

Radical Militant Groups and the Rule of Law in the Middle East

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As a cooperation initiative between the Konrad-Adenauer-Stiftung's regional Rule of Law program for the Middle East and North Africa, based in Beirut, and the KAS Ramallah office, a conference was organized to bring together experts from the Middle East and Europe to discuss the state of Rule of Law in the Middle East and how it has been affected by the emergence and recent growth of radical militant groups in the region. Co-chaired by Peter Rimmele and Hans Maria Heyn, the conference broke down traditional disciplinary and professional barriers by creating a forum for legal practitioners, academics, journalists, politicians and policy-makers to discuss current developments understand legal challenges and propose informed policy recommendations.

A set of recommendations have emerged from the conference proceedings, of which a summary is presented herein, as follows:

1. Policy-makers must avoid addressing all conflicts taking place in the Middle East as one and develop approaches and responses taking into consideration country-specific as well as transnational parameters. In the same vein, policy-makers must be wary of applying the Sunni/Shi'a divide as the only lens to interpret all Middle Eastern conflict. It is therefore advised to explore the social, economic, and geopolitical factors that lead to radicalization and draw a clear distinction between Sunni radicalism and Shi'a radicalism given their differing historic and socio-political trajectories.
2. Policy-makers must ensure that national de-radicalization policies are not devised in isolation or separately from foreign policy, as domestic radicalization is often tied to international affairs. European policy-makers are therefore advised to harmonize national counter-terrorism legislations and policies with regional and international standards (EU, UN, other international organizations).
3. In order to dissociate de-radicalization policies from Muslim communities as a whole and avoid marginalization of Muslim communities, programs that work to achieve a better understanding of Islam and its inner diversity must be promoted. In this endeavor, policy-makers are advised to operate across governmental bodies not only to raise awareness on the diversity of beliefs and practic-



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es within Muslim communities but, most importantly, to promote liberal schools of Islam as privileged partners to combating extremism.

4. Because Salafism also refers to a diversity of beliefs and practices, statements and generalizations that amalgamate all streams of Salafism together while ignoring peaceful streams of religious schools must be avoided.
5. Policy-makers must ensure that de-radicalization efforts and the profiling of terrorists are in harmony with individual civil rights and do not lead to the profiling of religious communities. In other terms, it is crucial to strike a balance between basic individual liberties and rights on the one hand, and national security on the other.
6. Last but not least, the participants highlighted the importance of the promotion of the rule of law in Middle East countries as privileged means to achieve de-radicalization, to which end the following guidelines may serve:

❖ **Support to state-building:** Because radicalism is a claim for agency and power by disenfranchised groups, support to state institutions is crucial to achieve stable, well-functioning governmental bodies that are able to develop their own responses to local threats. This type of support must include a special emphasis on the judiciary, given that the weakness of the rule of law in the concerned countries is well-entrenched and precedes the emergence of radical groups.

❖ **Support to cultural change:** Culture is a diverse and crucial sector of society and as such must be supported to promote the values of pluralism and inclusion. Policy-makers are therefore advised to assist in the development of various measures and programs (local programs, cooperation programs), that are likely to favor a reform of education, of media, and other vehicles for culture.

Conference Summary

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The pervasive gap between policy-makers, academia and rule of law experts is nowhere more evident than in domestic and international approaches to combat radicalism in Europe and the Middle East. In this gap lay important questions surrounding the future of civil liberties and the rarely discussed contradictions between domestic and international policies that often give rise to security issues. Given the limited overlap between the fields of government, academia and the legal arenas, respectively, the regional Rule of Law Program of the Konrad Adenauer Foundation for the Middle East and North Africa, in cooperation with the Representative Office in the Palestinian Territories, organized an interdisciplinary 3-day conference. The conference brought together policy-makers, legal experts, journalists and academics to examine the intersection of the legal, civic and security implications of the current wave of radicalism sweeping across the Arab region (as exemplified, amongst other actors, by the "Islamic State") as well as its implications for Europe.

Kicking off the conference, journalist, author and former editor-in-chief of *Le Monde Diplomatique* **Alain Gresh** gave, in his keynote address, a critical evaluation of the general perspective which has defined what is now known as the "War on Terror". In his speech, Gresh criticized the lack of differentiation between various conflicts in the Middle East, which are often defined and characterized by the language of "terrorism", thus neglecting to acknowledge the nuances and particularities of each context. Gresh argued that it is this exact approach that often inspires and drives young individuals to join the Islamic State or Al-Qaeda, driven by a desire to combat the global discourse of the West, thereby playing into a western self-fulfilling prophecy exploited by radical groups. The keynote address also touched upon foreign policy and the question of foreign fighters, presenting the current events as a consequence of military intervention by western countries in Afghanistan, Iraq, Libya, Mali and Central Africa, as well as intervention via drones in Pakistan, Yemen, Somalia. Gresh concluded his speech by inviting the participants to reconsider both the concept of a "War on Terror" and the possibility that the West is losing such a war. Although his statement did not go without disagreement, it set the stage for inquisitive, informative and engaging discussions – which followed.

Neslihan Çevik, author of the upcoming book "Muslimism in Turkey and New Religious Orthodoxies", argued that while the Islamic State falls broadly into the Wahhabi strand of Islam, it is characterized by a unique religious doctrine somewhat similar to the Azraqite sect (7th century A.D.), which was condemned by the early Muslim *Umma* for its deviation from Islam. Çevik deemed the behavior and ideology of the "Islamic State" particularly problematic in that it sets almost no ethical boundaries for its male members, known as the *mujahidin*. The rise of this distorted and grotesque form of religion practiced and promoted by the Islamic State, Çevik claimed, can be tied to several factors, namely relative inequality, political and international conflict, and cultural alienation. In her summary, Çevik noted that, in order to combat these types of distortions in religion, it is necessary to first abandon the underlying assumption that religion, particularly Islam, is incompatible with modernity.

Building upon the discussion on jurisprudence, **André Sleiman**, Program Manager of the regional Rule of Law program at the KAS office in Beirut, presented a summary and review of a report recently published by KAS's

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partner, the Adyan Foundation, on the origins of the Islamist discourse on war and peace in Syria. In his presentation, Sleiman attempted to sketch a genealogy of jihadist thought across the ages. According to his analysis, the jihadist rhetoric in Syria first emerged and acquired its shape through conflict and confrontation with other Muslim sects, namely the Tatars, the Nusayris (Alawites), and the Shi'a, before targeting non-Muslims. During the colonial and post-colonial eras, Sleiman pursued, *jihad* took on a new significance, primarily directed against the so-called "Christian West".

Sleiman also gave an overview of the Salafist self-criticism of the concept of *jihad*, namely the Salafist reaction against the ideological chaos and intellectual paucity within jihadist ranks). The exposé also tackled select revisionist views on *jihad* (e.g. non-violent vs. bellicose *jihad*), which it showed to have diverse and disputed interpretations. Sleiman concluded with his own critique of these approaches and the limitation of the concept of non-violent *jihad*.

British-Iranian political analyst **Ali Pedram** centered his presentation on the socio-historical construction of Shi'a political identity in light of the Iranian case. According to Pedram, Iranian Shi'a clerics had already been involved in the constitutional revolution of 1906 by introducing Twelver Shi'ism as the official religion and the source of civil and penal code; they, however, did not claim to possess any political role, until the accession of Ayatollah Khomeini to power. In post-revolutionary Iran, Shi'a jurists were granted judicial credentials to manage the civil and legal affairs of the citizens as well as a full-fledged political status. Secular political rule was therefore deemed impermissible and replaced with a Shi'a jurisprudential rule.

The Islamic Republic, continued Pedram, proved to be a new political product with many unknown facts and myths combined under the umbrella of a constitution comprised of French/Belgian legal framework and a Shi'a version of *shari'a* law. The mixture of democratic and theocratic elements into the constitution offered, said Pedram, a great deal of flexibility and, at the same time, ambiguity to analyze the compatibility of Shi'a Islam and democracy.

Exploring the topic of extremism from a geopolitical perspective, Associate Professor of International Politics at the London School of Economics **Katerina Dalacoura** commented on theological arguments expressed in previous presentations, claiming that the roots of extremism do not result from religious conditions but rather from political ones. The prevalence of authoritarianism and the socio-economic predicament of most Arab countries, such as deprivation and social exclusion, she stated, are the primary sources of extremism. Further, some Islamist movements manipulate such circumstances as a source of legitimacy for their own counter-hegemonic movements. Dalacoura supported her argument with historical examples that include the emergence of Al-Qaeda, Hamas, Hizbullah, the Armed Islamic Group in Algeria and the Jama'a Islamiya in Egypt. One important takeaway from Dalacoura's presentation was the idea that policy-makers too often focus on the ideology guiding such groups, when in reality extremism is facilitated far more by the security vacuum following the collapse or weakening of an existing regime, rather than the appeal of ideas presented by radical groups. This idea emerged as a central theme of the conference, where participants debated the centrality of ideology versus the primacy of conditions and contexts in spreading various forms of extremism.

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Zooming in from the broader sociological and political overview, the conference also addressed the Syrian, Iraqi and Egyptian experiences as case studies of countries directly affected by the Islamic state, and Lebanon and Jordan as countries battling the prospect of such developments in their respective territories.

Introducing the speakers on Syria, Iraq and Egypt, KAS Program Manager in the Palestinian Territories, **Adrieh Abou Shehadeh** gave an overview of the rise of the Islamic State and the role it has come to play as one of the most discussed and brutal militant groups in the Arab contemporary history. She noted that, despite having been founded as a branch of Al-Qaeda, the Islamic State has outgrown Al-Qaeda both in size and in their mission to establish an Islamic Caliphate in the region. Abou Shehadeh focused her remarks on the legal significance of these developments and their potential impact on the Rule of Law in the region, particularly after the "Islamic Caliphate" declared, in June 2014, "the legality of all emirates, groups, states and organizations [...] null by the expansion of the caliph authority and the arrival of its troops to their area." Without deconstructing the myth that the Islamic State operates in total chaos, and without understanding the motivating forces leading individuals and groups to join it, it is difficult, she added, to find ways to counter its expansion.

Speaking to the Syrian experience, **Yaser Tabbara**, Legal and Strategy Advisor of the Syrian Forum and Senior Fellow at the Istanbul-based Omran Center for Strategic Studies, spoke directly to the current challenge to the rule of law in rebel-dominated and regime-controlled Syria, where totalitarianism still prevails. The weakness of the rule of law in Syria, according to Tabbara, long precedes the current conflict and the Islamic State, and is a consequence of the complete absence of an independent judiciary and the existence of security and military courts enjoying a wide jurisdiction. However, undoubtedly, the situation became further complicated by the attempts to re-establish judicial order in rebel-controlled areas. Areas which were liberated from the regime became characterized by a shortage of trained judges, as the latter were mostly discredited for being pro-regime, or fled the area. In turn, religious clerics filled the gap, despite the little or no knowledge that they possessed of legal procedures, and in some cases, of Islamic jurisprudence. The lack of a central judicial or legal authority eventually resulted in competing "judicial institutions", which shared one common challenge: the lack of independence from armed groups, who often directly supervised the newly emerged judicial authorities. Further, in contrast with the *ad hoc* legal systems established by rebels, the IS perceives itself as a permanent state that administers and imposes ultra-strict and puritanical interpretations of the law, or "*shari'a*" as they interpret it. As such, the IS has pursued lawmaking as a grandiose project which includes targeted recruitment of legal experts, the deployment of legal jurists alongside combatants to advise military commanders, and the creation of accountability mechanisms in promotion of civilian oversight. Examples of codification under IS include rules on the treatment of slaves, enforcement of contracts to regulate social and economic relations, as well as puritanical social and religious laws complimented by a primitive penal code.

Tabbara concluded by noting that the deplorable state of rule of law in Syria currently is not simple a result of the civil unrest and the dissolution of centralized institutions over the past four years, but rather a direct result of the systematic weakening of state institutions by the regime over

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the past five decades. Furthermore, Tabbara added that it is important to note that authoritarian and theocratic regimes, like the Assad regime and IS, use rule of law mechanisms as a tool for political and societal control rather than the administration of justice.

Shedding light on the Iraqi experience, **Faleh Abdul-Jabar**, director of the Iraqi Institute for Strategic Studies and visiting Fellow at Birkbeck College, London University, gave a thorough analysis of the rise, fall and resurgence of Islamic extremists in the Middle east, linking this trend to the process of failed nation-building. Abdul-Jabar pointed out the hyper-fragmentation of Iraq into three segments since 2003, and argued that it is this Hobbesian state that has given rise to the Islamic State as a means for Iraqis to claim agency and power. In addition, he highlighted the fact that the Islamic State is not the cause of the Iraq's political tribulations but rather a consequence of greater trends that have marred Iraq from its 2003 makeover. Abdul-Jabar added that to ward off the imminent threat of IS, a twin-track of a benign political-military strategy is required. He noted that, while a military approach is currently being pursued by the US and a wider coalition, this track must be complemented by a political strategy towards an all-inclusive political process in Iraq. A military approach alone, he stated, will only allow the over-growth of paramilitary groups in the region, a line that was echoed by several participants throughout the conference.

The Egyptian case, as presented by sociopolitical researcher and Visiting Arab Journalist Fellow at the Woodrow Wilson Center in Washington, D.C., **Ismail Alexandrani**, is another example of how domestic power vacuums and international politics have given rise to the Islamic State and its affiliates. In Sinai, he explained, a local armed group known as *Ansar Beit El-Maqdis* (ABM) officially announced their loyalty to the Islamic State in November 2014. By the end of January 2015, he added, ABM massively attacked ten military and security targets, constituting the biggest attack on the Egyptian army since the October 1973 War. Based on his own field research in the Sinai region, Alexandrani found that the failure of classical military tactics against ABM, combined with extreme deprivation (e.g. the local inhabitants' struggle for potable water and regular access to electricity and communication networks) have not only failed in confronting terrorist threats, but have created further conditions to motivate individuals to join ABM in pursuit of money, revenge and, in some cases, an avenue for ideological expression. Alexandrani noted that pure ideology is not a leading cause driving individuals to join ABM or the "Islamic State", but that ideology gains its appeal only in conditions of desperation, a sense of marginalization and in the face of failed domestic approaches. In his closing remarks, Alexandrani proposed recommendations to the EU and the Egyptian government on how to counter ABM's and IS's expansion in the Sinai, including improved tactical and strategic training for the Egyptian Army. These measures would have not only to focus efficient military operations, but also address the humanitarian situation through aid and relief, and pursuing a diplomatic track to highlight the injustices and marginalization of local communities in Sinai.

Opening up the discussion on countries indirectly affected by the presence of the Islamic State in the region, the Head of the Regional Rule of Law Program for the Middle East and North Africa, **Peter Rimmele** referenced recent headlines alluding to the fact that the Islamic State may be gearing up for a major offensive on the Lebanese territory, and touched on the Jordanian air strike against dozens of targets in Syria and Iraq,

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and the execution of two detained Islamists in retaliation for the killing of Jordanian Air Force pilot Mu'ath al-Kasasbeh.

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For his part, Jordanian political analyst **Amer Sabaileh** traced back the roots of radicalization in Jordan to the intersection of interests between the Muslim Brotherhood and the Hashemite dynasty in power during the 1960s. Indeed, as Sabaileh put it, King Hussein saw in the Islamist groups an efficient tool to counter the popular hegemony of Nasser over the Arab populations. The ensuing alliance between the Brotherhood and the Jordanian monarchy resulted, according to him, in the control of the Brotherhood over crucial sectors of society, most importantly the Ministry of Education, which radically transformed the curricula of schools, universities, and religious institutes. Soon, however, the Jordanian regime seemed to lose control over the rhetoric simmering in educational and religious institutions. After the Iranian revolution and the Afghan war against the Soviets, the Brotherhood's propaganda shifted from countering the influence of Nasser's socialism to combating the *kuffar* (the Soviets and the Iranians).

In nowadays Jordan, said Sabaileh, the unipolar conservative trend pervades along with a lack of spaces and opportunities where a liberal culture can flourish. Sabaileh emphasized the indispensable role of the Jordanian state in promoting laws and unblocking budget lines that are likely to support a cultural change inspired by the ideals of the Enlightenment, and to check the influence of conservative religious institutions.

Approaching the issue from a Lebanese legal perspective, both as a scholar and judge, **Joseph Samaha**, advocated for a firmer stance against terrorism in Lebanon, arguing for the necessity of this approach in pluralist contexts such as in Lebanon, where he argued pluralism is constantly threatened by fanaticism. Samaha exposed both the procedural and legislative avenues to prosecute the perpetrators of terrorist acts, which are defined in Lebanese law as all acts intended to cause a state of terror and committed by means liable to create public danger. He went on to explain that, regardless of the motives, identity of perpetrators and the ideologies which may incite the terrorists acts, the act itself is considered a criminal offense and therefore its perpetrator is subject to sanctions ranging from hard labor to the death penalty. Despite strongly advocating for repressive legal means, Samaha concluded by conceding to the fact that the role of the justice system in curbing radicalism is limited. Indeed, he noted that sanctions alone do not play a weighty dissuasion role given the socio-economic, ideological and political factors underlying such acts.

The conference also featured informative input from German policymakers and EU policy advisors. The head of the sub-unit "Fight against Terrorism, Extremism, and Organized Crime" at the German Federal Ministry of Interior **Andreas Schultz** gave the second keynote address in which he noted that over 3,400 foreign fighters (i.e. from Europe) have joined the "Islamic State" alone, adding that several domestic and international threats to Germany are looming in the context of the transnational crisis in the Levant. He referenced the attacks in London, Brussels, Paris and Copenhagen over the last few years as results of the dichotomized rhetoric employed by extremist groups to propagate the idea that there is an ongoing war between Muslims and the West, and therefore a need to defend Islam "by the sword". The European response, he argued, must include a harmonized EU counter-terrorism strategy. As for the do-

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mestic level (in the case of Germany), Schultz presented the Ministry's "Prevention and De-radicalization Strategy", which comprises traditional surveillance and intelligence tactics as well as *ad hoc* security measures such as engaging in dialogues with Muslim associations and providing information centers where immigrant families can seek guidance for potentially radicalized family members.

German Federal Parliamentarian and member of the Internal Affairs Parliamentary Committee **Tim Ostermann** built on the federal framework set by Schultz and gave a detailed presentation on the legal and governmental measures currently underway in addition to those being proposed by the German conservative parties, namely CDU and CSU. Ostermann indicated that there are approximately 200 "returnees" (referring to German nationals who joined jihadist groups as foreign fighters and then returned to Germany), less than 50 of whom were active combatants. From a security perspective, he explained, returnees are considered high-level threats, and the German government is taking measures that include intelligence-led policing and surveillance, limitations on travel, revision of penal laws to include "attempt to travel in order to commit terrorist crimes" and "image advertising for terrorist groups". Ostermann mentioned that, in addition to the current legislation and that which is being revised, the CDU/CSU are proposing further and stricter measures which include lowering the threshold for penalizing participation in training camps, tightening money laundering laws and forceful crackdown of associations related to Islamic extremism.

Another German perspective was offered by **Kristina Eichhorst**, coordinator for Crisis and Conflict Management at the Konrad Adenauer Foundation in Berlin. Eichhorst stated that personal motivation has so far been underestimated in attempts to understand German nationals who chose to become jihadist foreign fighters or support radicalized movements. She argued that it is difficult for government agencies to establish a particular sociological or psychological profile of these individuals, primarily because the reasons that drive the action of these individuals vary considerably and can sometimes boil down to a moment of inadequacy, or a longing for attention.

Following the presentations, a discussion emerged on the potential problem of "religious profiling" by governmental agencies and security authorities, specifically with regard to the current monitoring of "Salafi groups" by the German government. In this discussion, Abdul-Jabar underlined, Salafism consists of several different streams, only one of which promotes violence as a legitimate means. For instance, some Salafi groups opt for missionary work as privileged means to reaching the caliphate. Furthermore, participants noted that given the lack of visible or public markers that distinguish Salafi followers of the different streams, and given the limited knowledge of the distinction of Salafis from other Muslims even, Western governments should guard from potentially violating the civil rights of European Muslims, especially under targeted surveillance relying on data collection and retention policies.

Adding an academic perspective to the security and policy-based discussion, the relationship between state and religion was analyzed further by doctoral candidate at Northwestern University **Matthew Robinson**. Robinson presented an in-depth theoretical/historical background of the concept of tolerance in Europe, pointing out the "internal paradoxes" of the concept. For instance, the idea that there are things that "tolerance can-

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not tolerate” underscores the way in which tolerance is a value-structured political practice. This contribution served as a reminder that the burden of proving the legitimacy of tolerance always falls on those in a position of disadvantage, as to justify their presence. He concluded by saying that it is the inability to accept that which one finds objectionable which results in extremism.

Shifting back to transnational policy efforts, **Eva Horelová** and **Elena Rigacci Hay**, from the European External Action Service and the United Nations Office on Drugs and Crime (UNODC), respectively, discussed the current transnational responses to the rise of the “Islamic State”, emphasizing the role of their respective institutions in countering and preventing extremism. Both speakers highlighted the urgent need for promoting the reflection of international norms in the domestic legislations of EU and UN member states.

Criticizing the past and current EU policy towards the Middle East, **Thomas Demmelhuber**, Associate Professor at the University of Hildesheim, questioned its effectiveness in the face of such challenges as the “Islamic State”. As alluded to by previous speakers, namely Gresh, Abdul-Jabar, Dalacoura and Alexandrani, Demmelhuber proposed that EU policy should primarily include support for state-building, while maintaining country-specific agendas and a differentiated bilateral approach.

The next presentation, which was given by **Paul Tabar**, Associate Professor of Sociology at the Lebanese American University, focused on youth radicalization using the example of “home-grown Jihadists in Australia”. Tabar examined the case of Jihadists in European countries and compared their profiles with those in Australia. The preliminary results of the research—which is still in process—showed a large degree of similarity in terms of socio-economic background, level of education, age and social marginality. It was also found that there was a similarity in the group dynamics and the psycho-social factors that led the Jihadists to engage in violent radical activities. However, according to Tabar the key to understanding why young people join radical Jihadism is to interrogate the jihadists concerned and locate their psycho-social dynamics in the broader context of their socio-economic background and their marginal position in society at large, instead of isolating these factors and considering them as the starting point for providing an analysis.

Last but not least, **Bernard Rougier**, Director of the Centre d’études et de documentation économiques, juridiques et sociales (CEDEJ) – Egypt/Sudan and Assistant Professor at Sciences Po Paris, talked about the “silent revolution” within the Muslim world during the 1990s and the 2000s which led to the rise of radical Islam on the international scene, as it is observed today. Rougier partly explained the radicalization process by the exposure of the Muslim masses to expanding mass media that were the custodians of an overtly Islamic rhetoric (such as Al-Jazeera in Qatar and Al-Manar in Lebanon), the influence of which grew to cater to the millions of viewers across the Arab region, eventually creating a new Islamic awareness. The feeling of belonging to a transnational religious community—namely the *umma*—was particularly evident among the underprivileged of the urban and the rural areas, precisely those deprived of political rights, but also of military utopias. According to Rougier, radicalization became all the more inevitable with the rapid proliferation of religious institutes during that period and, as of 2003, the voluntary migration of Syrian jihadist fighters to Iraq.

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While the re-creation of the *umma* was the result of a dynamic of concurrence and emulation between Sunnis and Shi'a, the former being supported by the Gulf monarchies, the latter backed by Iran, it also led to an inner rupture within the Sunni community in the Near East, more precisely between the Sunni urban bourgeoisie loyal to the Ba'thist regimes in Syria and Iraq, and the disadvantaged classes of rural and urban areas.

In his concluding remarks, Head of the KAS Office in the Palestinian Territories, **Hans Heyn**, posed the important question of the way forward to strengthening regional cooperation and the rule of law in the Middle East. He noted the need for revised and comprehensive approaches to understanding the threats to Europe, adding that they should be analyzed by tackling individual contexts and avoiding the grouping of conflicts into one. Further, he highlighted the need to re-think the concept and practice of "re-radicalization" in Europe in a manner that is better suited to respond to the core causes of radicalization, both on a regional and international level. He concluded by adding that the line between civil rights and liberties and state security needs to be further examined as to ensure that one does not come at the expense of the other.