

## United Nations Security Council Draft Resolution on the Financing of Terrorism: Protecting and Safeguarding Humanitarian Actions

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At the outset, I wish to express my unequivocal condemnation of acts of terror, in all their forms, wherever they occur and under all circumstances. The mass shooting in two mosques of Christchurch, New Zealand last week, which left fifty persons dead and scores wounded was a tragic reminder that such acts of terror have many origins and that they can strike anywhere. They all leave in their wake devastation on communities and societies.

States have not only the right, but also the duty, to protect individuals within their jurisdiction from threats to their lives and physical integrity, including those originating from acts of “terrorism”. The right to life, under Article 6 of the International Covenant on Civil and Political Rights (“ICCPR” or the “Covenant”), has been characterized as the supreme human right, non-derogable within the meaning of article 4 (2) of the Covenant. Accordingly, States are under an obligation to take lawful and proportionate measures aimed at preventing a real and immediate threat to life from acts of “terrorism”; to conduct thorough, independent and impartial investigations into such acts; to investigate and bring to justice the perpetrators in a manner consistent with international standards; and to afford adequate reparation to their victims. Effective strategy to prevent “terrorism” and protect against it may include measures to address its financing and ensure that organizations, groups and individuals do not provide financial support and other forms of assistance.

States must comply with international law, including human rights law, refugee law and humanitarian law in their implementation of their responsibility to protect against violent acts by non-State actors, such as those described as “terrorist” groups. The Global Counter-Terrorism Strategy<sup>1</sup>, adopted in 2006, identified respect for human rights and the rule of law as the fundamental basis of the fight against terrorism and affirmed that effective counter-terrorism measures and the protection of human rights are not conflicting, but rather complementary<sup>2</sup>.

Over the past decades, Member States have adopted several resolutions that include a focus on measures seeking to prevent the financing of “terrorism”. UN Security Council Resolution (UNSC) 1373, and subsequent related resolutions, require States to implement measures to criminalise the financing of “terrorism”, freezing funds, denying financial support to “terrorist” groups, cooperating with other governments in sharing information and investigating, detecting, arresting, and prosecuting individuals and entities involved in terrorist acts. In their implementation of UNSC resolutions, Governments have instituted counter-terrorism legislative frameworks that, given their stringency and the vague definition of terrorism, allow arbitrary or malicious designations of any individual/group as terrorists, including civil society organisations<sup>3</sup> and potentially criminalize life-saving medical aid or food relief, and in any case impose chilling effects on the provision of humanitarian aid for people desperately in need of help. The lack of a globally agreed definition of “terrorism” has meant that States have adopted unacceptably wide and nefarious definitions. One of the knock-on effects is that a wide range of humanitarian acts are tagged as being supportive of “terrorism”. Fear of prosecution and administrative burdens related to the financing of humanitarian aid is preventing crucial aid from reaching populations controlled by “terrorist” organisations. The results are violations of the right to life, in the name of countering “terrorism.”<sup>4</sup>

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<sup>1</sup> See <https://www.un.org/counterterrorism/ctif/en/un-global-counter-terrorism-strategy>

<sup>2</sup> See [A/HRC/16/51](#)

<sup>3</sup> See [A/HRC/40/52](#)

<sup>4</sup> See Saving lives is not a crime ([A/73/314](#))

A new UNSC resolution on combatting the financing of terrorism is currently under development. There is a scheduled debate on the subject on 28 March during which the resolution would be adopted.

**The United Nations Security Council has the power and duty to address the unintended effects of counter-terrorism resolutions on international humanitarian actions and civil society more generally. The on-going negotiations over the new UNSC resolution on the financing of “terrorism” should:**

- **Insist on the primacy of international humanitarian and human rights law: Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law**
- **Reaffirm in no uncertain terms the fourth pillar of the United Nations Global Counter-Terrorism Strategy and the obligation of States to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.**
- **Protect humanitarian and other civil society actors against the possible encroachments of counter-terrorism measures on legitimate and life-saving assistance. It is essential that the text contains no sweeping, imprecise provisions whose impact will be to either criminalize or prevent humanitarian assistance or to create a chilling effect that would make it impossible for humanitarian actors to carry out their legitimate work.**
- **Ensure that measures aimed at criminally repressing acts of terrorism are crafted so as to not impede humanitarian action. In particular, legislation creating criminal offences of "material support," "services" and "assistance" to or "association" with persons or entities involved in terrorism should exclude from the ambit of such offences activities that are exclusively humanitarian and impartial in character, and are conducted without adverse distinction.**
- **Ensure that no organization or person providing humanitarian relief is punished on account of their delivery of such services to an alleged terrorist or a person who is a member of, associated with or supportive of a terrorist organization; access to medical care and other life-saving relief by the latter should never be denied on the basis of such a designation.**

In conclusion, it is worth repeating that by obstructing the provision of humanitarian assistance, including life-saving services, States violate normative pillars of international human rights and humanitarian law. International humanitarian law clearly imposes an obligation on all parties to protect humanitarian actors, not just from attack, but also from harassment, intimidation and any other activities that might impede their work. When a party to the conflict fails to provide for the population, individuals and impartial humanitarian bodies may offer their services. No party to the conflict may arbitrarily withhold consent to offers of legitimate humanitarian services. Refusing relief action or consignments is not a matter of discretion. One of the most fundamental norms of international humanitarian law is the need to protect the provision of impartial medical care to all wounded and sick persons, including members of adversarial parties and the population under its control. This norm may come under direct attack by the application of counter-terrorism measures. Under international humanitarian law, in no circumstances should any person be punished for having provided medical services compatible with medical ethics, regardless of the person benefiting therefrom.

Under international human rights law, States have a positive obligation to seek and facilitate humanitarian action and a negative obligation not to prevent it: when the State is not able or willing to deliver life-saving services, it must delegate its duty to any other legal or natural entity having the capacity

to assist populations in need. It cannot prosecute them for undertaking services which it is required to provide but does not or cannot.

Safeguarding humanitarian assistance and protecting civil society against the encroachments and chilling effect of counter-terrorism measures are a matter of legal obligation, including protecting the right to life, as well as a question of effectiveness in combatting and preventing acts of terror and the groups and individuals behind them.

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