

**REMARKS OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS WHILE COUNTERING TERRORISM,
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**UNITED NATIONS SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE
SPECIAL MEETING – DELHI 25 OCTOBER 2022**

INTRODUCTION

1. Excellencies, distinguished colleagues and guests, I am grateful for the opportunity to be here in Delhi and to address the Counter-Terrorism Committee of the UN Security Council in my role as the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
2. It is very significant for my Mandate to be invited to address the Counter-Terrorism Committee as it meets in India and I appreciate the value that the CTC - with India as Chair - places on the inclusion of independent expert human rights advice. As Chair of the CTC, India has also shown important leadership in enabling the representatives from civil society organisations to meaningfully participate in this meeting of the Committee.
3. The inclusion of civil society in counter-terrorism legal and policy development has been a focus of the work of my Mandate, and here I acknowledge significant developments including the participative GCTS review process and the High-Level Conference on Counter-Terrorism and Human Rights in Malaga, Spain in May of this year. Engaging civil society is *indispensable* to understanding the impact of terrorism on communities and individuals. Civil Society is *indispensable* to identifying and understanding new and emerging threats. *And it is essential* for understanding the impact – positive and negative – of the international community’s efforts to combat terrorism. If we do not do this work with civil society in the room – active participants in our legal, policy and programmatic work – our capacity to prevent, regulate, and find solutions to end the scourge of terrorism will be undermined and weaker.
4. With that in mind, I wish to commend India for their inclusive leadership. The precedent they have established with this meeting of including civil society will strengthen the work of this committee into the future. Building upon and learning from India’s example and leadership will be a positive challenge for the CTC going forward.
5. I look forward to continued input with respect to aspects of the outcomes of this meeting, and its preceding technical sessions. For the participation of the Mandate and representatives of civil society to be most fruitful, it is important that there is involvement at all stages, including with respect to any future outcomes of this meeting.

Pre-eminence of Human Rights Considerations

6. This session is entitled ‘Overarching considerations for countering the use of new and emerging technologies for terrorist purposes.’ Accordingly, the focus is how the United Nations and Member States, in seeking to respond to terrorist threats in the new and emerging technology space, must avoid infringing human rights protections by virtue of **arbitrary**, unnecessary and/or disproportionate impacts on innocent users of new technologies. But at the same time, it is important to consider the degree to which the UN and Member States’ own deployment of new and emerging technologies for counter-terrorist purposes affects human rights protection and interacts with terrorists’ use of those technologies.
7. Three points are worth emphasizing briefly.
8. First, new and emerging technologies have been developed by the UN, Member States, and private companies in service of counter-terrorism purposes, but in circumstances where there is no internationally-agreed definition of terrorism, there remains extraordinary leeway for arbitrary and unjustified action using purported counter-terrorism as a pretext.¹ I have advocated a precise and tightly defined model definition of terrorism, which few States have adopted.² The result is that the counter-terrorism space, for which sophisticated technology is developed and marketed, and within which States deploy that technology, is fertile ground for the systematic violation of human rights. States will face continuing challenges in ensuring protection and promotion of human rights in their operations relating to technology and terrorism until States adopt rigorous definitions and restrictions upon their conduct for purportedly counter-terrorism objectives.
9. Second, while the field of new and emerging technologies – both as used by States and by terrorists – presents novel technical challenges, this cannot be used as a justification to lessen the scope or rigour of States’ human rights obligations. International human rights obligations are technology-neutral and apply in all circumstances, including in circumstances of armed conflict (subject to the *lex specialis* of international humanitarian law).³ The principles of international human rights protection are flexible, and their application responsive to the facts of a given case. We should treat very sceptically any assertions to the effect that well-established human rights principles should be suspended or require updating in the new technology space.
10. Third, the rapid proliferation of new and emerging technology used by Member States contributes to the risk of that technology being co-opted by terrorists for their purposes. The case of unmanned aerial systems provides a vivid example. Once the preserve of a small number of militaries, this technology has been shared worldwide between States, private companies, and civilian contractors. But, as States have learned, once sophisticated technology is promulgated widely, there is no way to control its spread to non-State and terrorist actors. As the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary

¹ The Special Rapporteur has repeatedly made this observation. See, for example: A/HRC/31/65, [21], [24], and [27]; A/HRC/37/52, [33], [36], and [66]; and A/HRC/40/52, [34]-[35].

² A/HRC/16/51, [28].

³ A/75/337, [17]. This position has been repeatedly endorsed by the International Court of Justice. See: *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion*, 1996 ICJ Rep p66, [24]-[25]; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 ICJ Rep p136, [105]-[106].

Executions noted in her 2020 Report,⁴ *‘[a]t least 20 armed non-State actors have reportedly obtained armed and unarmed drone systems, including...ISIL.’* We can have every expectation that other sophisticated new technologies originally developed and promulgated to fight terrorism - such as spyware, biometric analysis tools, and artificial intelligence - will follow the same path from State hands to non-State and terrorist hands in due course.

CONCLUSION

11. Therefore Excellencies, inclusive multilateral regulation of the development, use, storage and transfer of new technologies is essential. Such regulation must be human rights compliant not only because with such inherently high-risk technologies, protecting the dignity of the human person is indispensable, but also because our failure to regulate has had profound consequences for the reproduction of the conditions that produce violence itself.

⁴ UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Execution, ‘Use of Armed Drones for Targeted Killings,’ UN Doc. A/HRC/44/38 at [9].