“Denying safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens, and preventing terrorists from abusing the asylum system, in conformity with international law”

United Nations Headquarters, New York, 5 April 2017

I. Introduction

1. In its resolution 1373 (2001), the Security Council decides that all States shall “deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens”. The resolution also calls upon States to take appropriate measures, in conformity with the relevant provisions of national and international law, “before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts,” as well as to ensure that refugee status “is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”.

2. In its resolution 1624 (2005), the Council reaffirms that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations” and recalls that the protections afforded by the 1951 Convention Relating to the Status of Refugees and its Protocol shall not extend to any persons guilty of such acts. In the same resolution, the Council calls upon States to “deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering” that they have been guilty of incitement to commit a terrorist act.

3. In its resolution 2178 (2014), the Council calls on States to ensure, in conformity with in particular international human rights and international refugee law, that refugee status is not abused by foreign terrorist fighters (FTFs). The Council recently reiterated these calls in its resolution 2322 (2016).

4. The obligation to deny safe haven to terrorists under resolution 1373 (2001) requires Member States to take a number of steps, including legislative measures criminalizing the harbouring of terrorists and measures providing adequate jurisdiction for the prosecution of such offences. Also important in this context is the principle aut dedere aut judicare (“extradite or prosecute”) provided for in a number of international counter-terrorism instruments, reaffirmed by the Security Council in resolutions 1269 (1999), and 1566.

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1 S/RES/1373 (2001), para. 2 (c).
2 S/RES/1373 (2001), para. 3 (f).
3 S/RES/1373 (2001), para. 3 (g).
4 S/RES/1624 (2005), preamble.
5 S/RES/1624 (2005), para. 1 (c).
7 S/RES 2322 (2016), paras. 9 (d), 10.
8 See, e.g., 1999 International Convention for the Suppression of the Financing of Terrorism, art. 10.
Counter-Terrorism Committee Executive Directorate (CTED)

(2004), and noted in the United Nations Global Counter-Terrorism Strategy. Practical and legal measures on immigration and border controls should also be in place. Effective international legal cooperation is of particular importance, as noted by the Council in its resolution 2322 (2016).

5. Member States may face a number of challenges in meeting their obligations in these areas, including: limited resources; ongoing conflict; lack of a regional framework to extradite or exchange mutual legal assistance; and porous borders. Member States’ efforts may be further complicated by disparities between national and international watch lists.

6. Regarding the Security Council’s call to prevent terrorists from abusing refugee status, though the vast majority of refugees and asylum seekers have no connection to terrorism and are far more likely to be the victims of terrorism, there have been some recent incidents in which terrorists have falsely represented themselves as refugees and sought or been granted asylum before being implicated in terrorist attacks or in foiled attacks. These incidents have heightened concerns that asylum processes may be at risk of being abused by terrorists. Some Member States have also expressed concern at the potential for terrorists to use refugee camps for the purpose of recruitment and for planning attacks.

7. In accordance with article 1F of the 1951 “Refugee Convention”, protection may not be afforded to any person if there are serious reasons for considering that, inter alia, he or she has committed a war crime or a serious non-political crime or is guilty of acts contrary to the purposes and principles of the United Nations. These “exclusion clauses” have been interpreted to apply to terrorist offences. This legal framework is consistent with resolution 1373 (2001), which calls on States to take appropriate measures before granting refugee status in order to ensure that an asylum seeker has not “planned, facilitated or participated in the commission of terrorist acts.”

8. However, Member States often encounter difficulties in identifying persons who fall within these exclusion clauses, particularly in situations where asylum seekers constitute part of a large influx of migrants. Moreover, the screening of such persons upon their arrival is often conducted in an ad hoc manner, with minimal, if any, reference to national and international watch lists. Detailed assessment of an individual’s asylum claim often takes place many months after his or her arrival in the country of asylum.

9. It is therefore proposed that the Committee hold an open briefing, with the participation of the United Nations High Commissioner for Refugees (UNHCR) and the International Criminal Police Organization (INTERPOL), with a view to discussing these challenges, identifying good practices, and identifying areas in which further efforts are

12 S/RES/2322 (2016), para. 9 (d).
13 S/AC.40/2016/NOTE.23, p. 3.
14 See also S/2016/49, paras. 84, 91.
15 Europol, Changes in Modus Operandi of Islamic State (IS) Revisited, November 2016.
16 1951 “Refugee Convention”, art. 1F.
17 See UNHCR, Addressing Security Concerns without Undermining Refugee Protection - UNHCR’s Perspective, Rev. 2, December 2015, paras. 18-21. See also European Court of Justice, Case C-573/14, Judgment of 13 January 2017 (Grand Chamber).
18 S/RES/1373 (2001), para. 3 (f).
II. Purpose and topics

10. Some of these challenges were addressed by the General Assembly at its High-Level Summit on Large Movements of Refugees and Migrants, held in New York on 19 September 2016.¹⁹ An open briefing of the Committee would provide an opportunity to follow-up on those exchanges, as well as a forum in which non-Council Member States facing particular challenges could share their experiences and lessons learned.

11. In view of the expertise of INTERPOL in many related areas, as well as the vital role to be played by its networks and databases in facilitating the screening of asylum seekers in a manner that is timely, effective, and compliant with international human rights and refugee law, as well as in facilitating Member States’ efforts to deny safe haven to terrorists, CTED considers that its participation in the proposed briefing would greatly enhance the discussions. INTERPOL has confirmed its readiness to assist Member States to address these challenges²⁰ and is currently working with CTED to develop a series of partnerships to that end. Both UNHCR and INTERPOL have previously engaged with the Committee and are familiar with its mandate.

12. The first session would consist of a panel, consisting of representatives of INTERPOL, UNODC and two international criminal law experts, on the requirement to deny safe haven and the need to take appropriate measures to ensure that refugee status is not granted to individuals who have planned, facilitated, or participated in the commission of terrorist acts. Member States and international, regional and subregional organizations would be given the opportunity to share good practices and policies. The second session would consist of briefings by senior representatives of UNHCR and INTERPOL aimed at identifying good practices in preventing terrorists from abusing the asylum system, as well as areas in which further efforts are required.

III. Date and venue

13. CTED proposes that the open briefing be held in Conference Room 11, United Nations Headquarters, New York, on 5 April 2017. The briefing would be open to the wider membership, as well as to other relevant United Nations entities and international and regional organizations. Each session would provide an opportunity for interactive discussion, allowing Member States from different regions to share their experiences in denying safe haven to terrorists and preventing terrorist abuse of the asylum system. A draft agenda is attached.

IV. Outcomes

¹⁹ The High-Level Summit resulted in the General Assembly’s adoption of the New York Declaration for Refugees and Migrants, in which Member States pledged to “promote international cooperation on border control and management as an important element of security for States, including issues relating to battling transnational organized crime, terrorism and illicit trade” (A/RES/71/1, para. 24).

²⁰ Engaging INTERPOL in this briefing would also further the objective of strengthening cooperation between the United Nations and INTERPOL in combating terrorism, including in preventing FTF travel, as called for by the General Assembly in its resolution 71/19 of 21 November 2016.
14. The outcomes would include a Chair’s summary of the presentations and discussions, to be posted on the Committee’s website.

V. Communications

15. The open briefing would be webcast live. CTED would also dedicate a page to the event on the Committee’s website, and issue a press release.
Open briefing of the Counter-Terrorism Committee

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United Nations Headquarters, New York, 5 April 2017

10.00-10.15 Opening session

Opening statement:
H.E. Mr. Amr Abdellatif Aboulatta
Chairman, Counter-Terrorism Committee

10.15-12.00 Session I: Denying safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens

Presentations by:
- Mr. Yaron Gottlieb, Assistant-Director, Office of Legal Affairs, INTERPOL
- Mr. Ali Rached, Policy Advisor, Counter-Terrorism Directorate, INTERPOL
- Mr. Mauro Miedico, Chief a.i., Terrorism Prevention Branch, United Nations Office on Drugs and Crime (UNODC)
- Ms. Lori Damrosch, Professor of International Law and Diplomacy, Columbia University
- Mr. Edward J. Flynn, Senior Human Rights Officer, CTED

Interactive discussion
(Moderator TBC)

12.00-12.45 Session II: Preventing terrorists from abusing the asylum system, in conformity with international law

Presentations by:
- Mr. Volker Turk, Assistant High Commissioner for Protection, United Nations High Commissioner for Refugees (UNHCR)
- Mr. Yaron Gottlieb, Assistant-Director, Office of Legal Affairs, INTERPOL

Interactive discussion
(Moderator TBC)

12.45-13.00 Closing session

Closing remarks:
Mr. Weixiong Chen
Deputy Executive Director,
Counter-Terrorism Committee Executive Directorate (CTED)