SUPPRESSING FOREIGN TERRORIST FIGHTERS AND SUPPORTING PRINCIPLED HUMANITARIAN ACTION

A Provisional Framework for Analyzing State Practice

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EXECUTIVE SUMMARY

THE RISING THREAT OF “FOREIGN TERRORIST FIGHTERS”

The “unprecedented flow of foreign fighters in recent years to and from conflict zones” provided the impetus for Resolution 2178.

—President Obama (Sept. 24, 2014)

In 2014, reports suggested that a surge of foreign jihadis were participating in armed conflicts in Syria, Iraq, and elsewhere. The United Nations Security Council responded by imposing in Resolution 2178 (2014) an array of obligations on member states to counter the threat posed by “foreign terrorist fighters” (FTFs). In the intervening year, those states have taken a range of actions—though at various speeds and with varying levels of commitment—to implement the FTF obligations imposed by the Council.

Proportional Distribution of Reported Foreign Fighters by Nationality for 25 Selected States*

*Figures of foreign fighters came principally from International Centre for the Study of Radicalisation and Political Violence (January 26, 2015), available at http://icsr.info/2015/01/foreign-fighter-total-syria-iraq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/, although for three states we had to find the numbers in other sources (e.g., news articles). Where an estimated range was given for a state, we added the range of estimates (the high and low figures) together and divided that combined figure in half to produce the estimate for that state.
SUPPORTING PRINCIPLED HUMANITARIAN ACTION IN COUNTERTERRORISM CONTEXTS

Meanwhile, many states continue to fund and otherwise throw their support behind life-saving humanitarian relief for civilians in armed conflicts around the world—including conflicts involving terrorists. Yet, in recent years, members of the humanitarian community have been increasingly aware of the real, perceived, and potential impacts of counterterrorism laws on humanitarian action. Part of their interest stems from the fact that certain counterterrorism laws may, intentionally or unintentionally, adversely affect principled humanitarian action, especially in regions where terrorist groups control territory (and thus access to civilians, too). The effects of these laws may be widespread—ranging from heightened due diligence requirements on humanitarian organizations to restrictions on travel, from greater government scrutiny of national and regional staff of humanitarian organizations to decreased access to financial services and funding. Counterterrorism measures may also in principle give rise to a “chilling effect” on humanitarian action. That is, humanitarian actors may choose not to undertake life-saving relief schemes that they otherwise would due to fears of violating counterterrorism laws and policies.

States should “exclude from the ambit of [counterterrorism] offences activities that are exclusively humanitarian and impartial in character and are conducted without adverse distinction [...].”
—International Committee of the Red Cross, 2011

Given the awareness of the risks of counterterrorism laws and regulations to humanitarian action by the time Resolution 2178 was passed, one might have expected the Security Council and states to incorporate explicit and specific protections for humanitarian action, or to reaffirm expressly their commitment to humanitarian action in areas controlled by listed entities. This did not occur in Resolution 2178. One reason might be that those involved in crafting the resolution and those on the counterterrorism portfolios were not involved in the same discussions as those from the humanitarian or aid divisions. The Security Council did, however, expressly require that U.N. member states prevent and suppress the recruiting, organizing, transporting, or equipping of FTFs consistent with international humanitarian law (IHL). In doing so, the Council implicitly required states to discharge their FTF obligations in a manner that respects the various forms of humanitarian action protected by IHL. The Security Council did not, however, expressly require that states discharge each of the other key FTF obligations entailed in the resolution consistent with IHL.
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**BRIEFING REPORT: 2 GOALS**

1. Provide a primer on the most salient issues at the intersection of counterterrorism measures and humanitarian aid and assistance, with a focus on the ascendant FTF framing.

2. Put forward, for critical feedback and assessment, a provisional methodology for evaluating the following question: is it feasible to subject two key contemporary wartime concerns—the fight against FTFs and supporting humanitarian aid and assistance for civilians in terrorist-controlled territories—to meaningful empirical analysis?

After foregrounding the normative and operational frameworks, we note that FTF-related counterterrorism measures—following a long line of measures implementing increasingly robust anti-terrorism agendas—may have the capacity to adversely affect certain aspects of principled humanitarian action. Our research suggests, however, that more documentation from humanitarian organizations would be needed to firmly establish a systemic adverse impact of FTF-related counterterrorism measures on principled humanitarian action. We also note that the FTF framing by the Security Council may present a particularly strong opportunity for meaningful engagement between counterterrorism and humanitarian actors.

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**Defining “foreign terrorist fighters”:**

“Nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.”

U.N. Security Council, Resolution 2178, para. 6(a)

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In addition, we submit an analytical methodology aimed at ascertaining from an empirical perspective how (certain select) states have implemented the FTF-related obligations imposed by the Security Council in Resolution 2178 (2014) one year after its adoption. We also put forward a methodology aimed at ascertaining from an empirical perspective whether those same states are supporting—or, at least, not actively curtailing—humanitarian aid and assistance, especially in relation to conflicts involving FTFs and other terrorists. This section also offers provisional figures generated from the application of these methodologies to extant sources. In doing so, we develop—and invite critical feedback on—new ways to measure both of these areas of state practice.
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State Selection

Criteria

25
States selected

P5
Permanent members of the Security Council, due to the importance of those states in developing binding counter-foreign terrorist fighter measures in particular and counterterrorism obligations in general

Foreign Terrorist Fighters
States with the highest reported numbers of foreign terrorist fighters per capita*

Humanitarian Donations to Iraq & Syria
Largest major state humanitarian donors, per capita, concerning two key conflicts involving foreign terrorist fighters (Iraq and Syria in 2015, as of July 2015)*

Border States
States sharing borders with Syria and Iraq, since many foreign terrorist fighters may travel through those frontiers in order to reach the battlefield

*See Methodology section.

Selected States
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Provisional Framework for Analyzing State Compliance with Key Foreign Terrorist Fighter Elements of Resolution 2178

Provisional Indicators of State Compliance with Five Key Foreign Terrorist Fighter Elements of Resolution 2178

Prevent and suppress FTF travel 10
Penalize FTF conduct 10
Penalize funding to FTFs 10
Penalize facilitation and recruitment of FTFs
Bring FTFs to "justice"

10 potential points per subcategory
0 = lowest potential score per subcategory; 10 = highest potential score per subcategory; see Methodology section

Provisional Overall Compliance: Five Key Foreign Terrorist Fighter Elements of Resolution 2178
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Provisional Framework for Analyzing State Support of Principled Humanitarian Action in Counterterrorism Contexts

Provisional Indicators of Support of Five Key Aspects of Principled Humanitarian Action in Counterterrorism Contexts

10 potential points per subcategory

0 = lowest potential score per subcategory; 10 = highest potential score per subcategory; see Methodology section

Provisional Overall Support: 5 Key Aspects of Principled Humanitarian Action in Counterterrorism Contexts

0 = lowest potential score per subcategory; 10 = highest potential score per subcategory; see Methodology section
Today, the overall political and operational environment for principled humanitarian action appears to be marked by increasingly aggressive counterterrorism responses. It may well be that donor states, states in the region, and states with comparatively greater numbers of FTFs experience the FTF threat as presenting a different order of national security concern than does terrorism more generally. Perhaps particularly in light of recent ISIS developments, refugee influxes into Europe, and al-Qaeda calling for lone-perpetrator attacks in the West, state responses appear to be tipping increasingly towards national security. These changing political realities should inform how humanitarian organizations understand the potential for additional changes to the regulatory environment. In particular, on the horizon there are six areas humanitarian actors should be particularly aware of and engaged with:

- **Heightened administrative and programmatic burdens**
- **Decreased freedom of movement of humanitarian personnel**
- **Increased governmental scrutiny of national and regional staff**
- **Decreased access to financial services and funding channels**
- **Elevated concerns regarding reputational harm**
- **Decreased autonomy of action with respect to engagement with all parties to armed conflict**
RECOMMENDATIONS TO STRENGTHEN EVIDENCE-BASED DECISION-MAKING

How could a better understanding of the relevant trends and trajectories—in state responses to the threats posed by foreign terrorist fighters, in state support of principled humanitarian action in counterterrorism contexts, and, especially, in the potential intersections between those areas of state practice—be established? Four areas may be particularly impactful to focus on in the current environment:

 sık Make assessments of state compliance with binding Security Council counterterrorism measures publicly available

 F Foster discussion and consensus on what it means to comply with IHL, IHRL, and IRL when discharging Security Council-imposed counterterrorism obligations, and make assessments of such compliance publicly available

.Evaluate whether to draft model exemptions from counterterrorism obligations for principled humanitarian action

 Participate in efforts to document impact by building consensus around what counts as impact and then specifically identifying those impacts over time