**Views of the United Nations Special Rapporteur on the promotion and protection of Human Rights and Fundamental Freedoms while Countering Terrorism to the Secretary-General’s pending report pursuant to UNSCR 2482 (2019) addressing the issue of linkage between terrorism and organized criminal groups (OCG)**

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, is pleased to have the opportunity to input to the Secretary-General’s pending report pursuant OP25 UNSCR 2482 (2019). This input addresses some of the human rights and international law aspects of UNSCR 2482, urging the Secretary-General’s report to take account of the importance of legal certainty, proportionality, due process, the potential misuse or conflation of legal regimes, and the need to protect human rights and humanitarian norms in any implementation of this resolution.

*Human Rights Dimensions of UNSCR 2482*

Security Council resolution 2482 is a significant resolution passed under Chapter VI of the UN Charter. The Preamble (consisting of 19 paragraphs) to the Resolution is broad and expansive in its articulation of the intersection between terrorism and organized crime.[[1]](#footnote-1) The Special Rapporteur notes that there is a dearth of empirical evidence to affirmatively establish that all of these links exist in practice, or such density as to mandate the wholesale export of counter-terrorism law and practice into ordinary law-enforcements arenas currently regulating organized crime. The Special Rapporteur urges caution in a wholesale conflation of distinct legal phenomena and urges States to collect accurate and sufficient data to document nature the intersection which is outlined in the Resolution.

The Preamble describes a landscape of intersection between terrorism and organized crime, which includes reference to the relevant treaty law on organized crime (the UN Convention against Transnational Organized Crime)[[2]](#footnote-2) and a strong affirmation of the sovereignty, territorial integrity and political independence of states which gives all States the primary responsibility for countering terrorism, violent extremism and organized crime. The Special Rapporteur notes (see further below) that given the lack of a comprehensive treaty definition of the specific terms “terrorism”, “violent extremism” or “organized crime” deference to national practice has significant relevance to to the practice of States and accounts for significant variance in the protection and promotion of human rights at the national level.[[3]](#footnote-3)

Various UN bodies and other international enforcement, oversight and norm creation entities are mentioned in the Preamble to Resolution 2482 including the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the International Tracing Instrument, UNODC, UN Commission on Crime Prevention and Criminal Justice, and UN Commission on Narcotic Drugs, UNCTED. Non-UN bodies including the Financial Action Task Force (FATF) and its Global Network of FATF-style regional bodies, as well as the Global Counterterrorism Forum (GCTF) are also highlighted.[[4]](#footnote-4) The Special Rapporteur articulates her concern that not a single human rights oversight body and the specific normative standards of such bodies is mentioned in the text of the Resolution and encourages this Report to fill that obvious lacunae. She has previously noted the failure of certain Security Council resolutions to sufficiently acknowledge the human rights obligations of States, in regulatory arenas that deeply concern and touch upon the protection of fundamental human rights.[[5]](#footnote-5) She particularly stresses that human rights bodies, mechanisms and entities or other relevant international law entities, whether the Office of the High Commissioner for Human Rights, the Human Rights Council Special Procedures experts, such as the Special Rapporteur, or the International Criminal Court have significant expertise and relevance to oversight of both terrorism and organized crime, as well as any regulatory intersection. She underscores the importance of ensuring a balanced approach to the implementation of the four pillars of the Global Counter-Terrorism Strategy and thus the recognition of human rights in this report is an important aspect of such balance as well as the necessary inclusion of integral expertise.

The Resolution’s Preamble makes a welcome reference to human rights and international law, specifically that “any measures taken to counter-terrorism must comply with [State] obligations under international law, international human rights law”. In this regard, the Preamble also acknowledges the link between rule of law deficits and cycles of radicalization. However, despite this welcome one paragraph attention among 19 others in the Preamble, there is a notable absence of explicit, detailed and meaningful references to obligations under international human rights law where the text and the measures being advanced would clearly call for such precision. In total the phrase “human rights” appears **four times** in a resolution with far-reaching implications for the protection and promotion of human rights domestically if States were to systematically take up all the recommendations and exhortations to actions detailed therein.

The absence of any sustained integration of human rights is exacerbated by distinct, detailed and highly technical reference to “Recommendations” of non-treaty based entities,[[6]](#footnote-6) explicit calls to States to review domestic legislation and make unambiguously defined changes to domestic criminal law (with no mention of ensuring a rights-balancing or review exercise is carried out in parallel to ensure complementarity between human rights and counter-terrorism),[[7]](#footnote-7) calls to states to strengthen border management,[[8]](#footnote-8) and to establish mechanisms at the domestic level enabling broad international cooperation across multiple spheres of regulation, and much more.[[9]](#footnote-9) The Special Rapporteur has consistently noted that security and human rights are not two practices or concepts at odds with one another. Rather, the two are fundamentally entwined and co-dependent and such co-dependency is a necessary and integral part of effective and rule of law State regulation in this arena.[[10]](#footnote-10) The Special Rapporteur encourages the Secretary-General’s Report to include reference to review and implementation of this resolution through meaningful human rights integration by States and UN entities. It is only via the nuts and bolts assessment of UNSCR 2482 implementation will its human rights effects be fully revealed.  She notes that while undertaking country visits pursuant to her mandate the intersection between human rights, organized crime and counter-terrorism regulation will be examined where that nexus is engaged by the law and practice of States.[[11]](#footnote-11) However, a part-time mandate holder with limited resources is not a substitute for the full and necessary engagement of human rights in the development of further regulatory intersections between counter-terrorism and organized crime regulation. Given the potential for significant and negative human rights effects it is incumbent for human rights and rule of law protections to be addressed *ab initio* and then assessed in any further regulatory enhancements.

The Special Rapporteur notes that where human rights are mentioned in the UNSCR 2482 the phrase is used narrowly e.g. human rights obligations are mentioned in OP13 with respect to the implementation of API and PNR obligations (as also mandated by UNSCR 2396); and OP 16 with regard to preventing radicalization in prisons. The Special Rapporteur strongly recommends that the Secretary-General affirms the importance of a human rights-based approach to any actions taken to assist Member States in addressing any existing, growing or potential linkages between terrorism and organized crime. The Special Rapporteur also encourages identification of independently assessed good practice by States demonstrating their commitment to a balanced and human rights complaint approach to UNSCR 2482.

In the Special Rapporteur’s view, providing more clarity in the Secretary-General’s Report as to the scope of human rights obligations, including through the inclusion of human rights benchmarking and related assessment and oversight tools would represent a considerable improvement and would facilitate compliance with relevant international law standards in the context of domestic implementation processes.  Despite the fact that OP25 generically mandates ‘relevant entities to provide information’ to the Secretary-General’s report, the Special Rapporteur encourages the Secretary-General to pay close attention to rule of law and human rights based engagement in this complex, broad and highly sensitive framing of criminal activity and terrorism, given the potentially sustained and expansive effects a merged approach may pose for a range of human rights protections in multiple jurisdictions.

Positively, it is welcome to see the inclusion of a humanitarian exemption clause (similar to OP 24 of UNSCR 2462) in OP 16 of the resolution. The Special Rapporteur welcomes this provision as a significant step forward, affirming the critical need to protect humanitarian activities and actors particularly in fragile and complex conflict settings.[[12]](#footnote-12) However, similar to other humanitarian actors she remains concerned about the limited scope of the exemption clause as it only applies to “exclusively humanitarian activities” that are “carried out in accordance with international humanitarian law”. The clause would not encompass a number of activities conducted by humanitarian organizations, including activities that certain states may not consider ‘exclusively humanitarian’ in nature, such as international humanitarian law training to armed groups as well as other legitimate humanitarian activities not governed by the law of armed conflict.  The Special Rapporteur encourages the Secretary-General to be cognizant of the impact of such definitions on the work of humanitarian actors and the UN entities who work with them and rely heavily upon them. She encourages the Secretary-General to seek and support the widest possible humanitarian approach in both reporting and addressing the role of UN entities.

*Definitional Matters*

The Special Rapporteur has advocated for the use of precise and defined terminology in the counter-terrorism context, consistent with the principles of legality and proportionality. The absence of such precision creates conditions under which counter-terrorism norms can be abused domestically, undermining human rights protections for individuals and groups. As regards definitions, the Special Rapporteur has consistently advised that:

“Terrorist offences” should be confined to instances where the following three conditions cumulatively meet: (a) acts committed with the intention of causing death or serious bodily injury, or the taking of hostages; (b) 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; and (c) constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.[[13]](#footnote-13)

The Special Rapporteur articulates her concern that the blending together of ‘counter-terrorism’ and ‘organized crime’ may result in *de jure* or *de facto* expansions of ‘terrorism’ under domestic law adding to an already expansive and ill-defined legal landscape with the potential for substantial abuse. In many domestic legal systems, ‘organized crime’ as a concept covers a wide (and sometimes eclectic) range of activities and actors. In some States while there is no formal legal overlap between terrorism regulation and organized crime regulation there is *de facto* utilization of the courts, evidential standards, police powers and detention systems of terrorism for organized crime processing which has drawn significant and negative review from international Human Rights Courts and bodies.[[14]](#footnote-14) It is precisely the range and diversity of regulation across legal systems and cultures that makes the melding of legal categories highly problematic from a rule of law and legal certainty perspective. The Special Rapporteur encourages the Secretary-General Report to take due account of the legal concerns that have been identified by human rights bodies concerning the blending of counter-terrorism law and practice in organized crime contexts.

Furthermore, the Special Rapporteur has concluded that the scope UNSCR 2482 is irrefutably broad, due to the consistent introduction of the qualifier "whether domestic or transnational" after the term "organized crime". In plain reading this essential definition foundation to the Resolution implies that the scope of the Resolution goes beyond that of the Transnational Organized Crime Convention. This remains of concern to the Special Rapporteur and is a legal matter that requires considered reflection by States and by UN entities. This report by the Secretary-General is an important venue to address these challenges, to encourage legal clarity and to ensure that existing multilateral treaties are validated and affirmed.

While the Convention is repeatedly referenced in the text, it is apparent on close reading that the resolution does not seem to consistently adopt the terminology used in the Convention or provide comprehensive definitions the use of the terms ‘serious criminal offence’[[15]](#footnote-15) or ‘transnational organized criminals’.[[16]](#footnote-16) The lack of definition and the gaps with the Organized Crime Convention may have serious ramifications if the exhortations are implemented domestically as proposed. The absence of a list of definitions in Resolution 2482 might be read as giving effective carte blanche to States to define these terms as they will, but on the basis of compliance with a Security Council Resolution – thus legitimizing and expanding counter-terrorism mandates domestically in ways that simply do not accord with the rule of law or human rights protections in practice. She is also concerned that in the absence of systematic definitions there may it may be understood that counter-terrorism measures may be used against (relatively) minor criminal offences which are carried out by organized criminal groups in a way that extends the coercive power of the State without due oversight nationally or internationally. The Special Rapporteur encourages the Secretary-General to give due consideration to this undesirable outcome, to reflect on the need for precision and clarity, and to ensure that the precise and defined terms of the Transnational Organized Crime Convention are maintained and not undermined.

It remains somewhat obvious to say that terrorism and organized crime are subject to different legal regimes. And, in general, as the Special Rapporteur has pointed out elsewhere, terrorism regulation in many States constitutes a *de facto* exceptional legal regime, which is growing larger and more ambitious by the year.[[17]](#footnote-17) The report to exceptional law is all the more pressing given the widespread resort to emergency powers in State responses to the Covid-19 virus.[[18]](#footnote-18) Blending in an opaque opening to the inclusion of ‘organized crime’ in the counter-terrorism arena may result in the expansion of exceptionality at the national level. The move also foregoes the basic assumption that all else being equal, the ordinary law of States should be the preferred and natural point of regulation for both organized crime and terrorism. The Special Rapporteur encourages the Secretary-General to affirm the value of ordinary legal regimes in addressing crime and to avoid the regularizing of exceptional law at the national level under ill-defined international prompts.

Furthermore, the Special Rapporteur remains concerned (A/73/361, paras. 46-49) that this resolution may continue a pattern of problematic blending of different and distinct legal regimes, specifically a failure to separate out and address the law that applies to armed conflict and the international legal regime that has developed post 9/11 to address terrorism. Thus references to 'armed and terrorist groups' and 'illegal armed groups' in the Resolution raise concerns about blending terrorism and armed conflict and thereby undermine the protective regime established under international humanitarian law in ways that undermine the usefulness of these legal regimes to do the work they were intended to do. In this context, the Special Rapporteur draws attention to the narrow and specific definition of terrorism adopted in UNSCR 1566 which set out terrorism as encompassing:

…criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of 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 any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism[.][[19]](#footnote-19)

To this end, the Special Rapporteur encourages the Secretary-General’s report to flag the potential for weakening the application of international humanitarian law and to use this significant report to ensure that its free-standing and independent applicability is maintained.

*Defining the Nexus Between Terrorist Organizations and Organized Crime*

The Special Rapporteur takes the view that it is important to precisely and clearly delineate the distinctions between terrorist organizations and their activities and organized crime. She notes that there are a variety of different types of links between terrorist organizations and organized criminal groups. Understanding the differences between the types of connections and the relative prevalence of the various forms of connections is important in order to create an appropriate legal response. The ICCT distinguishes the types of linkages by the levels of intensity in the interactions between organized criminal groups and terrorist organizations summarized in the table below.[[20]](#footnote-20) Types 5 & 6 involve the appropriation of tactics commonly associated with the other form of criminal entity rather than a type of collaboration between the two.

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| --- | --- | --- | --- | --- | --- |
| Type 1 | Type 2 | Type 3 | Type 4 | Type 5\* | Type 6\* |
| a *weak nexus* of ad hoc, opportunistic collaboration (e.g. terrorist buying firearm on the black market from organized crime arms dealers). | a *regular association*, tactical, pragmatic collaboration, based on common interest constellation (e.g. maintaining ‘order’/discipline and illegal trade flows in lawless, no-go areas outside government control). | *alliance formation*, that is, a pact-based, strategic relationship involving a mutually advantageous symbiosis. | *convergence* whereby both sides merge in terms of personnel, resources, logistical and/or operational activities. | when organized crime groups *engage in terrorist tactics as violent hybrid organizations (VHO-1)*; developing these in-house, without linking up with an external terrorist group | when terrorist groups *use organized crime methods as violent hybrid organizations (VHO-2)* developing these in-house to generate funds for their political struggle, without linking up with an external organized crime group. |

 Although there are notable examples of higher-intensity cooperation, on this useful mapping most connections mapped appear to be largely transactional in nature. Research looking at the degree of cooperation between organized crime groups and terrorist organizations have found that terrorist organization are more likely to engage in low-end cooperation with organized crime groups.[[21]](#footnote-21) These lower-intensity transactional links include access to drug markets, facilitation of cross-border movements (e.g. use of smuggling human trafficking routes), and money laundering.[[22]](#footnote-22)

 Overstating the degree of connection between organized crime groups and terrorist organizations may lead to policies that are unnecessary or ill-advised.[[23]](#footnote-23) Scholars have noted that the nexus thesis is based in large part on confirmation bias and often does not appropriately distinguish the degrees of cooperation.[[24]](#footnote-24) Research to date appears to show that often the cooperation that is created involves a supplier and customer relationship born out of operating in a shared geographic space and does not mean that they develop common ventures or tactical and strategic alliances.[[25]](#footnote-25) The Special Rapporteur stresses that is important to have a well-informed understanding of the nature of the linkages between terrorist organizations and organized crimes groups in order to formulate an appropriate international response. Overstating or conflating the intensity of relationships between both risks resulting in threat inflation and may lead to government responses that unnecessarily or inappropriately impinge on vital human rights. Furthermore, understanding the types of links at issue impacts the relevant legal framework that should be applied to address the challenge.

*Existing Legal Frameworks to Address the Linkages Between Organized Crime and Terrorist Organizations*

 The above discussion is not to minimize the real and growing linkages between organized criminal groups and terrorist organizations that have been observed worldwide. However, it should inform the solutions and legal mechanisms that are used to combat this issue. Many of these forms of connections can and should be addressed by existing legal frameworks. Leading scholars have made a strong case that many of the identified terrorist organizations’ criminal activities can be substantially targeted and repressed under the UN Convention against Transnational Organized Crime, its Protocols, and other transnational crime frameworks.[[26]](#footnote-26) In line with this view, the Special Rapporteur would make the case that many of the criminal activities undertaken by terrorist organizations can be addressed by existing transnational crime agreements. The Convention against Transnational Organized Crime, defines transnational organized crime as serious crimes under national law, where the conduct is transnational, and an “organised criminal group” is involved.[[27]](#footnote-27) Thus, when the *immediate* aim of the terrorist organizations criminal activity is to obtain a financial or material benefit—as is often the case—it thus qualifies under the Convention against Transnational Organized Crime definition of transnational organized crime.[[28]](#footnote-28) The Special Rapporteur is also of the view that a number of criminal offenses commonly undertaken by terrorist organizations are covered by the Convention against Transnational Organized Crime, its Protocols, and other transnational crime frameworks. These criminal offenses include money laundering,[[29]](#footnote-29) corruption,[[30]](#footnote-30) human trafficking,[[31]](#footnote-31) illicit manufacture and trafficking of firearms,[[32]](#footnote-32) drug trafficking,[[33]](#footnote-33) cultural property trafficking,[[34]](#footnote-34) illicit exploitation of natural resources,[[35]](#footnote-35) and kidnap for ransom.[[36]](#footnote-36)

*Risks to Human Rights and Due Process*

Overstating the linkage between organized crime and terrorism may lead to measures that promote the securitization of domestic criminal justice. Here, the Special Rapporteur highlights that the ordinary modes of addressing and processing crime in many domestic legal systems will be reshaped by military and security sector regulation that dominates the legal processing of terrorism offences in many national contexts. In most national legal systems terrorism regulation is exceptional and often a breeding ground for the most excessive and profound violations of human rights. These include violations of non-derogable rights specifically torture, inhuman and degrading treatment as well as a range of other fundamental rights including due process rights,[[37]](#footnote-37) incommunicado detention,[[38]](#footnote-38) lack of access to legal counsel,[[39]](#footnote-39) and a range of other fundamental rights violations that have been consistently highlighted by the Special Rapporteur’s mandate. The Special Rapporteur thus cautions against the characterization and acceptance of certain domestic issues however challenging as a regulatory matter as necessarily “terrorism” threats. The Special Rapporteur stresses that the securitization of domestic organized crime presents significant risks to the protection of human rights and due process.

 Ordinarily, the criminal acts of organized criminal groups are addressed through a state’s domestic criminal justice system. These systems of justice should be designed and operated in accordance with the state’s international human rights obligations, which include key protections for non-derogable rights, association rights, expression rights, freedom of religion and belief, protections to family life, non-discrimination requirements and guarantees the right to due process under the law. There is no doubt, evidenced by the cataloging of sustained violations of these protections under domestic counter-terrorism regimes that securitization has high human rights costs.[[40]](#footnote-40) Closely associating organized crime with terrorism increases the likelihood that states will adopt broad security-based criminal measures to regulate organized crime, transpose terrorism regulation to the regulation of organized crime which remains a highly ill-defined concept in many national legal systems and utilize the many extra-ordinary process mechanisms that define terrorism prosecutions under domestic law. If the international community accepts or possibly encourages the deployment of widespread or systemic counter-terrorism measures and systems to address organized crime, the result may be the acceleration of human right suppression and negation. The Special Rapporteur strongly encourages pause and reflection on the merits of such an approach, encourages evidence based criminal law regulation, and meaningful engagement with the rule of law and human rights costs of proceeding in this way. More counter-terrorism does not mean better counter-terrorism and may not in mean more effective solutions to the range of genuine challenges that have spurred the adoption of UNSCR 2482. These pressing issues merit legal, political and social solutions to their complex underpinnings and suppression but the blunt instrument of counter-terrorism may be ill-equipped to the task.

1. Expressing its concern that terrorists can benefit from organized crime, whether domestic or transnational, as a source of financing or logistical support, recognizing that t e nature and scope of the linkages between terrorism and organized crime, whether domestic or transnational, vary by context, and emphasizing the need to coordinate efforts at the local, national, subregional, regional, and international levels to respond to this challenge, in accordance with international law, including by promoting international legal cooperation, where relevant.

Acknowledging, in t is regard, that terrorists can benefit from organized crime, whether domestic or transnational, such as the trafficking in arms, drugs, artefacts, cultural property and trafficking in persons, as well as the illicit trade in natural resources including gold and other precious metals and stones, minerals, charcoal and oil, illicit trafficking in wildlife and other crimes t at affect t e environment, as well as from the abuse of legitimate commercial enterprise, non-profit organizations, donations, crowdfunding and proceeds of criminal activity, including but not limited to kidnapping for ransom, extortion a d bank robbery, as well as from transnational organized crime at sea … [↑](#footnote-ref-1)
2. https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\_NATIONS\_CONVENTION\_AGAINST\_TRANSNATIONAL\_ORGANIZED\_CRIME\_AND\_THE\_PROTOCOLS\_THERETO.pdf [↑](#footnote-ref-2)
3. The Special Rapporteur acknowledges that the Convention on Translational Organized Crime includes definitions or ‘organized group’, ‘serious crime’ and the offences that come within the scope of the Convention. See e.g. Article 2(a) states that an: *‘*“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit’; [↑](#footnote-ref-3)
4. For the views of the Special Rapporteur on the engagement of these bodies with international human rights law see A/74/335 [↑](#footnote-ref-4)
5. A/73/361 [↑](#footnote-ref-5)
6. *See e.g*. “in particular the adoption of The Hague Good Practices on the Nexus between Transnational Organized Crime and Terrorism”; OP9 “*Strongly urges* all States to implement and strengthen compliance with the comprehensive international standards embodied in the revised Forty FATF Recommendations on Combating Money Laundering, and the Financing of Terrorism and Proliferation and its interpretive notes.” [↑](#footnote-ref-6)
7. See e.g. OP7 [↑](#footnote-ref-7)
8. See e.g. OP12 and OP15(a) [↑](#footnote-ref-8)
9. See e.g. OP15(b) [↑](#footnote-ref-9)
10. Fionnuala Ní Aoláin, *How Can States Counter Terrorism while Protecting Human Rights* 389 45 Ohio Northern University Law Review (2019) [↑](#footnote-ref-10)
11. Pursuant to Human Rights Council resolution 40/16. [↑](#footnote-ref-11)
12. UN High-Level Review on Sanctions, Working Group III, “UN Sanctions: Humanitarian Aspects and Emerging Challenges,” Chairperson’s Report, January 19, 2015. [↑](#footnote-ref-12)
13. *See, e.g.*, Martin Scheinin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism), *First Report on the* *Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 50, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005). [↑](#footnote-ref-13)
14. *See e.g.* Ireland v. Kavanagh (Communication No 819/1998) CPR/C/71/D/819/1998, April 2001. [↑](#footnote-ref-14)
15. The term is used in OP6 (*Urges* all States to ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and penalize in a manner duly reflecting the seriousness of the offence of trafficking in persons”). [↑](#footnote-ref-15)
16. OP7; OP 15(a). [↑](#footnote-ref-16)
17. A/HRC/37/52 [↑](#footnote-ref-17)
18. https://www.icnl.org/covid19tracker/ [↑](#footnote-ref-18)
19. S.C. Res. 1566, ¶ 3 (Oct. 8, 2004). [↑](#footnote-ref-19)
20. Alex P. Schmid, *Revisiting the Relationship Between International Terrorism and Transnational Organised Crime 22 Years Later*, Int’l Centre Counter-Terrorism (Aug. 2018) [↑](#footnote-ref-20)
21. Arie Perliger & Michael Palmieri, *Mapping Connections and Cooperation Between Terrorists and Criminal Entities*, Studies in Conflict & Terrorism 1, 1 (Nov. 11, 2019). [↑](#footnote-ref-21)
22. Alex P. Schmid, *supra* note 1, at 17–18. [↑](#footnote-ref-22)
23. *See* Phil Williams, *The Organized Crime and Terrorist Nexus: Overhyping the Relationship*, Stratfor (Apr. 20, 2018). [↑](#footnote-ref-23)
24. *Id*. [↑](#footnote-ref-24)
25. *Id*; see also, Erik Alda & Joseph L. Sala, *Links Between Terrorism, Organized Crime and Crime: The Case of the Sahel Region*, Stability: Int’l J. Security & Dev. 1 (2014), “[e]mpirical evidence for the crime-terror link is scarce and varies over time.”, *Id* at 3, 7-8. [↑](#footnote-ref-25)
26. Ben Saul, *The Legal Relationship Between Terrorism and Transnational* Crime, 17 Int’l Crim. L. Rev. 417, 452 (2017). [↑](#footnote-ref-26)
27. *Id*. at 420; Organized criminal groups are defined as a group “acting . . . with the aim of committing one or more serious crimes . . . in order to obtain . . . a financial or other material benefit.” *Id.* [↑](#footnote-ref-27)
28. The Special Rapporteur also takes the view that while such funds are often used for terrorist motives, there is no requirement that the group’s primary or predominate purpose be to pursue financial or material gain. A financial or material gain is the only required specific intent for the criminal act committed. [↑](#footnote-ref-28)
29. Saul *supra* note 26 at 424–26. [↑](#footnote-ref-29)
30. Article 8 & Article 9 Convention against Transnational Organized Crime.Saul at 428–29. [↑](#footnote-ref-30)
31. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Saul at 429–33. [↑](#footnote-ref-31)
32. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; Saul. at 433–34. [↑](#footnote-ref-32)
33. Saulat 435–38. [↑](#footnote-ref-33)
34. *Id*. at 438–41. [↑](#footnote-ref-34)
35. *Id*. at 441–46. [↑](#footnote-ref-35)
36. *Id*. at 446–51. [↑](#footnote-ref-36)
37. Human Rights Committee, General Comment No 29, States of Emergency, para. 16; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007); Angus McCulough & Shaheen Rahman, *Disclosure in Closed Material Proceedings: What Has to Be Revealed?*, 24 Jud. Rev. 223, 225 (2019); *See* David Jenkin, *The Handling and Disclosure of Sensitive Intelligence: Closed Material Procedures and Constitutional Changes in the ‘Five Eyes’ Nations*, *in* Routledge Handbook of Law and Terrorism 266 (Genevieve Lennon & Clive Walker eds., 2015); [↑](#footnote-ref-37)
38. Human Rights Council, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights an Fundamental Freedoms While Countering Terrorism, Martin Scheinin; the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Manfred Nowak; the Working Group on Arbitrary Detention Represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances Represented by its Chair, Jeremy Sarkin [Joint Study on Secret Detention in the Context of Countering Terrorism], ¶¶ 24, 28, UN Doc A/HRC/13/42 (May 20, 2010). [↑](#footnote-ref-38)
39. International Covenant on Civil and Political Rights art. 14(3)(b), Dec. 16, 1966, 999 U.N.T.S 171; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32, ¶ 34 (2007); Leandro Despouy (Special Rapporteur on the Independence of Judges and Lawyers), *Fourth Rep. on the Independence of Judges and Lawyers*, ¶¶ 10, 24, 26, U.N. Doc. A/63/271 (Aug. 12, 2008). [↑](#footnote-ref-39)
40. Liz Campbell, *Organized Crime and National Security: A Dubious Connection*, 17 New Crim. L. Rev. 220, 239 (2014). [↑](#footnote-ref-40)