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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights bodies and mechanisms

Negative effects of terrorism on the enjoyment of human rights

Report of the Human Rights Council Advisory Committee*

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I. Introduction

1. In its resolution 34/8, the Human Rights Council requested the Advisory Committee to conduct a study and prepare a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, with a particular focus on economic, social and cultural rights, including as a result of diverting foreign direct investment (FDI), reducing capital inflows, destroying infrastructure, limiting foreign trade, disturbing financial markets, negatively affecting certain economic sectors and impeding economic growth, and to recommend actions to be taken by Governments, United Nations human rights mechanisms, regional and international organizations and civil society organizations in that regard. The report will be presented to the Council at its forty-eighth session and be discussed during the interactive dialogue.

2. The Advisory Committee established a drafting group, currently composed of Buhm-Suk Baek, Lazhari Bouzid, Alessio Bruni (Chair), Milena Costas Trascasas, Iurii Alexandrovich Kolesnikov, José Augusto Lindgren Alves, Xinsheng Liu, Ajai Malhotra, Mona Omar (Rapporteur), Elizabeth Salmón and Patrycja Sasnal. In preparing the report, the drafting group worked in close consultation with United Nations agencies and Member States, national human rights institutions and non-governmental organizations. A total of 37 contributions were received. In addition, the drafting group took into consideration the work done by the Committee on Economic, Social and Cultural Rights to identify and underscore States' obligations with regard to the enjoyment of economic, social and cultural rights, together with relevant information from other human rights bodies. Moreover, the Advisory Committee benefited from the input of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

3. In the context of this overall reflection on the effects of both terrorism and counter-terrorism measures on the enjoyment of economic, social and cultural rights, the Advisory Committee reaffirms the indivisibility of all human rights, as provided in the Vienna Declaration and Programme of Action of 1993. The Advisory Committee stresses that nothing in the present report should be interpreted as undermining the applicable human rights standards and the fundamental role played by human rights mechanisms in monitoring State policies and practices in the context of counter-terrorism, in particular the role of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

4. By focusing on the negative effects of terrorism on the enjoyment of economic, social and cultural human rights, the Advisory Committee seeks to contribute to the debate on how global efforts and strategies can be consistent with the aim of fulfilling the human rights obligations of States. The Advisory Committee fully supports the statement made in the report of the Secretary-General on the implementation of the United Nations Global Counter-Terrorism Strategy that the collaborative efforts of Member States to prevent and counter-terrorism need to be based on the rule of law and must respect human rights.¹ States should strengthen efforts to effectively address the conditions conducive to the spread of terrorism and violent extremism, as recommended by the Human Rights Council,² through a comprehensive approach. Such efforts are fundamental for achieving the implementation of the 2030 Agenda for Sustainable Development.

II. Lack of an international definition of terrorism

5. In recent decades, terrorism has become a major threat to international peace and security, as well as to the enjoyment of human rights. Several international initiatives have been made to coordinate State actions in tackling what is now perceived as an issue of global concern. The adoption of a comprehensive convention on international terrorism would be an important step, but efforts in that regard remain deadlocked because no agreement has been reached on the concept or the legal definition of terrorism.

¹ A/72/840, para. 28.

² A/HRC/45/27, para. 2.

6. Definitions tend to reflect the position of those doing the defining and their purpose. States primarily concerned with ensuring respect for national sovereignty and the non-interference in domestic affairs and States concerned at the prospect of being placed under scrutiny depending on their position regarding terrorist acts committed by non-State actors are more reluctant to formulate a universally recognized definition of terrorism. States have so far only agreed to the adoption of a series of sectoral conventions defining and criminalizing various types of terrorist activities. At the regional level, notably within the European Union,³ the African Union⁴ and the League of Arab States,⁵ important steps have been taken towards the adoption of a legal common definition. As multiple human rights bodies, including the Human Rights Council, have noted, definitions of terrorism should meet the essential requirements of legality, proportionality and non-discrimination.

7. The Advisory Committee shares the concern expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in a recent report to the Human Rights Council that the definition of “violent extremism” remains opaque and deeply contested. In the same report, the Special Rapporteur warns against the use of terminology that, like terrorism, is overly vague and allows for broad discretion in its application.⁶

III. Applicable legal framework

8. Terrorism aims to destroy human rights, democracy and the rule of law. It attacks the values at the heart of the Charter of the United Nations and other international instruments and has a direct impact on the enjoyment of all human rights, in particular the rights to life, liberty and physical integrity. Terrorism can destabilize Governments, undermine civil society and jeopardize peace and security while also threatening social and economic development.⁷

9. As the main purpose of the present report is to assess the impact of terrorism on the enjoyment of human rights, it is important to review the different definitions of terrorism contained in the main international instruments that have already been adopted or that are being developed, specifically those developed by the United Nations and those on human rights law and customary international law.

A. Security Council

10. States have reached a consensus on certain aspects of the definition endorsed by the Security Council in its resolution 1566 (2004), wherein the Council recalled that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing an act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, ideological, racial, ethnic, religious or other similar nature, and called upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.

11. In that same resolution, the Security Council decided to establish a working group consisting of all members of the Council to consider the possibility of establishing an

³ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

⁴ Organization of African Unity Convention on the Prevention and Combating of Terrorism of 1999.

⁵ Arab Convention on the Suppression of Terrorism, of 1998.

⁶ A/HRC/43/46, para. 12.

⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Human rights, terrorism and counter-terrorism”, fact sheet No 32.

international fund to compensate victims of terrorist acts and their families, but there has been no follow-up in that regard.

12. On 19 July 2019, the Security Council adopted resolution 2482 (2019), by which it established a link between international terrorism and organized crime.

B. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

13. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reiterated that, in the absence of a comprehensive international definition of the crime of terrorism, domestic counter-terrorism provisions should adhere to the three-step cumulative characterization according to which an act, in order to be classified as terrorist, must have been:

- (a) Committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages;
- (b) Committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act;
- (c) Corresponding to all elements of a serious crime as defined by the law.⁸

C. General Assembly and the International Covenant on Civil and Political Rights

14. In its resolutions on the protection of human rights and fundamental freedoms while countering terrorism, the most recent of which was adopted on 19 December 2017,⁹ the General Assembly has reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law.

15. In its resolution 60/288 on the United Nations Global Counter-Terrorism Strategy, which was adopted on 8 September 2006, the General Assembly decided to encourage Member States, the United Nations and other appropriate international, regional and subregional organizations to support the implementation of the Strategy, including by mobilizing resources and expertise, and to further encourage non-governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement the Strategy. The Strategy comprises four pillars, one of which is dedicated to upholding human rights.

16. Article 4 (2) of the International Covenant on Civil and Political Rights prohibits the derogation under any circumstances of certain rights, namely: the right to life (art. 6); the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (art. 7); the right not to be held in slavery or servitude (art. 8 (1)–(2)); the right not to be imprisoned for the inability to fulfil a contractual obligation (art. 11); the right not to be held guilty for an act or omission which did not constitute a criminal offence at the time when it was committed (art. 15); the right to recognition everywhere as a person before the law (art. 16); and the right to freedom of thought, conscience and religion (art. 18).

17. The Human Rights Committee, in its general comment No. 29 (2001), expanded the list of rights and prohibitions whose derogation can never be considered as proportionate to include hostage-taking, the imposition of collective punishments, arbitrary deprivation of liberty and deviations from fundamental principles of fair trial, including the presumption of innocence. At the regional level – within the inter-American, African and European systems in particular – the practice has been to restrain States from using emergency powers.

⁸ A/HRC/25/59/Add.2, para. 40.

⁹ Resolution 72/180.

D. State obligations under the human rights framework

18. There is no doubt that terrorism aims to destroy the rule of law by annulling the rights of individuals. Those committing acts of terror use violence to spread fear and destroy human rights and fundamental freedoms. Particularly when terrorist actions are protracted and carried out by well-organized non-State actors, they may lead to significant levels of suffering in societies and to a number of human rights violations, such as violations of the right to life, equality, freedom from discrimination, liberty, personal security, freedom from slavery and freedom from torture and other cruel, inhuman or degrading treatment or punishment.¹⁰

19. The fulfilment of human rights requires States to adopt appropriate measures, including legislative, judicial, administrative or other measures, in order to fulfil their legal obligations. States must do everything possible to protect their populations from the scourge of terrorism while respecting their rights. Both international and regional systems emphasize that States have a duty to protect those living under their jurisdiction.

20. Counter-terrorism measures are lawful when they conform with international human rights law. This is the approach taken by the General Assembly in the United Nations Global Counter-Terrorism Strategy. Respect for human rights and the rule of law is one of the four areas that must benefit from international cooperation and State actions to combat terrorism. In its resolution 74/147 on terrorism and human rights, which was adopted on 18 December 2019, the General Assembly strongly condemned all terrorist acts as criminal and unjustifiable, and expressed grave concern at their detrimental effects on the enjoyment of all human rights.

21. Despite States formally committing to upholding the human rights framework set out in the United Nations Global Counter-Terrorism Strategy, in particular in terms of respect for human rights and the rule of law, adherence to this commitment has not been completely satisfactory. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism considers that there is an evident lack of political will to implement the full logic of the Strategy and, furthermore, that there is a need for new and innovative pathways premised on the fundamental idea that security without rights is meaningless, and that rights inherently protect and advance security.¹¹ In the same vein, the Secretary-General has stated that only by placing counter-terrorism within a rule-of-law framework can we safeguard the internationally valued standard that outlaws terrorism, reduce the conditions that may generate cycles of terrorist violence and address grievances and resentment that may be conducive to terrorist recruitment.¹²

E. Obligations towards victims of terrorism

22. Particular groups have traditionally been victims of terrorism and require special protection for the effective enjoyment of their human rights. These vulnerable groups include women, children, elderly persons, refugees, internally displaced persons and persons with disabilities. As vulnerable groups, measures must be taken to protect them against terrorist acts. States have an obligation to respect and protect the rights of all victims without distinction of any kind, including on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

23. According to the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, victims are persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal

¹⁰ Given that terrorist activities violate such important human rights, States have a duty to take the measures necessary to prevent or avoid the perpetration of such violations (submission of the Journalists and Writers Foundation, November 2018), while respecting fundamental rights and liberties.

¹¹ Submission by the Special Rapporteur to the Office of Counter-Terrorism on the implementation of the United Nations Global Counter-Terrorism Strategy (16 December 2019).

¹² A/60/825 and Corr.1, para. 113.

abuse of power. In addition, the immediate family or dependents of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization, are also victims.¹³

24. In the 2005 World Summit Outcome, which was adopted on 16 September 2005, Member States stressed the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.¹⁴

25. In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, it was agreed that appropriate measures should be taken to ensure victims' safety, physical and psychological well-being and privacy, as well as those of their families. Five forms of reparation are identified: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁵

26. In the absence of an international fund, the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law should be fully applied by States to victims of terrorism.

27. The Advisory Committee agrees that, under certain circumstances, terrorism may escalate so as to pose a threat to the life of the nation such as to allow a State's human rights obligations to be justifiably suspended in accordance with article 4 (1) the International Covenant on Civil and Political Rights. It must be recalled, however, that the exercise of emergency powers can only be justified under international law when terrorist acts constitute a threat to the life of the nation (particularly when that threat is sustained and consistent). Terrorism of itself does not automatically justify the declaration of a state of emergency. On the contrary, as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated in 2018, derogation requires that the scale of threat be exceptional and affect the State's fundamental capacity to function effectively, and impact the State's core security, independence and function. The Special Rapporteur emphasized that the exercise of emergency powers must reach high and specific thresholds to be lawfully exercised under international law.¹⁶ Moreover, when emergency measures are not strictly necessary, then ordinary law should be preferred. Governments must therefore assess very carefully when deciding to resort to extraordinary powers as overreaction by Governments can ratchet up the levels of violence and confrontation, as well as undermine the broader fight against terrorism and inadvertently bolster the conditions conducive to terrorism.¹⁷

F. Obligation to prevent or avoid the perpetration of terrorism

28. Terrorism has a direct impact on the enjoyment of human rights, which is why, under international law, States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks.¹⁸ Including human rights considerations when developing laws and implementing counter-terrorism policies may be essential to avoid the perpetration of acts of terrorism. Consideration must also be given to the potential negative impact of such measures on the consolidation of the rule of law. Assessments must therefore include not only the impact but also the cost (in democratic terms) of restrictive measures aimed at limiting the enjoyment of human rights and freedoms (i.e., increased surveillance, new criminal offences, increased levels of use of force by law enforcement and the military etc.).

29. A comprehensive human-rights approach also requires that Governments identify the root causes of terrorism, which may include social and economic injustice and inequality of

¹³ General Assembly resolution 40/34, annex, paras. 1–2.

¹⁴ *Ibid.*, resolution 60/1, para. 89.

¹⁵ *Ibid.*, resolution 60/147, paras. 10 and 18.

¹⁶ A/HRC/37/52, para. 12.

¹⁷ *Ibid.*, para. 6.

¹⁸ OHCHR, fact sheet No. 32.

access to services. Governments should provide proper redress and compensation to victims of terrorism. In addition, Governments should adopt measures to foster the active participation and engagement of civil society; to condemn human rights violations, prohibit them in national law, promptly investigate and prosecute those responsible and prevent violations from occurring; and to give due attention to the rights of victims of human rights violations.¹⁹ The risk of exceptional security measures being misapplied or used arbitrarily must also be taken into account, as potential human rights violations committed in the name of counter-terrorism would certainly contribute to jeopardizing the rule of law.

IV. Negative effects of terrorism on the enjoyment of human rights

A. Negative effects of terrorism on the enjoyment of economic rights

30. Terrorism has a significant negative impact on economic rights. It reduces the capacity of States to invest in economic or social projects, which seriously affects the population, in particular vulnerable communities. According to the General Assembly, terrorism potentially hampers development, including but not limited to destroying infrastructure, harming the tourism industry, diverting FDI, impeding economic growth and increasing security costs.²⁰ Terrorism may impose significant economic costs on societies, not only as consequence of the direct material damage, but also due to the long-term effects on the local economy.²¹ Resources normally allocated to economic and social programmes, development assistance and the reduction of poverty – such as education, health, water and sanitation – are diverted to the security sector and may have serious consequences for the affected countries and communities.²² There is also the direct and devastating economic effects of terrorism on individuals who live in fear of losing not only their lives and the lives of members of their families but also their work and of seeing their social and cultural rights restricted.

31. At the macroeconomic level, the economic consequences of terrorism take the form of declining rates of the gross domestic product (GDP) or lost GDP growth. Indirect impacts on the economy may surface as reduced growth in GDP, lost FDI, inflation or unemployment.²³ Another indirect economic consequence is the diversion of FDI or public investment funds to security and reduced trade.²⁴ Such indirect or secondary costs concern attack-related subsequent losses, such as raised insurance premiums, increased security costs, greater compensation to those in high-risk locations and costs tied to attack-induced long-term changes. All these aspects may directly or indirectly affect national economic development and the realization of economic rights, which could be hampered by a lack of resources or by the deviation of available resources to counter-terrorism policies away from socioeconomic development efforts.²⁵

¹⁹ United Nations Office on Drugs and Crime, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (New York, 2011).

²⁰ Resolution 72/246, para. 5.

²¹ The identification and estimation of the costs of terrorism have received broad attention in economic literature and research, especially since the events of 11 September 2001. For example, the Institute for the Analysis of Global Security has estimated the value of lives lost, as well as the cost of property damages and lost goods and services, to exceed US\$ 100 billion. The loss in stock market wealth has also been substantial.

²² OHCHR, fact sheet No. 32, p. 47.

²³ Countries suffering from conflict experience the most costly economic impacts associated with terrorism. These countries are mainly in the Middle East and North Africa, sub-Saharan Africa and South Asia. In 2016, Iraq had suffered the largest economic impact of terrorism as a percentage of GDP, followed by Afghanistan, the Syrian Arab Republic, Yemen and Libya. See also www.wilsoncenter.org/article/report-terrorism-decline-middle-east-and-north-africa.

²⁴ Todd Sandler and Walter Enders, “Economic consequences of terrorism in developed and developing countries: an overview”, in *Terrorism, Economic Development and Political Openness*, Philip Keefer and Norman Loayza, eds. (Cambridge University Press, 2008), pp. 17–47.

²⁵ For example, the cost of programmes for victims of terrorism aimed at their social reintegration and

32. Terrorism may reduce the capacity of States to invest in economic or social projects. Indeed, the economic effects of terrorism at the macroeconomic level also have a more concrete impact on individuals whose social and economic conditions may well have worsened. That impact may be felt even more by vulnerable communities.

33. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights sets out States' obligation to take steps to the maximum of their available resources with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means. Yet, it is clear that terrorism itself and the counter-terrorism measures adopted by States have an impact on States' capacity to fulfil that obligation and therefore on the enjoyment by individuals of their rights as well as on broader development objectives.²⁶

34. Social protection and public services may also be affected by the deviation of public funds away from socioeconomic development policies to policies that prioritize security, which also tends to limit individuals' rights and freedoms. As already underlined in 2007 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, a number of rights enshrined in the International Covenant on Economic, Social and Cultural Rights have been found to be at risk because of counter-terrorism measures, namely: the right to work (arts. 6–7); protection and assistance accorded to the family and to children and young persons (art. 10); the right to an adequate standard of living, including adequate food and housing (art. 11); the right to adequate food and housing (art. 11); the right to health (art. 12); and the right to education (arts. 13–14).²⁷

35. Terrorism also has negative effects on FDI, which is usually diverted to safer destinations.

36. Diversion of international funding from development to counter-terrorism policies is an effect of terrorism. Economic and social development, including through international cooperation and assistance, can play a role in reducing support for terrorism by preventing the conditions that give rise to violence in general and to terrorism in particular, and by contributing to long-term social and economic stability.²⁸ Terrorism also influences decisions on the allocation of international funding for use in the implementation of repressive policies and for programmes and strategies aimed at preventing terrorism and at coping with the perceived risk of terrorism. This diverts much-needed funds for addressing the root causes of terrorism, in particular socioeconomic inequality, and may hinder the realization of the Sustainable Development Goals. As stated by the Development Assistance Committee of the Organisation for Economic Co-operation and Development, aid allocations should be calibrated carefully where the prevention of terrorism is a relevant development objective. In particular, efforts should be made to ensure that “budget reallocations are preceded by in-depth analysis of need and aid effectiveness so that development aid contributes to long-term structural stability and does not become an instrument of non-development interests”.²⁹

37. Forced migration is another important negative effect. The connection between terrorism, and even its threat, and migration flows has been noted. As terrorism worsens, living standards and working conditions may push individuals to migrate to safe areas where they may find international protection, support and assistance. As the Secretary-General noted in 2018, some States' attempts to deal with alleged terrorists crossing international borders have also led them to take measures that violate the rights of migrants and refugees. In some cases, individuals fleeing conflicts have seen their absolute right to non-refoulement violated, in the absence of individualized procedures to determine a risk of torture or ill-treatment, while other States have continued to rely on “deportation with assurances” that

for the protection of persons participating in the struggle against terrorism may have a significant impact on the State's budget.

²⁶ OHCHR, fact sheet No. 32.

²⁷ A/HRC/6/17 and Corr.1, para. 33.

²⁸ Philip B. Heymann, “International cooperation in dealing with terrorism: a review of law and recent practice”, *American University International Law Review*, vol. 6, No. 1 (1990).

²⁹ DCD/DAC(2003)11/Rev.1, para. 2.

may not ensure that individuals affected will not be subjected to torture or other ill-treatment.³⁰

38. Tourism is an industry that is seriously affected by terrorism, which systematically influences tourists' choices of destination and negatively affects supporting industries and services, including the aviation sector.

B. Negative effects of terrorism on the enjoyment of social rights

39. Social rights, like economic and cultural rights, are protected by the International Covenant on Economic, Social and Cultural Rights, which recognizes, *inter alia*, the right to social security (art. 9); the right to protection of the family, mothers and children (art. 10); the right to the enjoyment of the highest attainable standard of physical and mental health (art. 12); and the right to education (arts. 13–14).

40. In the immediate aftermath of a terrorist attack, which may result in injury, death and psychological trauma, the normal development of social life is greatly affected. The scarcity of studies and documented information dealing with the wide range of variables that affect this issue means that it is difficult to measure society's ability to cope with or the extent of the effects of terrorism.³¹ Particularly for populations living in countries affected by acts of terrorism perpetrated over a protracted period, everyday life is complicated by the high levels of stress and the uncertainty linked to the lack of safety. In general, after terrorist acts, people suffer from post-traumatic stress disorder, anxiety and severe depression. Moreover, survivors of terrorist attacks may suffer from substance abuse and psychosomatic disorders.

41. Sustained counter-terrorism policies based on a perceived high risk of suffering from terrorism attacks may also notably affect societies. Particularly when such measures are unnecessary, discriminatory or disproportionate, they may contribute to the progressive detachment of citizens from political institutions, thus jeopardizing the rule of law and democratic governance. In such cases, the normal functioning of social life is progressively altered through the introduction of restrictive measures that sometimes do not respond to a real and imminent threat but to a perceived high risk of such attack.

42. It has been noted that the right to health is also seriously undermined by terrorist groups and their direct interference with the provision of humanitarian assistance and their direct targeting of humanitarian personnel.³² "Protecting the public mental health must be a component of the national defence".³³ These challenges often overwhelm government resources and exacerbate pre-existing problems affecting the population.

43. Many resources that could be spent on education are spent on security, which is a negative approach and one that will not sustain peaceful communities in the long term.³⁴ Concern has also been expressed regarding measures taken to close or restrict access to religious schools or to prevent their establishment under the justification of fighting terrorism. In that regard, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reminded States of their obligation to protect the right of families to secure an education for their children in conformity with their religious or other convictions.³⁵ Terrorist acts can jeopardize students' access to their educational institutions, which causes great damage to their future, their careers and their mental health.

44. The damage inflicted on victims of terrorism, specifically on their lives, health and property, calls for a particular response from national authorities in terms of providing compensation, psychological, medical and professional rehabilitation, legal aid and

³⁰ A/73/347, para. 20.

³¹ See, for example, Heidi Resnick and others, "Research on trauma and PTSD in the aftermath of 9/11", *PTSD Research Quarterly*, vol. 15, No. 1 (2004).

³² A/73/347, para. 23.

³³ Ezra Susser, Daniel Herman and Barbara Aaron, "Combating the terror of terrorism", *Scientific American* (September 2002).

³⁴ See A/HRC/6/17 and Corr.1, para. 17.

³⁵ *Ibid.*, para. 53.

employment and housing assistance. National authorities should put in place legislative and administrative measures in order to properly address, through material, legal and psychological assistance, the situation experienced by victims of terrorism.

45. Some national legal frameworks do provide legal protection and compensation to victims of terrorism. It is essential that such victims be provided with legal status and that their human rights be protected, including their rights to health, legal assistance, justice, truth and adequate, effective and prompt compensation and other forms of reparation, commemoration and memorialization. As the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted, comprehensively addressing the rights of the victims of terrorism represents best practice not just because it assists victims and survivors to rebuild their lives but also because it can help to reduce polarization in society by building national solidarity.³⁶

1. Impact on children's rights

46. Children are especially vulnerable to the negative psychological effects of living under threat of a terrorist attack. They are usually more likely than adults to suffer from post-traumatic stress disorder, anxiety or depression. Adolescents are more likely to manage their symptoms through substance abuse, and studies carried out after terrorist attacks in Israel and the events of 11 September 2001 documented an increased use of alcohol, illicit substances and nicotine among adolescents.³⁷ Moreover, indirect exposure to terrorist acts and threats through the media affects the mental health of children, both in the short and the long term, in ways that differ from the ways it affects adults. Because of their age, children do not have the resources to manage this kind of stress, which can disrupt the development of their brain and other organ systems, with lifelong consequences.

47. In its resolution 72/246 of 24 December 2017 on the effects of terrorism on the enjoyment of human rights, the General Assembly strongly condemned the systematic recruitment and use of children to perpetrate terrorist attacks, as well as the violations and abuses committed by terrorist groups against children, including killing and maiming, abduction and rape and other forms of sexual violence, and noted that such violations and abuses may amount to war crimes or crimes against humanity. Children may be subjected by terrorists to sexual slavery, rape, forced marriage and mass abduction.

48. As the United Nations High Commissioner for Human Rights has noted recently, children have been largely ignored in the counter-terrorism discourse. There is a need for further research on the short- and long-term impacts of terrorism on children and the drivers of terrorist exploitation of children. Counter-terrorism policies and programmes should, however, be grounded in the available empirical evidence, rather than untested theories, such as the narrative of radicalization.³⁸

49. Sometimes, children fall victim to recruitment by groups such as Da'esh, the Nusrah Front and Al-Qaida. Terrorist and violent extremist groups exploit children to boost their visibility. Indeed, in some cases, these groups exploit children's vulnerability to drive a perception in the community that they are a defence against the threat of violence from a different group or from the State. Young children are also more easily intimidated and far easier to control, both physically and mentally, than adults.³⁹ Such recruitment takes place despite the Protocol Additional to the Geneva Conventions of 12 August 1949, article 77 (2) of which prohibits the recruitment and participation in hostilities of children under the age of 15. In addition, article 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict declares 18 years as the minimum legal age

³⁶ A/HRC/40/52/Add.5, para. 47. See also United Nations, *Handbook of Good Practices to Support Victims' Associations in Africa and the Middle East* (2018).

³⁷ Marion Grenon and others, "Impact of a terrorist attack on the mental health of directly exposed French adolescents: study protocol for the first step of the AVAL cohort study", *Frontiers in Psychiatry*, vol. 10, No. 744 (25 October 2019).

³⁸ A/HRC/40/28, para. 68.

³⁹ United Nations Office on Drugs and Crime, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: the Role of the Justice System* (Vienna, 2017).

for the recruitment and use of children in hostilities. Numerous Security Council resolutions also address the protection of children in situations of armed conflict.⁴⁰

50. Children, particularly foreign children, whose parents are associated with terrorist groups experience stigma and exclusion. Stranded in squalid camps and detention centres, these children often have limited access to basic rights such as the rights to food, shelter and access to clean water, medicine and education and are exposed to endemic violence, exploitation, sexual abuse, trafficking, harassment and radicalization. A principled approach to this new phenomenon must be found in order to better protect children in situations of armed conflict. The Convention on the Rights of the Child underscores that children are rights holders in their own capacity and that therefore their rights cannot be undermined by the actions of their parents. The State of which a child is a national is responsible for fulfilling this principle and, in particular, for repatriating children in order to ensure that they are reunited with their family in their home country and that they are reintegrated. The primary consideration must be the best interest of the child in all circumstances.

2. Impact on women's rights

51. Women and girls experience particular vulnerabilities as victims of terrorism and therefore have specific protection needs. Women's human rights in conflict situations, displacement contexts and other circumstances in which they are subjected to the effects of extremist violence must be safeguarded. Moreover, the fact that acts of sexual and gender-based violence are often used as strategic objectives by certain terrorist groups should be kept in mind. Women and girls are used as sex slaves and are victims of trafficking. As the General Assembly has noted, sexual and gender-based violence are used as an instrument to increase terrorists' power through supporting financing and recruitment and through the destruction of communities.⁴¹

52. The General Assembly has urged States to ensure that gender equality and non-discrimination are taken into account when shaping, reviewing and implementing all counter-terrorism measures, and to promote the full and effective participation of women in those processes.⁴²

53. Many extremist groups promote an ideology that classifies women as second-class persons and offers financial and other benefits for enforcing women's subjugation. Sexual violence is used by terrorist groups to terrorize populations, to displace civilians from strategic areas and to generate revenue through trafficking. Suppressing women's rights also allows extremists to control reproduction and harness female labour.⁴³

54. In paragraph 17 of its general recommendation No. 30 (2013), the Committee on the Elimination of Discrimination against Women recommended that States parties to the Convention on the Elimination of All Forms of Discrimination against Women reject all forms of rollbacks in women's rights protections in order to appease non-state actors such as terrorists, private individuals or armed groups.

55. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has acknowledged that terrorism is particularly detrimental for the protection of women's rights and that women who are victims of terrorism face particular and unique challenges, adding that there are specific harms that women experience as a result of overarching gender inequalities, stereotypes and assumptions about their needs, experiences and vulnerabilities after terrorist acts that produce policies and practices of layered harms for women who are victims of terrorism.⁴⁴

⁴⁰ Submission of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressed to the Advisory Committee.

⁴¹ Resolution 73/174. See also Security Council resolutions 2331 (2016) and 2388 (2017). United Nations, Office of Counter-Terrorism, "Handbook of good practices to support victims' associations in Africa and the Middle East" (2018).

⁴² Resolution 70/148, para. 6 (t).

⁴³ Council on Foreign Relations, *Women and Terrorism: Hidden Threats, Forgotten Partners* (May 2019).

⁴⁴ A/HRC/46/36, para. 8.

C. Negative effects of terrorism on the enjoyment of cultural rights

56. Article 19 of the Universal Declaration on Human Rights reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. It should be noted, however, that this right is not absolute. In accordance with article 19 of the International Covenant on Civil and Political Rights, it may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for the respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals. Article 20 (2) of the Covenant provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

57. Cultural rights are related to art and culture, at the heart of which is article 15 (1) of the International Covenant on Economic, Social and Cultural Rights, according to which the States parties to the Covenant recognize the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; and (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author. In article 15 (3), it is stated that the States parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity. The right to participation in cultural activities has been seen in a broad sense to include the right to benefit from cultural values created by the individual or the community.⁴⁵

58. It is important to encourage freedom of exchange of opinions and intellect. Indeed, artistic and cultural expression is one of the categories of freedom of expression protected in many international instruments.⁴⁶

59. States must ensure that there is no discrimination in the enjoyment and participation in cultural activities (art. 5 (e) (vi) of the International Convention on the Elimination of All Forms of Racial Discrimination). Cultural rights of minorities and indigenous peoples are further protected by specific instruments, including the International Covenant on Civil and Political Rights (art. 27), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples.

60. In accordance with the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, States should endeavour to create an environment that encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.

61. Particular forms of terrorist incidents involving substantial casualties and damage, suicide bombings and fatalities affect the enjoyment of cultural rights. Sometimes, artists are particularly targeted. The Special Rapporteur in the field of cultural rights has explored the subjects of fundamentalism, extremism and cultural rights, especially as they relate to freedom of artistic expression and attacks against artists, intellectuals, cultural rights defenders, women’s cultural rights and based on a perceived or assumed “difference” in faith or culture, as well as attacks against educational institutions, personnel and students.⁴⁷ The Special Rapporteur has stressed that these are human rights issues requiring a human rights-based response.

62. The Human Rights Council, in its resolution 33/20, noted that the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights, in particular the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage. In fact, the potential for non-State actors to destroy cultural heritage is tremendous and could have disastrous effects on the enjoyment

⁴⁵ E/1993/22–E/C.12/1992/2, Para. 217.

⁴⁶ See, for example, the UNESCO Constitution, of 1945.

⁴⁷ A/HRC/34/56.

of cultural rights. In this instance, the cost goes beyond mere monetary value and extends to the total loss of the non-monetary value to human civilization.

63. In its resolution 2347 (2017), the Security Council deplored and condemned the unlawful destruction of cultural heritage, *inter alia* the destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives and other sites in the context of armed conflicts, notably by terrorist groups, and affirmed that directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law, a war crime and that perpetrators of such attacks must be brought to justice. The Council stressed that Member States had the primary responsibility in protecting their cultural heritage and that efforts to protect cultural heritage in the context of armed conflicts must comply with the Charter of the United Nations and should respect the sovereignty of all States.

64. On 20 January 2017, during a meeting of the Security Council, the Director General of the United Nations Educational, Scientific and Cultural Organization⁴⁸ said that the destruction of cultural heritage was a war crime and a tactic of war, part of a strategy of cultural cleansing. On the same occasion, it was emphasized that defending heritage was a priority and that States must step up efforts to protect those historical properties while respecting the principles of sovereignty and non-interference in others' internal affairs.

65. In a 2016 report, the Special Rapporteur in the field of cultural rights stated that the intentional destruction of cultural heritage was a human rights issue and called for national and international strategies for preventing, and holding those alleged to have taken part in, such destruction, and also called for support for and protection of defenders of cultural heritage.⁴⁹

V. Towards recognition of the rights of victims of terrorism

66. Despite important initiatives and a number of relevant resolutions and documents that have been adopted by the General Assembly, the Security Council and the Human Rights Council towards recognition of the rights of victims of terrorism, and despite the efforts made to adopt a comprehensive and coherent approach through the adoption of an international instrument at the United Nations level, none of these initiatives have yet yielded any results.⁵⁰

67. International human rights law is evolving to recognize terrorism victims' rights to remedy and reparation, including some measure of financial compensation for damages resulting from grave and serious violations of international law.⁵¹ According to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, no concrete steps have been taken to adopt an international instrument enshrining the rights of victims of terrorism. Such an instrument would contribute to a comprehensive and coordinated global counter-terrorism strategy and would ensure that victims of terrorism are not exploited by States for essentially political purposes.⁵²

68. Some important steps in that direction have already been taken. In 2012, the Special Rapporteur developed a set of framework principles for securing the human rights of victims of terrorism and recommended that States take steps towards enshrining those rights and obligations in a specific international instrument.⁵³ In the same vein, in May 2017 revised guidelines were adopted within the framework of the Council of Europe on the protection of victims of terrorist acts.⁵⁴

⁴⁸ S/PV.7907.

⁴⁹ A/71/317.

⁵⁰ International Commission of Jurists, *Human Rights of Victims of Terrorism: a Compilation of International Sources* (August 2019).

⁵¹ M. Cherif Bassiouny, "International recognition of victims' rights", *Human Rights Law Review*, vol. 6, No. 2 (2006), pp. 203–279.

⁵² A/HRC/34/61, para. 16.

⁵³ A/HRC/20/14, para. 66.

⁵⁴ See <https://rm.coe.int/protection-of-victims-of-terrorist-acts/168078ab54>.

69. In the framework of the European Union, the role of victims has been largely recognized and guidelines to help States members of the European Union to support and protect their rights have been put in place. Directive (EU) 2017/542 on combating terrorism⁵⁵ amends a previous Directive of 2012 on victims by requiring member States to provide victims of terrorism with access to professional, specialist support services immediately after an attack and for as long as necessary.⁵⁶ States should have in place protocols and mechanisms to respond efficiently to emergencies, including by providing access to reliable information so as to avoid any additional suffering for victims of terrorism and their families.⁵⁷

70. Efforts to give visibility to victims of terrorism and to enhance the protection of their rights should be strengthened. However, States cannot use the suffering of victims as an excuse to expand repressive measures taken in the name of countering terrorism. On the contrary, it is important for victims that their rights be formally recognized in an international document that may be used as guidance for the implementation of national policies in this regard. In that vein, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern about the approach taken by the Security Council and the General Assembly through resolutions that function to instrumentalize victims in order to bolster the need for greater counter-terrorism measures and thus weaken the international system as a whole.⁵⁸ This worrying trend is reflected in the evolution of the resolutions on the protection of human rights and fundamental freedoms while countering terrorism adopted by the Assembly, which have been merged in a new “streamlined” resolution on terrorism and human rights.⁵⁹ In the process of streamlining, some key aspects on the protection of human rights, among other aspects contained in previous resolutions, have been lost. Given the range of measures that can affect civil society, the Assembly must address these deficits.

71. The outcome has been the perversion of the whole system, which, instead of being reinforced to protect victims’ rights, is being progressively eroded on their behalf. A number of non-governmental organizations have also called upon States and policymakers to avoid using the suffering of victims of terrorism as an excuse to justify the strengthening of measures that may open the door to human rights abuses and violations, without delivering real justice, remedy or support to victims. In a joint written statement submitted by five non-governmental organizations to the Advisory Committee in February 2020, it was stated that “far too many States, while invoking the suffering of victims of terrorism to justify repressive and human rights-violating measures in the name of countering terrorism, have abjectly failed actually to recognize and implement the human rights of victims of terrorism”.⁶⁰ Recent international developments aimed at protecting victims have been set out in General Assembly resolution 73/305, in which the Assembly called upon Member States to develop comprehensive assistance plans for victims of terrorism, taking into account a gender perspective, and upon the Office of Counter-Terrorism, in particular the United Nations Counter-Terrorism Centre, within their respective mandates, to assist requesting Member States in developing their comprehensive assistance plans for victims of terrorism and in

⁵⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

⁵⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

⁵⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims provides access to national compensation schemes to victims of violent, intentional crime. In March 2019, the Special Adviser to President Juncker on victims’ compensation issued a report entitled *Strengthening Victims’ Rights: from Compensation to Reparation*. The European Commission has recently set up the Centre of Expertise for Victims of Terrorism to offer expertise, guidance and support to national authorities, as well as support to organizations working with victims of terrorism (see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/eu-centre-expertise-victims-terrorism_en).

⁵⁸ A/HRC/40/52, para. 29.

⁵⁹ Resolution 73/174.

⁶⁰ A/HRC/AC/24/NGO/1.

building their capacity to assist victims of terrorism. It is regrettable, however, that, in the absence of an internationally accepted definition of terrorism, the definition of a victim of terrorism is consequently absent.

VI. Concluding remarks and recommendations

72. Terrorism has a negative effect on the enjoyment of all human rights, specifically economic, social and cultural rights, as well as broader development objectives.⁶¹ Human rights must be an essential component of the fight against terrorism, which cannot succeed without the protection of such rights. Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism and the countermeasures adopted by States to combat it. Counter-terrorism laws, policies and practices must therefore be designed and implemented to protect human rights, fundamental freedoms and the rule of law, including the rights of victims of terrorism. The risk of eroding or undermining this framework should be carefully avoided in policymaking and decision-making at all levels.

73. The work and reports of human rights bodies and mechanisms have shown that in some States there is a particularly worrying trend towards normalizing human rights violations in the name of national or international security, thereby eroding human rights protection systems and undermining individual guarantees. Under such circumstances, the approaches in the implementation of the United Nations Global Counter-Terrorism Strategy should further enhance the human rights pillar. Attention should be paid to addressing the root causes of terrorism as well as to protecting the rights of victims of terrorism.

74. National and international actions cannot be exclusively devoted to strategies, policies and programmes that tend to ignore the root causes of terrorism. The 2030 Agenda for Sustainable Development provides a unique opportunity to address conditions conducive to the spread of terrorism, such as the lack of socioeconomic opportunities; marginalization and discrimination; poor governance; violations of human rights and the rule of law; and prolonged and unresolved conflicts.

A. Recommendations addressed to States

75. States should:

(a) Elaborate and adopt a universal definition of terrorism in a legally binding instrument under international law. Agreeing on a definition would constitute an important milestone in aligning international norms, national legislation and practices with international human rights standards and in preventing abuses and violations while countering terrorism;

(b) Finalize and adopt a comprehensive convention on international terrorism, taking into consideration that such an international instrument should address the root causes of terrorism, the negative effects of terrorism on the enjoyment of human rights and the fact that terrorism jeopardizes development efforts;

(c) Further enhance international cooperation to counter the actions of those who aid, abet, sponsor, finance or otherwise support terrorism, as it negatively affects the economic, social and cultural rights of individuals, as well as undermining broader development objectives;

(d) Elaborate and adopt an international instrument providing guidance to States on the rights of victims of terrorism that should be enshrined and protected through national legislation. Such action should not prejudice nor hinder States' accountability for human rights violations and abuses while countering terrorism;

(e) Share lessons learned and good practices in this regard, including with respect to national legislation, compensation, rehabilitation and assistance schemes and duties, in order to better protect and promote the human rights of victims. With regard to alleged human rights violations in the context of countering terrorism, States must conduct prompt,

⁶¹ OHCHR, fact sheet No. 32, p. 46.

independent, impartial and thorough investigations. If it is established that a violation has occurred, victims must be accorded effective redress, including payment of compensation to individuals who have been denied due process.⁶² States should prosecute and punish perpetrators of both terrorism-related offences and human rights violations committed in the context of countering terrorism.⁶³ States should request the support of the Office of the United Nations High Commissioner for Human Rights in the collection of such good practices;

(f) Consolidate international cooperation with the Office of Counter-Terrorism with a view to achieving recognition of and assistance to victims of terrorism as provided in the United Nations Global Counter-terrorism Strategy;

(g) Cooperate with other Governments and international organizations to address the root causes of terrorism and avoid all forms of discrimination, establish a sound system of social security and create job opportunities. In addition, States should redouble efforts aimed at resolving all armed conflicts and at defusing and de-escalating all forms of violence and conflict by peaceful means;

(h) Undertake periodic reviews of domestic counter-terrorism legislation to assess whether the impact of that legislation on the enjoyment of human rights is necessary and proportionate;

(i) Consider implementing the recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant human rights bodies;

(j) Support national institutions and civil society in promoting projects aimed at enhancing the realization of economic, social and cultural rights with the objective of addressing and preventing conditions conducive to the spread of terrorism, such as the lack of socioeconomic opportunities, marginalization and discrimination, poor governance, violations of human rights and the rule of law and prolonged and unresolved conflicts;

(k) It is imperative for Member States and international funding agencies to support women facing extremism, violence and terrorism and to mainstream a gender perspective in any peace and security agenda. The actions of and legislation by States should not be gender-blind. More women need to be recruited to leadership and decision-making positions within government and United Nations institutions involved in counter-terrorism efforts;

(l) In line with their international obligations, explicitly prohibit and criminalize the recruitment and use of children in hostilities by non-State armed groups, including terrorist groups. Cases of exploitation by such groups should be investigated and the perpetrators brought to justice. Exploited children should have access to comprehensive rehabilitation and reintegration, which should be gender-sensitive.⁶⁴ States must fulfil their obligations under the Convention on the Rights of the Child and implement programmes for the repatriation from zones of conflict of children whose parents are associated with terrorists and for their reintegration;

(m) Continue granting technical and capacity-building assistance to countries suffering from the effects of terrorism, especially developing countries that request such assistance.

B. Recommendations addressed to United Nations human rights mechanisms

76. United Nations human rights mechanisms should:

(a) Continue to support States in their efforts to combat terrorism strictly within the framework of their international human rights obligations and strengthen their capacities in this regard, particularly by providing them with assistance to ensure accountability for

⁶² A/HRC/34/30, para. 58.

⁶³ A/HRC/45/27, para. 52.

⁶⁴ A/HRC/40/28, para. 72.

human rights violations committed both by those responsible for acts of terrorism and by those responsible for counter-terrorism measures;

(b) Continue to provide technical assistance to States confronting terrorism through the relevant United Nations programmes, including campaigns to raise awareness about the promotion and protection of human rights in emergency situations and specialized training to public officials.

C. Recommendations addressed to civil society organizations

77. Civil society organizations should:

(a) Continue and increase support to victims of terrorism, including by providing assistance and medical, legal and psychological support services, advocating on behalf of victims and helping victims to raise public awareness about the human impact of terrorist acts;

(b) Provide support to women's civil society organizations that are working under extreme conditions to counter and prevent more violence and extremism in their communities, including by preventing the recruitment of children;

(c) Raise awareness of the negative effects of terrorist acts and participate in addressing the root causes of terrorism, especially by reducing poverty and overcoming social exclusion, as a preventive measure against terrorism.
