

## UNITED NATIONS FRAMEWORK ON TERRORISM AND STATES COMPLIANCE TO SECURITY COUNCIL ANTI-TERROR RESOLUTIONS

*Áquila Mazzinghy<sup>1</sup>*

*Guest Lecturer of Public International Law, the  
Istanbul Center of International Law – ICIL*

**Summary:** *Despite the lack of a universally agreed-to definition of terrorism, there is a substantial number of United Nations (UN) provisions, from the 70's up to date that deal with definitional elements of terrorism. This research scrutinized a myriad of UN counter terrorism instruments, including UN General-Assembly resolutions, reports of the Secretary-General, UN Security Council resolutions and statements by its President, resolutions of the United Nations Commission of Human Rights, resolutions of the actual Human Rights Council, drafts from the UN Ad Hoc Committee on terrorism, and other documents from the UN umbrella of organisms. The specific research objectives were: first) to discuss that, despite of this absence of a legal definition for terrorism (legality and typicity principles), there is a concept of terrorism when one reads in tandem UN documents and second) to assess states compliance with the UN framework to combat terrorism based on states reports submitted to the Security Council as well as based on the CTED Global Survey.*

**Keywords:** *Terrorism; Children and Terrorism; Security Council anti-terror resolutions; United Nations Framework on Terrorism; target sanctions.*

---

<sup>1</sup> Áquila Mazzinghy is currently an Assistant Professor at Altınbaş University Law School, Istanbul Turkey. He holds a Ph.D. in the field of International Criminal Law from the Koç University Law School, Istanbul, Turkey, 2021. He also holds an LL.M. in Human Rights and Humanitarian Law from Washington College of Law, Washington-DC, US, 2009; and an LL. B/Juris Doctor (U.S.), Federal University of Viçosa, Viçosa, Brazil, 2008. The author would like to thank distinguished professor Dr. Murat Önok, for his useful insights during the drafting of this article.

## I. Introduction: Discussion of the issue and significance of the study

Terrorism undermines human rights, law and order, and belongs to the doctrine of *jus cogens*. Terrorism knows no geographical boundaries and runs contrary to basic democratic values; it impinges upon the right to be free from fear and undermines international peace and security. Terrorism obstructs democratization by usurping the normal process of administering civil and political rights through the illegitimate use of force. Annually, terrorism leads to the displacement of millions of people, making it a major source of the refugee problem. Terrorism is an intractable issue that defies the understanding of scholars, politicians, and international actors.

Important organs of the United Nations (UN), such as the Security Council (SC), the General Assembly (UNGA) and the former Commission on Human Rights (now the Human Rights Council) have passed a number of resolutions over the years in relation to terrorism. A great number of statements from the president of UN Security Council and from the UN Secretary General has been made. UN Special Rapporteurs and ad hoc committees on issues related to terrorism were also established.

Importantly, the UN has also established the Counter Terrorism Committee (CCT) and the Counter Terrorism Committee Executive Directorate (CTED) aimed at strengthening the intelligence capabilities of states to fight terrorism and to facilitate collaboration among them. At the regional level, a number of instruments fighting terrorism has also been signed. International criminal tribunals also discussed the issue of terrorism, as for example, the ICTR and the ICTY. Hybrid Special Tribunal for Lebanon also ruled on the question.

The UN Security Council adopted various resolutions on terrorism throughout the 80's, 90's and from 2000-2017. One of the most important adopted resolutions was the 1373, established in the wake of the 9/11 attacks, declaring that acts of terrorism "constitute one of the most serious threats to the international peace and security in the twenty-first century." Resolution 1373 required states to legislate against crimes defined by suppression treaties, thus making them punishable under domestic law.

Later on, UN Security Council approved Resolution 1566 (2004). Paragraph 3 of Resolution 1566 remains one of most authoritative "definition" of terrorism available. Nevertheless, it is considered to be purely inferential, because the artificial "definition" of terrorism offered by Resolution 1566 saw many states establishing their domestic counter-terrorism legislation in accordance with resolution 1373, but based upon their own definition of the term. Consequently, there is universal consensus that resolution 1566 was too little too late,

that it has failed to resolve the problems inherent to resolution 1373 in terms of the divergence of domestic definitions.

Considering this framework, the main objectives of this paper are twofold: First: it will discuss that, despite of this absence of a legal definition for terrorism (*legality* and *typicity* principles), there is a *concept* of terrorism when one reads in tandem UN documents, including: 1) Resolutions from the General Assembly; 2) Resolutions from the UNSC, both in the preambular and dispositive parts, and those UNSC Resolutions prescribed under the Chapter VII of the UN Charter and Statements from the President of the UNSC. Second: this paper will assess the UN Security Council resolutions on measures to combat terrorism and to evaluate them based on state reports submitted to the Security Council as well as on the CTED Global Survey.

The first part of this paper deals with the first objective, the definitional elements of terrorism. There, it will be also discussed the issue of the UNSC and the UNGA resolutions on victims of terrorism, particularly the violence against children – including recruitment of children for terrorist practices, detention and rehabilitation. At the end, victims of kidnapping for ransom are contemplated.

The second part of the work is divided into two parts: First) it will assess the ways by which states may combat terrorism: target sanctions – assets freeze, travel ban, listing, arms embargo – and other measures: prevention of recruitment; ban on state support to terrorism; *Aut dedere, aut judicare*; respect for human rights while countering terrorism; respect for religious faith and cooperation among states. In the second part, this work will assess the challenges for states' compliance specifically with UN Security Council resolutions: Lack of compliance with the Counter-Terrorism Strategy Plan of Action, challenges in countering terrorism–financing; structural causes, lack of specific legislation, poor law enforcement and weak criminal justice system, and border security issues. At last, there is a pin-point on major flaws on states lack of adherence to UN Security Council resolutions.

Before the reader proceeds, there is a very important caveat: the author did not proceed to a full citation of the UN documents in the footnotes. Considering the extensive number of Resolutions, Reports and other pieces, a full citation would render the reading of this work completely impractical. To fully understand the documentation codes and abbreviations, please proceed to the section 7, “Bibliographical References”. Every footnote with more than one UN document citation is in chronological order.

## II. General trends on terrorism

### A. Terrorism in all its forms and manifestations: A criminal act that cannot be justified under any circumstances, wherever, whenever and by whomsoever is committed

Despite the lack of a universally agreed-to definition of terrorism, there is a substantial number of United Nations (UN) provisions, from the 70's up to date that deal with *definitional* elements of terrorism.<sup>2</sup> They include General Assembly resolutions and United Nations Security Council resolutions (UNSC), both in preambular and dispositive parts, and those UNSC resolutions prescribed under the Chapter VII of the UN Charter,<sup>3</sup> statements of the President of the UNSC, and particularly UNSC Resolution 1566 (2004), under the Chapter VII of the UN Charter. Although they don't fulfill the criteria of the Principle of Legality, they encompass the general UN practice towards terrorism, terrorist acts/attacks, terrorist groups, and measures to combat terrorism.

In light of all those documents, terrorism is conceived as a criminal act,<sup>4</sup> consummated or attempted,<sup>5</sup> targeting civilians<sup>6</sup> or "any other person not taking an active part in hostilities in a situation of armed conflict",<sup>7</sup> with the unlawful intent, by its nature or context,<sup>8</sup> to cause death or serious bodily injury,<sup>9</sup> taking of hostages<sup>10</sup>, or destruction of public or private property,<sup>11</sup> committed with the intention to, or calculated to, "provoke a state of terror in the general public",<sup>12</sup> in a group of persons or a particular person,<sup>13</sup> or committed aim-

<sup>2</sup> E/CN.4/2005/103. ¶ 32.

<sup>3</sup> United Nations, Charter of the United Nations. 24 October 1945. 1 UNTS XVI.

<sup>4</sup> A/RES/49/185 (1995). Preamble. p. 2; S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 3; S/PRST/2008/45. p. 1; S/RES/1904 (2009). Preamble. p. 1; A/RES/65/221 (2011). Preamble. p. 2; S/RES/2129 (2013). Preamble. p. 1.

<sup>5</sup> A/HRC/16/51. ¶ 28, practice 7.

<sup>6</sup> UN Office of the High Commissioner for Human Rights (OHCHR). Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism. July 2008. No. 32. P. 5-6.

<sup>7</sup> United Nations General Assembly. International Convention for the Suppression of the Financing of Terrorism. 9 December 1999, No. 38349, 2.b.

<sup>8</sup> Id. 2.b.

<sup>9</sup> S/RES/1822 (2008). Preamble. p. 1.

<sup>10</sup> S/RES/1566 (2004). ¶ 3.

<sup>11</sup> S/RES/1822 (2008). Preamble. p. 1; A/68/37 (2013). Article 2.b.

<sup>12</sup> A/RES/49/60 (1994). ¶ 3.

<sup>13</sup> A/RES/49/60 (1994). ¶ 3; A/RES/51/210 (1996). ¶ 2; A/RES/54/110 (1999). ¶ 2; A/RES/55/158 (2000). ¶ 2; A/RES/56/88 (2001). ¶ 2; A/RES/57/27 (2003). ¶ 2; A/RES/58/81 (2003). ¶ 2; A/RES/59/46 (2004). ¶ 2; A/RES/60/43 (2006). ¶ 2; A/RES/61/40 (2006). ¶ 4; A/RES/64/118 (2010). ¶ 4; A/RES/65/34 (2011). ¶ 4; A/RES/66/105 (2012). ¶ 4; A/RES/67/99 (2013). ¶ 4; A/RES/68/119 (2013). ¶ 4. A/RES/69/127 (2014). ¶ 4; A/RES/71/151 (2016). ¶ 4.

ing intimidation and/or undermining stability of a population,<sup>14</sup> or compelling a government or an international organization<sup>15</sup> to do or to abstain from doing any act,<sup>16</sup> “which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism”,<sup>17</sup> wherever, whenever and by whomsoever committed,<sup>18</sup> “whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other (similar) nature that may be invoked to justify them”.<sup>19</sup>

All forms and manifestations of terrorism constitute, at the same time, an unjustifiable, indefensible, strongly condemnable *criminal* act, and a gross violation of human rights, irrespective of any motivation or any circumstance that could be claimed to excuse them.<sup>20</sup> A myriad of UN counter terrorism instruments, including the UN General-Assembly resolutions,<sup>21</sup> reports of the Secretary-General,<sup>22</sup> UN Security Council resolutions<sup>23</sup> and statements by its Presi-

---

14 S/RES/1617 (2005). Preamble. p.1.

15 International Convention for the Suppression of the Financing of Terrorism. Supra note 7. Article 2.b.

16 S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 3.

17 Ibid.

18 A/RES/48/122 (1993). Preamble. p. 2; S/PRST/2005/45. p. 1; S/RES/1735 (2006). Preamble. p. 1; S/PRST/2008/45 at Preamble. p.1; S/RES/1904 (2009). Preamble. p.1; A/RES/65/221 (2011). Preamble. p. 2; A/HRC/RES/28/17 (2015). Preamble. p.2; A/HRC/28/L.30 (2015). Preamble. p.2; A/HRC/29/L.17/Rev.1 (2015). ¶ 3; S/PRST/2015/8. P. 2; S/PRST/2015/11. p. 1; A/RES/70/291 (2016). Preamble. p. 1; A/RES/71/151 (2016). ¶ 1.

19 A/RES/49/60 (1994). ¶ 3; A/RES/51/210 (1996). ¶ 2; A/RES/54/110 (1999). ¶ 2; A/RES/55/158 (2000). ¶ 2; A/RES/56/88 (2001). ¶ 2; A/RES/57/27 (2003). ¶ 2; A/RES/58/81 (2003). ¶ 2; A/RES/59/46 (2004). ¶ 2; S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 3; A/RES/60/43 (2006). ¶ 2; A/RES/61/40 (2006). ¶ 4; A/RES/64/118 (2010). ¶ 4; A/RES/65/34 (2011). ¶ 4; A/RES/66/105 (2012). ¶ 4; A/RES/67/99 (2013). ¶ 4; A/RES/68/119 (2013). ¶ 4; S/PRST/2013/1. p. 1; A/RES/71/151 (2016). ¶ 4.

20 S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 3; A/RES/64/118 (2010). ¶ 4.

21 A/RES/48/122 (1993). ¶ 1; A/RES/49/60 (1994). ¶ 1; A/RES/52/133 (1997). ¶ 4; A/RES/51/210 (1997). ¶ 1; A/RES/53/108 (1998). Preamble. p. 1; A/RES/54/110 (1999). Preamble. p. 1; A/RES/54/164 (1999). ¶ 4; A/RES/55/158 (2000). ¶ 1; A/RES/56/88 (2001). Preamble. p. 1; A/RES/57/27 (2003). ¶ 1; A/RES/58/81 (2003). Preamble. p. 2; A/RES/61/40 (2006). ¶ 1; A/RES/65/221 (2011). Preamble. p. 2; A/RES/66/105 (2011) (2011). Preamble. p. 2, ¶ 1; A/RES/66/171 (2011). Preamble. p. 2; A/RES/67/99. Preamble. p. 2; A/RES/68/119 (2013). ¶ 1; A/RES/69/127 (2014). ¶¶ 1, 4; A/RES/70/120 (2015). Preamble. p. 3; A/RES/70/148 (2015). ¶ 1; A/RES/70/291 (2016). Preamble. p. 1; A/RES/71/151 (2016). ¶ 1. A/RES/70/291 (2016). ¶ 1.

22 A/60/825 (2006). ¶ 9; A/60/825 (2006). ¶ 10.

23 S/RES/1269 (1999). Preamble. p. 1; S/RES/1456 (2003). Annex. Preamble. p. 1; S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 1; S/RES/1617 (2005). Preamble. p. 1; S/RES/1735 (2006). Preamble. p. 1; S/RES/1822 (2008). Preamble. p. 2; S/RES/1904 (2009). Preamble. p. 1; S/RES/2129 (2013). Preamble. p. 1; S/RES/2139 (2014). ¶ 14; S/RES/2170 (2014). Preamble. p. 1; S/RES/2253 (2015). Preamble. p. 1; S/RES/2341 (2017). Preamble. p. 1; S/RES/2322 (2016). Preamble. p. 1.

dent,<sup>24</sup> <sup>25</sup> United Nations Commission of Human Rights resolutions<sup>26</sup> and the resolutions of the actual Human Rights Council,<sup>27</sup> and drafts from the UN Ad Hoc Committee on terrorism,<sup>28</sup> and other documents from the UN umbrella of organisms,<sup>29</sup> incisively, repeatedly and in unison stress the very same *verbatim*: “wherever, whenever and by whomsoever” it is committed, terrorism is an defenseless, unreasonable criminal act and founds no justification of any order. It also constitutes a violation of the Charter of the United Nations<sup>30</sup> as well as a violation of international human rights law, refugee law and humanitarian law. It constitutes a serious threat to the rule of law and to peace and security.

Despite the fact that many UN organisms do not define terrorism, many of its documents repeatedly label certain acts as being acts/attacks of terrorism and/or international terrorism,<sup>31</sup> “heinous act of terrorism,”<sup>32</sup> “acts of violent extremist ideology”.<sup>33</sup> UN also label certain conducts as being “terrorist activities”,<sup>34</sup> “multiple criminal terrorist acts”<sup>35</sup> or terrorist assault.<sup>36</sup> Various UNSC resolu-

24 S/PRST/2000/38. p. 1; S/PRST/2004/14. p. 1; S/PRST/2004/31. p. 1; S/PRST/2005/45. p. 1; S/PRST/2005/53. p. 1; S/PRST/2005/55. p. 1; S/PRST/2006/30. p. 1; S/PRST/2007/10. p. 1; S/PRST/2007/11. p. 1; S/PRST/2007/32. p. 1; S/PRST/2007/39. p. 1; S/PRST/2007/45. p. 1; S/PRST/2007/50. p. 1; S/PRST/2008/19. p. 1; S/PRST/2008/31. p. 1; S/PRST/2008/32. p. 1; S/PRST/2008/35. p. 1; S/PRST/2008/45. p. 1; S/PRST/2009/1. p. 1; S/PRST/2009/22. p. 1; S/PRST/2010/4. p. 2; S/PRST/2013/1. p. 1; S/PRST/2013/5. p. 1; S/PRST/2013/15. p. 2; S/PRST/2015/8. p. 2; S/PRST/2015/11. p. 1.

25 For a better comprehension of the meaning and scope of the statements of the President of the Security Council, please refer to: Talmon, Stefan. The Statements by the President of the Security Council. 2 Chinese J. Int'l L. 419 2003. pp.419-466 at 419-420.

26 E/CN.4/2003/37. Preamble. p. 1-2, ¶ 1; E/CN.4/2005/L.10/Add.17. Preamble. p. 2.

27 A/HRC/RES/10/15 (2009). ¶ 4; A/HRC/29/L.17/Rev.1 (2015). ¶ 3; A/HRC/28/L.30 (2015). Preamble. p. 2; A/HRC/RES/28/17 (2015). Preamble. p. 2; A/HRC/RES/29/9 (2015). ¶ 3.

28 A/66/37 (2011). ¶ 1.

29 United Nations Educational, Scientific and Cultural Organization – UNESCO. General Conference, 31st session. General Resolutions. Resolution 39. Paris, 15 October – 3 November 2001. (31 C/Resolution 39). ¶ 8.

30 Charter of the United Nations. Supra note 3.

31 A/RES/49/60 (1994). Annex. p. 2-3; S/PRST/1994/40. p. 1; A/RES/49/185 (1995). ¶ 3; A/RES/50/186 (1995). Preamble. p. 1; S/RES/1373 (2001). Preamble. p. 1, ¶¶ 1.b, 1.d, 2.c; A/RES/61/40 (2006). Preamble. p. 1; A/RES/62/71 (2008). Preamble. p. 1; S/PRST/2008/19 (2008). p. 1; S/RES/1989 (2011). Preamble. p. 1; S/PRST/2011/9. p. 1; S/PRST/2014/11 at 2; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 4; S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 1; S/2015/144 (2015). ¶ 72; S/PRST/2016/6 (2016). p. 1.

32 S/PRST/2007/45. p. 1; S/PRST/2007/50. p. 1; S/PRST/2008/31. p. 1; A/RES/62/71 (2008). Preamble. p. 1.

33 S/RES/1735 (2006). Preamble. p. 1; S/PRST/2014/23. p. 1; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 1; S/RES/2253 (2015). Preamble. p. 1; S/RES/2255 (2015). Preamble. p. 2; S/PRST/2016/9 at 2.

34 S/RES/2145 (2014). Preamble. p. 5; S/2014/9 (2014). ¶ 8; S/PRST/2014/11. p.2; S/RES/2210 (2015). Preamble. p. 5.

35 S/RES/1455 (2003). Preamble. p. 1; S/RES/1617 (2005). Preamble. p. 1; S/RES/1735 (2006). Preamble. p. 1; S/RES/1822 (2008). Preamble. p. 1; S/RES/1904 (2009). Preamble. p. 1; S/PRST/2011/9. p. 1; S/RES/2253 (2015). Preamble. p. 1; S/RES/2322 (2016). Preamble. p. 1.

36 S/1995/867 (1995). p. 1.

tions – many of them under Chapter VII of the Charter of the United Nations<sup>37</sup> – and statements from its President and UN General Assembly resolutions and reports presume certain legal concepts, making use of them, sometimes with definitional elements, sometimes without any definition, such as terrorists,<sup>38</sup> terrorist groups,<sup>39</sup> terrorist organizations,<sup>40</sup> international terrorist organizations,<sup>41</sup> extremist groups,<sup>42</sup> associated terrorist groups,<sup>43</sup> members of terrorist groups,<sup>44</sup> terrorist fighters<sup>45</sup> or foreign terrorist fighters.<sup>46</sup>

UN organisms specifically name certain groups as “terrorist” and accounts them in the practice of terrorism. Four of those groups, for example, responded for at least 74% of all “terrorism deaths” that happen in the world in 2015.<sup>47</sup> They are cited in numerous UN documents from various organisms of UN umbrella: 1) The Islamic State in Iraq and the Levant (ISIL, also known as Da’esh) and associated individuals, groups, undertakings, and entities;<sup>48</sup> 2) Al-Qaida;<sup>49</sup>

37 S/RES/748 (1992), under Chapter VII – UN Charter. ¶ 2; S/RES/1373 (2001), under Chapter VII – UN Charter. ¶¶ 1.c, 2.a, 2.b, 2.d, 2.e, 2.g;

S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 8; S/RES/2178 (2014), under Chapter VII – UN Charter. ¶¶ 1, 4, 13.

38 S/2014/9 (2014). ¶ 11.

39 A/RES/48/122 (1993). Preamble. p. 2; S/1995/867 (1995). p. 1; S/2013/661 (2013); S/PRST/2015/14. p.3; S/PRST/2015/25. Preamble. p. 1;

S/RES/2322 (2016). Preamble. p. 2.

40 S/RES/2210 (2015). Preamble. p. 10.

41 S/RES/2210 (2015). Preamble. p. 4.

42 S/RES/1833 (2008). Preamble. p. 2; S/RES/1868 (2009). Preamble. p. 2.

43 S/PRST/2011/9. p. 1; S/RES/2255 (2015). Preamble. p. 2; S/RES/2120 (2013). Preamble. p. 4; S/RES/2096 (2013). Preamble. p. 5.

S/RES/2322 (2016). Preamble. p. 2.

44 S/2013/661 (2013). ¶ 54.

45 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 8.

46 A/RES/68/276 (2014). ¶ 31; A/RES/69/127 (2014). ¶ 9; S/PRST/2014/23. p.1, 4; A/RES/70/177 (2015). ¶ 2; A/RES/70/291 (2016). ¶¶ 44, 51, 54.

47 A/HRC/34/30. ¶ 17;

48 S/2013/661 (2013). ¶ 54; S/PRST/2014/23. p. 1; S/PRST/2014/20. p. 1-2; S/RES/2170 (2014), under Chapter VII – UN Charter. Preamble. p. 1, ¶¶ 1, 4; S/RES/2249 (2015). ¶ 3; S/RES/2199 (2015), under Chapter VII – UN Charter. Preamble. p. 5, ¶ 15; S/RES/2253 (2015). Preamble. p. 1. Preamble. p. 2, 5; S/RES/2255 (2015). Preamble. p. 1; S/PRST/2015/25. Preamble. p. 1; A/HRC/34/30 (2016). ¶ 17; A/RES/70/291 (2016). ¶ 68;

S/PRST/2016/6 (2016). p. 1; S/PRST/2016/14. p. 1; S/RES/2322 (2016). Preamble. p. 1, 2.

49 S/RES/1333 (2000), under Chapter VII – UN Charter. ¶ 8.c; S/RES/1617 (2005). Preamble. p. 1; S/RES/1735 (2006). Preamble. p. 1; S/RES/1776 (2007). Preamble. p. 1-2. Preamble. p. 10; S/RES/1822 (2008). Preamble. p. 1; S/RES/1833 (2008). Preamble. p. 1. Preamble. p. 2; S/RES/1868 (2009). Preamble. p. 2; S/RES/1904 (2009). Preamble. p. 1; S/PRST/2011/9. p. 1; S/RES/2051 (2012). Preamble. p. 1; S/RES/2120 (2013). Preamble. p. 4; S/PRST/2013/15. p.2; S/RES/2145 (2014). Preamble. p. 5; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 4; S/2014/9 (2014). ¶ 6. ¶ 7 and. ¶ 11; S/PRST/2014/11. p.2; S/PRST/2014/23. p. 1; S/PRST/2014/23. Preamble. p. 1; S/RES/2199 (2015). Preamble. p. 5; S/RES/2253 (2015). Preamble. p. 1; S/RES/2255 (2015). Preamble. p. 2. Preamble. p. 5; S/RES/2210 (2015). Preamble. p. 4; S/RES/2322 (2016). Preamble. p. 1,2; S/PRST/2016/6 (2016). p. 1; S/PRST/2016/14. p. 1; A/RES/70/291 (2016). ¶ 68; A/HRC/34/30 (2016). ¶ 17.

and their affiliates in the Middle East and North Africa and beyond – Al Nusrah Front (ANF) –<sup>50</sup> 3) the Taliban — “which also calls itself the Islamic Emirate of Afghanistan and associated individuals, groups, undertakings and entities” —<sup>51</sup> and 4) Boko Haram.<sup>52</sup>

Individuals of these groups are accused of countless atrocities and gross violations of human rights law and international humanitarian law,<sup>53</sup> which includes – but are not limited to –: violent extremism,<sup>54</sup> widespread attacks directed against civilians,<sup>55</sup> killings, mass executions, extrajudicial killings,<sup>56</sup> suicide attacks,<sup>57</sup> terrorist bombing, including bombing of schools<sup>58</sup> and hospitals,<sup>59</sup> arbitrary detention,<sup>60</sup> persecution of individuals on the basis of their religion or belief,<sup>61</sup> kidnappings and abductions of children for indoctrination in their ideology, for recruitment into their fighting force or to sexual violence and forced marriage,<sup>62</sup> recruitment of supporters and financiers, including foreign terrorist fighters,<sup>63</sup> hostage-taking, rape, sexual slavery and other sexual violence, pillaging, destruction of civilian property,<sup>64</sup> forced displacement of individuals of minority groups,<sup>65</sup> incidental or deliberate destruction of cultural heritage,<sup>66</sup> in-

50 S/RES/2170 (2014), under Chapter VII – UN Charter. Preamble. p. 1, ¶ 4; S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 15;

S/RES/2253 (2015). Preamble. p. 5; S/PRST/2014/23. p. 1.

51 S/RES/1267 (1999), under Chapter VII – UN Charter. ¶ 1; S/RES/1333 (2000), under Chapter VII – UN Charter. ¶ 5.c, 8.a, 10, 11; A/55/633–S/2000/1106 (2000). ¶¶ 9, 10; S/RES/1617 (2005). Preamble. p. 1; S/RES/1735 (2006). Preamble. p. 1; S/RES/1776 (2007). Preamble. p. 1-2; A/62/345–S/2007/555 (2007). ¶ 2. S/RES/1822 (2008). Preamble. p. 1; S/RES/1833 (2008). Preamble. p. 1-2; S/RES/1868 (2009). Preamble. p. 2; S/RES/1904 (2009), Preamble. p. 1; under Chapter VII – UN Charter. ¶ 1; A/HRC/RES/1817 (2011). Preamble. p. 1; S/RES/2096 (2013). Preamble. p. 5; S/RES/2120 (2013). Preamble. p. 4; S/RES/2145 (2014). Preamble. p. 5; S/PRST/2014/11. p.2; S/RES/2210 (2015). Preamble. p. 5; S/RES/2255 (2015). Preamble. p. 2; S/PRST/2016/14. p. 1; A/HRC/34/30 (2016). ¶ 17.

52 S/2014/9 (2014). ¶ 9; S/2014/442 (2014). ¶¶ 21, 65; S/PRST/2015/4. p. 1; S/PRST/2015/14. p.3; S/PRST/2015/25. Preamble. p. 1; A/HRC/30/67 (2015). ¶¶ 2, 17, 29, 44; S/PRST/2016/11. p.2.

53 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2; A/HRC/30/67 (2015). ¶ 2.

54 S/RES/2096 (2013). Preamble. p. 2.

55 S/RES/2249 (2015). Preamble. p. 1;

A/RES/70/291 (2016). ¶ 68.

56 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

57 S/PRST/2007/50. p. 1.

58 S/2013/661 (2013). ¶ 37.

59 S/RES/1664 (2006). Preamble. p. 1; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

60 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

61 Ibid.

62 S/RES/2199 (2015), Preamble. p. 2; under Chapter VII – UN Charter. ¶ 2; S/RES/2253 (2015). Preamble. p. 5; A/69/926–S/2015/409. ¶ 7;

A/HRC/29/51 (2015). ¶ 28; A/HRC/30/67 (2015). ¶ 29.

63 A/RES/70/291 (2016), para 54; S/PRST/2014/23. p. 1.

64 S/PRST/2014/20. p. 1-2; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2; S/PRST/2015/4. p. 1; A/HRC/30/67 (2015). ¶ 2.

65 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

66 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 15.



cluding the destruction of religious sites and objects,<sup>67</sup> trafficking of cultural property,<sup>68</sup> weakening or destruction of economic, social and cultural rights,<sup>69</sup> use of national territory for installations of camps to serve as areas for preparation, training, support and/or organization of terrorist acts,<sup>70</sup> trafficking of weapons and ammunition, including military and paramilitary vehicles and equipment,<sup>71</sup> drug trafficking and oil trade.

Most of the UN documents are convergent on at least one point: terrorism has serious consequences on states:

- 1) Terrorism frequently has transboundary effects<sup>72</sup> in flagrant disregard for the territorial integrity of the states,<sup>73</sup> what frontally threatens the principle of independence<sup>74</sup> and respect for sovereignty,<sup>75</sup> running contrary to the principles of the UN Charter;<sup>76 77</sup>
- 2) Terrorism seriously threatens peace and security of the international community,<sup>78</sup> weakening the unity of states<sup>79</sup> and has a deleterious effect<sup>80</sup> on the peaceful relations between them;<sup>81</sup>

---

67 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2; S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 15.

68 S/RES/2249 (2015). Preamble. p. 1.

69 S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

70 S/RES/1333 (2000), under Chapter VII – UN Charter. ¶ 1.

71 *Id.* ¶ 5.a.

72 S/2014/9 (2014). ¶ 15.

73 A/RES/48/122 (1993). Preamble. p. 1; A/RES/49/185 (1995). ¶ 1; A/RES/50/186 (1995). ¶ 2; A/RES/52/133 (1997). ¶ 3; E/CN.4/2003/37. ¶ 1; A/66/37 (2011). ¶ 1; A/RES/66/171 (2011). Preamble. p. 2; A/RES/70/291 (2016). Preamble. p. 2.

74 A/RES/70/291 (2016). Preamble. p. 2.

75 *Ibid.*

76 A/RES/49/60 (1994). ¶ 2; S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 5; A/RES/70/291 (2016). Preamble. p. 2.

77 United Nations, Charter of the United Nations. *Supra* note 3.

78 A/RES/50/186 (1995). ¶ 2; S/RES/1044 (1996). Preamble. p. 1; S/RES/1390 (2002). Preamble. p. 2; E/CN.4/2005/103. ¶ 4; S/PRST/2010/19. p. 1; A/55/37 (2010). ¶ 16; A/66/37 (2011). ¶ 1; S/RES/2129 (2013). Preamble. p. 1; S/PRST/2013/5. p. 1; S/PRST/2015/14. p. 1.

79 A/RES/70/291 (2016). Preamble. p. 2.

80 S/RES/1044 (1996). Preamble. p. 1.

81 A/RES/49/60 (1994). Preamble. p. 1; S/RES/1455 (2003). Preamble. ¶ 1; S/PRST/2008/45. p. 1; S/RES/1904 (2009). Preamble. p. 1; S/RES/2129 (2013). Preamble. p. 1; S/RES/2253 (2015). Preamble. p. 1; S/RES/2322 (2016). Preamble. p. 1; S/RES/2341 (2017). Preamble. p. 1.

- 3) The threat of terrorism subverts governments legitimately constituted,<sup>82</sup> and, in a more diffuse way,<sup>83</sup> challenges global stability<sup>84</sup> and the rule of law in the social order;<sup>85</sup>
- 4) Terrorism imposes substantial obstacles for the “functioning of democratic institutions worldwide”,<sup>86</sup> and, ultimately, empty the very core of the concept of a pluralistic civil society,<sup>87</sup> undermining democracy and the democratic bases of society with all its institutions;<sup>88</sup>
- 5) Terrorism “impairs global prosperity”<sup>89</sup> and erode the main foundations of economic development of States.<sup>90</sup>

### B. Terrorism: a practice that destroys basic human rights, fundamental freedoms and democracy

The unequivocal condemnation of terrorist acts, methods and practices<sup>91</sup> lays down its foundations in the fact that terrorist attacks are either *willfully aimed* at the destruction of human rights<sup>92</sup> or, it *constitutes a consequence* of gross violations of basic human rights.<sup>93</sup> In either way, an environment of deleterious effect on the enjoyment of fundamental freedoms and human dignity is, then, created,<sup>94</sup> imposing a serious threat to the full enjoyment and exercise of human rights.<sup>95</sup> Most of the times, terrorist acts constitute a violation of international humanitarian law, with “devastating humanitarian impact on the civilian population”,<sup>96</sup> which represents an attack against the whole humanity.<sup>97</sup>

82 A/RES/50/186 (1995). ¶ 2; A/RES/52/133 (1997). ¶ 3; A/RES/49/185 (1995). ¶ 1; E/CN.4/2003/37. ¶ 1; A/RES/70/291 (2016). Preamble. p. 2.

83 S/RES/2129 (2013). Preamble. p. 1.

84 S/RES/1735 (2006). Preamble. p. 1; S/RES/1822 (2008). Preamble. ¶ 1. S/PRST/2010/19. p. 1; A/66/37 (2011). ¶ 1; S/RES/2129 (2013). Preamble. p. 1-2.

85 A/RES/48/122 (1993). ¶ 1; E/CN.4/2003/37. Preamble. p. 2.

86 A/59/37 (2003).

87 A/RES/48/122 (1993). ¶ 1; A/RES/50/186 (1995). ¶ 2; A/RES/52/133 (1997). ¶ 3; E/CN.4/2003/37. ¶ 1.

88 A/RES/49/60 (1994). ¶ 2; A/RES/49/185 (1994). ¶ 1; E/CN.4/2003/37. Preamble. p. 2; ¶ 1; E/CN.4/2005/103. ¶ 4.

89 S/PRST/2010/19. p. 1; S/PRST/2011/5. p.2; S/RES/2129 (2013). Preamble. p. 1.

90 A/RES/52/133 (1997). ¶ 3; E/CN.4/2003/37. ¶ 1; S/RES/1624 (2005). Preamble. p. 1; S/PRST/2010/19. p. 1; S/PRST/2013/5. p. 1; S/RES/2129 (2013). Preamble. p. 1.

91 A/RES/50/186 (1995). ¶ 2.

92 A/RES/48/122 (1993). ¶ 1; A/RES/49/60 (1994). Preamble. p. 1; A/RES/49/185 (1995). ¶ 1; A/RES/52/133 (1997). ¶ 3; S/PRST/2013/5 (2013). p. 1; A/RES/68/276 (2014). Preamble. p. 2; A/RES/70/291 (2016). Preamble. p. 2.

93 A/RES/49/185 (1995). Preamble. p. 2; A/RES/54/164 (1999). Preamble. p. 2; A/55/37 (2010). ¶ 16.

94 A/RES/3034 (1972). ¶ 1; A/31/242 (1976). Annex. ¶ 5; A/RES/48/122 (1993). ¶ 1; A/RES/49/60 (1994). Preamble. p. 1; A/RES/50/186 (1995). ¶ 1; A/60/825 (2006). ¶ 32.

95 E/CN.4/2003/37; S/RES/1624 (2005). Preamble. p. 1; E/CN.4/2005/103. ¶ 4; S/PRST/2010/19. p. 1; A/66/37 (2011). ¶ 1; S/RES/2129 (2013). Preamble. p. 1.

96 S/RES/2170 (2014). Preamble. p. 1; S/RES/2249 (2015). Preamble. p. 1; S/PRST/2015/15. p. 1.

97 UNESCO. Resolution 39. ¶ 3. *Supra* note 29.

Within the human rights catalogue, the right to life and the right to personal integrity – *security of a person* – are the most essential, basic human rights.<sup>98</sup> They are considered a *sine-qua-non* requisite for the enjoyment of human dignity and for developing human personality.<sup>99</sup> In fact, when taking into consideration the UN Charter,<sup>100</sup> the Universal Declaration of Human Rights on its article 3 and 5,<sup>101</sup> and the International Covenant on Civil and Political Rights (ICCPR), under articles 6 and 4, para 2,<sup>102</sup> one can deduce that the right to life has been lifted as a supreme, non-derogable right,<sup>103</sup> even in a scenario of emergency situations.<sup>104</sup> Terrorist attacks, which are invariably a sub-product of intolerance and extremism, are in direct collision course with the full enjoyment of the right to life,<sup>105</sup> personal integrity – security of persons.<sup>106</sup>

Protection of the right to life and the right to personal security of a person constitutes a key component and *raison d'être* of states and it is a core element of their practices.<sup>107</sup> Consequentially, every *arbitrary-unlawful* privation of the right to life constitutes a serious risk for the international peace and security.<sup>108</sup> Under article 6 of the ICCPR, states have a positive legal obligation, of domestic and international law nature,<sup>109</sup> to “protect the lives of individuals within its jurisdiction”.<sup>110</sup> States are, thus, urged to act proactively, by creating a legal framework protective of the right to life, enacting domestic criminal prohibitions of terrorism practices, including all forms of participation in the terrorist machinery, at any stage of the crime.

Another two basic human rights under the UN umbrella refers to the fact that every individual is entitled the right of freedom from fear and has the right to enjoy peace.<sup>111</sup> Both UN Universal Declaration<sup>112</sup> and the ICCPR<sup>113</sup> envisage these rights in their preambular sections. Also, a considerable number of UN documents points to the fact that “terrorism, in all its forms and manifestations,

---

98 A/RES/48/122 (1993). Preamble. p. 1; A/RES/49/185 (1995). Preamble. p. 1; A/RES/50/186 (1995). Preamble. p. 1-2; A/RES/52/133 (1997). ¶ 2; E/CN.4/2003/37. Preamble. p. 2, ¶2.

99 A/HRC/28/L.30 (2015). Preamble. p. 2.

100 United Nations. Charter of the United Nations. Supra note 3.

101 United Nations, General Assembly. Universal Declaration of Human Rights. 10 December 1948.

102 United Nations. International Covenant on Civil and Political Rights. 16 December 1966.

103 A/HRC/34/30 (2016). ¶ 16.

104 E/CN.4/2005/103. ¶ 10.

105 S/RES/1624 (2005). Preamble. p. 1.

106 A/HRC/31/L.13. Preamble. p. 1.

107 A/HRC/2014. ¶ 17.

108 A/HRC/28/L.30 (2015). Preamble. p. 2.

109 A/HRC/2014. ¶ 19.

110 A/HRC/2014. ¶ 18.

111 A/HRC/RES/32/28. Article 1.

112 Universal Declaration of Human Rights. Supra note 101. Preamble.

113 International Covenant on Civil and Political Rights. Supra note 102. Preamble.

creates an environment that destroys the ideal of free human beings enjoying freedom from fear and want.”<sup>114</sup> Freedom from fear is also understood as “a means to build peace within and between societies”.<sup>115</sup> Accordingly, along with the protection of the right to life and security, states are equally under the duty to guarantee that no violation of those rights occur under their jurisdictions.

### III. Victims of terrorism

All forms and manifestations of terrorism substantially depend on the “denial of the humanity of its victims.”<sup>116</sup> The multiple criminal indiscriminate acts of violence,<sup>117</sup> the terror<sup>118</sup>, all the massacres and deliberate targeting of innocent civilians<sup>119</sup> from numerous nationalities and diverse beliefs<sup>120</sup>, particularly affecting women, children and the elderly people,<sup>121</sup> suppress victims of terrorism from the enjoyment of their most fundamental human rights,<sup>122</sup> including the right to life and the right for health<sup>123</sup>. Terrorism also deprive its victims from the right to housing and standard of living, as it unfairly displaces millions of people, in a flagrant disregard of what is inscribed on article 25 of Universal Declaration of Human Rights, on article 11 of the International Covenant on Economic, Social and Cultural Rights and on article 27 of the Convention on the Rights of the Child.<sup>124</sup>

The participation of terrorist groups in armed conflicts only increases even further the problem of the necessary distinction between civilians and combatants.<sup>125</sup> That constitutes, at the same time, a driving factor increasing the level of suffering of the non-combatants<sup>126</sup>, and, at the same time, sums up a “new and difficult set of challenges to (the) work on the protection of civilians.”<sup>127</sup> Much more than deploring the suffering caused by terrorism<sup>128</sup> to its victims and their

114 A/RES/50/186 (1995). Preamble. p. 1; A/RES/52/133 (1997). ¶ 2; E/CN.4/2003/37. Preamble. p. 2.

115 A/HRC/RES/32/28. Article 2.

116 A/60/825 (2006). ¶ 22; A/RES/68/276 (2014). ¶ 15; A/HRC/34/30 (2016). ¶ 49; A/RES/70/291 (2016). ¶ 24.

117 E/CN.4/2003/37. Preamble. p. 2.

118 A/RES/48/122 (1993). Preamble. p. 2.

119 S/RES/1044 (1996). ¶ 1; S/RES/1617 (2005). Preamble. p. 1; S/RES/2083 (2012). Preamble. p. 1; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 2.

120 S/RES/1624 (2005). Preamble. p. 2.

121 A/RES/48/122 (1993).

122 A/60/825 (2006). ¶ 6.

123 A/HRC/34/30 (2016). ¶ 6.

124 A/60/825 (2006). p. 15; A/RES/68/276 (2014). Preamble. p. 2; S/RES/2170 (2014). Preamble. p. 1.

125 S/2002/1300 (2002). ¶ 12.

126 Id. ¶ 63.

127 Id. ¶ 61.

128 S/PRST/2010/19. p.2; A/HRC/29/L.17/Rev.1 (2015). 29 June 2015. ¶ 6.

families<sup>129</sup> and offering them condolences,<sup>130</sup> profound solidarity<sup>131</sup> and deepest sympathy,<sup>132</sup> states are called to play an active role in helping victims and their families in coping with their loss and grief,<sup>133</sup> by “providing them support and assistance for their needs and their rights,”<sup>134</sup> whereas judicially, psychologically, financially or of other nature, making the most to ultimately preserve their human rights.<sup>135</sup>

Providing the victims, whereas direct, secondary, indirect or potential victims of terrorism,<sup>136</sup> and their families in their needs and rights embodies a practice that stands as a best practice: rebuilding a victim’s life contributes to lessen “tensions in society that might themselves result in conditions conducive to recruitment to terrorism.”<sup>137</sup> To address that practice, states are urged, among other measures, to: 1) Take measures to challenge the problems that “dehumanization” of victims of terrorism can cause;<sup>138</sup> 2) Create a state’s policy for compensation of victims of terrorism and “victims of counter-terrorism measures in a timely fashion;”<sup>139</sup> 3) Provide, in accordance with international law, human rights law and refugee law, support and conditions for remembrance, international solidarity, dignity and justice, truth and respect,<sup>140</sup> and 4) Ensure the inviolability of the civilian at all times;<sup>141</sup> 5) Recognize that victims of ter-

---

129 A/RES/50/186 (1995). ¶ 1; A/RES/52/133 (1997). ¶ 1; S/PRST/2010/19. p.2; A/RES/68/276 (2014). ¶ 15; A/HRC/28/L.30 (2015). ¶ 12;

A/HRC/29/L.17/Rev.1 (2015). ¶ 6; A/HRC/RES/28/17 (2015). ¶ 12; A/RES/70/291 (2016). ¶ 24.

130 S/RES/1189 (1998). ¶ 2.

131 S/RES/1624 (2005). Preamble. p. 2.

132 S/PRST/2005/22. p. 1.

133 S/RES/1624 (2005). Preamble. p. 2.

134 A/RES/65/221 (2011). ¶ 2; A/RES/66/282 (2012). ¶ 10; A/RES/68/276 (2014). ¶ 15; A/HRC/29/L.17/Rev.1 (2015). ¶ 6; A/HRC/28/L.30 (2015). ¶ 12; A/RES/70/291 (2016). ¶ 24.

135 A/HRC/28/L.30 (2015). ¶ 12.

136 The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism”, Ben Emmerson, identified, on his 2014 report four categories of victims of terrorism: “1) Direct victims of terrorism: Natural persons who have been killed or have suffered serious physical or psychological injury as the result of an act of terrorism; 2) Secondary victims of terrorism: Natural persons who are the next of kin or dependents of a direct victim of terrorism; 3) Indirect victims of terrorism: Individuals who have suffered serious physical or psychological injury as the indirect result of an act of terrorism; 4) Potential victims of terrorism: For the purposes of promoting a comprehensive statement of basic rights and obligations in this sphere, potential victims of future terrorist acts are an important additional category.” (A/HRC/2014. ¶ 16.)

137 A/HRC/16/51. ¶ 24.

138 A/RES/70/291 (2016). Preamble. p. 3.

139 A/HRC/16/51. ¶ 24.

140 A/RES/68/276 (2014). Preamble. p. 2, ¶ 15; A/RES/70/291 (2016). ¶ 24.

141 A/60/825 (2006). ¶ 13.

rorism have a substantial role in countering terrorism practices,<sup>142</sup> in “bravely speaking out against violent and extremist ideologies.”<sup>143</sup>

### A. Violence against children

Terrorist activities always pose a strongly deplorable threat to peace and security and result, in numerous situations, in a high number of civilian casualties, from which children are among the most affected and disadvantaged.<sup>144</sup> Children are disproportionately and gravely affected by Indiscriminate and arbitrary acts of terror, violence, abuses and violations of humanitarian law and human rights perpetrated by terrorist groups.<sup>145</sup> These acts have been systematic and increasing year-by-year.<sup>146</sup> Children are either a direct target of acts of violence or are an indirect victim of terror intended to inflict entire communities in civilian areas,<sup>147</sup> provoking “worldwide outrage”.<sup>148</sup>

These attacks have been widely documented:<sup>149</sup> children have been killed, either as a *consequence* of the attack or *willfully* in summary executions. They have been maimed, raped or suffered other forms of sexual violence;<sup>150</sup> they have been abducted, kidnapped, tortured and have suffered from arbitrary detection and other ill and inhuman treatment. Girls have been forced to marry and to carry equipment and weapons. Consistent reports show that children have been increasingly used as human shields.<sup>151</sup> <sup>152</sup> In most cases, these conducts may amount to crimes against humanity, war crimes and may even constitute a violation of the Convention on the Rights of the Child and its Optional Protocol, concerning the involvement of children in armed conflict.<sup>153</sup> United Nations organs, particularly the UNSC, have always urged the international community of states to make efforts hold accountable those who perpetrate these barbaric acts of terror against children, and to work to ensure that these violators of human rights and humanitarian law against children are brought to justice.<sup>154</sup>

142 A/RES/68/276 (2014). Preamble. p. 2.

143 S/PRST/2010/19. p.2.

144 S/RES/1917 (2010). Preamble. p. 3; S/RES/1988 (2011). Preamble. p. 1; S/RES/2041 (2012). Preamble. p. 5; S/RES/2082 (2012). Preamble. p. 1; S/RES/2096 (2013). Preamble. p. 5; S/RES/2120 (2013). Preamble. p. 4; S/RES/2145 (2014). Preamble. p. 5; S/PRST/2014/12. p.2; S/PRST/2015/4. p. 1.

145 A/RES/48/122 (1993). Preamble. p. 2; S/2013/661 (2013). ¶ 37; S/RES/2170 (2014). ¶ 2; S/PRST/2015/4. p. 1.

146 A/RES/48/122 (1993). Preamble. p. 2.

147 S/2013/661 (2013). ¶ 37; A/69/926–S/2015/409. ¶ 11.

148 A/69/926–S/2015/409. ¶ 11.

149 A/HRC/29/51 (2015). ¶ 28.

150 A/RES/70/291 (2016). Preamble. p. 3.

151 A/HRC/30/67 (2015). ¶ 44.

152 A/HRC/29/51 (2015). ¶ 28.

153 S/PRST/2014/20. p. 1-2; A/HRC/29/51 (2015). ¶ 28; A/RES/70/291 (2016). Preamble. p. 3.

154 S/PRST/2014/20. p. 1-2.

Also, the abuse and violence against children committed by terrorist groups frequently involves attacks on the right to education. They operate in three fronts: 1) the destruction of the very idea of education and curriculum as well and 2) the physical destruction of educational institutions. Reports shows that extreme violence attacks targeting schools is emblematic and a common practice.<sup>155</sup> A 2014 report from the UNSC, for example, shows a suicide bomber driving a truck “packed with explosives into the playground of a primary school, (...) killing 10 schoolchildren and injuring over 90”.<sup>156</sup> A particularly alarming situation is related to schools located in areas controlled by extremist armed groups.<sup>157</sup> In these cases, education is also used as an instrument for indoctrination.<sup>158</sup> Terrorist organizations changes the school curriculum as a tool “to reflect the groups’ ideology.”<sup>159</sup> Very frequently, children in these areas are reportedly forced to watch horrific videos of terrorist attacks, including the killing of hostages, mass executions, beheadings, ill treatment of abducted people, torture, rape, forced amputations and enslavement to make them insensitive to the terror disseminated by terrorist groups.<sup>160</sup>

The third front is the use of educational places to recruit children for terrorist acts. Abduction and the consequent recruitment and use of children for perpetration of terrorist attacks constitutes a deep outrage.<sup>161</sup> This condemnable and deplorable abuse of human rights by terrorist groups leads, most of the times, to other violations, such as killing and maiming, sexual violence, torture, forced disappearance and enslavement of children.<sup>162</sup><sup>163</sup> According to testimonies, children have been fooled, forced, seduced with financial incentives or physically molested for taking part in active hostilities.<sup>164</sup> Some reports account for children as young as 5 years old in terrorist groups ranks being trained and used

---

155 A/69/926-S/2015/409. ¶ 12.

156 S/2013/661 (2013). ¶ 37.

157 A/69/926-S/2015/409. ¶ 12.

158 A/HRC/29/51 (2015). ¶ 28.

159 A/69/926-S/2015/409. ¶ 12; A/HRC/29/51 (2015). ¶ 28.

160 A/HRC/29/51 (2015). ¶ 28.

161 S/PRST/2014/20. p. 1-2; A/RES/70/291 (2016). Preamble. p. 3.

162 A/64/742-S/2010/181 (2010). ¶ 81; S/PRST/2015/4. p. 1; S/RES/2199 (2015). Preamble. p. 2; S/RES/2253 (2015). Preamble. p. 5; A/HRC/29/51 (2015). ¶ 28; A/HRC/30/67 (2015). ¶¶ 29, 44; A/69/926-S/2015/409. ¶ 6.

163 “Police and military sources, community members, the media and United Nations partners have reported the continuing recruitment of children by armed groups for acts of terror.” (A/64/742-S/2010/181 (2010). ¶ 81).

164 A/64/742-S/2010/181 (2010). ¶ 81; A/HRC/30/67 (2015). ¶ 44.

in active combat roles.<sup>165</sup> Iraq<sup>166</sup>, Syria<sup>167</sup> and Nigeria<sup>168</sup> are among the most reported places as having recruited children for taking part in terrorist hostilities, including terrorist attacks. There, young boys and girls are coerced to attend “cub camps” for indoctrination and to be trained to be executioners and to be deployed as suicide bombers.<sup>169</sup>

### 1. *Terrorist* children detention and rehabilitation

Since September 11 there is a great concern on the issue of children being indicted, convicted and detained on charges of involvement with terrorist activities or association with terrorist groups under anti-terrorism domestic laws.<sup>170</sup> While in detention, these children have been reportedly as being victims of mistreatment, “including intimidation by police dogs and sexual abuse.”<sup>171</sup> They are also denied civil and political rights. Frequently, they “cannot access their legal counselor in order to challenge the legality of their detention or are denied access to consular assistance”.<sup>172</sup> As standard practice, the UN General Assembly and the UN Security Council urges states to consider that “every child alleged as, accused of or recognized” as being associated with terrorist groups and perpetration of terrorist attacks, be considered as bearing a “potential status as victims of terrorism”<sup>173</sup> and to have their rights protected at all times.<sup>174</sup> Accordingly, they have to be treated “in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child.”<sup>175</sup> On this purpose, states are called for a twofold action, one preventive and other suppressive: 1) Under Chapter VII of the UN Charter, States are urged to, in accordance with their obligations under international law, to work on fully cooperation with other states to prevent the recruitment of foreign terrorist fighters, particularly children.<sup>176</sup> 2) If there is any child, suspected, convicted and/or on detention

---

165 A/64/742-S/2010/181 (2010). ¶ 81; A/HRC/29/51 (2015). ¶ 28.

166 A/64/742-S/2010/181 (2010). ¶ 81.

167 Ibid.

168 S/PRST/2015/4. p. 1.

169 A/64/742-S/2010/181 (2010). ¶¶ 81, 328; A/69/926-S/2015/409. ¶ 7; A/HRC/29/51 (2015). ¶ 28; S/PRST/2015/4. p. 1.

170 E/CN.4/2005/103. ¶ 43; A/64/742-S/2010/181 (2010). ¶ 84; A/69/926-S/2015/409. ¶ 73.

171 E/CN.4/2005/103. ¶ 43.

172 E/CN.4/2005/103. ¶ 43.

173 A/RES/70/291 (2016). ¶ 18.

174 A/69/926-S/2015/409. ¶ 14.

175 A/RES/70/291 (2016). ¶ 18.

176 S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 4; A/69/926-S/2015/409. ¶ 16; A/RES/70/291 (2016). ¶ 44.



on charges related to association with terrorist groups, states must take all the necessary measures for the promptly and fully reintegration of that child.<sup>177</sup>

### B. Kidnapping for ransom

For some international terrorist groups, human trafficking, hostage taking and kidnapping for ransom constitutes one of the primary sources of material income.<sup>178</sup> Journalists, humanitarian workers, politicians and, particularly local groups, including mainly woman and children, have been victims of this scourge.<sup>179</sup> Back in the 70's, the United Nations had already looked at this issue. Interestingly, in a letter from the Vice-Chancellor and Minister for Foreign Affairs of the Federal Republic of Germany to the UN Secretary-General, in 1976, the hostage taking issue had already been on the table.<sup>180</sup> Already at that time, the then Vice-Chancellor of the Federal Republic of Germany noted that it was of "frightening proportions" the number of persons around the world taken hostages and deprived from their liberty, being threatened to death.<sup>181</sup> For the Chancellor, hostage taking created a vicious cycle of events of international dimensions that weakened dignity and the rights of every individual and endangered international peace and transnational relations and needed to be addressed as a matter of utmost importance and urgency.<sup>182</sup> Still, in 1985 both the UN Security Council and the UN Secretary General made considerations on the episode of the cruise ship *Achille Lauro*, expressing resolute condemnation of that deplorable, unjustifiable criminal hostage-taking, considered as an "act of terrorism."<sup>183</sup> Considerations were then made on the prevalence of incidents of hostage-taking and abduction, many of them ending in victims' death,<sup>184</sup> as offenses "of grave concern to the international community, having severe adverse consequences for the rights of the victims and for the promotion of friendly relations and co-operation among states."<sup>185</sup>

UN concerns from the 70's, 80's and 90's on this issue, however, were innocuous faced to the human rights abuses and gross violations of humanitarian law committed by terrorists in abducting people for ransom.<sup>186</sup> Indeed, from the 70's up until now the violent extremism which resulted in criminal activities of

---

177 A/RES/70/291 (2016). ¶ 18.

178 S/2015/366. ¶¶ 36, 39; S/RES/2253 (2015). Preamble. p. 3.

179 S/2015/366. ¶ 36.

180 A/31/242 (1976).

181 A/31/242 (1976). Annex. ¶ 1.

182 A/31/242 (1976), annex, ¶¶ 1; 5, 7.

183 S/RES/579 (1985). p. 1.

184 S/RES/579 (1985). ¶ 1.

185 S/RES/579 (1985). Preamble; S/16880/Add.40 (1985). Preamble.

186 S/RES/2199 (2015). Preamble. p. 2; S/RES/2253 (2015). Preamble. p. 5; S/PRST/2015/4. p. 1.

kidnapping for ransom and hostage-taking committed by terrorist groups have just exponentially increased.<sup>187</sup> In many cases the abduction incident ends ruthlessly and in cold blood execution of the hostages.<sup>188</sup>

Payment of ransoms to terrorists constitutes one of the great challenges among states on fighting terrorism. The delivery of the requested amount of money to terrorists groups will most probably have as a consequence the releasing the hostage. Nevertheless, that very same amount will fund future kidnappings and hostage-takings and other activities of those groups, what only perpetuates the problem.<sup>189</sup> As measures to be taken urgently to address this issue, states are urged: 1) to take all the necessary measures, according to international law, and particularly international human rights law and international humanitarian law, to prevent terrorists from ransom payments;<sup>190</sup> 2) to create strategies for the safe release of hostages; 3) to cooperate closely with other states “during incidents of kidnapping and hostage-taking committed by terrorist groups;”<sup>191</sup> and 4) to implement “relevant international instruments and United Nations resolutions that address hostage-taking and kidnapping for ransom.”<sup>192</sup>

#### IV. Measures to combat terrorism

There is a strong calling upon all states “to ensure no tolerance for terrorism.”<sup>193</sup> Some points are of pivotal importance in the prevention, suppression and punishment of terrorist acts.<sup>194</sup> A fundamental stratum for a victorious long-term policy to seriously address the threat of terrorism has to deal with the circumstances that conduce to the spread of violent extremism and criminality, and ultimately foment the root causes for terrorism.<sup>195</sup> Weaknesses in eliminating these root causes provide the “fertile ground”<sup>196</sup> upon which terrorist organiza-

187 A/68/37 (2003). p. Annex III, para 8; S/RES/2133 (2014). Preamble. p. 1; S/PRST/2014/21. p.3; S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 18; A/HRC/31/L.13 (2016). ¶ 5.

188 A/31/242 (1976), annex, ¶ 1; S/PRST/2006/29. p. 1.

189 S/RES/2133 (2014). Preamble. p. 1; A/RES/68/276 (2014). ¶ 28.

190 S/PRST/2010/4. p. 1; A/RES/66/105 (2011). ¶ 8; S/RES/1989 (2011). Preamble. p. 1; A/RES/67/99 (2012). ¶ 8; S/PRST/2013/5. p.3;

A/RES/68/119 (2013). ¶ 8; A/RES/68/276 (2014). ¶ 28; S/RES/2133 (2014). Preamble. p. 1, ¶ 6.

191 S/PRST/2010/4. p. 1; S/RES/1989 (2011). Preamble. p. 1; A/RES/66/105 (2011). ¶ 8; A/RES/67/99 (2012). ¶ 8; A/RES/68/119 (2013). ¶ 8; S/PRST/2013/5. p.3; S/RES/2133 (2014). Preamble. p. 1, ¶¶ 4, 6; S/RES/2160 (2014). Preamble. p. 3; S/RES/2161 (2014). Preamble. p. 1-2; S/RES/2170 (2014). Preamble. p. 2; A/RES/68/276 (2014). ¶ 28; S/RES/2255 (2015). Preamble. p. 2.

192 A/RES/70/177 (2015). ¶ 2.

193 A/RES/70/291 (2016). ¶ 34.

194 S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 3.c.

195 A/HRC/29/L.17/Rev.1 (2015). ¶ 3; A/HRC/16/51 (2010). ¶ 12; S/2014/9 (2014). ¶¶ 5, 13; S/2015/366 (2015). ¶¶ 62, 66; A/RES/70/291 (2016). Preamble. p. 3., ¶ 37.

196 UNESCO. Resolution 39. ¶ 3. Supra note 29. ¶ 8.

tions “fund, organize, equip and train their recruits, carry out their attacks, and hide from arrest.”<sup>197</sup>

Within the wide spectrum of underlying conditions conducive to terrorism, some are of crucial concern:<sup>198</sup>

- 1) Structural causes: lack of the rule of law,<sup>199</sup> lack of effective criminal justice systems,<sup>200</sup> lack of good governance,<sup>201</sup> violations of human rights,<sup>202</sup> “prolonged unresolved conflicts,”<sup>203</sup> both regional and global ones;<sup>204</sup>
- 2) Social-Economic: absolute poverty,<sup>205</sup> socio-economic marginalization,<sup>206</sup> inequality,<sup>207</sup> lack of “sustained economic growth (and) sustainable development”,<sup>208</sup> lack of “global prosperity for all,”<sup>209</sup> youth unemployment;<sup>210</sup>
- 3) Civil-Political: political exclusion,<sup>211</sup> alienation<sup>212</sup>, lack of Tolerance,<sup>213</sup> lack of pluralism<sup>214</sup> and religious discrimination.<sup>215 216</sup>

Beyond working preventively in combating the root causes conducive to the spread of terror, states are also urged to suppress and punish terrorist practices. There is a cornucopia of ways by which states may combat terrorism. Here there are enumerated some of the most recurrent measures in UN resolutions and documents:

- 1) Target sanctions.
- 2) States are firmly urged to become parties, as a matter of urgency, to the international conventions related to terrorism and to respect UN General

---

197 A/60/825 (2006). ¶¶ 35, 74.

198 A/HRC/RES/28/17 (2015). ¶ 14.

199 A/HRC/16/51 (2010). ¶ 12; S/2015/366 (2015). ¶ 78; A/RES/70/291 (2016). Preamble. p. 2.

200 A/60/825 (2006). ¶ 77.1; A/HRC/RES/32/28 (2016). p. 2.

201 A/HRC/16/51 (2010). ¶ 12.

202 A/RES/65/221 (2011) Preamble. p. 2; A/RES/70/291 (2016). Preamble. p. 3.

203 A/RES/70/291 (2016). Preamble. p. 3.

204 S/RES/1624 (2005). Preamble. p. 2.

205 A/60/341–S/2005/567 (2005). ¶ 3; S/PRST/2010/19. p.2.

206 A/HRC/16/51 (2010). ¶ 12; S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 16.

207 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 8.

208 S/RES/1624 (2005). Preamble. p. 2.

209 S/PRST/2010/19. p.2.

210 A/60/825 (2006). ¶ 36.

211 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 12.

212 A/60/825 (2006). ¶ 36.

213 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 3.

214 A/RES/70/291 (2016). ¶ 37.

215 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 8.

216 A/HRC/16/51 (2010). ¶ 12.

Assembly and UN Security Council resolutions on terrorism.<sup>217</sup> They are also called to take all legislative and administrative measures to internalize those conventions and protocols on terrorism by domestic legal typification of terrorist criminal offences,<sup>218 219</sup> establishing penalties consistent with the gravity of the offenses;<sup>220</sup> They shall take all the necessary measures to “establish their jurisdiction over the elements of the crime”<sup>221</sup> and to hold accountable those convicted for their terrorist practices.<sup>222</sup>

- 3) States must fully respect human rights while combating terrorism.
- 4) While countering terrorism, states must respect religions, religious values, beliefs and cultures, and work in the promotion of a culture of interfaith and religious tolerance,<sup>223 224</sup> and combat all sort of religious discrimination and religious exclusion.<sup>225 226</sup>
- 5) State measures shall be taken to provide a fertile ground for intercultural tolerance, dialogue and the broadening of understanding among civilizations and peoples.<sup>227</sup> States shall build a social structure in which mutual respect and respect for diversity, be within the key elements in countering violent extremism.<sup>228 229</sup> States shall promote education for peace and a culture of peace and justice nationally, regionally and globally.<sup>230</sup>
- 6) General measures under the aegis of Chapter VII of the Charter of the United Nations, as, for example, “prosecute or extradite”. States must also refrain from supporting terrorism and preventing terrorist organizations and from recruiting fighters. States must observe UNSC target

217 A/RES/49/60 (1994). ¶ 8; S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 3.a, b; S/RES/1456 (2003), annex. p. 1; A/RES/66/282 (2012). ¶ 11.; S/RES/2129 (2013). Preamble. p. 4.

218 International Convention for the Suppression of the Financing of Terrorism. *Supra* note 7. Article 4.a.

219 A/RES/49/60 (1994). ¶ 8; S/RES/1624 (2005). ¶ 1.a; A/RES/66/178 (2012). ¶ 1; A/RES/67/99 (2012). ¶ 1; A/RES/68/119 (2013). ¶ 13; A/RES/70/177 (2015). ¶ 1; S/RES/2322 (2016). ¶ 6.

220 S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 3.

221 International Convention for the Suppression of the Financing of Terrorism. *Supra* note 7. Article 7.1.

222 S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 4.b.

223 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 8.

224 A/60/825 (2006). ¶ 80; A/HRC/RES/10/22 (2009). ¶ 8; A/RES/68/119 (2013). Preamble. p. 2; A/RES/68/276 (2014). ¶ 23; A/RES/70/291 (2016). ¶ 37; A/HRC/RES/32/28 (2016). Article 2; A/HRC/31/L.13 (2016). Preamble. p. 2.

225 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 8.

226 A/60/825 (2006). ¶ 35; A/HRC/16/51 (2010). ¶ 12.

227 A/59/37 (2003). ¶ 2; S/RES/1624 (2005). Preamble. p. 2.A/60/825 (2006). ¶ 80; A/HRC/31/L.13 (2016). Preamble. p. 2; A/RES/70/291 (2016). ¶ 37.

228 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 8.

229 A/RES/64/118 (2010). Preamble. p. 2; A/RES/65/34 (2011). Preamble. p. 1; A/RES/70/148 (2015). Preamble. p. 2; A/HRC/31/L.13 (2016). p.2;

A/RES/70/291 (2016). ¶ 37.

230 A/HRC/RES/32/28 (2016). Article 2, 4. A/RES/70/291 (2016). ¶ 37.

sanctions such as asset freeze, travel ban, arms and related materiel embargo, listing criteria, banking measures and reporting measures.<sup>231</sup>

### A. Target sanctions

#### 1. Assets freeze

Money is one of the main gears that make the terrorism machinery work.<sup>232</sup> Accordingly, a myriad of UN documents requires states to take urgent, vigorous and decisive action to “prevent active and passive support to terrorism”<sup>233</sup> by cutting the flow to terrorists and their organizations of any financial asset, or fund or monetary resources that could be, in any form, available for the practice of terrorist attacks.<sup>234</sup> Resolutions from both the UN General Assembly and the UN Security Council are concurrent in vital points:

- 1) “Law enforcement, intelligence, security services, and financial intelligence units, (...) within and between governments,” must come together in a joint effort to be vigilant over international monetary-financial transactions that could lead to the financing of terrorist activities;<sup>235</sup>
- 2) States must “freeze without delay the funds and other financial assets, or economic resources,” including funds derived from property, “owned or controlled directly or indirectly” by individuals,<sup>236</sup> or those acting in their name or are under their direction, groups, undertakings and entities who perpetrate, or attempt to perpetrate, participate or facilitate terrorist acts;<sup>237 238</sup>
- 3) States must ensure that no persons within their territories, national or foreigner, have, in their support, financial resources available to the them, directly or indirectly, for the commission, attempt to commission, par-

---

231 On Security Council “targeted sanctions”: Garvey, Jack I. Targeted Sanctions: Resolving the International Due Process Dilemma. 50 *Tex. Int’l L. J.* 551 2015-2016. pp. 551-601.

232 S/2015/366 (2015). ¶ 8.

233 S/RES/1456 (2003), annex. p. 1; A/RES/66/282 (2012). ¶ 23.

234 S/RES/1822 (2008), under Chapter VII – UN Charter. ¶ 5; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 12.

235 S/RES/2253 (2015), under Chapter VII – UN Charter. ¶ 25.

236 A/RES/51/210 (1996). ¶ 3.f; S/RES/1617 (2005), under Chapter VII – UN Charter. ¶ 1.a; S/RES/1822 (2008), under Chapter VII – UN Charter. ¶¶ 3, 3a; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 12; S/RES/2199 (2015), under Chapter VII – UN Charter. ¶¶ 2, 4; A/RES/70/291 (2016). Preamble. p. 2.

237 S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 1.c; S/RES/2129 (2013). Preamble. p. 2.

238 S/RES/2129 (2013). Preamble. p. 2; S/RES/2253 (2015), under Chapter VII – UN Charter. ¶ 13.

icipation or facilitation of terrorist acts,<sup>239</sup> <sup>240</sup> be those resources a result of internal financial assets and funds or a fruit of collecting external donations;<sup>241</sup>

- 4) States are required to impeach any commercial or financial transactions, directly or indirectly, among terrorist groups and any persons within their territories, nationals or foreigners;<sup>242</sup>
- 5) States must challenge impunity by bringing to justice and denying safe haven to all of those engaged in the financing of the terrorist venture, prosecuting them or extraditing, on the basis of the principle to extradite or prosecute.<sup>243</sup>

The control and administration of certain activities, actions and conducts by terrorist organizations may, directly or indirectly, profit those organizations financially. That material income can be used in a variety of ways, from widening the capacity of the organization to recruit its fighters, whether nationals or aliens, to the bolstering of the working efficiency to coordinate and perpetrate a terrorist attack.<sup>244</sup> These activities have a wide range: oil and charcoal trade, the trafficking of arms and machinery trade, drug trafficking and cigarettes trade<sup>245</sup>, human trafficking,<sup>246</sup> “looting and smuggling of cultural heritage items,”<sup>247</sup> kidnapping for ransom, money-laundering,<sup>248</sup> the trade of minerals, metals, precious stones,<sup>249</sup> livestock and electronics sale,<sup>250</sup> bank robbery,<sup>251</sup> tax collecting/extortion, among others.

239 S/RES/1617 (2005), under Chapter VII – UN Charter. ¶¶ 1, 1a; S/RES/1735 (2006), under Chapter VII – UN Charter. ¶ 1a, 2; S/RES/1822 (2008), under Chapter VII – UN Charter. ¶¶ 1a, 3; S/RES/1904 (2009), under Chapter VII – UN Charter. ¶ 1.a; S/RES/1989 (2011), under Chapter VII – UN Charter. ¶ 1.a; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 1; S/RES/2160 (2014). ¶ 1, 1a; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 1.a; S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 3, 7; A/RES/70/291 (2016). ¶ 31.

240 A/RES/70/148 (2015). ¶ 11.

241 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 21.

242 S/PRST/2014/14. p. 1.

243 A/RES/49/60 (1994). ¶ 5; A/RES/54/110 (1999). ¶ 5; A/RES/55/158 (2000). ¶ 5; A/RES/56/88 (2001). ¶ 5; E/CN.4/2003/37. Preamble. p. 2; A/RES/57/27 (2003). ¶ 5; S/RES/1456 (2003). Annex. ¶ 3. A/RES/69/127 (2014). ¶ 10; A/RES/68/276 (2014). ¶ 22; A/RES/70/291 (2016). ¶ 31.

244 S/PRST/2014/14. p. 1; S/PRST/2014/20. p.2; S/RES/2170 (2014), under Chapter VII – UN Charter. ¶ 13; S/RES/2253 (2015). Preamble. p. 4.

245 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 10.

246 S/RES/2199 (2015). Preamble. p. 2.

247 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 16.

248 S/2014/9 (2014). ¶ 30.

249 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 10; S/RES/2322 (2016). Preamble. p. 2.

250 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶ 10.

251 S/RES/2322 (2016). Preamble. p. 2.

Some of these activities raise special attention: Hostage-taking, because of the threat in which the victim is exposed, oil trade and drug trafficking, due to their potential in collecting money. Oil trade respond for a significant source of income of terrorist organizations, both directly with the “prospection, exploration of oilfields and modular refineries and consequent production and sale of oil products”,<sup>252</sup> as well as indirectly with the operation of the chain of oil transfer involving “vehicles, including aircraft, cars and trucks and oil tankers” along with the transfer of cash generated from those operations.<sup>253</sup>

Equally of a great concern is the existing link between illicit cultivation, production and trade of drugs and the financing of international terrorism.<sup>254</sup> Beyond the problem of bringing financial assets to terrorist organizations – consequentially strengthening their capacity of recruiting fighters and enhancing their effectiveness to carry out attacks –, this situation may pose “threats to the local population, including women, children, national security forces and international military and civilian personnel, including humanitarian and development workers.”<sup>255</sup> National, regional and international efforts must be carried out, in a coordinated, harmonious and joint action towards an unison and worldwide initiative against this serious threat to peace and security.<sup>256</sup>

Likewise, kidnapping and hostage-taking, through the payment of ransom, constitutes a substantial source of income of terrorist groups responding for millions of dollars of money collection.<sup>257</sup> The payment of ransoms to terrorists groups triggers a vicious cycle: the more ransom the groups collect, the more cash will flow to the perpetration future kidnappings and hostage-takings, the more money terrorists will have to recruit fighters, prepare, organize and launch attacks decimating thousands of victims and further perpetuating the problem.<sup>258</sup> In the financing/monetary area, states urged to freeze funds, financial assets and any economic resources that belong or are controlled, directly or indirectly, of those who commit, or attempt to committed, terrorist acts or are, in any form, responsible for terrorist acts, or those associated to them.<sup>259</sup> States are called to

---

252 S/RES/2199 (2015), under Chapter VII – UN Charter. ¶¶ 1, 7.

253 *Id.* ¶ 10.

254 S/RES/1776 (2007). Preamble. p. 1-2; S/PRST/2010/4. p. 1; S/RES/1989 (2011). ¶ 7; S/RES/2199 (2015). Preamble. p. 4; S/RES/2322 (2016). Preamble. p. 2.

255 A/HRC/RES/1817 (2011). Preamble. p. 1; S/PRST/2013/5. p.2; S/RES/2120 (2013). Preamble. p. 4; S/RES/2129 (2013). Preamble. p. 2; S/PRST/2014/12. p.2.

256 S/RES/2129 (2013). Preamble. p. 2.

257 A/RES/66/105 (2011). ¶ 8; A/RES/67/99 (2012). ¶ 8; A/RES/68/119 (2013). ¶ 8; S/PRST/2013/5. p.3; S/RES/2133 (2014). ¶ 3; S/RES/2160 (2014). Preamble. p. 3; S/RES/2170 (2014). Preamble. p. 2; A/RES/70/177 (2015). ¶ 2; S/2015/366 (2015). ¶ 36, 37, 38, 39. S/RES/2199 (2015), under Chapter VII – UN Charter. ¶¶ 18, 20; A/HRC/31/L.13 (2016). Preamble. p. 3, ¶ 5.

258 S/RES/2133 (2014). Preamble. p. 1; A/RES/68/276 (2014). ¶ 28.

259 S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 1c.

work on the prevention and suppression of financing of any act of the terrorist machinery<sup>260</sup>, by prohibiting their nationals “and entities within their territories” from making any funds available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts”;<sup>261</sup> They are urged to criminalize the deliberate provision of funds to be used for the commission of terrorist acts whereas directly or indirectly.<sup>262</sup>

## 2. Travel ban

Freedom of movement respond as one of the most important assets of terrorist groups. That’s why the UN Security Council resolutions and the UN General Assembly resolutions and recommendations are so peremptory and incisive about this issue. States are strongly required to prevent from freedom of movement and transport those who travel to perpetrate, plan, assist, prepare, participate or finance terrorist actives,<sup>263</sup> denying them avenue to their desired target of attack.<sup>264</sup> This call shall include:

- a) Intensifying transport security;<sup>265</sup>
- b) Strengthening forceful border controls both at the international, regional and national levels;<sup>266</sup>
- c) Controlling on issuance of identity papers, passports and other travel documents;<sup>267</sup>
- d) Preventing the “counterfeiting, forgery or fraudulent use of identity papers and travel documents;”<sup>268</sup>
- e) Denying in their territories authorization for taking offs, landings of overflies of any aircraft whose take-off or destiny will take place in a terri-

<sup>260</sup> Id. ¶ 1a.

<sup>261</sup> Id. ¶ 1b.

<sup>262</sup> Ibid.

<sup>263</sup> S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 2.g; A/60/825 (2006). ¶ 62; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 1; S/RES/2129 (2013). Preamble. p. 3; S/RES/2160 (2014). ¶ 1.b; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 1.b; S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 5.

<sup>264</sup> A/60/825 (2006). ¶ 66.

<sup>265</sup> S/2014/9 (2014). ¶ 49.

<sup>266</sup> S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 2.g; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 1; S/RES/2129 (2013). Preamble. p. 3; S/RES/2160 (2014). ¶ 1.b; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 1.b.

<sup>267</sup> S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 2.g; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 1; S/RES/2129 (2013). Preamble. p. 3; S/RES/2160 (2014). ¶ 1.b; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 1.b.

<sup>268</sup> S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 2.g; S/RES/1617 (2005), under Chapter VII – UN Charter. ¶ 1.b; S/RES/1735 (2006), under Chapter VII – UN Charter. ¶ 1.b; S/RES/1822 (2008), under Chapter VII – UN Charter. ¶ 1.b; S/RES/1904 (2009), under Chapter VII – UN Charter. ¶ 1.b; S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 2.



tory “designated by the (Counter Terrorism) Committee as being under (a terrorist group) control;”<sup>269</sup>

- f) In stricter situations, the UN Security Council may even require that states immediately and completely close a flight company offices in their territories;<sup>270</sup> prohibit any support, assistance, guidance, instruction to “pilots, flight engineers, or aircraft and ground maintenance personnel” associated with a determined flight company;<sup>271</sup> prohibit, “by their nationals or from their territory, any renewal of any direct insurance for a determined aircraft” fleet.<sup>272</sup>

### 3. Listing

Listing is a measure under the Chapter VII of the UN Charter.<sup>273</sup> States are strongly encouraged to work in fully cooperation with the UN Security Council under resolutions 1267 (1999), 1373 (2001) and 2253 (2015).<sup>274</sup> They ought to maintain and update the lists with the names and as much information as possible of/about terrorists, terrorist groups, undertakings and entities associated with them, as well as with the names of financiers, supporters and facilitators of terrorist practices,<sup>275</sup> in order to permit and facilitate a decisive identification of them by border control, police, airports/ports/train stations security personnel and by legal authorities constituted by law. Pursuant Resolution 1267, UN Security Council created the “1267 Committee” with the mandate to zeal for the states compliance with that resolution. 1267 listing procedures raised a myriad of international criticism on its lack of due process and respect for human rights.

Worth saying that the issue was so serious that requests for judicial reviews of Committee listing swarmed in various places. The most notable one was the *Kadi case* in the European Court of Justice (ECJ) that grant mr. Yassin Abdullah Kadi the right to be delisted from the UNSC “assets freeze” sanction over

---

269 S/RES/1333 (2000), under Chapter VII – UN Charter. ¶ 11.

270 S/RES/883 (1993), under Chapter VII – UN Charter. ¶ 6.

271 Id. ¶ 6.e.

272 Id. ¶ 6.f.

273 S/RES/2083 (2012), under Chapter VII – UN Charter. ¶¶ 10, 13.

274 For a better comprehension of the meaning and scope of the listing ban, please refer to: Andrea. Security Council’s Anti-terror Resolutions and their Implementation by Member States: An Overview. 4 J. Int’l Crim. Just. 1044 2006. pp. 1044-1076. p. 1057.)

275 S/RES/1989 (2011). Preamble. p. 2; S/RES/2160 (2014), under Chapter VII – UN Charter. ¶ 16; S/RES/2199 (2015). ¶ 13.

all the territory of European Union.<sup>276 277</sup> Trying to tackle criticisms on the process of enlisting and delisting individuals, the council passed Resolution 1904, on December 17, 2009, establishing the Office of the Ombudsperson of the Security Council's Committee, an unbiased and independent person whose mandate was to review cases of persons whose names were enlisted on the UN Security Council sanctions list.<sup>278 279</sup> Applications for listing/delisting are considered according to Annex II of the unanimously adopted Security Council resolution 2253 (2015).<sup>280</sup>

#### 4. Arms embargo

States shall take all the necessary measures to prevent that any kind of arms, or spare parts of them, be accessible to terrorists, terrorist groups, undertakings and entities,<sup>281</sup> whereas weapons and ammunition, "military vehicles and equipment, paramilitary equipment,"<sup>282</sup> "explosives, , as well as "raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons."<sup>283</sup> States shall prevent terrorist groups from having any assistance, training of technical advice related to those arms.<sup>284</sup> States shall also prevent terrorists from obtaining and handling, supplying, selling, transfer-

<sup>276</sup> As a consequence of UNSC resolution 1373 target sanction listing process, Yassin Abdullah Kadi, a Saudi Arabian businessman, had his assets frozen in the USA and Europe, after being listed accused of supporting terrorist activities worldwide and having strong bonds with AlQaeda. Mr. Kadi challenged UNSC decision on the regional level, as he demanded United Kingdom. p.the European Court of Justice (ECJ), based on European Union regulation. In its final decision on appeal, on July 18, 2013, the Grand Chamber of ECJ granted him, over all the territory of European Union (EU), the right to be delisted from the UNSC "assets freeze" sanction. State cooperation of members of EU with the UNSC was impacted after ECJ handled down its decision.

<sup>277</sup> For a full cover on Kadi case on the Court of Justice of the European Union (CJEU) and the issue of judicial review of UNSC resolutions, please read: Wimmer, Michael. Inward-and-Outward Looking Rationales Behind Kadi II. 21 Maastricht J. Eur. & Comp. L. 676 2014, PP. 676-703; Marguhes, Peter. Aftermath of an Unwise Decision: The U.N. Terrorist Sanctions Regime After Kadi II. 6 Amsterdam L.F. 51 2014. pp. 51-63; Cantwell, Douglas. A Tale of Two Kadis: Kadi II, Kadi v. Geithner & U.S. Counterterrorism Finance Efforts. 53 Colum. J. Transnat'l L. 652 2014-2015. pp. 652-700.

<sup>278</sup> On the role of the 1267 Ombudsperson, please find supplementary reading in: Willis, Grant L. Security Council Targeted Sanctions, Due Process and the 1267 Ombudsperson. 42 Geo. J. Int'l L. 673 2010-2011. pp. 673-746

<sup>279</sup> On the independence and impartiality of the Ombudsperson, please find supplementary reading in: Willis, Grant L. Security Council Targeted Sanctions, Due Process and the 1267 Ombudsperson. 42 Geo. J. Int'l L. 673 2010-2011. pp. 673-746. p.742.)

<sup>280</sup> S/RES/2253 (2015).

<sup>281</sup> S/RES/1617 (2005), under Chapter VII – UN Charter. ¶ 1.c; S/RES/1735 (2006), under Chapter VII – UN Charter. ¶ 1.c; S/RES/1822 (2008), under Chapter VII – UN Charter. ¶ 1.c; S/RES/2170 (2014) under Chapter VII – UN Charter. ¶ 10.

<sup>282</sup> S/RES/2160 (2014). ¶ 1.c.

<sup>283</sup> S/RES/2161 (2014) under Chapter VII – UN Charter. ¶ 14.

<sup>284</sup> S/RES/2160 (2014). ¶ 1.c.

ring or delivering, storing,<sup>285</sup> having access to technologies of manufacture of,<sup>286</sup> or seeking technical assistance for weapons of mass destruction.<sup>287</sup>

States are also urged to work on capacity building, information and intelligence sharing and strengthening control mechanisms to cut any form of access of terrorists to “the use of nuclear, chemical, biological and other potentially deadly materials.”<sup>288</sup> In what regards to nuclear and radioactive materials and sources,<sup>289</sup> states shall strengthen national measures to work for the prevention of nuclear attacks in two different fronts: First: they will prevent terrorists from acquiring, storing, trafficking and using nuclear materials, and second: they shall make efforts in order to keep nuclear plants and facilities safe and physically protected<sup>290</sup> from terrorist attacks.<sup>291</sup>

## B. Other measures

### 1. Prevent recruitment

Recruiting is an activity that is at the core of a terrorist organization.<sup>292</sup> There is a peril even more serious than that: the increasing threat of international recruitment, that is foreign terrorist fighters (FTFs) who leave their state of nationality or residence to travel to other states in order to receive training to plan, assist, prepare, participate and commit terrorist attacks.<sup>293</sup> Acute concern is also over the ways by which terrorist organizations and their supporters recruit their fighters. New communications technologies, new social medias and the use of internet are within the most used recruiting platforms of those who spread terror.<sup>294</sup>

To challenge and prevent this threat, states are called to develop strategies and take firm action both nationally, bilaterally, regionally and internationally.<sup>295</sup>

---

285 S/RES/1904 (2009), under Chapter VII – UN Charter. ¶ 2.b; S/RES/1989 (2011), under Chapter VII – UN Charter. ¶ 4.b; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 2.b; S/RES/2160 (2014). ¶ 2.b; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 2.b; S/RES/2253 (2015). ¶ 3.b.

286 A/RES/66/50 (2012). Preamble. p. 1, ¶ 13; A/RES/67/44 (2013). Preamble. p. 1, ¶ 13; A/RES/67/51 (2013). Preamble. p. 1; A/RES/68/41 (2013). ¶¶ 1, 3; A/RES/70/36 (2015). Preamble. p. 1.

287 A/60/825 (2006). ¶ 43; A/RES/67/44 (2013). ¶ 1; S/2014/9 (2014). ¶ 71.

288 S/RES/1456 (2003), annex. p. 1; A/RES/69/50 (2014). Preamble. p. 1.

289 A/RES/69/50 (2014), preamble 1.

290 A/RES/65/74 (2011). ¶ 2; A/RES/69/50 (2014). ¶ 1.

291 A/RES/65/74 (2011). Preamble. p. 1, ¶ 1; A/RES/67/51 (2013). ¶¶ 1,2; A/RES/69/50 (2014). Preamble. p. 1.

292 S/RES/1904 (2009), under Chapter VII – UN Charter. ¶ 2.c; S/RES/1989 (2011), under Chapter VII – UN Charter. ¶ 4.c; S/RES/2083 (2012), under Chapter VII – UN Charter. ¶ 2.c; S/RES/2160 (2014). ¶ 2.c; S/RES/2161 (2014), under Chapter VII – UN Charter. ¶ 2.c; S/RES/2253 (2015). ¶ 3.c.

293 A/RES/68/276 (2014). ¶ 31; S/PRST/2015/11. p. 1-2.

294 S/RES/1456 (2003). Annex. p.1; S/PRST/2010/4. Preamble. p.1; A/RES/67/99 (2013). Preamble. p. 2; S/RES/2129 (2013). Preamble. p. 3; S/PRST/2014/23 (2014). Preamble. p. 4; S/RES/2170 (2014). Preamble. p. 2; S/RES/2255 (2015). Preamble. p. 2; A/HRC/31/L.13 (2016). ¶ 10; A/RES/70/291 (2016). ¶ 42.

295 A/RES/70/291 (2016). p.51, 53, ¶ 31.

- a) states must take cooperative and collaborative actions to impede terrorists from making use of technologies, communications and other virtual sources to recruit their fighters,<sup>296</sup> including the recruitment of lone terrorists in several parts of the world;<sup>297</sup>
- b) states shall share their information on border control, included, but no limited to, “biometric and biographic information, multilateral screening databases,”<sup>298</sup> as well as listing information and profile databases “that demonstrates the nature of an individual’s association with terrorism”<sup>299</sup> in order to detect travel and to prevent terrorists and their supporters from traveling “from or through their territories;”<sup>300</sup>
- c) states shall expand the use of INTERPOL Special Notices with the inclusion of new terrorist foreign fighters;<sup>301</sup>
- d) Ultimately, states should take all the necessary and appropriated responses from criminal justice and take full consideration of the United Nations mechanisms and instruments, including resolutions, sanctions, recommendations and considerations, on combating international recruitment of terrorist fighters.<sup>302</sup>

## 2. State support to terrorism

States have a duty to prevent acts of terror, either those committed against the citizens of this very state or those perpetrated against citizens of other states.<sup>303</sup> Consequentially, involvement of any state in the practice of any terrorist act reveals a gross violation of states obligations.<sup>304</sup> As a fulfillment of their responsibilities,<sup>305</sup> both from conventions, protocols and UN Security Council resolutions, states must refrain from any activity of providing support to terrorists and terrorists organizations, direct or indirect, whereas logistical, financial, political, or military,<sup>306</sup> whether coordinating, tolerating installations or training camps<sup>307</sup> on their territories, instigating or organizing terrorist activities<sup>308</sup> and denying safe havens for those involved on the spread of terror.

<sup>296</sup> A/RES/68/187. Preamble. p. 2.

<sup>297</sup> A/RES/68/276 (2014). ¶ 25.

<sup>298</sup> S/PRST/2015/11. p.3.

<sup>299</sup> S/RES/2322 (2016). ¶ 3.

<sup>300</sup> S/PRST/2015/11. p. 3, 4.

<sup>301</sup> S/RES/2178 (2014), under Chapter VII – UN Charter. ¶ 13.

<sup>302</sup> A/HRC/31/L.13 (2016). p.2.

<sup>303</sup> A/RES/49/60 (1994). ¶ 5.a.

<sup>304</sup> S/RES/1636 (2005), under Chapter VII – UN Charter. ¶ 4.

<sup>305</sup> A/HRC/31/L.13 (2016). Preamble. p. 3.

<sup>306</sup> A/HRC/31/L.13 (2016). Preamble. p. 3; A/60/825 (2006). ¶ 69.

<sup>307</sup> A/RES/49/60 (1994). ¶ 5.a.

<sup>308</sup> A/RES/49/60 (1994). ¶ 5; A/RES/55/158 (2000). ¶ 5.

### 3. *Aut dedere, aut judicare*

States are resolutely called to fulfill their obligations under international law, including those from the UN Charter<sup>309</sup> and Security Council resolutions, to urgently combat international terrorism by bringing to justice those found guilty of perpetrating terrorist attacks<sup>310</sup> or any participant, supporter, facilitator, organizer, inciters<sup>311</sup> or financier of such heinous acts.<sup>312</sup> States must work in the legal level:<sup>313</sup> to enhance the state capacity of to afford criminal justice<sup>314</sup> and law enforcement,<sup>315</sup> as well as to safeguard that their courts have jurisdiction over terrorist conducts.<sup>316</sup> In the operational level: states shall prevent obstruction of investigation,<sup>317</sup> apprehending,<sup>318</sup> and they must deny safe havens.<sup>319</sup> In the jurisdictional level: states shall prosecute<sup>320</sup> those accused of terrorist practices, on the basis on the basis of the principle of extradite or prosecute<sup>321</sup> with the transferring of criminal proceedings, when appropriate.<sup>322</sup> On the international police level: states are encouraged, according to their own domestic legislation, to disrupt criminal networks,<sup>323</sup> working in close cooperation with other states and with the INTERPOL, sharing all the necessary information and data on terrorists and their organizations.<sup>324</sup>

### 4. Respect for human rights while countering terrorism

After September 11, as part of the immediate struggle against international terrorism, the UN Security Council, under Chapter VII of the Charter of the United Nations, passed, in 2001, the Resolution 1373,<sup>325</sup> which obligated States, inter alia, to “take the necessary steps to prevent and suppress the commission of terrorist acts”<sup>326</sup>, and to prevent and suppress “all forms of the financing of

---

309 A/RES/70/291 (2016). ¶ 31.

310 S/RES/1368 (2001). ¶ 3; S/RES/1456 (2003). Annex. ¶ 3; S/RES/1624 (2005). ¶ 1.c; A/RES/69/127 (2014). ¶ 10; S/PRST/2014/20. p. 1-2; A/HRC/31/L.13 (2016). Preamble. p. 3; A/RES/70/291 (2016). ¶ 31.

311 S/2014/9 (2014). ¶¶ 26, 56.

312 A/RES/70/291 (2016). ¶ 31.

313 S/2015/366 (2015). ¶ 75.

314 S/2014/9 (2014). ¶ 35.

315 S/2015/366 (2015). ¶ 78.

316 A/RES/68/119 (2013). ¶ 13.

317 S/RES/1636 (2005). Preamble. p. 1.

318 A/RES/49/60 (1994). ¶ 5.

319 E/CN.4/2003/37. Preamble. p. 2; S/RES/2322 (2016). ¶ 9.d.

320 A/RES/49/60 (1994). ¶ 5.b.

321 S/RES/1456 (2003). ¶ 3, Annex. p.2; A/RES/69/127 (2014). ¶ 10; A/RES/70/291 (2016). ¶ 31.

322 S/RES/2322 (2016). ¶ 9.b.

323 S/2015/366 (2015). ¶ 81.

324 S/RES/2160 (2014), under Chapter VII – UN Charter. ¶ 18.

325 S/RES/1373 (2001).

326 S/RES/1373 (2001). ¶ 2.b.

terrorist acts”<sup>327</sup>. Lamentably, the Security Council made no reference to the states’ obligation to respect, protect and promote human rights while countering terrorism.<sup>328</sup> That very fact created the false assumption that states had a *carte blanche* to sacrifice core values of humanity if the reward was the ‘successful’ fight against terror.<sup>329</sup>

The UN Security Council strongly remended this false assumption in issuing the Resolution 1456, from 20 January 2003 and its attached declaration.<sup>330</sup> Under this Resolution, states were under the obligation to “ensure that any measure taken (by a state) to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law”.<sup>331</sup> Later on, the UN Security Council passed other resolutions on this matter. Also, the president of the UN Security Council, the UN Secretary General and the Human Rights Council, inter alia, recognized that the objectives of a “comprehensive approach” to countering terrorism are not in conflict with human rights, development, the functioning of democratic institutions and the maintenance of peace and security,<sup>332</sup> but rather they are complementary and mutually reinforcing.<sup>333</sup>

Reading them in tandem, it is possible to draw a pattern of desired conduct of states towards the subject of countering terrorism. Procedural guarantees, as the principle of legality – *nullum crimen sine lege* –, must guide states while drafting anti-terrorist laws and treaties.<sup>334</sup> This means: laws criminalizing terrorist acts shall be “accessible, formulated with precision – no ambiguities<sup>335</sup> –, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.”<sup>336</sup>

There is a peremptory prohibition on the application of retroactive and *ex post facto* criminal laws.<sup>337</sup> In what regards to persons deprived from liberty, as

---

327 Id. ¶ 1.a.

328 For further reading on anti-terror Resolutions and International Human Rights Law consistent implementation, please refer to Andrea. Security Council’s Anti-terror Resolutions and their Implementation by Member States: An Overview. 4 J. Int’l Crim. Just. 1044 2006. pp. 1044-1076. p. 1059.

329 E/CN.4/2005/103. ¶ 6.

330 S/RES/1456 (2003).

331 Id. ¶ 6.

332 A/RES/66/171 (2011). Preamble. p. 1.

333 A/60/825 (2006). ¶ 5; A/HRC/16/51 (2010). ¶¶ 5, 8; S/RES/2129 (2013). Preamble. p. 1; S/PRST/2013/1. p.2; S/RES/2170 (2014). Preamble. p. 2; S/RES/2253 (2015). Preamble. p. 2; A/HRC/RES/28/17 (2015). Preamble. p. 1; A/HRC/31/L.13 (2016). Preamble. p. 2.

334 E/CN.4/2005/103. ¶ 33.

335 Ibid.

336 E/CN.4/2005/103. ¶ 35; A/RES/65/221 (2011). ¶ 6.i; A/RES/68/178 (2014). ¶ 6.

337 E/CN.4/2005/103. ¶ 33.

a consequence of the application of domestic criminal laws on terrorism, fundamental judicial-procedural guarantees also arise:

- 1) A “fair and effective” criminal justice system must be founded on a faithful observance of human rights and the rule of law;<sup>338</sup>
- 2) Detained persons shall be treated and protected in accordance to international law, human rights law, humanitarian law and international criminal law.<sup>339</sup> All forms of secret or unacknowledged detention is prohibited.<sup>340</sup> Detainees have their judicial safeguards protected, regarding dignity, security, and the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to stand trial within a reasonable time.<sup>341</sup> The right of a detainee to contact a legal counselor of his/her on choice at any phase of the detention or the process must be safeguarded.<sup>342</sup> They shall be given the rights to review their detention;<sup>343</sup>
- 3) Detainees shall be granted, at all times, due process guarantees, in fully respect to the provisions of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Geneva Conventions of 1949 and their Additional Protocols, and the 1951 Convention relating to the Status of Refugees,<sup>344</sup> irrespective of the place they are arrested or detained;<sup>345</sup>
- 4) Suspects of terrorism practices must be granted interrogation methods that meet the criteria of international states’ obligations, in total respect for international law, including international human rights, refugee law, humanitarian law and international criminal law;<sup>346</sup>
- 5) Suspects have the guarantee of a fair and public trial with independence and impartially by a natural judge<sup>347</sup> as well as the guarantee of an effective remedy apply both to suspects of terrorism and to victims, whose right is to receive adequate, effective and prompt reparations for the damage they suffered;<sup>348</sup>

---

338 A/RES/66/171 (2011). Preamble. p. 2; A/RES/66/178 (2012). ¶ 3.

339 A/RES/66/171 (2011). ¶ 6.c, 6.e; A/RES/68/178 (2014). Preamble. p. 2, ¶¶ 3, 6.e; A/RES/65/221 (2011). ¶ 6.c.

340 A/HRC/16/51 (2010). ¶ 38.1.

341 A/RES/66/171 (2011). ¶ 6.d; A/RES/68/178 (2014). ¶ 6.d.

342 A/HRC/16/51 (2010). ¶ 38.2.

343 A/RES/66/171 (2011). ¶ 6.b; A/RES/65/221 (2011). ¶ 6.b.

344 A/RES/65/221 (2011). ¶ 6.p.

345 A/RES/65/22 (2011). ¶ 6.b; A/RES/68/178 (2014). ¶ 6.c.

346 A/RES/66/171 (2011). ¶ 6.o; A/RES/65/221 (2011). ¶ 6.n; A/RES/68/178 (2014). ¶ 6.

347 A/HRC/RES/25/7. ¶ 17.

348 A/HRC/RES/10/15 (2009). ¶ 5; A/HRC/RES/29/9 (2015). ¶ 14; A/HRC/29/L.17/Rev.1 (2015). ¶ 14; A/RES/66/171 (2011). ¶ 6.p; A/RES/65/221 (2011). ¶ 6.o.

- 6) There is the guarantee that states have to protect the right to privacy and they must take all the necessary measures to ensure that investigations and countermeasures against terrorism be implemented in a lawful, discriminate and non-arbitrary manner;<sup>349</sup>
- 7) According to article 4.1 of the International Covenant on Civil and Political Rights, “in a time of public emergency which threatens the life of the nation,” states may derogate some of the rights thereof in a strictly extension “required by the exigencies of the situation.” The power of states to derogate rights must be governed by several conditions which are in turn regulated by the generally recognized principles of proportionality, necessity and non-discrimination.<sup>350</sup> Other rights, like those enshrined on articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 can never suffer derogation. States must respect the non-derogability of these rights in any circumstances related to counter terrorism.<sup>351</sup>

In what regards to border governance measures and human rights guidelines and practices in border control operations,<sup>352</sup> states must always obey the principles of legality, proportionality, necessity and non-discrimination.<sup>353</sup> States shall not resort on disproportionate, unnecessary and biased pre-entry mechanisms, that is, there shall be:

- 1) No blanket imposition of additional barriers to entry or screening for certain groups,<sup>354</sup> or no “profiling practices based on assumptions that persons of a certain racial, national or ethnic origin or religion are particularly likely to pose a risk may lead to practices with respect to border controls and counter-terrorism measures;”<sup>355</sup>
- 2) All border control practices must fully respect states’ obligations under international law, particularly international human rights law;<sup>356</sup>
- 3) States are called to observe the principle of non-refoulement, under human rights law and refugee law,<sup>357</sup> that is: states shall not return persons, even those related to terrorist practices, to other states where there are significant reasons to believe that those persons would be under the

349 A/RES/65/221 (2011). ¶ 6.f; A/HRC/RES/25/7 (2014). ¶ 12; A/HRC/2014 (2014). ¶ 25; A/RES/68/178 (2014). ¶ 6.g.

350 E/CN.4/2005/103. ¶ 9.

351 A/RES/65/221 (2011). ¶ 5; A/RES/66/171 (2011). ¶ 5; A/RES/68/178 (2014). ¶ 5.

352 A/71/384. ¶ 17.

353 A/RES/65/221 (2011). ¶ 6.h; A/71/384 (2016). ¶ 17.

354 A/71/384 (2016). ¶ 17.

355 A/RES/68/178 (2014). ¶ 6.n; A/71/384 (2016). ¶ 17.

356 A/RES/65/221 (2011). ¶ 6.h.

357 A/RES/68/178 (2014). ¶ 6.



threat of being tortured or killed by virtue of their belonging in a particular group, be they racial, national, religious or any other social group or of a particular opinion, in violation of international refugee law and/or international human rights law,<sup>358</sup>

- 4) National security and public order may allow states to expel refugees from their territories according to international refugee law.<sup>359</sup> In those cases, states are called upon to ensure, in conformity with international refugee law, that the expulsion be non-discriminatory and proportionate, made on a case-by-case basis, through procedures which respect standards of due process, in which the threat to security posed by the individual is substantiated and in which the individual can provide evidence that might counter the allegations.”<sup>360</sup>

### 5. Respect for religious faith

There is a great concern that the association between religion and extremism becomes a growing threat and even more diffuse.<sup>361</sup> The risk is the constant growth of incitement of terrorist acts motivated by extremism ideology and Intolerance,<sup>362</sup> which threatens the enjoyment of human rights,<sup>363</sup> and has “a devastating humanitarian impact on the civilian population,”<sup>364</sup> claiming the lives of innocent people, particularly children.<sup>365</sup> Part of the deep concern related to religion lays on the grounds that the violence associated to terrorism, which often includes sectarian violence,<sup>366</sup> comprises both the attacks that are willfully driven by religious motivation against a civilian population,<sup>367</sup> and terrorist attacks whose target is members of religious minorities,<sup>368</sup> or towards the destruction of religious sites and objects,<sup>369</sup> irrespective if that destruction is incidental or deliberate, and/or “towards the illegally removal of objects of religious importance”<sup>370</sup> with the “unlawful objective of trading them”.<sup>371</sup>

---

358 A/RES/65/221 (2011). Preamble. p. 1-2, ¶ 6.j; A/RES/66/171 (2011). ¶ 6.k; A/RES/68/178 (2014). ¶ 6.

359 A/71/384 (2016). ¶ 29.

360 A/71/384 (2016). ¶ 29.

361 S/PRST/2010/19. p. 1.

362 S/PRST/2010/19. p. 1; S/RES/2129 (2013). Preamble. p. 2; S/RES/2170 (2014). Preamble. p. 1; A/RES/68/276 (2014). Preamble. p. 2; S/RES/1624 (2005). Preamble. p. 1; S/RES/2249 (2015). Preamble. p. 1.

363 S/RES/2129 (2013). Preamble. p. 2.

364 S/PRST/2015/15. p. 1.

365 A/RES/68/276 (2014). Preamble. p. 2.

366 Ibid.

367 S/RES/2249 (2015). Preamble. p. 1.

368 S/PRST/2014/20. p.2.

369 S/RES/2199 (2015). Preamble. p. 5. Under Chapter VII. ¶ 5.

370 Id. ¶ 17.

371 S/RES/2249 (2015). Preamble. p. 1.

Consequentially, a great number of the UN manifestations on counter terrorism, use the same verbatim: “violent extremism when conducive to terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group”.<sup>372</sup> Terrorist acts committed in the name of religion,<sup>373</sup> represent, therefore, a “distorted narrative that are based on the misinterpretation of (religious beliefs).”<sup>374</sup> There is a constant reminder that “widespread or systematic attacks directed against any civilian populations because of their religion, belief<sup>375</sup> and/or confessional affiliations, is totally prohibited.”<sup>376</sup> A crucial point for states, while in the fight against terrorism, is the protection of religion values of the peoples under their jurisdiction. In this context, states parties are urged to consider the statement that terrorism cannot/should not be associated with any religion.<sup>377 378</sup> Particularly in what regards to religious minorities, states are also urged to “prevent the indiscriminate targeting of different religions,”<sup>379</sup> and to recognize that incitement to “religious hatred contributes, in general, to aggravate existing contexts of denial of fundamental rights and freedoms of target groups.”<sup>380</sup>

States are also called to the solemn compromise to reinforce the pledge of the international community to promote a culture of peace and respect for all religions, beliefs and cultures, and to prevent the defamation of religions<sup>381</sup> through education programmes for youth that “could discourage their participation in acts of terrorism, violent extremism conducive to terrorism, violence, xenophobia and all forms of discrimination.”<sup>382</sup> Also in the context of the fight against terrorism, states are persistently encouraged:

---

372 S/RES/2170 (2014). Preamble. p. 1; S/RES/2199 (2015). Preamble. p. 2; A/RES/70/291 (2016). Preamble. p. 1.

373 A/66/37 (2011). ¶ 1; S/2013/133 (2013). ¶ 22.

374 A/RES/70/291 (2016). ¶ 54.

375 S/RES/2170 (2014), under chapter VII – UN Charter. ¶ 3.

376 S/PRST/2015/15. p. 1.

377 A/59/37 (2003). ¶ 2.r; A/HRC/RES/10/22 (2009). ¶ 8; S/PRST/2011/9. p. 1; S/RES/1989 (2011). Preamble. p. 1; A/66/37 (2011). ¶ 1; A/RES/65/221 (2011). Preamble. p. 1; S/RES/2083 (2012). Preamble. p. 1; S/PRST/2012/17. p. 1; A/RES/67/99 (2012). Preamble. p. 2; S/PRST/2013/1. p.2; S/PRST/2013/5. p.2; S/RES/2129 (2013). Preamble. p. 8; S/PRST/2015/14. p. 1; S/PRST/2015/11. p. 1; S/PRST/2015/14. p. 1; A/RES/68/178 (2014). Preamble. p. 1; S/RES/2253 (2015). Preamble. p. 1; A/RES/70/177 (2015). Preamble. p. 3; S/PRST/2016/6 (2016). p. 1.

378 UNESCO. Resolution 39. ¶ 3. *Supra* note 29. ¶ 5.

379 S/RES/1624 (2005). Preamble. p. 2.

380 A/HRC/RES/10/22 (2009). ¶ 6.

381 *Id.* ¶ 8.

382 A/RES/70/291 (2016). ¶ 13.

- 1) To reinforce a commitment to a culture of dialogue and understanding among civilizations, enhancing tolerance and interreligious dialogue,<sup>383</sup> and a “broad understanding for religious diversity”;<sup>384</sup>
- 2) To avoid discrimination, “including unjustified differences in the treatment of particular religious;”<sup>385</sup>
- 3) To take full consideration of human rights of all persons while countering terrorism, with special attention to the persons belonging to ethnic and religious minorities;<sup>386</sup>
- 4) “Not to recourse, in measures involving international border governance,<sup>387</sup> “on stereotype and religious based profiling on the basis of disrespect for the rule of law and for the principles of legality and proportionality”,<sup>388</sup> and, equally, “not to resort on a discrimination prohibited by international law, human rights law, humanitarian law and refugee law, including on religious grounds.”<sup>389</sup>

## 6. Cooperation

Since its foundational document, the United Nations strive for international cooperation among nations with the purpose of maintenance of international peace and security<sup>390</sup> and for achieving “universal respect for, and observance of, human rights and fundamental freedoms”,<sup>391</sup> “without distinction as to race, sex, language, or religion.”<sup>392</sup> After the end of the Cold War, it was even believed that the world would have, at that moment, “the best chance of achieving international peace (through cooperation) since the foundation of the United Nations.”<sup>393</sup> Time and the numerous and violent conflicts of the last decades have shown that “the best chance” has been lost.

The passing of time would bring the states to the understanding that mutual cooperation, mutual understanding and peace are more than a state of absence of conflict, but rather it would require a proactive,<sup>394</sup> effective, inclusive, ac-

---

383 S/PRST/2012/17. p.3; S/PRST/2013/1. p.2; S/PRST/2016/6 (2016). p. 1; A/RES/70/291 (2016). ¶ 13.

384 S/PRST/2012/17. p.3; S/PRST/2013/1. p.2; S/PRST/2016/6 (2016). p. 1.

385 A/HRC/2014 (2014). ¶ 25.

386 A/RES/68/178 (2014). ¶ 4.

387 A/71/384 (2016). ¶ 17.

388 Ibid.

389 A/RES/68/178 (2014). ¶ 6.n; A/RES/66/171 (2011). ¶ 6.n.

390 United Nations, Charter of the United Nations. Supra note 3. Article 11.1.

391 Id. Article 1.3, 13.2 b.

392 Id. Article 55. c.

393 S/23500 (1992). p.5.

394 S/RES/2341 (2017). ¶. 4.

tive, timely,<sup>395</sup> resolute,<sup>396</sup> cooperative,<sup>397</sup> “positive (and) dynamic participatory process,”<sup>398</sup> in order to adopt, at the same time, practical and effective measures to combat terrorism,<sup>399</sup> and, conversely, strive for the protection of the rule of law, tolerance, inclusiveness,<sup>400</sup> while promoting and protecting civil and political rights, economic, social and cultural rights for all persons<sup>401</sup> within the jurisdiction of each state. Cooperation would then assist all the aspects of terrorism: “prevention, protection, mitigation, preparedness, investigation, response to or recovery from.”<sup>402</sup>

Accordingly, terrorism cannot be defeated in an independent initiative.<sup>403</sup> States must collectively make efforts to foster cooperation among them,<sup>404</sup> acting in unison,<sup>405</sup> in full obedience to the Charter of the United Nations, to international law and relevant international conventions,<sup>406</sup> to the resolutions from the UN umbrella organisms and to the sanctions imposed by them.<sup>407</sup> In this sense, international law and the principles inscribed in the UN Charter prevent states from unilateral practices while countering terrorism.<sup>408</sup> Rather than one-sided response, states must acknowledge the United Nations vital role as the competent universal organ to lead and coordinate the effort of combating the issue of international terrorism.<sup>409</sup> The participation of United Nations is, in this aspect, *sine qua non*, through enhancing cooperation among states and regional and international organizations and “strengthening each other’s efforts,”<sup>410</sup> imple-

---

395 S/RES/1456 (2003). ¶ 5; A/RES/70/148 (2015). ¶ 10.

396 A/RES/70/148 (2015). ¶ 10.

397 A/RES/38/130 (1983). Preamble; A/HRC/28/L.30 (2015). p.2; A/HRC/RES/28/17 (2015). p.2.

398 A/HRC/RES/32/28. Annex. Preamble. p. 3.

399 S/RES/1044 (1996). Preamble. p. 1.

400 S/RES/2129 (2013). Preamble. p. 1; S/PRST/2013/1at 1; S/PRST/2013/5. p. 1.

401 United Nations, Charter of the United Nations. *Supra* note 3. Article 1.3 and 13.2 b.

402 S/RES/2341 (2017). ¶. 4.

403 A/70/924–10 S/2016/532. ¶ 22.

404 A/59/37 (2003). ¶ 2; A/RES/68/41 (2013). ¶ 4; S/2015/144 (2015). ¶ 85.

405 A/59/37. ¶ 1.

406 A/RES/56/88 (2001). Preamble. p. 1; A/RES/57/27 (2003). Preamble. p. 1; S/RES/1566 (2004), under Chapter VII – UN Charter. ¶ 2; A/RES/61/40 (2006). Preamble. p. 2; S/RES/1989 (2011). Preamble. p. 1; A/RES/70/291 (2016). ¶ 32.

407 S/RES/2129 (2013). Preamble. p. 3; S/PRST/2013/5 (2013). p. 1.

408 A/59/37 (2003). ¶ 9.

409 S/RES/1269 (1999). ¶ 3; A/RES/57/27 (2003). Preamble. p. 1; A/RES/61/40 (2006). Preamble. p. 1; S/RES/1989 (2011). Preamble. p. 1; A/RES/70/291 (2016). Preamble. p. 2.

410 A/RES/51/210 (1996). p. 1; A/RES/52/165 (1997). p. 1; A/RES/51/210 (1997). p. 1; A/RES/54/110 (1999). p. 1; A/RES/55/158 (2000). p. 1; A/RES/57/27 (2003). p. 1; A/59/37 (2003). ¶ 1; E/CN.4/2003/37. p. 1-2; A/RES/59/46 (2004). p.2; A/RES/60/43 (2006). p.2; A/RES/61/40 (2006). p.2; A/RES/62/71 (2008). p. 1; A/RES/66/105 (2011). p.2; A/RES/67/99 (2012). p.2.

menting and updating the United Nations Global Counter-Terrorism Strategy, and providing technical and integrated assistance in the fight against terror.<sup>411</sup>

There are no shortcuts in the fight of preventing, weakening, isolating and incapacitating the threat of terrorism.<sup>412</sup> “Military force, law enforcement measures, and intelligence operations alone”<sup>413</sup> cannot defeat terrorism. A successful, joint, and collaborative alliance against terrorism necessarily “need to address the factors driving recruitment and radicalization to terrorism:”<sup>414</sup> namely, *inter alia*, economic inequality, social exclusion, human rights abuses, lack of good governance and state capacity, poverty and corruption.<sup>415</sup> That effort can be only and exclusively achieved through cooperation among states in a “long term fight.”<sup>416</sup>

Addressing those root causes that promote the advance of terrorism demands robust cooperation.<sup>417</sup> As a general command, states have to work on fully cooperation with other states in the fight against terrorism,<sup>418</sup> through the exchange of operational information,<sup>419</sup> and, particularly, through bilateral and multilateral arrangements,<sup>420</sup> assuring that no person convicted of terrorism be granted refugee status<sup>421</sup> or find safe havens, on the basis of the principle of extradite or prosecute.<sup>422</sup> Specific commands include:

- 1) It mandatorily requires transparency among states, inclusiveness, coordination, decisiveness,<sup>423</sup> effective collaboration, proactive participation and comprehensive approach towards human rights and fundamental freedoms in all levels: state, bilateral relations, regional and interregion-

---

411 A/RES/52/133 (1997). ¶ 5; A/RES/68/119 (2013). ¶ 3; S/2014/9 (2014). ¶ 34; A/HRC/29/L.17/Rev.1 (2015). ¶ 3; A/HRC/RES/29/9 (2015). ¶ 3; S/2015/366 (2015). ¶¶ 88, 89.

412 S/RES/2083 (2012). Preamble. p. 1; S/PRST/2012/17. p.3; S/PRST/2013/1. p. 1; S/RES/2161 (2014). Preamble. p. 2; S/RES/2170 (2014). Preamble. p. 1-2; S/RES/2199 (2015). Preamble. p. 2; S/PRST/2016/6 (2016). p. 1.

413 A/RES/68/276 (2014). ¶ 8.

414 S/PRST/2014/23. p. 1.

415 S/PRST/2013/5. p.2.

416 *Ibid.*

417 S/2014/9 (2014). ¶ 13; A/RES/68/276 (2014). ¶ 8.

418 A/RES/68/276 (2014). ¶ 22.

419 S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 3.b.

420 *Id.* ¶ 3.c.

421 *Id.* ¶ 3.g.

422 S/RES/1373 (2001), under Chapter VII – UN Charter. ¶ 3.g; S/RES/1456 (2003). Annex. p.2; A/RES/69/127 (2014). ¶ 10; A/RES/68/276 (2014). ¶ 22; A/HRC/31/L.13 (2016). Preamble. p. 1-2; A/RES/70/291 (2016). ¶ 31.

423 A/RES/70/291 (2016). Preamble. p. 2.

al organizations and arrangements,<sup>424</sup> and international levels,<sup>425</sup> and the civil society;<sup>426</sup>

- 2) Full coordination would support at any phase of the criminal investigations and proceedings as well as of the administrative proceedings<sup>427</sup> That may include: the collecting of evidence; “speeding investigations”;<sup>428</sup> denying safe haven and bringing to justice or extraditing those who “support, facilitate or participate or attempt to participate in the financing, planning, preparation (or perpetration) of terrorist acts”<sup>429</sup> and obtaining evidence for proceedings;<sup>430</sup>
- 3) International cooperation to prevent and suppress both terrorist acts and financing of terrorist acts through exchange information.<sup>431</sup>

## V. Challenges in states’ compliance with UN Security Council resolutions

Up to this point one could read the general UN bodies, agencies and organisms framework on terrorism, both binding and non-binding – resolutions, statements, letters, reports. From this point on, the focus will be exclusively on UN Security Council Resolutions on terrorism. As one could read in the previous sections of this paper, the absolute priority of a considerable number of UNSC resolutions, particularly resolution 1373, is to work to constrain individuals, groups, organizations and states through *embargos* measures – arms embargo, travel ban, assets freeze, listings and others – and to promote universal ratification counter-terrorism treaties and protocols. Security Council Resolutions on terrorism depends on states adherence and compliance to be effectively implemented. The effectiveness of any Council measure is, therefore, contingent to states wiliness to efficaciously fulfill the resolutions commands in a timely fashion, with tightening of the control and supervision of law enforcement domestic measures.<sup>432</sup>

In order to assist states in adhering to the those commands, the UN created two committees: The Counter Terrorism Committee (CTC), in 2001,<sup>433</sup> and

424 A/RES/70/291 (2016). ¶ 30.

425 A/RES/66/171 (2011). Preamble. p. 2; S/2014/9 (2014). ¶ 58; A/RES/68/276 (2014). Preamble. p. 2; S/2015/366 (2015). ¶ 72.

426 S/PRST/2012/17. p.3.

427 E/CN.4/2003/37. Preamble. p. 2.

428 A/RES/51/210 (1996). ¶ 3.

429 A/RES/69/127 (2014). ¶ 19; A/RES/70/148 (2015). ¶ 10; A/RES/70/291 (2016). ¶ 32.

430 A/RES/70/291 (2016). ¶ 32.

431 S/RES/1269 (1999). ¶ 4.

432 Bianchi, Andrea. Security Council’s Anti-terror Resolutions and their Implementation by Member States: An Overview. 4 J. Int’l Crim. Just. 1044 2006. pp. 1044-1076. p. 1045.

433 S/RES/1373 (2001).

the Counter-Terrorism Committee Executive Directorate (CTED), in 2004.<sup>434</sup> Their mandates are complimentary: the CCT main mandate is to assist states to strengthen their capacity in preventing and suppressing terrorist attacks whether internally or cross-border, and CTED to technically assist the CTC in the following focus areas: Border management, countering violent extremism, foreign terrorist fighters, human rights, information and communications technologies (ICT), international, regional and subregional cooperation, law enforcement, legislative issues, role of women and terrorism financing. This next session evaluates states adjudication, compliance, adherence and response to anti-terror UN Security Council resolutions, based on state reports to the Council and on the “Global survey of the implementation of Security Council resolution 1373 (2001) by Member States, from 2016.”<sup>435</sup> <sup>436</sup>States are divided by regions and subregions: 1) Africa: North Africa,<sup>437</sup> East Africa,<sup>438</sup> Southern Africa<sup>439</sup> West Africa,<sup>440</sup> Central Africa,<sup>441</sup> 2) Asia: Pacific Islands,<sup>442</sup> South-East Asia;<sup>443</sup> South Asia;<sup>444</sup> Central Asia and the Caucasus;<sup>445</sup> Western Asia;<sup>446</sup> East Asia;<sup>447</sup> 3) Latin America: Central America,<sup>448</sup> Caribbean,<sup>449</sup> South America;<sup>450</sup> 4) Europe and

---

434 S/RES/1535 (2004).

435 S/2016/49 (2016).

436 Hereinafter” The Report”, “2016 Report”.

437 Algeria, Egypt, Libya, Mauritania, Morocco, Tunisia.

438 Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan, Uganda, United Republic of Tanzania

439 Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe.

440 Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia.

Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.

441 Angola, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, quatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe.

442 Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

443 Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, Viet Nam.

444 Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

445 Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan.

446 Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen.

447 China, Democratic People’s Republic of Korea, Japan, Mongolia, Republic of Korea.

448 Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama.

449 Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago

450 Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, Bolivarian Republic of Venezuela.

North America: Eastern Europe,<sup>451</sup> Western European, North American and other States<sup>452</sup> and South-East Europe.<sup>453</sup>

### A. Counter-Terrorism Strategy Plan of Action and challenges in countering terrorism–financing

There is a crescendo of challenges related to the combat of terrorism. The risks associated to terrorism evolve very quickly and mutate from time to time its form of action, what undermines stability across the globe.<sup>454</sup> Fight against terrorism always requires more and more sophisticated responses to those threats, particularly in the area of strategically countering-terrorism’ – counter-terrorism strategy – which includes a huge sub-area of counter-financing of terrorism. The global uniformed and widely accepted plan to combat terrorism is the UN Global Counter-Terrorism Strategy Plan of Action (A/RES/60/288),<sup>455</sup> which is composed of 4 pillars: “1. Measures to address the conditions conducive to the spread of terrorism; 2. Measures to prevent and combat terrorism; 3. Measures to build States’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard, and 4. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.”

The first states responses to terrorism following September 11 revealed a *naivité* completely incompatible to what are the real causes of the terrorism phenomena. Time and experience would show that radicalization, violent extremism and terrorist propaganda would require much more from states than simply military, legislative and law enforcement measures.<sup>456</sup> Addressing conditions conducive to terrorism constituted a *sine-qua-non* path towards global peace and stability. But there is one extremely important caveat here: when young people, who live in the periphery of the physical, political and economic world, offer their very lives in sacrifice for a “greater call,” ameliorating their conditions of life may not suffice to challenge the problem.<sup>457</sup> At the initial stages of re-

451 Belarus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Russian Federation, Slovakia, Ukraine.

452 Andorra, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

453 Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia.

454 S/2016/49 (2016). ¶ 11.

455 A/RES/60/288 (2006). Annex.

456 S/2016/49 (2016). ¶ 59.

457 “Because many potential FTFs play a marginal role in their host countries, Governments and NGOs believe that offering material advantages, such as jobs or education, may suffice to counter the lure of the



recruitment, that might be enough. But the broad attraction of terrorist groups for young people<sup>458</sup> is focused on those who are “seeking ways to find purpose and significance”<sup>459</sup> and want to change and save the world,<sup>460</sup> even in the form of political or religious violence. They are called to a “glorious” cause, to a “joyful movement bonded in blood.”<sup>461</sup>

Moreover, in countering recruitment, there is also the common idea of young people being “brainwashed” by terrorist organizations.<sup>462</sup> Once more, to think this way is to despise the sincere motives of those marginalized in the periphery of the world, rejected by society, disillusioned and disaffected, who turn their personal frustrations and grievances into a moral fight, many times vested as a religious fight.<sup>463</sup> <sup>464</sup> Astonishingly, contrary to popular belief, only 20 per cent of those young *recruitees* have formal religious education or training.<sup>465</sup> Even more incredibly, although social media plays a very important role on recruitment of young individuals, research shows that “one in every four FTFs to Al-Qaida and ISIL join through friends and that around one in five join with family.”<sup>466</sup> To counter the influence of extremist ideology at this level of fully radicalized individuals requires much more than measures of a political and/or economic nature.

In order to effectively prevent, disengage, rehabilitate and reintegrate those disillusioned and disaffected, it is necessary to construct a thorough counter violent extremism message with the crucial engagement of families, schools,

---

“caliphate”. However, if such individuals are prepared to sacrifice their lives, it is unlikely that offers of material advantage will stop them. Such incentives may provide viable alternative life pathways. p.initial stages of radicalization, but fully radicalized individuals who are fused with a certain group and its values are not particularly susceptible to material incentives or disincentives (punishments, sanctions), which often backfire by increasing support for violence” (S/AC.40/2016/NOTE.11. ¶ 14).

458 S/AC.40/2016/NOTE.11. ¶ 16.

459 S/AC.40/2016/NOTE.11. ¶ 6.

460 S/AC.40/2016/NOTE.11. ¶ 30.

461 S/AC.40/2016/NOTE.11. ¶ 11.

462 “As suggested by the work of researchers (interviews; experimental studies with youth in Paris, London, and Barcelona, and with captured ISIL fighters in Iraq and Jabhat an-Nusra fighters from Syria): simply to dismiss ISIL as “nihilistic” is to avoid the imperative to comprehend and address the attraction of its “mission” to change and save the world. There is no evidence for (and massive evidence against) the role of “brainwashing”. “Brainwashing” is invoked by those who wish to remain ignorant of the sincere motives of those who join such radical movements or who wish to deny that apparently “normal” members of society may seek out such movements of their own volition.” (S/AC.40/2016/NOTE.11. ¶ 12.)

463 “It is necessary to research and test messages of hope for those who are disillusioned and disaffected (those seeking meaning, glory, esteem, adventure, respect, remembrance, camaraderie, justice, rebellion, self-sacrifice and structure) and to build an independent network of credible global voices, local content creators, bloggers, etc., who understand the generational, cultural, theological and geographical nuances of their communities”. (S/AC.40/2016/NOTE.11. ¶ 30.)

464 S/AC.40/2016/NOTE.11. ¶ 9.

465 Id. ¶ 6.

466 Id. ¶ 6.

religious leaders, communities and civil society.<sup>467</sup> Specific strategies have to be put in place also for those who voluntarily join terrorist groups, but who are not in the margin of societies: they are very skilled professionals of all sort of areas: doctors, engineers and other professionals,<sup>468</sup> such as “hackers, web designers, and developers of mobile telephone applications and dedicated social media platforms, both open and encrypted.”<sup>469</sup>

The UN Global Counter-Terrorism Strategy Plan of Action addresses some of these recruitment issues within a myriad of practical measures in other aspects of countering terrorism. Although some of the envisaged measures have been fulfilled, the level of states’ adherence to the terms of the Plan remains very low. Take, for example, the Eastern, Western European and North American countries along with Australia, Israel and New Zealand, where majority of states have not adopted an integrated and comprehensive national counter-terrorism strategy.<sup>470</sup> Same scenario in Western Asia, where “no State of the subregion appears to have introduced a national comprehensive and integrated counter-terrorism strategy that engages all stakeholders in the society beyond law enforcement and Governmental agencies”.<sup>471</sup>

Also, in Central Asia and the Caucasus, no state has established an ‘integrated counter-terrorism strategy.’<sup>472</sup> Not different from West and East Africa, where no state of those regions “have not developed a national strategy or a comprehensive, integrated counter-terrorism/ countering violent extremism approach.”<sup>473</sup> In Southern Africa, only South Africa has adopted a counter-terrorism strategy.<sup>474</sup><sup>475</sup> Likewise, only few states from Pacific Islands put in practice a comprehensive and integrated counter-terrorism strategy.<sup>476</sup> A little different scenario in North Africa, where there are some isolated cases of states that has instead developed a *national* strategy, albeit the subregion has not yet developed an *international* counter-terrorism strategy,

Speaking of terrorism financing, as money constitutes the main instrument through which terrorists and terrorist organizations operate, recruit fighters, perpetrate attacks, foment violent extremist propaganda, destabilize governments and international organizations and spread terror among civilian population,

---

467 S/AC.40/2016/NOTE.11. ¶ 26; S/2016/49 (2016). ¶ 205.

468 S/2016/49 (2016). ¶ 43.

469 Ibid.

470 Id. ¶ 355.

471 Id. ¶ 242.

472 Id. ¶ 220.

473 Id. ¶¶ 86, 147.

474 Id. ¶¶ 66, 105.

475 Id. ¶ 66.

476 Id. ¶ 165.

control over terrorist financing is profoundly essential in a well-successful counter-terrorism strategy. Nevertheless, many of the provisions from UN Security Council resolutions related to this issue remain at idle. Albeit there are exceptions as, for example, Western European and North American countries along with Australia, Israel and New Zealand where all states have enacted “robust legislation criminalizing terrorism financing as a standalone offence.”<sup>477</sup> Part of the problem is due to four main aspects: First: lack of legislative framework criminalizing terrorism; Second: informal banking and cash-based systems in determined regions; Third: physical cross-border cash flows and Forth: creation of non-profit entities to mask illicit terrorist receiving of funds.

In all East Africa, only one state has criminalized terrorist financing<sup>478</sup> or has put in place a “comprehensive legal framework to freeze assets,”<sup>479</sup> like Kenya. The others have a very weak legislative framework in this field.<sup>480</sup> Only Kenya and Ethiopia had effectively frozen terrorist assets up until 2016.<sup>481</sup> Same struggle faced by west african countries, where a very reduced number of states has criminalized the financing of terrorism, both for lone-wolf terrorists and for terrorist organizations.<sup>482</sup> In some regions like West Africa and East Asia, cash-based economies are widely available and inadequately supervised,<sup>483</sup> remaining a great challenge for countering financing of terrorism,<sup>484</sup> owing to the exploitation of those channels by perpetrators of terrorist attacks. In the former, for example, less than 12 per cent of the population holds bank account.<sup>485</sup> Consequently, it is widespread the use of alternative - no “paper trail” – remittance services, like in East Africa<sup>486</sup> and West Africa.<sup>487</sup>

In Cameroon and India, for example, there are the so called “tontines” and “hawala” transactions, informal banking services that transfer money through unofficial networks.<sup>488</sup> In West Africa, one can transport currency at the border without being required to make a declaration or a disclosure of the content.<sup>489</sup> Different, for example, from Western European and North American countries, along with Australia, Israel and New Zealand, where only one state lack the dis-

---

477 Id. ¶ 361.

478 Id. ¶ 92.

479 Ibid.

480 Ibid.

481 Ibid.

482 Id. ¶ 130.

483 Id. ¶ 151.

484 Id. ¶ 270.

485 Id. ¶ 130.

486 Id. ¶ 92.

487 Id. ¶ 151.

488 S/2006/918. p.6; S/2007/196. p.5.

489 S/2016/49 (2016). ¶ 153.

closure procedure for the detection of “illicit physical cross-border transportation of currency.”<sup>490</sup> In China, Democratic People’s Republic of Korea, Japan, Mongolia and Republic of Korea, “reliance on informal and cash based transactions has impeded the systematic reporting of cross-border currency transactions”.<sup>491</sup> Same problem faced by East African countries, where lack of capacity and resource constraints prevent the region from an effective and successful monitoring of illicit physical cross-border transportation of currency.<sup>492</sup> In turn, North Africa has established mechanisms to detect these transportations of currency. Nevertheless, their system is still incapable to detect if that capital flight is addressed to money-laundering and/or terrorism financing.<sup>493</sup>

A vast number of countries still have difficulties in dealing with non-profit organizations. Suffice to say that from all Western European and North American countries and Australia, Israel and New Zealand, seventy-five per cent had not conducted, up until 2016, “a specific review of the terrorist financing risk to their non-profit organization sectors.”<sup>494</sup> In a worst scenario, only one state from Central Asia and the Caucasus and very few from Central America have performed the same review.<sup>495</sup> Up until 2006, Colombia had no surveillance over donations and funds received by non-profit entities.<sup>496</sup> In East Africa there is systematic abuse of the charitable and non-profit organization sector.<sup>497</sup> Majority of states recognize that challenging those various problems and constraints related to counter-terrorism and, moreover, countering terrorism financing, requires mutual support, mutual technical and financial assistance, technical equipment, human resources and joint resolute efforts to “exert control over the borders.”<sup>498</sup>

#### B. Structural causes, arms trafficking, information and communications technology, (non)definition of terrorism

Structural causes play out in various degrees on fomenting states inobservance and lack of adherence to UN Security Council resolutions. They represent one of the most robust challenges states face while preventing and countering terrorism. High poverty levels, economic inequalities and violent extremism are, at the same time, the driving forces of terrorism and the main reasons why states have such difficulty in fulfilling international Council commands. Nige-

490 Id. ¶ 362.

491 Id. ¶ 270.

492 Id. ¶ 92.

493 Id. ¶ 70.

494 Id. ¶ 362.

495 S/2016/49 (2016). ¶¶ 226, 288.

496 S/2006/423. p. 10.

497 S/2016/49 (2016). ¶ 91.

498 S/2007/142. p. 18; S/2004/403. p.5; S/2003/388. p.3.

ria, Ghana, Mali, Niger, Senegal and other west-African countries, along with south-Asian countries, like Afghanistan, India and Pakistan point that poverty is a great cause of tensions within the territory and on the borders and it is conducive to violent extremism.<sup>499</sup> Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan and Uganda indicate that inequalities related to economic, social and cultural rights exacerbate conflicts among ethnic groups and fuels “terrorist narratives and recruitment campaigns in areas where governments appear to be non-responsive to community demands or criticism.”<sup>500</sup>

In this context, Iran points out that social, political and economic disparities, marginalization and injustices are important hurdles in the countering of terrorism.<sup>501</sup> Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, in South Asia, and Nigeria, in Africa, are in unison to rightly mark that low education levels, illiteracy<sup>502</sup> limited access to justice, and absence of social inclusion<sup>503</sup> must be addressed if they are to develop an efficient platform to combat terrorism. In some regions, as for example in Nigeria, religious fanaticism, intolerance and the presence of ethnic militias makes it worse the problem of violent extremism.<sup>504</sup>

On state level, domestic tensions and external political tensions, long-standing local disputes and socioeconomic challenges, unrest, political instability, corruption and weak governance are among the main causes heavily entrenched to the states’ incapacity/deficiency in dealing with the spread of terror. To have a glance, the aftermath of the “Arab spring” in Egypt, Libya and Tunisia led these states to a complete political debacle deteriorating even further the vulnerability of the region. Long-lasting disputes in Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone constitute a fiasco in terms of countering terrorism and fuels terrorist groups message. Corruption and political instability make west-african situation even worse. A major refugee crisis has occurred in the Sahel and northern Nigeria due to political unrest and weak governance.<sup>505</sup> Still on state level, concerns as for excessive bureaucracy, lack of training, and resource constraints hinder the counter-terrorism initiatives in South America.<sup>506</sup>

Arms trafficking is another source for non-compliance with UN Security resolutions. For Ethiopia, Kenya, Rwanda, Somalia and other east-african countries the ongoing conflict in the region makes it highly vulnerable to access of

---

499 S/2007/65. p.3-4; S/2016/49 (2016). ¶¶ 146, 206.

500 S/2016/49 (2016). ¶ 94.

501 S/2001/1332. p.3.

502 S/2007/65. p.3-4.

503 S/2016/49 (2016). ¶ 206.

504 S/2007/65. p.3-4.

505 S/2007/65. p.3-4; S/2016/49 (2016). ¶¶ 65, 122, 136, 146.

506 S/2016/49 (2016). ¶ 314.

arms.<sup>507</sup> In Cameroon, firearms could be easily bought by criminals through informal channels.<sup>508</sup> A 2006 report showed that no specific arms-embargo measures directed at Osama bin Laden and Taliban and other individuals, groups, undertakings and entities associated with them (as required by the UN Security Council) have been adopted, although Cameroonian laws might punish this type of offence on its own way.<sup>509</sup> Armed banditry is a commonplace reason for the *crescendo* problem of terrorist practices in the region.<sup>510</sup> For Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, arms trafficking continues to pose a major problem for the subregion.<sup>511</sup>

In many regions, those who are involved in arms trafficking are also involved in drug trafficking. In Colombia, for example, in order to combat drug traffickers, “concrete actions to prevent smuggling and trafficking in arms and ammunition” must be taken.<sup>512</sup> For Iran, “the relation between terrorism and drug trafficking also needs greater international attention.”<sup>513</sup> The criminal networks established by traffickers of arms and drugs create an extensive, complex, network of transnational organized crime that grows very speedily and serves as a vital financing asset for the terrorist machinery. The Sahel region, Lake Chad Basin, the Horn of Africa, North Africa, the Middle East, South-East Europe and Central Asia are among the most affected with that issue.<sup>514</sup>

Increasing abuse of the internet and social media (information and communications technology – ICT) by terrorist groups and lone-wolf individuals to disseminate terrorist propaganda and spread a terrorist narrative,<sup>515</sup> especially when the domains are registered abroad, is a major concern that all states, without a single exception, face today.<sup>516</sup> It suffices to glance at how ISIL uses sophisticated and hi-tech media platforms with encrypted messages, conversations and overall marketing to foment its cause.<sup>517</sup> Astonishingly, ISIL even provides its users with a “help desk”.<sup>518</sup> Those groups take advantage of high level of technological sophistication to impair international economic compounds, state agencies, communication systems and the overall critical infrastructure,<sup>519</sup>

---

507 Id. ¶ 84.

508 S/2006/918. p. 10.

509 Ibid.

510 S/2007/65. p.3-4.

511 S/2016/49 (2016). ¶ 210.

512 S/2006/423. p.20.

513 S/2001/1332. p.3.

514 S/2016/49 (2016). ¶¶ 11, 13.

515 Id. ¶ 2, 204, 354.

516 Id. ¶¶ 191, 208, 338, 360.

517 S/AC.40/2016/NOTE.11. ¶ 8.

518 S/AC.40/2016/NOTE.11. ¶ 8.

519 S/2016/49 (2016). ¶ 47.

including power and nuclear plants and the state defense/intelligence sensitive network. In the event of terrorist organizations not posing that technological capacity, they can obtain it the so-called “darknet” (closed networks; anonymity network).<sup>520</sup> Particular regions of Africa, for example West Africa, are not suitable for launching even the most basic monitoring of internet or social media as they lack the basic equipment and expertise for that purpose.<sup>521</sup> In East Africa, use of internet by terrorists is heavily entrenched with the spread of terror among communities.<sup>522</sup> North African states rightly points out to the fact that one of the most significant hurdles in combating cyber-terrorism is the fact that all of their internet servers, involved in the advance of terrorism, were hosted abroad, and, therefore, cooperation with other states would be indispensable.<sup>523</sup>

ICT is a slippery slope for states’ policy makers, police personnel, and judicial branch.<sup>524</sup> Governments lack agility in preventing and responding this huge challenge.<sup>525</sup> The fact that there is no centralized regulation for internet and that there is no consensus upon universally accepted rules makes the problem worse.<sup>526</sup> Encryption, that can be a form of protection, confidentiality and integrity of the internet user, serves, most of the times, as a powerful tool for anonymity in terrorists’ hands.<sup>527</sup> Today, terrorist groups may even “develop their own proprietary encryption software,” making use of “open source encryption solutions.”<sup>528</sup> That anonymity hampers the effectiveness of most of the counter-terrorism measures for recruitment of fighters. Encryption allows terrorist recruiters to enlist people leaving digital marks extremely difficult to decode. To have an idea how serious this is, in the EUA, the country whose internet is the most watched in the world, almost 80 per cent of all aspiring foreign terrorist fighters in that country used the internet to connect with other extremists online and to download terrorist propaganda,<sup>529</sup> both using encrypted communication apps (“going dark”) and open platforms such as WhatsApp, Facebook, Twitter and YouTube.<sup>530</sup>

---

520 Id. ¶ 49.

521 Id. ¶ 129.

522 Id. ¶ 90.

523 Id. ¶ 69.

524 Id. ¶ 50.

525 S/AC.40/2016/NOTE.11. ¶ 10.

526 S/2016/49 (2016). ¶ 50.

527 Id. ¶ 45.

528 Ibid.

529 Id. ¶ 42.

530 Ibid.

Lastly, but very importantly, there is the crucial issue of the (non)definition of terrorism.<sup>531 532</sup> Countless states are of the same opinion that the absence of a commonly agreed definition of terrorism continues to thwart the fight against terrorism. Azerbaijan, for example, indicates that “the absence of a clear definition of terrorism in international law merely hampers the efforts of the international community in bringing not only individual terrorists and organizations to account, but also States that promote, support or finance terrorist activities.”<sup>533</sup> For this country, not only the absence of a definition but the “vagueness of legal formulations (may) open the way for a potential increase in criminal activities.”<sup>534</sup> For Iran, the degree of success obtained in fighting acts of international terrorism depends thoroughly in greater efforts to define terrorism and terrorist practices.<sup>535</sup> As for Iraq, “the fight against terrorism requires, first and foremost, agreement on a clear and unambiguous definition of terrorism”<sup>536</sup>

### C. Lack of specific legislation, poor law enforcement and weak criminal justice system

From the list of issues – reasons – that may hamper – or even hinder – states from complying with UN Security Council resolutions on terrorism, the *trinitica* ‘lack of specific legislation, poor law enforcement and weak criminal justice system’ is placed among the most substantial ones. Separately, each one of them is already in itself a sufficient reason. The three together can lead a counter-terrorism strategy to a complete debacle. Speaking of the first, one of the main states’ legal obligations under the aegis of the UN Security Council Resolution 1373 (2001) is to adopt domestic legislation criminalizing terrorism in all its forms and manifestations. Specific legal measures were due in tightening the control and supervision of financial operations that could be conducive

531 On the discussion of the (non)definition of terrorism and whether a universal concept is necessary, please refer to: Jagtap, Radhika. Defining International Terrorism: Formulation of a Universal Concept out of the Ideological Quagmires and Overlapping Approaches. 4 J. Phil. Int’l L. 56 2013, pp. 56-74; Hickman, Daniel J. Terrorism as a Violation of the Law of Nations: Finally Overcoming the Definitional Problem. 29 Wis. Int’l L.J. 447 2011-2012, pp. 447-483; Young, Reuven. Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation. 29 B. C. Int’l & Comp. L. Rev. 23 2006, pp. 23-106.

532 Further reading on the question of justifications and excuses for criminalizing terrorism, please take note of: Saul, Ben. Definition of Terrorism in the UN Security Council: 1985-2004. 4 Chinese J. Int’l L. 141 2005, pp. 141-166; Saul, Ben. Defending Terrorism: Justifications and Excuses for Terrorism in International Criminal Law. 25 Aust. YBIL 177 2006, pp. 177-226; Saul, Ben. Three Reasons for Defining and Criminalizing Terrorism.

Available at: <[http://www.esil-sedi.eu/sites/default/files/Saul\\_0.PDF](http://www.esil-sedi.eu/sites/default/files/Saul_0.PDF)> Last visited: May, 27th, 2016.

533 S/2001/1325. p.3.

534 Ibid.

535 S/2001/1332. p.3.

536 S/2001/1291. ¶ 3.



to terrorist practices. States had, likewise, to edit laws suppressing incitement to violent extremism and were under the compulsory task to internalize international treaties and protocols on terrorism, ratifying them and providing wide compliance to its statutory provisions.

In some regions, as in East Africa, situation in more critical once not all states have adopted counter-terrorism legislation.<sup>537</sup> Nevertheless, reports show that virtually almost all states in the world have criminalized terrorism since 2001, ratified important counter-terrorism treaties and protocols, and unprecedentedly cooperated with other states in the fight against terror, attesting that, at least particular to this, great progress has been made.<sup>538</sup> **539** All in all, a great deal of those laws defining terrorism are too broad and vague and does not feature a capricious detailing in the wording, as for example, in North and West African countries.<sup>540</sup> That failure in turn may abridge subjects' fundamental rights. Substantial part of this problem is laid upon the fact that there isn't still a common agreed definition of terrorism expressed or by a UN Security Council or as a stand-alone crime prescribed in an international treaty.

By and large, however, the struggle today is not concentrated in states ratification of those international treaties. The core obligation heralded by Resolution 1373 requires two distinct tasks: 1) enhancing states aptitude and practical infrastructural capacity to fully and effectively meet all the obligations put forward Resolution 1373 – and the sequential UN Security Council resolutions on counter-terrorism – and those obligations from treaties. Counter-Terrorism Committee affirms that these days it “tends to spend less time establishing whether countries have put in place appropriate legislation and counter-terrorism machinery, and more time evaluating how effective their border control arrangements, their counter-terrorism coordination machinery and their law enforcement capabilities are;”<sup>541</sup> Just to exemplify, East Africa countries, like Somalia

---

537 S/2016/49 (2016). ¶ 96.

538 United Nations Security Council. Counter-Terrorism Committee Executive Directorate (CTED). Briefing by CTED Executive Director Mike Smith to UN Security Council. 19 March 2008. Available at [http://www.un.org/en/sc/ctc/docs/statements/2008\\_03\\_19\\_cted\\_brief.pdf](http://www.un.org/en/sc/ctc/docs/statements/2008_03_19_cted_brief.pdf) Last visited: 8 May 2017. p. 1.

539 “At the same time, it is worth noting that considerable progress has been made. Most countries in the world have now criminalized terrorism. We have seen hundreds of new ratifications of the key counter-terrorism conventions and protocols, and there has been an almost unprecedented level of international exchange of information and cooperation among relevant agencies across borders, with the purpose of disrupting planned terrorist attacks and enabling the arrest and prosecution of those engaged in terrorism.” (United Nations Security Council. Counter-Terrorism Committee Executive Directorate (CTED). Briefing by CTED Executive Director Mike Smith to UN Security Council. 19 March 2008. Available at [http://www.un.org/en/sc/ctc/docs/statements/2008\\_03\\_19\\_cted\\_brief.pdf](http://www.un.org/en/sc/ctc/docs/statements/2008_03_19_cted_brief.pdf) Last visited: 8 May 2017.)

540 S/2016/49 (2016). ¶¶ 67, 125.

541 United Nations Security Council. Counter-Terrorism Committee Executive Directorate (CTED). Briefing by CTED Executive Director Mike Smith to UN Security Council. 19 March 2008. Available at [http://www.un.org/en/sc/ctc/docs/statements/2008\\_03\\_19\\_cted\\_brief.pdf](http://www.un.org/en/sc/ctc/docs/statements/2008_03_19_cted_brief.pdf) Last visited: 8 May 2017. p. 1-2.

and Eritrea, have introduced arms embargo legislative measures to reduce the flow of weapons in their respective territories.<sup>542</sup> However, the implementation of those measures fell short before the substantial lack of states' capacity and infrastructure along with political instability and weak governance;<sup>543</sup> 2) fully compliance with the 'UN counter-terrorism strategy' providing the indispensable partnership with civil society, academia, and other entities in advancing the combat of terror.<sup>544</sup>

Be that as it may, while there are advances, states are still far away from fully compliance with Resolution 1373 commands in terms of domestically legislating terrorist practices, and approaches to those commands are very disparate. Up until 2016, for example, most of the south-asian states had still not introduced an autonomous offence criminalizing incitement to commit terrorist acts, albeit there are parallel offences under the penal code. All in all, those parallel offenses are very broad and can be conducive to prohibitions and suppressions of the right to freedom of expression. For Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka there are still huge challenges when incitement and terrorist propaganda is disseminated through the Internet and social media.<sup>545</sup> Likewise, most states from South-East Asia have not yet criminalized incitement to terrorism and, "where it is criminalized, the definitions are generally not specific enough, giving rise to concerns that the laws could be used to suppress freedom of expression."<sup>546</sup> The soundness of this assumption that many states are too little too late in implementing Council's and treaties commands can be seen, for example, in the fact that no state in the North Africa subregion had already established an independent body to supervise counter-terrorism law enforcement,<sup>547</sup> including the state most affected by terrorist attacks: Egypt.

Some points are very critical in terms of legislative framework criminalizing acts of terrorism:

- 1) Organization, planning and preparation of terrorist acts and terrorist recruitment. In terms of organization and planning, only few states from North-Africa, West Africa, South Asia, Central America, Caribbean and South America have criminalized those practices as autonomous offences.<sup>548</sup> North Africa, South Asia, Western Asia and Caribbean states rely, instead, on existing provisions in their respective criminal codes to

542 S/2016/49 (2016). ¶ 93.

543 S/2016/49 (2016). ¶ 93.

544 S/AC.40/2016/NOTE.11. ¶ 2.

545 S/2016/49 (2016). ¶ 208.

546 Id. ¶ 191.

547 Id. ¶ 67.

548 Id. ¶¶ 74, 167, 212, 255, 293, 328, 396.

hold accountable those who organize, plan and prepare terrorist acts.<sup>549</sup> Nevertheless, those definitions may be too broad and, consequentially, may encroach on fundamental rights safeguarded on international human rights instruments, as is the case of West Africa.<sup>550</sup> Differentially, the majority of Eastern Europe and East Africa, and all of the countries from Western European, North America have introduced specific provisions in their domestic legal framework that criminalize organizing, planning and preparation terrorist acts.<sup>551</sup>

- 2) In terms of criminalizing active terrorist recruitment there are also major general weaknesses, both when the person is recruited locally or abroad. The case is very critical in the subregion of East and West Africa, where only very few states passed municipal legislation implementing Security Council resolutions and international treaties on this regard.<sup>552</sup> It suffices to glance at West Africa, where only two states provided that their counter-terrorism legislation prosecute those who recruit and provide training in order to commit terrorist attacks irrespective where would those acts take place.<sup>553</sup> Only 50 per cent of the States of the subgroup ‘Western European, North American and other States’ including, for example Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Israel, Italy, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America have adopted legislation specifically criminalizing active terrorist recruitment.<sup>554</sup> Dissemination of propaganda through the Internet and social media is also a challenge faced by them. In West-Africa, Boko Haram constantly uses Internet and social media to show off its propaganda.<sup>555</sup> In that region, only two states have criminalized apology for terrorism.<sup>556</sup>

In what regards to law enforcement and criminal justice, a considerable number of states suffer from severe resource and capacity constraints. By and large, however, the situation in East, North and West Africa, South-East Asia and South America demands even further attention. In East Africa, for example, only Kenya and Uganda has the “capacity to investigate and prosecute terrorism cases, including through trained specialized prosecution units complemented

---

549 Id. ¶¶ 74, 167, 212, 255, 396.

550 Id. ¶ 157.

551 Id. ¶¶ 96, 345, 367.

552 Id. ¶¶ 89, 149.

553 Id. ¶ 158.

554 Id. ¶ 359.

555 Id. ¶ 150.

556 Ibid. ¶ 150.

by specialized police units empowered to use a range of special investigative techniques.”<sup>557</sup> In West Africa, countries severely lack autonomous effective mechanisms, law enforcement agencies, special investigative techniques or measures permitting the interception of communications.<sup>558</sup> No State of the sub-region has created a specialized investigative unit,<sup>559</sup> and until 2016, not only a single individual had been prosecuted for terrorist offenses.<sup>560</sup> UNSC CTED Report illustrates the seriousness of the case: “the judicial system still lacks very basic elements and the prison system is in such disarray that even the number of prisons and prisoners is unknown. There are also reports of precarious living conditions and overly lengthy pretrial detention periods. In some States, there are doubts as to the independence and impartiality of the judiciary, owing to the lack of an independent mechanism responsible for the recruitment and monitoring of judges, as well as to the many pressures and influences, including from the executive branch, to which judges are subjected.”<sup>561</sup>

In Central Africa, only Chad has established a special criminal court to handle complex cases of terrorism and effectively prosecuted individuals on terrorist charges, albeit no one has been convicted.<sup>562</sup> In Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia no single state has created an autonomous law enforcement special unit to handle cases of terrorism. “Excessive periods of pretrial detention, incommunicado detention, and allegations of ill-treatment in detention”<sup>563</sup> for alleged terrorism offenders raise special concern in the region in term of the respect for human rights while countering terrorism. Shortage of prosecutors, inadequate laws for prosecuting terrorists and insufficient intelligence collection affects South-East Asia and South America.<sup>564</sup> Circulation of small arms and light weapons hampers law enforcement even more in South America.<sup>565</sup> 2003 Report from Azerbaijan and 2006 Report from Yemen to the UNSC 1373 Committee shows scarcity of necessary logistics and equipment in the former and inadequate international support in the latter in their counter-terrorism strategies.<sup>566</sup> As for South Asia, 2016 Report indicates that lack of forensic laboratories, human and technical resources, coordination and cooperation among police and prosecutors remains a major shortfall in the subregion.<sup>567</sup>

---

<sup>557</sup> Id. ¶ 98.

<sup>558</sup> Id. ¶¶ 140, 148.

<sup>559</sup> Id. ¶ 159.

<sup>560</sup> Id. ¶ 148.

<sup>561</sup> Ibid. ¶ 148.

<sup>562</sup> Id. ¶ 159.

<sup>563</sup> Id. ¶ 67.

<sup>564</sup> Id. ¶¶ 198, 314.

<sup>565</sup> Id. ¶ 323.

<sup>566</sup> S/2003/1085. p. 11-12.

<sup>567</sup> S/2016/49 (2016). ¶ 215.

A striking difference, though, stands out in Western European and North American countries along with Australia, New Zealand and Israel a “sophisticated arsenal of special investigative techniques, (...) criminal procedure(s), separate legislative acts (and) police acts”<sup>568</sup> have been established in a broad, comprehensive counter-terrorism strategy.

#### D. Border security

Border security is a highly sensitive issue on states (non)compliance with UN Security resolutions on terrorism and hardly needs to be underscored. There is a myriad of border security flaws that can lead counter-terrorism efforts down to a slippery slope. They range from porous borders, influx of refugees, migrants and recruitment foreign fighters, limited capacity of border control and patrol, lack of collaboration with INTERPOL, non-utilization of Advance Passenger Information (API) systems,<sup>569 570</sup> lack of real-time computerized border control, up to lack of recording and storage of passenger information. Protection of borders is a very crucial part in combating terrorism as it eliminates or diminishes the risk posed by foreign terrorist fighters to international peace and security.<sup>571</sup>

Recruitment of foreign terrorist fighters (FTFs), through peer-to-peer connections or through social media, is a pressing concern that can wreak havoc on border security. It suffices to glance the case of ISIL. Highly successful recruitment campaigns from that terrorist group have “attracted more than 30,000 foreign terrorist fighters from over 100 States.”<sup>572</sup> For the same reason, law enforcement at stake in the subregions of East Asia, South Asia and South-East Asia, for example.<sup>573</sup> FTFs’ issue is worsened when states do not challenge the

---

568 Id. ¶ 370.

569 “An API system is an electronic communications system that collects passenger biographical data and basic flight details provided by the airline operator. The data are generally collected from the passenger’s passport or other government-issued travel document. Airline communication networks then transmit the data to border control agencies in the destination country or country of origin, where outbound API recording is mandated either before the flight’s departure or its arrival. at the airport of destination. Once transmitted, the data are then, in practice, checked by the relevant border control agencies against various sanctions lists and watch lists used for immigration, customs and security purposes. If the data are received before the flight’s departure, border control agencies can also use API as a decision-making tool to assist Member States in determining whether a passenger should be permitted to board an aircraft.” (S/2015/377. ¶ 17.

570 For further information on API system, please refer to: IATA, ICAO and WCO. Guidelines on advance passenger information (API). 2014. Available. [p.http://wcoomdpublications.org/downloadable/download/sample/sample\\_id/6/](http://wcoomdpublications.org/downloadable/download/sample/sample_id/6/)

571 On the issue of Foreign Terrorist Fighters, please read: Kopitzke, Cory. Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon. 24 Ind. J. Global Legal Stud. 309 2017. pp. 309-342.

572 S/2016/49 (2016). ¶ 41.

573 S/2016/49 (2016). ¶¶ 190, 204, 261.

problem, as one can see in West Africa, where, up until the last 2016 CTED Report, not a single state had introduced a tailor-made program on FTFs.<sup>574</sup>

The transboundary nature of FTFs requires coordinate task forces, comprehensive program on information-sharing,<sup>575</sup> well-equipped criminal justice, well-tailored domestic criminal laws,<sup>576</sup> strong cooperation among states<sup>577</sup> and political will to address the underlying conditions conducive to the spread of terrorism.<sup>578</sup> As if it were not enough, *returning* foreign terrorist fighters – “*blow-back* effect” – can potentialize the problem even further. Indeed, reports show that, in the case of ISIL, “thirty percent of those who have fought in the war zone have returned to their home nations.<sup>579</sup> *Returnees* are immersed on the terrorist extreme violent propaganda. They are trained in arms, logistics and military tactics and part of them remain loyal to a given terrorist group and are prepared to be martyred on the sake of their cause when they go back to their countries of origin or decide to go to third countries.<sup>580</sup>

UN Security Council Resolution 2178 (2014),<sup>581</sup> adopted unanimously, sought to quell part of the problem with Resolution 2178 (2006). Issued under the aegis of Chapter VII of the Charter of the United Nations, the Resolution expressly demands states to require all airlines effective on their territories to deliver to the national authorities information from the Advance Passenger In-

---

574 Id. ¶ 123.

575 “In several subregions, lack of information-sharing and inter-agency cooperation and coordination remains a major impediment to the successful interdiction of foreign terrorist fighters. All States would benefit from strengthening national and international law enforcement information-sharing and inter-agency cooperation and coordination. Many law enforcement agencies lack the technical capacity to investigate terrorist cases within a rule of law framework and in accordance with international human rights obligations. There is a need for coordinated action among Government agencies and information technology and law enforcement sectors to tackle the foreign terrorist fighter phenomenon. States have enhanced monitoring of cross-border foreign terrorist fighter movements, but many still lack the technical and operational capacity to effectively detect and prevent their travel. Long, porous borders and inadequate immigration and visa controls are additional impediments. Very few States are fully connected to the relevant databases of the International Criminal Police Organization (INTERPOL). Few currently use advance passenger information systems or passenger name record systems, which are effective risk-based tools to identify potential foreign terrorist fighters”. (S/2016/49 (2016). ¶ 20.)

576 S/2016/49(2016). ¶ 19.

577 Id. ¶ 24.

578 “Addressing the threat posed by foreign terrorist fighters requires comprehensively addressing the underlying conditions conducive to the spread of terrorism, including through measures to: prevent radicalization to terrorism; suppress recruitment; prevent foreign terrorist fighter travel; disrupt financial support for them; counter violent extremism; counter incitement to terrorism; promote political and religious tolerance, economic development, social cohesion, and inclusiveness; resolve armed conflicts; and facilitate the reintegration and rehabilitation of returning foreign terrorist fighters (see S/2015/338 for more information on this issue)”. (S/2016/49(2016) (2016). ¶ 15).

579 Kopitzke, Cory. Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon. 24 Ind. J. Global Legal Stud. 309 2017. pp. 309-342. p.312.

580 S/2016/49 (2016). ¶ 23; S/2017/97. ¶ 4.

581 S/RES/2178 (2014).

formation about the movement, through civil aviation, of individuals listed on the Consolidated United Nations Security Council Sanctions List – Foreign Terrorist Fighter (FTFs). In other words, states were urged “to institute laws that criminalize the travel or attempted travel for terrorism purposes.”<sup>582</sup>

Most of the envisaged measures from Resolution 2178 lack adherence, though. To have a glance, up until 2015 only 51 UN member states used a API systems.<sup>583</sup> 2016 reports show that only three states from South-East Asia employ Advance Passenger Information systems while screening passengers at international airports.<sup>584</sup> Even worse is the situation of South Asia where only one state utilizes API to detect potential terrorists.<sup>585</sup> Problem persists even in eastern-european countries where only a few “effectively screen travelers at ports of entry by air into the state”<sup>586</sup> In South America, there were only 3 adherences to the API systems.<sup>587</sup> To worsen the problem there, only few travelers are checked for terrorist links along the border.<sup>588</sup> There, most of the countries lack the “intelligence and analytical capability” to detect border movement of terrorist fighters.<sup>589</sup> Same hurdle is experimented in West Africa.<sup>590</sup> In most of East Africa, immigration entrance is paper-based and manually checked: states even have computer-based access to visa and passport in border checkpoints to receive real time information and alerts.<sup>591</sup>

East Africa countries also have very limited use of databases.<sup>592</sup> In fact, this problem is not exclusive of East Africa. Only few states from Eastern and Western Europe along with West Africa “record and store in an automated system the entry and exit of persons crossing air, land and sea borders (...) using an automated system.”<sup>593</sup> In West Africa, some states did actually introduced “a computerized traveler entry and exit management system at international airports”.<sup>594</sup> Nevertheless, “only one of them has connected its airports to the INTERPOL I-24/7 system”.<sup>595</sup> Also, only a few States of Western European have online real-time access to the INTERPOL for running basic immigration

---

582 Kopitzke, Cory. Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon. 24 *Ind. J. Global Legal Stud.* 309 2017. pp. 309-342. p.311.

583 S/2015/377. ¶ 5.

584 S/2016/49 (2016). ¶ 165.

585 *Id.* ¶ 211.

586 *Id.* ¶ 343.

587 *Id.* ¶ 327.

588 *Id.* ¶ 314.

589 *Id.* ¶ 327.

590 *Id.* ¶ 155.

591 *Id.* ¶ 94.

592 *Id.* ¶ 95.

593 S/2016/49 (2016). ¶ 343; S/2016/49 (2016). ¶ 365.

594 S/2016/49 (2016). ¶ 155.

595 *Ibid.*

checks, as for example, searching United Nations sanctions lists, INTERPOL Red Notices and INTERPOL Stolen and Lost Travel Document database.<sup>596</sup> Very few states have high level of border security and fully online immigration services and instant direct access to the INTERPOL front line. East Asia, Western European, North American and other states like Australia, Israel and New Zealand are among those.<sup>597</sup>

Significant advances were accomplished with regard to document security. Many states have introduced “machine-readable travel documents and (took) non-machine readable travel documents out of circulation.”<sup>598</sup> Nevertheless, forged travel documents are still an issue of major concern. In South-East Asia, for example, an extended net of criminals supplies the black market of falsified passports, making them easy and cheap for other criminals and for irregular migrants.<sup>599</sup> Migrants, that, in fact, potentiate the border security problem. Foreign terrorist fighters can “disguise themselves as nomads and cross borders with the herds”, as strongly noted in a 2006 country-report from Djibouti to the UNSC CCT. The report pointed to the fact seasonal migration of nomads within the territory of Djibouti, Ethiopia, Eritrea and Somalia needed carefully monitoring of that practice.<sup>600</sup> Other East African countries, as for example Ethiopia, Kenya, Rwanda, Somalia, South Sudan and Sudan, corroborate that movements of migrants and asylum seekers adds additional to the problem and may hamper even further efforts of States to effectively control long and porous borders and to sustainably integrate various population groups.<sup>601</sup> A particular threat is faced by North African countries as the influx of people trying to head South Europe gets bigger as political and armed conflicts in the region indicate that they have no sunset date.<sup>602</sup>

Lengthy and porous state borders is a problem of great concern in various parts of world. West Africa,<sup>603</sup> East Africa,<sup>604</sup> Western Asia,<sup>605</sup> South Asia,<sup>606</sup> South-East Asia<sup>607</sup> and South America<sup>608</sup> are among the most affected region. Illegal flows of cash and weapons can make it through East-Africa through its

---

596 Id. ¶ 365.

597 S/2016/49 (2016). ¶¶ 272, 365;

598 S/2016/49 (2016). ¶ 425.

599 Id. ¶ 182.

600 S/2006/172. p.7.

601 S/2016/49 (2016). ¶ 83.

602 Id. ¶ 65.

603 S/2016/49 (2016). ¶¶ 122, 133.

604 Id. ¶ 94.

605 Id. ¶ 252.

606 Id. ¶ 211.

607 Id. ¶ 164.

608 Id. ¶ 324.



porous borders.<sup>609</sup> Inequalities related to economic, social and cultural rights and instability in Somalia, South Sudan and the Sudan degrade the problem and catalyze terrorist propaganda and facilitates recruitment campaigns in areas where there is poor governance and lack of capacity building.<sup>610</sup> In Western Asia, porous borders associated with lack of effective border controls makes it easy for unregistered movement of persons and cash.<sup>611</sup> It is an increasing problem of vulnerability.<sup>612</sup> Foreign terrorist fighters can make their way particularly through the open border between Iraq and the Syrian Arab Republic, under de facto ISIL control.<sup>613</sup> In South-East Asia, leaks in the borders facilitate smuggling and the movement of terrorists.<sup>614</sup>

Some issues can represent the need additional efforts in solving the problem: lack of states cooperation, geographical features of the region, political tensions in border areas, lack of legislation and law enforcement. Examples are vast. On cooperation, the Islamic Republic of Iran, in a Letter dated 12 March 2007 to the Chairman of UNSC 1373 Committee, added a point of concern on the “lack of control by certain neighboring countries over their sides of the border”:<sup>615</sup> “exercising full control over the whole borders without cooperation of the neighboring countries is extremely troublesome.”<sup>616</sup> In a different letter, Iran also pointed to the fact that terrorists found in its territory had “entered the country from a neighboring state where they had received terrorist trainings”, where no trace of them could be tracked.<sup>617</sup> Political strains in Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan and Uganda leaves the region “highly vulnerable to exploitation as a terrorist safe havens”<sup>618</sup> and create a favorable environment for the “planning and preparation of terrorist acts to be committed elsewhere.”<sup>619</sup> South-East Asia geography, including, Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Timor-Leste, makes border control very difficult, particularly the monitoring of weapons and terrorist movement.<sup>620</sup> In South America there are even unmarked physical borders, what poses substantial border-security challenges.<sup>621</sup> Continental countries like

---

609 Id. ¶ 94.

610 Ibid. 94.

611 Id. ¶¶ 252, 254.

612 Id. ¶ 241.

613 Id. ¶¶ 252, 254.

614 Id. ¶ 164.

615 S/2007/142. p. 17.

616 Ibid.

617 Ibid.

618 S/2016/49 (2016). ¶ 84.

619 Ibid.

620 Id. ¶ 183.

621 S/2016/49 (2016). ¶ 324; S/2016/49 (2016). ¶ 314.

India can also challenge security concerns as it makes it necessary huge “infrastructure for patrolling and surveillance of the coastline”<sup>622</sup> In Afghanistan, lack of legislation and law enforcement deteriorates the already weak border control to the extent that legal parameters in combating terrorism are missed.<sup>623 624</sup>

## **VI. Conclusion: Pin-pointing major flaws on states lack of adherence to UN Security Council resolutions**

Terrorism is a scourge that has a devastating impact on the civilian population, undermining the full enjoyment and exercise of their human rights. Despite the lack of a universally legal agreed-to *definition* of terrorism (tipicity), UN practice demonstrates that there is *concept* of terrorism. Substantial documents, both binding and non-binding indicate the contours of it. Although they don't fulfill the criteria of the Principle of Legality, they encompass the general UN framework towards terrorism, terrorist acts/attacks and terrorist groups, and measures to combat terrorism. Those documents contain specific measures to counter terrorism, both target sanctions and general ones. They may random from assets freeze, travel ban, listing, arms embargo to other measures: prevent recruitment; ban on state support to terrorism; *Aut dedere, aut judicare*; respect for human rights while countering terrorism; respect for religious faith and cooperation among states. This conclusion indicates the main challenges and struggles of states' compliance with UN Security Council resolutions and assesses them.

After the dragnet approach of the five prongs of this paper, dealing with the most significant hurdles that seriously hamper the states' effectiveness to fulfil the UN Security Council resolutions on terrorism, it is possible to pin-point some major flaws on countries response while combating terrorism. This observation is fully based on the “Priority issues/recommendations” section of the consolidated “Global survey of the implementation of Security Council resolution 1373”, from 2016, sent by states to the CTED and prepared by its technical groups – already cited here –. Given the wide spectrum of reasons why states disobey/do not fulfill UN Security Council resolutions on terrorism, they are listed here separately, in a systematic fashion, on the following functional areas: 1) Terrorist Financing; 2) States infrastructure and services, border security, movement and arms; 3) Law enforcement and counter-terrorism in the

622 S/2007/196. p. 11.

623 S/2016/49. ¶ 211.

624 Kopitzke, Cory. Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon. 24 Ind. J. Global Legal Stud. 309 2017. pp. 309-342. p.331-332.

context of resolution 1373; 4) Prevention of terrorism, mutual legal assistance and human rights.

- 1) Terrorist financing: Failure of financier agents to report to the competent authorities suspicious financial transactions, lack of control of cash transactions and multiple-transactions that might be associated with money-laundering; lack of a national anti-money-laundering legislation; failure to keep track of institutions that have no legal obligation to declare foreign assets on the territory of a given state; lack of political will to adopt counter-terrorism financing laws that are fully compliant with UN Security Council resolutions lack of a system to keep track of foreign assets belonging to its natural and legal persons; international money transfers that are not subject to foreign exchange controls; alternative currency remittance/transfer services/cash transfers system that runs without specific government authorization, control, inspection, registration and/or license; deficiency in controlling and monitoring cross-border movement of liquid cash for terrorist-financing purposes; weakness of the asset-freezing domestic legal framework; weakness of measures for freezing of assets *without delay*; weakness/inexistence of tracking mechanisms to independently audit and monitor funds received by non-profit/charitable and/or religious or cultural organizations; lack of cooperation mechanisms among states' agencies for financial tracking preventive of terrorism.
- 2) States infrastructure and services, civil society, border security, movement and arms: lack of technical equipment/training for state institutions that work countering terrorism; weakness of human resources (judges, prosecutors, lawyers and security forces); lack of technology of the state in detecting forged and falsified documents, including travel documents; inexistence or weakness of penalties for falsifying travel documents; lack of biometric travel documents; states that permit legal name changes without a physical identification such as fingerprinting or photographing; non-participation of civil society in the implementation of counter-extremist strategies; incompetency in alerting competent authorities at points of entry of persons suspected of terrorist activities, including the INTERPOL 24/7 network; deficiency in the process of issuing/examining/reviewing/denying and systematically checking asylum status and scarcity of communication among national authorities responsible for this process and foreign governments and agencies, including INTERPOL; incompetency of the domestic institutions in training immigration/asylum/refugee/border control/judicial authorities on the issue of terrorism; lack of state report of stolen and lost travel documents, including

lost refugee travel documents, to the INTERPOL I-24/7 Stolen and Lost Travel Document database.

There is insufficiency of measures to prevent and to combat the counterfeiting travel document or forgery of identity, including lack of trained personnel placed on state's points of entry to inspect and detect those documents; lack of electronic record/database of immigrants, including asylum-seekers and lack of refugee-screening system; scarcity of technology and border management to run risk analysis and to monitor porous borders that significantly hamper the effectiveness of national security and might be a way of terrorists entering irregularly on a state; failures of international transportation companies to provide the domestic authorities with the "advance passenger information" lack of communication, information and intelligence among states' agencies; lack of specific legal requisites for the import, export, transit or storage of firearms and ammunition; scarcity of instruments to check the authenticity of the authorization for importing, exporting, storing and or transporting firearms and ammunition; deficiency of the counter-terrorism strategy in combating arms and ammunition on a regional level; absence of a thorough cooperation among states to prevent trafficking in arms on states borders.

- 3) Law enforcement and counter-terrorism: the absence of a commonly agreed definition of terrorism; lack of legislative measures to criminalize recruitment to terrorism; lack of a comprehensive arms legislation; systematic deliberate non-compliance with UN Security Council resolutions;; non-adherence to international conventions, treaties and protocols related to counter-terrorism; weak government and judiciary institutions that are not able to provide law enforcement; incompetence of the criminal-justice systems to work effectively, independently, fairly and in full compliance with international law, international human rights law, international criminal law and with the guarantee of the rule of law; disharmony on the states' operative legal framework on terrorism, with the adoption of contradictory mechanisms of prevention, combat and prosecution of terrorist offenses; members and officers of the judiciary that do not receive proper training for a painstakingly investigation in complex cases of terrorism; exiguity of domestic legal mechanisms to deal with the issue of returning terrorists (*blowback* terrorists); absence of domestic legislation criminalizing passive terrorist recruitment, incitement and the receipt of terrorist training as stand-alone offences; major flaws in the rehabilitation and reintegration of terrorist fighters, includ-

- ing women and children; lack of a specialized juvenile criminal justice destined to deal young offenders; wrongly granting safe havens to persons against who there are credible information about his/her guilt on terrorist charges; insufficient cooperation with INTERPOL; insufficient population of INTERPOL database; lack of engagement between state and civil society/non-governmental organizations in order to implement comprehensive integrated counter violent extremism strategies;
- 4) Prevention of terrorism, mutual legal assistance and human rights: major flaws on counter-terrorism prevention strategies that do not involve dialogue in and within the society and despises the interchange of educational, cultural and religion institutions; lack of specific legislation preventive of incitement of terrorist attacks; inefficiency or complete lack of domestic legislation preventing recruitment of members of terrorist groups; insufficient measures to counter messaging and narratives of terrorist groups over the internet and other technological medias; incompetence in effectively monitoring the internet over terrorism, particularly recruitment of members, while safeguarding the right to freedom of speech and expression; scarcity or incompetence of government measures to promote community policing as an indispensable tool for a comprehensive effort to prevent radicalization and the recruitment of individuals; hurdles on legal mutual states' assistance and difficulties on the transfer of the criminal proceedings, on extradition measures and on the recognition of foreign criminal judgements; states' incompetence in cooperating and exchanging information bilaterally, subregionally, regionally and internationally; lack of will of states in sharing secret information (intelligence-sharing); externally, lack of equal state representation and participation in the UN Security Council may thwart states' motivation in preventing the root causes of terrorism; there is an astonishing difficulty of states in weighing counter-terrorism measures while full respecting international human rights law, refugee law, humanitarian law, international law and international criminal law.