

The Role of the UN Security Council in Countering Terrorism & Violent Extremism: The Limits of Criminalization?

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KEY FINDINGS

- **UN Security Council Resolutions (UNSCRs) have either required or encouraged States to criminalize an increasingly broad set of terrorist-related acts.**
- **The over-reliance on broad terrorist-related offenses often undermines rule of law safeguards — a problem that is worsened by extending criminalization into the pre-crime space.**
- **Implementation of UNSCRs has had a chilling effect on the exercise of fundamental rights, such as the freedoms of expression and peaceful assembly in several instances.**
- **Member States themselves have also contributed to this problem, by implementing overly broad and vague UNSCRs in manners which go beyond what is required by the resolutions, including in ways that are not compliant with human rights.**
- **While UNSCRs may provide useful guidance and obligations for Member States, those same States must avoid adopting an overly securitized approach to counter-terrorism as they seek to implement them.**

INTRODUCTION

After the 9/11 attacks, a united global community entered an era which saw the proliferation of UN entities and organs focused on responding to terrorism. These bodies were created, at least in part, in response to the recognized need for a comprehensive multilateral counter-terrorism architecture to ensure international peace and security in the face of the growing specter of violent extremism.¹ This response has notably also included an array of UN Security Council (UNSC) resolutions adopted to counter the threat of terrorism. A little over 20 years after the adoption of Resolution 1373 (2001),² 52 terrorism-related resolutions now exist,³ creating an elaborate set of measures for Member States to implement.

Despite this, however, terrorism was arguably more prevalent in 2021 than in 2001, with 5,226 terrorist attacks taking place in 2021, the highest on record since 2007.⁴ There are undoubtedly a myriad of factors that have led to the continued spread of terrorism. These include the increasingly transnational nature of terrorists and terrorist networks, as well as the failure to adequately address the structural factors and underlying conditions that are conducive to the spread of violent extremism.⁵ While the scale of terrorist attacks by global terrorist groups such as ISIL and al-Qaeda may have diminished, the threat has now become more geographically diverse as ISIL and al-Qaeda affiliates, as well as other terrorist organizations, exploit local grievances to fuel conflicts.⁶ The Taliban and the complex web of terrorist networks in Afghanistan pose a significant threat to both regional and international stability⁷ and serious questions over whether foreign terrorist fighters (FTFs) will relocate to new conflict zones, or return to their countries of residence to carry out further attacks or recruit new members, persist.⁸ Terrorist groups and transnational criminal networks may interact with each other for financing or operational

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- 1 United Nations Secretary-General, *Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy*, 6, U.N. Doc. A/72/840 (April 20, 2018).
 - 2 United Nations Security Council Resolution (UNSCR) 1373 (September 28, 2001).
 - 3 For a full list, refer to: <https://www.un.org/securitycouncil/ctc/content/security-council-resolutions>.
 - 4 Institute for Economics & Peace, *Global Terrorism Index 2022: Measuring the Impact of Terrorism*, March 2022. <https://www.economicsandpeace.org/wp-content/uploads/2022/03/GTI-2022-web.pdf>.
 - 5 Throughout this paper, the terms terrorism and violent extremism are used interchangeably.
 - 6 The situation in Sahel is most notably a major concern where jihadi extremist groups such as Islamic State in the West Africa Province (ISWAP), Jama'at Nasr al-Islam wal Muslimin (JNIM) and Boko Haram are responsible for the rise in terrorist attacks. The most recent coup in Burkina Faso illustrates the complex challenges the country faces in dealing with violent extremism and countering the increasing number of terrorist attacks. Méryl Demuyneck and Julie Coleman, *Political Upheaval and Counter-Terrorism in Burkina Faso: Between a Rock and a Hard Place*, The International Centre for Counter-Terrorism, February 1, 2022. <https://icct.nl/publication/political-upheaval-and-counter-terrorism-in-burkina-faso/>.
 - 7 Asfandyar Mir, "Twenty Years After 9/11: The Terror Threat from Afghanistan Post the Taliban Takeover," *CTC Sentinel* 14, no. 7 (September 2021): 29–43. <https://ctc.usma.edu/twenty-years-after-9-11-the-terror-threat-from-afghanistan-post-the-taliban-takeover/>; Tanya Mehra and Matthew Wentworth, *The Rise of the Taliban in Afghanistan: Regional Responses and Security Threats*, The International Centre for Counter-Terrorism, August 27, 2021. <https://icct.nl/publication/the-rise-of-the-taliban-in-afghanistan-regional-responses-and-security-threats/>.
 - 8 In addition, bringing to FTFs to justice poses yet another concern especially because many countries are still not willing to actively repatriate their FTFs to face justice. Adam Hoffman and Marta Furlan, *Challenges Posed by Returning Foreign Fighters*, The George Washington University, March 2020. <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Challenges%20Posed%20by%20Returning%20Foreign%20Fighters.pdf>.

purposes, such as through the exchange of networks, knowledge, or skills.⁹ The growing transnational networks of far-right extremist groups, particularly after the attack on the US Capitol, both in person and in on-line spaces, are also an increasing concern that contributes to a more complex and diversified terrorism landscape.¹⁰

All of these factors may partly explain the challenge of stemming the tide of terrorism. But in order to explain its persistence, one must not only examine the continued appeal of terrorist groups and violent extremist ideology and propaganda, but also reflect upon where, how, and why counter-terrorism responses have often failed to reduce the threat or, in some cases, even exacerbated the factors which give rise to terrorism in the first place. This includes the response of the UNSC. Despite considerable time, resources, and attention being paid to the subject, it has not been successful in adequately addressing terrorism or violent extremism.¹¹ One aspect of this failure has been the obligation or expectation created for States to continuously expand the criminalization of terrorism, without evidence that such an approach will lead to less terrorism.

This paper focuses on how some UNSCRs include measures that require Member States to criminalize conduct that has historically fallen within the pre-crime space and lacks a clear link to terrorist activities and examines the subsequent impact this has on human rights and the effectiveness of the criminal justice system. At the same time, we also explore the role that States themselves have played in the exceptionalization of terrorism in terms of criminal justice responses, and whether the criminalization of terrorism that has expanded exponentially over the past twenty years can be blamed on the UNSC, or whether it is a symptom of a broader issue, i.e., the way in which societies view terrorism as the worst form of crime (perceived as even more egregious than the commission of war crimes, crimes against humanity, or genocide in some cases) and therefore have the tendency to (overly) securitize and criminalize the response to it. Within this, we scrutinize whether a ‘no risk’ society is either feasible or desirable, and examine the ways in which the intolerance for any risk of terrorist violence has informed the UNSC’s criminalization of terrorism-related activities to the detriment of the values of democratic societies. Finally, we offer recommendations for both the UNSC and Members States on how to ensure

9 Although the extent of the link between terrorism and transnational organized crime may vary from region to region, it has been a growing concern that has led to adoption of UNSCR 2462 and UNSCR 2482. UNSCR 2462 (March 28, 2019); UNSCR 2482 (July 19, 2019); Alex P. Schmid, *Revisiting the Relationship between International Terrorism and Transnational Organised Crime 22 Years Later*, The International Centre for Counter-Terrorism, August 29, 2018. <http://dx.doi.org/10.19165/2018.1.06>; Tanya Mehra, Méryl Demuynck, Colin P. Clarke, Nils Duquet, Cameron Lumley, and Matthew Wentworth, *Cashing in on Guns: Identifying the Nexus between Small Arms, Light Weapons and Terrorist Financing*, International Centre for Counter-Terrorism, March 24, 2021. <https://icct.nl/publication/small-arms-light-weapons-terrorist-financing-report/>; Committee of Ministers, *1400th meeting* (March 31, 2021). https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a19655.

10 The Soufan Center, *A Perfect Storm: Insurrection, Incitement, and the Violent Far-Right Movement*, October 2021. <https://thesoufan-center.org/research/a-perfect-storm-insurrection-incitement-and-the-violent-far-right-movement/>; Europol, *European Union Terrorism Situation and Trend Report*, Luxembourg: Publications Office of the European Union, 2021. <https://www.europol.europa.eu/publications-events/main-reports/european-union-terrorism-situation-and-trend-report-2021-tesat>.

11 United Nations Security Council (UNSC), *Fifteenth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat*, S/2022/576 (July 26, 2022).

that counter-terrorism architecture can both be human-rights based and simultaneously conducive to promoting peace and security.

ANALYSIS

The adoption of UNSCR 1373 (2001) marked a fundamental shift in which the Security Council *inter alia* requires States to criminalize the financing of terrorism, refrain from any form of support to terrorists or terrorist groups and deny safe havens for those who would “finance, plan, support, or commit terrorist acts”.¹² The requirement of criminalizing certain terrorism-related acts is not new — all but two of the international counter-terrorism conventions¹³ oblige States Parties to criminalize certain conduct. However, under resolution 1373, the Security Council, a political organ of the United Nations, now was assuming the role of legislator, which led to a fierce debate on the need and effectiveness of the Security Council to its law-making power.¹⁴ Given the limited representation of States in the Security Council, this raises legitimate concerns about whether the Security Council should impose binding obligations on states (without their consent), which sidelines the normal process of consenting, ratifying, or acceding to conventions.¹⁵ Due to its political nature, resolutions often lack legal certainty, whereas *travaux préparatoires* contain the negotiation history of a convention and can be used to interpret the wording. Furthermore, UNSC resolutions often reiterate existing obligations and also contain binding and non-binding obligations in the same resolutions, making it very difficult for states to understand and properly implement the resolutions in domestic legislation.¹⁶

The Trend of Over-Criminalizing Offenses

Since 2001, the Security Council has increasingly obliged or pressured States to criminalize terrorist activities, ranging from incitement to commit a terrorist act¹⁷ to financing of terrorism,¹⁸ to a broad range of activities that are tied to the “foreign terrorist fighter” phenomenon,¹⁹ and developing watch lists

12 UNSCR 1373 (September 28, 2001).

13 The exceptions are the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection and the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft. Convention on the Marking of Plastic Explosives for the Purpose of Detection, March 1, 1991, U.N.G.A.; Convention on Offences and Certain Other Acts Committed on Board Aircraft, September 14, 1963, I.C.A.O.

14 Andrea Bianchi, “Assessing the Effectiveness of the UN Security Council’s Anti-terrorism Measures: The Quest for Legitimacy and Cohesion.” *European Journal of International Law* 17, no. 5 (November 2006): 881–919. <https://doi.org/10.1093/ejil/chl032>.

15 *Ibid.*; Eric Rosand, “The Security Council As ‘Global Legislator’: Ultra Vires or Ultra Innovative?” *Fordham International Law Journal* 28, no. 3 (2004): 542–590. <https://ir.lawnet.fordham.edu/ilj/vol28/iss3/2>; U.N. Secretary-General, *Promotion and protection of human rights and fundamental freedoms while countering terrorism*, 8–18, U.N. Doc. A/73/361 (September 3, 2018).

16 David McKeever, “Revisiting Security Council action on terrorism: new threats; (a lot of) new law; same old problems?” *Leiden Journal of International Law* 34 (2021): 441–470.

17 Although UNSCR 1624 is not adopted under Chapter VII it does call upon states to criminalize incitement to terrorism. UNSCR 1624 (September 14, 2005).

18 UNSCR 1373 (September 28, 2001).

19 UNSCR 2178 (September 24, 2014); UNSCR 2396 (December 21, 2017).

and databases of known and suspected terrorists.²⁰ The criminalization of conduct such as providing or receiving training, membership in a terrorist organization, and travel to a conflict zone are further examples of conduct that has been criminalized in recent years. One notable difference between UNSCR 1373 and the latter resolutions 2178 and 2396 is that UNSCR 1373 required members states to criminalize offenses that were already addressed in the UN Convention on Financing of Terrorism rather than criminalizing new offenses.²¹

The justification for criminalizing these types of conduct can be found in the precautionary principle, meaning that where there is a risk that serious and irreparable harm will occur, precautionary measures should be taken.²² On the basis of this principle, some countries have criminalized certain acts as endangerment while other countries have criminalized the intent of some acts.²³

Criminalization of inchoate offenses such as planning and attempting, conspiring, aiding and abetting are very common and aim to prevent or deter the commission of crimes, and can be prosecuted even if the crime itself has not occurred. While such a preventive approach to criminal law is understandable and aims to deter or prevent the commission of crimes, it has limitations. This approach is at odds with one of the main purposes of criminal law: to criminalize actions which cause harm. The harm principle, criminalizing only actions that cause harm to another, is in turn both a fundamental limit on the scope of criminal law²⁴ and a justification to impose punishment on those who breach it.²⁵

More problematic is the criminalization of conduct in the pre-crime or pre-criminal space. This entails criminalizing conduct that precedes any commission of a substantive offense, which has not traditionally fallen under the ambit of criminal law, such as having radical views. Unlike inchoate offenses, which are offenses related to crimes that have not (yet) been completed but may have begun, pre-crime or pre-criminal criminalization seeks to pre-empt potential future crimes, before any “manifest threat” exists.²⁶ The trend of counter-terrorism legislation to cross into the pre-crime or pre-criminal space is closely linked with the concept of a “risk free society.”²⁷ In such an environment, “the possibility of forestalling

20 UNSCR 2396 (December 21, 2017).

21 At the time that UNSCR 1373 was adopted the Convention had not yet entered into force and simply side-tracked the process of acceding or ratifying to the convention. The Convention entered into force on April 10, 2002 after the 22nd ratification and has reached nearly universal status with 189 States as of June 9, 2022.

22 Matthias J. Borgers and Elies van Sliedregt, “The Meaning of the Precautionary Principle for the Assessment of Criminal Measures in the Fight against Terrorism.” *Erasmus Law Review* 2, no. 2 (Sep. 2009): 171-195. http://www.erasmuslawreview.nl/tijdschrift/ELR/2009/2/ELR_2210-2671_2009_002_002_004.

23 Ibid.

24 Richard A. Epstein, “The Harm Principle and How It Grew,” *The University of Toronto Law Journal* 45, no. 2 (Autumn 1995): 369-417. <https://doi.org/10.2307/825731>.

25 Patrick Tomlin, “Retributivists! The Harm Principle Is Not for You,” *Ethics* 124, no. 2 (Jan. 2014): 272–298. <https://doi.org/10.1086/673437>.

26 Jude McCulloch and Sharon Pickering, “Pre-Crime and Counter-Terrorism Imagining Future Crime in the ‘War on Terror,’” *British Journal of Criminology* (August 2009), p. 630.

27 Ulrike Beck, “The Terrorist Threat: World Risk Society Revisited,” *Theory, Culture & Society* 19, no. 4 (August 1, 2002): 39-55. <https://doi.org/10.1177/0263276402019004003>.

risks competes with and even takes precedence over responding to wrongs done” and “the post-crime orientation of criminal justice is increasingly overshadowed by the pre-crime logic of security.”²⁸

This trend raises practical and ethical concerns and it risks undermining a number of rule of law safeguards and, more broadly, weakens the effectiveness of criminal justice, particularly in countries where the rule of law is lacking. Firstly, by increasingly casting the net wider and trying to criminalize a broad range of activities to prevent terrorism, criminal legislation implemented in response to or in line with UNSCRs often fails to ensure there is a link between the acts specifically criminalized and any terrorist activities. Nor are the criminalized acts necessarily based on criminal conduct (*actus reus*) and intent (*mens rea*), elements which are fundamental to establishing individual criminal responsibility.²⁹ For instance, while some countries distinguish between different types of membership in a terrorist organization, others do not make a distinction between passive and active membership, thus making this more a status crime.³⁰

In 2020, in the EU Member States and the United Kingdom, membership in a terrorist organization was the most frequently charged terrorism-related offense. The expansive use of this type of offense was done not only in the context of jihadist terrorism, but also far-right, left-wing, and anarchist terrorism in Europe.³¹ Criminalization of membership of a terrorist group in national laws often lacks legal certainty and leaves to the discretion of prosecutors and courts the determination of the scope of membership offenses. Moreover, when membership of a terrorist group is not clearly defined in a domestic legislation, this can lead to excessive, arbitrary, and discriminatory use of the offense.³²

The shift to criminalizing conduct in the pre-crime space may also conflict with the principle that criminal sanctions should only be used as a last resort (*ultima ratio*) to address conduct that is harmful. Furthermore, criminal law should be applied with restraint that takes into consideration the impact that the criminal process, such as arrest, pre-trial detention, imprisonment, and non-custodial sentences, has on the exercise of human rights.³³ This may be exacerbated further by the stigmatization surrounding acts

28 Lucia Zedner, “Pre-Crime and Post-Criminology,” *Theoretical Criminology* (2007), p. 261.

29 International Commission of Jurists, *Counter-Terrorism and Human Rights in the Courts: Guidance for Judges, Prosecutors and Lawyers on Application of EU Directive 2017/541 on Combatting Terrorism*, November 8, 2020. <https://www.icj.org/eu-guidance-on-judicial-application-of-the-eu-counter-terrorism-directive/>.

30 Liat Levanon, “Criminal Prohibitions on Membership in Terrorist Organizations,” *New Criminal Law Review* 15, no. 2 (March 2012): 224-276. <https://doi.org/10.1525/nclr.2012.15.2.224>.

31 Europol, *European Union Terrorism Situation and Trend Report*, Luxembourg: Publications Office of the European Union, 2021. <https://www.europol.europa.eu/publications-events/main-reports/european-union-terrorism-situation-and-trend-report-2021-tesat>.

32 See e.g., Office of the High Commissioner for Human Rights (OHCHR), “Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” AL TUR 20/2020, November 10, 2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25660>; UNAMI, “Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL,” January 2020. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.

33 Piet Hein van Kempen, “Criminal Justice and the Ultima Ratio Principle: need for limitation, exploration and consideration” in *Overuse in the Criminal Justice System: On Criminalization, Prosecution and Imprisonment*, edited by Piet Hein van Kempen and Manon Jendly, 47. Intersentia, 2019. doi:10.1017/9781780688398.

of terrorism. When it comes to criminalizing conduct, the substantive criteria of proportionality, necessity and adequacy used in international human rights law should guide the legislator – whether this is the UNSC or national legislators – to determine whether all conduct should be criminalized. The potential harmfulness of certain conduct, the existence of other less coercive measures, and the proportionality of the potential infringement of human rights by entering the criminal justice space all clearly limit the extent to which conduct should be criminalized.

Another concern with criminalizing preparatory offenses is that in several jurisdictions the burden of proof has been reversed, which risks eroding the presumption of innocence, a vital component of the right to a fair trial in criminal proceedings. This reversal of the burden of proof may arise in a number of contexts, including situations now being seen in regard to Member States’ obligations under UNSCR 2178 (2014), which requires States to bring to justice those that “travel or attempt to travel to a State other than their States of residence or nationality [...] for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.” Some Member States — such as Denmark,³⁴ the United Kingdom,³⁵ and Australia³⁶ — that have implemented legislation to criminalize travel to a designated area abroad have shifted the burden of proof onto the defendant, who must prove that they either fall under the general exemption clause or have permission to travel to a conflict zone. More recently, similar criminalization has been discussed in the Netherlands,³⁷ despite the proposed change in law lacking criminal intent as an element and failing to provide for an appropriate exemption for humanitarian workers and journalists.³⁸ Other examples include the criminalization of visiting terrorist websites, for example in United Kingdom,³⁹ without the need to prove terrorist intent. It is upon the defendant to prove one of the exemptions contained in the law.

The lack of legal certainty, clarity, and foreseeability that underpin the criminalization of some offenses make it difficult, if not impossible, for citizens to know when exactly their conduct falls within the ambit of terrorism legislation. The shortcomings of such legislation likely have to do with how countries

34 Straffeloven [criminal law] , §114 (Den.).

35 Counter-Terrorism and Border Security Act 2019, c. 3, § 4 (Gr. Brit.).

36 In this respect it is interesting to note that the Australian Parliamentary Joint Committee on Intelligence and Security (PJICIS) had conducted a statutory review into the ‘declared area’ provisions and recommended that citizens should be able to request permission prior to travelling if it not listed as exemption, which was rejected by the Government. Parliamentary Joint Committee on Intelligence and Security, *Review of ‘Declared Areas’ Provisions Sections 119.2 and 119.3 of the Criminal Code*, 2021. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/DeclaredAreasProvisions/Report.

37 Eerste Kamer der Staten-Generaal. *Wijziging van het Wetboek van Strafrecht en het Wetboek van Strafvordering en enige andere wetten in verband met versterking van de strafrechtelijke aanpak van ondermijnende criminaliteit*, September 10, 2019. https://www.eerstekamer.nl/behandeling/20190910/gewijzigd_voorstel_van_wet_3.

38 Piet Hein van Kempen, “Een verblijfsstrafbaarstelling die journalisten en humanitair hulpverleners belemmert en onschuldigen in het kader van terrorisme criminaliseert,” *Nederlands Juristenblad*, November 7, 2019. <https://www.njb.nl/blogs/een-verblijfsstrafbaarstelling-die-journalisten-en-humanitair-hulpverleners-belemmert-en-onschuldigen-in-het-kader-van-terrorisme-criminaliseert/>.

39 Terrorism Act 2019, c. 11, § 58 (Gr. Brit.); Hill, Max, “Tom Sargant Memorial Lecture for Justice 24th October 2017,” Independent Reviewer of Terrorism Legislation. Last modified Oct. 24, 2017. <https://terrorismlegislationreviewer.independent.gov.uk/tom-sargant-memorial-lecture-for-justice-24th-october-2017/>; Parliamentary Joint Committee on Intelligence and Security, *Review of police powers in relation to terrorism, the control order regime, the preventative detention order regime and the continuing detention order regime*, 2021. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ReviewofAFPowers/Report.

have implemented the obligation to criminalize certain activities under the UNSCRs. At a time when a growing number of foreign ‘terrorist’ fighters were leaving for Syria and Iraq after ISIL’s establishment of a caliphate, the passage of UNSCR 2178 led to a legislation fever that prompted many countries to rush the process of adopting new laws, doing so without proper consultation of relevant human rights organizations⁴⁰ and sometimes bypassing normal legislative processes. The EU Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism with the aim to implement UNSCR 2178 is one such example of legislation adopted with great speed due to the terrorist attacks in Europe.⁴¹ In the years that followed, other States have felt the urge to adopt new anti-terrorism legislation after terrorist attacks. Examples include the United Kingdom,⁴² Austria,⁴³ and New Zealand,⁴⁴ all of which have contributed to the trend of casting the net wider to criminalize more conduct and increase sentences.

Moreover, in seeking to ‘prevent’ terrorism through criminalizing preparatory offenses, fundamental rights such as the freedom of expression and the right to assembly may be infringed upon. Particularly when offenses such as ‘glorifying’, ‘justifying’ or ‘apologizing for’ terrorism are poorly defined, restrictions on the freedom of expression have often been unnecessary and/or disproportionate. For instance, the Spanish Criminal Code’s prohibition on glorifying or justifying terrorism has been criticized for its potential to “criminalise behaviours that would not otherwise constitute terrorism,” with the then-UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warning that it “could result in disproportionate restrictions on the exercise of freedom of expression, amongst other limitations.”⁴⁵ When apology for terrorism was introduced into the French criminal code in 2014, France was criticized for restricting the freedom of speech by imposing a severe punishment of up to 5 years imprisonment and a fine of up to €75,000.⁴⁶ Turkey, far from alone in doing so, has been prolific in its use of counter-terrorism legislation to silence legitimate expression from journalists, academics, and political opposition.⁴⁷

40 Meijers Committee, *Note on a Proposal for a Directive on combating terrorism*, March 16, 2016. <https://www.commissie-meijers.nl/comment/note-on-a-proposal-for-a-directive-on-combating-terrorism/>.

41 Christophe Paulussen and Kate Pitcher, “Prosecuting (Potential) Foreign Fighters: Legislative and Practical Challenges,” *The International Centre for Counter-Terrorism* 8, no. 13 (January 30, 2018). <http://dx.doi.org/10.19165/2018.1.01>.

42 After the terrorist attacks at Fishmongers’ Hall on November 29, 2019 and in Streatham on February 2, 2020 by known terrorists, the United Kingdom amended the Counter-Terrorism and Sentencing Act 2021. Danny Shaw, “Terror suspects could face indefinite curbs under new legislation,” *BBC*, May 20, 2020. <https://www.bbc.com/news/uk-politics-52732839>; Counter-Terrorism and Sentencing Act 2019, c. 11 (Gr. Brit.).

43 After the attack in Vienna in November 2020, the government in Austria announced amendments to the terrorism legislation. Tanya Mehra and Julie Coleman, *Vienna Attack: the Path of a Prospective (Foreign) Terrorist Fighter*, *The International Centre for Counter-Terrorism*, November 16, 2020. <https://icct.nl/publication/vienna-attack-the-path-of-a-prospective-foreign-terrorist-fighter/>.

44 After the supermarket attack in 2021, New Zealand announced its intention to tighten terrorism legislation. “New Zealand supermarket stabbing: Government to toughen anti-terror laws,” *BBC*, September 4, 2021. <https://www.bbc.com/news/world-asia-58446260>.

45 OHCHR, “Two Legal Reform Projects Undermine the Right of Assembly and Expression in Spain – UN Experts,” February 23, 2015. <https://www.ohchr.org/en/press-releases/2015/02/two-legal-reform-projects-undermine-rights-assembly-and-expression-spain-un-?LangID=E&NewsID=15597>.

46 Article 421-2-5- Code pénal- Légifrance (legifrance.gouv.fr).

47 Organization for Security and Co-operation in Europe (OSCE), “OSCE media freedom representative alarmed by life sentences against journalists in Turkey, urges reform of Anti-Terror Law,” OSCE, November 5, 2003. <https://www.osce.org/fom/107850>; Amnesty International, “Turkey: First Academic to Go to Prison for Signing Peace Petition in a Flagrant Breach of Freedom of Expression,” Amnesty International, April 29, 2019. www.amnesty.org/en/documents/eur44/0290/2019/en/.

This is despite a number of relevant resolutions explicitly recalling that any restrictions on the freedom of expression must be both based in law and necessary.⁴⁸ In reality, however, while it may be permissible to restrict speech that directly incites terrorism, courts, international organizations, and governments alike have continually struggled to reconcile the need to protect freedom of expression, one of the “essential foundations” of a democratic society,⁴⁹ with the criminalization of speech that may incite or glorify terrorism.⁵⁰ Given the serious penalties that may be imposed for speech seen to cross the often vague threshold of glorifying or inciting terrorism, many instead opt to self-censor.⁵¹

Over-criminalizing conduct, in particular criminalizing conduct in the pre-crime space, not only risks encroaching upon fundamental rights, but is likely to also be counter-productive. Criminalizing for example mere radical views is morally questionable but also in practice also very difficult to enforce. Although resolution 2178 does acknowledge the need to prevent radicalization to violence, instead of focusing on effective prevention in terms of addressing the drivers of violent extremism, the legal frameworks established in line with the UNSCRs primarily rely on broad criminal offenses to counter the terrorism threat. The subsequent limitations on fundamental rights, and the disproportionate targeting of certain communities, can in turn become factors that will increase the types of grievances that are conducive to the spread of violent extremism,⁵² creating a vicious circle where increasingly restrictive measures lead to an outcome opposite of that which was intended.

The Use of Administrative Measures

In order to stem the flow of FTFs many countries, in line with UNSCR 2178, adopted an array of administrative measures, such as revoking travel documents and imposing travel bans. Switzerland,⁵³ Australia,⁵⁴ the United Kingdom,⁵⁵ and the Netherlands⁵⁶ are among many other countries that have adopted specific laws that allow for the use of administrative measures in the counter-terrorism

48 UNSCR 1624 (September 14, 2005).

49 *Handyside v. the United Kingdom*, App. No. 5493/72, Eur. Ct. H.R. 49 (1976).

50 European Union Agency for Fundamental Rights, *Directive (EU) 2017/541 on Combatting Terrorism: Impact on Fundamental Rights and Freedoms*, November 18, 2021. <https://fra.europa.eu/en/publication/2021/combating-terrorism-rights-impact>.

51 Maria Rumbol, “The Chilling Effect of Terrorism and Violent Extremism Regulation: The UN, UK, and US,” LL.M. thesis, Central European University, 2019.

52 Lurdes Vidal Bertran, “Islamophobia, Security Narratives and Countering Violent Extremism: Dangerous Liaisons,” European Institute of the Mediterranean (2018). <https://www.iemed.org/publication/islamophobia-security-narratives-and-countering-violent-extremism-dangerous-liaisons/>.

53 Schweizerische Eidgenossenschaft, *Bundesgesetz über polizeiliche Massnahmen zur Bekämpfung von Terrorismus (PMT)*, September 25, 2020. <https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/fga/2020/2004/de/pdf-a/fedlex-data-admin-ch-eli-fga-2020-2004-de-pdf-a.pdf>.

54 Parliamentary Joint Committee on Intelligence and Security, *Review of police powers in relation to terrorism, the control order regime, the preventative detention order regime and the continuing detention order regime*, 2021. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ReviewofAFPPowers/Report.

55 Terrorism Prevention and Investigation Measures Act 2011, c. 23 (Gr. Brit.).

56 Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding [Temporary Act on Administrative Measures to Combat Terrorism] February 26, 2022 (Neth.).

context. Immigration detentions, expulsions, and deportation are also often used to address terrorism.⁵⁷ Administrative measures are permissible measures that restrict the exercise of human rights to mitigate a risk to national security. However, in practice, many administrative measures - based on the precautionary principle - are excessively coercive in nature, especially if such measures are applied cumulatively or in combination with criminal measures.⁵⁸ The expanding use of administrative measures such as deprivation of nationality, control orders, reporting duties, or travel bans have had a chilling effect on human rights and are often no less punitive than criminal law.⁵⁹ The use of such measures have in fact circumvented the fair trial guarantees applicable in criminal proceedings. Thus, while a limited application of administrative measures in full conformity with rule of law safeguards could contribute to curbing the risk to national security, in instances where prosecution is not possible, administrative measures should be pursued only in exceptional cases due to their potential misuse.⁶⁰ One instance of a proper consideration of the use of an administrative measure would be when a minor visits a terrorist website, one could consider on the basis of the harm principle and the *ultima ratio* principle whether this conduct should be criminalized and prosecuted at all, or whether an administrative measure such as attending a class on democratic diversity could be more appropriate.

UNSCR 2396 calls on States to “develop watch lists or databases of known and suspected terrorists, including foreign terrorist fighters.”⁶¹ This resolution, among others, risks further reducing civic space by allowing states to list without clear criteria members of civil society or legitimate government opposition, thus easily undermining freedoms of expression, peaceful assembly, and association.⁶² UNSCR 2396 further “encourages States to share this information through bilateral and multilateral mechanisms.”⁶³ Although the UNSC repeatedly states that this is to be done “in compliance with domestic and international human rights law,”⁶⁴ it does not provide guidance on how this should be done in a human-rights compliant manner and in practice it often results in rendering individuals who may be unfairly targeted by counter-terrorism measures for being “undesirable” subject to rights violations across a number of States instead of only one.⁶⁵ These far-reaching obligations put civil society organizations, human right defenders, and political dissidents at risk. This can be observed in a range of countries, from Colombia and Guatemala,

57 Max Hill, “Tom Sargent Memorial Lecture for Justice 24th October 2017,” Independent Reviewer of Terrorism Legislation. Last modified October 24, 2017. <https://terrorismlegislationreviewer.independent.gov.uk/tom-sargent-memorial-lecture-for-justice-24th-october-2017/>.

58 Berenice Boutin, “Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards,” *The International Centre for Counter-Terrorism* 7, no. 12 (December 16, 2016). <http://dx.doi.org/10.19165/2016.1.15>.

59 Anne Charbord and Fionnula ni Aolain, *The Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space*. Minneapolis: University of Minnesota Human Rights Center, 2019. https://www.icnl.org/wp-content/uploads/civil_society_report_-_final_april_2019.pdf.

60 Tanya Mehra, Matthew Wentworth, and Bibi van Ginkel, *The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards*, The International Centre for Counter-Terrorism, November, 10, 2021.

61 UNSCR 2396 (December 21, 2017).

62 Anne Charbord and Fionnula ni Aolain, *The Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space*.

63 UNSCR 2396 (December 21, 2017).

64 Ibid.

65 Anne Charbord and Fionnula ni Aolain, *The Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space*.

where human rights defenders have been labelled as terrorists,⁶⁶ to Ethiopia,⁶⁷ to Rwanda, where well-known political opponent Paul Rusesabagina was recently sentenced to 25 years in prison on terrorism-related charges, after publicly criticizing the country's president.⁶⁸

In addition to limiting freedom of expression, the broadness of offenses included in various UNSCRs has also impacted the freedom of assembly, including through prohibiting gatherings based on the expected content, i.e., anticipation that speakers would promote extremist ideology.⁶⁹ Such a prohibition on assembly would be permissible where the speech would not fall under the protection of freedom of expression because it violates the criminal law. But with criminal law having expanded so as to now criminalize a vast array of speech that would have previously been protected, lines become increasingly blurred and not based on necessity to protect national security. For instance, Austria's recently adopted Anti-Terrorism Act⁷⁰ appears to include restrictions on religiously motivated extremist associations that interfere with freedom of religion and expression, without being necessary or proportionate to the legitimate aim of protecting national security.⁷¹

Imposing Stricter Sentences

Another negative trend closely linked to over-criminalization is imposing stricter sentences to some of the preparatory and membership offenses. This includes imposing minimum sentences, extending the length of sentences, ending early release for terrorist-related offenses, or increasing maximum sentences. Such examples can be found in the United Kingdom,⁷² New Zealand,⁷³ and are also planned in the Netherlands.⁷⁴ As a result, in some countries prosecuting for terrorism will allow for longer sentences than for prosecution of core international crimes. When sentencing is increased, this must be proportionate to the harm that

66 Peace Brigades International, "Criminalisation of Human Rights Defenders," *Peace Brigades International*. https://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf.

67 Lindsay Church, "Striking the Balance: Combating Terrorism and Preserving the Freedom of Expression in Ethiopia," *Harvard International Law Journal*, January 2016. <https://harvardilj.org/2016/01/striking-the-balance-combating-terrorism-and-preserving-the-freedom-of-expression-in-ethiopia/#:~:text=Everyone%20shall%20have%20the%20right%20to%20freedom%20of%20expression%3B%20this,other%20media%20of%20his%20choice>.

68 BBC, "Hotel Rwanda hero Paul Rusesabagina convicted on terror charges," *BBC*, September 20, 2021, <https://www.bbc.com/news/world-africa-58624691>.

69 Ulad Belavusau, Berenice Boutin, Romyana Grozdanova, Marloes van Noorloos, and Christophe Paulussen, *A Comparative Research Study on Radical and Extremist (Hate) Speakers in European Member States Prosecuting (Potential) Foreign Fighters: Legislative and Practical Challenges*, The International Centre for Counter-Terrorism, November 20, 2019. <https://icct.nl/publication/a-comparative-research-study-on-radical-and-extremist-hate-speakers-in-european-member-states/>.

70 Terror-Bekämpfungsgesetz [TeBG] [Act on Anti-Terrorism] Bundesgesetzblatt [BGBl] No. 2/2021. https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2021_I_159/BGBLA_2021_I_159.html (Austria).

71 European Centre for Not-for-Profit Law, "Comments on the Draft Federal law amending the Criminal Code, the Code of Criminal Procedure 1975, the Penal Code and the Court Organisation Act to combat terror in Austria," February 2022. https://ecnl.org/sites/default/files/2021-02/Austria%20draft%20law%20extremism%20ECNL%20analysis_1.pdf.

72 Counter-Terrorism and Sentencing Act 2021, c. 11 (Gr. Brit.).

73 Comments on the Counter-Terrorism Legislation Act 2021 and its compatibility with New Zealand's international and human rights law obligations, O.H.C.H.R., OL NZL 1/2021 (January 19, 2022). Counter-Terrorism Legislation Bill (29-2), cl. 13. (N.Z.).

74 Rijksoverheid, *Coalitieakkoord 'Omzien naar elkaar, vooruitkijken naar de toekomst'*, October 1, 2022. <https://www.rijksoverheid.nl/regering/documenten/publicaties/2022/01/10/coalitieakkoord-omzien-naar-elkaar-vooruitkijken-naar-de-toekomst>.

the perpetrator has caused and should not solely be guided by fear or by the risk that a person may pose to society in the future. Additionally, extending a prison sentence may not necessarily be the only or the best option to address recidivism. Instead, experts have recognized that societies are best protected not when violent extremists receive disproportionately lengthy sentences, but when they are able to be reintegrated back into society, which requires investment in rehabilitation measures.⁷⁵ Success in terms of reducing the risk of recidivism is thus likely to be more dependent on rehabilitation interventions than forced disengagement through prolonged detention. While retribution, incapacitation, and deterrence are widely accepted objectives of criminal punishment, in recent years rehabilitation and restoration have become more widely recognized as applicable in the context of terrorism.⁷⁶ Despite this, however, the approach most commonly seen remains centered on criminal punishment.

Other issues arise when no link exists between the activities in question and the facilitation of the actions of a terrorist group. For example, in the United States, material support offenses are seen as an effective tool to facilitate the arrest of terrorists and their supporters well before their violent plans come to fruition.⁷⁷ However, the lack of clarity and legal certainty of what constitutes material support is concerning. Despite being upheld as constitutional by the US Supreme Court,⁷⁸ it is possible that the vague material support provisions in US law “can be used to impose punishment for conduct remote from the commission of criminal harms, often conduct involving minimal and outwardly non-criminal acts.”⁷⁹ Because of concerns regarding the “overbroad and vague” language used in these statutes, humanitarian organizations have been deterred from providing aid, out of fear of inadvertently helping someone with ties to a prohibited group.⁸⁰ Not only do material support provisions limit the provision humanitarian aid to those who live in proximity to or under the control of terrorist groups, but they create uncertainty over what would remain protected speech or association, and what would constitute impermissible training or advice to designated Foreign Terrorist Organizations (FTOs). The definition of material support under US law has been broadened so significantly that even a *de minimis* levels of support, such as when victims of terrorism are forced to clean or cook for an FTO, amount to providing material support to these groups.⁸¹ This, in effect, removes any logical limit on what can be considered material support, further harms those who are victims of designated terrorist groups, and is highly unlikely to have any effect in countering terrorism.

The victim perspective overall has largely been absent from the legal frameworks of counter-terrorism and countering violent extremism. Membership, training, and travel charges focus on criminalizing

75 Radicalisation Awareness Network (RAN), *Dealing with radicalisation in a prison and probation context RAN P&P: practitioners working paper*, RAN, 2016. https://utveier.no/app/uploads/sites/2/ran_p_and_p_practitioners_working_paper_en-1.pdf.

76 United Nations Office on Drugs and Crime (UNODC), *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, UNODC, 2016. https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf.

77 The material support offenses have been expanded over time and are now also applicable when committed abroad.

78 *Holder v. Humanitarian Law Project*, 561 U.S. (2010), Nos 08-1498 and 09-89, June 21, 2010.

79 Norman Abrams, “The Material Support Terrorism Offenses: Perspectives Derived from the (Early) Model Penal Code,” *Journal of National Security Law & Policy* 1, no. 5 (2005).

80 Jordan E. Helton, “Construction of A Terrorist Under the Material Support Statute, 18 U.S.C. § 2339B,” *American University Law Review* 67, no. 2 (2018): 553-601.

81 *Matter of A-C-M-*, 27 I. & N. Dec. 303 (B.I.A. 2018).

the preliminary stage before harmful conduct, such as murder, torture, or sexual and gender-based violence, has been committed against an individual or part of a population. However, prosecuting for solely preparatory or membership offenses does not take the victim perspective into account, especially when the perpetrators have committed substantive crimes such as torture, sexual slavery, or other sexual and gender-based violence crimes. Prosecutors often rely on membership charges or material support offenses, whereas a number of (other) evidentiary and charging opportunities are available.⁸² Prosecuting alleged terrorists for the full range of crimes that have been committed, instead of membership crimes or preparatory offenses, reflects more accurately the seriousness of the crimes that have been committed and may provide more justice and dignity to victims.⁸³ From a victim's perspective combining a criminal justice approach with other transitional justice mechanisms, such as truth, reparation, or memorialization, can help to develop a comprehensive response when terrorist groups have committed grave offenses. Furthermore, restorative justice, which may overlap with transitional justice, aims to bring together victims, offenders, and possibly the community in communication and dialogue processes to repair harm.⁸⁴

CONCLUSION

The UNSC has undoubtedly played a role in promoting, and even requiring, the criminalization of an increasingly broad set of acts in the pursuit of countering terrorism. While the legislative powers of the UNSC have been criticized, including for the lack of clear language, several resolutions impose the obligations to criminalize certain conduct. The ambiguity that may result from imprecise or obscurely worded resolutions could lead to states to not properly implementing the UNSCRs by accident, but also gives space to authoritarian regimes who intentionally over-securitize, which in turn negatively impacts human rights.

Furthermore, the vague language in UNSCRs is making it more difficult to properly monitor the implementation of the resolutions. The Counter-Terrorism Committee (CTC) and the Counter-Terrorism Committee Executive Directorate (CTED) have been created, respectively, under resolution 1373 and 1535 and are tasked with monitoring the implementation of the resolutions. Member states are requested under resolution 1373 to provide national progress reports on their implementation obligations, but

82 Christophe Paulussen and Tanya Mehra, "Evidentiary and charging matters in the context of prosecuting returning foreign fighters before national courts," *T.M.C. Asser Institute for International & European Law* (September 21, 2021). *Forthcoming in Returning Foreign Fighters: Responses, Challenges and Ways Forward*, eds. F. Capone, C. Paulussen, and R. Mignot-Mahdavi, The Hague: T.M.C. Asser Press, 2022. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3938926.

83 Global Counterterrorism Forum. *Memorandum On Criminal Justice Approaches to The Linkages Between Terrorism and Core International Crimes, Sexual and Gender-Based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, And Crimes Against Children*, September 2021. https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJROL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3d.

84 Emanuela Biffi, *The potential of restorative justice in cases of violent extremism and terrorism*, Luxembourg: Publications Office of the European Union, 2021. https://ec.europa.eu/home-affairs/networks/radicalisation-awareness-network-ran/publications/potential-restorative-justice-cases-violent-extremism-and-terrorism-2021_en.

there is no system in place to verify the national reports.⁸⁵ Ensuring compliance and providing guidance is primarily done through dialogue, country assessments, and technical assistance, however the lack of transparency and the fact that CTED visits and assessments are not made public have been raised as one of the main drawbacks.⁸⁶

The UNSC has contributed to the pervasive tendency to securitize the response to terrorism. It seems indeed that many Member States have opted to enact domestic legislation that goes significantly beyond what is required by UNSCRs, entering into the concerning territory of criminalizing pre-crime and restricting space for freedom of expression, association, and peaceful assembly, in addition to the right to a fair trial. Thus, much as the Security Council alone cannot solve the problem of terrorism, it also cannot be held solely responsible for the overly expansive criminalization of terrorism-related offenses.

It remains incumbent on States that the drafting of criminal offenses is in accordance with the harm principle, contains a clearly articulated *mens rea* and *actus reus*, and meets the principles of legal certainty, legality, and foreseeability. Doubts exist as to whether States have been able to strike the right balance in adopting counter-terrorism measures, leading to questions of whether justice and accountability are being upheld, and whether fundamental rights and freedoms have been jettisoned in the dogged pursuit of a zero-terrorism policy.

According to Beck, we live in a global risk society⁸⁷ and the responses of both the UNSC and Member States to the risk of terrorism is informed by a “zero-risk” appetite found among both the public and governments alike. However, a 100% risk-free society can neither be achieved nor should it be pursued. Not only is it impossible to reach a point where there is zero risk from potential acts of terrorism, over-criminalization risks undermining the rule of law and human rights as shown by the myriad consequences of criminalizing more and more acts in an attempt to counter terrorism. The negative impacts of such attempts to eliminate risk, including those currently seen, appear likely to outweigh their potential efficacy. In particular, there is significant risk that over-criminalization may lead to a backlash that furthers, rather than reduces, the likelihood that individuals will radicalize to violence.

Thus, rather than looking towards the UNSC to provide guidance on further criminal justice measures to counter violent extremism, the international community would benefit from reflecting more broadly on where the UNSC’s mandate and strengths lie, namely in supporting multilateralism through cooperation among different actors and ensuring proper implementation of the relevant UNSCRs. Recognizing this limitation of the UNSC is surely one part of reaching a better understanding of how to address the evolving threat of terrorism.

85 Andrea Bianchi, “Assessing the Effectiveness of the UN Security Council’s Anti-terrorism Measures: The Quest for Legitimacy and Cohesion,” *European Journal of International Law* 17, no. 5 (Nov. 2006): 881–919.

86 Annabelle Bonnefont, Agathe Sarfati, and Jason Ipe, *Continuity Amid Change: The 2021 Mandate Renewal of the UN Counter-Terrorism Committee Executive Directorate*, Global Center on Cooperative Security and International Peace Institute, November 2021. <https://www.globalcenter.org/publications/continuity-amid-change-the-2021-mandate-renewal-of-the-un-counter-terrorism-committee-executive-directorate/>.

87 Ulrike Beck, “The Terrorist Threat. World Risk Society Revisited,” *Theory, Culture & Society* 19, no. 4 (August 1, 2002): 39–55. <https://doi.org/10.1177/0263276402019004003>.

RECOMMENDATIONS

Our recommendations therefore include:

1. When addressing terrorism and violent extremism, in all its forms and manifestations, States need to consider the full spectrum of available human rights-compliant measures, including those that go beyond traditional counter-terrorism measures, and adopt a whole-of-society approach to prevent, rather than merely to respond to, terrorism.
2. States should seek to more effectively utilize existing legal frameworks to achieve accountability, rather than firstly seeking to criminalize pre-crime. This means that States should invest in the capacity of the criminal justice system to fairly and expeditiously adjudicate alleged terrorists and uphold the rule of law through training, workshops and stimulating professional networks.
3. When it is deemed necessary to criminalize new offenses and adopt new terrorism legislation, States should ensure that terrorism legislation is adopted in a rule of law-compliant manner. This means that:
 - a. Civil society organizations (CSOs) are consulted. This could be achieved by organizing town hall meetings, internet consultations to allow CSO and other stakeholders to contribute to the legislative process in a meaningful way. Consideration must also be taken into account that CSOs are not harmed by new legislation, including by the shrinking of civic space;
 - b. National parliaments should be involved by avoiding the reliance on the passage of emergency laws that circumvent normal legislative processes;
 - c. States should consider adopting sunset clauses to the amendments they make to terrorism legislation and ensure that a meaningful assessment is made of the effectiveness of the law in question.

4. Given the legitimacy concerns (lack of representation of the majority of states) of the UNSC, it should refrain from taking on the role of legislator and focus more on proper and more critical implementation of the existing UNSCRs through UNSC mechanisms and organs such as CTC and UNCTED. This can be done by:

- a. Improving the methods of how to assess implementation of the resolutions by, for example, also requesting civil society organizations and academia to report on the implementation of relevant UNSCRs in a country;
- b. Provide concrete guidance on how binding and non-binding UNSCRs can be implemented in accordance with international law, in particular international human rights law;
- c. Establish clear criteria to determine when a country is not complying with the binding as well as non-binding UNSCRs;
- d. Consider establishment of reporting mechanisms that allow allegations of non-compliance to be submitted to an independent body.

5. Considering the primary responsibility of the UNSC to maintain peace and security, it should consider the use of its 'other' powers. It could establish fact-finding mechanisms like in Darfur, peacekeeping missions like in Mali, or judicial bodies such as UNITAD. Furthermore, it could facilitate technical assistance, coordinating UN agencies, ensuring that terrorism remains on the international agenda, and provide recommended whole-of-society approaches to address terrorism and violent extremism.

6. The UN should improve the capacity and feasibility of monitoring national terrorism laws' compliance with human rights obligations by other UN entities such as OHCHR and SRHR that are less political and more independent. This could be achieved through a number of means, including:

- a. Expanding the mandate and resources of UN human rights mechanisms;
- b. Establishing independent periodic review processes carried out by a pool of independent experts that are seconded from national human rights committees and oversight mechanisms.

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