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**Statement by Ms. Fionnuala Ní Aoláin**

**SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM**

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*Honourable Chair, Excellencies, Distinguished delegates, Ladies and Gentlemen,*

It is a privilege to be here for my third dialogue with you on issues relating to my mandate as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

The protection of human rights in the context of countering terrorism continues to be a fraught and precarious exercise. I turn to reflect on some of those challenges now. As I reported to the Human Rights Council in March this year, civil society space and human rights defenders continue to be at the frontlines of the misuse of counter-terrorism laws and practice. As I demonstrated then, 66% of all communications sent my mandate between 2005 and 2018 involved the use of counter-terrorism or preventing extremism measures against civil society organizations or human rights defenders. I noted then, and reiterate now, that this is neither efficient or effective counter-terrorism nor is such targeting human rights compliant practice by States.

Since I spoke to you last year, victims of terrorism continue to bear the burden of challenge in many societies from terrorism. My mandate continues to be at the forefront of demanding a human rights-based approach to addressing the needs of victims of terrorism. I welcome the establishment of the Group of Friends of Victims of Terrorism led by Afghanistan and Spain, whose leadership and experience is profound in this area. I encourage States to follow the leadership of countries such as France which has integrated a meaningful and effective rights-based approach to the protection of victims of terrorism in national law. Countries need to do more than simply offer platitudes to victims and stand in rhetorical solidarity with them. Rights in practice and in delivery is what victims of terrorism demand and need. These are but two illustrative examples of broader challenges to human rights protection at the forefront of the mandate’s daily work.

*Excellencies, Distinguished delegates*

As Special Rapporteur I have had a demanding year. I thank the government of Kazakhstan for the open dialogue during my visit in May 2019. My report on that visit will be presented to the 43rd Human Rights Council session in the Spring. I was also pleased to return to Belgium in February 2019, underscoring the approach of the mandate to ongoing dialogue with States and specifically engaged with the World Congress on the death penalty addressing the human rights violation and challenges which follow from the use of the death penalty in context of terrorism crimes and in particular against foreign fighters. This visit also gave the mandate the opportunity to hold an EU working level visit and to deep relationship with EU institutions. The issue of foreign fighters was also to the forefront of the mandate’s engagement in a regional conference on Foreign Fighters which took place in Qatar in October 2018. I remain deeply engaged with the Global Counter-Terrorism Coordination Compact and affirm the strong working relationships of the mandate with Under-Secretary General Voronkov, the Office of Counter-Terrorism and the UN Counter-Terrorism Executive Directorate (CTED) led by ASG Coninsx. As a deeply engaged participant in the work of the Global Compact I underscore the ongoing challenges to the mandate in the limited resources available to Special Procedures, compounded by the budget cuts to travel, and the lack of any specific budget line support to the work of the mandate within the Global Counter-Terrorism Coordination Compact. It states the obvious that when Special Rapporteurs have to use research funds from their Universities to do their essential and required work as Special Rapporteurs, there is something profoundly amiss in the meaningful support of States to the work of human rights mainstreaming in the counter-terrorism sphere. The lack of consistent and institutionalized support to human rights mainstreaming and oversight in the Global Counter-Terrorism architecture here in New York, is one of the profound structural challenges facing the protection and promotion of human rights globally.

*Excellencies, Distinguished delegates*

I have prioritized assessing the international law and human rights compliance of the global counter-terrorism architecture. The report before you addresses the role of “soft law” and new institutions in counter-terrorism regulation and governance. I pay particular attention to the impact of the proliferation of “soft law” instruments and related standard-setting initiatives and processes in the counter-terrorism context on global governance and the promotion and protection of human rights at the global, regional and domestic level.

The report recognizes that “soft law” is a category that is challenging as a legal matter for many States given the paradox that we rarely think of law as “soft”, but presume by virtue of the title of law, a legal norm will be binding. Nonetheless, “soft law” has played an important and increasingly visible role across multiple fields of international law in recent decades. “Soft law” can have a positive and human rights affirming capacity, filling identified gaps, giving clarity to States on the precise nature and form of legal obligations and providing innovative legal tools when new challenges and problems arise. However, the scale and pace of “soft law” production in the counter-terrorism field is expanding at an accelerated pace. Moreover, unlike most other areas of international law practice such “soft law” is being created by a complex and ever-expanding global counter-terrorism architecture which has the capacity to implement “soft” norms in ways that effectively make norms “hard” and binding on States in practice. From a human rights perspective this translation of hard to soft law is of deep concern given the profound marginalization of human rights within the architecture as well as the lack of meaningful human rights content to the substance of much of this new law and practice. Moreover, in tracking a number of “new” institutions in the counter-terrorism arena, my report meticulously documents how significant portions of this “soft law” is being produced outside of multilateral and global institutions, but in especially created clubs of States which are neither equal nor open in membership or function. The report also underscores the institutional and practical lack of human rights and international law expertise, content and output from these new institutions.

All of us are conscious that the growth of legal norms on terrorism has been on a fast track since the events of 9/11. The growth has been important and invaluable where it has filled lacunae in the regulation of terrorist acts and actors. This is particularly salient as norm production has responded to new practices and patterns of financing, targeting and technologies. When we have a sizeable proliferation of legal norm for states there are obvious difficulties in keeping pace with the breadth and depth of norm obligations. More law does not always mean better law, and more rules do not necessarily mean greater efficiencies. “Soft law” fills up much of this new law space, and the pace of rule and practice proliferation, much of it, lacking meaningful human rights integration is deeply problematic for international law compliance and ultimately rule of law adherence at the national level.

Among the most pertinent messages highlighted in the report, I would like to flag the following:

1. The implications for State sovereignty and the equality of States in the law making process when “soft law” is produced outside of traditional multilateral contexts, often in institutions which have an uncertain status under international law, have a closed membership, exclude or limit the participation of civil society and human rights actors, and produce legal norms which circuitously find themselves embedded in resolutions of UN organs including Security Council resolutions General Assembly Resolutions and Human Rights Council Resolutions, technical assistance, or translated as good/best practice despite all of the creation flaws including a lack of human rights content.
2. I underscore that the production of “soft law” counter-terrorism instruments by United Nations entities should be benchmarked against human rights treaty obligations, and comprehensive, detailed and relevant inclusion of human rights standards should be consistently applied in counter-terrorism soft norm-making. United Nations entities should only endorse non-United Nations standards in the counter-terrorism arena when they are consistent with international law, human rights and international humanitarian law
3. The importance of operationalizing the right to take part in the conduct of public affairs, as guaranteed in Article 25 ICCPR, including in the context of standard-setting processes and fora at the international and regional levels. Meaningful operationalization of the right requires that standard-setting and implementation processes are conducted transparently by ensuring the participation of those affected by relevant laws and policies;
4. In this sense, the report highlights the value of making standard-setting and evaluation processes more participatory, including by making them consistently accessible to a diverse representation of relevant stakeholders, including civil society and experts in international human rights law, as well as international humanitarian law and refugee law. In the mandate’s view, participatory processes, together with increased transparency and meaningful in-house expertise are well-placed to bring about improved human rights compliance of resulting standards and their implementation processes (including through building in human rights impact assessments, benchmarking and oversight mechanisms). Human rights compliant participation in existing and new counter-terrorism institutions means meaningfully, transparently and consistently including independent civil society in consultation, engagement, creation and assessment. It does not mean inviting groups or individuals only occasionally, inviting only those that are not going to be critical or hard-hitting in their analysis, taking a photo opportunity, disregarding their advice and input, and undermining the value of civil society participation in the making and oversight of global counter-terrorism practice while simultaneously proclaiming that civil society is an essential partner to prevent terrorism and violent extremism on the ground.
5. I emphasize that a mapping of the production of "soft law" norms within the UN counter-terrorism architecture evidences a human rights deficit. I meet that deficit every day as a full time Law Professor and part-time Special Rapporteur, and the only entity within the global counter-terrorism architecture charged to oversee the intersection of human rights and counter-terrorism within the architecture. In order to remedy this shortcoming, I strongly recommend that increased financial and institutional support be given to permanently building human rights capacity within the UN and specifically targeted to the global counter-terrorism architecture, including by strengthening support for OHCHR and the mandate of the Special Rapporteur;
6. Similarly, I urge non-UN entities and fora including but not limited to Financial Action Task Force (FATF) and Global Counterterrorism Forum (GCTF) engaged in standard-setting and capacity-building in the area of counter-terrorism to add specialized staff with proven expertise in international human rights law, international humanitarian law and refugee law and to consistently and meaningfully integrate human rights in all aspects of their norm setting activities. Here, I particularly note the weaknesses identified in the FATF and GCTF and urge timely attention to the institutional human rights weaknesses identified in both entities.

*Excellencies, Distinguished delegates*

I remain deeply concerned that States, international organizations and practitioners do not, in my view, have a coherent or systematic understanding of how these new norms and new institutions relate to or impinge upon both the human rights and international law obligations of States. One of my express goals is not only to better map and understand the totality of State obligations across counter-terrorism, human rights and international law norms, but to systematically identify where legal conflicts and inconsistencies exist, particularly as those affect the full enjoyment of human rights. The proliferation of “soft law” and new institutions in the counter-terrorism arena requires attention by all States, as the regulatory effects of both are felt by all States. These ‘gray’ zones of state practice require the antiseptic light of day for States and human rights experts to engage fully with the implication of an expansion of “soft law” and a proliferation of new institutions. The effectiveness of the law (international or domestic) depends on knowing what you are bound to do. States and individual alike also depend on the clarity of legal norms to ensure that when there are breaches by States they can name and identify those breaches, and that there is common understanding of obligations, reparations, and the obligation of non-recurrence. As Special Rapporteur I have a uniquely placed institutional role to cut a path through the uncertainty and clutter, and affirm the normative human rights obligations of States, and reminding them what is most effective and most relevant in advancing the promotion and protection of human rights while countering terrorism. I underscore that both the content of “soft law” counter-terrorism norms and the practices new institutions have sizeable remedial work to do to ensure that the human rights and international law obligations are fully realized in their production and operation.

*Excellencies, Distinguished delegates*

I am privileged to hold this mandate at a critical time as we contemplate the effectiveness of the global counter-terrorism architecture, built over the past two decades and reflect on its success, failures and limitations. Most critically as we better understand the marginalization and precariousness of human rights within that architecture, we may still have time to remedy those glaring deficits and in the process be able to effectively challenge both terrorism and violent extremism in ways that build and sustain resilience, the rule of law and the dignity of each person without distinction.

There are a number of other points of significance in the report I am presenting today, but these are the ones I want to draw your particular attention to this morning.

I thank you for your attention.