1.0 Introduction

Contemporary armed conflicts have become more protracted and impactful to civilian lives, livelihoods and settlements thus producing multiple humanitarian crises. Local and regional terrorist groups affiliated to international terrorist groups are contributing directly to these crises in many ways. Their motivation is that terrorism, as an operational and ideological tool, is a key force multiplier that allows them to sustain their armed movement. In keeping with this, part of their strategy is to exploit the humanitarian crises created by their activities.

The worse the humanitarian crisis, the more they believe states will be delegitimised in the eyes of their citizens, the greater the flow of aid to suffering populations will become, and the more tentative the counter-terrorism response. It also affords them opportunities to recruit from displaced civilians, including children, raise funds for their operations, and use civilians and civilian objects as shields against military and counter-terrorism actions. The result is even more protracted and destructive insurgencies that fundamentally undermine state sovereignty, territorial integrity, and dim the prospects of peace.
The International Community has been steadfast in responding to the increasing humanitarian needs with funds and peacekeeping missions. However, the protracted and escalating nature of the conflicts has led to continuous shortfalls in funding especially when the impacts of insurgent and terrorist operations combine with destructive climate events, and the widespread economic slumps emanating from the COVID-19 pandemic.

To deliver security and give relief to suffering populations, many countries are simultaneously seeking to escalate counter-terrorism and humanitarian aid. These two critical activities are however in tension. The humanitarian community at large is wary of counter-terrorism measures, particularly financial sanctions arguing that they undermine the delivery of their mandate.

Counter-terrorism actors in the meantime are aware that the terrorist threat is potent enough to threaten even state viability and lead to much worse humanitarian crises in the medium to longer term.

In response to these imperatives, the Security Council has made determined attempts to develop humanitarian carve-outs and improved safeguards, and incorporate them in counter-terrorism-related Resolution 2462 (2019) and 2482 (2019). Yet the tension between humanitarian action and counter-terrorism listings and sanctions continues.

### 2.0 Objectives

The objectives of the Arria Formula meeting will include;

- **a)** Assessing the extent to which insurgent and terrorist groups are consciously incorporating humanitarian situations into their strategies and operations.
- **b)** Evaluating the extent to which humanitarian carve-outs in UN Security Council resolutions, and associated international instruments, are sufficient to protect, allow, and facilitate impartial humanitarian action.
- **c)** Exploring new approaches and opportunities to limit terrorist groups’ exploitation of civilian suffering to raise finances and recruit new members.
- **d)** Promoting dialogue and co-operation between the counter-terrorism and humanitarian communities and institutions most related to Security Council mandates.

### 3.0 Background

Individual member states, regional and multilateral organisations have evolved measures for prevention, to deter and punish individuals, entities and groups who are
engaged or support diverse forms of terrorist acts. Over the years, the UN has established a detailed normative and institutional framework with the purpose of strengthening the criminal repression of acts of terrorism and curtailing support to designated terrorist groups.

**3.1 United Nations Security Council Counter-Terrorism Resolutions**

The Policy Working Group convened by former Secretary-General Kofi Annan, recommended that the counter-terrorism role of the United Nations focus on five areas; (i) to dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals, (ii) to deny terrorists the means to carry out their attacks, (iii) to deter states from supporting terrorists, (iv) to develop state capacity to prevent terrorism, and (v) to defend human rights in the struggle against terrorism.

Three (3) Security Council resolutions form the basis of UN counter-terrorism action: 1267 (1999), 1373 (2001), and 1540 (2004). Overtime, several additional resolutions have expanded and refined the terms of each one of them. As opposed to the previous counter-terrorism resolutions and initiatives which targeted states accused of sponsoring or supporting terrorists, the contemporary resolutions also address the activities of non-state actors, including individuals and commercial entities.

They are not confined by time or geography, are open-ended and also target abstract threats. The resolutions oblige UN member states to implement a number of sustained measures to fulfil their obligations. They also demonstrate the UN ability to adapt to the increasingly transnational elements of contemporary security threats such as, cross-border networks, support from the private sector and individuals.

UNSC Resolution 1267 (1999) imposed sanctions on Al-Qaida and the Taliban government of Afghanistan for harbouring the group. The scope of this resolution was expanded through resolution 1390 (2002) to include; assets freeze, travel ban, and penalising financial or material support to members of Al-Qaida and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000).

UNSC Resolution 1373 (2001) imposes a set of legislative obligations on all UN member states. Among other things, it compels states to criminalise the financing of terrorism and freeze the assets of known terrorists and supporters, to refrain from providing “active or passive” support to entities or persons involved in terrorist acts, to prevent the movement and travel of known terrorists, and to intensify and accelerate law-enforcement cooperation to counter-terrorism. As it was approved under Chapter VII of the UN Charter, the resolution carries with it the threat of a response by the
international community that may include the use of force in the case of noncompliance.

The Security Council adopted Resolution 1540 (2004) to address the threat of non-state actors acquiring weapons of mass destruction (WMD), including chemical, biological, radiological, and nuclear weapons (CBRN). It imposes binding obligations on all states under Chapter VII of the UN Charter and prohibits states from providing “any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.”

3.2 Impact on Humanitarian Action

Humanitarian actors have consistently expressed concerns on the implications of counter-terrorism measures for humanitarian operations in some contexts, including fear to incur criminal liability by coming into contact or engaging with non-state armed actors listed as terrorist entities.

The fundamental humanitarian principles as espoused by international humanitarian law (IHL) and UN General Assembly Resolution 46/182, as well as numerous other UN resolutions, advocate for equal treatment by humanitarian actors to both state and non-state parties to an armed conflict, and indiscriminate response to the needs of the civilian population.

The International Committee of the Red Cross, in its “IHL and the challenges of contemporary armed conflicts” reports of 2011, 2015 and 2019, has highlighted the tensions between IHL and counter-terrorism measures. An independent study, commissioned by UNOCHA and the Norwegian Refugee Council in 2013, argued that counter-terrorism laws and measures affect humanitarian action on the structural, operational and internal levels. The structural impacts include limitations on the ability of organisations to operate according to the principles of neutrality, impartiality and independence. The operational impacts include changes or restrictions in funding to specific geographic areas, beneficiaries or partners. The internal impacts include slower operations and increased costs. The Special Rapporteur on counter-terrorism and human rights in October 2020 urged the Security Council to discourage the “misapplication” of CT norms to the legitimate scope of IHL.

The UN Security Council has made efforts to minimise the impact of its counter-terrorism and sanctions resolutions on humanitarian action. Through Resolution 2462 (2019), the Security Council demanded that Member States ensure that all measures taken to counter terrorism comply with their respective obligations under International Humanitarian Law (IHL) and urged them to “take into account” the potential effects of
counter-terrorism measures on exclusively humanitarian activities, that are carried out by impartial humanitarian actors in a manner consistent with IHL. However, when CTED and the 1267 Committee asked States what they had been doing to “take into account” the impact of countering the financing of terrorism (CFT) measures on humanitarian action, their joint report showed (S/2020/493) a lack of clear answers from States to the question.

It is therefore important to identify principles that are broad enough to deal with the existential threat to international peace and security while ensuring that they do not override fundamental humanitarian protections and humanitarian action in situations of armed conflict.

4.0 Guiding Questions

i) How do insurgent and terrorist groups incorporate humanitarian situations into their strategies and operations?

ii) How do UN counter-terrorism measures and operations impact humanitarian action?

iii) Are UN counter-terrorism measures designed to protect humanitarian space in situations of armed conflict and other disasters?

iv) How are domestic, sub-regional, regional and multilateral sanction measures designed and applied for counter-terrorism impeding humanitarian access to funds, materials or the people they aim to serve?

v) How can the UN Security Council respond and lessen the impact of counter-terrorism measures on humanitarian activities? What is the role of humanitarian actors?

vi) What are the existing and/or possible humanitarian carve-outs?

5.0 Invited Briefers

i) Mr. Raffi Gregorian, Deputy Under-Secretary-General and Director, United Nations Office of Counter-Terrorism (UNOCT)

ii) Ms. Reena Ghelani, Director of Operations and Advocacy Division, UNOCHA

iii) Dr. Helen Durham, Director of International Law and Policy, ICRC Geneva

iv) Commissioner for Political Affairs, Peace and Security, African Union Commission -TBC
6.0 Modalities

The meeting will be chaired by H.E. Amb. Martin Kimani, Permanent Representative of the Republic of Kenya to the United Nations.

**Speaking will be open to all members of the Security Council. Speaking will also be open to Member States wishing to co-sponsor the event. All other Permanent Missions are invited to submit written statements.** Speakers will be allocated a maximum of 3 minutes and are encouraged to offer practical, solution-oriented remarks and interact with briefers through directed questions.

The meeting will be convened in VTC format, conducted in English and broadcasted through the UN Web TV.

7.0 EXPECTED OUTCOME

Compilation of Statements or a Resume of discussion

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