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ABSTRACT

Thousands of foreign terrorist fighters poured into the Middle East from almost every country across the globe. Radicalized by professionally edited videos and propaganda disseminated through the Internet, people from all walks of life were captivated by the Islamic State’s rhetoric, and nations were struggling to figure out how to stop them. One solution came in the form of a United Nations Security Council Resolution—Resolution 2178 (2014). This resolution is directed specifically at foreign terrorist fighters and calls upon all Member States to act with haste to address this new phenomenon. Critics were quick to call into question the language of Resolution 2178, however, with some claiming that it had the potential to give credibility to disastrous human rights violations by oppressive governments. This note examines those critiques and suggests that the actual problems of Resolution 2178 lie not in its potential for abuse but in the failure of states to implement its dictates—stemming from a lack of both political will and capability. As a potential solution, this note suggests that states should focus their efforts on one specific directive of Resolution 2178, countering and preventing violent extremism.

INTRODUCTION

The world is facing the “largest global convergence” of foreign terrorist fighters (FTFs) in history.¹ The number of fighters from across

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the globe who have traveled to the Middle East to join terrorist groups is unprecedented in scale\(^2\) and hard to estimate with any accuracy.\(^3\) Moreover, the groups to which fighters are flowing—such as the Islamic State in Iraq and Syria (ISIS or Islamic State) and the Al-Nusra Front—are sophisticated, dangerous, and wealthy.\(^4\)

The acts of these terrorist groups have been described as "medieval savagery."\(^5\) The mention of ISIS conjures up images of mass executions; the beheadings of civilians, including journalists and aid workers; and the destruction of precious historical sites and artifacts spread across the Fertile Crescent. While broadcast on daily news outlets, these images come to mind, in part, because they have been distributed across all forms of social media and the Internet—in combination with stories of adventure and religious salvation—in an attempt to recruit fighters to join ISIS's efforts in the Middle East.\(^6\) And the group's efforts have paid off. Numbers have varied depending on the institution conducting the estimates, but, in May of 2016, the United Nations projected—based on a report from one Member State—that around thirty-eight thousand individuals may have attempted to travel to join ISIS in Iraq and Syria.\(^7\)

It was against this backdrop of barbarity and the influx of FTFs from across the globe that nations convened at the urging of President Obama to come up with a solution to curb the flow of FTFs to the Middle East.\(^8\) The product of this meeting was Security Council Resolution 2178

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1. HOMELAND SEC. COMM., FINAL REP. OF THE TASK FORCE ON COMBATING TERRORIST AND FOREIGN FIGHTER TRAVEL 6 (Sept. 2015) [hereinafter HOMELAND SEC. REPORT].
4. See Mapping Militant Organizations: The Islamic State, STANFORD UNIV. (last updated Apr. 4, 2016), http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/1 ("In summer 2014, some estimates claimed that ISIS was worth up to $2 billion. As of September 2014, experts estimated that ISIS’s oil revenues alone brought in between $1 million and $2 million per day.").
SECURITY COUNCIL RESOLUTION 2178 (2014)

(2014), which has been referred to by some as the “watershed in the global civilian effort to reduce the threat from foreign terrorist fighters. . . in Syria, Iraq, and elsewhere.” Adopted unanimously, Resolution 2178 obligates all countries to institute laws that criminalize the travel or attempted travel for terrorism purposes, and it requires states to suppress and prevent the organizing, recruiting, transporting, and equipping of FTFs along with the financing of their activities. Moreover, Resolution 2178 urges states to counter violent extremism (CVE) and cooperate with other states in information and intelligence sharing.

On paper, Resolution 2178 seems like a positive and comprehensive strategy to curb the flow of FTFs to the Middle East, yet since its adoption, the number of FTFs has increased by fifty percent. Today, estimates show that FTFs have poured into Syria and other nations from over one hundred different countries. Based on recently released classified data, which does not count soldiers who have died on the battlefield or returned to their home country, 250 people from the United States, 1,550 French nationals, 700 people from the United Kingdom, and over 1,700 people from Russia and former Soviet States are currently estimated to be fighting in Iraq and Syria.

While coalition forces have reportedly killed many fighters—by some estimates reducing ISIS's fighting force to twelve thousand—the terrorist organization has not been strategically or permanently weakened. In fact, the threat from ISIS remains high and has continued to diversify. Member States have reported a clear increase

13. See id. ¶¶ 11, 18.
14. See HOMELAND SEC. REPORT, supra note 1, at 16 (“Based on the 58 cases we reviewed, there have been sharp increases in the number of Americans trying to travel to Syria each succeeding year (50 percent in 2015), indicating that coalition airstrikes in the region have not dissuaded travelers.”).
15. See id. at 36.
16. See id. at 11–12.
18. See Report of the Secretary General, supra note 7, ¶ 4.
19. Id.
in the rate of returnees from Iraq and Syria.\textsuperscript{20} Indeed, thirty percent of those who have fought in the war zone have returned to their home nations—roughly three thousand ISIS fighters per month.\textsuperscript{21} Recent international attacks perpetrated by members of ISIS additionally show that the group is changing its strategy.\textsuperscript{22}

In the months following its adoption, numerous legal scholars, think tanks, and non-governmental organizations (NGOs) underscored some of the suspected problems with Resolution 2178, and reports by the United Nations and other governments have analyzed the efforts by states to comply with their obligations of the resolution.\textsuperscript{23} Nevertheless, little research has been done to determine whether the concerns and potential problems proposed have materialized. Thus, this note is an attempt to fill that gap by examining the previously argued problems posed by adopting Resolution 2178 and then offering an outline of the issues that have actually materialized, which can then be used for further research regarding the FTF problem.

This note addresses both the anticipated and actual flaws of Resolution 2178 as a global, legal, and political solution to the FTF problem. Part I examines Resolution 2178, including its adoption history, its obligations, and the other Security Council Resolutions it is meant to complement. Part II lays out the perceived issues with Resolution 2178 identified by commentators immediately following its adoption—specifically its potential to exacerbate human rights violations by governments that choose to misuse the dictates of the resolution. Part III shows how the human rights concerns presented by critics in Part II have not materialized and surveys the problems of the resolution that have actually emerged—focusing specifically on the ineffectiveness of the resolution as a solution to the FTF problem. Part IV then provides an outline and critique of many of the alternative approaches to the FTF problem that have been urged by scholars and

\textsuperscript{20} See id.
\textsuperscript{21} See Arkin & Windrem, supra note 17.
\textsuperscript{22} See Report of the Secretary General, supra note 7, ¶ 5.
policy makers alike, including radicalization prevention, de-radicalization strategies, and counter narratives. Part IV shows how those strategies can actually be effective at stopping the flow of FTFs and preventing attacks by returning fighters. In short, this note argues that, while an honest attempt to stop the flow of FTFs to the Middle East, Resolution 2178 has proven to be unsuccessful in many of its objectives.

I. THE FOREIGN TERRORIST FIGHTER PROBLEM AND RESOLUTION 2178

In general, FTFs are not a new problem for states. FTFTFs traveled to Afghanistan after the Soviets invaded in 1989, and they united in the Balkans in the early 1990s to fight in the Bosnian conflicts. What is new today is the global scale of their recruiting efforts, their ability to reach individuals directly, and their sophistication in attracting new recruits. More specifically, the instability in Syria and Iraq has turned the problem into more of a “global crisis,” with fighters traveling from more than half the countries in the world. Terrorists have also begun to heavily use social media and obscure Internet sites to recruit new members, allowing groups to disseminate their message of terror across the globe in real time.

The threat of the FTF is also somewhat different than that posed by previous foreign fighters. Today, the concern for many governments—primarily Western governments—is “blowback,” or the fear that FTFs will return to their country of origin to commit terrorist attacks after participating in combat and training activities in Syria or elsewhere.

24. See EUROPEAN PERSPECTIVE, supra note 2, at 1.
25. See Third Report, supra note 23, ¶ 139.
30. See generally Daniel Byman & Jeremy Shapiro, Homeward Bound? Don’t Hype the Threat of Returning Jihadists, 93 FOREIGN AFF. 37 (2014) (investigating whether the hype surrounding returning foreign fighters is credible through an analysis of the numbers of fighters both leaving and re-entering the West and the impact this has had on bolstering the ISIS fight).
31. See generally ASIM QURESHI, BLOWBACK – FOREIGN FIGHTERS AND THE THREAT THEYPOSE (2014) (describing the “blowback” phenomenon, a concern that those British
In fact, this concern was one of the main motivations behind the introduction of Resolution 2178, with President Obama reinforcing to Member States at the Security Council that “foreign fighters were likely to return to their home countries to carry out attacks.”\textsuperscript{32} Tony Abbott, former Prime Minister of Australia, noted at the time that twenty people had returned to Australia from fighting in Middle East “disposed to wreak havoc,” \textsuperscript{33} and Stephen Harper, former Prime Minister of Canada, warned that FTFs would return home to motivate and recruit others to carry out attacks.\textsuperscript{34} And it seems that this fear has been realized, with FTFs returning to their home countries at a rate of twenty to thirty percent in recent months.\textsuperscript{35}

\textit{A. Security Council Resolutions and Attempts to Deal with Terrorism Before Resolution 2178}

Terrorism, including international and transnational terrorism is not a new concern for states.\textsuperscript{36} The United Nations began to address international terrorism in the 1960s in the form of agreements among Member States that held parties accountable for terrorist acts.\textsuperscript{37} Then, in the 1990s, the U.N. Security Council passed several resolutions, which sought to implement sanctions for state-sponsored terrorism and persuade all Member States to work together to prevent all acts of terrorism.\textsuperscript{38} In the years following the September 11 attacks, the

\begin{itemize}
  \item[32.] Press Release, \textit{supra} note 11.
  \item[33.] \textit{Id.}
  \item[34.] \textit{Id.}
  \item[36.] See Laura E. Little, \textit{Transnational Guidance in Terrorism Cases}, 38 GEO. WASH. INT'L L. REV. 1, 2 (2006).
  \item[38.] See, \textit{e.g.}, S.C. Res. 687 (Apr. 8, 1991) (deploring the threats made by Iraq in the Gulf Conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq); S.C. Res. 1054 (Apr. 26, 1996) (implementing sanctions against the Sudan for not complying with Security Council Resolution 1044 (Jan. 31, 1996), which demanded the extradition to Ethiopia of three suspects wanted in connection with an assassination attempt on President Mubarak of Egypt); S.C. Res. 1267 (Oct. 15, 1999) (deciding that all States “\[f\]reeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban . . . ”); S.C. Res. 1269 (Oct. 19, 1999) (calling upon all States “to implement fully the international anti-terrorist conventions to which they are parties, encourage all States to consider as a matter of
Security Council's strategy changed as it moved more urgently to adopt resolutions that would address what was becoming the "new challenge" for states—"large-scale international terrorism, in the context of highly complex and increasingly global networks." These global networks of terrorists are a product of globalization, as these groups recognized and began to exploit the global availability of information for their own logistical purposes.

Resolution 1373 (2001) was one of the first resolutions adopted by the Security Council after the September 11 attacks. It obligates Member States to "prevent and suppress the financing of terrorist acts" and calls on states to become parties to "relevant international conventions and protocols relating to terrorism." It also established the Security Council's Counter-Terrorism Committee (CTC). In addition to Resolution 1373, the Security Council adopted Resolution 1455 (2003), which requests that states enforce and pass legislation to prevent their nationals and others operating in their territories from aiding the Taliban and Al-Qaida. The Security Council adopted Resolution 1540 (2004), in which the Security Council decided that "all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes." And, finally, the Security Council adopted Resolution 1624 (2005), which calls upon States to do the following:

cooperate, inter alia, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and

priority adhering to those to which they are not parties, and encourage also the speedy adoption of the pending conventions").

39. See S.C. Res. 1368, ¶¶ 1, 3 (Sept. 12, 2001) (condemning the attacks on September 11, 2001).
40. Hans Koechler, Professor and Chairman, Dept. of Philosophy, Univ. of Innsbruck/Austria, Lecture Delivered at the International Conference on International Terrorism and Anti-Terrorism Cooperation: The United Nations and International Terrorism: Challenges to Collective Security (Nov. 15, 2002).
41. See id.
42. See id.
43. See S.C. Res. 1373 (Sept. 28, 2001).
44. Id. ¶¶ 1(a), 3(d).
45. See id. ¶ 6.
passenger security procedures . . . to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters. 48

In 2011, the Security Council adopted Resolution 1989, which imposes sanctions on Al-Qaeda and encourages Member States to submit the names of individuals and groups associated with the terrorist organization to the CTC. 49 It also reaffirms that "terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security." 50

B. The Emergence of the Islamic State and the Need to Address the FTF Problem

As the resolutions mentioned above show, the Security Council has been concerned with and has attempted to address terrorism—in its many forms—for quite some time. However, as the Islamic State grew in numbers and Member States began to see their citizens flee to the Middle East to join its ranks, they recognized the "particular and urgent need to prevent the travel [of] and support for [FTFs]." 51

Thus, in 2014, the Security Council introduced two resolutions aimed at suppressing the flow of FTFs, Resolution 2170 52 and Resolution 2178. 53 Resolution 2170 is directed at, among other things, the financing of foreign terrorist fighters. For example, it notes that "all

51. See Press Release, supra note 11.
States shall ensure that no funds, financial assets or economic resources are made available, directly or indirectly for the benefit of ISIL, ANF or any other individuals, groups, undertakings and entities associated with Al-Qaida." It also emphasizes that States should comply "with their obligation to ensure that their nationals and persons within their territory do not make donations to individuals and entities" in these groups.

Many of the provisions of the earlier resolutions mentioned above have also been repeated in Resolutions 2170 and 2178. For example, Resolution 1373's obligation that Member States "shall prevent and suppress the financing of terrorist acts," is repeated in both Resolution 2170 and 2178. Additionally, the Security Council confirmed that both Resolutions 2170 and 2178 make FTFs and their associates eligible for inclusion on sanctions lists set down in Resolutions 2167 and 1989.

Resolutions 2170 and 2178 also complement each other in certain respects. They were adopted specifically for the FTF phenomenon, with Resolution 2170 aimed broadly at the suppression of recruitment and financing of terrorists and Resolution 2178 focused directly on specific actions Member States should take, such as criminalization of travel for terrorism purposes. Perhaps most meaningfully, both resolutions emphasize the need to improve the effectiveness of fighting terrorism on the global level, and both have highlighted the use of advanced technology by terrorists to recruit and commit terrorist acts in a "globalized society."

C. Resolution 2178

The Security Council adopted Resolution 2178 under Chapter VII of the United Nations Charter, thus making many of its provisions binding on all U.N. Member States. It is modeled on a draft resolution submitted by the United States and pulls material from the Hague Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, developed by the Global Counterterrorism Forum (GCTF). The resolution imposes new and

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54. S.C. Res. 2170, supra note 52, ¶ 12.
55. Id. ¶ 15.
57. S.C. Res. 2170, supra note 52, ¶ 5; S.C. Res. 2178, supra note 9, ¶ 6.
58. See S.C. Res. 2170, supra note 52, ¶ 14; S.C. Res. 2178, supra note 9, ¶ 20.
59. See S.C. Res. 2170, supra note 52, ¶ 9; S.C. Res. 2178, supra note 9, ¶ 6.
60. See S.C. Res. 2170, supra note 52, at 2; S.C. Res. 2178, supra note 9, at 1.
61. S.C. Res. 2170, supra note 52, at 2.
62. See GENEVA ACADEMY, supra note 3, at 42.
63. See id. at 38.
extensive obligations on Member States, reflecting the significance of the international terrorism threat. It also reaffirms what other terrorism-related resolutions in the past have found—namely, "that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations."64

Many paragraphs of Resolution 2178 are, thus, not novel.65 However, the resolution is unique in its focus on FTFs, and, in particular, on "the Islamic State in Iraq and the Levant (ISIL), the Al-Nusrah Front (ANF) and other cells, affiliates, splinter groups or derivatives of Al-Qaida."66 Moreover, for the first time in a resolution, the Security Council defines what it means by a FTF:

individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.67

Using this definition, the Security Council requires Member States to take different actions in three broad sections under their general duty to "prevent and suppress the recruiting, organizing, transporting or equipping of [FTFs]."68 The first section focuses on the need for Member States to implement better border controls and issue travel documents with better care, "preventing [their] counterfeiting, forgery or fraudulent use."69 The second section urges Member States to share information "regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters."70 Finally, the third section calls upon states to counter violent extremism by preventing the "radicalization to terrorism"71 and implement "prosecution,

64. S.C. Res. 2178, supra note 9, at 1.
66. S.C. Res. 2178, supra note 9, at 2.
67. Id.
68. Id. ¶ 5.
69. Id. ¶ 2.
70. Id. ¶ 3.
71. Id. ¶ 4.
rehabilitation and reintegration strategies for returning foreign terrorist fighters."

Resolution 2178 also contains numerous specific obligations and encouragements, of which operative paragraph 6 is, perhaps, the most controversial. In that paragraph, the Security Council

decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense: (a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality [to plan or commit terrorist acts or receive terrorist training]; (b) the wilful provision or collection . . . of funds by their nationals or in their territories with the intention that the funds should be used . . . to finance [FTFs or the planning or perpetration of terrorist acts]; and, (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.73

Some of the commentators below argue that this provision is both unenforceable and provides a tool for oppressive regimes that choose to define terrorism as anything they do not like or find potentially threatening, religiously or politically.74

As mentioned above, Resolution 2178 also asks Member States to focus on countering violent extremism (CVE).75 For the first time in a Chapter VII resolution, the prevention of radicalization is described as an ‘essential element’ of tackling the threat of FTFs.76 Specifically,

72. Id.
73. Id. ¶ 6 (emphasis added).
75. See S.C. Res. 2178, supra note 9, ¶ 15–19.
76. FINK, supra note 8, at 3–4.
operative paragraph 16 encourages Member States to “promote social inclusion and cohesion”77 and to empower “youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society...”78

Resolution 2178 requires Member States to implement and maintain effective border controls and to regulate the issuance of travel documents.79 Under operative paragraph 2, the Security Council commands Member States to take measures to prevent the counterfeiting or forgery of travel documents and identity papers.80 Indeed, this requirement makes sense, as the 9/11 Commission found that “[f]or terrorists, travel documents are as important as weapons.”81

Resolution 2178 advises Member States to share information and cooperate on operational practices. For example, the Security Council urges Member States to exchange information regarding the movements of terrorists or terrorist groups “through bilateral or multilateral mechanisms” 82 and, at the same time, calls upon Member States to improve international and regional cooperation to prevent travel of FTFs.83 Moreover, the Security Council recalls its decision in Resolution 1373—that Member States must provide each other the “greatest measure of assistance” in criminal investigations and proceedings regarding the financing or supporting of terrorism—while highlighting this requirement’s importance with respect to FTFs.84

Finally, Member States are obligated under operative paragraph 9 to require airlines operating in their territories to provide “advance passenger information” to national authorities. This requirement allows Member States to detect attempted entries and departures into their countries of individuals designated by the CTC under authority granted in Resolutions 1267 and 1989.85 Advance passenger information would

77. S.C. Res. 2178, supra note 9, ¶ 16.
78. Id.
79. See id. ¶ 2.
80. Id. In this provision, the Security Council appears to be building on “Good Practice #13" of The Hague Marrakech Memorandum, which suggests that states “[u]se all available tools to prevent the misuse of travel documents... to deny suspected FTFs the ability to travel to engage in terrorist activities.” GLOBAL COUNTERTERRORISM FORUM, “FOREIGN TERRORIST FIGHTERS” (FTF) INITIATIVE: THE HAGUE—MARRAKECH MEMORANDUM ON GOOD PRACTICES FOR A MORE EFFECTIVE RESPONSE TO THE FTF PHENOMENON 6–7.
82. S.C. Res. 2178, supra note 9, ¶ 3.
83. Id. ¶ 11.
84. Id. ¶ 12.
85. Id. ¶ 9.
II. INITIAL REACTIONS TO AND CRITIQUES OF RESOLUTION 2178

Resolution 2178 has been described as President Obama's "legacy" in the Security Council. Nevertheless, numerous scholars rushed to provide commentary on its potential negative implications.

The Resolution received much criticism for its language. As noted above, the Resolution is not without provisions reminding Member States of their obligations under international law—particularly, international human rights law. However, critics argued that Resolution 2178 left room for some undesirable interpretations. For example, many individuals were concerned that while the Resolution defines FTF, it does not—like other resolutions before it—define terrorism. Critics have discussed extensively the political difficulties inherent in defining international terrorism. They argue that Resolution 2178 requires agreement on this point because of the extensive legal obligations imposed on Member States, particularly the obligation in operative paragraph 6 to enact “serious criminal offenses” to prosecute FTFs. Scholars worried that this omission would allow regimes to define “terrorism” as “whatever they do not like—for instance political opposition, trade unions, religious movements, minority or indigenous groups.”

Critics thus argue for amendments to Resolution 2178 that would limit governments’ ability to classify individuals or groups as terrorists. Martin Scheinin—the first United Nations Special Rapporteur on Human Rights and Counterterrorism—suggests that instead of classifying as threats “terrorism in all forms and manifestations,” the Security Council should limit the threat to “international terrorism or

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86. See HOMELAND SEC. REPORT, supra note 1, at 64 n.224.
88. See Scheinin, supra note 74.
89. See id.
90. S.C. Res. 2178, supra note 9, ¶ 6.
92. Scheinin, supra note 74.
specific forms of it." He recommends including operative paragraph 3 of Security Council Resolution 1566 as a definition of international terrorism. He argues that this definition would potentially address many human rights scholars' concerns by constraining the governments to prosecute acts that "constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism."

Emilio De Capitani agrees with Scheinin, describing the call for Member States to simultaneously criminalize FTFs' activities and comply with international human rights law "rhetorical" in nature. De Capitani also stresses the concerns highlighted by Sandra Kraehenmann and others at the Geneva Academy. He notes that one provision in the definition used by the Security Council to describe FTFs—which says that FTFs are those who travel to commit terrorist attacks or provide terrorist training, "including [training] in connection with armed conflict"—muddles the line between terrorism and armed conflict, and, thus, potentially infringes upon international humanitarian law. In short, the provision declares that acts governed by international humanitarian law are "terrorist acts," but it does not limit that term to acts prohibited by international humanitarian law, like the execution of individuals hors de combat.

III. Responding to the Critics: Actual Problems of Resolution 2178

Since Resolution 2178's adoption, many Member States have taken legislative and administrative action in their attempts to comply with the obligations set down in the Resolution, while others have used existing laws to suppress the flow of FTFs. After reviewing the actions of Member States and these new and existing laws, it seems

93. Id.
94. See id.
97. See GENEVA ACADEMY, supra note 3.
98. See De Capitani, supra note 97.
99. See GENEVA ACADEMY, supra note 3, at 42.
100. For a description of actions taken by Member States since the adoption of Resolution 2178, see First Report, supra note 23; Second Report, supra note 23; Third Report, supra note 23.
that the fears and criticisms of Resolution 2178—specifically with
regard to human rights—are unfounded. While the potential for human
rights violations is present, it is no more so than with any previous
resolution. In short, the true issue with Resolution 2178 is not its
exacerbation of human rights concerns, but instead, its ineffectiveness
at stopping FTFs from traveling across the globe. This part of the note,
evertheless, shows how Resolution 2178 could exacerbate human
rights concerns—even though none have been specifically documented—and highlights the ineffectiveness of the document at meeting its
ultimate objective.

A. Language Regarding Human Rights and Fundamental Freedoms

Contrary to many of the arguments made above, the Security
Council never disregarded the concerns Member States or others might
have had about the potential for the provisions in Resolution 2178 to be
abused. On the contrary, the Resolution’s language is quite strong on
human rights, stronger than Resolution 1373, for example. Furthermore,
the broad support the Resolution received at adoption was partly due to
its incorporation of language protecting human rights and assurances of
compliance with international humanitarian law. Moreover, the Security Council recognized that respect for fundamental rights and the rule of law supports
counterterrorism measures. Firstly, Resolution 2178 lays out Member States’ obligations under international human rights law, international humanitarian law, and
international refugee law in its preamble, even noting that the failure
to comply with these laws “is one of the factors contributing to increased
radicalization.” Moreover, the Security Council recognized that respect for fundamental rights and the rule of law supports
counterterrorism measures.

Throughout the preamble, the Security Council reminds Member
States of their responsibility to respect fundamental freedoms under
human rights law. For example—in underscoring its concern that
terrorists are using technology to incite radicalism—the Security
Council encourages Member States to take action to stop this trend but
to do so while respecting human rights and other international legal
obligations. In the same vein, the Security Council calls upon Member
States to ensure FTFs do not abuse refugee status, with the

101. See FINK, supra note 8, at 3.
102. Id. at 4.
103. See S.C. Res. 2178, supra note 9, at 1–2.
104. Id. at 2.
105. See id. at 1–2.
106. See id. at 2–3.
requirement that Member States only do so "in conformity with . . . international human rights law and international refugee law."\(^{107}\)

Additionally, many operative paragraphs contain prefatory language regarding the need to follow international human rights law. For instance, operative paragraph 5—the provision that "decides" that Member States shall prevent the recruiting, organizing, and traveling of FTFs—introduces that obligation with the requirement that those measures be taken "consistent with international human rights law, international refugee law, and international humanitarian law."\(^{108}\) Thus, Resolution 2178 contains ample language reminding Member States of their responsibilities to protect fundamental freedoms and human rights in general.

**B. Travel Document Revocations and Travel Restrictions as Potential Human Rights Issues**

One of the easiest ways for a Member State to "prevent the movement of terrorists or terrorist groups"\(^{109}\) is to restrict the issuance of passports or to revoke them from citizens they suspect are acting or attempting to act as FTFs. States are using this practice today to prevent suspected fighters from exiting and entering their territories.\(^{110}\) Canada, for instance, has been invalidating passports prior to the adoption of resolution 2178,\(^{111}\) using existing regulations that allow administrators to deny or revoke passports when there is evidence that an individual will travel to commit a crime.\(^{112}\) Australia is another nation that took preemptive action by using existing laws to revoke passports of suspected returning jihadists.\(^{113}\) At the time of the resolution's adoption, Australia had already suspended the passports of at least sixty of its citizens,\(^{114}\) with that number up to at least 115 at the time of writing.\(^{115}\) Meanwhile, France has passed legislation that allows the government to prohibit individuals from leaving the country for up to six months—with the ability to be renewed indefinitely—if it believes

107. *Id.* at 3.
108. *Id.* ¶ 5.
109. *Id.* ¶ 2.
111. See *id*.
112. See *id*.
114. See Bell, *supra* note 111.
that the individual intends to commit terrorist acts abroad.\textsuperscript{116} Yet, suspected terrorists without passports have still attempted other methods of leaving the country. For example, in May of 2016, five men on a terrorist watch list were apprehended by Australian police as they attempted to set sail for Syria in a seven-meter fiberglass boat.\textsuperscript{117}

Other Member States have passed new legislation after the adoption of Resolution 2178. The United Kingdom passed the Counter-Terrorism and Security Act\textsuperscript{118} in early 2015, which allows for the seizure and temporary retention of travel documents for up to fourteen days of individuals attempting to leave the territory for terrorism-related purposes.\textsuperscript{119} That period can be extended to thirty days with judicial approval.\textsuperscript{120} The Act also includes temporary exclusion orders, which permit officials to cancel the passports of U.K. nationals and to exclude them from the territory by placing them on international and domestic no-fly lists for up to two years.\textsuperscript{121}

One hundred sixty-eight countries have ratified the International Covenant on Civil and Political Rights, which protects an individual’s right to freedom of movement.\textsuperscript{122} And the Member States of the Council of Europe have signed Protocol 4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, which also protects the freedom of movement.\textsuperscript{123} These laws assure an individual’s right to leave his or her country, restricted only by lawful means in the attempt to achieve a legitimate goal, which includes

\begin{itemize}
  \item \textsuperscript{116} See \textit{Geneva Academy}, supra note 3, at 59.
  \item \textsuperscript{117} See Euan McKirdy, \textit{Five Terror Suspects Caught Trying to Flee Australia to Syria by Boat}, CNN (May 11, 2016, 9:00 AM), http://www.cnn.com/2016/05/11/asia/australians-boat-syria-bound/.
  \item \textsuperscript{118} Counter-Terrorism and Security Act 2015 c. 6 (Eng.).
  \item \textsuperscript{120} See Fatima QC, supra note 120.
  \item \textsuperscript{121} \textit{See Charles Lister, Returning Foreign Fighters: Criminalization or Reintegration?} 5 (2015).
  \item \textsuperscript{122} \textit{See} \textit{International Covenant on Civil and Political Rights} art. 12, Dec. 19, 1966, 999 U.N.T.S. 71.
  \item \textsuperscript{123} Eur. Ct. of Hum. Rights [Eur. Ct. H.R.], \textit{Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms}, art. 2 (Apr. 16, 1993); see also Org. of African Unity [OAU], \textit{African [Banjul] Charter on Human and Peoples’ Rights}, art. 12 (June 27, 1981) ("Every individual shall have the right to leave any country including his own, and to return to his country."); Org. of American States, \textit{American Convention on Human Rights, “Pact of San Jose"}, art. 22 (Nov. 22, 1969) ("Every person has the right to leave any country freely, including his own.").
\end{itemize}
national security. The restrictions must be necessary to achieve that goal—meaning the restrictions are subject to the principle of proportionality, and thus should be the least intrusive means available to achieve the desired goal. Moreover, an individual must have the right to appeal any decision restricting his freedom of movement, and this appeal should evaluate the legitimacy of and the substantive reasons for the decision.

The new and existing legislation used by Member States to restrict passports and travel, therefore, interferes with the right to freedom of movement set out under these treaties. Nevertheless, as noted, Member States are allowed to interfere if the substantive and procedural requirements are met. Thus, while the right may be interfered with as states attempt to comply with the obligations set down in Resolution 2178, nothing in the resolution itself causes a violation of the right to freedom of movement, and states can lawfully restrict travel in the name of national security.

The Security Council has conducted three reports on Member States' implementation of measures to comply with Resolution 2178, and in those reports it discovered at least one potential human rights concern with regard to passport and travel restrictions. It found that one country had introduced legislation that would allow its Minister of Foreign Affairs to declare certain overseas areas "no-go zones," whereby citizens commit an offence just by traveling there with no legitimate purpose. Nevertheless, there have been no documented instances of states abusing the dictates of Resolution 2178 with regard to freedom of movement.

C. Citizenship Revocation and Statelessness

Member States are also using citizenship revocation to restrict travel by suspected FTFs, and this method—like the revocation of travel documents—poses numerous legal issues. While Member States used this tool prior to the adoption of Resolution 2178, they have expanded

124. See GENEVA ACADEMY, supra note 3, at 59–60.
125. See id. at 60.
126. See id.
127. For an indication of the specific measures taken by Member States to comply with Resolution 2178, see First Report, supra note 23; Second Report, supra note 23; Third Report, supra note 23.
129. See id. ¶ 95.
its use in an attempt to stop FTFs and comply with the resolution.\textsuperscript{130} States are usually free to regulate citizenship;\textsuperscript{131} however, international law, particularly human rights law, can limit states' decisions of citizenship deprivation.\textsuperscript{132} States cannot arbitrarily deprive their citizens of nationality or forbid them from entering their own country.\textsuperscript{133} Nationality, like the freedom of movement, is a fundamental right that can only be restricted under a very particular set of conditions.\textsuperscript{134} Specifically, deprivation must be proportional, and the individual must have the ability to challenge it.\textsuperscript{135}

Only sixty-seven ratifying states are prohibited from depriving an individual of citizenship if that decision would render him stateless under the 1961 \textit{Statelessness Convention}, with a minimal exception allowed when the conduct of the individual is "seriously prejudicial to the vital interests of the State."\textsuperscript{136} That exception, however, must have already been on the books of the domestic law of the state at the passing of the \textit{Convention}—meaning that exception is essentially granted—a grandfather clause.\textsuperscript{137} On the other hand, some conventions—such as the European Convention on Nationality—do not even permit this exception when it renders the individual stateless.\textsuperscript{138} Additionally, the U.N. Secretary-General recently noted that "[g]iven the severity of the consequences where statelessness results, it may be difficult to justify loss or deprivation resulting in statelessness in terms of proportionality."\textsuperscript{139}

The CTC has found that several European Union States have passed legislation allowing for citizenship revocation, with one Member State having "the legal basis to revoke the citizenship of an individual who has obtained that citizenship through naturalization, even if it would render him or her stateless."\textsuperscript{140} Many other member states, such as Canada, have passed legislation permitting them to revoke the

\begin{footnotes}
\item[\textsuperscript{130}] See \textit{First Report}, \textit{supra} note 23, \textit{\S} 52.
\item[\textsuperscript{132}] See \textit{id.} at 21.
\item[\textsuperscript{133}] See U.N. Secretary-General, \textit{Human Rights and Arbitrary Deprivation of Nationality}, \textit{\S} 20, UN Doc. A/HRC/13/34 (Dec. 14, 2009).
\item[\textsuperscript{136}] Audrey Macklin, \textit{Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien}, 40 \textit{QUEEN'S L.J.} 1, 13 (2014) (Can.).
\item[\textsuperscript{137}] See \textit{id.} at 14.
\item[\textsuperscript{138}] See \textit{European Convention on Nationality}, Nov. 6, 1997, E.T.S. 166, art. VII, \textit{\S} 3.
\item[\textsuperscript{139}] U.N. Secretary-General, \textit{supra} note 136, \textit{\S} 4.
\item[\textsuperscript{140}] See \textit{Second Report}, \textit{supra} note 23, \textit{\S} 73.
\end{footnotes}
citizenship of dual nationals who have been convicted of major crimes at home or abroad.141

Some FTFs may not have the opportunity to contest their citizenship revocation, as they may be abroad when the decision is made and, thus, not know that their citizenship has been revoked or miss the chance to file an appeal.142 However, many FTFs have renounced their citizenship on their own while fighting for the Islamic State, with some fighters destroying their passports on arrival.143 Finally, the revocation of citizenship might not help the problem posed by FTFs if the goal is to stop the flow of fighters to conflict zones as set out in Resolution 2178. As the Chair of the CTC noted in his first report, revoking citizenship may effectively prevent “the return of such individuals to their State of former citizenship, but they may also simply pass on the associated problems to the individual’s State of remaining citizenship.”144 Nevertheless, actual due process and human rights violations with regard to citizenship revocations—while possible—have yet to materialize in any of the reports submitted by the CTC.

D. The General Potential for Misuse

Some of the critics mentioned above argued that the language of Resolution 2178 has the potential for overbroad use by oppressive regimes with other political motivations.145 While this is true in theory, the threat posed by the misuse of Resolution 2178 is no different and no more severe than the threat posed by previous Security Council Resolutions. For example, Resolution 1373 was seen as “radical” in nature, in part, because of its legislative character and the discretion it

141. See id. ¶ 96.
142. See GENEVA ACADEMY, supra note 3, at 57.
144. First Report, supra note 23, ¶ 52.
145. See Scheinin, supra note 74 (describing how an oppressive regime might use operative paragraph 6 in ways unintended by the Security Council) (“Let us assume that a country applies a definition of terrorism that includes organized campaigns of indigenous groups toward self-determination by non-violent means. Criminalizing the provision of training to empower these groups, including in the field of human rights, would then be legitimized by OP6. The repressive regime would refer to its obligations under the UN Charter to justify a crackdown upon travel, training and funding of organizations and movements said to constitute a threat to the oppressive regime itself – even when totally nonviolent. The situation of the Uighurs in China, or the harassment experienced in recent days by leaders of Russian indigenous communities trying to travel to New York for the World Conference on indigenous peoples, demonstrate that the above scenario is totally realistic.”).
gave to Member States in implementing its mandates. Additionally, Security Council Resolution 1267 received criticism because of its potential for due process violations. Critics argued that Resolution 1267 created a “Kafkaesque predicament” whereby the accused had no recourse to challenge their inclusion on a U.N. terror sanctions list, and some individuals had no way of establishing which country had placed them on the list because the procedures allow governments to secretly place individuals.

In short, many resolutions have the potential for overbroad use by Member States, and this is a problem that has existed long before the adoption of Resolution 2178. The critiques of Resolution 2178 by scholars such as De Capitani and Scheinin could have just as easily been made about previous Security Council resolutions. Moreover, Scheinin’s recommendation to include operative paragraph 3 of Security Council Resolution 1566 as a definition of international terrorism does not solve the problem. There has not been—and likely will never be—a globally accepted definition of terrorism. Additionally, the definition of FTF included in Resolution 2178 is restricted to “individuals who travel to a State other than their States of residence or nationality.” Therefore, the FTF problem is defined as an international problem and limited to international terrorism contrary to the fears expressed above. Human rights problems created by counterterrorism measures are not new, and Resolution 2178 is just inheriting those problems.

146. See Kim Lane Scheppel, The Empire of Security and the Security of Empire, 27 Temp. Int'l & Comp. L.J. 241, 254, 263 (2013) (noting how the dictates of Resolution 1373 caused Member States to develop their own varying definitions of terrorism.).
148. Id.
149. See Scheinin, supra note 74.
151. S.C. Res. 2178, supra note 9, at 2.
E. The Actual Problems of Resolution 2178—Practical Restraints

Like many Security Council Resolutions before it, Resolution 2178 fails to achieve its desired ends—in part, because of a failure by Member States to implement its pronouncements and recommendations. For example, some of the most relevant states, where the majority of FTFs travel to and from, do not have the ability to implement the required measures, lack the political will to take action, and suffer from endemic corruption. Additionally, while some Member States are taking their obligations under the resolution seriously, implementing new legislation and tactics to stop the flow of FTFs, some have taken little action with regard to implementing legislation since the adoption of Resolution 2178. Moreover, even the most sophisticated Member States in terms of counterterrorism technology, such as the United States, are struggling to stop FTFs before they leave.

Most FTFs traveling to Iraq and Syria do not come from Western States. Over seventy percent have come from Northern Africa and the Middle East, yet some of these countries do not have functioning governments, let alone the technical ability to track and stop FTFs. The Islamic State is continuing to increase its presence in Northern Africa, particularly in the failed state of Libya, which has now also become a state of destination for FTFs as opposed to only a state of origin or transit. The CTC report on Northern Africa lays out even more concerns. It shows that at least one Member State has no methods in place to prevent FTFs from leaving its territory, and another state


155. See Third Report, supra note 23, at 2 (“Few States have introduced comprehensive criminal offences to prosecute foreign terrorist fighter-related preparatory or accessory acts. Many rely on existing legislation to tackle the foreign terrorist fighter phenomenon, and such legislation may not be sufficient to prevent foreign terrorist fighter travel.”).

156. See HOMELAND SEC. REPORT, supra note 1, at 15.

157. See id. at 10.

158. See id.

159. See ICCT Commentaries, supra note 92.


161. Id. ¶ 53. The Islamic State has recently suffered several military setbacks in Libya, which has some observers worried that fighters will spill into Europe as they are routed from Sirte. See Nick Squires, Islamic State Fighters Fleeing Besieged Libyan City Could Cross the Mediterranean in Migrant Boats, Italy Warns, TELEGRAPH (Aug. 14, 2016, 1:13 PM), http://www.telegraph.co.uk/news/2016/08/14/islamic-state-fighters-fleeing-besieged-libyan-city-could-cross/.

is not even in a position to implement legislation or policies to control potential fighters. Only two Member States can receive advanced passenger information, yet their systems are not computerized, and one state has no ability to process such information.

Countries from the Lake Chad Basin, such as Cameroon, Chad, Niger, and Nigeria, also lack some of the technical capabilities needed to suppress the flow of FTFs. For example, while one state has established a special counterterrorism unit, it lacks the technical capability and equipment needed to carry out its missions. Moreover, many land border posts in the region lack basic resources like electricity and Internet access, and, thus, lack access to international databases and must rely on paper wanted lists.

Resolution 2178, of course, requires the above-mentioned Member States to take the same action as any other state, yet that requirement means little when these states lack the necessary means. Similarly, the Resolution obligates Member States to share information and best counterterrorism practices with other states, yet again, that obligation is, in effect, inoperable when those on the receiving end cannot process or use that information.

While there is a global consensus on the need to cooperate between nations to stop the FTF problem, there is no consensus on what actually should be done. Some states are wary of adding new measures for fear of infringing on the human rights of their citizens. In other states, the obligations of Resolution 2178 have increased legislative burdens. For example, no Central Asian States have criminalized travel or attempted travel for terrorism purposes as required by the Resolution, nor have any instituted mechanisms to disrupt the financing of FTF travel in the

163. See id. ¶ 56.
164. Id. ¶ 57.
165. Id.
166. See Third Report, supra note 23, ¶ 52.
167. See id.
168. Id. ¶ 55.
169. See id. ¶ 89. With regard to states neighboring the conflict zones in the Middle East, such as Egypt, Iran, Iraq, and Jordan, there is little evidence that these states have taken the necessary legal, institutional, and practical steps necessary to stop FTFs and comply with Resolution 2178. See id. ¶¶ 78–92.
170. S.C. Res. 2178, supra note 9, ¶ 11.
172. See id. ¶¶ 27–28, 71.
173. Id. ¶ 64.
174. Id. ¶ 43.
region. Additionally, no states in the region utilize advanced passenger screening information.

West African countries have taken action with regard to criminalization requirements, but their new counterterrorism laws "do not generally comply with the criminalization requirements of Resolution 2178." Moreover, there are few or no legislative or operational measures in place that ensure that those who attempt to travel to become FTFs are prevented from leaving their country of origin to travel to conflict zones.

Only a small number of Western European States have amended or added new legislation to comply with the Resolution’s criminalization requirements, while other Member States (like the United States) use existing criminal laws. And few have instituted advanced passenger information systems.

European Union members recognize the transnational nature of the FTF problem and have, thus, strengthened cooperation efforts with states outside the Union. Yet most nations must—at the same time—focus on the current European refugee crises, directing their resources toward that phenomenon and away from FTFs.

Perhaps most concerning is the fact that nations like the United States—with more than capable law enforcement agencies and counterterrorism strategies—are unable to come up with an effective solution to stop FTFs before they leave the country. In September 2015, the Department of Homeland Security (DHS) produced a report analyzing the United States’ ability to confront FTF travel. That report revealed, among other things, that the United States Government lacks any “comprehensive strategy for combating terrorist and foreign fighter travel and has failed to maintain a system for identifying and plugging related gaps in America’s defenses.” Just as alarming is that while over 250 fighters from nineteen U.S. states

175. Id. ¶ 47.
176. Id. ¶ 66.
177. Third Report, supra note 23, ¶ 64.
178. Id. ¶ 66.
179. See Second Report, supra note 23, ¶ 70.
180. Id. ¶ 72.
181. Id. ¶ 79.
182. See generally Leo Cendrowicz, Refugee Crisis: Europe’s Leaders Meet to Tackle Crisis for the Sixth Time this Year, INDEPENDENT (Nov. 9, 2015), http://www.independent.co.uk/news/world/europe/refugee-crisis-europes-leaders-meet-to-tackle-crisis-for-the-sixth-time-this-year-a6727831.html.
183. See generally HOMELAND SEC. REPORT, supra note 1.
184. Id. at 22.
185. See id. at 16.
have traveled from the United States to the Middle East, DHS was only able to identify twenty-eight people who were stopped before they left the country, with some fighters able to travel back and forth multiple times.\textsuperscript{186} DHS's recommendations to fix these issues, however, appear to only reiterate the obligations laid down in Resolution 2178, such as to improve information sharing capabilities.\textsuperscript{187} Moreover, because the United States drafted and introduced the Resolution, arguably, it should have been able to implement an effective strategy before any other Member State.

Many states across the globe face the same types of problems. For example, very few states are able to conduct on-site missions to conflict zones, and, therefore, are unable to collect valuable information for purposes of investigations or prosecutions.\textsuperscript{188} For purposes of investigations into FTF travel, evidence, including witnesses, may be scattered among States of departure, transit, and destination.\textsuperscript{189}

IV. ALTERNATIVE STRATEGIES FOR COMBATING THE FTF PROBLEM

So far Resolution 2178 has proven to be a somewhat ineffective tool in halting the flow of FTFs to conflict zones. It is wise, then, to determine whether other options might better serve the interests of the nations attempting to stop FTFs. What follows is a catalog of those options. These options focus more on addressing the problem at its root through community involvement and awareness rather than through criminal prosecutions that attack the issue at the back end. While Member States should continue to work inside the framework of Resolution 2178—as it does recognize "that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone"\textsuperscript{190}—the focus of these states should be on prevention and reintegration. Perhaps by doing so, Member States will avoid the potential human rights concerns mentioned above and possibly receive better results with regard to stemming the flow of FTFs to conflict zones and preventing attacks in states of origin as more and more FTFs return home.

Resolution 2178 calls upon Member States to develop mechanisms to counter violent extremism, particularly through "social inclusion and cohesion."\textsuperscript{191} However, it is unclear what steps Member States should

\textsuperscript{186} Id. at 23.
\textsuperscript{187} See id. at 29.
\textsuperscript{188} Third Report, supra note 23, ¶ 32.
\textsuperscript{189} Id. ¶ 40.
\textsuperscript{190} S.C. Res. 2178, supra note 9, at 2.
\textsuperscript{191} Id. ¶ 16.
take to enhance or develop these mechanisms. Moreover, while some Member States have developed well-intentioned strategies to counter violent extremism, the focus of most states in implementing Resolution 2178 has been on apprehension and prosecution, not de-radicalization or the prevention of radicalization.

A. Involving Affected Communities

One solution may be to engage with communities identified as having a high likelihood of producing FTFs to both educate and assist them in deterring future recruits. Some experts have claimed that up to ninety-five percent of FTFs are recruited by either friends or family. Moreover, more than seventy-five percent of the FTFs in the United States who have been stopped before they left the country were apprehended because of concerned family members, friends, or observant community members. Policy makers have recognized the potential of the strategy. DHS noted in its latest report that the government should “devise new approaches for encouraging community members to report suspicious activity, especially signs an individual is preparing to travel overseas to join a foreign terrorist organization.” Early on, the GTCF documented the potential benefits of community involvement in the Hague Marrakech Memorandum. The GTCF suggested reaching out to communities to develop awareness of the FTF problem, informing the public of the potential for radicalization through social media and other Internet-based services. However, it also suggested that the awareness be brought in small settings, through community briefings and tabletop discussions, noting that the “exploitation of undue attention or misguided media coverage of the FTFs could contribute to the radicalization of the FTFs.”

193. This strategy may nevertheless be difficult in failed or quasi-failed states where they lack the ability to implement any strategies whatsoever.
195. See HOMELAND SEC. REPORT, supra note 1, at 17.
196. Id. at 34.
197. See GLOBAL COUNTERTERRORISM FORUM, supra note 80, at 4.
198. See id.
199. See id.
200. Id. at 3.
The counterargument to this approach is that those communities will not allow or trust any intervention. Indeed, many Muslim communities distrust CVE efforts because such efforts tend to focus exclusively on Muslims instead of extremism generally. In fact, in the past, governments and law enforcement—including the FBI—have used such CVE efforts to spy on those communities and encourage members to become informants.

B. Counter-Narrative Strategies

Peter Neuman—Director of the International Centre for the Study of Radicalization and Political Violence—suggests using the stories of disillusioned returning FTFs to counter ISIS's recruiting success. This strategy would also include decriminalization measures and efforts to ensure—to the extent possible—that the message being disseminated is not viewed by potential FTFs as government-sponsored. Neuman and his researchers created a database of fifty-eight disillusioned Islamic State fighters who were willing to speak out publicly. From the stories of those individuals, Neuman was able to identify four “defection narratives” that detailed why FTFs were most likely to leave the Islamic State: (1) infighting, (2) brutality against Sunni Muslims, (3) corruption and un-Islamic behaviors, and (4) quality of life. For example, many defectors felt that “fighting against other Sunni groups was wrong, counterproductive and religiously illegitimate.” The returnees have given other various reasons for leaving, including the belief that they would only be fighting the Assad regime; favoritism and mistreatment by ISIS leaders; and an overall disappointment in their experience, which was not nearly as exciting or worthwhile as they initially assumed. Some countries have already taken advantage of

202. Id.
203. See id.
205. It is difficult to say, however, how this strategy would work in real time, as counter-narrative campaigns typically depend on government catalysts.
206. See Neumann, supra note 205, at 5.
207. See id. at 10–11.
208. Id. at 10.
209. See id.
discouraged returnees, or “jaded jihadists,” allowing them to tell their stories in order to convince others not to travel.\footnote{See Homeland Sec. Report, supra note 1, at 37.}

This strategy may be most effective against potential FTFs from the West. For example, Western FTFs are predominately chosen as suicide bombers, which may deter their joining.\footnote{See id. at 13.} Moreover, many Westerners did not anticipate having to live without electricity or basic goods, not to mention they never received the luxury items and lavish lifestyle they were promised.\footnote{See Neumann, supra note 205, at 11.} Thus, the FTFs who might go to Syria or Iraq in search of “the T-shirt and the pictures”\footnote{See Byman & Shapiro, supra note 30, at 42.} might be dissuaded after hearing these facts from returnees.

One of the major issues with this strategy, like with most CVE strategies, is that we may never know if it is actually working. Those in charge of facilitating the story telling of disillusioned FTFs will essentially be asked to prove a negative, “an impossible standard.”\footnote{See Greg Miller & Scott Higham, In a Propaganda War Against ISIS, the U.S. Tried to Play by the Enemy’s Rules, WASH. POST (May 8, 2015), https://www.washingtonpost.com/world/national-security/in-a-propaganda-war-us-tried-to-play-by-the-enemys-rules/2015/05/08/6eb6b732-e52f-11e4-8ea-0649268f729e_story.html.} No person who was intending to join a terrorist group but was dissuaded from doing so by the accounts of returnees will likely come out and say so.\footnote{See id.} Nevertheless, recognizing this inherent difficulty will be essential when it comes time to speak of its success.

Combating the Islamic State’s pervasive social media campaign and slick video productions through a counternarrative operation is another potential option for dissuading potential recruits from joining the terrorist organization. Scholars and policy makers alike have argued that one potential way to prevent individuals from joining foreign terrorist groups is to address the problem at its source by implementing measures to counter the violent extremist message of groups like the Islamic State.\footnote{See Global Counterterrorism Forum, supra note 80, at 2–3.} A counter-message approach, of course, has its own flaws, especially when the government directs it. For example, messages coming from the government are likely to be seen as having their own agenda.\footnote{See Miller & Higham, supra note 215.} When the Center for Strategic Counterterrorism Communications (CSCC), an arm of the United States Department of State, first tried its hand at a propaganda counter-message, the product—a YouTube video entitled, “Welcome to ISIS Land”—was a
complete debacle. Some Washington insiders denounced it as “embarrassing” and potentially helpful to the enemy, and it even received mocking criticism from comedian John Oliver. In short, the video suffered from a lack of understanding about the motivations of many fighters and was seen by potential recruits only as a government-created countermeasure. Therefore, when developing a program for returning FTFs to spread a counter-message, officials should keep in mind the failures of the CSCC.

Undermining the Islamic State’s narrative is a critical element of radicalization prevention. Counterterrorism scholars Daveed Gartenstein-Ross and Nathaniel Barr note that “[e]xposing the group’s embellishments and outright fabrications can do a great deal of damage to the Islamic State’s overall appeal.” Gartenstein-Ross and Barr outline a number of ways this can be done, such as challenging the Islamic State’s religious narrative; questioning its narrative of military success; and exposing its inability to provide public services. Both also suggest alternative forums for communicating this counternarrative. For example, they suggest establishing a corps of online counselors who would mirror the Islamic State recruiters. These individuals would monitor Islamic State social media posts and identify at-risk individuals, then connect with the potential recruits privately, allowing for one-on-one intervention whereby religious ideology and political grievances can be discussed and anger diffused. Gartenstein and Barr also suggest “CVE practitioners could create online forums where at-risk individuals can discuss their political disgruntlement, salafism, or jihadist ideas with knowledgeable community leaders in a candid, safe environment.”

Counter-messaging strategies could see more success in the coming months as governments invest in technology and manpower. As one example, the Defense Advanced Research Projects Agency has recently unveiled a new program called Quantitative Crisis Response, which seeks to develop “automated digital tools that can help operational partners better understand how information is being used by

218. See id.
219. See id.
220. See id.
222. Id.
223. See id.
224. See id.
225. Id.
226. Id.
adversaries and to quantitatively predict and assess—in real time and at scale—the effects of those campaigns and of countermeasures." In short, the program will try to better understand how well the propaganda from groups like ISIS is working in addition to the effectiveness of counter-messaging campaigns.

C. Counter-Content Strategies

Social media giants like Twitter have also worked closely with governments to remove Islamic State propaganda from the Internet. For example, since the middle of 2015, Twitter has suspended over 125,000 accounts "for threatening or promoting terrorist acts, primarily related to ISIS." Moreover, the company has attended over forty CVE events across four continents to help it better combat the problem. And, it has partnered with groups such as People Against Violent Extremism and the Institute for Strategic Dialogue. Facebook and YouTube have likewise worked to remove Islamic State propaganda from their sites.

D. A Setback to Alternative Strategies

Recent events have seriously weakened the move away from criminal/surveillance measures and toward de-radicalization measures. On November 13, 2015, a group of terrorists armed with automatic weapons and explosives killed 129 people while wounding 368 in an attack in Paris. Soon thereafter, the Islamic State claimed responsibility for the attacks. It declared that more attacks were to

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228. Id.
230. Id.
231. See id.
232. Id.
come if France continued its air campaign against the terrorist group in Syria and Iraq. Some of the attackers had fought for the Islamic State in Syria before committing the attacks and had—in fact—traveled freely back and forth from Europe to Syria multiple times. Then, on December 2, 2015, two individuals attacked a holiday party in San Bernardino, California, killing fourteen and wounding twenty-two. The attackers, a husband and wife, pledged allegiance to the Islamic State on social media shortly before they were killed in a shootout with police. Then again, on March 22, 2016, three bombs exploded at separate locations in Brussels, Belgium, killing thirty-five people and wounding more than three hundred. The Islamic State claimed responsibility for the attacks and warned of more attacks in the future if Belgium continued its military strikes against the terrorist group. Finally, on Sunday, June 12, 2016, a lone gunman entered a nightclub in Orlando, Florida, and killed forty-nine people and wounded fifty-three more, in the worst mass shooting in United States' history. The gunman, who pledged allegiance to the Islamic State prior to the attack, was interviewed by the FBI in 2013 and 2014 but was not found to be a threat.

These attacks have changed the debate on everything from the refugee crises to how the FTF issue should be handled. Citizens, politicians, and policy makers alike have called for stricter measures to address these issues, which will surely call into question the implementation of the strategies outlined above.

236. See id.
239. See id.
243. See id.
For instance, president-elect Donald Trump has called for a "total and complete" ban on Muslims entering the United States. Additionally, after the Paris attacks, some United States politicians have called for the maintenance of the controversial NSA surveillance program that allows for the collection of U.S. citizens’ phone data, with Senator Marco Rubio claiming that “[t]he Paris terrorist attacks remind us that no corner of the free world is safe from these savages, and it is our duty to defeat them by any means necessary.” Additionally, the United Nations Security Council passed a new French-sponsored resolution after the Paris attacks, which calls “on all nations to redouble and coordinate action to prevent further attacks by Islamic State terrorists and other extremist groups.” In terms of new legislation, the European Union has implemented the provisions of Resolution 2178 into its legal framework. Among other things, the European Union’s directive now criminalizes “[t]raveling for terrorist purposes, both within and outside the EU, to counter the phenomenon of foreign terrorist fighters.”

Countries have also acted quickly to revise their immigration laws in response to some attacks. For example, the United States has altered its visa waiver program—a program that permits visa-free travel into the United States for citizens of thirty-eight partner countries—to add stricter security measures. In the same vein, some European Union Member States are now doing away with passport-free travel across their borders inside the Schengen Zone, with some calling the border between Denmark and Sweden “the new iron curtain.”

248. Id.
measures potentially show that the push for radicalization prevention policies is unlikely, and the recent attack in Orlando by a self-radicalized U.S. citizen shows that counternarrative strategies are not reaching everyone.251

It seems that at the end of the day criminalization and surveillance measures will continue to be pushed while CVE efforts will be kicked down the road as legislators and policy makers hastily respond to the next attack—perhaps by continuing to implement the criminalization elements of Resolution 2178. This, of course, is a bad approach long term.

CONCLUSION

There appears to be no end in sight to the global FTF crisis, but many submitted solutions appear to be no more than reiterations of the failed obligations of Member States under Resolution 2178, such as information sharing and enhanced border controls, with little being said of CVE and similar efforts.252 A solution to these issues is, perhaps, to increase the use of the inclusion and cohesion policy initiatives laid out above. These measures are more forward-looking and are better able to traverse human rights and international law conflicts. Additionally, they are potentially more effective in the long run, as they purport to solve the problem at its source rather than reacting to FTFs already radicalized. Finally, Member States that lack ample prosecutorial and investigative resources are, perhaps, more readily able to implement these measures.

251. See David Fidler, The Orlando Massacre and the Conundrum of Online Radicalization, COUNCIL ON FOREIGN RELATIONS (June 16, 2016), http://blogs.cfr.org/cyber/2016/06/16/the-orlando-massacre-and-the-conundrum-of-online-radicalization/.
252. See id.