feeds; and
- avoid the identification of violent extremism with any religion, culture, ethnic group, nationality, or race.

Parliamentarian’s efforts on P/CVE complement their wider role in counter-terrorism plans or frameworks. From this perspective, parliamentarians can play a key role in ensuring that national P/CVE strategies are also in alignment with counter-terrorism policies.¹⁹³

¹⁹² Peter Romaniuk, Does CVE Work? Lessons Learned from the Global Effort to Counter Violent Extremism, Global Centre on Cooperative Security, September 2015, pp. 15-20. https://www.globalcenter.org/wp-content/uploads/2015/09/Does-CVE-Work_2015.pdf.

¹⁹³ For example, this may include relating CVE strategy development to NAPs on Women, Peace and Security (WPS) or good practices in the non-binding Global Counterterrorism Forum (GCTF) framework documents. See: Guidelines and good practices on Developing National P/CVE Strategies and Action Plans, September 2016, p. 4. See: <http://www.hedayahcenter.org/Admin/Content/File-1792016192156.pdf>.

Box 34: Guidelines and Good Practices for Developing National P/CVE Strategies and Action Plans

The Hedayah International Center of Excellence for Countering Violent Extremism (CVE)¹⁹⁴, recommends the following **guiding principles**:

- Establish an understanding of the drivers of violent extremism as an evidence base on which to build a strategic response.
- Draw on elements of international good practice in national P/CVE strategy and/or action plan development.
- Establish clear roles and responsibilities for different government ministries, departments, agencies and offices with respect to P/CVE national strategy development and implementation, including intra-government coordination and communications mechanisms.
- Clarify roles and responsibilities between central, regional and local governments and between government and non-government organisations, civil society organisations, communities and the private sector when it comes to P/CVE.
- Include mechanisms that allow different actors to hold each other accountable.
- Consider the potential for unintended consequences and assess the risk for approaches that could exacerbate violent extremism or vulnerability to violent extremist messaging.
- Identify constructive means of addressing grievances (real or perceived).
- Promote and foster ownership for non-governmental actors including civil society and the private sector to engage on P/CVE.
- Ensure new P/CVE policies and practices complement existing rule of law responses to violent extremism, with both parallel practices engaging on how they impact one another.

4.2 The Contributions of Parliamentarians to Strengthening the Inclusiveness of P/CVE Strategies

Parliamentarians can play a vital role in ascertaining that the P/CVE policies meets people's needs and addresses the evolving nature of the threat. For this purpose, the following efforts can be undertaken by parliamentarians:

- strengthening the counter-narrative against violent extremism and terrorist propaganda;
- addressing the eminent challenges of foreign terrorist fighters (FTF) and the homegrown terrorism phenomenon; and
- putting in place systems for the protection of vulnerable groups, including women, children and victims of terrorism.

4.2.1 Strengthening Counter-Narratives Against Violent Extremism and Terrorist Propaganda

Strategic communications have a level of impact in countering terrorists' narratives and propaganda. As part of their representative role and pursuant to P/CVE policies, parliamentarians are responsible for defending their constituencies and the wider voters' interests. As a result, parliamentarians are pivotal for societal resilience against radicalisation and the pursuance of counter-terrorism and P/CVE policies.¹⁹⁵ They can carry out engagement and outreach, through messaging and public campaigns.

¹⁹⁴ The Hedayah International Center of Excellence for Countering Violent Extremism or Hedayah Centre was established in response to the growing desire from members of the Global Counterterrorism Forum (GCTF) and the wider international community for the establishment of an independent, multilateral centre to counter violent extremism. See: Guidelines and Good Practices on Developing National P/CVE Strategies and Action Plans, September 2016, p. 4. <http://www.hedayahcenter.org/Admin/Content/File-1792016192156.pdf>.

¹⁹⁵ Enhancing the Role of Parliamentarians in Building Effective Counter-Terrorism Systems within a Rule of Law Framework, Key Note Address House of Representatives for IJ Director, 8 November 2016.

It is worth noting that initiatives addressing counter-terrorism narratives are carried out by a number of different actors on the supranational, international, regional, national and sub-national levels. The United Nations, the Global Counterterrorism Forum (GCTF), and the GCTF-inspired Hedayah Center, and other international and regional organisations assist states in building concrete plans of action in this field. The Comprehensive International Framework for Counter Terrorism Narratives, proposed by UN CTC, emphasises three core elements¹⁹⁶:

1. legal and law enforcement measures in accordance with obligations under international law, including international human rights law and relevant United Nations Security Council resolutions, and in furtherance of General Assembly resolutions;
2. public-private partnerships, including tech industries; and
3. the development of counter-narratives¹⁹⁷.

Parliamentarians contribute in underscoring states' obligations to deliver on these elements. As part of their oversight and legislative roles, parliamentarians promote effective implementation of the legal and law enforcement aspects of relevant United Nations Security Council resolutions, the General Assembly's Global Counter-Terrorism Strategy and subsequent General Assembly resolutions. Parliamentarians can play an active role in developing counter-narrative campaigns and establishing effective partnerships (public-private partnerships; or with the media and civil society organisations) with a view to developing a comprehensive approach to the threats of terrorism and violent extremism. Parliamentarians should work to assert the values of the rule of law within these policies.

4.2.1.1 Inclusive Communication with Civil Society Organisations, the Media and the Private Sector, including Tech Industries

The 'whole-of-society' approach to counter-terrorism could be delivered by adopting inclusive communication and outreach strategies at all levels. These strategies would promote engaging with key actors such as the media, civil society organisations, victims of terrorism, and private sector internet service providers who can support an inclusive policy that addresses cross-cutting issues such as gender, children and youth.¹⁹⁸

Public-Private Partnerships, including Tech Industries

The business community, among others, has a role in fostering an environment that is not leading to the incitement of terrorism.¹⁹⁹ Recent years have witnessed a rise of exploitation of the internet and all forms of technology by terrorist organisations for several purposes. These include the dissemination of propaganda material, fundraising, and recruitment.

In the past, there has also been a lack of precision in what the appropriate form of cooperation between private sector and states might be, especially when more than one government needs to be involved.²⁰⁰

The United Nations Global Counter-Terrorism Strategy adopted by the General Assembly in September 2006 encouraged the United Nations *'to consider reaching out to the private sector for contributions to capacity-building programs, in particular in the areas of port, maritime and civil aviation security.'*²⁰¹ The United Nations Security Council has long noted the importance of public-private partnerships in efforts to counter incitement to terrorism. In Resolution 2129 (2013), the Security

¹⁹⁶ Letter dated 26 April 2017 from the Chair of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council. See: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/375&referer=http://www.un.org/en/documents/index.html&Lang=E.

¹⁹⁷ Countering Terrorist Narratives, Study for the LIBE commission, Civil liberties, Justice and Home Affairs, Directorate-General for International Policies, November 2017.

¹⁹⁸ Eric Rosand, Emily Winterbotham, Michael Jones, and Franziska Praxl-Tabuchi, A Roadmap to Progress: The State of Global P/CVE Agenda, The Prevention Project and Royal United Services Institute (RUSI), September 2018, p.1. <https://organizingagainste.org/roadmap-progress-state-global-p-cve-agenda/>.

¹⁹⁹ As confirmed by United Nations Security Council Resolution 1624, S/RES/1624 (2005), 14 September 2005. <http://unscr.com/en/resolutions/1624>.

²⁰⁰ G8 Initiative for Public-Private Partnerships to Counter Terrorism: Private Sector Action Beyond 2006, Discussion Paper, East West Institute, November 2006, p.2. https://www.files.ethz.ch/isn/90482/2006-11-28_G8-Initiative-for-PPPs.pdf.

²⁰¹ Other international and regional initiatives exist, such as: the Global Forum for Partnerships between States and Businesses to Counter Terrorism, an antiterrorist partnership of states and the business community fostered by G8; the EU Internet Forum, created in 2015 by the European Commission, with the aim to facilitate dialogue between the Commission and tech companies to develop a safer web, both by disrupting terrorist content and by amplifying counter-narratives; as well as regional statements and decisions, for example the Organization for Security and Co-operation Ministerial Council Decision No 5/07 on Public-Private Partnership in Countering Terrorism, adopted on 30 November 200X and the Asian Pacific Economic Cooperation (APEC) highlighting at the Fourth Secure Trade in the APEC Region (STAR) Conference in February 2006 how crucial public private partnerships are in deterring terrorism.

Council noted the nexus between terrorism and information and communications technology (ICT), in particular the internet, and directed the Counter-Terrorism Committee Executive Directorate (CTED) to continue to address this issue in consultation with all stakeholders, including the private sector.

Key areas of terrorist threats include:

- energy infrastructure security;
- cyber security; and
- transport of people, goods, money and services.

The role of parliamentarians is crucial in delivering these commitments through legislation and procedures governing these sectors.²⁰²

In response, tech companies (a number of private actors, especially those in Silicon Valley) have engaged in strategic communications to counter terrorism on their platforms and announced the establishment of the Global Internet Forum to Counter Terrorism (GIFCT). The aim of GIFCT is to disrupt the terrorist exploitation of its services. The GIFTC is part of a wider initiative in partnership with United Nations CTED and the Swiss foundation ICT4Peace called Tech Against Terrorism²⁰³ to facilitate knowledge-sharing and multi-stakeholder engagement. Members of Tech Against Terrorism include the above four actors, and others, including Telefonica, Soundcloud, ASKfm, Snapchat, and Justpaste.²⁰⁴

GIFTC focuses on three main areas:

- providing technical solutions;
- commissioning research on counter-narrative efforts; and
- sharing of good practices within members of the GIFTC and aiding smaller companies in developing successful CT measures.

Tech companies have taken steps to prevent abuse of their platforms by terrorist actors, including developing self-regulation and committing to taking down terrorist content. The challenge is larger when terrorists exploit the smaller tech platforms that do not have the same resources as the larger platforms. Such work requires measures of accountability to ensure that tech companies are working within the overall counter-terrorism framework, as well as respecting human rights and the freedom of expression.

²⁰² G8 Initiative for Public-Private Partnerships to Counter Terrorism: Private Sector Action Beyond 2006, Discussion Paper East West Institute, November 2006, p.8, https://www.files.ethz.ch/isn/90482/2006-11-28_G8-Initiative-for-PPPs.pdf4.

²⁰³ Tech Against Terrorism is focused on improving ongoing knowledge sharing and facilitating improved dialogue. www.techagainstterrorism.org.

²⁰⁴ Countering Terrorist Narratives, Study for the LIBE Committee of the European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for International Policies of the Union, European Union, November 2017, p.18. [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU\(2017\)596829_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU(2017)596829_EN.pdf). See also Microsoft partners with Institute for Strategic Dialogue and NGOs to discourage online radicalization to violence, Microsoft, April 18, 2017. <https://blogs.microsoft.com/on-the-issues/2017/04/18/microsoft-partners-institute-strategic-dialogue-ngos-discourage-online-radicalization-violence/>.

Box 35: Code of Conduct on Countering Illegal Hate Speech and Addressing the Spread of Illegal Hate Speech Online in Europe

In May 2016, the European Commission and a number of the largest online players, including Facebook, Twitter, YouTube, and Microsoft – ‘the IT companies’ –, announced a new Code of Conduct on Countering Illegal Hate Speech (hereinafter Code of Conduct) to tackle the spread of illegal hate speech online in Europe²⁰⁵. Although hate speech and terrorism are topics that are often acted upon separately, both the commission and the IT companies deliberately and explicitly addressed the link between the two.

The Code of Conduct, aimed at guiding IT companies’ activities, as well as sharing good practices with other internet companies, platforms and social media operators, committing to establish clear and effective processes for reviewing illegal hate speech; and to review most valid notifications within 24 hours.²⁰⁶

The role of parliamentarians in this regard could be as follows:

1. Ensure that steps, including self-regulation, taken by tech companies are in line with the overall counter-terrorism policy.
2. Ensure oversight of tech company’s efforts to ensure they do not go beyond their mandate, through hearings, sub-regional meetings, and other oversight tools.
3. Ensure that traditional legal approaches adapt to the huge scale and fragmentation of the internet.
4. Ensure that companies are transparent about their actions on online extremism and that they publish data such as quarterly statistics showing how many sites and accounts they have taken down and for what reason.
5. The reporting of content takedowns and referrals improves transparency. Publish transparency reports regarding government requests to have content taken down off the internet.
6. Ensure that parliamentarians have lawful and non-arbitrary access to available information where access is necessary for the protection of national security against terrorist threats.

²⁰⁵ The European Commission issued in March 2018 a set of recommendations for companies and EU member states that apply to all forms of illegal internet material, ‘from terrorist content, incitement to hatred and violence, child sexual abuse material, counterfeit products and copyright infringement’. requesting to remove terrorist propaganda within an hour of receiving the order from authorities, or companies like Facebook and Twitter could face massive fines. The EU abandoned a voluntary approach to get big internet platforms to remove terror-related videos, posts and audio clips from their websites, in favour of tougher draft regulation. The legislation proposed by European Commission President Jean-Claude Juncker marks a toughening approach after Brussels had relied on internet firms to voluntarily remove such content. See: <https://phys.org/news/2018-09-social-media-hour-terror-propaganda.html#jCp>.

²⁰⁶ Countering illegal hate speech online #NoPlace4Hate, http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300.

Box 36: Zurich-London Recommendations on Preventing and Countering Violent Extremism and Terrorism Online

This policy tool aimed to address overarching good practices for preventing and countering violent extremism online, as well as specific good practices for content – and communications-based responses. The document was developed and endorsed by Global Counter-terrorism Forum Members at the Eighth Ministerial Plenary Meeting in New York in September 2017.²⁰⁷ The document compiles a non-exhaustive list of governmental good practices regarding strategic communications and social media aspects in preventing and countering violent extremism and terrorism online for GCTF members – as well as any other interested governments.

The good practices expressed in this document were identified in meetings and subsequent discussions with GCTF members, reflecting their experience in this regard. Moreover, with these recommendations, the GCTF aims to support and complement existing work and initiatives by other international and regional organisations, namely the United Nations and other relevant stakeholders involved in this context. The good practices are divided into three sections:

- Section I addresses overarching good practices for preventing and countering violent extremism and terrorism online;
- Section II addresses good practices for content-based responses; and
- Section III addresses good practices for communications-based responses.

Engagement with Civil Society Organisations²⁰⁸

Engagement with civil society is increasingly becoming be part of the consultation practices by parliamentarians at all levels. Engagement between civil society organisations (CSOs) -and parliamentarians is one of the main elements of participatory democracy. CSOs can play an important role in supporting parliamentarians' representative, legislative and oversight functions, not least by providing evidence about the impact of policies²⁰⁹. In their efforts to developing community outreach channels, parliamentarians can engage with CSOs, which helps to promote an inclusive and sustainable support for national counter-terrorism policies.

²⁰⁷ *Zurich-London Recommendations on Preventing and Countering Violent Extremism and Terrorism Online*, Global Counterterrorism Forum (GCTF), 2017. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF%20-%20Zurich-London%20Recommendations%20ENG.pdf?ver=2017-09-15-210859-467>.

²⁰⁸ There are several definitions of 'civil society'. The European Union defines civil society as 'all non-state, non-profit structures, non-partisan and non-violent, through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic'. Civil society encompasses a wide range of actors with different roles and mandates, e.g. community-based organisations, NGOs, trade unions, cooperatives, professional or business associations, not-for-profit media, philanthropic organisations, etc.

²⁰⁹ Alan Hudson, *CSOs and Parliamentary Committees: The UK's International Development Select Committee*, Overseas Development Institute, June 2006. See: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/2918.pdf>.

The involvement of CSOs in counter-terrorism contributes to the implementation of the 'whole-of-society' approach, as they play a proactive role in:

- communicating and raising awareness against terrorism, including countering narratives for delegitimising violent extremists' views.
- contributing to preventing terrorism through de-radicalisation and counter-narrative actions, especially at a community level.
- supporting educational institutions in providing robust alternatives to terrorism and identify at risk youth.
- monitoring and evaluation and sharing lessons learned to prompt adequate responses to terrorism within rule of law and human rights framework.
- helping to give voice to marginalised and vulnerable peoples, including victims of terrorism, and provide a constructive outlet for the redress of grievances.

The main challenge rests in the potential abuse of CSOs, such as charities, by terrorist and related organisations (e.g. through the provision of financing, movement and support). A balance between preventing CSOs involvement in breaches of the law and prosecuting those involved in such acts, on the one hand, and interfering with the beneficial role played by legitimate CSOs and without undermining the freedom of association, on the other hand²¹⁰.

Parliamentarians have an important role in ensuring civic participation to counter violent extremism, through partnering and engaging with CSOs. It is important for parliamentarians to be aware of the different ways in which CSOs can contribute to the implementation of the counter-terrorism policy. This could happen via:

1. parliamentarians entering into dialogue and consultation with CSOs to help to inform more effective and resonant rule of law – compliant counter-terrorism-related laws and policies through hearings, sub-regional meetings, public awareness campaigns, etc.
2. parliamentarians relying on independent information and research and evidence-based findings and recommendations on countering violent extremism provided by groups within civil society such as academic institutions, think tanks, human rights NGOs and policy-focused issue NGOs.
3. parliaments encouraging the participation of NGOs in public debate about national security, the armed forces, policing and intelligence that enhances further the transparency of government.
4. parliamentarians providing CSOs sufficient legal and operational space as part of the freedom of association.

Engagement with the Media

The media plays a central role in reporting on and portraying terrorism. A key challenge rests in the almost symbiotic relationship between terrorism and media outlets, including internet-based media channels, as terrorism provides for exciting and violent stories which help sell the news product and the media provides terrorist groups with a means of spreading their message and creating fear among the general public.²¹¹

The media can play an important part in countering terrorism by framing the phenomena in a less fear-provoking manner. The media have a responsibility to avoid contributing to negative views of particular groups in society through unbalanced or unsubstantiated reporting.²¹²

²¹⁰ Eric Rosand, Alistair Millar, and Jason Ipe, *Civil Society and the UN Global Counter-Terrorism Strategy: Opportunities and Challenges*, Centre on Global Counterterrorism Cooperation, September 2008, p. 29. See: http://www.globalcenter.org/wp-content/uploads/2008/09/civil_society.pdf.

²¹¹ Kate Ferguson, *Countering Violent Extremism through Media and Communication Strategies: A Review of the Evidence*, Partnership for Conflict, Crime and Security Research, 1 March 2016, p. 7. <http://www.paccsresearch.org.uk/wp-content/uploads/2016/03/Countering-Violent-Extremism-Through-Media-and-Communication-Strategies-.pdf>.

²¹² The government response to the eighth report from the Home Affairs Select Committee Session 2016-17 HC 135: *Radicalisation: the Counternarrative and Identifying the Tipping Point*, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, December 2017, p.5. <https://www.parliament.uk/documents/commons-committees/home-affairs/Correspondence-17-19/Radicalisation-the-counter-narrative-and-identifying-the-tipping-point-government-response-Eighth-Report-26-17-Cm-9555.pdf>.

4.2.1.2 Developing Counter Narratives

In addition to parliamentarians' engagement with the private sector, CSOs, and the media, other key ways parliamentarians can adopt to help advancing counter narratives agenda and tackling terrorist propaganda such as activities on legislative and operational level on the ground with CSOs and other stakeholders with targeted messaging. This is part strategic communications efforts of counter-terrorism and countering violent extremism. A synergy between what is said and what is done is key to enhance the credibility and the effectiveness of such policies.

As a recent European Parliament study on counter-narratives concluded, *'the concept of counter narrative itself is rather underdeveloped and lacks a thorough grounding in empirical research.'*²¹³ There is a need for greater research in this area and effective monitoring and evaluation of current counter-narrative projects in order to be able to ensure that lessons are learned.

The notion of counter-narratives could include different meanings and take many approaches. It can refer to government-led initiatives, deradicalisation strategies, or grassroots and civil society movements, and can be speaking to a number of different audiences – such as extremists, those vulnerable to extremism, members of communities that include extremists, or the general population at large.²¹⁴

Global initiatives to counter terrorist narratives are carried out by a number of different actors on the supranational, international, regional, national and sub-national levels. The UN has established itself as a key player in the field of counter-narratives, inspiring related institutions, such as the Global Counterterrorism Forum (GCTF) and Hedayah, to assist states in building concrete plans of action in this field. Other international organisations, such as the North Atlantic Treaty Organization (NATO) and the Organisation for Security and Co-operation in Europe (OSCE), have implemented initiatives that focus on strategic communications and counter-narratives. States have also increased efforts in countering terrorist narratives through cooperation with other states or non-state institutional partners. Finally, tech companies have also started taking steps to prevent abuse of their platforms by terrorist actors.

Parliamentarians could use key parliamentary tools to enhance counter narratives, such as:

1. constituency outreach and visits;
2. acting on petition sent to members of parliament;
3. speeches and interviews;
4. overseeing government's strategic communications; and
5. promoting policies for conflict management and resolution, as well as for the transformation of societies in the post-conflict period²¹⁵.

Within the framework of the fight against terrorism, policies should be developed for conflict management and resolution, as well as for the transformation of societies in the post-conflict period²¹⁶.

²¹³ Countering Terrorist Narratives, Study for the LIBE Committee of the European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for International Policies of the Union, European Union, November 2017, p.7. See: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU\(2017\)596829_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU(2017)596829_EN.pdf).

²¹⁴ Countering Terrorist Narratives, Study for the LIBE Committee of the European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for International Policies of the Union, European Union, November 2017, pp. 8 -10. See: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU\(2017\)596829_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU(2017)596829_EN.pdf).

²¹⁵ The Role of Diplomacy and Soft Power in Combatting Terrorism - Concepts, Fighting Methods and Case Studies, Centre for Strategic Research. See: http://www.coedat.nato.int/publication/workshop_reports/04-Diplomacy_Soft_Power_Report.pdf.

²¹⁶ The Role of Diplomacy and Soft Power in Combatting Terrorism - Concepts, Fighting Methods and Case Studies, Centre for Strategic Research. See: http://www.coedat.nato.int/publication/workshop_reports/04-Diplomacy_Soft_Power_Report.pdf.

Box 37: Strategic Communication and Key Policy Recommendations²¹⁷

Different thematic approaches exist and address terrorist propaganda from a different angle. Each of these approaches has merit and, collectively, they create a stronger response to terrorist propaganda, however, none of them are comprehensive in themselves.

1. **Disruptive Method:** Disrupting the activities of suspected violent extremists has become an increasingly significant method in prevention and counter-terrorism policies. Disruption of violent extremist networks should be comprehensive and multi-platform to avoid displacement and partnered by targeted messaging to fill the post-disruption vacuum. The key challenge in this approach is related to its risk on a number of human rights and free speech issues. What constitutes extremist content? And importantly, who decides this and on what basis? As the tech companies point out, determining what is extremist content is not simple.
2. **Redirect Method – Campaign and Message Design:** A different approach to counter-narratives is to target those who deliver such narratives. There are a number of platforms, which host and disseminate information to aid those who are building responses to terrorist narratives. A strategic communications campaign needs a clear and simple-to-understand, overarching central narrative to bring coherence to thematically diverse messaging over the short, medium and long term. Strategic literacy, technical literacy and target audience assessments offer essential metrics for gauging the efficacy of counter-terrorism and P/CVE strategic communications. The starting point should be establishing pre-implementation baseline measures that can be used to gauge effectiveness and efficiency over time.
3. **Synchronise Message and Action Method:** Synchronising counter-terrorism and P/CVE strategic communications with actions and events on the ground is essential for amplifying trust, credibility and legitimacy in the eyes of a target audience for oneself and diminishing those sentiments for adversaries.

4.2.2 Addressing the Challenges of Foreign Terrorist Fighters and Homegrown Terrorism

A comprehensive approach to P/CVE is needed, including combatting radicalisation and recruitment, hampering terrorist movements and countering terrorist propaganda, as well as Foreign Terrorist Fighters (FTFs) and Homegrown Terrorism.

Homegrown terrorists²¹⁸, FTFs²¹⁹, and those returning or relocating from conflict zones are of serious concern to many of states. International commitments to ensure a comprehensive response to the current terrorism landscape to address this challenge intensified in the last few years. States called for technical assistance in meeting these obligations provided by the efforts of the United Nations system and other key entities and partners.

In addressing the FTF phenomenon, parliamentarians can contribute by:

- offering legislative clarity about defining the meaning of FTF.
- developing legal frameworks and resource capacities that warrant different approaches in assessing an individual's culpability and determining the appropriateness of criminal investigation, prosecution, and interventions.
- ensuring that national laws, policies and practices aimed at countering FTF threats are implemented in full compliance with international law, including international human rights and humanitarian law standards.²²⁰

²¹⁷ See: Alastair Reed and Haroro Ingram, Lessons from History for Counter-Terrorism Strategic Communications, International Centre for Counter Terrorism (ICCT) Policy Brief, June 2016. <https://www.icct.nl/wp-content/uploads/2016/06/ICCT-Ingram-CTSC-June-2016-3.pdf>. See also: Alastair Reed, Haroro Ingram and Joe Whittaker, Counter Terrorist Narratives, November 2017, Study for the LIBE Committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU\(2017\)596829_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596829/IPOL_STU(2017)596829_EN.pdf).

²¹⁸ The term 'homegrown terrorism' refers to acts of violence committed by an individual in their country of citizenship or legal residency, who is incited, instructed, supported by and/or otherwise linked to a terrorist organization that operates outside of that country. The global community faces the on-going threat of homegrown terrorism, with a number of countries already experiencing these types of attacks.

²¹⁹ The definition and scope of the term 'foreign terrorist fighters' (FTF) is controversial. It has been commonly used to refer to individuals who have travelled from their home states to other states to participate in or support terrorist acts, including in the context of armed conflict, especially in Iraq and Syria. See: Guidelines for Addressing the Threats and Challenges of 'Foreign Terrorist Fighters' within a Human Rights Framework, OSCE/ODIHR 2018, p.8. <https://polis.osce.org/guidelines-addressing-threats-and-challenges-foreign-terrorist-fighters-within-human-rights>.

²²⁰ <https://www.osce.org/odihr/393503?download=true>.

- ensuring that national laws and legal framework distinguish between acts of terrorism that may arise in armed conflict and mere participation in a conflict.²²¹
- ensuring specific attention is paid to women, juvenile recruits, and children, and respecting their human rights regardless of the threat these individuals may pose or the criminal activities in which they may have participated.
- ensuring they are aware of international efforts addressing the anticipated return of FTFs and are provided guidance in developing community-based solutions to the phenomenon of people returning home from having engaged in violent conflict abroad or having violated their country's anti-terrorism laws.²²²
- conducting evaluations or assessments of P/CVE practices carried out within detention settings aimed at the reintegration and rehabilitation of those convicted for terrorism offences.²²³

In addressing homegrown terrorism, parliamentarians can contribute by:

- promoting better understanding of the homegrown terrorism phenomenon and avoiding stigmatisation of any particular community after a homegrown terrorist attack as well as engaging with local communities and their constituencies.
- supporting the development, implementation, and evaluation of counter-terrorism and P/CVE policies.
- addressing the potential links between criminal activities, including transnational organised crime and homegrown terrorism.
- ensuring there is no impunity for human rights violations and abuses in addressing homegrown terrorism.
- reviewing domestic legal frameworks, as appropriate, to ensure that tailored interventions²²⁴, such as referral mechanisms and off-ramp programs for at risk individuals, may be developed and implemented.
- promoting the development and implementation of appropriate judicial and administrative measures to mitigate the risk posed by potential homegrown terrorists, while respecting human rights.
- promoting best practice whereby criminal justice and law enforcement agencies disseminate accurate information to the public as soon as they can after an attack without compromising any ongoing investigation.

²²¹ The International Committee of the Red Cross (ICRC) and others have underscored the importance of clarifying the distinction between the two to preserve the proper functioning of IHL. See: Guidelines for Addressing the Threats and Challenges of 'Foreign Terrorist Fighters' within a Human Rights Framework, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw Poland, 2018. <https://www.osce.org/odihr/393503?download=true>.

²²² *Malta Principles for Reintegrating Returning Foreign Terrorist Fighters (FTFs)*, Hedayah and the International Institute for Justice and the Rule of Law (IIJ). <http://www.hedayahcenter.org/Admin/Content/File-26102016223519.pdf>.

²²³ *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*, Global Counterterrorism Forum (GCTF), 2016, p.9. <https://theijj.org/wp-content/uploads/English-Valletta-Recommendations.pdf>.

²²⁴ Intervention refers to efforts aimed at individuals who are demonstrating some signs of radicalization to violence yet have not committed a terrorist act. The goal of intervention is to provide an individual with a range of support services that may address some of the issues that may have propelled this person to become attracted to violent ideology. See: Global Counterterrorism Forum (GCTF), *Lifecycle of Radicalization to Violence Toolkit*, www.toolkit.thegctf.org, and the Rabat – Washington Good Practices on the Prevention, Detection, Intervention and Response to Homegrown Terrorism https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/C/GCTF-Rabat-Washington-Good-Practices_ENG.pdf?ver=2018-09-21-122245-707.

Box 38: Foreign Terrorist Fighter-related CVE and Returnee Programs

The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as ‘foreign terrorist fighters’ (FTFs) travel abroad for the purpose of terrorism. Returning foreign terrorist fighters pose a heightened security threat.

FTFs are defined as *‘individuals who travel to a state other than their state 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’*. They increase the intensity, duration, and complexity of conflicts and may constitute a serious danger to their states of origin, transit, destination, as well as neighbouring zones of armed conflict in which they are active. The FTF threat is evolving rapidly and is unlikely to be fully contained in the short term. A significant longer-term risk is posed by FTFs returning to their countries of origin or upon their arrival in third countries.²²⁵

As many as 30,000 people from up to 90 different countries have left home to fight in foreign wars, often engaging with known terrorist groups in the process. This number is increasing, and countries with no previous history of foreign fighters may discover they have citizens travelling to war zones. While it is unclear how many of them will ultimately return to their countries of origin, there is an increasing international concern regarding the anticipated return of these FTFs²²⁶. Some FTFs may have become disillusioned; others may have escaped; still others may have been sent back for a specific reason. Individuals who return will undoubtedly have seen or participated in traumatic events and are likely to hold more extreme views. While the Global Counterterrorism Forum (GCTF) *Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders* addresses what to do with violent extremist offenders, including returning FTFs who are incarcerated, countries may be unable or find it impractical to prosecute all their returning FTFs. Some may be held under house arrest; some may have been arrested and later released. To reduce the likelihood of these individuals returning to terrorism, governments need to help them disengage from violent activities and successfully reintegrate them into their communities after their return.

Many key international resolutions and initiatives address countering violent extremism and the critical and growing threat posed by FTFs.

²²⁵ Focus Areas: Foreign Terrorist Fighters, Counter-Terrorism Committee, United Nations Security Council. <https://www.un.org/sc/ctc/focus-areas/foreign-terrorist-fighters/>.

²²⁶ Malta Principles for Reintegrating Returning Foreign Terrorist Fighters (FTFs), Hedayah and the International Institute for Justice and the Rule of Law (IIJ). <http://www.hedayahcenter.org/Admin/Content/File-26102016223519.pdf>.

Key Documents

Good Practices on Addressing the Challenge of Returning Families of Foreign Terrorist Fighters (FTF), Global Counterterrorism Forum (GCTF).²²⁷

Focus: How to handle the families who accompanied FTFs or were acquired in the conflict zones and are looking to return to a third country or their country of origin. The non-binding guidelines for good practices that follow should be considered, as appropriate, in accordance with the circumstances and domestic legal standards of each state, as well as applicable international legal obligations.

Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders, Global Counterterrorism Forum (GCTF).²²⁸

Focus: Addresses what to do with violent extremist offenders, including returning FTFs who are incarcerated. Countries may be unable or find it impractical to prosecute all their returning FTFs. A non-exhaustive list of GCTF good practices based on discussions in two expert workshops organised by the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the International Centre for Counter-Terrorism – The Hague (ICCT).

Guiding Principles on Foreign Terrorist Fighters, adopted by the United Nations Security Council (S/2015/939).²²⁹

Focus: The Guiding Principles are intended as a practical tool for use by United Nations member states in their efforts to combat terrorism and, in particular, to stem the flow of foreign terrorist fighters in accordance with resolution 2178 (2014). Includes Conclusions, as well as the Declaration of the Meeting of the Ministers for Foreign Affairs and of the Interior held within the framework of the special meeting.

Guidelines for Addressing the Threats and Challenges of 'Foreign Terrorist Fighters' within a Human Rights Framework, Organization for Security and Co-operation in Europe (OSCE), 12 September 2018.²³⁰

Focus: This document seeks to provide states with recommendations, and supporting analysis, on some of the key human rights issues that they must grapple with as they seek to respond to the threats posed by FTFs in a manner that is consistent with human rights and the rule of law. Following a brief overview of background facts, international and national responses, this document offers a series of recommendations for a human rights-compliant approach to addressing the flow and return of FTFs.

²²⁷ https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/C/GCTF-Good-Practices-on-Returning-Families-of-FTFs_ENG.pdf?ver=2018-09-25-101427-323.

²²⁸ http://www.unicri.it/topics/counter_terrorism/Rome_Memorandum.pdf

²²⁹ https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Madrid-Guiding-Principles_EN.pdf.

²³⁰ <https://www.osce.org/odihr/393503?download=true>.

4.3 The Role of Parliamentarians in Protecting the Rights of Vulnerable Groups, Specifically Women and Juveniles

The rights and protection of all vulnerable groups have been specifically acknowledged in a number of international counter-terrorism frameworks. Women and children are increasingly affected and victimised by terrorism, but at the same time, are increasingly engaged in terrorist-related activity.

Protection of Women

The role of women in preventing and countering violent extremism (P/CVE) is receiving increased attention. Women can be vulnerable to terrorism in different ways.

'Gender integration means asking always the questions: what were women's experiences of terrorism and women's experience of the counter-terrorism responses? It means asking the women concerned what justice and remedies mean to them; it means designing programs, whether reparation or rehabilitation programmes, which are founded on this analysis and women's voices.'

Commissioner Asiago, Special Rapporteur on Women's Rights in Africa, African Commission on Human and Peoples' Rights.²³¹

'Terrorism and violent extremism have a profound gender dimension. Terrorists continue to violate the rights of women and girls through sexual violence, abduction, forced marriages and preventing free movement and access to education. Involvement in domestic abuse is a common thread among many perpetrators. That is why we must urgently prioritise the rights, participation and leadership of women.'

Mr. António Guterres, United Nations Secretary General, Uniting the World Against Terrorism, 6 June 2018.²³²

The United Nations Global Counter-Terrorism Strategy 2006 did not make specific reference to women and gender integration in counter-terrorism. However, the United Nations General Assembly adopted by consensus on 1 July 2016 Resolution A/RES/70/291 on the Fifth Review of the Global Counter-Terrorism Strategy reinforcing a global consensus on this issue in the fight against terrorism and violent extremism. The resolution cited:

- The important contribution of women to the implementation of the strategy, and encouraging member states, United Nations entities and international, regional and sub-regional organisations to ensure the participation and leadership of women in efforts to prevent violent extremism and counter terrorism.
- Deep concern that acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups. This is used as an instrument to increase terrorist groups' power through financing and recruitment and by destroying communities.
- A call to all member states, given the complex global security context, to highlight the important role of women in countering terrorism and violent extremism. Member states and United Nations entities should integrate a gender analysis on the drivers of radicalisation of women to terrorism into their relevant programs. These states should consider, when appropriate, the impacts of counter-terrorism strategies on women's human rights and women's organisations and to seek greater consultations with women and women's organisations when developing strategies to counter terrorism and violent extremism.

²³¹ Opening of Sub-Regional Workshop on Gender Dimensions of Criminal Justice Responses to Terrorism in Yaoundé, United Nations Office on Drugs and Crime (UNODC) and the Office of the High Commission for Human Rights (OHCHR), Cameroon, 19-21 July 2017. <https://www.unodc.org/westandcentralafrica/en/yaounde-gender-terrorism.html>.

²³² <https://www.un.org/sg/en/content/sg/articles/2018-06-26/uniting-world-against-terrorism>.

Furthermore, the Global Study on the Implementation of United Nations Security Council Resolution 1325²³³, issued in October 2015, highlighted the serious impacts of violent extremism on women and girls. The key messages²³⁴ included:

- Across regions, a common thread shared by extremist groups is that in every instance their advance has been coupled with attacks on the rights of women and girls; rights to education, to public life, and to decision-making over their own bodies.
- Counter-terrorism and CVE overlook the spectrum of roles that women play in both preventing and participating in violent extremism. The women's peace and security agenda provide a framework for a de-militarised and preventive response to terrorism and violent extremism, and several recent international mandates acknowledge this correlation. It is important to engage women as messengers for counter-narratives.
- The risk of co-opting and instrumentalising women's rights is high. Where women's advocacy becomes too closely associated with a government's counter-terrorism agenda, the risk of backlash against women's rights defenders, in often already volatile environments, increases.
- Women are also impacted by counter-terrorism tactics: securitisation can increase women's insecurity and stricter banking procedures and donor policies can impact women's organisations adversely. As such, women are 'squeezed' between terrorism and counter-terrorist responses.

As part of the Sixth Review of the United Nations Global Strategy, adopted on 26 June 2018, the General Assembly called on member states to highlight the important role of women in countering terrorism and violent extremism.²³⁵

What is clear is that extremism in all its forms has had serious impacts on the rights of women and girls. From forced marriage, to restrictions on education and participation in public life, to systematic sexual and gender-based violence (SGBV), this escalation in violence and insecurity demands the attention of the women's, peace and security agenda. Moreover, women are not a homogenous group and also play an important role in extremist and terrorists' action.

Integrating gender dimensions to the fight against terrorism responds to the need to ensure women's rights are respected in the context of growing terrorism threats and in the absence of a coherent international framework. The United Nations Security Council has recognised, through Resolutions 2242 and 2331, that sexual violence is being used as a tactic of terror.

²³³ UN Security Council Resolution 1325 on Women, Peace and Security, (S/RES/1325), was adopted in 2000 as the first resolution ever passed by the Security Council specifically dealing with the impact of war on women and women's contributions to sustainable peace.

²³⁴ Preventing Conflict, Transforming Justice, Securing the Peace, A Global Study on the Implementation of United Nations Security Council Resolution 1325, p.14. <http://wps.unwomen.org/en>.

²³⁵ Sixth Biennial Review of the United Nations Global Counter-Terrorism Strategy, United Nations General Assembly, Resolution A/RES/72/284, adopted by consensus on 26 June 2018. <https://undocs.org/en/A/RES/72/284>.

Box 39: Recommendations of the United Nations Security Council²³⁶**Member states, the United Nations, and regional organisations should:**

- Detach programming on women's rights from counter-terrorism and extremism, and all military planning and military processes. Any effort at empowering them should be through civilian assistance to the women themselves or to development and human rights agencies.
- Protect women's and girls' rights at all times and ensure that efforts to counter violent extremism strategies do not stereotype, instrumentalise or securitise women and girls.
- Work with local women and institutions to engage women at all levels, and allow local women autonomy and leadership in determining their priorities and strategies in countering extremism.

Member states, the United Nations, regional organisations and civil society should:

- Build the capacity of women and girls, including mothers, female community and religious leaders, and women's civil society groups to engage in efforts to counter violent extremism in a manner tailored to local contexts. This can include the provision of specialised training, facilitating, training of women religious leaders to work as mentors in their communities, increasing women's access to secular and religious education to amplify their voices against extremist narratives and supporting mother's schools. All this capacity building should again be through civilian agencies and with women peacebuilders deciding the priorities and the content of their programmes.
- Invest in research and data collection on women's roles in terrorism including identifying the drivers that lead to their radicalisation and involvement with terrorist groups, and the impacts of counterterrorism strategies on their lives. This should include the impact of counter-terrorism laws and regulations on the operation of women's civil society organisations, and their access to resources to undertake activities relating to countering violent extremism.
- Ensure gender-sensitive monitoring and evaluation of all counter-terrorism and countering violent extremism interventions. This should specifically address the impact on women and girls, including through use of gender-related indicators and collection of sex-disaggregated data.

Member states and the United Nations should:

- Develop gender-sensitive disengagement, rehabilitation and reintegration programmes that address the specific needs of women and girls. Draw upon the lessons learned from disarmament, demobilisation, and reintegration (DDR) initiatives under the women, peace and security agenda.

The United Nations should:

- Ensure accountability mechanisms and processes mandated to prevent and respond to extremist violence have the necessary gender expertise to fulfil their mandates.
- Introduce disengagement, rehabilitation and counselling programmes for persons engaged in violent extremism which are gender-sensitive;
- Ensure that offenses of sexual violence are prosecuted explicitly, including in the context of terrorism trials so that perpetrators are punished for the full extent of their crimes and victims are also recognised. (International cooperation, especially between military, intelligence and justice sectors is crucial to accelerate such prosecution. Declassification of information and evidence that can be used in court to prosecute conflict-related sexual violence as a war crime, a crime against humanity, or as a constituent act of genocide is also critical.)
- Conduct terrorism investigations in a gender sensitive manner. Investigating sexual violence by terrorist groups requires expertise on interviewing women and girl victims, and on measures to protect them, which may be lacking in investigation teams specialised in counter-terrorism.

²³⁶ UN Women, Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325, New York, UN Women, 2015), Chapter 9: Countering violent extremism while respecting the rights and autonomy of women and their communities. <http://wps.unwomen.org/pdf/CH09.pdf>.

Protection of Children and Juveniles

Children and juveniles²³⁷ may be affected by terrorism in many ways – as victims, witnesses, and offenders. They are also affected by counter-terrorism and P/CVE policies, including all criminal, administrative and other measures. Increasingly, children are recruited by terrorist groups within or outside their country or are growing up in a family with extremist influences and are particularly vulnerable to becoming radicalised themselves. United Nations Security Council Resolution 2396 specifically calls upon states to assess and investigate suspected FTFs and their accompanying family members, including children.²³⁸

In general, juveniles who come into contact with the law are a particularly vulnerable group. They may suffer abuse, be in mortal danger and in need of care, or unaware of their rights when they are accused of committing a crime²³⁹. This could be exacerbated in the context of counter-terrorism. The prosecution of juveniles requires an appropriate response that is grounded in international human rights law and the rule of law, including international juvenile justice standards. National counter-terrorism frameworks should recognise vulnerability of juveniles and guarantee special legal protections for them as well as integrate existing international juvenile justice and child protection standards. The juvenile justice system²⁴⁰ always emphasises the well-being of the juvenile and the best interests of the child remain a primary consideration, even in criminal cases, including terrorist offenses.²⁴¹ In the case of FTF-related policies and practices, there is a need that these are in a way that is consistent with the best interest of the child, when children are involved, or directly or indirectly affected.

Despite this, the rights of children affected by terrorism and counter-terrorism have not entered into mainstream discourse, and have been largely overlooked.²⁴² The UN Global Counter-Terrorism Strategy, and its updates and reviews make no mention of the particular vulnerabilities of children and how these could most appropriately be addressed in national counter-terrorism strategies. Juvenile justice in a counter-terrorism context should address the emerging questions regarding children involved in terrorism, and the different phases of a criminal justice response, which include prevention, investigation, prosecution, sentencing, and reintegration. It is important to assess the situation of children in a terrorism-related context from a child rights and child development perspective. It is key to provide the care for a child and remove the stigma of criminality from the unlawful acts of a child. A criminal justice response to cases of children should be geared towards the rehabilitation and reintegration of the child into society.

²³⁷ The term 'child' is used to refer to individuals below the age of 18 years. This definition is based on Article 1 of the Convention on the Rights of the Child (CRC), which states that a child is 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. On the other hand, it is recognised that social, cultural and religious norms, as well as some national laws, may define the end of childhood earlier or later than 18 years of age. However, for the sake of clarity and consistency, this report uses the strict definitional threshold of 18 years that is advocated by the UN Committee on the Rights of the Child (CRC Committee). As for the term 'juvenile', there is no generally accepted definition of the term, however, it is often used to signify a child who is over the minimum age of criminal responsibility and is alleged to, accused of, or convicted of a criminal offence. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) simply define a juvenile as 'every person under the age of 18'. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) provides the following definition: 'A juvenile is a child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult'. The CRC Committee avoids the use of the term juvenile, referring instead to 'children in conflict with the law'. It is recognised that social, cultural and religious norms, as well as some national laws, may define the juvenile age limitations differently. See: Children and Counter Terrorism, United Nations Interregional Crime and Justice Research Institute (UNICRI), Italy, 2016, p. 4-5. http://www.unicri.it/services/library_documentation/publications/unicri_series/Children_counter_terrorism.pdf.

²³⁸ United Nations Security Council Resolution 2396, S/RES/2396 (2017), 21 December 2017. [https://undocs.org/en/S/RES/2396\(2017\)](https://undocs.org/en/S/RES/2396(2017)).

²³⁹ Handbook on Juvenile Law in Zambia, Centre for Law and Justice Cornell Law School's Avon Global Centre for Women and Justice and International Human Rights Clinic, August 2014, P. 9. https://www.lawschool.cornell.edu/womenandjustice/Legal-and-Other-Resources/upload/Handbook-on-Juvenile-Law-in-Zambia_8_8.pdf.

²⁴⁰ 'Juvenile justice' is a general term used to describe the policies, strategies, laws, procedures and practices applied to children over the minimum age of criminal responsibility who have come into conflict with the law. The term 'juvenile justice' needs to be distinguished from the broader concept of 'justice for children', which covers children in conflict with the law (i.e. alleged as, accused of, or recognised as having infringed the penal law), children who are victims or witnesses of crime, and children who may be in contact with the justice system for other reasons such as custody, protection or inheritance. See: Penal Reform International. 2013. Protecting Children's Rights in Criminal Justice Systems: A Training Manual and Reference Point for Professionals and Policymakers. Available at: <http://www.penalreform.org/wp-content/uploads/2013/11/Childrights-training-manual-Final%2%ADHR.pdf>.

²⁴¹ Children and Counter Terrorism, United Nations Interregional Crime and Justice Research Institute (UNICRI), Italy, 2016, p. 35. http://www.unicri.it/services/library_documentation/publications/unicri_series/Children_counter_terrorism.pdf.

²⁴² *Ibid.* p.3.

Box 40: Legal Framework and Key Principles for the Protection of Juveniles in the Justice System²⁴³

The most important international instruments for the administration of juvenile justice are the *Convention of the Rights of Child* (CRC) and the *International Covenant on Civil and Political Rights* (ICCPR). Article 40(3) of the CRC requires states to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law. In other words, a State is required to establish a juvenile justice system. Children over the state's minimum age of criminal responsibility and under the age of 18 who are charged with a criminal offence should be dealt with in the juvenile justice system, regardless of the nature of the charge. This applies just as much to terrorist offences as it applies to any other criminal offence.

Apart from the CRC and the ICCPR, there are four main juvenile justice instruments, known collectively as the United Nations Minimum Standards and Norms of Juvenile Justice: United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); and Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines). In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) require that prisoners always need to be separated according to their age (children from adults).²⁴⁴ Assistance on interpreting the CRC and the UN Minimum Standards and Norms on Juvenile Justice has been provided by the CRC Committee in General Comment No. 10.

According to the CRC and the Beijing Rules, adopted by General Assembly Resolution 40/33 of 29 November 1985, courts should be guided by the following principles:

- The arrest, detention, or imprisonment of a child should only be used as a last resort (CRC, Art. 37; Beijing Rules, Rule 13.1). Under the CRC definition of 'child', this means any person who is under the age of eighteen years, unless under the law applicable to the child, majority is attained earlier (CRC, Art. 1).
- Every child deprived of his or her liberty has the right to be separated from adults (unless it is in the child's best interest not to be separated) (CRC, Art. 37; Beijing Rules, Rule 13.4). If a child is charged with a criminal offence, he or she should be tried in a children's court or juvenile court, and the privacy of the child should be respected throughout the proceedings, with a trial taking place in a closed courtroom and no identification of the child in the media.
- Every child deprived of his or her liberty has the right to maintain contact with his or her family through correspondence and visits (barring exceptional circumstances) (CRC, Art. 37). Every child deprived of his or her liberty has the right to prompt access to legal assistance (CRC, Art. 37).
- Every child deprived of his or her liberty has the right to a prompt resolution of his or her case (CRC, Art. 37).

As CRC rights are non-derogable, provisions relating to juvenile justice continue to apply during an armed conflict. International humanitarian law provisions also apply in situations of armed conflicts.

²⁴³ Handbook on Juvenile Law in Zambia, Centre for Law and Justice Cornell Law School's Avon Global Centre for Women and Justice and International Human Rights Clinic, August 2014, p. 9. https://www.lawschool.cornell.edu/womenandjustice/Legal-and-Other-Resources/upload/Handbook-on-Juvenile-Law-in-Zambia_8_8.pdf.

²⁴⁴ Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, Criminal Justice Handbook Series, UNDOC, 2016, p. 42. <https://www.scribd.com/document/336728061/Handbook-UNODC-Prisons-on-VEPs>.

The research and analysis highlight key challenges. While some juvenile justice provisions are applied to terrorism charges, children charged with terrorist offences do not, on the whole, benefit from the full protection that juvenile justice has to offer. Another challenge is related to the striking dissonance in the approach taken to children engaged in terrorist related activity and the approach taken to child combatants in armed conflict. Child combatants are largely treated as victims, are not subject to prosecution under international law and are recognised as needing rehabilitation and reintegration services. Children who are involved or engaged in terrorism related activity are sometimes subject to prosecution and to lengthy custodial sentences²⁴⁵. Yet, in some cases, the line between child combatant and child terrorist is a very thin line. The legal framework could address criminalising the recruitment and use of children by non-state armed groups, and consider recruitment and use of children for terrorism related offenses as an aggravating circumstance in punishment as well as treat children who have engaged in FTF-related acts in conflict zones, consistent with approaches towards child soldiers (primarily as victims), and provide them with necessary support for physical and mental recovery and social reintegration.²⁴⁶ Ensure that children with meaningful links to the state are able to return and receive protection and support for reintegration, recovery and education consistent with their needs, taking all feasible measures to ensure that no child is rendered stateless.²⁴⁷

Strengthening juvenile justice systems in the counter-terrorism context is important. Parliamentarians and the justice system play a vital role in this area by supporting the establishment of a comprehensive juvenile justice system according to international standards, ensuring laws are subject to review on the impact of its implementation on juveniles and their justice system, and ensuring effective monitoring of the implementation of the juvenile justice system. Moreover, as members of the principal representative institution in any democracy, parliamentarians are uniquely positioned to engage and interact directly with their constituents, including children.²⁴⁸ In the context of their contribution to the implementation of a prevention strategy, parliamentarians can ensure that there is a clear pillar targeting children vulnerable to recruitment for terrorism purposes and/or radicalisation to violence and encourage assessment that would address key structural and social factors at the community level.

²⁴⁵ Handbook on Children and Counter Terrorism, United Nations Interregional Crime and Justice Research Institute (UNICRI), Italy, 2016, p.76. http://www.unicri.it/services/library_documentation/publications/unicri_series/Children_counter_terrorism.pdf.

²⁴⁶ Working with Families and Safeguarding Children from Radicalisation: Step-by-Step Guidance Paper for Practitioners and Policy-Makers, RAN Centre for Excellence, Ex-Post Paper Joint Event RAN YF&C and RAN H&SC 2 and 3 February 2017, Nice, France. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/about-ran/ran-h-and-sc/docs/ran_yf-c_h-sc_working_with_families_safeguarding_children_en.pdf.

²⁴⁷ Guidelines for Addressing the Threats and Challenges of 'Foreign Terrorist Fighters' within a Human Rights Framework, OSCE ODIHR, Poland, 2018, P. 67. <https://www.osce.org/odihr/393503?download=true>.

²⁴⁸ See: Handbook on Child Participation in Parliament, Handbook for Parliamentarians No18, 2011, IPU and UNICEF. <http://archive.ipu.org/PDF/publications/child-parl-e.pdf>.

Box 41: Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context

I. The Status of Children and their Protection under International Law and Juvenile Justice Standards

Good Practice 1: Address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.

Good Practice 2: Assess and address the situation of children in a terrorism-related context from a child rights and child development perspective

II. Prevention

Good Practice 3: Address children's vulnerability to recruitment and/or radicalization to violence through preventive measures.

Good Practice 4: Develop targeted prevention strategies with a strong focus on the creation of networks to support children at risk.

III. Justice for Children

Good Practice 5: Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.

Good Practice 6: Apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.

Good Practice 7: Consider and design diversion mechanisms for children charged with terrorism-related offenses.

Good Practice 8: Consider, and apply where appropriate, alternatives to arrest, detention, and imprisonment, including during the pre-trial stage and always give preference to the least restrictive means to achieve the aim of the judicial process.

Good Practice 9: Apply the principle of individualisation and proportionality in sentencing.

Good Practice 10: Hold children deprived of their liberty in appropriate facilities; support, protect, and prepare them for reintegration.

IV. Rehabilitation and Reintegration

Good Practice 11: Develop rehabilitation and reintegration programs for children involved in terrorism-related activities to aid their successful return to society.

V. Capacity Development, Monitoring and Evaluation

Good Practice 12: Design and implement specialized programs for terrorism cases to enhance the capacity of all the professionals involved in the juvenile justice system.

Good Practice 13: Design and implement monitoring and evaluation programs to ensure the effective implementation of international juvenile justice standards.

Source: Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, Global Counterterrorism Forum (GCTF), 2016.²⁴⁹

²⁴⁹ <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.

Recommendations to Improve the Nexus with the Criminal Justice Sector

Chapter 1: Parliamentarians' Work in the Context of Security and Counter-Terrorism Policies

At the legislative level,

- Parliamentarians play a vital role in efforts to combat the global threat of terrorism and ensure that counter-terrorism should not only be looked at from a defence and security or a home affairs lens.
- Parliamentarians have a vital role in defining terrorists' offenses in national legislation and avoiding definitions that are vague, ambiguous, or imprecise.
- Parliamentarians have a vital role in ensuring that national counter-terrorism legislation complies with international legal norms and are adapted, as appropriate, to address new and evolving terrorist challenges.
- Parliamentarians could actively engage in both pre- and post-legislative scrutiny to review the impact of legislation and avoid unintended consequences, including:
 - promoting improvements to the law-making process and encouraging the adoption of new models for the clarification of objectives of a counter-terrorism bill;
 - ensuring that obligations to review counter-terrorism legislation are enshrined in domestic law – particularly with respect for emergency or hastily drafted legislation which may require early review;
 - encouraging openness to public consultations during the legislative drafting and analysis process to enhance legitimacy and transparency;
 - ensuring synergy with related laws and intersection of terrorist offenses with other crimes (arms trafficking, border control, human smuggling, organised crime, etc.);
 - encouraging parliamentary institution to provide technical staff with experience in criminal justice affairs and counter-terrorism; and
 - enacting timely anti-terrorism laws respecting human rights and fundamental freedoms.
- Parliamentarians could play a vital role in encouraging law enforcement administrations to implement counter-terrorism laws.
- Parliamentarians could encourage the engagement of the judiciary in the legislative process and ensure their inputs and feedback on the implementation of laws are captured.

At the oversight level,

- Parliamentarians could support, through their oversight mechanisms, the enforcement of laws.
- Parliamentarians members of relevant committees could encourage an exchange of information and expertise and assist in understanding and implementing counter-terrorism obligations.
- Parliamentarians could use all available oversight mechanisms for making the executive aware of expectations of the public in counter-terrorism, such as oral and written questions, motions, inquiries, select committee hearings, 'white papers', representations to ministers and departments.
- Parliamentarians could install and increase monitoring mechanisms to ensure counter-terrorism measures are achieving their intended outcomes and comply with the framework of rule of law and human rights.
- The parliament plays a crucial role in authorising expenditures to implement counter-terrorism measures and could encourage competent committee(s) to hold debates on relevant policy budgets.
- Parliamentarians could encourage participatory, transparent and open counter-terrorism policy-making processes, by:
 - ensuring that procedures are in place to enable effective public consultation allowing civil society organisations and citizens to influence the policy;
 - encouraging the government to conduct a comprehensive review of overall counter-terrorism policy and capture lessons learned in the implementation process;
 - requesting regular access to briefings and research summaries to improve their understanding of the problem and inform effective responses; and
 - contributing to building public awareness of what is considered criminal conduct.
- Parliamentarians can play a crucial role in ascertaining whether policies meets people's needs and aspirations and in requiring its revision if necessary.
- Parliament plays a vital role in the development of counter-terrorism policy in all its phases: development, decision-making, implementation and evaluation.

Chapter 2: Parliamentarians' Capacity to Enable the Implementation of International Counter-Terrorism Law at the National Level in Support of, Judicial Cooperation

- Parliamentarians have a vital role to play to ensure the creation of domestic laws relating to the requirements stated by international counter-terrorism commitments and resolutions. This could include:
 - encouraging government to become parties of counter-terrorism treaties;
 - getting involved in parliamentary debate or committee deliberations on the parliament ratification of counter-terrorism treaties;
 - overseeing and ensuring the implementation of counter-terrorism treaties and resolutions taking their provisions as a basis and respecting their requirements, particularly with regard to the criminalisation of acts; and
 - encouraging government to become parties to the other relevant United Nations conventions such as the Convention Against Transnational Organised Crime (and all its protocols) as well as the United Nations Convention Against Corruption.
- Parliamentarians should seek to ensure that national counter-terrorism legislation adheres to the principle of legality and is consistent with international human rights and refugee law as well as international humanitarian law, this includes:
 - ensuring that laws do not criminalise or restrict key freedoms such as freedom of expression, association, etc;
 - ensuring that the permissibility of security measures to limit individuals' rights is defined under the overarching conditions of legality, necessity, proportionality and non-discrimination;
 - setting up of proportionate legal and operational counter-terrorism (CT) measures to the nature and circumstances of the offence with respect to the rule of law and human rights frameworks; and
 - ensuring that domestic laws meet international obligations and good practices while ensuring the protection of human rights, especially those related to criminal justice system.
- Parliamentarians, prosecutors and investigating magistrates could play an active role in facilitating increased cooperation and exchange of information in the prevention, detection, investigation, and prosecution of terrorism offences in accordance with national law and international and regional frameworks.
- Parliamentarians could review relevant criminal procedure code and criminal laws to ensure that the predicate proscribed acts described in the international counter-terrorism legal framework are criminalised and that legal jurisdiction for them is established.
- Parliamentarians could oversee the effective operation of international cooperation in the criminal justice system.
- Parliamentarians play an important role in establishing effective justice sector institutions that can prevent and counter terrorism and related criminal activities and could establish responsibilities of the justice sector institutions and the parameters of their authority in laws.
- Parliamentarians could ensure independence of the criminal justice system by:
 - adopting adequate laws and eliminating opportunities for political influence or corruption within the justice system;
 - revising the criminal procedural law to empower the criminal justice system to fulfil its security and social protection duties while upholding its commitment to the rule of law and human rights;
 - embedding clearer parliamentary oversight tools to ensure accountability of the judiciary system within the principles of independence and impartiality of the judiciary; and
 - ensuring that courts guarantees the proper application of counter-terrorism laws and avoid arbitrarily detaining and punishing individuals engaged in lawful activity.
- Parliamentarians play an active role in overseeing the implementation of justice system framework and in empowering the criminal justice authorities to use the latest special investigative techniques, such as proactively trace the money of terrorists and seize it, etc.
- Parliamentarians could focus on engaging more and better at inter-parliamentary level to share views, learn from each other's experiences and engage in joint actions.
- Parliamentarians could review and enhance the legal framework to include measures that support and strengthen mutual assistance; enable extradition as required by instruments to which the country is a party; and include measures that authorise law enforcement cooperation as required by any bilateral or multilateral agreements.
- Parliamentarians could contribute to developing practices and procedures to encourage international cooperation in counter-terrorism matters.

- Parliamentarians could encourage regional entities to adopt guidelines on human rights and the fight against terrorism, similar to the Council of Europe Guidelines²⁵⁰; the UN Guidelines and the OSCE/ODIHR Guidelines²⁵¹.
- Parliamentarians play an active role in drafting and reviewing legislation related to the establishment and authority of different institutional or interagency bodies and promoting information sharing.

Chapter 3: The Role of Parliamentarians in Overseeing the Security and Intelligence Services' Work in Counter-Terrorism

- Parliaments play a vital role in establishing the legal framework that sets the powers and defines the limits of law enforcement and intelligence and security services agencies.
- Parliamentarians could encourage intelligence and security services to be effective and to work in an efficient legally based way.
- Parliamentarians could encourage a regular dialogue with intelligence and security services to ensure they are kept informed and up-to-date as well as encourage inter-agencies coordination and communication between intelligence services, the military and the prosecution.
- Parliamentarians could increase its role in overseeing intelligence agencies and ensure that the oversight mechanisms are timely and adapted to evolving circumstances.
- Parliamentarians could ensure getting access to reports, persons and record and playing an active role in defining the terms of access to information in a statutory law or through actions, such as:
 - reaching a protocol with other parts of the government to ensure that enough levels of information are disclosed while maintaining the needed level of secrecy for the government to lawfully exercise its functions regarding counter-terrorism objectives;
 - defining the overall legal framework for state information classification;
 - encouraging the formation of specialised parliamentary committee with guaranteed access to persons, places, papers, and records and that can help defining and assessing the level of details to be disclosed to the public; and
 - using the power to conduct hearings to obtain information from intelligence officials, independent experts, and other respondents.

- Parliamentarians and criminal justice practitioners could ensure that increased reliance on intelligence does not have any deleterious effect on criminal justice and the right to a fair trial and the rule of law.
- Parliamentarians should follow up on the implementations of recommendations issues by relevant committees.
- Parliamentarians could promote the inter-parliamentary exchange of information and cooperation on this matter.
- Parliamentarians should seek to build trust with the intelligence bodies and support them in their role.
- Parliamentarians should allocate time for the work of oversight and develop relevant expertise and access experts' and comparative studies on the subject and ensure that monitoring of service activity covers the full intelligence oversight cycle consisting of ex ante, ongoing, and ex post oversight.

Chapter 4: The Role of Parliamentarians in Preventing and Countering Violent Extremism: Addressing Conditions Leading to the Spread of Terrorism

- Parliamentarians could play a vital role in ascertaining that the P/CVE policies meet people's needs and address the evolving nature of terrorist threat.
- Parliamentarians are uniquely positioned to engage and interact directly with their constituents and ensure that diversity and inclusion are respected as part of any relevant policy.
- Parliamentarians could convene public hearings to discuss conditions conducive to terrorism within the local community.
- Parliamentarians play a key role in developing public opinion and are therefore key for raising counter-terrorism awareness of the whole society.
- Parliamentarians could promote avoiding stigmatising communities and support sending clear and positive messages.
- Parliamentarians could foster inclusiveness and good governance mechanisms in the development of national counter-terrorism policies and frameworks, which can increase community-level understanding and ownership.
- Parliamentarians could encourage relevant committees to conduct public hearings in regions to listen to people's expectations and grievances.

²⁵⁰ <https://book.coe.int/eur/en/terrorism-and-law/3208-human-rights-and-the-fight-against-terrorism-the-council-of-europe-guidelines.html>.

²⁵¹ <https://www.osce.org/odihr/394163>.

- Parliamentarians could encourage more transparency and information exchange between all levels of government in the development and implementation of P/CVE and counter-terrorism policies.
- Parliamentarians could encourage the active involvement of business and civil society when developing specific legal and policy frameworks to address terrorism.
- Parliamentarians could ensure the existence of clear and just legal frameworks addressing FTFs and the homegrown terrorism phenomenon that:
 - define and limit the scope of activity covered by FTF-related laws and policies and resource capacities that warrant different approaches in assessing an individual's culpability and determining the appropriateness of criminal investigation, prosecution, and interventions;
 - distinguishes 'foreign terrorist fighting' from participation in armed conflict consistently with international humanitarian law (IHL), and apply and interpret FTF-related measures consistently with, and in a way that does not undermine, the broader legal framework, including IHL;
 - ensures that national laws, policies and practices aimed at countering FTF threats are implemented in full compliance with international law, including international human rights and humanitarian law standards;
 - supports the development of community-based solutions to address the phenomenon of people returning home from having engaged in violent conflict abroad or in having violated their country's anti-terrorism laws;
 - promotes better understanding of homegrown terrorism phenomenon and avoids stigmatisation of any community after a homegrown terrorist attack as well as engage with local communities and their constituencies on this; and
 - promotes the development and implementation of appropriate judiciary and administrative measures to mitigate the risk posed by potential homegrown terrorists, while respecting human rights.
- Parliamentarians and criminal justice practitioners could ensure that the criminalisation and prosecution of suspected foreign fighters who have returned comply with international human rights law.
- Parliamentarians could engage in conducting evaluations or assessments of countering violent extremism practices aimed at the reintegration and rehabilitation of those convicted for terrorism offences that is carried out within the detention's settings.
- Parliamentarians could play an active role in promoting best practice whereby criminal justice and law enforcement agencies disseminate accurate information to the public as soon as they can after an attack without compromising any ongoing investigation.
- Parliamentarians could ensure specific attention to women, juvenile recruits, and children, and their human rights are respected regardless of the threat these individuals may pose or the criminal activities in which they may have participated.
- Parliamentarians could promote the role that women play in preventing violent extremism and that gender dimensions to fight terrorism is integrated and responds to the need to ensure women's rights are respected in the context of growing terrorism threats while a coherent international framework is still missing.
- Parliamentarians and criminal justice system could ensure that offenses of sexual violence are criminalised and prosecuted explicitly, including in the context of terrorism trials so that perpetrators are punished for the full extent of their crimes and victims are also recognised.
- Parliamentarians could support criminal justice system to reflect on community role in P/CVE and encourage investigations in a gender sensitive manner and encourage investigation teams to acquire skills in interviewing women and girl victims and knowledge about measures to protect them.
- Parliamentarians and justice system play a vital role in supporting the establishment of a comprehensive juvenile justice system according to international standards, ensuring laws are subject to review on the impact of its implementation on juveniles, and ensuring effective monitoring of the implementation of the juvenile justice system.

List of Acronyms and Abbreviations

ACSRT	African Centre on the Study and Research of Terrorism
AU	African Union
CGCC	Centre for Global Counter-Terrorism Cooperation
CSO	Civil Society organisation
CTC	Counter-Terrorism Committee
CTED	Counter Terrorism Executive Directorate
CT	Counter Terrorism
DCAF	Geneva Centre for the Democratic Control of Armed Forces
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
FATF	Financial Action Task Force
IJJ	International Institute for Justice
IMF	International Monetary Fund
IPU	Inter-Parliamentary Union
NATO	The North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OIC	Organisation of the Islamic Conference
OSCE	Organisation for Security and Co-operation in Europe
PPP	Public-Private Partnership
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UK	United Kingdom
US	United States
VERLT	Violent Extremism and Radicalization that Lead to Terrorism

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Annex I

Table I: Universal instruments related to the prevention and suppression of international terrorism

Treaty	Ratification Status	Link
Instruments regarding civil aviation		
1. Convention on Offences and Certain Other Acts Committed on Board Aircraft	Signed at Tokyo on 14 September 1963; entered into force on 4 December 1969; 180 parties	http://treaties.un.org/doc/db/Terrorism/Conv1-english.pdf
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft	Signed at The Hague on 16 December 1970; entered into force on 14 October 1971; 181 parties	http://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf
3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Signed at Montreal on 23 September 1971; entered into force on 26 January 1973; 183 parties	https://treaties.un.org/doc/db/Terrorism/Conv3-english.pdf
4. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Signed at Montreal on 24 February 1988; entered into force on 6 August 1989; 156 parties	https://treaties.un.org/doc/db/Terrorism/Conv7-english.pdf
5. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation	Adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977; 161 parties.	http://www.icao.int/secretariat/legal/Administrative%20Packages/Beijing_Convention_EN.pdf
6. 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft	Adopted in Beijing on 10 September 2010 (Doc 9959); entered into force in accordance with its Article XX,	http://www.icao.int/secretariat/legal/Administrative%20Packages/Beijing_protocol_EN.pdf

7. 2014 Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft	Adopted in Montreal on 4 April 2014. Not yet in force.	http://www.icao.int/secretariat/legal/list%20of%20parties/montreal_prot_2014_en.pdf
Instrument regarding the protection of international staff		
8. 1973 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; entered into force on 20 February 1977; 161 parties.	http://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf
Instrument regarding the taking of hostages		
9. 1979 International Convention against the Taking of Hostages	Adopted by the General Assembly of the United Nations on 17 December 1979; entered into force on 3 June 1983; 153 parties	http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf
Instruments regarding the nuclear material		
10. 1980 Convention on the Physical Protection of Nuclear Material	Signed at Vienna on 3 March 1980; entered into force on 8 February 1987; 116 parties	http://treaties.un.org/doc/db/Terrorism/Conv6-english.pdf
11. 2005 Amendments to the Convention on the Physical Protection of Nuclear Material	Adopted in 1 November 2005	https://www.unodc.org/tldb/pdf/Conv_nuclear_material_1980_amendment_en.pdf
Instruments regarding the maritime navigation		
12. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	Adopted in Rome on 10 March 1988; entered into force on 1 March 1992; 135 parties	https://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf
13. 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	Adopted in London, United Kingdom on 14 October 2005	https://www.unodc.org/tldb/en/2005_Protocol2Convention_Maritime%20Navigation.html

14. 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf	Adopted in Rome on 10 March 1988; entered into force on 1 March 1992; 124 parties.	https://treaties.un.org/doc/db/Terrorism/Conv9-english.pdf
15. 2005 Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf	Adopted on 1 November 2005;	https://www.unodc.org/tldb/pdf/Protocol%20Fixed%20Platforms%20EN.pdf
16. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection	Signed at Montreal on 1 March 1991; entered into force on 21 June 1998; 125 parties.	https://treaties.un.org/doc/db/Terrorism/Conv10-english.pdf
17. 1997 International Convention for the Suppression of Terrorist Bombings	Adopted by the General Assembly of the United Nations on 15 December 1997; entered into force on 23 May 2001; 146 parties	
18. 1999 International Convention for the Suppression of the Financing of Terrorism	Adopted by the General Assembly of the United Nations on 9 December 1999; entered into force on 10 April 2002; 153 parties.	https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf
19. 2005 International Convention for the Suppression of Acts of Nuclear Terrorism	Adopted by the General Assembly of the United Nations on 13 April 2005; not yet entered into force; 2 parties.	https://treaties.un.org/doc/db/Terrorism/english-18-15.pdf
20. United Nations Convention against Transnational Organized Crime and to the three protocols supplementing	Adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.	https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en

Annex II

Table II- Universal and Regional institutions and arrangements related to the prevention and suppression of international terrorism²⁵²

Institution	Mandate	Link
United Nations Office of Counter-Terrorism (UNOCT)	<p>UNOCT was established pursuant to the General Assembly resolution 71/291 on 15 June 2017. It is headed by an Under-Secretary-General.</p> <p>The Office of Counter-Terrorism has five main functions:</p> <p>(a) provide leadership on the General Assembly counter-terrorism mandates entrusted to the Secretary-General from across the United Nations system;</p> <p>(b) enhance coordination and coherence across the 38 Counter-Terrorism Implementation Task Force entities to ensure the balanced implementation of the four pillars of the UN Global Counter-Terrorism Strategy;</p> <p>(c) strengthen the delivery of United Nations counter-terrorism capacity-building assistance to member states;</p> <p>(d) improve visibility, advocacy and resource mobilisation for United Nations counter-terrorism efforts; and</p> <p>(e) ensure that due priority is given to counterterrorism across the United Nations system and that the important work on preventing violent extremism is firmly rooted in the Strategy.</p>	http://www.un.org/en/counterterrorism/

²⁵² This table is illustrative only.

<p>United Nations Counter-Terrorism Committee (CTC)</p>	<p>The Counter-Terrorism Committee (CTC) was established by Security Council resolution 1373 (2001).</p> <p>The Committee, comprising all 15 Security Council members, was tasked with monitoring implementation of resolution 1373 (2001), which requested countries to implement a number of measures intended to enhance their legal and institutional ability to counter terrorist activities at home, in their regions and around the world, including taking steps to:</p> <ul style="list-style-type: none"> • Criminalise the financing of terrorism • Freeze without delay any funds related to persons involved in acts of terrorism • Deny all forms of financial support for terrorist groups • Suppress the provision of safe haven, sustenance or support for terrorists • Share information with other governments on any groups practicing or planning terrorist acts • Cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and • Criminalise active and passive assistance for terrorism in domestic law and bring violators to justice. 	<p>https://www.un.org/sc/ctc/</p>
<p>Counter-Terrorism Implementation Task Force (CTITF)</p>	<p>The Counter-Terrorism Implementation Task Force (CTITF) was established by the Secretary-General in 2005 and endorsed by the General Assembly through the United Nations Global Counter-Terrorism Strategy, which was adopted by consensus in 2006.</p> <p>The mandate of the CTITF is to strengthen coordination and coherence of counter-terrorism efforts of the United Nations system. The primary goal of CTITF is to maximise each entity's comparative advantage by delivering as one to help member States implement the four pillars of the Global Strategy.</p> <p>While the primary responsibility for the implementation of the Global Strategy rests with member states, CTITF ensures that the United Nations system is attuned to the needs of member states, to provide them with the necessary policy support and spread in-depth knowledge of the Strategy, and wherever necessary, expedite delivery of technical assistance.</p> <p>The Task Force consists of 38 international entities and INTERPOL which by virtue of their work have a stake in multilateral counter-terrorism efforts. Each entity makes contributions consistent with its own mandate.</p>	<p>https://www.un.org/counterterrorism/ctitf/en</p>

<p>Terrorism Prevention Branch, United Nations Office on Drugs and Crime (UNODC)</p>	<p>UNODC has the mission of making the world safer from crime, drugs, and terrorism. To be effective and sustainable, responses to these threats must include strategies covering the following areas:</p> <ul style="list-style-type: none"> • Crime Prevention, especially Urban crime prevention; Armed violence prevention; Prevention of recidivism • Criminal Justice Reform: Police reform, Prosecution service, Judiciary (the courts), Access to legal defence and legal aid, Prison reform and alternatives to imprisonment, and Restorative justice • Justice for children; Support and assistance to victims; Gender in the criminal justice system 	<p>https://www.unodc.org/unodc/index.html?ref=menutop</p>
<p>Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism</p>	<p>The Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism works to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms. The Special Rapporteur also provides, at the request of member states, advisory services and technical assistance.</p>	<p>https://www.ohchr.org/en/issues/terrorism/pages/srterrorismindex.aspx</p>
<p>Financing Action Task Force (FATF)</p>	<p>The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the ministers of its member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a 'policy-making body' which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.</p>	<p>http://www.fatf-gafi.org/about/</p>

<p>Counter-Terrorism Executive Directorate (CTED)</p>	<p>Under United Nations Security Council Resolution 1535 (2004), the Council established the Counter-Terrorism Committee Executive Directorate (CTED) to assist the work of the CTC and coordinate the process of monitoring the implementation of Resolution 1373 (2001).</p> <p>CTED comprises some 40 staff members, about half of whom are legal experts who analyse the reports submitted by states in areas such as legislative drafting, the financing of terrorism, border and customs controls, police and law enforcement, refugee and migration law, arms trafficking and maritime and transportation security. CTED also has a senior human rights officer.</p>	<p>https://www.un.org/sc/ctc/</p>
<p>Global Counterterrorism Forum (GCTF)</p>	<p>The Global Counterterrorism Forum (GCTF) is an international forum of 29 countries and the European Union with an overarching mission of reducing the vulnerability of people worldwide to terrorism by preventing, combating, and prosecuting terrorist acts and countering incitement and recruitment to terrorism. The main objectives of the forum are to strengthen the fight against terrorism by sharing experiences and reinforcing the criminal justice approach.</p> <p>The GCTF brings together experts and practitioners from countries and regions around the world to share experiences and expertise and develop tools and strategies on how to counter the evolving terrorist threat.</p>	<p>https://www.thegctf.org/</p>
<p>INTERPOL</p>	<p>Among its other activities, INTERPOL circulates alerts and warnings on terrorists. The global role of the agency against terrorism was also acknowledged by United Nations Security Council Resolution 2178 of 2014. In the event of a terrorist attack, member countries may request the assistance of an INTERPOL Incident Response Team (IRT), which provides a range of investigative and analytical support services. Moreover, INTERPOL offers some tools and services to help member countries enhance security at their borders.</p>	<p>https://www.interpol.int/</p>

Global Initiative to Combat Nuclear Terrorism (GICNT)	<p>The Global Initiative to Combat Nuclear Terrorism (GICNT) is a voluntary international partnership of 88 nations and five international organisations that are committed to strengthening the global capacity to prevent, detect, and respond to nuclear terrorism. All partner nations have voluntarily committed to implementing the GICNT Statement of Principles (SOP), a set of broad nuclear security goals encompassing a range of deterrence, prevention, detection, and response objectives. The eight principles contained within the SOP aim to develop partnership capacity to combat nuclear terrorism, consistent with national legal authorities and obligations as well as relevant international legal frameworks such as the Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material, and United Nations Security Council Resolutions 1373 and 1540.</p>	http://gicnt.org/
G7 Financial Action Task Force (FATF)	<p>The G7 Financial Action Task Force was established in July 1989 at a G7 Summit in Paris, initially to examine and develop measures to combat money laundering. In October 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.</p>	http://www.fatf-gafi.org/
Regional entities		
European Union Counter-Terrorism Strategy and EU Counter-Terrorism Coordinator	<p>The EU Counter-Terrorism Strategy was adopted by the Council of the EU on 30 November 2005. The strategy is based on the four pillars of prevent, protect, pursue, and respond. Across these pillars, the strategy recognises the importance of cooperation with third countries and international institutions. The EU Declaration on Combating Terrorism, adopted in 2004, also established the role of the EU Counter-Terrorism Coordinator, who is responsible for coordinating the work of the EU Council in combating terrorism, presenting policy recommendations, and monitoring the implementation of the EU counter-terrorism strategy.</p>	https://www.consilium.europa.eu/en/policies/fight-against-terrorism/counter-terrorism-coordinator/

<p>Organization for Security and Co-operation in Europe (OSCE)</p>	<p>The Organization for Security and Co-operation in Europe (OSCE) is an intergovernmental organisation with a multifaceted agenda. In 2012, the OSCE adopted the Consolidated Framework for the Fight Against Terrorism, in which it laid out its approach to counterterrorism efforts. The OSCE uses its particular organisational strengths to, among other activities, attempt to 'eliminate the conditions conducive to the spread of terrorism' (through addressing socio-economic, institutional, and cultural factors) and 'enhance co-operation and build capacity to prevent and combat terrorism' (though addressing issues with legal frameworks and institutions, financing, extremism, and prosecution). The OSCE Parliamentary Assembly established the Ad Hoc Committee on Countering Terrorism in July 2017 to strengthen the contribution of OSCE parliamentarians in addressing violent extremism and radicalisation.</p>	<p>https://pilac.law.harvard.edu/multi-regional-efforts//organization-for-security-and-co-operation-in-europe-osce</p>
<p>Council of Europe's Committee of Experts on Terrorism (CODEXTER)</p>	<p>The Council of Europe's Committee of Experts on Terrorism (CODEXTER) is an intergovernmental body coordinating the Council of Europe's action against terrorism. It drafted the Council of Europe Convention on the Prevention of Terrorism and several important soft law instruments. The Committee focuses on preventing radicalisation and the spread of terrorist ideologies via the Internet as well as special investigation techniques and the link between terrorism and organised crime. It also monitors and promotes the effective implementation of the Council of Europe counter-terrorism instruments while encouraging the exchange of relevant best practices.</p>	<p>https://www.coe.int/en/web/counter-terrorism/codexter.</p>
<p>North Atlantic Treaty Organization (NATO) Policy Guidelines on Counter-Terrorism</p>	<p>In 2012, NATO agreed on the Policy Guidelines on Counter-Terrorism. These Guidelines provide strategic direction for NATO's counter-terrorism activities and identified key areas within which the defence Alliance should implement initiatives to enhance the prevention of and resilience to acts of terrorism. The guidelines focus on awareness, capabilities and engagement with partners.</p> <p>NATO key initiatives in this area include: building defence capacity; providing Military Assistance if needed; providing education, training and exercises through NATO's Centres of Excellence; promoting interoperability and co-operation and sharing of standards. NATO cooperates actively with the United Nations, the European Union and the Organisation for Security and Co-operation in Europe (OSCE) to ensure that views and information are shared and that appropriate action can be taken more effectively in the fight against terrorism.</p>	<p>https://www.nato.int/nato_static/assets/pdf/pdf_topics/ct-policy-guidelines.pdf.</p>

<p>Collective Security Treaty Organization (CSTO)</p>	<p>The Collective Security Treaty Organization (CSTO) is an intergovernmental military alliance. Among its fundamental objectives is combating international terrorism. The CSTO aims to strengthen the national and collective security of its members through military-political cooperation, coordinating foreign policy, and establishing cooperation mechanisms. Reportedly, the CSTO is undertaking an effort to develop relationships with the Counter-Terrorism Committee of the United Nations Security Council, the OSCE, and other security entities.</p>	<p>https://www.globalsecurity.org/military/world/int/csto.htm</p>
<p>Commonwealth of Independent States Anti-terrorism Centre</p>	<p>The Commonwealth of Independent States established the Anti-Terrorism Centre (ACT) in June 2000 to help coordinate the interaction among competent authorities of member states in the struggle against international terrorism and other forms of extremism. It helps to develop and draft legislation, coordinate joint counterterrorism actions, conduct trainings, gather and analyse information, and facilitate co-operation. The Commonwealth of Independent States (CIS) is an association of states.</p> <p>The CIS established its Anti-terrorism Centre (ACT), the main purpose of which is to help coordinate interaction among competent authorities of member states in the struggle against international terrorism and other forms of extremism. The ATC employs a variety of counterterrorism measures across several spheres. It helps develop and draft legislation, coordinate joint counterterrorism actions, conduct trainings, gather and analyse information, and facilitate cooperation. The ATC works with CIS authorities and member states in pursuing these goals.</p>	<p>https://pilac.law.harvard.edu/multi-regional-efforts//commonwealth-of-independent-states-cis-anti-terrorism-centre-atc</p>

<p>Shanghai Cooperation Organization (SCO)</p>	<p>The Shanghai Convention on Combating Terrorism, Separatism and Extremism was adopted in June 2001. The Shanghai Cooperation Organization (SCO) member states defined the notion of extremism and agreed on the forms of co-operation, the nature of information subject to exchange and the format for the interaction of the involved authorities.</p> <p>The Concept of Co-operation Between SCO Member States in Combating Terrorism, Separatism and Extremism was adopted in July 2005. It regulates the main goals, objectives, guidelines, areas and forms of co-operation in combating terrorism, separatism and extremism. The Convention on Combating Extremism and the Declaration on the Joint Fight Against International Terrorism was signed in 2017 at the Astana Summit. It built on two previous documents and resonates with the issues addressed by the UN Global Counter-Terrorism Strategy.</p> <p>Finally, the Regional Anti-Terrorist Structure (RATS) was established by the member states of the Shanghai Convention to combat terrorism, separatism and extremism on 15 June 2001. Its main tasks and duties include: maintaining working relations with other international institutions dealing with terrorism; assisting member states in the preparation and staging of counter-terrorism exercises; and drafting international legal documents concerning the fight against terrorism, separatism and extremism.</p>	<p>http://eng.sectesco.org/</p>
<p>Inter-American Committee Against Terrorism (CICTE)</p>	<p>The Inter-American Committee Against Terrorism (CICTE) was established in 1999 and is currently in charge of supervising the implementation of 2002 Convention. The main purpose of the CICTE is to promote and develop co-operation among member states to prevent, combat and eliminate terrorism.</p>	<p>http://www.oas.org/en/sms/cicte/default.asp.</p>
<p>African Centre for the Study and Research on Terrorism (ACSRT)</p>	<p>African Centre for the Study and Research on Terrorism (ACSRT), was established in 2004 in Algiers pursuant to the decision of the AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, held in Algiers in September 2002. ACSRT main aim is to serve as a structure for centralizing information, studies and analyses on terrorism and terrorist groups and to develop Counter-Terrorism capacity building programmes. The ACSRT also provides a forum for interaction and cooperation among member states and regional mechanisms. The Centre plays an important role in guiding the African Union's counter-terrorism efforts and works in collaboration with a number of regional and international partners to ensure coherent and coordinated counter-terrorism efforts in the continent.</p> <p>The African Union also appointed in 2010 a Special Representative for Counter-Terrorism Cooperation. The Special Representative serves, concurrently, as the Director of the ACSRT.</p>	<p>http://caert.org.dz/About%20us.pdf</p>

<p>Counterterrorism Committee of the League of Arab States (Arab League)</p>	<p>The Arab League Ministerial Council has resolved to fight against terrorism in the region, with respect for the security, economic, ideological, and social dimensions of the threats. The Arab League has committed itself to implementing United Nations efforts to fight terrorism through its Arab Strategy to Combat terrorism (1997) and Arab Convention for the Suppression of Terrorism (1998). To achieve these ends, the Arab League advocates for the adoption of comprehensive and coordinated tactics at both national and regional levels to combat terrorism. The Arab League works to generate reports and recommendations on Arab States' security challenges, enact necessary legislation to criminalize terrorism and money laundering, endorse or join universal conventions on terrorism, promote dialogue, tolerance and understanding among civilizations, cultures and religions, address the conditions and factors that lead to terrorism, and cooperation in intelligence, extradition, and mutual legal assistance.</p>	<p>https://pilac.law.harvard.edu/multi-regional-efforts//counterterrorism-committee-of-the-league-of-arab-states-arab-league</p>
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