

AD HOC COMMITTEE ON COUNTERING TERRORISM

INITIATIVE TO PROMOTE THE IMPLEMENTATION OF RELEVANT INTERNATIONAL COMMITMENTS ON STRENGTHENING BORDER SECURITY AND INFORMATION SHARING IN THE CONTEXT OF COUNTERING TERRORISM AND VIOLENT EXTREMISM

CONCEPT NOTE

1. Introduction

In recent years, States have strived to strengthen border security measures to prevent the transit of terrorists in conformity with international human rights law and the rule of law. Such measures include ensuring that identity documents are not forged, employing evidence-based risk assessments, screening procedures and the collection and analysis of travel data. Prompted by an increased risk of returning foreign terrorist fighters (FTFs) following the loss of territory by terrorist groups in conflict zones, the United Nations Security Council (UNSC) adopted in December 2017 Resolution 2396, which builds upon previous resolutions 2170 and 2178 (2014) by providing greater focus on measures to address returning and relocating FTFs and transnational terrorist groups. In particular, it obliges States: (i) to collect Advance Passenger Information (API) and Passenger Name Record data; (ii) to develop watchlists or databases of known and suspected terrorists, including FTFs; (iii) to develop systems to collect biometric data; and, (iv) to share this information bilaterally and multilaterally including by using databases such as those of INTERPOL.

2. The Role of the OSCE

The OSCE has progressively stepped up its efforts to promote compliance with the commitments stemming from UNSC Resolution 2396, as the latter explicitly calls on regional organizations to provide technical assistance, resources and capacity-building to States. In fact, OSCE executive structures are already supporting interested participating States on the issue, also building upon the *2014 Ministerial Declaration on the OSCE Role in countering the phenomenon of FTFs in the context of the implementation of UN Security Council resolutions*, and the *2016 Ministerial Decision on Enhancing the Use of API*. Notably, in August 2017 the OSCE Secretariat submitted a technical questionnaire to all participating States on API implementation ahead of the 1st OSCE-wide Seminar on Passenger Data Exchange, that took place in September 2017. The aim of that questionnaire was to identify best practices from participating States that had already set up API systems and to learn more about the operational and technical needs of those countries that had not done so yet.

3. The contribution of national Parliaments

One of the most important roles played by Parliaments in democratic societies is oversight and control of government activity. This is to hold authorities accountable for their actions, to ensure that governments are fulfilling their obligations, and to prevent and detect any abuse of power. In the context of implementing international obligations, such as UNSC Resolutions adopted under Chapter VII of the Charter of the United Nations (i.e. threats to peace), whilst there is a clear prerogative of Governments to undertake all required actions at national level, Parliaments should also contribute to these efforts by exercising their institutional powers to promote a swift implementation of relevant standards.

Responding to a widespread call from the public in the OSCE region, the OSCE Parliamentary Assembly has brought more focus to its counter-terrorism efforts by establishing an Ad Hoc Committee on Countering Terrorism (CCT). So far, the CCT has been active in boosting trust among relevant stakeholders, building strategic partnerships with key international actors, and in pondering emerging needs and potential policy loopholes in this field. Ultimately, the objective is to promote stronger international co-operation in providing focused policy guidance and in swiftly implementing existing counter-terrorism frameworks, thereby bringing a distinct parliamentary contribution to countering terrorism and violent extremism in the OSCE region.

At the 2018 Annual Session in Berlin, **the OSCE PA adopted a comprehensive new resolution on Countering and Preventing Terrorism and Violent Extremisms and Radicalization that Leads to Terrorism**. This innovative framework, which duly emphasizes the prominent role of national parliaments in this field, reaffirms *“the urgency of fully implementing UN Security Council Resolutions 2396 and 2178 and relevant OSCE commitments to counter the threat posed by foreign terrorist fighters (FTFs) to the countries of origin, transit and destination, including those returning to their countries of origin or relocating from/to conflict zones”*. Moreover, it stresses *“the need to further boost border control and information sharing, including through systems for advance passenger information (API), passenger name record (PNR) and biometric data, as well as by developing watch-lists or databases of known and suspected terrorists, in compliance with domestic and international law, including human rights law”*.

Against this backdrop, the Ad Hoc Committee intends to **promote a more coordinated role of OSCE national Parliaments in monitoring the implementation at national level of relevant provisions of UNSC Resolution 2396**, namely on border security and information sharing. In co-operation with the OSCE Transnational Threats Department, **the CCT has therefore developed a set of specific sample questions that should be submitted to national Governments in the form of parliamentary interpellations, public hearings, question times, etc.**, in accordance with relevant national procedures. The collected information shall then be centrally processed with the aim to highlight promising practices and persisting loopholes across the OSCE region. Ultimately, by pro-actively monitoring compliance with international standards, national Parliaments will **encourage Governments to (i) redouble their counter-terrorism efforts, (ii) carefully assess persisting challenges and (iii) determine needs for targeted technical assistance**, which could then be provided by, *inter alia*, the OSCE executive structures upon specific request.

4. What are the relevant commitments that States should implement?

a) Advance Passenger Information (API)

An API system is an electronic communication system by which biographic data from a passenger's passport is collected by airlines when checking in and transmitted to border control agencies before a flight's departure or arrival at the airport of destination. If checked against watch lists and risk indicators, API data allows law enforcement officials to know, in advance, whether FTFs and other suspicious individuals are attempting to enter their countries.

The UNSC has been calling on States to collect API data since 2014 (Resolutions 2178 and 2309) and the OSCE adopted a politically-binding Ministerial Council Decision in 2016. Since 23 February 2018, the setting up of national API systems is also mandatory for all members of the International Civil Aviation Organization (ICAO).

This time, UNSC Resolution 2396 goes further by: (i) deciding – mandatory – that States shall establish API systems and require airlines operating in their territories to provide API to appropriate national authorities; and calling upon States (ii) to promptly report and share any 'hits' with the relevant States and organizations; and (iii) to ensure API data is analyzed by all relevant authorities, with full respect for human rights and fundamental freedoms.

b) Passenger Name Record (PNR)

PNR data is the information collected from passengers by travel management systems when booking a flight, including contact details and payment information. It is useful for analyzing suspicious patterns or hits associated with these details, as well as highlighting hidden connections between known threats and unknown associates.

UNSCR 2396 decided that States shall develop the capability to collect, process and analyze PNR data for the purpose of preventing, detecting and investigating terrorist offences and related travel. The Resolution also mandates the use and sharing of this passenger information by all competent national authorities with full respect for human rights and fundamental freedoms. Lastly, it calls upon regional and international organizations like the OSCE to provide technical assistance and capacity building to States in order to implement such capabilities.

c) Biometrics

Biometrics are technological tools that are able to identify someone using human physical characteristics, such as facial and eye recognition. Because fingerprints and other biometric information can be used to validate the identity of travelers and their travel documents, UNSC Resolution 2396 mandates that all States begin collecting biometric information to responsibly detect terrorists and other serious criminals. It also encourages them to share this data with other States, with INTERPOL and with other relevant international bodies. The collection and exchange of biometrics should be carried out in compliance with domestic and international human rights law.

5. Questions to be posed to OSCE Governments through national Parliaments on the level of implementation of border security and information sharing provisions of UNSCR 2396

ON API

- *What legislative and operational measures have you undertaken to establish an Advance Passenger Information (API) system?*
- *If such a system has already been put into place, how many cases were detected and promptly notified so far to relevant authorities of other countries and international organizations?*
- *If such a system has not yet been put into place, why is that the case and how does the Government intend to swiftly make them operational?*
- *How is the Government ensuring that the collection, analysis and sharing of API does not violate relevant human rights and fundamental freedoms?*

ON PNR

- *What legislative and operational measures have you undertaken to develop your capability to collect, process and analyze Passenger Name Record (PNR) data, with full respect for human rights and fundamental freedoms for the purpose of preventing, detecting and investigating terrorist offences and related travel, and to share such data with relevant States?*
- *What challenges are you facing in setting such capacity?*
- *How is the Government ensuring that the collection, analysis and sharing of PNR does not violate relevant human rights and fundamental freedoms?*

ON BIOMETRICS

- *What legislative and operational measures have you undertaken to develop and implement systems to collect biometric data to responsibly identify terrorists?*
- *What challenges are you facing in setting such capacity?*
- *Are you sharing this data with other States, with INTERPOL and with other relevant international bodies?*
- *How do you ensure that the collection and exchange of biometrics is carried out in compliance with domestic and international human rights law?*

6. Feedback

Relevant feedback should be submitted in English to the OSCE PA International Secretariat (focal point: marco.bonabello@oscepa.org) no later than 01 December 2018 in order to be further processed by the OSCE Secretariat.

If available, preliminary findings shall be presented at the 2nd OSCE-wide Seminar on Passenger Data Exchange and the Implementation of UNSC Resolution 2396, which will take place on 1-2 November 2018 in Vienna, Austria.