



The Role of Parliamentarians in Developing an Effective Response to Terrorism

*Valletta Recommendations Relating to Contributions by
Parliamentarians in Developing an Effective Response to Terrorism*

The International Institute for Justice and the Rule of Law





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The International Institute for Justice and the Rule of Law

Inspired by the Global Counterterrorism Forum (GCTF), the IJ is a neutral platform for training lawmakers, judges, prosecutors, law enforcement, corrections officials, and other justice sector practitioners to discuss sustainable counter terrorism approaches founded on the rule of law.

The IJ is 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 consists of an international team of twelve headed by an Executive Secretary, who are responsible for the day-to-day operations of the IJ.

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Finally, the IJ is particularly appreciative of the Global Counterterrorism Forum (GCTF), which welcomed the *Valletta Recommendations* as one of its framework documents that support policy-makers and practitioners in the pursuance of sustainable counter terrorism actions.



Editor Biography

Valerio de Divitiis joined the International Institute for Justice and the Rule of Law (IJ) as Program Manager in February 2015, where he has been developing and implementing counter terrorism (CT) programming across the IJ portfolio including this initiative for parliamentarians as well as projects addressing the rehabilitation and reintegration of violent extremist offenders. Since 2007, Valerio has been working at multilateral level in CT and transnational organized crime prevention

through the United Nations Office for Drugs and Crime (UNODC) Division for Operations in its HQ in Vienna and the Country Office in Iran, the EU Agency for Fundamental Rights, and the Action against Terrorism Unit of the Organization for Security and Co-operation in Europe (OSCE). In 2013 and 2014, Valerio worked as independent expert on CT and Fundamental Rights for the EU as well as acted as advisor for the NATO Center of Excellence Against Terrorism based in Ankara.

Credits

Maryam El Hajbi, IJ Program Manager, provided invaluable contributions to the drafting of the present report. **Maria Sarkaz**, IJ Program Assistant, provided invaluable logistical support to the workshops with the parliamentarians during this initiative. The IJ is also especially grateful to **Lara Nonninger**, **Julia Terradot**, **Yuliya Hauff**, and **Morgan**

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Foreword by Gilles de Kerchove, EU Counter-Terrorism Coordinator

Parliamentarians around the world play a crucial role in efforts to counter terrorism. They propose, amend and adopt legislation governing how states should respond to the threat from terrorism. They scrutinise governments' behaviour to ensure that, in striking a balance between protecting citizens and promoting their liberty, human rights and the rule of law are respected. And they have to maintain effective oversight of state security services.

Parliamentarians also need to work in partnership with practitioners from the justice and security sectors, ensuring that states pursue rule-of-law based responses in defending their citizens. Many countries and supranational actors, including the EU, are currently updating their legislation to reflect the unprecedented threat the world faces from DAESH and its brand of extremism. Ensuring that national legislation corresponds to international norms is critical. That is why the EU is leading the call for all states to amend their legislation in line with UN Security Council Resolution 2178 which contains a series of far reaching proposals to tackle the threat from foreign terrorist fighters.

To raise international awareness of the need to ensure effective parliamentary oversight of counter-terrorism legislation, the EU is proud to work with the International Institute for Justice and the Rule of Law (IJ) in Malta. With financial support from the EU, the IJ has implemented a project - 'Enhancing the role of parliamentarians in building effective counter-terrorism systems within a rule of



law framework' - which has brought together parliamentarians from Europe, the Middle East, North, East and West Africa. This report includes concrete examples of successful preventative measures and capacity-building efforts in countering terrorism we have seen around the world in recent months.

The contribution of parliamentarians to this project has also led to the preparation of the *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*. The Valletta Recommendations were adopted by the Ministers of the Global Counterterrorism Forum (GCTF) in New York in September 2016. As a member of the GCTF, the EU will continue to support work to strengthen the role of parliamentarians and criminal justice practitioners in efforts to effectively tackle the scourge of terrorism. I hope the recommendations and this study will become practical tools for parliamentarians around the world as they seek to strike that crucial legislative balance between liberty and security.

Introduction

The Role of Parliamentarians in Counter Terrorism

Parliamentarians play a distinct role in maintaining the rule of law. While parliamentary systems vary between countries, parliaments are typically bodies that are responsible for the enactment of legislation and the oversight of its implementation and national budgeting. Parliamentarians are also the voices of the citizens, and represent different groups within society, including disadvantaged communities, and are therefore, well situated for community engagement.

The issues facing parliamentarians in the Counter Terrorism (CT) context are extensive. An engaged and independent legislative body is a critical element in developing a legitimate, coherent, and comprehensive CT regime that reinforces the rule of law and justice both at national and local levels. Parliamentarians can play a central role in CT legislation, policy, and implementation, CT law enforcement and intelligence oversight, Countering Violent Extremism (CVE) and public outreach, CT budgeting, and overall good governance and rule of law. The national CT legal legislation and strategy must be regularly reviewed and updated to ensure national CT policies meet evolving national, regional, and global threats in compliance with international requirements. Strengthening justice mechanisms counters terrorism ideology, recruitment, and

operational capacities by avoiding the sense of injustice that can fuel extremist violence.

Protection of rights and upholding the rule of law is not a limitation, but rather a central pillar for CT efforts' effectiveness. The rule of law defines operational boundaries and powers that assume particular relevance when these relate to the CT area where insufficient legal provisions, definitions of functions and limitation of powers may jeopardize citizens' fundamental rights. Legislators are vested with the responsibility to establish regulations in order to provide executive branches and operational agencies' CT mandate and resources, as well as to oversee their work against terrorism. In light of the sensitive security-related concerns in the area of CT, parliamentarians, as direct representatives of citizens, are ideally placed for raising the public awareness and consulting with different stakeholders, including the civil society, to develop and implement rule of law-compliant CT policies. Furthermore, exchanging views and experiences with parliamentarians from different States and with regional bodies and CT experts, increases the exchange of good practices and exposure to the evolving international law and policies addressing terrorism.

About this study

The present study highlights the work of parliamentarians in the area of counter terrorism using the perspective provided by a set of written recommendations developed by parliamentarians during an IJ Initiative supported by the European Union. The Initiative unfolded through a series of engagements with parliamentarians from North, East and West Africa, the Middle East, and Europe, together with the United Nations and other CT and parliamentary experts. Initially drafted at the inaugural workshop held in Valletta at the IJ in May 2015, the recommendations to support parliamentarians' roles in countering terrorism were refined during a first regional workshop hosted by the House of Representatives of Morocco in October 2015, a Symposium held in Brussels in March 2016, and a second regional workshop hosted by the Grand National Assembly of Turkey in April 2016. The activities were based on a participatory methodology and shaped around thematic discussions that enabled parliamentarians to revise the document in real time and produce a tangible outcome. These eleven recommendations, not only include broad principles, but address practical aspects relevant to parliamentarians' overall efforts to deter terrorism at national and international levels. Following its formal adoption by the Global Counterterrorism Forum (GCTF) during its Seventh Ministerial Meeting in New York in September 2016, the document produced during this Initiative is now known as the *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism*.



The *Valletta Recommendations* address a variety of issues, roles and responsibilities of parliamentarians. They provide guidance to examine the existing parliamentarians' practices in the field of CT reflected in the present study. They are designed to support: 1) incorporating the requirements of international and regional instruments against terrorism into domestic law and enacting timely anti-terrorism laws respecting human rights and fundamental freedoms; 2) investigating the sources of terrorism, including radicalisation of individuals, the financing of terrorism, and typologies of terrorism; 3) establishing effective justice sector institutions and interagency bodies; 4) setting investigative tools within the rule of law; 5) promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases; 6) fostering public understanding and inclusiveness in the development of national



counter terrorism policies and framework; 7) engaging civil society in the formation, development and implementation of national counter terrorism strategy; 8) allocating sufficient budget to maximize the use of government resources to support national counter terrorism strategy implementation; 9) overseeing law enforcement and intelligence services to secure citizens' rights; 10) balancing effective oversight, operational security, and the benefits of public disclosure; and 11) promoting inter-parliamentary exchange of information and cooperation.¹

The variety of duties and functions the *Valletta Recommendations* encompass reflect the complexity of the challenges and, therefore, the versatile role of parliamentarians, which calls for increased attention and support to address the multifaceted dimension of terrorism on a sound rule of law basis.

By taking stock of and recognizing the existing efforts pursued by international parliamentary fora to assist the work of legislatures for sustained rule of law, the *Valletta Recommendations*, together with this study, constitute a practical instrument to guide parliamentarians in their efforts to counter terrorism.



¹ The full text of the *Valletta Recommendations* is annexed to the present study.

About the GCTF

Launched at a Ministerial Plenary Meeting in New York on 22 September 2011, the GCTF is an informal, apolitical, multilateral counterterrorism (CT) platform that has developed and strengthened the international architecture for addressing 21st century terrorism. Central to the GCTF's overarching mission is the promotion of a strategic, long-term approach to counter terrorism and the violent extremist ideologies that underpin it. As an action-oriented forum, the GCTF holds regular meetings focused on producing framework documents (good practices and memoranda) and the necessary materials and tools for policy-makers and practitioners to develop CT civilian capabilities, national strategies, action plans and training modules.

The GCTF is a dedicated forum for national CT officials and practitioners to meet with their counterparts from key states in different regions to share experiences, expertise, strategies, tools, capacity needs, and capacity-building programs. It prioritizes civilian capacity-building in areas such as rule of law,

border management, and CVE. Additionally, the GCTF works with partners around the globe to identify critical civilian needs to effectively counter terrorism, mobilize the necessary expertise and resources to address such needs, and enhance global CT cooperation.

GCTF Members have endorsed framework documents consisting of good practices, recommendations, and action plans, which address a variety of salient CT and CVE topics, including: effective responses to the “foreign terrorist fighters” (FTF) phenomenon, including returning FTFs (RFTFs); effective, human rights-compliant CT practices in the criminal justice sector; the role of the judiciary in adjudicating terrorism offenses; rehabilitation and reintegration of violent extremist offenders; multi-sectoral approaches to CVE; community engagement and community-oriented policing as tools for CVE; education and CVE; the role of families in CVE; preventing and denying the benefits of kidnapping for ransom by terrorists; and supporting victims in the immediate aftermath of a terrorist attack.



Part I

Incorporating international law requirements against terrorism and investigating the sources of terrorism

Legislation should shape a consistent national plan that addresses inter alia factors conducive to terrorism. Legislators' role is independent. Coordination with the executive branch of the government may contribute to sound preparation of legal framework on CT. Executive branches are typically deeply involved in preventing and/or investigating and prosecuting terrorism. Parliamentarians are in the best position to draft laws in CT that meet international obligations and good practices while ensuring the protection of human rights and fundamental freedoms including those rights relating specifically to the criminal justice system, such as due process and a fair trial, and also those relating to society more generally.

Excerpt from *Valletta Recommendation 1*: incorporating the requirements of international and regional instruments against terrorism into domestic law and enacting timely anti-terrorism laws respecting human rights and fundamental freedoms.

Latest international law obligations to respond to the Foreign Terrorist Fighters phenomenon

In light of the phenomenon of 'Foreign Terrorist Fighters' (FTF), which in recent years has emerged as a main terrorist global concern, and the subsequent adoption of United Nations Security Council Resolution (UNSCR) 2178 in September 2014, countries were called to enact legislation to provide sufficient legal basis to respond to the FTF

phenomenon. UNSCR 2178 provides that legislations must address the prosecution and penalization of the offences of: a) travel or attempted travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training; b) the funding of such travel, and c) the organisation or facilitation of such travel.

UNSCR 2178 reaffirms the obligation of all States to comply with international human rights law when fighting terrorism, underscoring that respect for human rights and the rule of law are essential to a successful counter-terrorism effort.² Similarly, the GCTF's *The Hague Marrakech-Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon*³ identifies a set of good practices for addressing the FTF phenomenon under four major headings: (1) radicalization to violent

extremism; (2) recruitment and facilitation; (3) detecting and intervening against travel and fighting; and, (4) return and reintegration.

All States are encouraged to consider these good practices, while recognizing that any implementation must be consistent with applicable international law, as well as national law and regulations, taking into account each States' varied histories, cultures, and legal systems.



² Similarly, UNSCR 2199 (2015), which reaffirmed that “[...] all States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that such terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts [...]”

³ Available at https://www.thegctf.org/documents/10162/140201/14Sept19_The+Hague-Marrakech+FTF+Memorandum.pdf. The Addendum to *The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon with a focus on Returning FTFs*, adopted by the GCTF in 2016, is available at <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Addendum-to-The-Hague-Marrakech-Memorandum.pdf>.

National examples of measures by parliaments to face FTF phenomenon

Algerian parliament amended penal code to comply with UNSC Resolution 2178

In June 2016, the Algerian parliament adopted legislation to comply with UNSC Resolution 2178. This supplemented provisions of the penal code of 1966 with two articles to criminalize the travel or financing thereof “of Algerians or foreign nationals residing in Algeria, to another state to commit, incite or train to commit terrorist acts.” The law also seeks to criminalise “recruitment on behalf of terrorist associations, bodies, groups or organizations or support for acts or spreading of their ideology using ICT or any other means.”

Moroccan parliament responds to the FTF phenomenon

Moroccan Law No. 03-03 of 2003 defines terrorist offences and provides investigative powers to seize any type of documents that may prove the commission of a crime by searching the residence of those who have possession of such documents; searching residences, detaining persons who could be helpful for the investigation for a period not to exceed 96 hours (renewable twice). The royal attorney general (as opposed to the investigating prosecutor) also has the power to order the interception of communications over the phone and by other means. In January 2015, the House of Representatives passed the law 86.14 amending and supplementing the Penal Code and the Code of Criminal Procedure relating to the fight against terrorism with particular regard to the FTF phenomenon by including offences, as joining or attempting to join terrorist groups operating out and not constituting a direct threat to Morocco; the apology for and incitement to terrorism; and taking part in trainings for terrorist purposes inside or outside of Morocco. Therefore, Moroccan citizens who commit terrorist acts abroad are subject to prosecution once they return to Morocco.

Italy's Anti-terrorism Decree-law of 2015

In 2015, the Italian Parliament introduced amendments to the Criminal Code in response to a governmental decree and in observance of the UNSCR 2178 (2014). Provisions address cases of self-training, being recruited, and organization, financing or promotion travels with the purpose of committing acts of violence pursuing terrorism or subversion of the democratic order. For the purposes of criminal prosecution, the purpose of terrorism includes when acts of violence are directed against a foreign State, an international organization or institution. Article 270-quinquies punishes training for the purposes of terrorism even if that training is for action against a foreign state, institution, or international body. Punishment is up to ten years of imprisonment. The provision focuses on domestic terrorism but also encompasses the situation of persons who have gone abroad to fight with terrorist organizations.

According to a Member of the Italian Chamber of Deputies, “[t]he amendments introduces the criminalization of the facilitators of terrorism regardless of any direct and practical participation in terrorist activities or being part of a terrorist group [...] An increase of the punishment is foreseen for crimes in relation of terrorism propaganda and incitement through the internet [...] With regard to recruitment aspects, the previous criminal provision was applicable to the recruiter and not at the recruited while the amendments clearly address those individuals who are subject to recruitment. [...] The new law, while filling a legislative gap by punishing those who organise, finance, incite to travel abroad for the purpose of committing acts in relation to terrorist goals it, however, does not specifically determine the connection of such conduct with the terrorist activities and goals.” Meaning, in fact, the concept of travel as any movement from one place to another, could be particularly difficult to prove a link with the terrorist purpose.

Unofficial translation of a commentary drafted by a Member of the Italian Chamber of Deputies who contributed to the drafting of the *Valletta Recommendations* Commentario giuridico Utet, Sezione III Capitolo I, *I delitti contro la personalità dello stato*.

Cortes Generales of Spain enacted ‘Ley Orgánica’ for a comprehensive response to terrorism

In July 2015, a new law amending Spanish criminal code for terrorism-related offences entered into force. This was the result of an inclusive parliamentary action aimed at the Spanish CT legal framework compliant with UNSC Resolution 2178 to better equip the country's police and judicial authorities to cope with the terrorist trends emerging in recent years. ‘Ley Orgánica 2/2015’ introduces the configuration of computer crimes

in relation to terrorism objectives, it foresees training and indoctrination offences to encompass also self-training for which the regular access to information on the internet which contents incite to committing terrorist acts. Traveling abroad for the purpose of joining terrorist organisations and collaboration with a terrorist group even without being an active associate member are also criminalised.

Ley Orgánica 2/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de delitos de terrorismo; https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3440.

On 31 May 2016, the UN Security Council issued a report of the UN Secretary-General⁴ focusing on UN Member States actions to address FTF-related threats. The document specifies that approximately one third of the 77 Member States most affected by the FTF phenomenon have updated legislation in response to UNSCR 2178 (2014). Most legislative gaps pertain to preventing the travel of such fighters by comprehensively criminalizing preparatory or accessory acts. Also, in the report, the UN Secretary General stresses “National legislation also remains overly broad or vague in many Member States and therefore risks providing inadequate protection of international human rights, humanitarian and refugee laws.”

Previously, annexed to the letter dated 15th December 2015 addressed to the President of the UN Security Council, the Chair of the Security Council Committee, pursuant to resolution 1373 (2001), issued the UN Security Council's Third Report on the implementation of UNSCR 2178 (2014) by States affected by FTFs.⁵ This Annex highlights some UN Member States' application of the criminalization requirements of UNSCR 2178 (2014).

“In Nigeria, the Terrorism (Prevention) Act has been drafted in such a way that most criminalization requirements of resolution 2178 (2014) could be met. Cameroon and Chad have criminalized recruitment and the provision or receiving of training to commit acts of terrorism. Facilitation is also covered in Chad's counter-terrorism legislation. However,

⁴ UN Security Council's Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (31 May 2016).

⁵ Annex to the Letter dated 15th December 2015 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.

the counter-terrorism laws recently adopted by Cameroon and Chad include overly broad definitions of “terrorism” and “terrorist act” and provide for the death penalty in respect of most terrorist offences, raising human rights concerns.

The creation in Mali, Mauritania, Niger and Senegal of specialized counter-terrorism investigative and prosecutorial units represents real progress by allowing for specialization among the judges and courts responsible for handling terrorism cases. However, these units face logistical and technical capacity challenges in handling such cases and have successfully prosecuted very few of them. There is therefore a need to enhance the authority of the units, develop their expertise in handling foreign terrorist fighter cases and strengthen their technical resources.

In Bosnia and Herzegovina, a law adopted in June 2014 banned the leaving of the country to take part in any paramilitary activity or conflicts abroad. To prove the offence, it is not necessary to prove intention to commit certain acts, only participation on a battlefield abroad. A conviction for that offence carries the potential of imprisonment for a duration of 5 to 20 years.”

Excerpts from regional analysis sections concerning the Lake Chad Basin and West Africa/Sahel regions of the Annex to the Letter dated 15th December 2015 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.

CT policies should not be focused exclusively on narrow goals without addressing the complexity and variety of issues and cultural enablers that lead individuals into terrorism, including foreign and national factors, economic causes, and the abuse of religious beliefs by violent extremists. Parliamentarians have the responsibility to assess and address causes of terrorism to tackle the facilitating conditions while strengthening democratic foundations. Respect for minorities’ rights (traditions, customs) is instrumental for societal resiliency and inclusion that prevent terrorism.

Excerpt from Valletta Recommendation 2: investigating the sources of terrorism, including radicalisation of individuals, the financing of terrorism, and typologies of terrorism.

Counter Terrorism Law in Mali

Malian Law No. 08-025 of 23 July 2008 defines terrorist acts; criminalizes the financing of terrorism; clarifies specific procedures; and specifies the penalties for the perpetrators of terrorism. The 2008 law was followed by the 2016 Law on money laundering and terrorist financing. This states that terrorist offenses are crimes without statutory limits and allows for searches to take place at any time and without the individual in question being present. For the purposes of extradition and mutual legal assistance, chapter 3 provides that offenses provided for by the Act shall not be regarded as political offenses or offenses inspired by political motives and adds that the financing of terrorism should not be considered a fiscal offense. Chapter 4 states that the offenses provided for by this Act are subject to life imprisonment. When the terrorist act has resulted in the death of one or more persons, the death penalty applies. In all cases, a fine of ten million francs will be imposed. A person who attempts to commit an act of terrorism is nevertheless exempted from punishment if he/she warns the administrative or judicial authority in such a way as to avoid the realization of the offense and identifies any secondary parties.

Unofficial translation.



Malta law against terrorism financing

In order to upgrade the legal framework dealing with economic crimes, including terrorism financing, in February 2015 the Maltese House of Representatives adopted Act No. 3 to facilitate the contribution of private practitioners to the country's efforts against money laundering and terrorism financing. In so doing Maltese legislation continues to follow recommendations by MONEYVAL and the Financial Action Task Force (FATF) ensuring that Malta conforms and keeps up with international standards and obligations.

With their broad experiences and role as representatives of society, parliamentarians are well positioned to create a national dialogue regarding issues relating to terrorism, including examining conditions conducive to terrorism, in order to establish policies to prevent it. One good practice for parliamentarians is to convene public hearings

to discuss conditions conducive to terrorism within the local community. These may be attended by local officials, education, religious, and other community leaders, terrorism experts, youth experts, prison officials, and, where appropriate, even former terrorists who can provide insight into the radicalisation process.

The *Valletta Recommendations* aim at advising parliamentarians to strengthen States' capacities to combating violent extremism, which, as emphasized by the UN General Assembly Plan of Action to Prevent Violent Extremism (2015),⁶ is a factor of destabilization. By having the capacity to pursue a coherent and comprehensive policy for countering terrorism and preventing violent extremism, parliamentarians can directly impact States' responses against terrorism. The *Valletta Recommendations* help national counter-terrorism strategies development based on the principle of national ownership and in accordance with the international law, where the role of the parliamentarians becomes crucial.⁷

⁶ Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674.

⁷ As suggested through National Plans of Action for Preventing Violent Extremism of the UN.

Part II

Defining countries' investigative, procedural, and justice actions to counter terrorism

Addressing terrorist offenders within the rule of law purports parliamentarians with responsibilities and duties to establish complex systems at a national level. These, while observing human rights obligations through the transposition and implementation of international law, require constant updating and refinement to cope with the evolving

scenarios of terrorist threats. Remaining abreast of current technology can better assist authorities in the detection and investigation of criminals. A sustainable framework that defends human rights for effective counter terrorism practices must be maintained by law enforcement and judicial agencies.

Parliamentarians play an important role in establishing effective justice sector institutions that can prevent and counter terrorism and related criminal activities.

Parliamentarians should actively play the primary role of encouraging, developing and legitimizing sustainable justice sector institutions and organic laws. Judicial reforms can assist in this process. Specialised prosecutors, task forces, and courts can serve the purpose of effective prosecution and adjudication, as terrorism is a crime that is more effectively combatted with expertise and experience.

Excerpt from *Valletta Recommendation 3: establishing effective justice sector institutions and interagency bodies.*

Provisions enacted by the National Assembly of Mauritania to investigate and prosecute terrorism offences

In 2010, new CT legal provisions were adopted by a Mauritanian Parliament creating a team made up of police officers, established at the Court of the Wilaya of Nouakchott, whose purpose is to investigate terrorism cases. The team can enforce detention measures and request that the Attorney General freeze assets of individuals under investigation for terrorism offences. The investigating team can wire-tap phone conversation and emails of suspected individuals only following written authorization of the Attorney General based on convincing evidence. Officers of the investigating team can be authorised to infiltrate the terrorist organisations. The report submitted, prepared in conformity with the procedures of the criminal code can be contested only in relation to its underlying truthfulness. Proofs detailed in such reports are assessed by the Court of Nouakchott, which is the only court having competence to exercise public prosecution for terrorism cases. Prosecutors of the Wilaya Courts, other than the Wilaya court of Nouakchott, are to start urgent preliminary investigations to assess the offence and gather evidence. They can arrange detention and are to provide the Wilaya Court of Nouakchott with reports, minutes, and proofs. The Prosecutor of the Court of Wilaya Tribunal must initiate proceedings in cases of an evident offence. The President of the Indictment Division may order the filing against the accused.

Morocco's '*Bureau Central des Investigations Judiciares*'

Established in March 2015 as part of the Direction Generale de la Surveillance du Territoire (DGST), which was created in 2011 under Law 35-11, the Bureau is in charge of terrorism affairs. The DGST is part of the Moroccan judicial police and it is responsible for ensuring cooperation between intelligence services and tribunals.

Mali's 'pole judiciaire'

In May 2013, the Malian National Assembly adopted an amendment to the Code of Criminal Procedure to set up a judicial team deployed to address terrorism and transnational organised crime offences' cases. This team is composed of experts in countering terrorism from a variety of judicial institutions under the authority of the Public Prosecutor, specialised investigating magistrates, specialised investigations brigades, as well as officers and agents from the judicial police. Its jurisdictional power covers the whole country.

Tunisia 'Majlis Nawwāb ash-Sha'b' approved the organic law on the fight against terrorism and the suppression of money laundering

In 2015, Tunisian parliament enacted a new bill creating a unit of judges specialized in terrorism cases and assigning investigations to the Criminal Investigation Department of Tunis rather than units at the governorate level. This institutional reform aims to make procedures more straightforward and avoid information being lost between different police units.



Parliaments play a key role in ensuring that CT investigations and adjudications respect due process and also guarantee the principles of legitimate use of investigative techniques such as undercover operations, confidential sources, and electronic surveillance. This concern equally applies to intelligence services. The code of criminal procedures or other legislation should clearly regulate and define these practices and ensure proportionality and standards for detention consistent with international human rights law, such as those embodied in the International Covenant on Civil and Political Rights (ICCPR).

In line with GCTF's The Hague Memorandum on the Good Practices for the Judiciary to Adjudicate Terrorism Cases, criminal procedure rules and rules of evidence play a critical role in ensuring that the criminal justice system can address terrorism, including the protection of the rights of victims and the protection of witnesses and their families. The failure to address terrorism through the criminal justice system poses serious risks of human rights abuses.

Excerpts from *Valletta Recommendations* 4 and 5 setting investigative tools within the rule of law; promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases.

***Majlis* of Jordan amended CT law to meet evolving threats**

The State Security Court, established through Act no. 17 of 1959 and amended by law No. 11 of 1997, is the primary legal institution for adjudicating cases involving alleged terrorists. It oversees the prosecution of civilians charged with crimes affecting national security. The SSC, which operates as a hybrid civilian and military entity consisting of judges from both sectors of society, handles cases under the jurisdiction of these new definitions, regarding the internal or external security of the state and treason, espionage, terrorism, drug-related offenses, and currency forgery. Its decisions may be appealed to the High Court.

In April 2014, the Parliament of Jordan amended the 2006 Anti-Terrorism law to define offences in relation to terrorism and reinforce CT policy through the work of an interagency anti-extremist task force set up in October 2014. The amended law of the Jordanian penal code prohibits Jordanian citizens from joining military groups and terrorist organisations, both within Jordan and abroad, as well as facilitates admissibility of social media experts in court in order to respond to new trends in FTF and more broadly terrorism recruitment.

The Code of Criminal Procedure provides the right of an accused person to access a

lawyer of his or her own choice during the investigation and trial period, who has the right to attend the interrogation unless the investigation is confidential or urgent. The Code of Criminal Procedure also stipulates that detainees should be brought before a court within 48 hours of arrest, even in special security cases, giving the accused an opportunity to have full access to legal counsel.⁸



Senegalese National Assembly adopted measures to face challenges of terrorism

In 2007, the Senegalese National Assembly adopted amendments in the country's penal procedural code. The following excerpts illustrate some of the changes that the legislators introduced.

“For the prosecution and investigation of offenses under the Penal Code, a pool of CT practitioners is established at the Regional Court of Dakar and composed of: a section dedicated to the prosecution; and offices specialized in investigations. The Prosecutor attached to the Dakar Regional Court has exclusive jurisdiction to carry out a prosecution

⁸ Available at <http://www.kinghussein.gov.jo/government4.html>.

for terrorism-related offences⁹ for which any prosecutor shall, within seventy-two hours, refer the case to the Prosecutor attached to the Regional Court of Dakar. The specialized office of examining magistrates of the Dakar Regional Court has exclusive jurisdiction to conduct the investigation against the perpetrators of the terrorist offences. When the investigating judge of a court other than that of Dakar finds that the facts before the examining magistrate can constitute a terrorist offence as regulated by the Penal Code, the examining magistrate will either automatically order after consultation with the prosecutor or upon the latter's request, the referral of the case to the competent investigating office of the Regional Court of Dakar. In all cases, examining magistrate shall give prior notice by registered mail or by a signature notification on the record of the proceedings, to the accused and the civil party or their counsel who may comment within five days of receipt of the registered mail or notification. The order under paragraph 2 of this Article, which may not be subject to any appeal, is submitted along with the file to the prosecutor. The latter is required, within seventy-two hours, to refer the case to the prosecutor attached to the Regional Court of Dakar. The Indictment Division of the Dakar Court of Appeal is the only competent examining body/investigating court of second instance for terrorism-related offences. When an Indictments Division other than that of the Dakar Court of Appeal finds that the facts before it could be one of the offenses referred to in the previous paragraph, it shall order either automatically after consulting the Attorney General, or upon request of the latter, the referral of the case to the Indictment Division of the Appellate Court of Dakar. The Court of Appeal of Dakar, sitting in special session, has sole jurisdiction over crimes falling within the category of terrorism. This court shall be composed of a chairman and four judges appointed by Order of the First President of the Dakar Court of Appeal. Any decision shall be based on a majority."

In October 2016, the National Assembly of Senegal voted to amend Law No. 65-60 of 21 July 1965 of the Penal Code in an effort to criminalise further terrorist-related crimes. The amendment is notably hardening the sentences against the recruitment of persons to join a group or to participate in the execution of a terrorist act; the provision of means, the organization or preparation of terrorist acts, the non-denunciation of terrorist acts, terrorist concealment, and against the financing of terrorism.

The case was illustrated by a Senegalese parliamentarian in the course of the meeting closing the Initiative in Malta on 9 November 2016.

⁹ Article 279 of the Law n. 2007-01 adopted by the Senegalese National Assembly in February 2007 amending the Penal Code defines offences of terrorism.

¹⁰ National Legislative Bodies / National Authorities, Ethiopia: Proclamation No. 652/2009 of 2009, Anti-Terrorism Proclamation, 7 July 2009.

Ethiopia Antiterrorism Proclamation

In 2009, the Parliament of Ethiopia adopted an Antiterrorism Proclamation¹⁰ to criminalize a number of terrorist offences. The proclamation lays out the procedure for the investigation of terrorist acts in police searches and provides other evidentiary and procedural rules. Ethiopia established a National Antiterrorism Coordinating Committee comprising the heads of the Ministry of Justice, the National Intelligence and Security Service, and the Federal Police. This committee provides a forum for strategic coordination, with operational coordination taking place under its auspices. Cooperation between the police and federal prosecutors is particularly close on terrorism and transnational crimes, with several senior federal prosecutors seconded to the Federal Police for this purpose.¹¹

Protection Measures Provisions enacted by the National Assembly of Mauritania

The National Assembly of Mauritania established protection measures for judicial officers, victims, witnesses and anyone who would be responsible in any capacity whatsoever, to alert authorities. In case of risk of delay, the judge may decide that the investigation process or the holding of the hearing are held in a different place without prejudice to the right of defense. Interrogation of the accused and the hearing of witnesses can be through audio/visual communication equipment. Those who are called to give evidence to the judicial police officers, the judge or other judicial authority, can have domicile established at the prosecutor office who confidentially reports the actual information to the office of the prosecutor of the Wilaya Court of Nouakchott.* The Council Chamber may, within ten days from the date from the hearings request the judicial authority to disclose identities of individuals involved in the proceedings. The judicial authority may act accordingly if it considers the request reasonable and there is no fear for the lives or property of the individuals of his/her family members. The decision rejecting or following up the request is not subject to appeal.

Unofficial translation of some excerpts of the Law No. 2010-035, July 2010, amending the Law No. 2005-047, July 2005, on the fight against terrorism.

* A court is established in each capital of region (Wilaya) of Mauritania.

¹¹ For detailed information consult 'Center on Global Counterterrorism Cooperation and IGAD Security Sector Program publication *Fighting Terror Through Justice: Implementing the IGAD Framework for Legal Cooperation Against Terrorism* available at http://globalcenter.org/wp-content/uploads/2012/06/TaskForce_Report_May20121.pdf.

The national-level cases illustrated above show a variety of approaches that different legislators can take with the goal to establish a firm legal ground to govern the actions of law

enforcement actors in detecting terrorism-related offences and bringing perpetrators to justice. Clearly grounding these measures in statute strengthens the rule of law.

UN Global CT Strategy's second pillar, '*Measures to prevent and combat terrorism*', matches with *Valletta Recommendations* 3, 4, and 5 reflecting the capacity of parliamentarians to push for the adoption of international standards and techniques in the prevention of terrorism through coherent national-level policies to bring terrorist offenders to justice and to foster international and regional-level cooperation. The fourth Pillar of the UN Global CT Strategy, '*Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism*' is directly linked to the *Valletta Recommendations* through the promotion of clear rules and reforms (Recommendations 4 and 5) and community involvement (Recommendation 6).



Part III

Ensuring CT policy inclusiveness and filling the gap between the executive branch & community-level stakeholders

Terrorism and security matters are typically handled in a discrete manner by governmental authorities due to their sensitivity to the safety of populations and stability and integrity of countries. In recent years, there has been a shift of the counter terrorism to include increased human security-oriented policies rather than only traditional hard measures. This new paradigm entails a growing public awareness and active involvement to effectively prevent violent extremism as part of an overall national response to terrorism.

Parliamentarians are crucial for the pursuance of CT practices where the understanding and active participation of citizens and civil society organisations is vital. Two examples recognized in the *Valletta Recommendations* include 6) *reducing space for violent radicalization and fostering public understanding and inclusiveness of the counter terrorism response*; and 7) *engaging civil society in the formation, development and implementation of national counter terrorism strategy, and support processes for a whole-of-a-society action against terrorism*.



As community leaders, parliamentarians are also well positioned to foster interfaith and interethnic dialogue and work with religious and educational leaders. Such actions can help prevent the cycle of terrorism before it starts. Parliamentarians stand as independent representatives of the people and, therefore, they are well positioned to credibly articulate CT policy on behalf of their citizens. Parliamentarians have to ensure non-discriminatory practices and equality before the law, and should lead by example. They should foster inclusiveness and good governance mechanisms. Parliamentarians can assist in tempering the immediate emotional reactions of the public in response to specific terrorist incidents, and direct the focus on solutions that address the long-term interests of society. It is therefore a good practice for parliamentarians to discuss and debate policies in a non-partisan, rational, accurate and non-demagogic style to encourage an informed and open national debate where different opinions and beliefs are respected, and to build public understanding, resilience, and consensus.

CSOs play an essential role for communication and awareness raising efforts against terrorism, including countering narratives for delegitimizing violent extremists' views. CSOs also offer tools for monitoring the implementation of laws and policies designed to counter terrorism. Developing community outreach channels is a further role that parliamentarians can play, which helps to ensure an inclusive and sustainable support for national CT policies. Families of victims can play a role in developing informed CT policy drawing on direct experiences. CT policies formation needs to integrate community-level feedback. CSOs can play a proactive role in preventing terrorism through de-radicalisation and counter-narrative actions, especially at a community level. The potential abuse of civil society organizations, such as charities, by terrorist and related organizations should be prevented and individuals involved in breaches of the law should be investigated and prosecuted. It is a good practice for parliamentarians to ensure civic groups and individuals can openly express their views regarding CT measures through hearings open to the public.

Excerpts from Valletta Recommendations 6 and 7: Fostering public understanding, and inclusiveness in the development of national counter terrorism policies and frameworks; engaging civil society in the formation, development and implementation of national counter terrorism strategy.

Tunisia *Majlis Nawwāb ash-Sha'b* establishes the National Counter Terrorism Commission

The organic law on the fight against terrorism and the suppression of money laundering, approved by Tunisian Majlis in 2015, created the National Counter Terrorism Commission. The creation of this interagency body aims at strengthening and broadening Tunisian response to national and international-level threats including the rapidly growing number of Tunisian foreign fighters joining terrorist organizations (especially in Libya, Iraq, and Syria). In order to better coordinate the government's response to these trends, the Tunisian parliament in Art. 65 of the Counter-Terrorism and Money-Laundering Law (Law No. 22/2015) sanctioned the creation of the National (CT) Commission, responsible for the facilitation of communication and collaboration between various ministries involved in national CT efforts. The Commission is composed of representatives from each ministry, as well as an examining magistrate with expertise on terrorism matters, an expert from the defense and security information agency, an expert of the telecommunications agency, and a representative from the Tunisian Commission for Financial Analysis. This inter-agency format enables quick and seamless communication and consultation on emerging terrorism trends and developments as well as proposes CT responses. The Commission is charged with advising on future laws relating to CT and proposing preventive measures against terrorism over the longer term. The Commission can request representatives of civil society, whose expertise is relevant to the purposes of the Commission, to attend its meetings in order to benefit from civil society's advice. The Commission will also contribute to setting up programmes and policies aimed to eradicate terrorism, and propose execution mechanisms in addition to cooperation with international organisations and civil society components, including assessing the efforts to meet Tunisia's international commitments.

***Bunge la Kenya* Standing Committee on Legal Affairs and Human Rights**

Kenya's parliamentary Standing Committee on Legal Affairs and Human Rights was established following Senate Standing Order 208. Bunge la Kenya established the Commission on Administrative Justice (CAJ)/Office of the Ombudsman in 2011. Together, both institutions form critical components in Kenya's toolkit for the protection of human rights as well as provide for independent reviews and investigations. The CAJ/Office of the Ombudsman is responsible for an investigatory portfolio of duties. It is mandated to investigate conduct of state affairs that is alleged or suspected to be prejudicial or improper, specifically targeting any forms of discrimination in the state system.

Furthermore, the office is able to investigate complaints of abuses of power, unfair treatment and the manifestation of injustices, amongst others. These investigations ensure that law enforcement and intelligence services remain a positive force in counter-terrorism efforts, rather than being perceived as unjust. The CAJ/Office of the Ombudsman has the power to recommend appropriate compensation and adequate remedies to victims of such abuse, incorporating an element of restorative justice to the victims. The Standing Committee on Legal Affairs and Human Rights, currently composed of nine senators, is mandated to investigate matters regarding constitutional affairs, organisation and administration of law and justice, elections, the promotion of principles of leadership, ethics and integrity, as well as the implementation of the provisions of the Constitution on human rights. In particular, the Committee's provides an independent avenue for scrutiny and assistance to the public. The Committee also submits an annual report to Parliament, in which it outlines any important developments, concerns or other business that requires Parliamentary attention. The 2013 Annual Report suggested that the CAJ open branches in all 47 Kenyan counties, which would substantially increase accessibility to justice and send a strong message to citizens that the government is pursuing a genuine agenda of fostering trust and accountability.¹²

The first pillar of the UN Global Counter-Terrorism Strategy,¹³ *'Addressing the conditions conducive to the spread of terrorism'*, harmonizes with the *Valletta Recommendations 6* and *7* concerning parliamentarians' position, as elected representatives of their society, to address challenges arising from communities that may provide a breeding ground for terrorism recruitment and radicalisation.

¹² Republic of Kenya Parliament: The Standing Committee on Legal Affairs and Human Rights, 'The Committee Report on the Annual Report (2012/2013) of the Commission on Administrative Justice' (Nairobi, 2014).

¹³ Available at <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>.

Part IV

Overseeing counter terrorism policies and preserving national security: the critical role of parliamentarians

Security and law enforcement institutions bear an important responsibility to protect citizens against terrorist threats originating within national borders or from outside. They must be subject to accountability and oversight to exercise their functions and remain guardians of democratic order. It is

imperative for parliamentarians, as elected representatives, to have an active role to support security and law enforcements institutions, including intelligence services, to pursue counter terrorism functions according to the rule of law.



Effective CT measures require adequate funding and justice sector officials should receive adequate compensation. This process should include transparency of procurement and recruitment components of resource allocation. As representatives of the citizens, parliamentarians are well positioned to make rational assessments of public expenditure to support executive institutions' accountability and ensure good governance. CT provides for an opportunity for strengthening societal resilience to violence and intolerance. Parliamentarians should develop mechanisms for allocation of funds, effective auditing processes and end use monitoring of CT policies and expenditures, through use of a select committee where appropriate, and conduct on site visits to ensure direct information to relevant parliamentary committees.

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 similarly monitor prisons management and conduct assessments of specific CT and countering violent extremism (CVE) practices aimed at the reintegration and rehabilitation of those convicted for terrorism offences. Different parliamentary committees can be relevant for overseeing law enforcement and intelligence agencies' work.

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 specialized 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.

Excerpts from Valletta Recommendations 8, 9, and 10: allocating sufficient budget to maximize the use of government resources to support national counter terrorism strategy implementation; Overseeing law enforcement and intelligence services to secure citizens' rights; Balancing effective oversight, operational security, and the benefits of public disclosure.

Tunisia National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 2013, the Tunisia Majlis Nawwāb ash-Sha'b approved a law creating the National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁴ This independent body is comprised of 16 members representing civil society, academia, child protection, health authorities, and retired judges. Its mandate encompasses conducting assessments in detention, apprehension, and imprisonment settings to ensure the observation of certain requirements and the non-existence of torture-related practices. Settings include, inter alia, prisons, centres for juvenile offenders' rehabilitation, centres hosting refugees and asylum seekers and immigrants, seaport and airports' transit areas, and means of transport for those incarcerated.

Nigerian parliamentarians access to prisons

Legal authority for parliamentary visits to the premises of military and security services is derived from the general budgetary and oversight powers contained in sections 80 and 88 of the 1999 Constitution, and the jurisdiction of defence and security committees spelt out in the standing orders. Members and the clerk of the relevant defence and security committees or an ad hoc committee of investigation are usually part of the delegations. These visits take place whenever the need arises, but at least three times in a legislative year. Although no special procedures are involved, the visits are conducted with the prior knowledge of authorities. Reports are presented before the parliament but are often presented in private due to the confidential and sensitive nature of the issues covered. Also, such reports may form the basis of summoning or compel the attendance of any person to give evidence to a committee.

Source: Interview with the Honorable Oluwole Oke, Chairman of the Committee on Defence, House of Representatives, National Assembly of the Federal Republic of Nigeria (Dec 2009), as reported by the ECOWAS Parliament-DCAF Guide for West African parliamentarians. See also Caleb Ayuba, *Challenges of Parliamentary Oversight of the Security Sector in a Democracy: A Case Study of Nigeria*.

¹⁴ Available at [http://www.legislation-securite.tn/sites/default/files/files/lois/Loi%20organique%20n%C2%B0%202013-14%2043%20du%2023%20Octobre%202013%20\(Fr\).pdf](http://www.legislation-securite.tn/sites/default/files/files/lois/Loi%20organique%20n%C2%B0%202013-14%2043%20du%2023%20Octobre%202013%20(Fr).pdf).

Ethiopia House of Peoples Representatives' oversight

The responsibilities and work of the Ethiopian National Intelligence and Security Service (NISS), initially established in 1994, are set by Proclamation No/ 804/2013.¹⁵ Legislative oversight of the overall activities is carried out by a committee of the House of Peoples Representatives but “shall not be conducted in a manner that jeopardizes the national security of the country”. Importantly, the Ministry of Justice and the House of Peoples Representatives and the Ethiopian Human Rights Commission conduct regular visits to prisons to monitor the respect for human rights and submit their recommendations to the management of prison administrations and other relevant government bodies. Corrective measures are taken on the basis of these recommendations.

Source: The Federal Democratic Republic of Ethiopia National Human Rights Action Plan 2013 – 2015.

Moroccan parliament address budgeting and oversight of CT policies

Morocco’s security sector and its budget are subject to parliamentary oversight. Article 70 of the 2011 Constitution specifically states, “Parliament exercises the legislative power. It votes the laws, controls the action of the government and evaluates public policies,” while Article 67 allows for the establishment of commissions of inquiry, at the request of the king, or that of one-third of the members of the House of Representatives, or one-third of the members of the House of Councillors. Public policies regarding the security sector are debated by the Committee of the Interior within the House of Representatives.

The Organic Law of Finance Act of 2015 provides that “the government may halt, during the financial year, the implementation of investment expenditures if necessitated by economic and financial conditions and if the relevant committees in the parliament are informed.” In an attempt to improve parliamentary oversight in the area of financial legislation, the new financial regulatory law allows the Houses of Parliament 30 days in order to study the budget and vote on it, and provides the House of Representatives 6 days in order to ratify the amendments that the House of Councillors may apply to it.

¹⁵ Proclamation No. 804/2013, A Proclamation to re-establish the National Intelligence and Security Service.



UK Parliamentary Joint Committee on Human Rights

In a report examining potential complicity of intelligence services in torture issued in 2009, the UK Parliamentary Joint Committee on Human Rights summarised the implications of State responsibility with regard to international cooperation in this field. The Joint Committee concluded that State responsibility and risks of complicity in torture “means simply one State giving assistance to another State in the commission of torture, or acquiescing in such torture, in the knowledge, including constructive knowledge, of the circumstances of the torture which is or has been taking place [...] the following situations would all amount to complicity in torture, for which the State would be responsible, if the relevant facts were proved: a request to a foreign intelligence service, known for its systemic use of torture, to detain and question a terrorism suspect; the provision of information to such a foreign intelligence service enabling them to apprehend a terrorism suspect; the provision of questions to such a foreign intelligence service to be put to a detainee who has been, is being, or is likely to be tortured; the sending of interrogators to question a detainee who is known to have been tortured by those detaining and interrogating them; the presence of intelligence personnel at an interview with a detainee being held in a place where he is, or might be, being tortured; the systematic receipt of information known or thought likely to have been obtained from detainees subjected to torture.”

Source: Norwegian Parliamentary Intelligence Oversight Committee, Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Making International Intelligence Cooperation Accountable*.

UN Human Rights Council Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Parliaments' responsibilities concerning oversight functions in relation to the counter terrorism work of intelligence agencies in particular, is prescribed by the UN General Assembly Human Rights Council's *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*.¹⁶ This document sets forth good practices to safeguard human rights standards. In the section on '*Mandate and legal basis*' the document explains that: "While the understanding of national security varies among States, it is good practice for national security and its constituent values to be clearly defined in legislation and adopted by parliament. This is important in ensuring that intelligence services confine their activities to helping to safeguard values that are enshrined in a public definition of national security. The mandates of intelligence services are one of the primary instruments for ensuring that their activities serve the interests of the country and its population, and do not present a threat to the constitutional order and/or human rights. In the majority of States, intelligence services' mandates are clearly delineated in a publicly available law, promulgated by parliament."

Further references on parliamentary oversight for intelligence and security agencies' accountability

A study conducted by the Norwegian Parliamentary Intelligence Oversight Committee and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) on international intelligence accountability matters¹⁷ poses fundamental questions related to the overseers' need to access information about the organisations and activities they are mandated to oversee. Obstacles in this regard include the fact that information held by many intelligence services is of foreign provenance, and that oversight authorities, including parliamentary ones, cannot access it without undermining the confidentiality

¹⁶ UN General Assembly 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* (May 2010).

¹⁷ Norwegian Parliamentary Intelligence Oversight Committee, Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Making International Intelligence Cooperation Accountable* (2015).

conditions under which it was provided by a third party. Restrictions on oversight bodies' access to information in this area often include statutory restrictions due to the third party rule. With regard to the former, the study explains that "laws regulating oversight bodies sometimes explicitly prevent an oversight body from viewing information provided by a foreign entity. Second, and more commonly, laws include general restrictions on access to operational information by oversight bodies. Some national laws contain provisions granting the executive broad discretion to determine what information can be provided to an oversight committee. Such discretion may be exercised in order to bar an oversight body from examining information relating to international intelligence cooperation. Statutory limitations do not necessarily undermine oversight, as long as there is another external oversight body that has full access to such information (if necessary) and provided that any limitations do not preclude the oversight body from fulfilling its legal mandate."

As to the third party rule (or the principle originator control) relating to the necessity of consent by the (foreign) information originator for its use and transfer - intended to ensure that intelligence bodies prevent information sharing with a third party that may use it in contravention of human rights – the study highlights that this constraint could imply that "a service would need to seek the permission of a foreign partner before its own oversight could view information provided by that partner." First, applying the third party rule to oversight bodies grants foreign services an effective veto on the scope of intelligence oversight in another state. [...] Secondly, a system that places intelligence services in a position in which they effectively have to seek permission in order to be fully scrutinised is seriously open to abuse.

In 2011, the Parliamentary Assembly of the Council of Europe adopted a resolution¹⁸ addressing this matter observed that "[i]t is unacceptable that activities affecting several countries should escape scrutiny because the services concerned in each country invoke the need to protect future co-operation with their foreign partners to justify the refusal to inform their respective oversight bodies." In 2015, the Council further resolved that "[t]hose responsible for national control [oversight] mechanisms must have sufficient access to information and expertise and the power to review international cooperation without regard to the 'originator control' principle, on a mutual basis."¹⁹

The Commissioner of Human Rights of the Council of Europe has likewise recommended that Member States: "Ensure that access to information by oversight bodies is not restricted by or subject to the third party due or the principle of originator

¹⁸ Resolution 1838 (2011) of the Parliamentary Assembly of the Council of Europe, *Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations*.

¹⁹ Resolution 2045 (2015) of the Parliamentary Assembly of the Council of Europe, *Mass surveillance*.

control. This is essential for ensuring that democratic oversight is not subject to an effective veto by foreign bodies that have shared information with security services. Access to information by oversight bodies should extend to all relevant information held by security services including information provided by foreign bodies.”

In 2013, DCAF assisted the European Parliament in the production of the study *‘Parliamentary oversight of the security sector’*. This emphasizes the benefit of international parliamentary institutions to ‘help compensate an oversight deficit concerning the security sector that may affect national parliaments’. It stresses the emergence of human security, as opposed to narrow military security considerations, alluding specifically to the ever-growing proliferation of non-state threats such as terrorism.

A noteworthy study by the EU Agency for Fundamental Rights (FRA) *Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU, Mapping Member States’ legal frameworks* stresses: “Access to information and documents by oversight bodies is essential for adequate oversight. While information gathered by intelligence services is sensitive and safeguards are required to guarantee that it will be dealt with accordingly, oversight bodies cannot carry out their tasks without access to the information necessary to make an informed decision and carry out supervision.”

Parliamentarians’ tasks to oversee counter terrorism policies while preserving national security are widely recognized as positive examples for the democratic oversight of the work of actors primarily responsible to protect communities. Too often, however, they lack foundational legal basis and mechanisms to pursue oversight functions. A forward-looking

methodology of such policies would generate, through parliamentarians, a more conscious CT response by conferring legislative branches, in conjunction with the work of judicial bodies, the necessary mandate and instruments. Valletta Recommendations 8, 9, and 10 are articulated to examine these critical responsibilities and support parliamentarians’ roles in this area.

Part V

Promoting the work of inter-parliamentary fora to counter terrorism

In recognition of the commitment of fora convening parliamentarians, frequently in support of the bilateral and multilateral diplomacy to strengthen the architecture

of organisations bodies that are key for operational CT actions, one of the *Valletta Recommendations* is dedicated to promoting the inter-parliamentary cooperation.



Inter-parliamentary efforts can provide a critical bridge to permit greater international cooperation. 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. As part of such parallel bilateral and multilateral diplomacy, it is recommended for inter-parliamentary fora to convene regularly and discuss CT policies and their commitments. 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. Existing regional and international parliamentary assemblies and networks can support these efforts.

Excerpt from *Valletta Recommendation 11*: Promote inter-parliamentary exchange of information and cooperation.

International, regional, and, thematic inter-parliamentary fora's work addressing terrorism

The existence of a multitude of inter-parliamentary fora is an asset for mutual understanding and increasing effectiveness of CT policies through inter-parliamentary action.

Several examples are illustrated below with reference to the work of these entities in the field of counter terrorism.

The Arab Parliament and its work against terrorism

The idea of establishing a popular representative institution within the framework of the League of Arab States dates back to the mid-20th Century, when the Secretariat of the League in 1955 put forward proposals to amend the League Charter including the creation of a new body in the form of a popular association. The idea of establishing such an Arab parliament remained under consideration until 2015 when the Council of the League of Arab States convened in Algeria and decided on the establishment of the Arab Parliament. Article V of the Statute of the Arab Parliament provides that the Arab Parliament shall:

- work to strengthen inter-Arab relations, develop forms of joint Arab action and strengthen mechanisms thereof, ensuring Arab national security and promote human rights. It may also make recommendations and suggestions as it deems appropriate;

- follow-up the process of joint Arab action, holding hearings with heads of the ministerial councils, the Secretary-General of the League, speakers or general managers of the Specialized Arab Organizations;
- discuss matters referred thereto it by the League Council, the Ministerial Councils, the Secretary-General or heads of Specialized Arab Organizations, expressing opinion and making recommendations constituting a basis for adopting relevant resolutions by the councils concerned;
- address questions in writing to heads of the Ministerial Councils, the Secretary-General of the League and the Managers of Specialized Arab Organizations on any matter within their jurisdiction.



Courtesy of Arab Parliament

With regard to the role of parliamentarians in the field of CT, recommendations were issued by the Arab Parliament during the symposium entitled '*Towards a new Arab vision of security*' held in Cairo in October 2014. They involve the following:

- 1) Inciting Arab parliaments – via their representatives at the Arab Parliament - to take the necessary steps to ratify joint Arab conventions that have not yet been ratified, in such a way as to reach an Arab consensus on consolidated legislation.
- 2) Providing comprehensive data via the League of Arab States on legal procedures in the Arab world, as well as an agreed list of terrorist organisations.
- 3) Harmonising information between the Arab States with regard to the list of terrorists on an individual as well as organisational basis (as some States' lists are not recognised by others).

- 4) Promoting Arab as well as regional coordination and collaboration in term of the fight against terrorism (especially in terms of technical support).
- 5) Including in the Arab Convention on the Suppression of Terrorism, a text relating to conflict resolution.
- 6) Updating the Arab Convention on the Suppression of Terrorism by adding an appendix that would take into account the nature of recent terrorist crimes, e.g. FTF and trans-border weapons smuggling.
- 7) Facilitating mutual recognition, between Arab States, of authentic legal verdicts with regard to the fight against terrorism.
- 8) Moving quickly towards establishing the Arab network for legal collaboration/cooperation through linking points of contacts in respective Ministries of Justice.
- 9) Promoting cooperation extradition between Arab States for terrorism-related offences.
- 10) Harmonising Arab national legislations with the texts of the Arab Convention on the Suppression of Terrorism.
- 11) Ratifying the primary law of the Arab Court of Justice to complete the institutions of the League of Arab States (LAS) as a legal institution beside the executive institution (represented by the LAS) and the legislative institution (represented by Arab parliament).
- 12) Facilitating communication between the Arab Parliament and the Arab Centre for Legal Studies in order to provide a solid basis/formation to overcoming objective and methodological difficulties which are an obstacle to Arab legislation unification.
- 13) Endorsing the Arab Parliament Secretariat for communicating with the General Secretariat of the LAS in order to receive the report that was written by the latter on the obstacles to implementing Arab conventions.

Unofficial translation of the recommendations provided by the Arab Parliament General Secretariat.

²⁰ The Committee on Legal Affairs and Human Rights promotes the rule of law and defends human rights. It is also responsible for a variety of activities and serve as the Assembly's legal adviser. The Committee (AS/Jur) comprises of 86 members and their alternates. It addresses a wide range of legal and human rights topics, appointing parliamentary rapporteurs mandated to prepare reports based on in situ research, hearings and exchanges of views with experts. This work culminates in resolutions and recommendations of the PACE addressed to Member States and other Council of Europe bodies. The Committee consists of three sub- committees, which include sections on human rights, on crime problems and the fight against terrorism, and on the implementation of judgments of the European Court of Human Rights. Recently its work focused on reinforcing the system of human rights protection in Europe, respect for human rights in the fight against terrorism, combating impunity, eradicating judicial corruption and upholding the rule of law.

Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE)

PACE's Committee on Legal Affairs and Human Rights (AS/Jur)²⁰ considers all legal and human rights matters that fall within the competence of the Council of Europe (CoE). In particular these pertain to human rights treaties and mechanisms, notably the European Convention on Human Rights (ECHR) and its protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and other international instruments. Such responsibilities include legal and human rights issues relating to the fight against terrorism, the promotion legal instruments in the field of respect for human rights, fundamental freedoms and the rule of law in non-member States. Also, the treatment of offenders and conditions of detention (including pre-trial detention) and alternatives to imprisonment are part of the Committee's competencies. The AS/Jur plays an increasingly important role in human rights monitoring and in the drafting of new instruments relevant to human rights by cooperating with the CoE Committee of Ministers for Foreign Affairs and the Steering Committee for Human Rights.

In 2011, the AS/Jur issued a report on *Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations*.²¹ More recently, another PACE Committee, on Political Affairs and Democracy, issued a report on combating international terrorism while protecting Council of Europe standards and values²² that, inter alia, calls on the parliaments and governments of member States with respect to the fight against terrorism:

- when adopting and implementing legislation or other administrative measures, a fair balance is struck between defending freedom and security, on the one hand, and avoiding the violation of those very rights, on the other;
- a state of emergency is limited to the shortest possible period of time and space, and this regardless of whether such a state is declared under Article 15 of the European Convention on Human Rights or results from a de facto situation either in the whole or part of their territory;
- law-enforcement bodies do not abuse or circumvent basic legal requirements and do not disproportionately restrict individual freedoms, in line with the European Convention on Human Rights and the case law of the European Court of Human

²¹ PACE Report *Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations*, published in 2011. Available at http://www.assembly.coe.int/CommitteeDocs/2011/State%20secrecy_MartyF.pdf.

²² PACE Report *Combating international terrorism while protecting Council of Europe standards and values*, published in 2016. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22427&lang=en>.

Rights; any administrative decisions taken in this context should always be subject to judicial review; there is no ethnic or racial profiling of suspects subjected to search and seizure operations, arrests or other coercive measures;

- there is effective democratic oversight exercised by both the parliament and other independent actors, such as national human rights institutions and civil society;
- appropriate means and training are granted to law-enforcement bodies and security and intelligence services to cope with the rising threat of terrorism, including the new challenges posed by the so-called “jihadist” threat; intelligence services refrain from indiscriminate mass surveillance, which has proven to be inefficient, and instead increase collaboration among themselves;
- co-operation with other democracies as well as with countries in the Middle East and the Arab world is also important; pertinent national records related to terrorist offences as well as information on airline passengers posing security threats are shared, subject to appropriate data protection guarantees;
- the financial lifelines of international terrorism and arms trafficking are cut off, including through the effective implementation of United Nations and Council of Europe conventions against the financing of terrorism.

5+5 Dialogue’s Parliamentary Forum

The 5+5 Initiative started in Rome on 10 December 1990. Since 2003, its member states include Algeria, Libya, Morocco, Mauritania, Tunisia, Spain, France, Italy, Malta and Portugal. More recently the 5+5 Dialogue expanded its sphere of action to inter-parliamentary relations. Following a series of meetings in April 2013 in Nouakchott, a Declaration²³ highlighting the critical role of enhanced political and parliamentary dialogue in ‘fighting terrorism and fighting other threats’ was adopted.

The 5+5 Parliamentary Dialogue is thus a regional formation, founded on the premise of common threats, challenges and circumstances of the countries in the Western Mediterranean region. Parliamentary cooperation in such settings can work particularly

²³ Nouakchott Declaration, Concluding the Fourth Meeting of the Parliaments of the countries of the Western Mediterranean Forum - 5+5 Dialogue [http://cdn02.abakushost.com/pam/filerepo/files/5+5_PAM_Nouakchott_Declaration_Final_EN\[2\].pdf](http://cdn02.abakushost.com/pam/filerepo/files/5+5_PAM_Nouakchott_Declaration_Final_EN[2].pdf).

well as parliamentarians may be confronted with similar concerns, situations and issues, which can be solved by joining forces or learning from each other's successful and failed policy implementations.

Pan-African Parliament

The Pan-African Parliament (PAP) was created through the Abuja Treaty in 1991, with the overarching aim to spur economic development and the integration of the continent. PAP has strong consultative and advisory powers, currently made up of 250 members encompassing all 50 AU member states. PAP's specialised committees include, inter alia, the Committee on Justice and Human Rights, and the Committee on Cooperation, International Relations and Conflict. In 2015, the PAP recommended the formation of an African Standby Force to respond to terrorism on the continent. In the same year, the PAP exerted pressure on AU member states to sign and ratify the Constitutive Act of the African Union, which will provide the PAP with increased powers. This is a clear example of the powers that a united front of parliamentarians can have. The PAP assumes increased relevance in consideration of the African Union Convention on the Prevention of Terrorism and Plan of Action on the Prevention and Combating of Terrorism highlighted in the Appendix of this study.

Parliamentarians for Global Action Campaign to Prevent and Counter Violent Extremism

Parliamentarians for Global Action (PGA) is the largest non-governmental organization of individual legislators committed to human rights and the rule of law, democracy, human security, non-discrimination and gender equality. With approximately 1300 members in 143 parliaments around the world, PGA works to contribute to the creation of a "rules-based international order for a more equitable, safe and democratic world."

Developed at the request of PGA's member-parliamentarians in Iraq, Jordan, Morocco, Tunisia and Lebanon, PGA is launching a Parliamentary Campaign to Prevent and Counter Violent Extremism as part of an educational/advocacy effort to address and eliminate the theoretical/ideological and practical bases of violent extremism, which are

among the root causes of terrorism and armed conflict. PGA plans to mobilize legislators globally and in key MENA States in support of the following strategic objectives:

- 1) eradicate the support-base of violent extremism through effective counter-messaging and supporting effective governance in the MENA region by promoting strategies based on strengthening/building the Rule of Law, upholding democratic principles and institutions, developing credible accountability mechanisms, advancing freedom of expression and a healthy civil society, respect for diversity of religions and beliefs, and promoting and protecting human rights and gender equality;
- 2) bring to justice perpetrators of mass-atrocities and end impunity; and
- 3) support proportionate and necessary military action to liberate civilian populations and halt mass- atrocity crimes, including the crime against humanity of enslavement of women and children.

The Parliamentary Assembly of the Union for the Mediterranean

The Parliamentary Assembly of the Union for the Mediterranean (PA-UfM) is a consultative institution comprising the European Parliament and all UfM member countries. In 2016, its Committee on Political Affairs, Security, and Human Rights drafted a recommendation in support of the UfM political cooperation by extending the Secretariat's activities to include intercultural dialogue, mobility and migration and the fight against terrorism. It linked issues of security and development more broadly, including by the priority given to human development and youth employment.²⁴

²⁴ PA-UfM website available at <http://www.paufm.org/>.

Parliament of the Economic Community of West African States (ECOWAS)²⁵

The ECOWAS Parliament acts as an advisory body to facilitate harmonisation of laws, sharing country experience and information relating to good practices to increase regional-level initiatives and implement common standards and practices. It is headquartered in Abuja, Nigeria and provides recommendations, especially in the areas of human rights and fundamental freedoms, to the ECOWAS' organs. In relation to terrorism matters, its committees on political affairs, peace and security and human rights and child protection are responsible for the strengthening of regional cooperation on conflict prevention, early warning, peacekeeping operations, control of cross-border crime, international terrorism and proliferation of small weapons and mines. In September 2010, the ECOWAS Parliament endorsed a guide titled *Parliamentary Oversight of the Security Sector*²⁶ to enhance and support parliamentary culture in the region with regard to such practices. The guide aims at shaping codes of conduct relevant to parliamentarians for CT efforts. It emphasizes the shift towards human security in favour of state security, taking into account a broader range of threats outside the military dimension, listing terrorism as part of political threats. It stresses the adoption of measures to strengthen cooperation between States' security services and focuses on the need for democratic oversight over the security sector through passing laws that define/regulate the armed forces and security services and their powers as well as adopting their budgetary allocations. The document recommends legislators' development of expertise in security sector dialogue with civil society. It also suggests tips on how to phrase parliamentary questions so as to effectively obtain information and ensure accountability from executive branches.

The Parliamentary Assembly of the Mediterranean and its partnership with the United Nations Office on Drugs and Crime

The Parliamentary Assembly of the Mediterranean (PAM) is a regional parliamentary forum, having the status of Observer at the General Assembly of the UN. It works for the political dialogue and understanding between Member States by fostering and building confidence among Mediterranean States to support regional security, stability

²⁵ Official website available at <http://www.ecowasparliament.org>.

²⁶ ECOWAS Parliament-DCAF Guide for West African parliamentarians, *Parliamentary Oversight of the Security Sector*.

and promote peace. The PAM presents opinions and recommendations to national parliaments and governments, regional organizations and international fora. In Istanbul in 2009, the PAM Standing Committee on Political and Security-related Cooperation's Reflection Group concluded that *'Terrorism can be defined as violence or the threat of violence, induced by political, ideological, religious or ethnic motives. Terrorist actions are carried out or designed to achieve maximum publicity, and to produce effects beyond the immediate damage to people, property and the environment. The methods used are extreme, destruction is ruthless, and the behavior is not constrained by the rules of war. The nature of violence is such so as to provoke fear and intimidation.'*²⁷

More recently, the PAM partnered with the United Nations Office on Drugs and Crime (UNODC) in the implementation of two regional seminars for parliamentarians of the Maghreb region, specifically on the oversight of law enforcement and security services in the fight against terrorism and the strengthening of the legal regime against FTFs in Middle East, North African and Balkan Countries. Such activities were respectively hosted by the Italian Senate in February 2015 and the Romanian parliament in October 2015, where the IJ also presented a preliminary draft of the *GCTF Valletta Recommendations*.

The UNODC offers technical support to Member States' legislative processes by providing comments and submissions to draft bills on combating corruption, crime prevention and criminal justice. For example, the Nigerian parliament invited the UNODC to make written and oral submissions during the public hearing of a public complaints commission bill in September 2014. The UNODC and the United Nations Counter-Terrorism Committee Executive Directorate (UN CTED) have worked to raise awareness of the prominent role of parliamentarians in countering terrorism and violent extremism. The UNODC has also supported parliamentary committees in the ratification of international conventions and protocols and their incorporation into national legislation, and works with parliamentarians to identify gaps in national legal frameworks and provide recommendations for the refinement of those laws.²⁸

²⁷ Istanbul, 23 October 2009, PAM 1st Standing Committee on Political and Security-related Cooperation Reflection Group on the Definition of Terrorism. http://cdn02.abakushost.com/pam/downloads/Rpt-Terrorism-Final_EN_2009.pdf.

²⁸ UN General Assembly 71st session, Agenda Item 124 *Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union*, Report of the Secretary-General, 6th June 2016.

Global Organization of Parliamentarians Against Corruption

The Global Organization of Parliamentarians Against Corruption (GOPAC) is an international network of parliamentarians dedicated to good governance and combating corruption. Its work addresses terrorist financing matters by supporting parliamentarians in establishing Financial Intelligence Unit (FIUs) to implement national anti-money laundering frameworks. In 2012, GOPAC published the 'Anti-money laundering action guide for parliamentarians'.²⁹

Similar to *Valletta Recommendation 11*, the UN General Assembly's report³⁰ section on International peace and security reflects the prominent role of such parliamentary fora:

“the most effective way to advance treaties that underpin fundamental global norms on international peace and security, such as in the area of the regulation of conventional arms and weapons of mass destruction, is universal participation and rigorous implementation. In both respects, parliamentarians and parliamentary organizations are essential. Through information exchanges, outreach activities and capacity-building opportunities, the Office for Disarmament Affairs has collaborated with parliamentary groups, such as Parliamentarians for Nuclear Non-proliferation and Disarmament, the Parliamentary Forum on Small Arms and Light Weapons and Parliamentarians for Global Action. [...] Similarly, within the framework of Security Council resolution 2178 (2014), by which the Council condemned violent extremism and underscored the need to address the phenomenon of foreign terrorist fighters, the Counter-Terrorism Committee Executive Directorate has established a partnership with the Parliamentary Assembly of the Mediterranean. Mediterranean States continue to be affected by the threat of foreign terrorist fighters: several are countries of origin, transit or destination, or are located close to the conflict zones in Iraq and the Syrian Arab Republic. The dialogue between the Executive Directorate and the Assembly has been conducted in close cooperation with the Office for Disarmament Affairs. More broadly, the Executive Directorate has worked closely with IPU, the Assembly and other parliamentary interlocutors to raise awareness among parliamentarians of the terrorist threat and of the requirements of relevant United Nations resolutions. In the same vein, the United Nations Educational, Scientific and Cultural Organization (UNESCO) worked with the European Parliament to hold a hearing in 2015 on the prevention of radicalization in the European Union.”

²⁹ http://www.gopacnetwork.org/Docs/GOPAC_AML_ActionGuide_EN.pdf.

³⁰ UN General Assembly 71st session, Agenda Item 124 *Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union*, Report of the Secretary-General, 6th June 2016.

Appendix

At the regional-level, in 2015, the Council of Europe supplemented its Convention on the Prevention of Terrorism,³¹ in response to the UNSC Resolution 2178. It requires the criminalization of the following acts: participation in an association or group for the purpose of terrorism, receiving training for terrorism (Article 3), travelling or attempting to travel for terrorist purposes, providing or collecting funds for such travels and organising and facilitating such travels. It also requires parties to strengthen the timely exchange

of information between them. Similar to the UNSCR 2178, the Additional Protocol reaffirms the obligation of each Party to ensure states parties to implement the Additional Protocol while respecting human rights, in particular the right to freedom of movement, freedom of expression, freedom of association and freedom of religion, as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.³²

The Convention for the Protection of Human Rights and Fundamental Freedoms and European Court of Human Rights' role

A cornerstone for the affirmation of human rights is the Convention for the Protection of Human Rights and Fundamental Freedoms,³³ adopted by the Council of Europe in 1950. Together with its 11 additional protocols, this convention represents the most advanced and successful international experiment in the field to date. Its enforcement mechanisms resulted

in considerable jurisprudence on matters referring to countering terrorism. State parties are obliged to conform with its provisions.

The European Court of Human Rights (ECtHR) is a key institution in addressing the practical application of the convention. Citizens can file petitions or complaints directly to this whose decisions are final and binding on the

³¹ *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/217>.

³² The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN in 1966. To provide legal ground to the Universal Declaration of Human Rights. ICCPR sets a broad range of human rights in relation to: freedom from torture and other cruel, inhuman or degrading treatment or punishment; freedom from slavery and forced labour; arrest, detention and imprisonment; movement into, within and out of a state; treatment by the judicial process; privacy, home and family life; freedom of thought, religion and expression; peaceful assembly freedom of association, including through trade unions; marriage and the rights of children; political participation; equality and non-discrimination. It is available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

³³ The Convention for the Protection of Human Rights and Fundamental Freedoms (http://www.echr.coe.int/Documents/Convention_ENG.pdf), better known as the European Convention on Human Rights, was opened for signature in Rome on 4 November 1950 and came into force in 1953. It was the first instrument to give effect to certain of the rights enumerated in the Universal Declaration of Human Rights and make them binding.

state parties. ECtHR comprised of judges elected in respect of a State who hear cases as individuals and do not represent that State but act independently and impartially.³⁴ Importantly, ECtHR's judges are elected by the Parliamentary Assembly of the Council of Europe (PACE).³⁵ Established in 1949, PACE comprises parliamentarians from the 47 Council of Europe Member States' legislative assemblies. Some other parliaments enjoy the status of observer (US, Canada, and Israel)

and partner for democracy (Morocco, Jordan, Palestinian National Authority, and Kyrgyzstan).

Some recent ECtHR jurisprudence reflects the connections of the *Valletta Recommendations* that draw support from the Convention for the Protection of Human Rights and Fundamental Freedoms. Some relevant cases are described hereinafter.

Recent Decisions of the European Court of Human Rights relating to terrorism

Szabó and Vissy v. Hungary

This case concerned Hungarian legislation on secret anti-terrorist surveillance introduced in 2011. The applicants complained that they could potentially be subjected to unjustified and disproportionately intrusive measures within the Hungarian legal framework on secret surveillance for national security purposes. They alleged that this legal framework was prone to abuse, notably for want of judicial control.

In January 2016, the Court held that there had been a violation of the Convention. It accepted that it was a natural consequence of the forms taken by present-day terrorism that governments resort to cutting-edge technologies, including massive monitoring of communications, in pre-empting impending incidents. However, the Court was not convinced that the legislation in question provided sufficient safeguards to avoid abuse. Notably, the scope of the measures could include virtually anyone in Hungary, with new technologies enabling the Government to intercept masses of data easily concerning even persons outside the original range of operation.

³⁴ For more information on the functions and composition see the European Court of Human Rights' website <http://www.echr.coe.int/Pages/home.aspx?p=home&c=>.

³⁵ For detailed information on the election procedure please consult <http://website-pace.net/documents/1653355/1653736/ProcedureElectionJudges-EN.pdf/e4472144-64bc-4926-928c-47ae9c1ea45e>.

El Haski v. Belgium

This case concerned the arrest and conviction of a third party national for participating in the activities of a terrorist group. The applicant complained that his right to a fair trial had been violated because some of the statements used in evidence against him had allegedly been obtained in a third country by means of treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention.

In September 2012, the Court held that there had been a violation of Article 6 (right to a fair trial) of the Convention. Unlike the Belgian courts, the Court found that because of the context in which the statements had been taken, in order to make the criminal court exclude them as evidence, it sufficed for the applicant to demonstrate the existence of a “real risk” that the statements concerned had been obtained using treatment contrary to Article 3. Article 6 of the Convention therefore required the domestic courts not to admit them as evidence without first making sure they had not been obtained by such methods.

Sher and Others v. the United Kingdom

In September 2015 the ECtHR delivered a judgment concerning the review of lawfulness of detention (as per Article 5)³⁶ in a U.K. terrorism-related case. The judgment concerned the reconciliation of the fight against terrorism with the restriction of the procedural and defence rights of arrested suspects. The applicants, Pakistani nationals, were arrested and detained for thirteen days in connection with an anti-terrorism operation and ultimately released without charge. They complained that they had been denied an adversarial procedure during the hearings on requests for prolongation of their detention because certain evidence in favour of their continued detention was withheld from them and that one such hearing was held in closed session. The Court found that there had been no breach of that provision. The Court was once again called upon to rule on the balance between the fight against terrorism and respect for the rights of individuals suspected of involvement in acts of terrorism. The Court accepted that, in the instant case, the authorities had suspected an imminent terrorist attack and had launched an extremely complex investigation aimed at thwarting it. In finding no breach of Article 5, the Court reiterated that terrorism falls into a special category, and that provision cannot preclude the use of a closed hearing wherein confidential sources of information supporting the authorities’ line of investigation are submitted to a court in the absence of the detainee or his lawyer. The authorities have to disclose

³⁶ “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

adequate information to enable a detainee to know the nature of the allegations. In the applicants' case, the Court accepted that the threat of an imminent terrorist attack justified restrictions on the applicants' rights.

Nasr and Ghali v. Italy

The case concerned an instance of extrajudicial transfer by CIA agents occurred in Milan in 2003, with the cooperation of Italian officials, of the Egyptian citizen, Abu Omar. Omar had been granted political asylum in Italy, but was subsequently abducted and transferred to Egypt, where he was held in secret for several months. The Court of Strasbourg established that the Italian authorities were aware that the applicant had been a victim of an operation which had begun with his abduction in Italy and had continued with his transfer abroad. In the present case, the Court held that the legitimate principle of "State secrecy" had clearly been applied by the Italian government in order to ensure that those responsible did not have to answer for their actions. In fact, the investigation and trial had not led to the punishment of those responsible. In February 2016, the European Court of Human Rights held that there a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, a violation of Article 5 (right to liberty and security), a violation of Article 8 (right to respect for private and family life) and a violation of Article 13 (right to an effective remedy) read in conjunction with Articles 3, 5 and 8.

In September 2015 the Parliamentary Assembly of the Council of Europe (PACE) released a memorandum 'The role of parliaments in implementing ECHR standards: overview of existing structures and mechanism'³⁷ which recommends that "National parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of

international human rights obligations, such as dedicated human rights committees or appropriate analogous structures, whose remit shall be clearly defined and enshrined in law [...] A specialised human rights committee or sub-committee, which is independent of the executive and can, over time, develop both systematic oversight mechanisms and human rights expertise among its members and staff."

³⁷ Available at <http://website-pace.net/documents/10643/695436/20142110-PPSDNotefondstandardsCEDH-EN.pdf/113ad45b-7ffd-4ee7-b176-7fb79ad32f93>.

Grand National Assembly of Turkey Human Rights Inquiry Committee

Established in 1991 this Committee handles human rights matters within the Grand National Assembly of Turkey (GNAT), relating both to domestic and international affairs. Its duties include: considering individual applications alleging violations of human rights; examining the compatibility of national legislation and practice with international human rights norms; scrutinizing draft laws on human rights referred by the Presidency of the Parliament. The Committee may also establish sub-committees to hold thematic inquiries. Reports resulting from such inquiries are submitted to the Office of the Speaker and may be put on the agenda of the Plenary and/or referred by the Office of the Speaker to the Prime Minister or relevant ministries. The Committee publishes an annual report on the matters falling within its remit. The Committee has dedicated legal advisers attached to it. In 2014, the Human Rights Inquiry Committee added to its remit the function of monitoring the implementation of ECtHR judgments.

United Kingdom Joint Committee on Human Rights

The United Kingdom Joint Committee on Human Rights (JCHR) began its work in 2001 and has 12 members drawn equally from the House of Commons and House of Lords. The JCHR currently has two dedicated legal advisers with human rights expertise who intensively service its members. The Committee's mandate covers 'matters relating to human rights' in the UK, excluding individual cases. Among other activities, it scrutinizes government draft legislation for human rights compatibility, and proposes amendments to such draft legislation as needed in order to remove any incompatibility. The JCHR's is assisted by a 'human rights memorandum' prepared by the relevant Government department detailing the draft legislation's compatibility with the ECHR and other international human rights obligations as well as it monitors the UK's compliance with its obligations under UN human rights treaties.

The *Valletta Recommendations* in relation to the work of the Council of Europe on terrorism

The *Valletta Recommendations* for parliamentarians address the reinforcement of international legal provisions as those of the Convention on the Prevention of Terrorism (2005) and The Additional Protocol on “foreign terrorist fighters” to the Council of Europe Convention on the Prevention of Terrorism (2015).

Recalling the need to reaffirm measures set out by the Council of Europe (CoE), the *Valletta Recommendations* support the Convention on the Prevention of Terrorism (2005) and its Protocol (2015) in parliamentarians’ ability to support law enforcement in the allocation of budgetary resources [*Valletta Recommendation 8*] allocating and segmenting sufficient budget to maximize the use of government resources to support national counter terrorism policy implementation; to the proper investigation of terrorist offenses, as provided by these two legal references. The recommendations also support parliamentarians in the promotion of clear procedural and evidential rules relating

to the proper trying of terrorism cases, as key to upholding the ECHR while not impeding prosecution. [*Valletta Recommendations 3, 4, and 5*].

The *Valletta Recommendations* support the second objective of the CoE Action Plan on The fight against violent extremism and radicalisation leading to terrorism with concern to the prevention and fight of violent radicalisation through concrete measures in the public sector, in particular in schools and prisons, and on the internet. The *Valletta Recommendations* highlight parliamentarians’ work in the investigation of the radicalisation of potential individuals, through their knowledge and experience as elected representatives of their society; in keeping the community involved and active through public hearings; and involving local leaders and civil society organizations, who work with at-risk individuals in preventing terrorism, and promoting steps toward deradicalisation at a community level.

The *Valletta Recommendations* in relation to the Arab Convention on the Suppression of Terrorism

The *Valletta Recommendations* support the preventive measures for countering terrorism as laid out in the Arab Convention on the Suppression of Terrorism³⁸ by supporting the exchange of information, expertise, and action and promoting cooperation at the parliamentary level as well as supporting parliamentarians’ role in the creation of

procedural rules in the investigation of terrorist activities, with assurance of the security of citizens’ rights and rule of law-based approaches to trying individuals for terrorism offences.

The Arab Convention on the Suppression of Terrorism emphasizes judicial cooperation

³⁸ The Arab Convention on the Suppression of Terrorism, adopted in Cairo in 1998 by League of Arab States’ countries.

matters for the investigation and prosecution of individuals suspected and those convicted

for crimes in relation to terrorism as well as it provides for procedures for extradition.

The Role of the European Parliament as empowered by the Lisbon Treaty

The Lisbon Treaty,³⁹ entered into force in 2009, reinforces the powers of the European Parliament (EP) whose co-legislative power, together with the Council of the European Union, expanded to include also EU justice and home affairs domains. The Lisbon Treaty de facto increased EU institutions' democracy

and transparency as the EP works for strengthening EU Members States legislation as well as increasing the accountability and oversight in the external dimension of the EU, which is also relevant to EU counter-terrorism mechanisms.

Examples of European Parliament relevance to the EU action to counter terrorism

Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

The PNR Directive aims to prevent, detect, investigate and prosecute terrorist offences and serious crimes by regulating the transfer of PNR data from airlines to national authorities as well as the processing of PNR data by competent authorities within EU Member States. Under the PNR Directive, airlines and air carriers will be required to provide Member States' authorities with PNR data for flights entering or departing the EU. PNR data may include the name of the passenger, travel dates, travel itinerary, ticket information, contact details of the travel agent through which the flight was booked, means of payment used, seat number and/or baggage information. The PNR Directive will enter into force in May 2018 and also allows EU Member States to collect PNR for selected intra-EU flights.

The path that led to the adoption of this legislative measure shows the evolution of the powers of the European Parliament since the Lisbon Treaty. In light of the new

³⁹ Treaty on European Union and the Treaty on the Functioning of the European Union available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_2016.202.01.0001.01.ENG&toc=OJ:C:2016:202:TOC.

provisions, the European Parliament expressed its views and ultimately vote to consent the Directive Adoption. Initially, in February 2011, the European Commission tabled a proposal for such directive on the use of PNR data. In June 2013, Parliament decided in plenary to refer the matter back to its Committee on Civil Liberties, Justice and Home Affairs (LIBE), which in April 2013 voted against the PNR proposal, questioning its proportionality and compliance with fundamental rights. Following terrorist attacks Europe in 2015 and new concerns over possible threats to the EU's internal security posed by foreign terrorist fighters, the debate on the PNR proposal gained new momentum and was ultimately adopted by the European Parliament in 2016.

The EU-US PNR Agreement

The EU concluded the EU-US PNR agreement following European Parliament's consent in April 2012 to replace a 2007 agreement. The new agreement provides a legal framework for the transfer of PNR data by carriers operating passenger flights between the European Union and the United States to the US Department of Homeland Security (DHS) and its subsequent use of that data. The goal is to prevent, detect, investigate and prosecute terrorist offenses and related crimes as well as other serious cross-border crimes punishable by a sentence of imprisonment of at least three years. In May 2010, the European Parliament decided to postpone its vote on the request for consent to such agreement (concluded and applied on a provisional basis since 2007, before the Lisbon Treaty entered into force).

The significance of the European Parliament's involvement in such agreement is characterized by the views it expressed in opposition to the previous EU-US PNR agreements (2004 and 2007). Fundamental rights and citizens' privacy protection matters were of primary concern for some members of the European Parliament.

The EU-US SWIFT Agreement

The 2010 EU-US SWIFT agreement provides another case that highlights the actual role the European Parliament plays in the CT-related legal context is provided by to allow financial messaging data transfers to the US Treasury Department in the context of the US Terrorist Finance Tracking Programme (TFTP). Significantly, the European Parliament rejected an interim EU-US Agreement based on EU citizens' right to privacy infringements concern. This resulted in revised agreement which introduced certain safeguards to balance the need of security with privacy and respect of fundamental rights. The agreement guarantees non-discriminatory rights of administrative redress and ensures that any person whose data are processed under this will have the right to seek redress in the US judicial mechanism. The agreement acknowledges the principle of proportionality for its application. Europol can assess whether the data requested in any given case is necessary for the fight against terrorism and its financing. Europol also

verifies that each request is tailored as narrowly as possible to minimise the amount of data requested. Independent overseers, including persons appointed the European Commission, can review in real time and retroactively all searches made of the provided data, request additional information to justify the terrorism nexus of these searches, and block any or all searches that appear to be in breach of the privacy safeguards provided for in the agreement.

The ‘Umbrella Agreement’

In September 2015, the European Commission (EC) agreed on terms for the ‘Umbrella Agreement’ with the United States. The agreement includes data protection measures for data transfers for law enforcement purposes, including terrorism. The EC requested US authorities to approve a Judicial Redress Act, which the US Senate passed in February 2016, in order to corroborate the agreement and try to facilitate its adoption.

The agreement became necessary since European Court of Justice (ECJ) ruled, in October 2015, on the invalidity of a previous agreement (known as ‘Safe Harbour’) on grounds that government surveillance in the US may endanger the privacy of EU citizens’ data and no judicial redress for EU citizens was guaranteed by US law. Since the ECJ decision, EU and US negotiators achieved a new data transfer agreement. Importantly, before such agreement could be concluded, the European Parliament will need to vote to express its consent, demonstrating European Parliament’s central role for the EU to conclude international agreements on counter-terrorism.

EU-level response to the recent trends of terrorist threats with regard also to the FTF phenomenon

In addition to being a signatory of the CoE Convention on Terrorism and the 2015 Protocol to this focusing on FTF-issues, the EU’s own legislation has to comply with recent requirements set by the UNSC. With this regard, a proposal of a European Parliament and European Council Directive⁴⁰ on combating terrorism to align EU CT-relevant legal framework with the UN Security Council Resolutions (2178, 2249, and 2253) is pending approval by the European Parliament. The proposal aims at better addressing FTF-related threats affecting both within EU and outside. One of the key targets of the proposal is the “foreign fighter” who becomes “radicalised” in Europe, travels to Iraq, Syria or elsewhere to fight for a terrorist group, and then returns to Europe, potentially motivated to carry out terrorist attacks. Implementing the requirements of UN Security

⁴⁰ For additional information regarding this ongoing process, please consult the Appraisal report prepared by the European Parliamentary Research Service available at [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).

Council Resolution 2178, the proposed Directive would criminalise “receiving training for terrorism, travelling abroad for terrorism and the organising or otherwise facilitating travelling abroad for terrorism,” and the “financing of travelling abroad for terrorism.” The European Commission also decided to propose the criminalisation of attempt of recruitment and training, travel abroad with the purpose of participating in the activities of a terrorist group, and financing.

European Parliament Resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations

The resolution adopted by the European Parliament in November 2015 comprehensively address terrorism matters. It calls for, inter alia, preventing the spread of violent extremism online and in prisons and to strengthen the connection between the internal and external dimension of EU security in relation to FTFs as well as the specific security risk they may present when returning to the EU and to neighbouring countries. A stronger management of prisons would help to avoid these to serve as a breeding ground for the spread of violent extremism. To prevent the distribution of hate messages and praise for terrorism on the internet, the European Parliament refers to the illegal content that spreads violent extremism to be deleted promptly, but in line with fundamental rights. EU Member States should consider legal action against internet and social media companies and service providers that refuse to comply with an administrative or judicial request to delete illegal content or content praising terrorism.

Resolutions are also not binding. They express EP’s political will and suggestion for the EU to act in a specific field.

European Court of Justice

The European Court of Justice (ECJ) is the judicial institution of the EU primarily tasked to examine the legality of EU laws and ensure the uniform interpretation and application across the Members States.

Through its case law, the Court of Justice sets obligations on administrations and national courts to apply EU law within their sphere of competence and to protect the rights conferred on EU citizens by that law. The Court of Justice has recognised the principle of the liability of Member States for breach of EU law, which plays an important part in consolidating the protection of the rights

conferred on individuals by EU provisions. The Court of Justice also works in conjunction with the national courts, which are the ordinary courts applying EU law. Any national court or tribunal that is called upon to decide a dispute involving EU law may, and sometimes must, submit questions to the Court of Justice for a preliminary ruling. The Court of Justice must then give its interpretation or review the legality of a rule of EU law. The development of its case-law illustrates the Court of Justice’s contribution to creating a legal environment for citizens by protecting the rights under European Union legislation.

ECJ's decision in Digital Rights Ireland Ltd v. Minister for Communication et al, and Kartner Landesregierung

In April 2014, the ECJ invalidated the EU 2006 Data Retention Directive that required internet service providers to store telecommunications data in order to prevent and prosecute crimes by holding that the directive was in breach of the right to respect for private life and the right to the protection of personal data as per the Charter of Fundamental Rights of the European Union.⁴¹

The Directive⁴² had been adopted due to the divergent norms in Member States relating to data retention. The Court observed that while the Directive had a legitimate objective and that data retention was appropriate to meet that objective, the length of the retention of the data was too long to justify and would be unnecessary outside of exceptional circumstances. The Court found that the Directive had a “blanket approach,” which did not set appropriate limits on the scope of the collection of data or supply objective criteria for how and when data would be collected.

ECJ Case-Law: Kadi v. Commission

The applicant, identified as an associate of Osama bin Laden and the Al-Qaeda network had his name listed in October 2001 on the consolidated list of persons established by the UN SC Sanctions Committee pursuant to UNSC Resolution 1267.⁴³ An EU Regulation (No 467/2001) observed such UN provisions, and few months later Kadi was also listed in Annex I of EU Council Regulation No 881/2002 imposing specific restrictive measures against persons and entities associated with Osama bin Laden, the Al-Qaida network, and the Taliban. Kadi filed an action for annulment of both EU Regulations claiming certain fundamental rights' violation (the right to be heard, the right to respect of property, the principle of proportionality, and the right to effective judicial review). The Court of First Instance of the EU dismissed Kadi's legal action since no control exercise over the legality of a regulation implementing a UNSC Resolution was deemed possible. However, a September 2008 ruling of the ECJ (Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and

⁴¹ Available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32006L0024>.

⁴² Data Retention Directive sought to harmonise Member States' provisions concerning the retention of certain data that are generated or processed by providers of publicly available electronic communications services or of public communications networks. It therefore aimed to assist the prevention, investigation, detection and prosecution of serious crime, such as organised crime and terrorism. Thus, the directive provides that internet providers must retain traffic and location data as well as related data necessary to identify the subscriber or user. By contrast, it does not permit the retention of the content of the communication or of information consulted.

⁴³ The Sanctions Committee was established by Resolution 1267 of the UN Security Council of 15 October 1999.

Commission) held that all EU measures must be compatible with fundamental rights. Given that Kadi had not been notified or given any reason or evidence supporting his listing, the Court found that his rights of defence, his right to an effective remedy and his property rights could not be infringed upon even with the purpose of implementing Security Council resolutions. It held that “the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, [...] which it is for the Court to review.” The Court added that there cannot be “any derogation from the principles of liberty, democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as foundation of the Union.”

In order to meet the requirements set by the ECJ, the Sanctions Committee forwarded an explanatory memorandum relating to the registration of Kadi on the consolidated list of individuals and terrorist groups. Kadi challenged the allegations asked to provide evidence corroborating them. Meanwhile, a November 2008 EU Regulation (No 1190/2008) amended the previous one. Kadi then sought annulment of the text, again claiming violation of the rights of defence, to effective judicial protection, and to property. In its September 2010 decision, the ECJ pronounced the annulment the contested regulation and Kadi’s name was removed from the list of individuals in October 2012. In this second ruling, the Court, without interfering with the UNSC-based sanctions, reasoned that a judicial review was essential to balance the preservation of peace and international security and the protection of freedoms and fundamental rights of the person concerned.

ECJ Case-Law *Sison v. Council* and *Fahas v. Council*

In 2002, following the Council of the European Union’s adoption of Decision 2002/848/EC,⁴⁴ the applicant requested access to the documents that had led the Council to adopt this decision and information about the identity of the States that had provided certain documents in that connection. The applicant also specifically requested access to the report of the proceedings of the EU Permanent Representatives Committee (COREPER) concerning such decision, which the Council refused to provide based on confidentiality.

The Court of First Instance - now the General Court - dismissed the applicant’s appeal, observing that the Court of Justice had recognized that the Council and other institutions enjoy wide discretion in determining whether the disclosure of documents

⁴⁴ This included the applicant in the list of persons whose funds and financial assets were to be frozen pursuant to Regulation (EC) No 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combating Terrorism. Later, the Council adopted Decision 2002/974/EC and Decision 2003/480/EC repealing the previous decision and establishing a new list. The applicant’s name was retained on the new list.

may undermine public interest. The Court dismissed the applicant's argument about the right to be informed in detail of the nature and cause of the accusation made against him, which led to his inclusion on the list. The ECJ also found that documents held by the public authorities concerning persons or entities suspected of terrorism and coming within the category of sensitive documents must not be disclosed to the public in order not to prejudice the effectiveness of the operational efforts against terrorism and thereby undermine the protection of public security. It concluded that the Council "did not make a manifest error of assessment in refusing access to the COREPER reports on the ground on protection of public security." However, it further held that the Council could not rely on the public interest exception as regards international relations because, contrary to the Court of First Instance's finding, the documents emanated not from third countries but from Member States.

For more information please consult: <http://fra.europa.eu/en/caselaw-reference/cjeu-c-58410-p-c-59310-p-and-c-59510-p-judgment>.

OAU Convention on the Prevention and Combating of Terrorism⁴⁵

Adopted in Algiers in July 1999, the Convention on the Prevention and Combating of Terrorism requires that States Parties criminalize terrorist acts under their national laws as defined in the Convention. It defines areas of cooperation among states, establishes state jurisdiction over terrorist acts, and provides a legal framework for extradition as well as extra-territorial investigations and mutual legal assistance. The Convention entered into force in December 2002, and to date, 40 Member States have ratified it.

The AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, held in Algiers in September

2002, adopted the AU Plan of Action on the Prevention and Combating of Terrorism. The Plan of Action adopts practical CT measures that substantially address Africa's security challenges, includes measures in areas such as police and border control, legislative and judicial measures, financing of terrorism and exchange of information.

An additional Protocol to the 1999 Convention on the Prevention and Combating of Terrorism was adopted in Addis Ababa in July 2004, following a proposal by at the 28 Heads of States meeting in Dakar on 17 October 2001 (the Dakar Declaration Against Terrorism was also adopted in that context). The

⁴⁵ Available at <http://www.au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>.

Protocol recognizes the growing threat of terrorism in the continent and the growing linkages between terrorism, drug trafficking, transnational organized crimes, money laundering, and the illicit proliferation of small

arms and light weapons. The protocol aims at co-ordinating and harmonizing continental efforts in the prevention and combating of international terrorism in all its aspects.



Conclusions

The rule of law requires States to regulate the societal functioning through legislation. Clear legal rules and proper oversight are at its foundation. Justice and law enforcements officials need to observe substantive and procedural aspects of the legal framework they operate in for the purpose of a legitimate and effective exercise of their authority in the pursuance of CT objectives. Its absence can threaten human rights and fundamental freedoms. Parliamentarians have a vital role to play to make this vision a reality. Different degree of parliamentarians' engagement across the States contained in this study calls for increased action in support of the role the citizens' direct representatives play for a long-term vision of counter terrorism policies. The *Valletta Recommendations*

Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism, which resulted from the parliamentarians' engagement throughout the IJ Initiative in support of their role in countering terrorism and guided the elaboration of the present study, are instrumental for pursuing these objectives. Parliamentarians' work is intrinsically connected to the rule of law and justice mechanisms, the need to address terrorism root causes, and the prevention of violent extremism. By adopting the *Valletta Recommendations*, the GCTF recognized that parliamentarians are key stakeholders, together with the judiciary, law enforcement, civil society and others in the pursuit of effective counterterrorism strategies.



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Annex

*Valletta Recommendations Relating to
Contributions by Parliamentarians In
Developing an Effective Response to Terrorism*



Valletta Recommendations Relating to Contributions by Parliamentarians In Developing an Effective Response to Terrorism

Introduction

Terrorism is a global phenomenon that presents a direct and multi-faceted threat to human security. States have a responsibility to protect populations from terrorism-related threats, which requires actions taken consistent with human rights and the rule of law. Legislatures bear a primary responsibility in the establishment of such a framework. An engaged and independent legislative body is a critical element in developing a legitimate and comprehensive counter terrorism (CT) strategy that ensures an effective response to terrorism including with necessary oversight measures to protect human rights.

Parliamentarians are the backbone in developing domestic CT legislation. Their participation in the field of CT 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. CT policies are, therefore, an opportunity for strengthening rule of law and human rights. Legislation is to be constantly reviewed and updated where necessary to ensure national CT policies meet evolving national, regional and global threats in compliance with international requirements. Protection of rights and upholding the rule of law is not a limitation on effective CT measures, but rather is a central pillar of CT efforts. Strengthening a rule of law counters terrorist ideology and avoids the sense of injustice that can fuel extreme activities.

In recognition of the central role of parliamentarians in countering terrorism within a rule of law framework, the following recommendations intend to support: 1) incorporating the requirements of international and regional instruments against terrorism into domestic law and enacting timely anti-terrorism laws respecting human rights and fundamental freedoms; 2) investigating the sources of terrorism, including radicalisation of individuals, the financing of terrorism, and typologies of terrorism; 3) establishing effective justice sector institutions and interagency bodies; 4) setting investigative tools within the rule of law; 5) promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases; 6) fostering public understanding and inclusiveness in the development of national counter terrorism policies and framework.; 7) engaging civil society in the formation, development and implementation of national counter terrorism strategy; 8) allocating sufficient budget to maximize the use of government resources to support national counter terrorism strategy implementation; 9) overseeing law enforcement and intelligence services to secure citizens' rights; 10) balancing effective oversight, operational security, and the benefits of public disclosure; and 11) promoting inter-parliamentary exchange of information and cooperation.

The issues facing parliamentarians in the CT context are necessarily cross-cutting, reflecting their overarching role in CT legislation, CT policy and its implementation, CT law enforcement and intelligence oversight, Countering Violent Extremism (CVE) and public outreach, CT budgeting and overall good governance and rule of law. The Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism are based, *inter alia*, on discussions during four workshops of parliamentarians organized by the

International Institute for Justice and the Rule of Law (IJJ), as part of a parliamentary initiative funded by the European Union.¹ This list of recommendations is not intended to be exhaustive.²

Recommendations

Recommendation 1: Incorporate the requirements of international and regional instruments against terrorism into domestic law and enact timely anti-terrorism laws while respecting human rights and fundamental freedoms.

Legislatures play a central role in developing and enacting legislation to address terrorism. International and regional conventions may require domestic legislation to become effective in many jurisdictions. United Nations Security Council resolutions call upon Member States to enact legislation to address particular terrorist threats, such as terrorism financing and criminalizing preparatory acts, but leave latitude for national legislatures to develop specific approaches to achieve those goals based on the local context. Adoption of international good practices likewise often requires national legislative action, which should be harmonised with international conventions and resolutions and regional-level conventions that address terrorism matters.³

Parliamentarians therefore are in key positions to develop and enact timely legislation to address terrorism, including translating the universal anti-terrorism instruments into national legislation. Such universal definitions assist international cooperation and avoid double standards. Legislation should shape a consistent national plan that addresses *inter alia* factors conducive to terrorism. Legislators' role is independent. Coordination with the executive branch of the government may contribute to sound preparation of legal framework on CT. Executive branches are typically deeply involved in preventing and/or investigating and prosecuting terrorism. Parliamentarians are in the best position to draft laws in CT that meet international obligations and good practices while ensuring the protection of human rights and fundamental freedoms including those rights relating specifically to the criminal justice system, such as due process and a fair trial, and also those relating to society more generally. Such

¹ As part of this initiative, the IJJ organized regional workshops with parliamentarians in Malta in May 2015, Morocco in October 2015, Brussels in March 2016, and Turkey in April 2016. At these workshops, national parliamentarians came from 20 countries, each facing directly terrorism concerns, to work together with the European Parliament and inter-parliamentary fora and networks, the United Nations, and other organizations to share their good practices and help refine this document. Participating parliamentarians made clear their absolute rejection of terrorism in all its forms and manifestations. This document therefore reflects the perspectives and experiences of the parliamentarians and parliamentary experts who participated in the regional workshops, and like all other GCTF document, its recommendations are non-binding in nature. The document has not been adopted by specific national legislatures, but rather was developed through a consensus process.

² This recommendations memorandum focuses on parliamentarians' role in shaping global and national responses to terrorism. These recommendations have been aided by the efforts of other parliamentary fora, such as the provisions contained in the draft resolution '*Terrorism: The Need to Enhance Global Cooperation Against the Threat to Democracy and Individual Rights*' submitted to the Standing Committee on Peace and International Security of the Inter-Parliamentary Union. These recommendations also are complementary of good practices contained in other GCTF memoranda such as those set forth in the GCTF's [Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector](#) and [Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism](#).

³ For example, Good Practice 12 of the GCTF's [Rabat Memorandum](#) suggests that although States may approach codification of terrorism offenses differently depending on their legal traditions, they should criminalize the offenses outlined in the relevant international counterterrorism legal instruments. Adequate incorporation into national legislation of the international counterterrorism provisions and obligations constitutes a key element in a comprehensive and coherent counterterrorism legal framework.

legislation should be non-partisan and built around consensus to garner support from society. Parliamentarians can look to existing reference laws that can be tailored to meet the local context.

Anti-terrorism laws and policies should be targeted and not overly inclusive, and they should be regularly reviewed and amended and fine-tuned to evolving circumstances. Related laws, for example those related to arms trafficking, border control, and human smuggling, can be relevant. Regular and careful gap analysis of existing laws is a useful exercise.

Parliamentarians are elected officials, and therefore typically serve for a limited period of time, with new members joining their ranks. It is therefore recommended to ensure continuity that legislatures have standing committees of parliamentarians to draft, review and amend terrorism legislation, including through public hearings and open debate, to address emerging threats in compliance with international law including human rights and international humanitarian law. Such committees should include parliamentarians and legal professional staff with experience on justice affairs. Ensuring inclusiveness by assigning representatives from different regions, groups, and backgrounds will enhance the legitimacy of the parliamentary committees.

Recommendation 2: Investigate the sources of terrorism, including radicalisation of individuals, the financing of terrorism, and typologies of terrorism.

With their broad experiences and role as representatives of society, parliamentarians are well positioned to investigate issues relating to terrorism, including examining conditions conducive to terrorism in order to establish policies to prevent it. Terrorism is generated by a variety of internal and external causes. Some of these can result from conditions in society, such as poverty and inequality, instability and conflict, corruption and weak or absent governance, external and internal terrorism funding, frustration and cultural alienation, and perceived injustice. These conditions and others provide fertile ground for citizens, especially youth, to be recruited by terrorist organisations often through the use of social media that glorifies terrorism and iconizes terrorists through the presentation of false narratives. CT policies should not be focused exclusively on narrow goals without addressing the complexity and variety of issues and cultural enablers that lead individuals into terrorism, including foreign and national factors, economic causes, and the abuse of religious beliefs by violent extremists.

Parliamentarians have the responsibility to assess and address causes of terrorism to tackle the facilitating conditions while strengthening democratic foundations. Respect for minorities' rights (traditions, customs) is instrumental for societal resiliency and inclusion that prevent terrorism (no polarization among different ethnicities). Interfaith dialogue can seek to reduce sectarian tension.

One good practice for parliamentarians is to convene public hearings to discuss conditions conducive to terrorism within the local community. These can be attended by local officials, education, religious, and other community leaders, terrorism experts, youth experts, prison officials, and, where appropriate, even former terrorists who can provide a window into the radicalisation process. Such hearings should be handled in a non-partisan manner and lead to concrete solutions that can contribute to the development of national strategy and that can be implemented through legislation, policy and other means. The involvement of front-line civil society organisations, in particular those working with youths and the defence of children rights, can contribute to the public hearings.

Recommendation 3: Establish effective justice sector institutions and interagency bodies.

Justice sector institutions are typically based on organic laws that establish the parameters of their authority. Interagency bodies are usually established and fostered through legislation. Their conception and design aim at pursuing coherent national level CT policies mandating different bodies with specific functions and roles to converge into a unique country vision and action. It is vital that such representative institutions establish responsibilities within the civilian criminal justice system. Parliamentarians therefore play an important role in establishing effective justice sector institutions that can prevent and counter terrorism and related criminal activities.

Conceiving and amending such institutional organic laws builds a broad foundation of national CT efforts. Parliamentarians should actively play the primary role of encouraging, developing and legitimizing sustainable justice sector institutions and organic laws. Judicial reforms can assist in this process. Specialised prosecutors, task forces, and courts can serve the purpose of effective prosecution and adjudication, as terrorism is a crime that is more effectively combatted with expertise and experience. Community policing efforts can foster better understanding and local knowledge. The development of a rapid response capacity to changing situations is often necessary.

In regions where the rule of law has been absent or undermined due to civil or military unrest or misguided policies related to prior CT activities, parliamentarians play a critical role in ensuring that basic rights are restored. There can be no impunity for torture or other gross violations of human rights. In this context, rights of the victims of terrorism,⁴ access to justice, and redress mechanisms should be guaranteed. It is a good practice for parliamentarians to play an active role in drafting and reviewing legislation related to the establishment and authority of different institutional or interagency bodies and consider centralizing entities involved in preventing, investigating and countering terrorism under one authority where appropriate with a view to maximize information sharing. Parliamentarians should encourage justice institutions to be receptive to regular improvement of their technical capacities. Clearly defined mandates further ensure that authority is not abused. For other justice sector institutions, such as the judiciary, parliamentarians should ensure their independence and adequate resources. As representatives of society, parliamentarians should make sure that misguided efforts to counter terrorism do not undermine the very rule of law values that the terrorists wish to destroy.

When an international tribunal or a court has been established to focus on the adjudication of crimes perpetrated in a country, as citizens' direct representatives, parliamentarians should play an active role for observing proceedings as well as file inquiries. This may involve the adoption of emergency conditions and rules for certain countries.

Recommendation 4: Set investigative tools within the rule of law.

The mandate of authorities vested with investigative responsibilities should be based on clear rule of law foundations and accountability. This concerns intelligence and investigative entities' legal mandates.

Investigators' methodologies and practices including turning intelligence into evidence, using evidence derived from the Internet, and conducting special investigative techniques should all

⁴ See the GCTF's [*Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings*](#).

be firmly based on sound legal provisions with adequate safeguards to protect human rights from any abuse.

Parliaments play a key role in ensuring that CT investigations and adjudications respect due process and also guarantee the principles of legitimate use of investigative techniques such as undercover operations, confidential sources, and electronic surveillance. This concern equally applies to the intelligence services.⁵ The code of criminal procedures or other legislation should clearly regulate and define these practices and ensure proportionality and standards for detention consistent with international human rights law, such as those embodied in the International Covenant on Civil and Political Rights (ICCPR).⁶

It is a good practice to invest legislative bodies with the responsibilities to address procedural matters pertaining to the investigation of terrorism-related cases to ensure that they abide by the rule of law, provide for judicial oversight, and protect the rights of the accused.

Recommendation 5: Promote criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases.

In line with GCTF's *The Hague Memorandum on the Good Practices for the Judiciary to Adjudicate Terrorism Cases*,⁷ criminal procedure rules and rules of evidence play a critical role in ensuring that the criminal justice system can address terrorism, including the protection of the rights of victims and the protection of witnesses and their families. The failure to address terrorism through the criminal justice system poses serious risks of human rights abuses. Sources of criminal procedure rules and evidence vary according to jurisdictions. In some jurisdictions, such rules are codified through legislation. In others, the rules in court are developed by judicial bodies.

For example, given the international dimension of terrorism cases, evidence from different jurisdictions (such as international evidence and digital evidence) should be admissible in courts consistent with the rights of the accused. Principles of extradition should be observed. Existing legal instruments can provide model legislation for mutual legal assistance (MLA) requests. It is recommended to have MLA treaties in place to help cross-border legal cooperation. Parliamentarians should ensure the required legal ground for MLA and cooperation is implemented within a robust rule of law-based framework. Robust rules of asset freezing and asset forfeiture are important tools to counter terrorism and terrorism financing. Ultimately, public trials without the use of secret evidence provide legitimacy to the government's efforts to counter terrorism.

⁵ A useful reference is contained in the GCTF's [Recommendations for Using and Protecting Intelligence Information in Rule of Law-Based, Criminal Justice Sector-Led Investigations and Prosecutions](#). These recommendations are based on Good Practice 6 of the GCTF's [Rabat Memorandum](#), which encourages States to enact rule of law-based measures to protect the sources and collection methods of such information in terrorism cases.

⁶ Terrorist cases typically involve extensive and thorough investigations, which may include the gathering of evidence from other countries. The period of pretrial detention should be subject to prompt judicial review, but should not be a constraint for the continued gathering of additional evidence.

⁷ The good practices identified in [The Hague Memorandum](#) are: 1) the necessity for specially-trained judges; 2) the use of continuous trials in terrorism cases; 3) developing effective trial management standards; 4) the establishment of special measures to protect victims and witnesses; 5) the right of the accused to a fair trial with counsel of his choosing; 6) the necessity for rules regarding the use and protection of intelligence information, sources, and methods in trial; 7) effective courthouse and courtroom security; and 8) developing media guidelines for the court and trial parties; 9) ensuring victims of terrorism access to justice.. This document elaborates on these good practices, all of which reinforce the UN Global Counter-Terrorism Strategy.

Recommendation 6: Foster public understanding, and inclusiveness in the development of national counter terrorism policies and framework.

Parliamentarians play a key role in developing public opinion, and are therefore key for raising CT awareness of the whole society. Their role is twofold.

First, through their dialogue with members of society and countering and delegitimizing false narratives, parliamentarians play a role in preventing an environment where terrorism can flourish.⁸ It is not possible to effectively counter an ideology without an alternative credible message. As community leaders, parliamentarians are also well positioned to foster interfaith and interethnic dialogue and work with religious and educational leaders.⁹ Such actions can help prevent the cycle of terrorism before it starts.

Second, as elected officials not directly involved in investigating, prosecuting, or adjudicating specific CT cases, parliamentarians stand as independent representatives of the people and, therefore, they are well positioned to credibly articulate CT policy on behalf of their citizens. Parliamentarians have to ensure non-discriminatory practices and equality before the law, and should lead by example. They should foster inclusiveness and good governance mechanisms. These efforts can increase community-level understanding and ownership of national CT policies. Citizens' resilience is a goal to counter the terrorists' narrative and communication.

Parliamentarians can assist in tempering the immediate emotional reactions of the public in response to specific terrorist incidents, and redirect the focus on solutions that address the long-term interests of society and thereby contribute to fostering a balanced and strategic approach for the resilience of communities against terrorist ideologies and, more generally, against terrorist recruitment efforts.

It is therefore a good practice for parliamentarians to discuss and debate policies in a non-partisan, rational, accurate and non-demagogic style to encourage an informed and open national debate where different opinions and beliefs are respected, and to build public understanding, resilience, and consensus.

Recommendation 7: Engage civil society in the formation, development and implementation of national counter terrorism strategy.

Local civil society is at the frontline of communities and, therefore, constitutes a basin of knowledge for authorities to draw on. The consultation with civil society organisations (CSOs) helps to inform more effective and resonant CT strategies. The participation of civil society in the formation of CT policies ensures that a variety of opinions of the population are considered.

CSOs reflect a cross section of society, and can provide valuable inputs and should be consulted by legislators in the formation of terrorism-related laws and policies. Community leaders'

⁸ See the GCTF's [The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighter Phenomenon](#), Good Practice 6 (invest in the long-term cultivation of trusted relationships with communities susceptible to recruitment, considering the broader set of issues and concerns affecting the community) and Good Practice 5 (prevent the identification of the FTF phenomenon or violent extremism with any religion, culture, ethnic group, nationality, or race).

⁹ See the GCTF's [Abu Dhabi Memorandum on Good Practices for Education and Countering Violent Extremism](#), Good Practice 2 (promote dialogue and collaboration between the education and security sectors to increase political attention and resources devoted to CVE and education) and Good Practice 17 (engage the private sector through relevant corporate social responsibility mandates and emphasize how violent extremism can negatively affect profits while highlighting the benefits of educational opportunities for youth).

engagement should be part of civil society consultation practices by parliamentarians, for example, in preventing youth recruitment by terrorist organizations. CSOs play an essential role for communication and awareness raising efforts against terrorism, including countering narratives for delegitimizing violent extremists' views. CSOs also offer tools for monitoring the implementation of laws and policies designed to counter terrorism. The involvement of civil society in CT contributes to the engagement of people at the margins of society. Developing community outreach channels is a further role that parliamentarians can play, which helps to ensure an inclusive and sustainable support for national CT policies. Families of victims can play a role for developing informed CT policy drawing on direct experiences. CT policies formation needs to integrate community-level feedback. CSOs can play a proactive role in preventing terrorism through de-radicalisation and counter-narrative actions, especially at a community level. CSOs are critical participants in ensuring educational institutions provide robust alternatives to terrorism and identify at risk youth. Some CSOs are directly supportive of the victims of terrorism and can assist legislators to safeguard related rights.

Civil society should have space and fertile ground to succeed in its mission. The potential abuse of civil society organizations, such as charities, by terrorist and related organizations (e.g. through the provision of financing, movement and support) should be prevented and individuals involved in breaches of the law should be investigated and prosecuted, but without interfering with the healthy role played by legitimate CSOs. CSOs' action has to be in a result-oriented synergy with national authorities with proportionate accountability levels even while they remain separate from formal government structures. It is a good practice for parliamentarians to ensure civic groups and individuals can openly express their views regarding CT measures through hearings open to the public. A robust and open debate regarding the need and efficacy of existing and planned CT measures can lead to greater consensus within society.¹⁰

Recommendation 8: Allocate sufficient budget to maximize the use of government resources to support national counter terrorism strategy implementation.

Parliamentarians play a central role in approving public expenditures and use of public resources. Effective CT measures require adequate funding and justice sector officials should receive adequate compensation. Since an increased budget does not necessarily reflect a better CT policy, CT efforts' funding should be considered in light of other government programs designed both to prevent terrorism and to meet the other needs of its citizens. This process should include transparency of procurement and recruitment components of resource allocation. As representatives of the citizens, parliamentarians are well positioned to make rational assessments of public expenditure to support executive institutions' accountability and ensure good governance.

A sound rule of law compliant CT policy directly strengthens the representative institutions and good governance of countries. Societal core sectors such as welfare, education, health, religious services should be considered as part of comprehensive CT response where citizens' security is built through the rule of law and human rights across society. CT provides for an opportunity for strengthening societal resilience to violence and intolerance. Security and justice are part of broader development goals. Anti-corruption efforts are complementary to

¹⁰ See the GCTF's [Abu Dhabi Memorandum on Good Practices for Education and Countering Violent Extremism](#) as well as Good Practice 11 of the GCTF's [Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism](#).

these goals. Investing in the pursuit of human rights compliant CT policies means sustaining societal foundations.

It is a good practice to ensure that public resources are available for sustainable CT policies. Parliamentarians may be able to identify and liaise with external supports for funding of the national budget. While it may not be possible, or even advisable, for parliamentarians to micromanage all aspects of the national government, they should firmly establish budgetary policies and sustainable goals. Parliamentarians should develop mechanisms for allocation of funds, effective auditing processes and end use monitoring of CT policies and expenditures, through use of a select committee where appropriate, and conduct on site visits to ensure direct information to relevant parliamentary committees. Sharing budget information with the public serves a valuable purpose of allowing citizens to know how public financial resources are being spent.

Recommendation 9: Oversee law enforcement and intelligence services to secure citizens' rights.

Independent oversight of justice and security sector bodies requires a parliamentary committee to carry out its mandate consistently and neutrally. Effective oversight requires direct access to information. Capacity building on oversight requirements with an element of comparative approach between jurisdictions is to be promoted. Parliaments should establish the legal framework that sets the powers and defines the limits of law enforcement and intelligence agencies. This includes:

- setting up mechanisms to establish equipped and professional law enforcement and intelligence agencies (exercise control over selection, appointment and promotion systems) and to define operating procedures;

- preventing torture and other gross violations of human rights;

- providing means to raise and maintain the required quality of institutions' standards and technical capacities (providing financial resources, investing in human resource capacities, and providing a functioning administrative structure);

- defining and implementing evaluation mechanism of law enforcement and intelligence services agencies; and

- linking the provision of financial resources to law enforcement and intelligence services agencies with accountability and robust conduct auditing.

Selection and clearance of parliamentary members is instrumental to ensure their timely access to information that is not open to the general public while preserving operational information confidentiality. Operational information (investigation) and review of its management after conclusion are to be separated. The former may require full classification, the latter a chance for greater transparency and trust. The limitation of rights can be legitimated by security objectives as long as it is exercised in compliance with the rule of law and criminal justice international standards. Parliamentary oversight committees need selection mechanisms to bear the responsibility of this unique role.

Oversight of intelligence, enforcement and prosecutorial authorities should ensure that human rights abuses are promptly addressed. Judicial independence should be preserved throughout. The distinction between investigation entities and intelligence services should be recognized. Policies and actions that fail to respect human rights should be independently investigated by relevant parliamentary committees. Parliamentarians should further proactively ensure that the oversight mechanisms are timely and adapted to evolving circumstances. Citizens' awareness of their rights, including the right to security, increases comprehension of the responsibilities and builds increased trust in CT policies. The media and civil society can contribute to oversight efforts by having open channels to bring information to the attention of oversight committees without fear of reprisal.

Parliamentarians should similarly monitor prisons management and conduct assessments of specific CT and countering violent extremism (CVE) practices aimed at the reintegration and rehabilitation of those convicted for terrorism offences that is carried out within the detentions settings.¹¹

Different parliamentary committees can be relevant for overseeing law enforcement and intelligence agencies' work. Therefore, merging various committees' members in a specific select committee for overall CT oversight can increase effectiveness.

Recommendation 10: Balance effective oversight, operational security, and the benefits of public disclosure.

Disclosure of information to the public is beneficial for transparency as it builds the public's trust in their government over the long term. Executive branch officials' claims of state secrecy should be closely scrutinized to prevent efforts to conceal misconduct or ineffective policies.

Nevertheless, there can be justifications for withholding information, sources, and methods, particularly those relevant to ongoing CT operations. The right to information can therefore be limited when the need of security requires the classification of information. 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.

It is a good practice to form a committee of parliamentarians, which is to be provided with sufficient security clearance to directly evaluate classified materials. A specialized 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, and materials no longer requiring classification should be promptly declassified and made available.

¹¹ See generally the GCTF's [Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders](#).

Recommendation 11: Promote inter-parliamentary exchange of information and cooperation.

Terrorism is a global challenge with a strong transnational dimension. Parliamentarians play a role in developing and supporting foreign policy. They should seek opportunities to encourage policies that lead to resolution of local or regional conflicts that, if left unresolved, can create conflict zones where terrorism can grow.

Inter-parliamentary efforts can provide a critical bridge to permit greater international cooperation. Information sharing among national authorities is essential, yet too often it is frequently hampered by less than adequate existing cooperation mechanisms.¹² 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. As part of such parallel bilateral and multilateral diplomacy, it is recommended for inter-parliamentary fora to convene regularly and discuss CT policies and their commitments. 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. Existing regional and international parliamentary assemblies and networks can support these efforts.

Parliamentarians also have a special role to play in developing the architecture of regional bodies that can further support operational and information sharing to foster regional and inter-regional CT responses. Parliamentarians likewise have a responsibility to contribute to the development of the wider CT regional and global response of the international community. Inter-parliamentary cooperation may focus on action, such as following up on legislation implementation, taking concrete steps for the enhancement of CT legislation and its rule of law compliance, or facilitating cooperation among CT practitioners. International organizations can provide briefings and subject matter knowledge sharing for and among parliamentarians. Voluntary international mutual review mechanisms can be beneficial when adopting new legislation or policies, or amending existing ones.

¹² The [Rabat Memorandum's](#) Good Practice 9 specifically encourages the development of practices and procedures to encourage international cooperation in CT matters.

Terrorism is a global phenomenon that presents a direct and multi-faceted threat to human security. States have a responsibility to protect populations from terrorism-related threats, which requires legislative actions taken consistent with human rights and the rule of law that assigns primary responsibilities to parliamentarians. Parliamentarians have also the capacity to increase the effectiveness of counter terrorism (CT) policies by enhancing accountability mechanisms, encouraging civic participation, and promoting adherence to international best practices. Importantly, the transposition of the CT international legal framework into domestic legislation requires parliamentarians to pursue national security goals in accordance with international law. Legislators can directly impact the effectiveness of an anti-terrorism regime through allocation of national budget resources, oversight of justice sector institutions and existing legislation, public statements, and overall setting of national policy. Parliamentarians' independent role requires informed judgment to guarantee transparent antiterrorism legislation and national policy while securing individual rights and the rule of law.

In recognition of the central role of parliamentarians in countering terrorism within a rule of law framework, the International Institute for Justice and the Rule of Law (IJ) was tasked by the European Commission (EC) Directorate-General for International Cooperation and Development (DG DEVCO) to implement a project in support of the role of parliamentarians for rule of law-compliant CT policies. This endeavour, endorsed at the Global Counterterrorism Forum (GCTF) Criminal Justice and Rule of Law Working Group plenary meeting in April 2015, was inaugurated at the IJ in Valletta in May 2015. A regional workshop addressing legislators was subsequently hosted by the House of Representatives of Morocco in October 2015 in Rabat, followed by a Symposium held in Brussels in March 2016, a second regional workshop hosted by the Grand National Assembly of Turkey (GNAT) in Istanbul in April 2016, and a meeting concluding this project held at the House of Representatives of Malta and the IJ in November 2016. In the course of these events, parliamentarians from justice and security-related committees from Middle East, North, East and West Africa, and European countries, together with the European Parliament, various inter-parliamentary fora and experts from the United Nations and other organisations discussed and drafted a set of written recommendations to guide parliamentarians' work in the field of counter terrorism. The resulting *Valletta Recommendations Relating to Contributions by Parliamentarians in Developing an Effective Response to Terrorism* were adopted at the GCTF Seventh Ministerial Meeting in New York in September 2016 and constitute a practical reference for parliamentarians to address terrorism issues.

The *Valletta Recommendations* shaped the present study, which reflects practical cases discussed by parliamentarians as part of the IJ project, and constitute the basis for the development of a parliamentarian-focused training module to sustain rule of law-based action against terrorism globally.