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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, submitted in accordance with Assembly resolution [72/180](#) and Human Rights Council resolution [49/10](#).

* The present report was submitted after the deadline in order to reflect the most recent information.



Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin

Impact of counter-terrorism on peacemaking, peacebuilding, sustaining peace, conflict prevention and resolution

Summary

In the present report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addresses the inextricable link between the core objectives of the United Nations to maintain, build and preserve peace and promote and protect human rights and fundamental freedoms, detailing the history of these objectives within the United Nations architecture. She affirms that increased emphasis by the United Nations and its entities in ensuring that any peace work, including peacemaking, peacebuilding and peacekeeping, is designed by, for and in the interest of primary beneficiaries – “the people of the United Nations” – not simply its Member States. By tracing the breadth of peace work conducted by the United Nations across its entities, the Special Rapporteur highlights a range of contemporary challenges emerging in contexts where States are increasingly engaged through a terrorism rather than a peace lens, often displacing core international legal frameworks and undermining the ability to engage in local-level peacebuilding and human rights work or facilitate or support the mediation of local conflicts. This places the United Nations in complex interfaces that challenge norms of neutral peacekeeping principles and compliance with human rights and rule of law standards.

The Special Rapporteur underscores the positive shifts and rearticulations of the United Nations commitment to preventing conflict and sustaining peace through more closely aligned objectives, programmes and support to communities and Member States. She notes, however, detrimental shifts in the unparalleled growth of the United Nations counter-terrorism architecture and the ways in which it engages States in a service-driven and on-demand model of technical assistance and capacity-building without concrete consideration for how such programming ultimately delivers to the United Nations primary stakeholders – the people of those States. She observes increased challenges for United Nations and civil society actors who expose these dynamics in United Nations programming, practice and normative frameworks. She anticipates that further articulation of core issues relating to human rights due diligence, principles of “do no harm” and long-term failures to deliver on key objectives, including the Sustainable Development Goals, Our Common Agenda and other normative frameworks will continue.

In the report, she traces the pre-eminence of peace and human rights within the United Nations architecture, the legal and policy tools available to promote and protect human rights in United Nations peace work, the evolution of and interplay between the United Nations counter-terrorism and peace architectures, the challenges posed by the encroachment of counter-terrorism and preventing and countering violent extremism on peacemaking, peacebuilding, sustaining peace, conflict prevention and resolution, including in peacekeeping and armed conflict settings, mediation and disarmament, demobilization and reintegration processes and the interface between the law of occupation and counter-terrorism practice.

I. Introduction

1. The present report by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, is submitted pursuant to General Assembly resolution 72/180 and Human Rights Council resolution 49/10. In the report, the Special Rapporteur analyses the impact of counter-terrorism on peacemaking, peacebuilding, sustaining peace, conflict prevention and resolution. She places particular emphasis on the critical relationship between ending conflict and the protection of human rights, the pursuit of justice for serious violations of international law and the essential role of the United Nations in pursuing peaceful, just and inclusive societies, including as outlined in the Charter of the United Nations and as continuously articulated by the Secretary-General.

2. A report on the work undertaken by the Special Rapporteur since her previous report to the General Assembly (A/76/261) is provided below.

II. Activities of the Special Rapporteur

3. The Special Rapporteur has continued to prioritize positive and robust engagement with Member States at the national level. She concluded highly constructive country visits to Uzbekistan (see A/HRC/49/45/Add.1), and the Maldives.¹ The Special Rapporteur has received the confirmation for a visit to Iraq during the last quarter of 2022 and requested further country visits to Bahrain, Cameroon, Colombia, Kenya, North Macedonia, Portugal and Senegal. She conducted a working-level visit to the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) in July 2022, where she provided counter-terrorism and human rights training. She has received a preliminary invitation from the Government of the United States of America to conduct a technical visit to the detention facility at Guantanamo Bay, Cuba, and discussions regarding the parameters of such a visit are ongoing.²

4. The Special Rapporteur presented the follow-up report to the joint study on global practices in relation to secret detention in the context of countering terrorism to the Human Rights Council in March 2022 (A/HRC/49/45). In her report, she provided a comprehensive follow-up to the joint study on that topic issued by four special procedures in 2010 (A/HRC/13/42), and she reiterated the demand for accountability, reparation and transparency by States who engaged or abetted in systematic practices of torture and rendition. The Special Rapporteur expressed profound concern that recommendations of the joint study had not been implemented and that that had enabled and facilitated ongoing human rights violations in the name of countering terrorism globally. She highlights that mass arbitrary detention without legal process has been normalized by certain States (A/HRC/49/45, paras. 30–34), and that exceptionality in trial processes involving charges of terrorism remains entrenched. She provided an annex to the report which tracks the legal fate of all those known to have been rendered and tortured in the aftermath of the terrorist attacks of 11 September 2001 (“9/11”). She concludes that not a single individual has received an adequate remedy for the harms experienced. She urges an end to impunity, the meaningful activation of independent access to all places of detention without exception and rehabilitation and remedy for those harmed by secret detention practice.

¹ <https://www.ohchr.org/sites/default/files/2022-05/srct-eom-preliminary-findings.docx>.

² See United Nations, Interactive dialogue: Special Rapporteur on countering terrorism – 27th meeting, 49th regular session of the Human Rights Council, video, 15 March 2022.

5. The Special Rapporteur has maintained her commitment to active engagement with diverse civil society actors, thereby ensuring that “on the ground” experiences of counter-terrorism and security practices are fully integrated in her work. In 2022, she has held consultations with civil society organizations from five continents. On 9 May, in advance of the High-level International Conference on Human Rights, Civil Society and Counter-Terrorism, the Special Rapporteur, with Spain, co-hosted a civil society workshop on enhancing civil society leadership and the promotion and protection of human rights in counter-terrorism in Malaga. Supported by the Special Rapporteur, civil society representatives from 43 countries engaged in a series of consultations to produce a 2022 civil society workshop outcome document³ to inform the outcomes of the conference. She has also held consultative meetings in Geneva, New York and Washington, D.C., and produced a short film documenting the impact of counter-terrorism measures on civil society actors around the globe. The Special Rapporteur launched a global study on the impact of counter-terrorism measures on civil society and civic space in March 2022 and is deeply grateful for the financial support of Spain and Germany.

6. She has provided legislative analysis of counter-terrorism, emergency measures, countering terrorism financing and (violent) extremism legislation to Algeria, Belarus, China, Israel, Sri Lanka, New Zealand, Nicaragua, Qatar, the Bolivarian Republic of Venezuela and the European Union since October 2021.⁴ She issued position papers on the impact of counter-terrorism sanctions on the human rights and international law obligations of States with particular reference to the sanctions regimes under Security Council resolutions 1267 (1999) and 1988 (2011),⁵ the human rights consequences of citizenship stripping in the context of counter-terrorism with specific application to North-East Syria⁶ and on countering terrorism finance measures and their compatibility with human rights obligations.⁷

7. The Special Rapporteur, as one of 45 member entities of the United Nations Global Counter-Terrorism Coordination Compact Task Force within the United Nations counter-terrorism architecture, has made working within the United Nations structure itself a high priority. She is deeply committed to the “all-of-United Nations” approach to countering terrorism, with human rights mainstreamed as affirmed in the United Nations Global Counter-Terrorism Strategy.⁸ The Special Rapporteur is an active participant in all eight thematic working groups of the United Nations Global Counter-Terrorism Coordination Compact. She maintains positive cooperation with the Financial Action Task Force. She has participated in three meetings of the Inter-American Committee Against Terrorism.

8. The Special Rapporteur has provided two amicus curiae briefs to the European Court of Human Rights in the cases of *Domenjoud v. France* (Applications nos. 34749/16 and 79607/17) and *Daoudi v. France* (Application no. 48638/18), which dealt respectively with the use of emergency measures in countering terrorism and the extensive use of administrative measures to address threats to national security.

³ <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/civilsocietyworkshop-malaga/2022-08-16/Civil-Society-Workshop-Outcome-Document-Malaga-Spain.pdf>.

⁴ See www.ohchr.org/en/special-procedures/sr-terrorism/comments-legislation-and-policy.

⁵ Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “The impact of counter-terrorism targeted sanctions on human rights”, position paper, 2021. Available at <https://www.ohchr.org/sites/default/files/2022-03/position-paper-unsrct-on-unsct-use-of-ct-targeted-sanctions.pdf>.

⁶ See www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families.

⁷ Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “The human rights and rule of law implications of countering the financing of terrorism measures”, position paper, June 2022.

⁸ See resolution 60/288.

III. Necessity of peace to the protection of human rights

A. Pre-eminence of peace and human rights within the United Nations architecture

9. The Charter of the United Nations eloquently commits States “to unite our strength to maintain international peace and security”. The challenge of preventing conflict, peacebuilding, and negotiating, sustaining and advancing peace has been at the heart of the work of the United Nations and its constituent entities for over 70 years. Peace is not merely the absence of violence between combatants or adversaries but is an essential precondition for society and individuals so that economic, social, cultural and political life can be fully and fairly lived.⁹ In the contemporary moment, with the prevalence of unspeakably destructive conflicts raging across the globe,¹⁰ many defined by brazen violations of international law, the challenges to advancing peace in both the positive and negative sense are unsettlingly elusive.¹¹

10. The Charter recognizes a symbiotic relationship between the protection of rights and the advancement of peace. The very first paragraph of the preamble to the Charter makes the fundamental connection between saving “succeeding generations from the scourge of war” and affirming “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”. This fundamental link informs the analysis of the present report, in which the Special Rapporteur sets out how the ongoing encroachment of counter-terrorism norms and practice have both undermined our collective capacity to advance peace and enabled and sustained systematic violations of human rights and the rule of law.

11. The first United Nations peacekeeping mission was established in 1948. Although peace “work” by the United Nations was, for many decades, essentialized to this classic “peacekeeping” function – at narrowest the “blueline” between warring factions – in practice, the peace “work” of the United Nations has historically and contemporaneously been diverse, dispersed and multidimensional, including, inter alia, peacebuilding, peacekeeping and peacemaking measures.¹² Framed by the breadth of this peace work, the present report is specifically focused on the pre-eminence of peace and human rights as intertwined United Nations objectives, and the Special Rapporteur observes how the norms, structures and objectives of United Nations counter-terrorism programmes and policies have presented impediments to the long-term prevention of conflict, the resolution of existing conflicts and United Nations peace work worldwide.

B. Development of and key concerns related to overarching legal regimes

12. A key point is that, until 2001, United Nations engagement in conflict prevention, conflict mediation, peacekeeping and peace enforcement was broadly premised on an understanding that the applicable legal regime regulating armed

⁹ Johan Galtung, “Violence, peace, and peace research”, *Journal of Peace Research*, vol. 6, No. 3 (1969).

¹⁰ António Guterres, Secretary-General of the United Nations, Secretary-General statement on Ukraine, 24 February 2022. The Special Rapporteur notes in particular the war in Tigray, the civil war in Yemen and the civil war in the Central African Republic.

¹¹ Institute for Economics and Peace, *Global Peace Index 2022: Measuring Peace in a Complex World* (Sydney, 2022).

¹² Joachim A. Koops and others, eds., *The Oxford Handbook of United Nations Peacekeeping Operations* (Oxford, United Kingdom of Great Britain and Northern Ireland, Oxford University Press, 2015).

conflict was international humanitarian law, and in post-conflict settings involved either the application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and annex: Regulations respecting the Laws and Customs of War on Land (Hague Regulations) (law of occupation) or the application of international human rights law as modified by limitations or derogations. The Special Rapporteur does not ignore State failures or overstate State willingness to apply international humanitarian law, in particular to internal armed conflicts in this period. States' engagement with international humanitarian law has often been by way of dispute as to whether the threshold condition of "armed conflict" has been met within the sovereign territory of States, or whether conflicts remained exclusively internal disturbances or tensions regulated by domestic criminal law. Acknowledging the *lex specialis* of international humanitarian law in situations of armed conflict, she affirms the parallel applicability of human rights norms in such contexts. She stresses that, in contexts where the existence of an armed conflict is denied or ended, human rights norms have primacy.

13. Until 2001, counter-terrorism regulation was primarily undertaken and driven by domestic imperatives and domestic law, whether by stand-alone counter-terrorism legislation or by regular criminal law.¹³ Until 9/11, multilateral regulation of terrorism was primarily carried out through treaties.¹⁴ These suppression treaties, which were focused on responding to certain threats or actions, ranged from agreements that were sweeping in scope to those with more specific aims, and illustrated States' multilateral capacity to adopt quasi-legislative models in response to terrorism (A/73/361, paras. 9–10). Notably absent has been agreement on a comprehensive multilateral treaty to regulate terrorism. While counter-terrorism treaty-making remains important,¹⁵ it has been overtaken by a dominant Security Council that regulates State responses to terrorism through the adoption of multiple (generally) binding resolutions (*ibid.*). The resolutions, many containing expansive counter-terrorism requirements for States, have failed consistently to recognize and specify the concurrent and complementary obligations of States under international law, including under international human rights law. In parallel, counter-terrorism has been marked by the widespread development and use of "soft law" norms (see A/74/335), developed without meaningful consultation with all affected States, civil society stakeholders and human rights experts (*ibid.*). These combined shifts have had, in the opinion of the Special Rapporteur, a distinctly negative effect on the overall advancement of meaningful protection for human rights within the counter-terrorism sphere. Moreover, the preoccupation with "terrorism" has prevented the Security Council from engaging in the more difficult sort of peacemaking and/or peace negotiation which entails grappling adequately with complex conflicts and multi-layered violence.

14. In tandem with the normative eruption in counter-terrorism there has been a massive investment in a global counter-terrorism architecture, both within and outside the United Nations.¹⁶ The United Nations architecture includes the Security Council, the Counter-Terrorism Committee, the Counter-Terrorism Committee Executive Directorate, the Office of Counter-Terrorism and the Global Counter-Terrorism Coordination Compact. All these entities engage fully in counter-terrorism regulation, as well as in capacity-building and technical assistance. Less well understood and

¹³ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge, United Kingdom, Cambridge University Press, 2006).

¹⁴ See, e.g., Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963); and Convention for the Suppression of Unlawful Seizure of Aircraft (1970).

¹⁵ Protocol to amend the Convention on Offences and Certain Acts Committed on Board Aircraft (2014).

¹⁶ See A/73/361; and Ali Altiok and Jordan Street, *A Fourth Pillar for the United Nations? The Rise of Counter-Terrorism* (Saferworld, 2020).

tracked is the scale of counter-terrorism and programming on preventing and countering violent extremism being undertaken by individual United Nations entities.¹⁷ Full adherence to the United Nations human rights due diligence policy, transparent monitoring and evaluation and human rights impact assessment remains a work in progress for all United Nations entities engaged in counter-terrorism or work on preventing and countering violent extremism. Finally, this United Nations institutional footprint constitutes part of a much greater web of global, regional and specialized entities actively involved in counter-terrorism practice with direct and traceable effects on the protection of human rights at the national level.¹⁸ The Special Rapporteur has observed the negative impact of untrammelled growth of this architecture, which, *inter alia*, lacks independent oversight and is limited in its monitoring and evaluation capacity, on the overall balances of the United Nations system, including on peacemaking, peacebuilding, sustaining peace, conflict prevention and resolution.

15. As the pace of counter-terrorism institutional and normative growth accelerated after 9/11, the United Nations was, in parallel, reshaping its conflict prevention and resolution work driven by concerns of overreach, mismanagement, vulnerability of peacekeepers and a lack of clarity on the scope of mission in complex conflict settings. For example, in the report of the Panel on United Nations Peace Operations which was issued in 2000 (“Brahimi report”), the Panel observed the immediate need for the United Nations to achieve more effective methods for conflict prevention and resolution (see [A/55/305-S/2000/809](#)). The Panel emphasized that effective strategies in conflict prevention and resolution required “doctrinal shifts” in peace operations that “emphasizes a team approach to upholding the rule of law and respect for human rights” (*ibid.*, p. ix). All recommendations were based on mutually reinforcing premises, including “the essential importance of the United Nations system adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities” (*ibid.*, para. 6 (e)).

16. In a post-9/11 context, the Secretary-General, in his 2004 report on the implementation of the recommendations of the Special Committee on Peacekeeping Operations ([A/59/608](#)), asserted: “The majority of operations led by the Department of Peacekeeping Operations today have mandates that extend beyond the security-related tasks traditionally linked to the term peacekeeping, and, indeed, they might more accurately be termed peace operations”. It is precisely this, as identified above – namely, the expansion of these mandates – which sees United Nations forces engaged in counter-terrorism operations or providing direct technical and capacity-building support to Governments which are themselves engaged in such operations, that deeply concerns the Special Rapporteur and is addressed in the present report.

IV. Interplay between counter-terrorism and the peace architecture

17. The Special Rapporteur notes with concern that the accelerated growth of the United Nations counter-terrorism architecture is having an institutional and practical impact on the United Nations peace architecture and, more broadly, on its perceived

¹⁷ In 2020, the Special Rapporteur reported on over 400 projects aimed at preventing and countering violent extremism implemented by 18 United Nations entities, benefiting more than 90 Member States in all regions of the world and addressing all seven priority areas recommended in the Secretary-General’s Plan of Action to prevent violent extremism (see [A/HRC/43/46](#)).

¹⁸ Funders Initiative for Civil Society, “FICS report reveals proliferation of agencies influencing counter-terrorism”, 25 May 2022.

legitimacy and effectiveness. Both architectures encounter one another inter-institutionally but also, given the expansion of Office of Counter-Terrorism capacity-building, technical assistance and programming within conflict zones, United Nations peace and counter-terrorism functions are also often physically meeting in the field.

18. In the present report, the Special Rapporteur recognizes the many reforms of the Secretary-General. Of particular relevance are the reforms of the peace and security pillar of the United Nations, alongside the counter-terrorism reform which resulted in the establishment of the Office of Counter-Terrorism.¹⁹ The Special Rapporteur welcomes the objective of the peace and security reforms, in particular as they relate to aims of alignment between peace and security, development and human rights towards greater coherence, including in special political missions and peacekeeping operations. However, the Special Rapporteur observes how the fragility of peace and human rights realizations can be further undone by internal undermining of such objectives within the United Nations, in particular amid the weight of investment in counter-terrorism capacity-building and technical assistance (see [A/76/261](#)). It is notable that the Secretary-General's prior reform in 2017 of the counter-terrorism architecture included the removal of the former Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre, out of the Department of Political Affairs into the current Office of Counter-Terrorism.²⁰ The Special Rapporteur reiterates her concerns about the delinking of core peace and security functions of counter-terrorism within the United Nations from efforts to otherwise move towards a "single, integrated" peace and security pillar.²¹ Since the establishment of this Office, she observes a level of growth and practice without adequate human rights due diligence, conflict and peace analysis, including gender-sensitivity analysis controls or institutionalized constraint of other peace and security mandates. Serious institutional attention must be paid to the interplay of these architectures both internally and externally, and the Organization must reassess its core goals and functions to ensure and protect its capacity to successfully engage in peace work in all its manifold dimensions.

A. Peacebuilding and its interplay with counter-terrorism and preventing and countering violent extremism programmes and objectives

19. The United Nations peace architecture has undergone various reforms over the years and includes a robust set of entities focused on peacebuilding. Evaluations and reforms²² were designed to assess progress as well as further improve United Nations peacebuilding support to civil society, Member States and other stakeholders. The Special Rapporteur concurs with the views expressed by the Advisory Group of Experts on the Review of the Peacebuilding Architecture, that the "international actors, including within the United Nations system, have yet to absorb fully how their tools and actions and ... too often prefer militarized responses. While such responses can prove effective in the immediate context of halting violence, they tend to address symptoms rather than root causes. The very nature of such responses, with their emphasis on short-term security and their correspondingly heavy resourcing needs, can sometimes take away support and attention from efforts to achieve sustainable peace" (see [A/69/968-S/2015/490](#)). She observes that the most egregious forms of such securitization and militarization continue to occur in the context of the United

¹⁹ See resolution [72/262](#).

²⁰ See resolution [71/291](#); and [A/71/858](#).

²¹ See <https://reform.un.org/content/peace-and-security-reform>.

²² See resolutions [70/262](#) and [72/276](#); and Security Council resolutions [2282 \(2016\)](#) and [2413 \(2018\)](#).

Nations counter-terrorism work and United Nations support for counter-terrorism operations, where beneficiaries of United Nations programming, including women and youth, are then considered risk groups rather than positive agents of change.

20. The Special Rapporteur affirms the critical importance of the mandates within the United Nations peacebuilding architecture, including the Peacebuilding Commission, the Peacebuilding Fund and the Peacebuilding Support Office. Several positive practices of these entities, in particular on gender markers,²³ the adoption of conflict sensitive principles, the emphasis on national and local ownership and effort to meaningfully engage youth (see General Assembly resolution 76/306) through a human rights-based perspective are all areas where, by contrast, the United Nations counter-terrorism architecture continues to struggle despite existing templates.

21. The Special Rapporteur draws attention to the integration responsibilities of Member States, in particular in the context of the Peacebuilding Commission, and underscores that strengthening of the United Nations peacebuilding work can be done only with the full support of Member States and financial investment. She draws attention to the steady and exponential increase in Member States' spending in bilateral and international and/or United Nations counter-terrorism capacity-building and technical assistance. A juxtaposition of the status of development assistance funding to conflict-affected countries, and the proportion of that funding which is dedicated to peacebuilding, is stark. As noted by the Secretary-General in his 2021 report, "while total official development assistance (ODA) to conflict-affected settings has increased in recent years, reaching 31 per cent in 2019 of total ODA, only 13.5 per cent was directed towards peacebuilding", a decline in share from 19.9 per cent in 2012 (A/76/668-S/2022/66 and A/76/668/Corr.1-S/2022/66/Corr.1, para. 34) and "the share of bilateral aid supporting feminist, women-led and women's rights organizations and movements in fragile or conflict-affected countries remains strikingly low: only 0.4 per cent (\$179 million)." (S/2021/827) As considerations for regular budget posts in the Office of Counter-Terrorism continue, it is important to consider balance in the system and the current number of 17 posts for the Peacebuilding Support Office, as compared with the 45 requested for the Office of Counter-Terrorism.

22. While a full assessment of the peacebuilding architecture is outside the scope of the present report, the Special Rapporteur urges caution in the nascent practice of United Nations counter-terrorism entities mobilizing the language of peacebuilding activities in their activities. She has already observed a steady encroachment of such securitized programming frameworks in peacebuilding work at the country level, which reflects the interests of donors. She is aware of previous United Nations Peacebuilding Fund funding for preventing and countering violent extremism projects in Burkina Faso, Chad, Kyrgyzstan, Mali, Mauritania, the Niger, Nigeria, Tajikistan and Togo (see A/76/687). She underscores that such programming operates in ways that undermine international human rights law, principles of "do no harm", the principles of legality, necessity and proportionality, in particular when programming is conducted in close coordination with national security forces and presents serious challenges in the context of informed consent, human rights due diligence and effectiveness. She is aware of positive examples whereby United Nations peacebuilding entities worked to shift away from securitized frameworks of preventing and countering violent extremism after dialogue with affected civil society entities. Building on the findings of the meta-synthesis report²⁴ of the United Nations Global Counter-Terrorism Coordination Compact, the Secretary-General should

²³ Peacebuilding Fund, "PBF guidance note on gender marker scoring", 2019.

²⁴ https://www.unodc.org/documents/evaluation/Meta-Analysis/Meta_Synthesis_United_Nations_Global_Counter_Terrorism_Strategy_Report.pdf, p. xvi.

critically assess the scope of work on preventing and countering violent extremism carried out by peacebuilding entities and ensure a separation of mandates – to avoid the United Nations peacebuilding offerings slipping into programmes that have thus far not been proven to create any significant impact. The continued increase in such activities may otherwise lead the system back towards confusion over mandates and the integrity of its peace work. Such an assessment may be conducted alongside the imbalances in funding in counter-terrorism as compared with peacebuilding in the context of the 2024 Summit of the Future, the mandated comprehensive review of United Nations peacebuilding in 2025 and the new agenda for peace.²⁵

B. Peacekeeping operations and counter-terrorism

23. Throughout the history of United Nations peacekeeping operations there have been multiple evolutions. Traditional operations involved deployments in situations where there was “a peace to keep”. The newest generation of peace operations are hybrid missions. Nonetheless, a clear throughline of this approach was optimization of the rights and protections of the civilians caught up in conflict. The incipient fifth generation of peace operations are hybrid missions which deploy troops and police personnel under mixed command,²⁶ and task separation is a defining feature of this modality. In all forms of United Nations peacekeeping operations, human rights have featured heavily in the rationale used to enable and legitimize their deployments.

24. Observing these generational shifts in peace operations, the Special Rapporteur acknowledges the obvious point that institutional and normative changes were necessary to address the complex and shifting nature of conflict emerging on the ground, as well as the evolving role of the Security Council in conflict settings.²⁷ She values the articulated commitments to human rights protection that have accompanied institutional shifts in peace operations. However, she is deeply concerned that States’ use of terrorism as a threat to international peace and security has led to peace operations being co-opted. Hybrid peace operations are now directly engaged in supporting States in their counter-terrorism operations or are providing States with the technical assistance and support to do this work themselves. In multiple contexts, counter-terrorism action precisely and deliberately operates to obscure and displace the reality of complex armed conflicts, to which international humanitarian law and human rights rightly apply. The lack of an agreed definition of terrorism means in practice, as consistently documented by the Special Rapporteur,²⁸ that States regulate a variety of legitimately protected human rights as “terrorism”, from the advancement of minority rights, freedom of expression and assembly to the fundamental, if contested, right of self-determination. Inevitably, peace operations that function to support the counter-terrorism (however defined) work of States will, given the lack of meaningful oversight on global, regional and national counter-terrorism activities, result in encroachment on fundamental human rights. The risks of this encroachment for the United Nations are significant and deeply detrimental to its impartiality and integrity.

25. The Special Rapporteur highlights that the 2015 High-level Independent Panel on Peace Operations made key recommendations which speak to the central concerns of the present report (see [A/70/95-S/2015/446](#)). The Panel drew what would seem like

²⁵ See Security Council resolution [2558 \(2020\)](#).

²⁶ See United Nations, Department of Peacekeeping Operations and Department of Field Support, “A new partnership agenda: charting a new horizon for UN peacekeeping”, 2009.

²⁷ Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 2nd ed. (Stanford University Press, 2007). Specifically, “new wars” with newly independent States including the complexity of post-cold war conflict contexts, e.g., Bosnia.

²⁸ See communications Nos. NZL 1/2021; DZA 12/2021; AUT 2/2021; and LKA 3/2021. Available at www.ohchr.org/en/special-procedures/sr-terrorism/comments-legislation-and-policy.

a red line, on counter-terrorism operations, explicitly stating that “United Nations peacekeeping missions, owing to their composition and character, are not suited to engage in military counter-terrorism operations. They lack the specific equipment, intelligence, logistics, capabilities and specialized military preparation required, among other aspects” (ibid., para. 119). Moreover, the Panel underscored that, following the exit of United Nations peacekeeping missions, the Security Council should ensure that the United Nations is not required to assume residual tasks beyond its capability. The Panel was unequivocal that the United Nations must maintain its impartial commitment to respect for human rights. The Special Rapporteur endorses these conclusions of the Panel and advocates for their centralizing in United Nations peace operations policy and their consistent application in the field. She further affirms the value and importance of the Future of Peacekeeping project.

26. The engagement of United Nations peacekeepers in active counter-terrorism tasks poses significant operational and reputational risks to the Organization. The Special Rapporteur recognizes that there are significant practical and political pressures on the United Nations to engage its forces in “robust” peacekeeping that includes direct counter-terrorism operations, but warns that the risks in so doing are exceptionally high. Most obviously, such actions jeopardize the legal protection of other United Nations staff, they may fundamentally hamper the capacity of the Organization to be an impartial arbiter of conflict, and, most worryingly, they may compromise the ability of other parts of the United Nations family to carry out essential humanitarian work.²⁹ She is particularly concerned that kinetic counter-terrorism action or support by United Nations peace operations serves to undermine the protection of civilians in complex settings, and in multiple sites has produced alienation and a lack of trust between the United Nations field presence and local communities. Once engaged in counter-terrorism action the capacity to narrate a cohesive, consistent and unproblematic narrative for the Organization is compromised, all the more so in communities and geographies where civilians and designated armed groups are mixed up. The bottom line may be that it is simply “not worth going there”, and that a pause on such deployment is needed.

27. In sum, the interrelated human rights concerns stemming from this encroachment of counter-terrorism into peace operations are as follows:

(a) The direct engagement in counter-terrorism operations involving the use of force, giving rise to concerns of extrajudicial killing, lack of transparency and accountability and inadequate remedies for victims of counter-terrorism;³⁰

(b) The provision of counter-terrorism technical support and capacity-building to security sectors that have been implicated in serious human rights violations without adequate controls and human rights due diligence in line with the existing United Nations policies;

(c) The diversion of military and security resources from Governments to United Nations-designated armed groups, in part due to a lack of transparency and oversight within the security sector and poor security for hardware;

(d) The conflation by the population of United Nations forces in the field with deeply unpopular and abusive national security forces, thereby undermining the credibility and neutrality of United Nations forces and the overall capacity of the

²⁹ John Karlsrud, “UN peace operations, terrorism and violent extremism”, in *United Nations Peace Operations in a Changing Global Order*, Cedric de Coning and Mateja Peter, eds. (Cham, Switzerland, Palgrave Macmillan, 2020).

³⁰ The annual reports of the Special Rapporteur on counter-terrorism and human rights are available at www.ohchr.org/en/special-procedures/sr-terrorism/annual-reports-human-rights-council-and-general-assembly.

United Nations to conduct its broader human rights monitoring, peace and security, development and humanitarian work which risks prolonging and intensifying conflict;

(e) Producing an “own goal” on humanitarian access and provision by acquiescence in the framing of a particular situation as a “terrorism” only problem, thus effectively undermining broader humanitarian law principles of impartial humanitarian access to a territory.

C. Counter-terrorism and armed conflict

28. The Special Rapporteur has reflected in previous reports ([A/73/361](#) and [A/75/337](#)) that counter-terrorism measures are frequently taken in the context of armed conflict in which international humanitarian law is applied. That reality is further illustrated by multiple non-international armed conflicts involving non-State armed groups subject to terrorist designation by the United Nations and its targeted sanctions regime or included on regional and national terrorist sanctions lists. The widening net of counter-terrorism regulation and practice is being applied to multiple national contexts in which the threshold requirements for armed conflict may be formally met under international law, but not applied in practice. It is also occurring in contexts where the threshold for armed conflict is formally acknowledged but counter-terrorism management and discourse plays an increasingly dominant role in the response to violence. These contexts are regularly being defined as contexts of terrorism rather than as situations of complex conflict in which acts of terrorism occur, but which overall remain regulated as situations of conflict to which human rights and humanitarian law apply. She has consistently argued that the enforcement of international humanitarian law ensures and enables the protection of fundamental human rights in armed conflict contexts (see [A/75/337](#)).

29. What does it mean for a situation to be defined in counter-terrorism rather than armed conflict terms? The answer has multiple elements. First, international humanitarian law has an undisputed set of treaty and customary law standards which frame both State and non-State actor obligations in situations of armed conflict, including but not limited to detention, protection of civilians, status of combatants, methods and means of warfare and impartial humanitarian action. Terrorism lacks an agreed international law definition and is characterized by significant imprecision in its use and application. Applying a vague, inexact and State-subjective set of regulations to a highly complex phenomenon means that we lack consistency in standards applied to State conduct; we do not have a clear consensus on what a breach of these standards might look like, and with so much inbuilt ambiguity there is an ongoing risk of abuse. Second, as a conceptual matter the fundamental logic of terrorism discourse and practice is focused on destroying the terrorist group, targeting and extinguishing its means of support and breaking up the leadership and structures that enable the production of violence. The mantra of “not negotiating with terrorists”, common across multiple political contexts, means that once a situation or group is framed in terms of “terrorism”, dialogue and negotiation is often formally prohibited and politically unacceptable. Armed conflict does not prohibit or preclude negotiation with the “enemy”, and in practice has multiple pathways to bring an end to conflict, whether by amnesty (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), article 6 (5)), negotiation (International Committee of the Red Cross, study on customary international humanitarian law, rule 64), or exchange of prisoners (customary study, rule 128). Third, the acceptance of a counter-terrorism framework generally brings a number of its regulatory preferences into play, including proscription of groups and individuals, sanctions, emergency powers that impact due process, legal proceedings and freedom of movement, countering terrorism finance

measures and limitations on freedoms of expression (e.g., Internet shutdowns). Many of these measures function to exacerbate fundamental grievances that drive violence and are consistently identified with systematic human rights violations in multiple countries. These measures restrict the capacity to resolve the violence or address grievance through a more comprehensive approach, such as by way of ceasefire or peace agreements.

30. Moreover, armed conflicts continue to emerge, intensify and reignite, while the maintenance of peace in societies that have experienced cyclical violence remains elusive. The conditions that give rise to sustained violence in many societies – namely, continued human rights violations and an absence of the rule of law, justice or accountability institutions – remain underaddressed. Ongoing challenges triggering and sustaining armed conflict also include climate change, grinding inequality, unresolved questions of self-determination, meaningful political participation and adequate representation in fragile, complex and disputed sovereignties. None of these issues have been adequately addressed by a counter-terrorism framework, whether sequentially or intersectionally.

1. Stabilization and counter-terrorism

31. The nomenclature of stabilization has consolidated in Security Council resolutions³¹ and has come to (re)define the role of peacekeeping forces in certain conflict sites. It has significant overlap with what has been framed as major threats requiring an urgent security response, including practices of counter-terrorism and countering violent extremism, as well as State-building in certain countries. The overarching goal of stabilization is to consolidate and support the State accepted to be under threat from non-State or terrorist actors.³² The problem in this scenario is that unqualified consolidation of political and security support for Governments that are weak, unrepresentative, corrupt and unaccountable to their publics inevitably leads to further cycles of insecurity and violence, often feeding and sustaining the grievance that has led to United Nations or regional military engagement in the first place. Stabilization's emphasis on order and stability can easily marginalize the need for social change, while at the same time institutionalizing corruption. The "peace" that is thereby ushered in may not be a just one; moreover, unaddressed grievances may mean that the peace is not sustainable. The Special Rapporteur accepts that a clearer way forward is needed on these challenges, given the increasing number of conflicts in which designated terrorist groups are active and the broader role of the United Nations in peace and security, which means that its engagement in contexts of close proximity to designated terrorist groups is also likely to increase. It is the Special Rapporteur's view that the embrace of counter-terrorism policy and practice that is not grounded in a clear understanding of the conditions that give rise to violent groups is counterproductive, has no evidenced capacity to directly address the underlying issues of insecurity, alienation, power-grabs and violence, and is simply likely to make things worse in the long run.

32. United Nations stabilization mandates come with critical challenges when the Government is engaged in countering terrorism and violent extremism.³³ By introducing an element of offensive operations, such mandates challenge United Nations impartiality and legitimacy by feeding into the impression that the United Nations is a counter-terrorism party to the conflict. Such support is particularly problematic when the Government's armed forces or security sector is engaged in

³¹ Security Council resolution [2640 \(2022\)](#).

³² Security Council resolutions [2643 \(2022\)](#) (Yemen) and [2628 \(2022\)](#) (Somalia).

³³ The Special Rapporteur also notes the challenges in funding for civil society when funds follow for stabilization efforts not humanitarian action, with the former not eligible for any humanitarian exemptions.

serious human rights violations and war crimes, which can give the impression that the United Nations is complicit in the commission of these violations. In Mali, the alleged commission of very serious human rights violations against civilians and war crimes by a private company from a third State engaged in countering terrorism alongside the Government is representative of these challenges.³⁴

33. MINUSMA was given a direct stabilization role in a country engaged in various conflicts with non-State armed groups, some designated as terrorist by the United Nations. Through an evolution in its mandate, MINUSMA has assisted in restoring State authority and deterring violent extremist groups. It has also played more specific counter-terrorism roles, such as formal and informal cooperation with counter-terrorism operations deployed in the region,³⁵ taking “direct action” to mitigate and respond to the asymmetric threats that the terrorist groups in Mali represent, and to support the United Nations counter-terrorism sanctions committees.³⁶ Possibly as a consequence of the closeness of MINUSMA to both the Government and other counter-terrorism operations, it has been the target of attacks from varied groups, with significant fatalities. As at February 2022, MINUSMA has lost, in the course of 11 years, a total of 462 United Nations and associated personnel.³⁷

2. Peacemaking and counter-terrorism Proscription and its impact on mediation and negotiation

34. An essential aspect of mediating, negotiating and ending conflict is the capacity to bring all relevant actors into discussions at multiple levels. In the view of the Special Rapporteur, it is the capacity to maintain lines of communications through violence, which can provide the means to disrupt and provide pathways of disengagement. Even before the activation of ceasefire formalities or other forms of violence-preventing measures,³⁸ engagement with a variety of actors, both armed and ordinary, in fragile and complex settings are essential to the prevention and ending of violence.³⁹ These kinds of activities, often disregarded and underappreciated, are far removed from the grand symbolic gestures of peace agreements and are the “stuff of everyday life” that is necessary to advance sustainable peace in societies experiencing heavy violence or conflict.⁴⁰ The proscription of non-State armed groups, whether by the United Nations through resolutions and sanctions regimes, or by the Government, constrains the search for political solutions to complex violence and accountability and the rights of victims.⁴¹ The nomenclatures of “terrorist” and “extremist” function powerfully in society. They can also function selectively and detrimentally in violent,

³⁴ Office of the United Nations High Commissioner for Human Rights, “Central African Republic: UN expert calls for end to impunity, urges armed groups to lay down arms”, 5 August 2022.

³⁵ It is also the first time that a multidimensional peacekeeping mission was deployed in parallel with an ongoing counter-terrorism operation, the French *Opération Serval*, which later transitioned into the current *Opération Barkhane*.

³⁶ See Security Council resolutions [2100 \(2013\)](#); [2295 \(2016\)](#); and [2640 \(2022\)](#).

³⁷ United Nations, “At least 25 peacekeeping, associated personnel killed in malicious attacks during 2021”, 3 February 2022.

³⁸ Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford, United Kingdom, Oxford University Press, 2008).

³⁹ Noting the submission of Switzerland stressing the importance of “reaching out to any actor who is genuinely willing to engage in dialogue”.

⁴⁰ Roger Mac Ginty, *Everyday Peace: How So-Called Ordinary People Can Disrupt Violent Conflict* (New York, Oxford University Press, 2021).

⁴¹ The Special Rapporteur notes her particular concern that the vast majority of proceedings taken against persons engaged in terrorism involve either travel or membership of a proscribed organization. Such proceedings do not meet the needs and rights of victims of terrorism and leave core international crimes untouched.

conflicted and/or fragile societies to undermine trust, limit the capacity for cross-community and/or group engagement and disable risk-taking to stop violence.

35. The terminology of terrorism matters, and the consequences of its use are marked. The use of terms such as “terrorist”, “extremist” and “violent extremist” solidifies the position that those qualified as such are in a singular category similar to the pirate of old, “an enemy of all mankind”.⁴² The terminology signifies a particular kind of villainy and moral opprobrium: persons placed in this category are not worthy of being considered as a party to the conflict. These terms make engagement with such groups or individuals impossible and facilitate the use of exceptional legal measures (see [A/HRC/37/52](#)). The cumulative effect of counter-terrorism measures piled up and extended over and over in complex conflict settings has a materially negative impact on the capacity to advance co-existence in a deeply divided society and ultimately press towards peacemaking. Thus, in many complex conflict settings, a key starting point to advancing collective security involves a “linguistic ceasefire”,⁴³ which creates a level playing field to address violence by recognizing that the generic use of the terminology of terrorism creates structural barriers to engaging all the actors needed in order to end violence and address the conditions conducive to terrorism and collective violence.

36. The Special Rapporteur observes that the labelling of groups as “terrorist” or “(violent) extremist” can be opportunistically used by Governments to undermine a group’s credibility and prevent outright its participation in negotiated solutions to conflict. She notes, first, that there are potent examples of groups having shifted from the use of illegal violence to being full-fledged participants in political processes, rendering the distinction between terrorist groups and non-terrorist groups a fluid one.⁴⁴ She also highlights that proscription does not displace or restrain the application of international humanitarian law, meaning that designated groups that meet the threshold to be considered as parties to a conflict under international humanitarian law do not lose this status even if they commit acts of terrorism under domestic law or under international humanitarian law. Unfortunately, once established, the terrorism and/or violent extremism label is extremely difficult to overcome.

37. Proscription regimes enabled by Security Council resolutions⁴⁵ are a core aspect of the multilateral counter-terrorism framework. However, by affecting the way the conflict is portrayed and circumscribed, proscription constrains the range of policy choices available. Labelling can serve as a barrier to various forms of reconciliation, entrenching prejudice and exclusion, and eliminates the possibility of holding onto some shared social meaning which allows deeply divided and conflicted societies to slowly transition from violence to co-existence. Proscription generally excludes the possibility of applying amnesty to certain crimes, and thus directly limits the ways in which combatants can be incentivized and encouraged to end their participation in hostilities and engage in processes including justice measures, truth-telling and guarantees of non-recurrence. Proscription also generally excludes opening up disengagement programmes to listed persons, creating complex challenges of reintegration when those individuals remain present and in the public arena in post-conflict and fragile settings.

⁴² From the Latin, “hostis humani generis”.

⁴³ Sophie Haspeslagh, *Proscribing Peace: How Listing Armed Groups as Terrorists Hurts Negotiations* (Manchester, United Kingdom, Manchester University Press, 2021).

⁴⁴ “In practice, distinguishing between ‘terrorist’ and ‘non-terrorist’ groups may be difficult – not least in Mali – given the fluidity of allegiances between transnational ‘terrorist’ groups and autochthonous groups with local grievances”, quoted in John Karlsrud, ‘Towards UN counterterrorism operations?’, *Third World Quarterly*, vol. 38, No. 6 (2017).

⁴⁵ See Security Council resolutions [1267 \(1999\)](#); [1373 \(2001\)](#); [1390 \(2002\)](#); [1988 \(2011\)](#); [1989 \(2011\)](#); [2170 \(2014\)](#); [2178 \(2014\)](#); [2253 \(2015\)](#); and [2368 \(2017\)](#).

38. The Special Rapporteur recognizes that, in societies that have lived through terrorist acts in the context of armed conflict, the profound hurt and human suffering experienced, in particular by the victims of terrorism, can make discussion and activation of inclusive measures for proscribed groups and individuals deeply painful. She does not minimize or ignore such hurt and affirms that accountability and justice measures remain an essential aspect of conflict ending and resolution sequences. She remains convinced that measures to address conditions conducive to conflict are essential. This requires, no matter how painful, the willingness to be open to the inclusion of all actors engaged in violence. The goal is not to forget the victims of terrorism and conflict but to be clear-eyed about what it requires to end cycles of violence. This also means prioritizing the day-to-day safety of communities, building trust, respect and actually meaningfully including affected communities in peacebuilding. In deeply divided societies like Northern Ireland and Colombia there are striking (and painful) examples of the compromises and accommodations made to create inclusive peace processes, which explicitly meant the inclusion of representatives of armed groups who were proscribed under domestic counter-terrorism regimes. Moreover, the Special Rapporteur has highlighted the continued impact of counter-terrorism targeted sanctions on the broader realization of human rights, in particular in Afghanistan under the 1988 sanctions regime of the Security Council and domestic sanctions. Greater transparency must be built within the work of the sanctions committees for counter-terrorism regimes writ large, in particular in terms of engaging civil society leaders and gender equality advocates. Member States must facilitate increased engagement of humanitarian expertise on the complex humanitarian crises in Afghanistan, including through international and Afghan humanitarian actors working to deliver assistance and medical care.⁴⁶

39. The Special Rapporteur makes clear that her position is not to advocate for full reconciliation with certain designated terrorist groups whose unwillingness to abandon violence, and whose lack of respect for the most basic international standards of humanity, makes such a position morally untenable. She is however fundamentally pragmatic and profoundly aware that the core imperative to end or limit violence may mandate principled, purpose- or task-driven and partial or conditional negotiations with such groups, in particular where it might be necessary to negotiate humanitarian access, ceasefires and/or prisoner treatment. The core imperative is to protect the fundamental human rights of those most affected by violence, to reduce violence where possible and to assist civilians caught in the maelstrom of conflict. In her experience, this necessary and complex navigation can constitute building blocks towards a more comprehensive solution. She remains deeply concerned that, in multiple observable conflicts, the implementation of counter-terrorism proscription measures, which are themselves deeply flawed from a due process perspective,⁴⁷ function to intensify and deepen the violence and exclusions which are the tinderboxes upon which conflict ignites.

40. She also notes her concerns about the ways in which proscription prevents third-party actors from engaging with proscribed groups for the purposes of advancing peace or materially regulating violence. This has been achieved through the outlawing of various forms of support – including material support for terrorism,⁴⁸ which has a significant impact on individuals and organizations engaged in negotiation and mediation around the world.⁴⁹ She highlights in particular the adverse consequences

⁴⁶ Ní Aoláin, “The impact of counter-terrorism” (see footnote 6).

⁴⁷ See A/HRC/34/61; A/67/396; and A/65/258. See also Ní Aoláin, “The impact of counter-terrorism” (see footnote 6).

⁴⁸ Supreme Court of the United States of America, *Holder v. Humanitarian Law Project*, case No. 130 S. Ct. 2705, 2725 (2010). See A/70/371, paras. 36–38.

⁴⁹ Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action* (2013), pp. 40–42.

of overly broad domestic legislation on “material support” by certain States,⁵⁰ which practically ousts support for peacemaking and peacebuilding activities and programming, including the vital work of creating the conditions for peace negotiations and peace process support in the most complex and difficult environments. These effects fall particularly harshly on civilians living in areas designated as being under the control of terrorist organizations who neither choose to be affiliated with such groups nor have the choice to exit their territories. She also highlights a broader problem of top-down, hierarchical and unrepresentative processes that ignore the knowledge and experience of local communities in conflict- and violence-affected sites. To meaningfully address the drivers of conflict, all actors must listen to those on the ground, find ways to raise up their voices and remain consistent with the central tenant of the women and peace and security agenda to actively engage and support women in peace work, including their work in areas in which designated groups have control or presence.

41. The necessity of addressing conflict as a driver and accelerator of terrorism has been clearly articulated in Pillar I of the United Nations Global Counter-Terrorism Strategy, in which the General Assembly recognizes that the peaceful resolution of prolonged unresolved conflicts would strengthen the global fight against terrorism. Similarly, the Assembly has called on Member States to ensure that counter-terrorism legislation or measures do not impede “engagement with all relevant actors”.⁵¹ The Secretary-General has called for Member States to support efforts by humanitarian organizations to engage armed groups (even those proscribed) to seek improved protection for civilians (*S/2009/277*, para. 45) and refrain from adopting measures that impede, or in some cases, criminalize engagement with non-State armed groups (*S/2010/579*, para. 55). Special envoys and mediators on the promotion of peace, security and stability in Africa stress that political solutions must become central to comprehensive strategies that address terrorism and violent extremism. This must involve local and mid-level mediators. As central tools in the toolkit of political responses, negotiation and mediation should always be considered and implemented on a case-by-case basis.⁵²

3. Disarmament, demobilization and reintegration processes and counter-terrorism

42. The Special Rapporteur emphasizes her disquiet that application of counter-terrorism law and practice prohibits persons who have voluntarily left designated (and other) terrorist organizations from being included in disarmament, demobilization and reintegration processes. Indeed, the very designation of a group as “terrorist” may function as a political means to avoid activation of disarmament, demobilization and reintegration and other processes designed to bring persons back into communities, address legacies of harm through transitional justice measures and create institutional incentives and brakes to prevent the recurrence of violence. She acknowledges that disarmament, demobilization and reintegration processes have had certain tension points with human rights practice, but also highlights evidence of good practices in disarmament, demobilization and reintegration,⁵³ which have enabled human rights-based peace processes to thrive and have functioned to inculcate security, protect the right to life and advance broader human rights enforcement in post-conflict societies.

⁵⁰ See e.g., amendments 18 USC §2339A and §2339B to the Antiterrorism and Effective Death Penalty Act of 1996 of the United States.

⁵¹ See resolution *72/284*, para. 79.

⁵² Special Envoys and Mediators of the African Union on the Promotion of Peace, Security and Stability in Africa, Windhoek Declaration, October 2015, para. 14.

⁵³ Good Friday Agreement (Belfast Agreement) of 1998, Prisoners, 37 I.L.M. at 774.

43. She highlights the current situation in the north-east of the Syrian Arab Republic, where it is broadly known that sizeable numbers of persons have exited from detention sites (including, but not limited to, Hawl and Rawj camps). She understands that agreements for return have been negotiated informally with tribal leaders and local communities in the region. While such returns take pressure off the humanitarian calamity unfolding in these detention sites, it is not a substitute for full functional disarmament, demobilization and reintegration processes for those who have engaged in armed groups, including designated terrorist groups, and it provides no measure of accountability for serious violations of international law or transparency for victims of terrorism. Moreover, many observers, including the Special Rapporteur, would posit that the continued detention of approximately 10,000 men in prison facilities in the region will require a holistic solution, which rightly ought to involve prosecution for serious violations of international law, but also pragmatically may mandate disarmament, demobilization and reintegration processes for those persons deemed suitable, through a human rights-compliant screening process, for return to their own or other communities.

44. The Special Rapporteur highlights that complex victims of terrorism, including women and girls kidnapped, coerced or groomed into terrorist organizations, are often viewed as supporters or enablers of terrorism rather than *prima facie* victims of terrorism. Similar disquiet applies to the treatment of children deemed associated with terrorist groups, who are classified as “associated” with terrorist organization rather than primarily as victims of human rights and humanitarian law violations and abuses and of terrorism (see [A/76/871-S/2022/493](#)).⁵⁴ In addition to their exclusion from victims’ support and rehabilitation programmes, they are also frequently and unacceptably deemed ineligible for disarmament, demobilization and reintegration programmes due to material support provisions being applied to disarmament, demobilization and reintegration funding.⁵⁵

V. Counter-terrorism, occupation and human rights

45. Ending situations of occupation should be a primary goal of peacemaking and a priority for States and the United Nations, given the deep and profound violations of human rights that frequently accompany them.⁵⁶ “Transformative” or long-term occupations are of particular concern,⁵⁷ given their *prima facie* incompatibility with the laws of armed conflict, their negative impact on State obligations to fully implement the Hague Regulations and the Geneva Conventions, and the corresponding reality of sustained and systematic violations of fundamental human rights in such contexts. The Special Rapporteur highlights in particular the ways in which transformative occupations have a sustained negative effect on the human rights of women and girls.⁵⁸ She notes that such violations are compounded and extended by occupying Power settlement projects, and harshly intensified when settlers engage in sustained violence which is not regulated but tolerated and encouraged by the occupying Power. The Special Rapporteur has observed that some States have sought to displace the application of the law of occupation by rhetorical and

⁵⁴ More than 2,864 children were detained for their alleged association with armed groups.

⁵⁵ Noting examples of “material support” laws presenting obstacles for peacebuilding in Colombia, Nepal, Nigeria and Sri Lanka set out in, Alliance for Peacebuilding and Charity and Security Network, “Preventing peace: how ‘material support’ laws undermine peacebuilding”, July 2021.

⁵⁶ See communications Nos. AL MAR 4/2021; [A/HRC/50/21](#); and [A/HRC/50/65](#).

⁵⁷ Adam Roberts, “Transformative military occupation: applying the laws of war and human rights”, *American Journal of International Law*, vol. 100, No. 3 (July 2006).

⁵⁸ Fionnuala Ní Aoláin, “The gender of occupation”, *Yale Journal of International Law*, vol. 45 (2020).

practical reliance on counter-terrorism law.⁵⁹ She reflects that there is an observable practice of treating any act of violence within an occupied territory as an act of terrorism rather than working from first order principles to apply the law of occupation to the territory in question, and then proceeding to address whether an act of terrorism has occurred within that legal framework.⁶⁰ The extension of a State's domestic counter-terrorism law into an occupied territory is a prima facie breach of international humanitarian law and undermines the substance and spirit of the Geneva Conventions.

46. The Special Rapporteur identifies a range of counter-terrorism measures applied in occupied territories that constitute egregious breaches of international law, including both international humanitarian law and human rights law; torture, incommunicado detention, the use of military commissions for crimes allegedly committed by civilian population, the military detention and interrogation of children, the charging and convictions of children for "terrorism" offences in military commissions, the destruction of private homes as a "punishment" for terrorist offences, the transfer of persons outside of the occupied territory for "terrorism" offences and the regulation of civil society organizations by terrorism regulation.⁶¹

47. The Special Rapporteur underscores the very obvious point that, in a context of belligerent occupation the overwhelming duty of the occupier is to safeguard and protect "protected persons" and to ensure that the status of the territory is not compromised by unilateral acts that would prevent the peaceful resolution of the underlying armed conflict. She is deeply concerned that opportunistic and highly retrogressive use of counter-terrorism law in occupied territory is a means to further subdue and humiliate the protected population and to make life "unliveable" for them in every molecule of daily life, through the establishment and defence of a counter-terrorism architecture. In such contexts, the rhetoric of counter-terrorism is used to try to displace and obscure the broader legal obligations of the occupying Power, as well as to deflect the obligations of all States whose goal, with the United Nations, must be to end the conflict, to ensure the protection of human rights and to meaningfully protect those living in occupied territories as uniquely protected persons under international law.

VI. Recommendations

48. The Special Rapporteur makes the following recommendations to prevent further obstruction and negative trends in the context of counter-terrorism measures and terrorism's infringement on human rights and fundamental freedoms and to safeguard the capacity of the United Nations and States to engage in effective and sustained peacemaking, peace maintenance and peace enforcement in order to protect and promote fundamental human rights, counter terrorism and ensure that the core and shared goals within the Charter of the United Nations can be realized.

⁵⁹ See communication No. ISR 6/2022; and the recent determination by the Russian Supreme Court that the Azov Regiment of Ukraine is a "terrorist organization".

⁶⁰ See article 33 of the Fourth Geneva Convention, which prohibits "all measures of intimidation or of terrorism" as part of collective punishment, which could induce a state of terror, as well as article 4 (2) (d) in Additional Protocol II.

⁶¹ See communications Nos.: S/2022/504; JUA EGY 11/2020; JAL AUS 1/2022; JAL NIC 2/2022; and JAL SAU 8/2022.

A. Recommendations for States

49. Advocate for the biannual Global Counter-Terrorism Strategy reviews to closely engage with the human rights, conflict sensitivity, gender sensitivity, rule of law and monitoring evaluation deficiencies in the context of United Nations counter-terrorism capacity-building and technical assistance, addressing the impact of such programming on broader objectives of the United Nations in preventing conflict, negotiating peace and building and sustaining peace.

50. Consider on balance the funding deficits and needs within the peace architecture of the United Nations and the fragility through which the peacebuilding architecture and human rights pillar rely on voluntary contributions, despite commitments on their centrality to United Nations reforms. In 2022, the human rights pillar received just 3 per cent of the total United Nations regular budget.⁶² The Peacebuilding Fund is currently under consideration for regular budget and approved assessed contributions (2022).⁶³ The Secretary-General's forthcoming consideration of the regular budget proposals of the Office of Counter-Terrorism should be tied to overall United Nations objectives, critically assessing the levels of regular budget funding towards peacebuilding, gender equality and human rights, as well as with measured analytics as to how the overall goals of the United Nations towards peace and human rights tied concretely to the observations and concerns raised during the seventh biennial review of the Global Counter-Terrorism on human rights due diligence, monitoring and evaluation and overall balance in the United Nations system.⁶⁴

51. Apply and respect international humanitarian law, ensure respect by other States consistent with common article 1 of the Geneva Conventions in conflict contexts, including those affected by terrorism, and avoid broad interpretation of the language of "association with terrorist organizations", which leads to the stigmatization of entire communities and cycles of revictimization, undermines the presumption of innocence and limits individual criminal responsibility.

52. Ensure, in accordance with articles 9 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, that no one should be prosecuted for crimes committed by family members.

53. Treat children caught up in armed conflict, including conflicts involving acts of terrorism as victims of terrorism, as entitled to the full application of the protection of the Convention on the Rights of the Child. States and all United Nations counter-terrorism entities must internalize the foundational position that children are crucial agents for achieving sustainable peace and security, and that they must be protected regardless of their actual or alleged association with parties to conflict and regardless of the party to the conflict that they are associated with.

54. Guarantee that impartial humanitarian action is protected in all contexts based on its essential function in protecting the rights and dignity of every person.

55. Ensure that full political support is given to the United Nations to pursue its good offices in all efforts to negotiate and mediate conflict, including in situations involving designated arms groups and where significant acts of terrorism occur. States must ensure that the diplomatic role of the United

⁶² \$134 million.

⁶³ See [A/76/732](#) and [A/76/821](#).

⁶⁴ Resolution [75/291](#), paras. 86, 93 and 118.

Nations is preserved in full through robust mandates aimed at preventing and resolving conflict through dialogue and mediation.

B. Recommendations for the United Nations

56. Conduct a thorough analysis and review of United Nations approaches to programming in preventing and countering violent extremism conducive to terrorism, including through lending support to work within the United Nations Global Counter-Terrorism Coordination Compact aimed at defining terminologies used in such programming that implicate serious human rights due diligence and rule of law concerns. The United Nations should have a coherent approach to the politicized issues of labelling certain groups and individuals as directly or “as associated” terrorist or “violent extremist,” given the well-documented misuse of such labels and strategies against civil society.

57. Given the forthcoming global review of the Peacebuilding Fund in 2024, the Secretary-General and relevant entities should integrate robust analysis and findings related to the increasing range of preventing and countering violent extremism programming labelled under the heading of peacebuilding. Such a review must consider the findings and recommendations from civil society and other local stakeholders from around the world.

58. Redouble its efforts to engage in preventive conflict work and prioritize the appropriate application of international humanitarian law and human rights law standards, including in contexts affected by acts of terrorism, despite the political barriers and lack of political will to engage in this work. The United Nations must preserve the integrity of the application of international humanitarian law and human rights law, and not cede the ouster of these legal regimes by the invocation of counter-terrorism regulation. Clear internal policy guidance on the full application of these frameworks must be promulgated and applied.

59. The United Nations must actively work to prevent counter-terrorism from “eating up” and ultimately weakening peace operations. Recalling the finding of the 2015 report of the High-level Independent Panel on Peace Operations, the Action for Peacekeeping Initiative and the Future of Peacekeeping project, the Special Rapporteur calls for the United Nations to consider how a robust review of current peace operations can prevent undue deference to rigid counter-terrorism approaches which function to undercut essential peace and security agendas and may undermine the overarching goals of the United Nations and its reforms. Such an assessment is urgently needed to address the independent and system findings on the impact of counter-terrorism measures on human rights.

60. Ensure the immediate operationalization and consistent application of the United Nations human rights due diligence policy across all United Nations activities, and initiate a process for updating the guidance to ensure application across all counter-terrorism and preventing of violent extremism support to Governments, including by peacekeeping operations, special political missions and all United Nations offices, agencies, funds and programmes that engage counter-terrorism activities, including the Counter-Terrorism Committee Executive Directorate, the Office of Counter-Terrorism and the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities. Such operationalization of the due diligence policy should be made public to support local civil society advocacy related to the misuse of counter-terrorism measures and to build trust in the United Nations coherent response to such challenges.

61. **Support and sustain holistic mediation, negotiation and observation of peace negotiations in complex conflicts, including those where terrorist groups (United Nations-designated and other) are present. The Special Rapporteur stresses that, when such armed groups are excluded from negotiations, they have little commitment to peace agreements or their associated processes, they remain with unresolved grievances and continue to be motivated to use violence to achieve their goals.**

62. **Develop, adopt and implement United Nations system-wide guidance on dealing with armed groups designated as terrorist organizations in the context of the Integrated Disarmament, Demobilization and Reintegration Standards. Such guidance should be firmly grounded in human rights and humanitarian law. Guidance should ensure that national designations are not simply rubber stamped by United Nations entities but rather that the United Nations use the terms solely where the groups have been designated as such by the Security Council, and that where any group meets the threshold to be considered as a non-State armed group under international humanitarian law it is that framework that applies as a matter of norm primacy.**

63. **Identify and discourage interpretations of Security Council resolutions by United Nations counter-terrorism entities inconsistent with the Charter of the United Nations or with the intent of Member States negotiating and agreeing such resolutions. Such interpretations create clear obstacles for advancing peacebuilding and conflict resolution measures, and moreover may unduly undermine the intended scope of Security Council positions. The Special Rapporteur also cautions against overreach by United Nations counter-terrorism entities expanding Security Council resolutions beyond what was intended by Member States.**

64. **Engage in creative and judicious thinking within the United Nations to address exit from labelled or designated terrorist groups, avoid recruitment and mitigation of violence. This requires a whole-of-United Nations approach which is not “counter-terrorism”-led but centralizes the Sustainable Development Goals and “Our Common Agenda” as the most effective and sustainable way to prevent violence and address its root causes in society.**
