

Introducing 2022 GIFCT Working Group Outputs

GIFCT WORKING GROUPS OUTPUT 2022



GIFCT
Global Internet Forum
to Counter Terrorism

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In July 2020, GIFCT launched a series of Working Groups to bring together experts from across sectors, geographies, and disciplines to offer advice in specific thematic areas and deliver on targeted, substantive projects to enhance and evolve counterterrorism and counter-extremism efforts online. Participation in Working Groups is voluntary and individuals or NGOs leading Working Group projects and outputs receive funding from GIFCT to help further their group's aims. Participants work with GIFCT to prepare strategic work plans, outline objectives, set goals, identify strategies, produce deliverables, and meet timelines. Working Group outputs are made public on the GIFCT website to benefit the widest community. Each year, after GIFCT's Annual Summit in July, groups are refreshed to update themes, focus areas, and participants.

From August 2021 to July 2022, GIFCT Working Groups focused on the following themes:

- Crisis Response & Incident Protocols
- Positive Interventions & Strategic Communications
- Technical Approaches: Tooling, Algorithms & Artificial Intelligence
- Transparency: Best Practices & Implementation
- Legal Frameworks

A total of 178 participants from 35 countries across six continents were picked to participate in this year's Working Groups. Applications to join groups are open to the public and participants are chosen based on ensuring each group is populated with subject matter experts from across different sectors and geographies, with a range of perspectives to address the topic. Working Group participants in 2021–2022 came from civil society (57%), national and international government bodies (26%), and technology companies (17%).

Participant diversity does not mean that everyone always agrees on approaches. In many cases, the aim is not to force group unanimity, but to find value in highlighting differences of opinion and develop empathy and greater understanding about the various ways that each sector identifies problems and looks to build solutions. At the end of the day, everyone involved in addressing violent extremist exploitation of digital platforms is working toward the same goal: countering terrorism while respecting human rights. The projects presented from this year's Working Groups highlight the many perspectives and approaches necessary to understand and effectively address the ever-evolving counterterrorism and violent extremism efforts in the online space. The following summarizes the thirteen outputs produced by the five Working Groups.

Crisis Response Working Group (CRWG):

The GIFCT Working Group on Crisis Response feeds directly into improving and refining GIFCT's own [Incident Response Framework](#), as well as posing broader questions about the role of law enforcement, tech companies, and wider civil society groups during and in the aftermath of a terrorist or violent extremist attack. CRWG produced three outputs. The largest of the three was an immersive virtual series of Crisis Response Tabletop Exercises, hosted by GIFCT's Director of Technology, Tom Thorley. The aim of the Tabletops was to build on previous Europol and Christchurch Call-led Crisis Response events, with a focus on human rights, internal communications, and external strategic communications in and around crisis scenarios. To share lessons learned and areas for

improvement and refinement, a summary of these cross-sector immersive events is included in the 2022 collection of Working Group papers.

The second output from the CRWG is a paper on the Human Rights Lifecycle of a Terrorist Incident, led by Dr. Farzaneh Badii. This paper discusses how best GIFCT and relevant stakeholders can apply human rights indicators and parameters into crisis response work based on the 2021 GIFCT Human Rights Impact Assessment and UN frameworks. To help practitioners integrate a human rights approach, the output highlights which and whose human rights are impacted during a terrorist incident and the ramifications involved.

The final CRWG output is on Crisis Response Protocols: Mapping & Gap Analysis, led by the New Zealand government in coordination with the wider Christchurch Call to Action. The paper maps crisis response protocols of GIFCT and partnered governments and outlines the role of tech companies and civil society within those protocols. Overall, the output identifies and analyzes the gaps and overlaps of protocols, and provides a set of recommendations for moving forward.

Positive Interventions & Strategic Communications (PIWG):

The Positive Interventions and Strategic Communications Working Group developed two outputs to focus on advancing the prevention and counter-extremism activist space. The first is a paper led by Munir Zamir on Active Strategic Communications: Measuring Impact and Audience Engagement. This analysis highlights tactics and methodologies for turning passive content consumption of campaigns into active engagement online. The analysis tracks a variety of methodologies for yielding more impact-focused measurement and evaluation.

The second paper, led by Kesa White, is on Good Practices, Tools, and Safety Measures for Researchers. This paper discusses approaches and safeguarding mechanisms to ensure best practices online for online researchers and activists in the counterterrorism and counter-extremism sector. Recognizing that researchers and practitioners often put themselves or their target audiences at risk, the paper discusses do-no-harm principles and online tools for safety-by-design methodologies within personal, research, and practitioner online habits.

Technical Approaches Working Group (TAWG):

As the dialogue on algorithms and the nexus with violent extremism has increased in recent years, the Technical Approaches Working Group worked to produce a longer report on Methodologies to Evaluate Content Sharing Algorithms & Processes led by GIFCT's Director of Technology Tom Thorley in collaboration with Emma Llanso and Dr. Chris Meserole. While Year 1 of Working Groups produced a paper identifying the types of algorithms that pose major concerns to the CVE and counterterrorism sector, Year 2 output explores research questions at the intersection of algorithms, users and TVEC, the feasibility of various methodologies and the challenges and debates facing research in this area.

To further this technical work into Year 3, TAWG has worked with GIFCT to release a Research Call

for Proposals funded by GIFCT. This Call for Proposals is on Machine Translation. Specifically, it will allow third parties to develop tooling based on the [gap analysis](#) from last year's TAWG Gap Analysis. Specifically, it seeks to develop a multilingual machine learning system addressing violent extremist contexts.

Transparency Working Group (TWG):

The Transparency Working Group produced two outputs to guide and evolve the conversation about transparency in relation to practitioners, governments, and tech companies. The first output, led by Dr. Joe Whittaker, focuses on researcher transparency in analyzing algorithmic systems. The paper on Recommendation Algorithms and Extremist Content: A Review of Empirical Evidence reviews how researchers have attempted to analyze content-sharing algorithms and indicates suggested best practices for researchers in terms of framing, methodologies, and transparency. It also contains recommendations for sustainable and replicable research.

The second output, led by Dr. Courtney Radsch, reports on Transparency Reporting: Good Practices and Lessons from Global Assessment Frameworks. The paper highlights broader framing for the questions around transparency reporting, the needs of various sectors for transparency, and questions around what meaningful transparency looks like.

The Legal Frameworks Working Group (LFWG):

The Legal Frameworks Working Group produced two complementary outputs.

The first LFWG output is about Privacy and Data Protection/Access led by Dia Kayyali. This White Paper reviews the implications and applications of the EU's Digital Services Act (DSA) and the General Data Protection Regulation (GDPR). This includes case studies on Yemen and Ukraine, a data taxonomy, and legal research on the Stored Communications Act.

The second LFWG output focuses on terrorist definitions and compliments GIFCT's wider Definitional Frameworks and Principles work. This output, led by Dr. Katy Vaughan, is on The Interoperability of Terrorism Definitions. This paper focuses on the interoperability, consistency, and coherence of terrorism definitions across a number of countries, international organizations, and tech platforms. Notably, it highlights legal issues around defining terrorism based largely on government lists and how they are applied online.

Research on Algorithmic Amplification:

Finally, due to the increased concern from governments and human rights networks about the potential link between algorithmic amplification and violent extremist radicalization, GIFCT commissioned Dr. Jazz Rowa to sit across three of GIFCT's Working Groups to develop an extensive paper providing an analytical framework through the lens of human security to better understand the relation between algorithms and processes of radicalization. Dr. Rowa participated in the Transparency, Technical Approaches, and Legal Frameworks Working Groups to gain insight into

the real and perceived threat from algorithmic amplification. This research looks at the contextuality of algorithms, the current public policy environment, and human rights as a cross-cutting issue. In reviewing technical and human processes, she also looks at the potential agency played by algorithms, governments, users, and platforms more broadly to better understand causality.

We at GIFCT hope that these fourteen outputs are of utility to the widest range of international stakeholders possible. While we are an organization that was founded by technology companies to aid the wider tech landscape in preventing terrorist and violent extremist exploitation online, we believe it is only through this multistakeholder approach that we can yield meaningful and long-lasting progress against a constantly evolving adversarial threat.

We look forward to the refreshed Working Groups commencing in September 2022 and remain grateful for all the time and energy given to these efforts by our Working Group participants.

Participant Affiliations in the August 2021 - July 2022 Working Groups:

Tech Sector	Government Sector	Civil Society / Academia / Practitioners	Civil Society / Academia / Practitioners
ActiveFence	Aqaba Process	Access Now	Lowy Institute
Amazon	Association Rwandaise de Défense des Droits de l'Homme	Anti-Defamation League (ADL)	M&C Saatchi World Services Partner
Automatic	Australian Government - Department of Home Affairs	American University	Mnemonic
Checkstep Ltd.	BMI Germany	ARTICLE 19	Moonshot
Dailymotion	Canadian Government	Australian Muslim Advocacy Network (AMAN)	ModusIzad - Centre for applied research on deradicalisation
Discord	Classification Office, New Zealand	Biodiversity Hub International	New America's Open Technology Institute
Dropbox, Inc.	Commonwealth Secretariat	Bonding Beyond Borders	Oxford Internet Institute
ExTrac	Council of Europe, Committee on Counter-Terrorism	Brookings Institution	Partnership for Countering Influence Operations, Carnegie Endowment for International Peace
Facebook	Department of Justice - Ireland	Business for Social Responsibility	Peace Research Institute Frankfurt (PRIF); Germany
JustPaste.it	Department of State - Ireland	Centre for Analysis of the Radical Right (CARR)	PeaceGeeks
Mailchimp	Department of State - USA	Center for Democracy & Technology	Point72.com
MEGA	Department of the Prime Minister and Cabinet (DPMC), New Zealand Government	Center for Media, Data and Society	Polarization and Extremism Research and Innovation Lab (PERIL)
Microsoft	DHS Center for Prevention Programs and Partnerships (CP3)	Centre for Human Rights	Policy Center for the New South (senior fellow)
Pex	European Commission	Centre for International Governance Innovation	Public Safety Canada & Carleton University
Snap Inc.	Europol/EU IRU	Centre for Youth and Criminal Justice (CYCJ) at the University of Strathclyde, Scotland.	Queen's University
Tik Tok	Federal Bureau of Investigation (FBI)	Cognitive Security Information Sharing & Analysis Center	Sada Award, Athar NGO, International Youth Foundation
Tremau	HRH Prince Ghazi Bin Muhammad's Office	Cornell University	Shout Out UK
Twitter	Ministry of Culture, DGMIC - France	CyberPeace Institute	Strategic News Global
You Tube	Ministry of Foreign Affairs - France	Dare to be Grey	S. Rajaratnam School of International Studies, Singapore (RSIS)
	Ministry of Home Affairs (MHA) - Indian Government	Dept of Computer Science, University of Otago	Swansea University
	Ministry of Justice and Security, the Netherlands	Digital Medusa	Tech Against Terrorism
	National Counter Terrorism Authority (NACTA) Pakistan	Edinburgh Law School, The University of Edinburgh	The Alan Turing Institute

	Organisation for Economic Co-operation and Development (OECD)	European Center for Not-for-Profit Law (ECNL)	The Electronic Frontier Foundation
	Office of the Australian eSafety Commissioner (eSafety)	Gillberg Neuropsychiatry Centre, Gothenburg University, Sweden,	The National Consortium for the Study of Terrorism and Responses to Terrorism (START) / University of Maryland
	Organization for Security and Co-operation in Europe (OSCE RFoM)	George Washington University, Program on Extremism	Unity is Strength
	Pôle d'Expertise de la Régulation Numérique (French Government)	Georgetown University	Université de Bretagne occidentale (France)
	North Atlantic Treaty Organization, also called the North Atlantic Alliance (NATO)	Georgia State University	University of Auckland
	Secrétaire général du Comité Interministériel de prévention de la délinquance et de la radicalisation	Global Network on Extremism and Technology (GNET)	University of Groningen
	State Security Service of Georgia	Global Disinformation Index	University of Massachusetts Lowell
	The Royal Hashemite Court/ Jordanian Government	Global Network Initiative (GNI)	University of Oxford
	The Office of Communications (Ofcom), UK	Global Partners Digital	University of Queensland
	UK Home Office	Global Project Against Hate and Extremism	University of Salford, Manchester, England,
	United Nations Counter-terrorism Committee Executive Directorate (CTED)	Groundscout/Resonant Voices Initiative	University of South Wales
	UN, Analytical Support and Sanctions Monitoring Team (I267 Monitoring Team)	Hedayah	University of the West of Scotland
	United Nations Major Group for Children and Youth (UNMGCY)	Human Cognition	Violence Prevention Network
	United States Agency for International Development (USAID)	Institute for Strategic Dialogue	WeCan Africa Initiative & Inspire Africa For Global Impact
		International Centre for Counter-Terrorism	Wikimedia Foundation
		Internet Governance Project, Georgia Institute of Technology	World Jewish Congress
		Islamic Women's Council of New Zealand	XCyber Group
		JOS Project	Yale University, Jackson Institute
		JustPeace Labs	Zinc Network
		Khalifa Ihler Institute	
		KizBasina (Just-a-Girl)	
		Love Frankie	

The Interoperability of Terrorism Definitions

GIFCT Legal Frameworks Working
Group

GIFCT WORKING GROUPS OUTPUT 2022



GIFCT
Global Internet Forum
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Dr. Katy Vaughan
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Introduction

It is a condition of GIFCT membership that companies must have policies that “explicitly prohibit terrorist and/or violent extremist activity.”¹ However, where policies exist, many tech platforms, companies, and other actors lack a coherent and consistent approach to defining terrorist and violent extremist content (TVEC) that aligns with relevant sources of law and human rights standards. Among the founding members of the GIFCT, only one platform (Meta) has a definition of terrorism, with the others relying on designation lists and definitions of violent extremism.

Approaches to defining TVEC underpinned by international and national designation lists will cover material from specific identified groups and individuals and requires frequent updates. More general and behavioral approaches to defining TVEC may lack consistency in scope and application and are generally harder to monitor and apply. Under algorithm-based models, there would be flagged material that meets the definitions applicable everywhere, material that meets most of the definitions in multiple regimes, material that meets the definitions in some regimes but not most, material that does meet the definitions in all but a few outlier regimes, and material that would not reasonably meet the definitions in any regime.

This may impede the proper application of content management policies about suspected TVEC on the platform and interfere with companies’ capacity to operate effectively and efficiently with external actors. While GIFCT creating a shared definition of terrorism is met with skepticism—as this task more appropriately sits with governments and international consensus-building forums—the recent GIFCT Human Rights Impact Assessment recognized the value in creating a common understanding of TVEC.² It is in the interest of GIFCT member companies to promote a move towards interoperability, with approaches to defining TVEC that are coherent and consistent throughout multiple regimes and jurisdictions. As identified by BSR, the benefits could include “pushing back against overbroad definitions” which could, in turn, establish a “bulwark” against definitions that present risks to the freedom of expression, “improving the capability of smaller companies,” and “improving shared awareness of the relationship between human rights and terrorist and violent extremist content.”³

The GIFCT Legal Frameworks Working Group (LFWG) is seeking to facilitate an expansion of the understanding of the possible implications for companies of the current level of (in)coherence regarding TVEC across commercial, national, regional, and international definitions of terrorism. Developing policy guidance that would facilitate broadly compatible approaches towards a definition of TVEC—in line with a range of potentially applicable legal regimes and jurisdictions—first requires an understanding of how interoperable and coherent existing definitions are. The premise of this approach is that there are standard minimums, thresholds, or tests to establish whether content meets the standard of TVEC. Where there is incoherence that impacts significantly

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1 GIFCT, “Membership,” n.d., <https://gifct.org/membership/>.

2 BSR, “Human Rights Impact Assessment: Global Internet Forum to Counter Terrorism,” 2021, <https://www.bsr.org/en/our-insights/report-view/human-rights-impact-assessment-global-internet-forum-to-counter-terrorism>.

3 BSR, Human Rights Impact Assessment.

on human rights, coherent norms need to be developed.

Objectives

This paper aims to compare a broad sample of definitions of terrorism and violent extremism from tech companies, national laws, regional legislation, international legal instruments, and international human rights law standards. The objective of this comparison is to identify the level of interoperability and (in)coherence in and between the definitions examined. This analysis will underpin future efforts to reduce inconsistent and conflicting definitions, recommend suitable minimum standards or principles underpinning definitions of TVEC, and improve cross-sectoral coherence.

Method

Definitions were collected from international instruments (four), regional intergovernmental instruments (five), domestic statutory definitions (four jurisdictions), the publicly available policies of the GIFCT founding members (four), and the model definition of terrorism put forward by the Special Rapporteur on counterterrorism and human rights. Academic definitions were also considered, including Schmid and Jongman's, which is based on an academic consensus resulting from a study conducted in 1989.⁴ Studies since have utilized Schmid and Longman's methodology examining selected legal definitions against the word categories triggered by the academic consensus.⁵ Instead of examining against Schmid and Jongman's word categories, this study examines a broader set of definitions of terrorism and identified categories based on an initial analysis of the selected definitions and the standard features found in these definitions. This was used as the basis of a comparative analysis to identify existing interoperability between them.

The definitions were selected by members of GIFCT's LFWG, drawing from existing geographical areas of expertise. The U.S. definitions were important given GIFCT's founding members are based in the U.S. Australia's definition is indicative of other Commonwealth country approaches such as the U.K., New Zealand, and Canada. France provides an example from a different type of legal system, as does Indonesia.

Some national definitions and the platform definitions for violent extremism were considered where available. It was noted that violent extremism was not legally defined. Some sources of law for violent extremism exist but are not referred to as violent extremism legislation. Some jurisdictions covered in this paper do have non-terrorism legislation that would capture violent extremist material, such as incitement to violence laws (Australia),⁶ laws regarding the recording and dissemination of violent images (France),⁷ and online safety laws targeting the publication of abhorrent violent

4 A. P. Schmid and A. J. Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, & Literature* (Transaction Books, 2005): 5–6.

5 Jessie Blackburn, Fergal F. Davis, and Natasha C. Taylor, "Academic Consensus and Legislative Definitions of Terrorism: Applying Schmid and Jongman," *Statute Law Review* 34, no. 3 (October 2013): 239–261, <https://doi.org/10.1093/slr/hms041>.

6 For example, in New South Wales Publicly threatening or inciting violence is an offense under section 93Z of the Crimes Act 1900.

7 Article 222-33-3 of the Code Pénal.

material (Australia).⁸ Therefore, terrorism definitions were the priority of this first phase of analysis. However, violent extremism seems to have emerged as an important category for platforms in response to the difficulties and complexities of navigating terrorism law.

Consequently, the mapping of sources of law for violent extremism (beyond terrorism) would be an important further phase of analysis as part of GIFCT efforts to ensure that platform categories and definitions align with the law.

The research uses qualitative analysis (specifically content analysis) to identify themes, patterns, and relationships between the definitions. Primary data was examined and then compared to phenomena highlighted in relevant academic literature to identify coherence, interoperability, and impact.

The research was conducted over four stages:

1. Collate a broad sample of definitions of terrorism and violent extremism used by international bodies, regional organizations, nation-states, and companies.
2. Undertake a comparative analysis to identify similarities and differences between standard features across the definitions.
3. Analyse the degree of coherence between the definitions and against human rights standards such as the principle of legality, necessity, and proportionality. Identify the areas of greatest coherence and areas of divergence and incoherence.
4. Evaluate the most harmful areas of divergence and incoherence in relation to human rights and community impacts.

This paper begins by introducing the standard features and core requirements of definitions of terrorism and identifying and explaining the relevant human rights standards. It will then highlight the areas of coherence and divergence across the definitions (and the impact on rights protection) before providing an analysis of some of the most harmful areas of divergence.

Definitions of Terrorism and Violent Extremism

In the absence of an internationally agreed definition of terrorism, some companies and organizations have resorted to relying on terrorist designation lists as a basis for policies on responding to TVEC online. Initially, GIFCT's hash-sharing database was limited to material associated with designated organizations on the United Nations Security Council's Consolidated Sanctions List, with the view to focusing on a narrow set of content.⁹ Of the definitions of companies included in

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⁸ Section 474.31 of the Criminal Code 1995; Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, the Criminal Code is mirrored by application provisions in the Online Safety Act 2021 (Cth). See also the Information and Electronic Communications Law in Indonesia (Undang-undang No 11 tahun 2008 tentang Informasi dan Transaksi Elektronik). In Indonesia, there is also a presidential decree (peraturan presiden) No 7 year 2021 on National action plan on prevention and countering violent extremism.

⁹ GIFCT, "Broadening the GIFCT Hash-sharing Database Taxonomy: An Assessment and Recommended Next Steps," July, 2021, <https://gifct.org/wp-content/uploads/2021/07/GIFCT-TaxonomyReport-2021.pdf>.

this study, Twitter, YouTube, and Microsoft avoid including a definition of “terrorism” and instead state that their policies are informed by terrorism designation lists. Twitter and YouTube refer to national and international terrorist designation lists without referring to a specific list; Microsoft relies on the UN Consolidated Sanctions List.

Reliance on international and domestic terrorist designation lists to define TVEC and design policies to counter TVEC online presents the danger that such policies will reflect “broader discrimination and bias in the counterterrorism field”¹⁰—specifically disproportionately focusing on self-declared Islamist terrorist organizations and not right-wing extremist groups. This in turn can have a disproportionate effect on Muslim and Arab communities.¹¹ There is also the difficulty in identifying right-wing terrorist groups or organizations, which can make utilizing designation difficult, as groups are “ideologically and organizationally fragmented.”¹² In contrast to the “group structure” of organizations such as IS, the extreme right is “not dominated by one or even a small number of groups.”¹³ This is evident in recent far-right terrorist attacks carried out by individuals who are difficult to identify as “members or even supporters of formal groups.”¹⁴ GIFCT responded to these concerns and has identified that it could expand its taxonomy based on a “behavioral and content-focused approach” and organizations.¹⁵ This is not to say that in the absence of a universal definition of terrorism there are no advantages (particularly for companies) to list-based approaches. This underpins Tech Against Terrorism’s development of the Terrorist Content Analytics Platform (TCAP), which alerts platforms to content associated with designated terrorist organizations and is stated to be an approach grounded in the rule of law.¹⁶ TCAP does include content created by both designated Islamist terrorist organizations and designated far-right terrorist organizations.¹⁷

While using designated terrorist organizations as the basis for identifying content provides certainty for companies, there are inherent difficulties including a rule of law perspective on the processes used by states and intentional bodies to designate groups as terrorist organizations.¹⁸ The lack of due process and transparency are well documented, particularly at the international level, including listing

10 GIFCT, Hash-sharing Database Taxonomy; BSR, Human Rights Impact Assessment.

11 Svea Windwehr and Jillian C. York, “One Database to Rule Them All: The Invisible Content Cartel that Undermines the Freedom of Expression Online,” Electronic Frontier Foundation, August 27, 2020, <https://www.eff.org/deeplinks/2020/08/one-database-rule-them-all-invisible-content-cartel-undermines-freedom-1>.

12 Report of the Secretary General, “Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy,” A/76/729, January 29, 2021.

13 Maura Conway, “Routing the Extreme Right,” *The RUSI Journal* 165, no. 1 (28 February 2020): 108–113, <https://doi.org/10.1080/03071847.2020.1727157>. For discussion on the lack of clarity in general on what constitutes a “terrorist group,” see Brian J. Phillips, “What Is a Terrorist Group? Conceptual Issues and Empirical Implications,” *Terrorism and Political Violence* 27, no. 2, (2015): 225–242, <https://doi.org/10.1080/09546553.2013.800048>.

14 Conway, “Routing the Extreme Right.”

15 GIFCT, Hash-sharing Database Taxonomy.

16 Tech Against Terrorism, “The Terrorist Content Analytics Platform and Transparency By Design,” VOX-Pol (Blog), November 11, 2020, <https://www.voxpol.eu/the-terrorist-content-analytics-platform-and-transparency-by-design/>.

17 Terrorist Content Analytics Platform, “Inclusion Policy,” 2021, <https://www.terrorismanalytics.org/policies/inclusion-policy>.

18 Report of the Eminent Jurists Panel on terrorism, counter-terrorism and human rights, International Commission of Jurists, 2009.

procedures carried out by the United Nations.¹⁹ Therefore, it is concerning if companies are relying on list-based approaches as a basis for designing policies on moderating TVEC on their platforms and services. In addition, removing content solely based on it being associated with a designated organization is problematic. This is illustrated by a decision by Meta's Oversight Board, which overturned Meta's original decision to remove an Instagram post encouraging people to discuss human rights concerns relating to the solitary confinement of a founding member of the Kurdistan Workers' Party (PKK)—a designated terrorist organization.²⁰

Given the inherent difficulties with the list-based approach, general definitions of terrorism have emerged. This is the approach of most of the definitions included in this study (other than those employed by Twitter, YouTube, and Microsoft), and will form the basis of the analysis of coherence between them based on standard features/core requirements. These include an act of violence, causing intentional harm, with the intention to impact a target beyond the immediate victims (wider audience), with underlying motives, and including express exemptions.

At the international level, there has been little attempt to define violent extremism. Given the absence of a universally agreed definition, vague and broad definitions have emerged at the national level. Interestingly, while Twitter and YouTube have avoided defining terrorism, they do include definitions of or references to violent extremism. These will be examined alongside the three found at the regional and national level (Shanghai Convention, U.S., and Australia) as part of this study. The development of policies that have the potential to negatively impact people's lives based on a term that has little legislative basis can be even more dangerous for human rights than the term 'terrorism'.²¹

Terrorist and Violent Extremist Content

This paper is focused on an examination of definitions of terrorism or terrorist acts. This is relevant to tech companies defining and designing policies in response to TVEC. However, this paper provides only a starting point. The definition of terrorist content should not depart from the definition of a terrorist act, and it is argued here that there is an advantage in greater interoperability in this regard. However, the difference between a terrorist act and terrorist content relates to the nexus among the content, the terrorist act, and the standard of proof that may be required.

In terms of the intersection between the terrorist act and terrorist content, a tech company policy may extend to content that shows, incites, glorifies, or instructs a terrorist act. This paper contends with the key elements of the definition of a terrorist act but does not assess the proof required to establish showing, inciting, glorifying, or instructing a terrorist act. Therefore, the intent component of

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 19 Report of the Eminent Jurists; Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, A/HRC/16/50, December 15, 2010; James Cockayne and Rebecca Brubaker, "Due Process in the UN Targeted Sanctions: Old Challenges, New Approaches," United Nations University Conference Proceedings, March, 2020, https://collections.unu.edu/eserv/UNU:7615/DueProcess_ConferenceBrief.pdf; Gavin Sullivan, *The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law* (Cambridge University Press, 2020).

20 "Oversight Board overturns original Facebook decision: Case 2021-006-IGUA," <https://www.oversightboard.com/news/187621913321284-oversight-board-overturns-original-Meta-decision-case-2021-006-ig-ua/>. Facebook had misplaced policy guidance including this exemption.

21 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/31/65, April 29, 2016.

the terrorist act will be relevant to determining if an event is a terrorist act, but not determinative or material towards the intent of the poster of content (unless the poster is engaged in the terrorist act themselves). Defining terrorist content and these associated questions are identified as a further area of research.

Human Rights Standards

The difficulties in defining terrorism and the implications of imprecise and overbroad definitions are well-known. They carry the risk of potential deliberate misuse, being unintentionally misapplied to acts that are not normally considered terrorism, and unintended consequences such as human rights violations.²² The lack of an international consensus on a definition of terrorism coupled with the highly politicized context exacerbates these difficulties.²³ However, in the absence of an internationally agreed definition, human rights and the rule of law standards can counter these negative impacts,²⁴ and provide a framework in which to hold both states and companies accountable across national borders.²⁵

The Principle of Legality

The principle of legality requires that measures taken by states must be lawful and that where a measure restricts human rights, those restrictions must be defined clearly and precisely to enable individuals to predict what limits the measure places on their behavior—and to ensure the measures taken do not encompass conduct which allows the law to operate beyond its intended purposes and scope.

Article 15, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) provides that,

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

Article 15 is a non-derogable right.²⁶ Similar provisions are included in the European Convention

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22 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Ten areas of best practice in countering terrorism," A/HRC/16/51, December 22, 2010.

23 BSR, Human Rights Impact Assessment.

24 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, E/CN.4/2006/98, December 28, 2005.

25 Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, A/HRC/38/35, April 6, 2018.

26 Article 4(2) ICCPR.

on Human Rights (ECHR)²⁷ and the American Convention on Human Rights (ACHR).²⁸ These provisions embody the principle of legality, which requires states to give reasonable notice of any conduct that will attract criminal punishment. In compliance with Article 15 ICCPR, any prohibition on terrorist conduct must be prescribed by law, so the prohibition must be framed in a law that is “adequately accessible so that an individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct.”²⁹

In the context of countering TVEC online, measures taken risk interference with the right to freedom of expression. Article 19 ICCPR guarantees the right to freedom of expression, which includes the right to receive information and the right to hold opinions without interference. The principle of legality is expressly included in the provision, stating that Article 19 rights can only be subject to restrictions where these are provided by law. Similar provisions are included in Article 10 ECHR and Article 13 ACHR, which also expressly include the principle of legality. Restrictions on the right must, “be adopted by legal processes and limit government discretion in a manner that distinguishes between lawful and unlawful expression with ‘sufficient precision.’”³⁰ This is also the case in relation to other relevant rights when considering measures regulating content online such as the right to freedom of thought, conscience, and religion,³¹ the right of assembly,³² and the right to privacy.³³

It is useful here to refer to the work of Hardy and Williams, which established three criteria for examining whether domestic statutory definitions of terrorism are appropriate.³⁴ The first two criteria are encompassed by the principle of legality. In this sense, they advanced a legal definition of terrorism:

1. “... should be sufficiently clear and precise to give reasonable notice of the kinds of conduct it prohibits”;³⁵ and
2. “... should not encompass conduct which allows legislation to operate outside its intended purposes.”³⁶

Therefore, it is important to assess definitions of terrorism and violent extremism against these standards. The principle of legality requires that the definitions be clear, precise, and narrowly focused. In the counterterrorism landscape, definitions must define terrorism and violent extremism such that counterterrorism measures are restricted to countering conduct that is truly terrorist in nature. In the

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27 Article 7 ECHR.

28 Article 9 ACHR.

29 Report of the Special Rapporteur, E/CN.4/2006/98.

30 Report of the Special Rapporteur, A/HRC/38/35, 6 April 2018.

31 Article 18 ICCPR, Article 9 ECHR, Article 12 ACHR.

32 Article 21 ICCPR, Article 11 ECHR, Article 15 ACHR.

33 Article 17 ICCPR, Article 8 ECHR, Article 11 ACHR.

34 Kieran Hardy and George Williams, “What is ‘Terrorism’? Assessing Domestic Legal Definitions,” *UCLA Journal of International Law and Foreign Affairs* 16 (2011): 77–162.

35 Kieran Hardy and George Williams, “What is ‘Terrorism’? Assessing Domestic Legal Definitions,” p.81.

36 Kieran Hardy and George Williams, “What is ‘Terrorism’? Assessing Domestic Legal Definitions,” p.81.

context of responses to TVEC online, content moderation rules should be clear and specific to “enable users to predict with reasonable certainty what content places them on the wrong side of the line.”³⁷

Necessity and Proportionality

Where definitions of terrorism do not comply with the principle of legality and consequently fail to restrict counterterrorism measures to conduct which is terrorist in nature, there is also the danger that such measures will not comply with the principles of necessity and proportionality.³⁸ These are important principles placing limits on unjustified interferences with fundamental human rights and freedoms. The right to freedom of expression,³⁹ the right to freedom of thought, conscience, and religion,⁴⁰ and the right of assembly⁴¹ are all qualified rights. However, any restrictions, in addition to needing to comply with the principle of legality, must be necessary and proportionate to the legitimate aim. Therefore, the legal response to terrorism and violent extremism must not be disproportionate to the threat.

It follows that the potential negative consequences for individuals and the protection of fundamental rights due to the misapplication of counterterrorism powers (whether intentional or unintentional) do not justify the adoption of overly broad and vague definitions of terrorism. In the context of countering TVEC online, companies should “demonstrate the necessity and proportionality of any content actions (such as removals of account suspensions)” and in doing so consideration should be given to less intrusive restrictions (e.g., content warnings and de-amplification scaled to risk and degree of harm).⁴²

Defining terms such as terrorism and violent extremism is not an easy task; however, tech companies have policies aimed at countering TVEC on their platforms and services. Consequently, they are required to explain to users what content constitutes TVEC and will therefore be removed.⁴³ Definitions will also help guide “the discretion of individual reviewers, reducing the risk of inconsistent – or even inappropriate – decision-making.”⁴⁴ It is important that definitions are clear and unambiguous to avoid the possibility of “censorship creep,”⁴⁵ and to ensure compliance with human rights standards such as the principle of legality, necessity, and proportionality.

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37 Report of the Special Rapporteur, A/HRC/38/35, para 46.

38 Report of the Special Rapporteur, A/HRC/16/51.

39 Article 19 ICCPR.

40 Article 18 ICCPR.

41 Article 21 ICCPR

42 Report of the Special Rapporteur, A/HRC/38/35.

43 Stuart Macdonald, Sara Giro Correia, and Amy-Louise Watkin, “Regulating Terrorist Content on Social Media: automation and the rule of law,” *International Journal of Law in Context* 15, no. 2 (2019): 183–197, <https://doi.org/10.1017/S1744552319000119>.

44 Macdonald, Correia, and Watkin, “Regulating Terrorist Content.”

45 Danielle K. Citron, “Extremist Speech, Compelled Conformity, and Censorship Creep,” *Notre Dame Law Review* 93, no. 3 (2018): 1035–1072.

Identifying Coherence and Divergence

An examination across the definitions revealed clear coherence and areas of divergence as to some core components/standard features of a definition of terrorism.

Definition of Terrorism Core Requirements: Coherence

Across the definitions, there was consensus that the definition of the term ‘terrorism’ includes the following core requirements:

- An act of violence;
- Indication of the level of harm resulting from the act;
- Proof of intention is necessary;
- The target is a wider audience beyond the immediate victims of the act; and
- Indication of the psychological impact on the target.

However, as is addressed below, within these core requirements there are layers of incoherence and inconsistency which is problematic when seeking to establish a common understanding of a definition of terrorism and the advantages of interoperability

Definition of Terrorism Core Requirements: Divergence

There exists divergence in relation to two core requirements of a definition of terrorism. These are in relation to the existence of a motive requirement and express exceptions.

Motive requirement

The motive requirement sets out reasons as to why an individual engages in the prohibited conduct, the underlying aim they sought to achieve, or the cause they sought to advance. For example, the requirement that the purpose of the conduct is to advance political, religious, racial, or ideological causes. The motive requirement is commonly understood to be the principal defining feature of terrorist attacks, distinguishing terrorism from ordinary crime.⁴⁶ Nevertheless, in the definitions of terrorism examined in this study, the existence of a motive requirement is identified as an area of divergence in the core requirements of a definition. Only five of the definitions explicitly include a motive requirement,⁴⁷ all of which include political causes.⁴⁸ The Australian and Meta definitions also include religious and ideological causes, while the Indonesian definition also includes ideological and security breach motivations. The UN Special Rapporteur’s model definition of terrorism does not include a motive requirement, although it suggests that reference to motivations can “assist in further

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 46 Kent Roach, “The Case for Defining Terrorism with Restraint and without Reference to Political or Religious Motive,” in *Law and Liberty in the War on Terror*, eds. Andrew Lynch, Edwina Macdonald, and George Williams (Sydney: Federation Press, 2007), 39; Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 2019), 38.

47 UN General Assembly Resolution 49/60 (December 9, 1994), US Title 22 USC § 2656f, and those for Australia, Indonesia, and Meta.

48 This is the sole motivation specified in two of those definitions: UN GA Res 49/60 and the U.S. (22 USC 2656f).

narrowing the scope of application of the definition of terrorism.”⁴⁹

Express exemptions

Definitions of terrorism often specify express exemptions. These include an express exemption for advocacy, protest, dissent, industrial action, and/or armed conflict. Across the definitions in this study, this is identified as an area of divergence, as only eight of the definitions include an express exemption. Of those, only Australia exempts advocacy, protest, dissent, and industrial action. The remaining include an armed conflict exception⁵⁰—this is stated in all five of the regional instruments, the Terrorist Financing Convention, and Meta’s definition.

If seeking a common understanding of the definition of terrorism, divergence on both the existence of a motive requirement and express exemptions raises important questions. On motive, there is the question of whether the motive requirement should be included in the definition, and if so, what motives should be included. Should the definition be restricted to political motives, or include a wider range such as religious and ideological motives? There is also the important question on the inclusion of express exceptions within a definition of terrorism for advocacy, protest, dissent, industrial action, and actions taken during armed conflict. The inclusion of such exemptions can assist in narrowing definitions of terrorism to ensure they comply with the principle of legality and therefore do not operate beyond their intended purpose, which in turn can ensure counterterrorism measures are necessary and proportionate to the threat. These issues are addressed in more detail in the “Implications of incoherence and divergence” section below.

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 49 Report of the Special Rapporteur, A/HRC/16/51, para 27.

50 Terrorist Financing Convention; EU Directive; OIC Convention; OAU Convention; Shanghai Convention; Arab Convention; Meta.

Divergence Within the Core Requirements of Definitions of Terrorism

While there is coherence as to the core requirements of a definition of terrorism identified in this study, there are layers of incoherence and inconsistency within each requirement, which is problematic when seeking to establish a common understanding and/or minimum standards. This is summarized in Table 1.

Table 1: Divergence Within the Core Requirements of Definitions of Terrorism

Core requirements: coherence	First layer of incoherence / inconsistency	Second layer of incoherence / inconsistency
Act of violence	Specific acts (listed)	
	General approach	Level of harm
		Existing criminal acts
	Combination of general and specific approach	
	Threats/attempts of action	
Indicating the level of harm resulting from the act	Range and level of harms	
Intention	To cause harm	Range and level of harms
	To impact the target	What the impact on the target is
	Both (cumulative)	As above
Target (wider audience)	Public/population	Level of impact
	Government	Level of impact
	International organization	Level of impact
	Public security/disorder	
Psychological impact on members of the public	Level of impact	

Act of Violence

Each of the definitions include an act of violence as a core requirement. However, there is divergence across the definitions as to how the act of violence is defined. Some of the definitions take a specific approach, setting out several specified acts that fall within the definition.⁵¹ Alternatively, a general approach is taken to defining acts of violence either by reference to the level of harm caused (e.g., causing death or serious bodily injury),⁵² by reference to existing criminal acts in national or

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51 Nuclear Terrorism Convention; EU Directive; U.S. (18 USC 2332b(g)(5)); France.

52 Shanghai Convention; Australia; U.S. (22 USC 2656f); U.S. (31 CFR 594); Indonesia; Meta.

international law,⁵³ or both.⁵⁴ Some definitions include a combination of the two approaches, for example Australia taking a general approach and including reference to some specific acts.

Divergence also exists as to whether the definition includes a threat of action⁵⁵ and/or attempted action. The UN Special Rapporteur has urged caution in this respect to ensure compliance with the requirements of the principle of legality.⁵⁶ Meta's definition goes further than threats and attempts and includes engaging, advocating, or lending substantial support to "purposive and planned acts of violence"; and the Shanghai Convention includes organizing, planning, aiding, and abetting. It is submitted that such facilitative actions should fall outside the definition of terrorism because by definition accomplices are not the perpetrators of the actual terrorist act. As with threats of action, these would be better dealt with in policies that address the circumstances in which posts and content about a terrorist act may be removed. It is suggested that definitions of terrorism ought to be confined to acts or attempted acts of violence.

Arguably, the specific approach of setting out a list of certain activities which constitute terrorist acts, without defining a general category of terrorism, better complies with the principle of legality.⁵⁷ Providing a list of specific acts such as hostage-taking and attacks upon a person's life can make it clearer and more certain what acts do and do not amount to terrorist acts.⁵⁸ This means that each act listed must be clear and precise, and within the definitions subject to this study the certainty of some terms can be called into question. For example, both the EU and French definitions include attacks upon the "physical integrity" of the person—further guidelines or examples of conduct would be helpful here.

An additional advantage of the specific approach is that it, "avoids political conflict over basic definitional principles," which in turn permits, "textual agreement to be reached."⁵⁹ Consequently, when considering the interoperability of definitions of terrorism, this approach could be seen as beneficial. Nevertheless, listing specific individual acts of terrorism, "might not be capturing what we mean by terrorism," because the additional requirements that distinguish a terrorist act from ordinary criminal acts may not be included.⁶⁰ Terrorism is not "inherent to any particular act or type of violence."⁶¹ Another issue is that a specific approach may not be able to keep pace with new terrorist acts,

53 UN GA Res 49/60; UN SC Res 1566; U.S. (18 USC 2331(l)); U.S. (18 USC 2332b(g)(5)).

54 Terrorist Financing Convention; OIC Convention; OAU Convention; Arab Convention; Special Rapporteur.

55 Eight out of the 21 definitions included a threat of action across international, regional, national, and local levels: Nuclear Terrorism Convention; EU Directive; OIC Convention; OAU Convention; Arab Convention; Australia; U.S. (18 USC 2332b(g)(5)); Indonesia.

56 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Australia: Study on Human Rights Compliance While Countering Terrorism," (A/HRC/4/26/Add.3, 14 December 2006).

57 Clive Walker, "The Legal Definition of 'Terrorism' in United Kingdom Law and Beyond," *Public Law* (2007): 331–352.

58 Martin Scheinin, "A Proposal for a Kantian Definition of Terrorism: Leading the World Requires Cosmopolitan Ethos," EUI Working Paper LAW, 2020/15. Scheinin identifies the EU Directive's approach of setting out an exhaustive list of enumerated pre-existing crimes as an effort to seek to preserve legality.

59 Geoffrey Levitt, "Is 'Terrorism' Worth Defining," *Ohio Northern University Law Review* 13, no. 1 (1986): 97.

60 Ben Golder and George Williams, "What is 'Terrorism'? Problems of Legal Definition," *University of New South Wales Law Journal* 27, no. 2 (2004): 270–295.

61 Anthony Richards, "Conceptualizing Terrorism," *Studies in Conflict and Terrorism*, 37:3 (2014): 213–236, <https://doi.org/10.1080/1057610X.2014.872023>.

particularly in relation to the use and development of new technology.⁶² The combination of a general approach to defining additional core requirements of a definition of terrorism and listing specific acts, such as in the EU Directive and the French definition (which also include intent and purpose requirements), would address the first concern but not the latter.

The general definitions of terrorism—defining terrorism with reference to certain criteria such as intention, and motivation—also include acts of violence. While there are benefits to the general approach to defining terrorism, such as flexibility and adaptability to the terrorist threat, this can pose difficulties for compliance with the principle of legality (both in ensuring acts of violence are defined clearly and precisely and that these are narrow enough to ensure the definitions are not used beyond their intended purposes). Arguably, the most coherent with the principle of legality are the definitions that require that **there can only be an act of terrorism if the act of violence corresponds to an existing criminal offence enacted for the purpose of compliance with an existing treaty against terrorism**.⁶³ All three of the general definitions at the international level and three out of the four general definitions at the regional level⁶⁴ seek to comply with the principle of legality by taking this approach. However, at the national level, only the U.S. definition of acts of terrorism⁶⁵ and the French definition do. The tech companies do not take this approach. The remaining general definitions of terrorism subject to this study define the act of violence with reference to the level of harm.

The level and range of harm resulting from the act of violence

There is consistency across the definitions that the terrorist act is violent and that this involves causing death or serious bodily injury. This does not pose particular difficulties from the perspective of the principle of legality. It follows that defining terrorism with reference to this higher level and narrow range of harms assists in ensuring definitions are sufficiently narrow to not result in a disproportionate response to the terrorist threat. Only the Terrorist Financing Convention restricts the range and level of harm in this way. Both the Special Rapporteur's model definition and UN SC Res 1566 go beyond this to include hostage-taking, which again is arguably clear and precise and does not result in an overly broad definition (when the other core requirements of a definition of terrorism are also met).

However, beyond this, there is a disparity in the range and level of harms that are required of a terrorist act. This adds a further layer of complexity in defining the core requirement of an act of violence within a definition of terrorism and identifying the level of intention where this is stated with reference to the harm caused by the primary act. The incoherence in the level and range of harms reveals a wide range of less serious and uncertain harms. For example, Meta's reference to "serious harm" may not be considered a clear and precise term, and circular definitions can cause difficulty in practice.

62 Richards, "Conceptualizing Terrorism."

63 Martin Scheinin, "A Proposal for a Kantian Definition."

64 The exception is the Shanghai Convention.

65 U.S. (18 USC 2332b(g)(5)).

Several of the definitions include property damage,⁶⁶ but there are differences in the appropriate threshold and a lack of consistency as to whether property damage is linked to a risk of death or other injury or harm to individuals (e.g., endangering property; damage to property; exposing property to hazards; occupying or seizing property; substantial damage to property; serious damage to property; significant damage to property with a risk of death, serious injury or death; damaging or destroying property with a substantial risk of bodily injury; extensive destruction to property likely to endanger life or major economic loss). Similar divergences are evident in the definitions that include environmental damage.⁶⁷ There is a similar lack of coherence as to the appropriate threshold (e.g., exposing the environment to hazards; may cause damage to the environment; damage to the environment; substantial damage to the environment).

The inclusion of property and/or environmental damage is potentially problematic from the perspective of legality, particularly when this is not linked to a risk of death or serious injury. This can result in overly broad definitions which can operate beyond their intended purposes, encompassing conduct that is not truly terrorist in nature. This could include political protest, for example, which results in or even deliberately causes serious property damage.⁶⁸ This problem is exacerbated in the absence of express exemptions and can lead to counterterrorism measures that are not necessary and proportionate to the terrorist threat.

Interestingly, only the Australian definition includes an action that creates a serious risk to public health or safety. Some of the definitions include impacts on natural resources,⁶⁹ again with varying thresholds of the level of harm (e.g., endangering; jeopardizing; damaging). The definitions that include acts of terrorism on infrastructure, systems, and facilities⁷⁰ also differ on the appropriate threshold of harm (e.g., seriously disrupts or destroys; damage or destruction; endangering; extensive destruction likely to endanger life or result in major economic loss). Issues of clarity and precision are evident in the inclusion of this range of harms, which in turn can lead to overly broad definitions of terrorism.

This raises several questions when seeking to establish minimum standards, including whether property and environmental damage should constitute terrorist acts—and if they do what is the appropriate threshold, and should this be linked to the risk of a loss of life or serious bodily injury? The same question arises as to whether attacks on infrastructure including facilities and systems (such as electronic systems) should be included—and if so what the appropriate level of harm should be. In addition, the EU Directive raises the question as to whether property damage and attacks on infrastructure should be linked to a risk of major economic loss. The alternative is to restrict an act of terrorism to one which causes death, endangers life, or causes serious bodily injury to members of

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 66 Nuclear Terrorism Convention; EU Directive; Arab convention; OIC Convention; OAU Convention; Australia; U.S. (18 USC 2332b(g)(5)); U.S. (31 CFR 594); Meta.

67 Arab Convention; OIC Convention; OAU Convention; Indonesia.

68 Kent Roach, "Sources and Trends in Post 9/11 Anti-Terrorism Laws," in *Security and Human Rights*, eds Benjamin J. Goold and Liora Lazarus (Hart Publishing, 2007); Jacqueline Hodgson and Victor Tadros, "The Impossibility of Defining Terrorism," *New Criminal Law Review*, 16, no. 3 (2013): 494–526.

69 Arab Convention; OIC Convention; OAU Convention.

70 EU Directive; Arab Convention; OIC Convention; Shanghai Convention; U.S. (31 CFR 594); Indonesia.

the population.

To ensure coherence with human rights standards such as the principle of legality, necessity, and proportionality, it is proposed that the level and range of harms should be restricted to those that cause or endanger life, cause serious bodily injury, or involve hostage-taking or kidnapping. This is in conjunction with defining the act of violence as corresponding with a crime enacted for the purpose of compliance with an existing treaty against terrorism. This would help to preserve the principle of legality in definitions of terrorism, which in turn assists in ensuring counterterrorism measures are necessary and proportionate.

Target: Wider Audience

It has been argued that the “essence of terrorism lies in the intent or purpose behind the act of violence rather than in the act itself, namely, to generate a wider psychological impact beyond the immediate victims.”⁷¹ This is captured across the definitions subject to this study, all of which refer to a target being a wider audience beyond the immediate victims of the act. There is coherence across the definitions that this includes the public, section of the public, or population.⁷² The majority of the definitions also include the government,⁷³ and seven of the definitions also include international organizations.⁷⁴ These targets are clear and precise and correspond with the Special Rapporteur’s model definition.

In addition, some of the definitions include public security (Shanghai Convention), public disorder (France), or public facilities (Indonesia) as targets at which terrorist acts can be directed. The EU Directive includes fundamental political, constitutional, economic, or social structures of a country or international organization. This presents issues with the principle of legality. These terms are not defined with precision, and even if the meaning is clear they present the danger of broadening a definition beyond its intended scope. This in turn could result in disproportionate counterterrorism measures.

The Psychological Impact on the Target

While specifying the target of a terrorist act as the population, public (or section of the public), the government, or international organization meets the requirements of legality, some of the definitions pose difficulties in how the psychological impact on the target is defined. The impact on the wider audience should be set at an appropriate threshold. This is particularly important as, for many of the definitions, this also sets the level of intention required for an act to be deemed an act of terrorism. While coherence exists across the definitions of terrorism by including reference to the psychological impact on the target, there is divergence as to the appropriate threshold. Where the impact is the

71 Anthony Richards, “Conceptualizing Terrorism.” See also: A. Schmid and A. Longman, *Political Terrorism*, Third Edition (New Brunswick, NJ: Transaction Books, 2008); Hoffman, *Inside Terrorism*.

72 The exception here is France which refers to the impact on public disorder.

73 The exceptions here are the UN GA Res 49/60, UN SC Res 1566; Arab Convention; France, and Indonesia.

74 Terrorist Financing Convention; Nuclear Terrorism Convention; EU Directive; OAU Convention; Shanghai Convention; Meta; Special Rapporteur.

population or members of the public, the impact ranges (e.g., to coerce; to compel; to force; to instill fear; to intimidate; to seriously intimidate; to provoke a state of terror; to sow panic; to influence). Some definitions use a combination of these thresholds. In addition, where the target of the terrorist act includes the government, the threshold as to the level of impact differs (e.g., to coerce; to compel; to unduly compel; to force; to induce; to instill fear; to intimidate; to seriously intimidate; to seriously destabilize or destroy; to threaten stability; to influence; to affect; to retaliate against).

In this respect definitions that refer to influencing the government or the public arguably set the bar too low. This can lead to broad definitions, encompassing acts that do not constitute terrorist acts, such as protests and demonstrations designed to influence the government where some violence occurs. Similar difficulties arise with the use of terms such as 'affect,' which also could be deemed to lack clarity and precision. Some of the definitions also refer to instilling fear or sowing panic in the population. It has been previously noted in relation to the threshold of instilling fear that such circumstances could "result from non-political hooliganism or individual acts of aggression."⁷⁵ It has more recently been suggested in relation to proposed changes to the definition of terrorism in New Zealand that "a patched gang member ... can induce fear at their local supermarket but it's arguable whether this qualifies as terrorism."⁷⁶ Therefore, using the lower threshold of "fear" could potentially encompass conduct that should be dealt with under the ordinary criminal law, which presents the danger of the definition operating beyond its intended purposes.

Setting the threshold of impact as intimidate, compel, or coerce would be more appropriate as the terms have a clearer meaning, providing better compliance with the principle of legality.

Moreover, these terms are more purposive in nature rather than being an impact incidental to the act, and so also encapsulate the core concept of terrorism more accurately. The use of these terms would be appropriate in reference to the impact on both the population and governments and international organizations.

Intention

There is a consistency across all the definitions that an act of terrorism is planned, premeditated, or purposive. This is identified using wording such as "intention," "calculated," or "acts as part of an agenda." The requirement of intention is an area of coherence in the definitions of terrorism. Definitions can include the intentional primary act causing a certain level of harm (general intention), a specific or qualified intention to accomplish the purpose of impacting the target of the wider audience (whether this is the government or the population)⁷⁷ or require both a general and specific intention.⁷⁸ The Australian definition expressed the requirement as the intention to advance a political, religious, or ideological cause (motive), and the specific intent to accomplish the purpose of

75 Clive Walker, "The Legal Definition of 'terrorism' in United Kingdom Law and Beyond."

76 Hayden Crosby, "Treating NZ's far right groups as terrorist organisations could make monitoring extremists even harder," The Conversation, 16 April 2021, <https://theconversation.com/treating-nzs-far-right-groups-as-terrorist-organisations-could-make-monitoring-extremists-even-harder-158291>.

77 UN GA Res 49/60 (9 December 1994); Australia; U.S. (18 USC 2331(l)); U.S. (18 USC 2332b(g)(5)); U.S. (31 CFR 594); France; Meta.

78 Terrorist Financing Convention; Nuclear Terrorism Convention; UN SC Res 1566; EU Directive; OAU Convention; Shanghai Convention; U.S. (22 USC 2656f); Indonesia; UN Special Rapporteur.

impacting the target. It should be noted that both the Arab Convention and the OIC Convention state that a terrorist act is carried out irrespective of the motives, intentions, and purposes behind the act; however, both go on to refer to seeking to sow panic or the aim of terrorizing people and causing fear. Therefore, an act of terrorism is purposive, and it appears that it requires both a general and/or specific intention, but this needs further clarity in the drafting.

Many of the definitions that refer to both general and specific intentions state these as in the alternative, with the use of the word 'or.' The Special Rapporteur supports a cumulative approach to defining terrorism, like SC Resolution 1566 (2004), including an intention to cause harm and an intention to impact the target.⁷⁹ This would better comply with the principle of legality, assisting in restricting definitions to actions that constitute terrorist acts.

Beyond whether the definitions of terrorism require a general or specific intention (or both), there exists an additional layer of incoherence. Where the definitions require a general intention to carry out the primary act of violence causing harm, as set out above the level and range of harms differ across the definitions. Similarly, in definitions that require a specific intention to accomplish the purpose of impacting the target, the threshold qualifying the level of intention differs (e.g., to coerce; to compel; to unduly compel; to force; to induce; to intimidate; to seriously intimidate; to influence; to affect; to instill fear; terror; seriously destabilizing or destroying). As discussed, above, many of the definitions use a different combination of these levels of intent. Therefore the issues identified with preserving legality with reference to the range and level of harm and in stating the psychological impact on the target of a terrorist act would need to be resolved to comply with human rights standards.

It should also be noted here that establishing intent can be difficult. The Terrorist Financing Convention attempts to provide some guidance, stating that intent to impact the wider audience is established "by its nature and context." Evidentiary issues are recognized specifically in establishing the specific or qualified intention, as this goes to the purpose of the perpetrator. This can be difficult to apply in practice and may be "inferred rather than proven."⁸⁰

TVEC content moderation policies risk an unjustified interference with the freedom of expression. In seeking a common understanding and greater interoperability on definitions of terrorism that apply to prevent forms of expression online (as opposed to an act of violence), there is a risk of a chilling effect. Therefore a higher threshold of intention and a tighter definition of terrorism as it applies to identifying terrorist content is important.⁸¹ It is submitted that **definitions should take a cumulative approach to intention, including an intentional primary act (of violence) and a specific intention to accomplish the purpose of impacting the target.** To maintain appropriately high thresholds, the general intention should be to cause death/endanger life and/or serious bodily injury and the specific intention should be qualified as to intimidate, coerce, or compel the population, government, or

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79 Report of the Special Rapporteur, A/HRC/16/51.

80 Martin Scheinin, "A Proposal for a Kantian Definition."

81 Alan Greene, "Defining Terrorism: One Size Fits All?," *International and Comparative Law Quarterly*, 66 (April 2017): 441–440, <https://doi.org/10.1017/S0020589317000070>.

international organization.

Summary

The review of the definitions demonstrates that a minimum degree of coherence in the core requirements of terrorism exists. An act of terrorism involves an act of violence, carried out intentionally, with the purpose of impacting a specified target which includes members of the general population. However, layers of incoherence are evident in the level and range of harms resulting from the act of violence, the level of intent required, the range of targets, and the impact of the act of violence on those targets. There is also divergence evident across the definitions as to the existence of a motive requirement, what motivations that should include, the existence of express exemptions such as for protest, advocacy, industrial action, and dissent, and an armed conflict/IHL exemption.

Definitions of Violent Extremism

The Shanghai Convention is the only statutory instrument subject to this study that includes a definition of violent extremism. Australia and the U.S. provide no legal definition, although the term is defined in relevant policy documents which have been included in this report. Twitter provides a definition of violent extremism and YouTube's Community Guidelines state that content produced by violent extremist groups not included on terrorist designation lists is covered by its policies against posting hateful or violent content.

Coherence is evident between these definitions that violent extremism involves acts of violence. However, beyond this, no further detail or clarification is provided as to the level or potential range of harms. This has the potential to be too broad, as it does not limit the threshold to serious violence. Twitter and the Shanghai Convention include as a requirement a target beyond immediate victims; however, there is divergence as the former refers to the population and the latter the government and public security. The U.S. and Australian policy documents include a motive requirement including political, religious, and ideological purposes.

There is considerable incoherence as all definitions are arguably vague and broad, presenting the danger that definitions will include individuals beyond the intended scope of countering violent extremism policies such as members of civil society.⁸² The Special Rapporteur on counterterrorism and human rights has raised concerns about policies developed on the basis of the term, arguing that it is "conceptually weaker than the term terrorism, which has an identifiable core."⁸³ This raises the important question about companies developing policies aimed at countering violent extremist content in addition to terrorist content. Further research would be welcome as to whether content currently removed as violent extremist content would also be removed as terrorist content, or under existing policies for hateful or violent content.

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⁸² Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders" (A/HRC/40/52, 1 March 2018).

⁸³ A/HRC/40/52.

Implications of Incoherence and Divergence

The Core Requirements of a Definition of Terrorism

While this paper has identified some standard features/core requirements of a definition of terrorism, **the inconsistency and incoherence within these requirements are problematic from the perspective of reaching a common understanding and increasing interoperability. This can lead to actions and content classified as terrorist in one jurisdiction or on one platform but not another.** Previous research has identified the example of where “a group carried out attacks against infrastructure without the intent to harm civilians (by releasing warnings).”⁸⁴ This would fall within some of the definitions subject to this study but not all. Some companies could judge this as not meeting its criteria for TVEC, but other companies may opt for removal. Similar outcomes may arise if a politically motivated group or individual carries out violence resulting in property damage but does not intend to cause death, endanger life, or serious injury to civilians, again falling within some definitions of terrorism but not all. Increased pressure to remove TVEC may result in some companies erring on the side of caution in these circumstances which can lead to over-censorship. Therefore, increasing coherence between definitions would be beneficial.

Existence of Motive Requirement

While the motive requirement is commonly understood to be the principal defining feature of terrorist attacks, distinguishing terrorism from ordinary crime,⁸⁵ it has been identified as an area of divergence in this study. The motive requirement differs from the intention requirement in that it is “directed towards the emotional reasons why the accused engaged in the prohibited conduct, as opposed to his or her desire to bring about a particular set of consequences.”⁸⁶ The motive requirement goes beyond requiring proof that the perpetrator intended to commit the act itself and requires proof that the perpetrator engaged in the conduct for a particular reason (for example, in advance of a political cause). The Special Rapporteur does not include this in the model definition, although has stated that reference to motivations can “assist in further narrowing the scope of application of the definition of terrorism.”⁸⁷

Nevertheless, the inclusion of a motive requirement in a definition of terrorism has proved controversial. On the one hand, requiring proof of motive can narrow the definition of terrorism and reduce the risk of overly broad and disproportionate application of counterterrorism measures. On the other hand, the motive requirement is difficult to prove, and it is argued can lead to religious or racial profiling and can have a chilling effect on rights protection.⁸⁸

84 Isabelle van der Vegt, Paul Gill, Stuart Macdonald, and Bennett Kleinberg, “Shedding Light on Terrorist and Extremist Content Removal,” Global Research Network on Terrorism and Technology: Paper No 3.

85 Roach, “The Case for Defining Terrorism,” 39; Hoffman, *Inside Terrorism*, 38.

86 Kieran Hardy, “Hijacking Public Discourse: Religious Motive in the Australian Definition of a Terrorist Act,” *University of New South Wales Law Journal* 34, no. 1 (2011): 333–350.

87 Report of the Special Rapporteur, A/HRC/16/51. See also UN Office on Drugs and Crime, “Legislative Guide to the Universal Legal Regime Against Terrorism,” 2008.

88 Roach, “The Case for Defining Terrorism.”

Ben Saul has argued that the inclusion of motive distinguishes the “public-orientated reason” (such as religion) for carrying out violence constituting terrorism with “violence perpetrated for private ends.”⁸⁹ He claims that definitions that only include an intention to target a wider audience, such as intimidating a population, do not accurately capture what is meant by terrorism. He points to extortion as an example of an action that intimidates a government or population which would be captured, albeit an act carried out for “private, non-political reasons”⁹⁰—thereby leading to definitions of terrorism that extend beyond conduct that is truly terrorist in nature.

In addition, Saul argues that the inclusion of a motive requirement can enhance the protection of human rights by narrowing the definition. Referring to the U.K.’s definition of terrorism which includes racial motives, he proposes that the motive requirement can be “harnessed to confront and quell those who would terrorize others in the pursuit of racial supremacy or eugenic-fantasies.”⁹¹

Specific Concerns with Religious Cause

Alternatively, critics of the inclusion of the motive requirement argue that it risks religious and racial profiling, prejudice, and a chilling impact on speech.⁹² Concerns are raised specifically on the inclusion of religious motive in a definition of terrorism.⁹³ The inclusion of a religious motive can directly fuel the misconception that Islamic religiosity causes terrorism or that the Qur’an generally radicalizes Muslims.⁹⁴ These are key narratives within extreme right movements:⁹⁵ in Australia, a prominent figure on the “radical right extremist scene” has been involved in “anti-Islam protest movements,”⁹⁶ and online links between these figures and the Christchurch attacker have been established.⁹⁷ Alternatively, terrorist groups such as al-Qaeda and Daesh have attempted to justify their actions based on a distorted rhetoric of Islam; by accepting their proclaimed identity as religious movements, it logically follows that public discourse will assume a link between Islamic jihad and terrorism.⁹⁸ Any suggestion of links between the actions of a terrorist organization and Islam is inappropriate and offensive to

89 Ben Saul, “The Curious Element of Motive in Definitions of Terrorism: Essential Ingredient or Criminalising Thought?” in *Law and Liberty in the War on Terror*, eds. Andrew Lynch, Edwina Macdonald, and George Williams, (Federation Press, 2007), 28.

90 Saul, “The Curious Element of Motive.”

91 Saul, “The Curious Element of Motive.”

92 per Rutherford J in the Canadian case *R v Khawaja* [2006] OJ 4245. Note higher courts did not agree: Court of Appeal for Ontario, *R v Khawaja*, File Nos C50298–C50299, Neutral Citation No. 2010 ONCA 862, 17 December 2010; Supreme Court of Canada, *R v Khawaja*, Case No. 34103, Neutral Citation No. 2012 SCC 69, 14 December 2012.

93 This is only included in the Australian definition in this study. This is modelled on the U.K.’s definition of terrorism (section 1 Terrorism Act 2000).

94 Anne Aly and Jason-Leigh Striegheer, “Examining the Role of Religion in Radicalization to Violent Islamist Extremism,” *Studies in Conflict & Terrorism* 35, no. 12 (2012): 849–862. <https://doi.org/10.1080/1057610X.2012.720243>; Faiza Patel, ‘Rethinking Radicalization’ (Research Report, Brennan Center for Justice at New York University School of Law, March 2011), 3.

95 Jade Hutchinson, “The New-Far-Right Movement in Australia,” *Terrorism and Political Violence*, 33, no. 7 (2021): 1424–1446. <https://doi.org/10.1080/09546553.2019.1629909>.

96 William Allchorn, “Australian Radical Right Narratives and Counter Narratives in an Age of Terrorism,” *Hedayah and Centre for the Analysis of the Radical Right*, 2021.

97 Allchorn, “Australian Radical Right Narratives.”

98 Hardy, “Hijacking Public Discourse.”

Muslim populations⁹⁹ and is considered an attack on the identity of the Muslim community, which adds to feelings of alienation.¹⁰⁰ Therefore, the inclusion of religious motives may be “misunderstood as targeting the entire group who wish to advance the religious cause of Islam,”¹⁰¹ which is counterproductive.

These criticisms point to issues with the legality, proportionality, and necessity of this clause in achieving a legitimate aim. If a concept is so easily weaponized due to a lack of precision or clarity, it negates legality. If a clause undermines social cohesion and national security and contributes to more violent extremism, its proportionality and necessity also come into doubt.

Therefore, **it is recommended that religious causes should not be included in a motive requirement.**¹⁰² “The requirement to prove religious motive in terrorism offenses comes too close to pursuing a case against a religion.”¹⁰³ It is also arguably unnecessary, given that the objectives of groups such as al-Qaeda could also be described as political or ideological.¹⁰⁴

Removing “religious cause” does not downplay the role of religious texts in violent extremist contexts, nor does it prevent people from being able to discuss religious texts and how they are used in violent extremism contexts. But it does reduce the likelihood of law or policy being used to further misconceptions and create counterproductive outcomes. In the context of content moderation, the same test and considerations should apply. There are actors that spread demographic invasion theory about Muslims who thinly veil themselves as engaging in legitimate expression about “religiously motivated” terrorism and violent extremism. It is important that these veils are lifted and those actors properly investigated. Misconceptions and bias about Muslims and Islam among content reviewers and leadership must be actively resisted. Not highlighting religion within terrorism or violent extremism definitions is a clear way to do that. Platforms don’t refer to white supremacy as “patriotically motivated violent extremism” because it would be giving undue credence to their self-proclaimed values. The same logic and approach should apply across the board.

Other Concerns with the Motive Requirement

Other segments of the community can be negatively affected by an overemphasis on motive rather than retaining a focus on the other elements of the crime.¹⁰⁵ Opponents to the inclusion of

99 Hardy, “Hijacking Public Discourse.” See also Victoria State Government, Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers Report 2, 2017.

100 Victoria State Government, Expert Panel on Terrorism.

101 C. J. Gerard Brennan, “Liberty’s threat from executive power,” Sydney Morning Herald, July 6, 2007, <https://www.smh.com.au/national/liberty-s-threat-from-executive-power-20070706-gdqjxj.html>.

102 For further discussion, see Rita Jabri Markwell, “Religion as a Motive: Does Australian law serve justice?,” Forum, forthcoming.

103 Australia Government Independent National Security Legislation Monitor, “Declassified Annual Report,” December 20, 2021.

104 Hardy, “Hijacking Public Discourse.” See also Mark Sedgwick, “Al-Qaeda and the Nature of Religious Terrorism,” Terrorism and Political Violence 16, no. 4 (2004): 795–814, <https://doi.org/10.1080/09546550590906098>.

105 For example, autistic people have been historically overrepresented in Prevent program referrals in the UK; see Jamie Grierson, “‘Staggeringly high’ number of autistic people on UK Prevent scheme,” The Guardian, July 7, 2021, <https://www.theguardian.com/uk-news/2021/jul/07/staggeringly-high-number-of-people-with-autism-on-uk-prevent-scheme>.

motivation in a definition of terrorism also raise pragmatic concerns such as evidentiary difficulties. Terrorism offenses do not sit easily within existing criminal law frameworks, the focus being on why the conduct was carried out (motive) and at who it was aimed (target).¹⁰⁶ The problem is that it can be difficult to determine what the particular purpose of a terrorist act was and why it was carried out. This can make prosecutions difficult. This will also be an issue for tech companies in developing content moderation practices in response to terrorist content online. In relation to the Australian definition, the difficulty identifying the perpetrator's motive was evident following the [Lindt Café Siege](#) in Sydney, which was generally accepted as a terrorist attack. The State Coroner of New South Wales concluded that,

Even with the benefit of expert evidence, it remains unclear whether Monis was motivated by IS to prosecute its bloodthirsty agenda or whether he used that organization's fearsome reputation to bolster his impact. Either way, he adopted extreme violence with a view to influencing government action and/or public opinion concerning Australia's involvement in armed conflict in the Middle east. That clearly brings his crimes within the accepted definition of terrorism.¹⁰⁷

However, without proof of the perpetrator's motivations, it is difficult to conclude that this attack meets the requirements of Australia's statutory definition of terrorism.¹⁰⁸ For this reason, the expert panel recommended removing the motive element and strengthening the intention requirement to include an intent to provoke or create a state of terror. Even prior to this, based on both principled and pragmatic concerns, Australia's Independent National Security Legislation Monitor had recommended removing the motive requirement from the definition in his 2012 Report.¹⁰⁹

The inclusion of the requirement of motive was an anomaly in this study and only included in five of the definitions of terrorism. Therefore, it is not recommended for inclusion in the interests of moving towards greater interoperability and identifying a common understanding. This is not to say that there is not a role for assessing the motivations in the broader analysis of the context of certain actions or material. This can be useful in "illuminating particular aspects of the phenomena of terrorism and of terrorists."¹¹⁰ However, based on this study it would not be deemed to be a necessary component of a legal definition of terrorism. If the intention requirement is drafted with clarity and included in a definition of terrorism, these purposes are "inherently political or broadly social phenomena."¹¹¹ In other words, if the definition of terrorism conveys the intention to intimidate the target of a wider audience, it is doubtful whether it needs to go on to expressly include reference to motivations.

106 Bernadette McSherry, "Terrorism Offenses in the Criminal code: Broadening the Boundaries of Australian Criminal Laws," UNSW Law Journal 27, no. 2 (2004): 354–372.

107 State Coroner of New South Wales, "Inquest into the Deaths Arising from the Lindt Café Siege: Findings and Recommendations," May 2017.

108 Victoria State Government, "Expert Panel on Terrorism."

109 Australia Government, "Declassified Annual Report," Recommendation VI/1, December 20, 2012.

110 Additional Progress Report Prepared by Ms. Kalliopi K. Koufa, Special Rapporteur on Terrorism and Human Rights, Sub-Commission on the Promotion and the Protection of Human Rights, E/CN.4/Sub.2/2003/WP.1 13, August 8, 2003.

111 Australia Government, "Declassified Annual Report."

Existence of Exceptions

A general behavioral approach to defining terrorism also presents the danger of encompassing conduct which is not truly terrorist in nature. This shows the importance of ensuring that such conduct is excluded from a definition of terrorism.¹¹² The existence of express exclusions on the face of the definitions is arguably anomalous.¹¹³ However, the existence of exceptions is not in itself anomalous in the context of applicable human rights standards and sources of international law such as IHL. Only the Australian definition excludes protest, advocacy, dissent, and industrial action. Without such an exemption, if a political protest became violent, this would arguably fall within the definition of terrorism. At national level, such as in the U.S., strong constitutional protection is given to the right to freedom of speech under the First Amendment of the Bill of Rights. Arguably, this would ensure that definitions of terrorism would not be applied to protest. However, such overriding constitutional protection of the freedom of speech does not exist globally and would not apply to all tech companies countering terrorist content on their platforms. It is difficult for companies to differentiate between TVEC and protest and dissent. This is evident in the case of Kurdish activists in Turkey advocating for an independent Kurdistan. One group—the Kurdish Workers' Party (PKK)—is designated as a terrorist group by governments. However, Kurdish activists have previously alleged that Meta removed posts in breach of its community guidelines, where individuals were engaging in mere legitimate dissent.¹¹⁴ Therefore, **it is recommended that definitions of terrorism should expressly exclude protest, dissent, and industrial action**, and that the existence of an exemption is a harmful area of divergence identified in this study.

The second (perhaps more controversial) exception to consider is that of terrorism in a just cause. If a definition of terrorism applies to actions committed anywhere in the world against any government, then liberation and resistance movements could fall within its scope. This is irrespective of how oppressive or undemocratic the government is. The difficulties in such an exception are encapsulated by the phrase, “one person’s terrorist is another’s freedom fighter,” and the view that “those who opt for terror always believe their cause is just.”¹¹⁵ One way to alleviate this issue is to limit the definition to violence against non-state actors, which is Meta’s approach.¹¹⁶ In addition, some of the definitions expressly exclude activities carried out during armed conflict as determined under international humanitarian law.¹¹⁷

While the inclusion of such an exemption would not eliminate all situations where the actions of liberation or resistance movements operating in a non-international armed conflict could be classified

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112 Golder and Williams, “What is ‘Terrorism?’”

113 Eight of the definitions included express exemptions; of these only Australia includes an exception for protest, etc.

114 Abdul Rahman Al Jaloud et al., “Caught in the Net: The Impact of ‘Extremist’ Speech Regulations on Human Rights Content,” Electronic Frontier Foundation, May 2019, <https://www.eff.org/wp/caught-net-impact-extremist-speech-regulations-human-rights-content>.

115 George Fletcher, “The indefinable concept of terrorism,” *Journal of International Criminal Justice* 4 (2006): 894–911.

116 Note that Twitter also takes this approach in its definition of violent extremism. See also Chris Meserole and Daniel Byman, “Terrorism Definitions and Designation Lists: What Technology Companies Need to Know,” Global Research Network on Terrorism and Technology: Paper No. 7, 2019.

117 See further Thomas Van Poecke, Frank Verbruggen, and Ward Yperman, “Terrorist offenses and international humanitarian law: The armed conflict exclusion clause,” *International Review of the Red Cross* 103, (2021): 295–324, <https://doi.org/10.1017/S1816383121000321>.

as terrorist, an exclusion clause can assist in regulating the relationship between counterterrorism law and international humanitarian law.¹¹⁸ Otherwise, in conjunction with broad general definitions, the consequence could be that a definition of terrorism could “criminalize certain activities carried out overseas that constitute lawful hostilities under international law.”¹¹⁹ U.K. case law offers a useful illustration of the difficulty.¹²⁰ This resulted in a conviction for a terrorist-related offense for an individual posting videos on YouTube showing attacks on coalition forces in Iraq and Afghanistan.¹²¹

The lack of an exception, and not limiting definitions of terrorism to violence against non-state actors, could have “significant repercussions for activists living in oppressive regimes.”¹²² This is an important consideration in the context of moderating terrorist content online, particularly given the increasing role of social media in contemporary activism.¹²³ In Egypt, research has shown that social media helped activists coordinate their “collective, offline actions” during the Egyptian revolution that led to overthrowing the Mubarak regime.¹²⁴ With companies facing heavy penalties, increasing government pressure to remove TVEC¹²⁵ can lead to an adverse impact on “collective action efforts”¹²⁶ and risks over censorship, as tech companies may err on the side of caution (which increases the potential for mistaken classification). This can lead to the deletion of important information such as evidence of human rights violations or war crimes.¹²⁷ This was illustrated by YouTube’s removal of thousands of videos documenting the civil war in Syria after it introduced new technology designed to “identify violent content that may be extremist propaganda or disturbing to viewers” in breach of the company’s community guidelines.¹²⁸ In addition, Meta came under criticism for the removal of images documenting ethnic cleansing in Myanmar.¹²⁹ These difficulties persist, and in response to the Russian invasion of Ukraine, a joint civil society letter was sent to Google, Meta, Telegram, Tik Tok, and Twitter calling on companies to improve content moderation practices in crisis situations, which included

118 Van Poecke, Verbruggen, and Yperman, “Terrorist offenses.”

119 Independent Reviewer of Terrorism Legislation, “The Terrorism Acts in 2011,” June, 2012.

120 While the UK’s statutory definition of terrorism is outside the scope of this study, the definition lacks an express exemption.

121 *R v Gul* [2013] UKSC 64. For further discussion see Alan Green, “The Quest for a Satisfactory Definition of Terrorism: *R v Gul*,” *Modern Law Review* 77, no. 5 (2014): 780–807, <https://doi.org/10.1111/1468-2230.12090>.

122 Macdonald, Correia, and Watkin, “Regulating Terrorist Content.”

123 Macdonald, Correia, and Watkin, “Regulating Terrorist Content.”

124 Kara Alaimo, “How the Facebook Arabic Page ‘We Are All Khaled Said’ Helped Promote the Egyptian Revolution,” *Social Media + Society*, (July 2015): 1–10, <https://doi.org/10.1177%2F2056305115604854>. See also Paulo Gerbaudo, *Tweets and the Streets: Social Media and Contemporary Activism* (London: Pluto Press, 2012).

125 Tech Against Terrorism, “The Online Regulation Series: The Handbook,” July 2021, <https://www.techagainstterrorism.org/wp-content/uploads/2021/07/Tech-Against-Terrorism-%E2%80%93-The-Online-Regulation-Series-%E2%80%93-The-Handbook-2021.pdf>.

126 William Lafi Youmans and Jillian C. York, “Social media and the activist toolkit: User agreements, corporate interests, and the information infrastructure of modern social movements,” *Journal of Communication* 62, no. 2 (April 2021): 315–329, <https://doi.org/10.1111/j.1460-2466.2012.01636.x>.

127 Svea Windwehr and Jillian C. York, “The Invisible Content Cartel that Undermines the Freedom of Expression Online,” *VOX-Pol Blog*, November 4, 2020, <https://www.voxpol.eu/one-database-to-rule-them-all/>.

128 Avi Asher-Schapiro, “YouTube and Facebook are Removing Evidence of Atrocities, Jeopardizing Cases Against War Criminals,” *The Intercept*, November 2, 2017, <https://theintercept.com/2017/11/02/war-crimes-youtube-Meta-syria-rohingya/>.

129 “Facebook bans Rohingya group’s posts as minority faces ‘ethnic cleansing,’” *The Guardian*, September 20, 2017, <https://www.theguardian.com/technology/2017/sep/20/Meta-rohingya-muslims-myanmar>.

providing clarity about how TVEC is defined.¹³⁰

There are circumstances when designations of terrorism might not be the most appropriate or effective way of approaching the problem—where groups are involved in armed conflict and their activities are confined to that armed conflict. Under these circumstances, the targeting of civilians through terror should be condemned as violations of the Law of Armed Conflict and the Geneva Conventions. If there is a lawful basis for violence, describing those individuals or groups as terrorists compromises democratic resolution by distorting public discourse. For tech companies, having an exemption for armed conflict means that material breaching the law would be properly classified as war crime material but not terrorist in nature.

Consequently, it is recommended that definitions of terrorism expressly exclude activities carried out during armed conflict as determined under international humanitarian law. It would also be beneficial to limit definitions to violence carried out by non-state actors.

Final Thoughts and Next Steps

This paper argues that tech companies should define terrorism and not rely on list-based approaches. There is an advantage for GIFCT member companies to move towards greater interoperability. However, in seeking a common understanding it is important to avoid arriving at the lowest common denominator in a definition that is not compliant with human rights standards. Definitions should comply with the principle of legality in that they are clear and unambiguous and do not allow for counterterrorism measures to extend beyond their intended scope. This in turn will assist in ensuring that measures taken to combat terrorist content online are necessary and proportionate.

This paper has identified a minimum degree of coherence in the core requirements/standard features of a definition of terrorism. An act of terrorism involves an act of violence, carried out intentionally, with the purpose of impacting a specified target which includes members of the general population. However, it has identified many inconsistencies within these core requirements which are problematic, as actions and content can be classified as terrorist in one jurisdiction or on one platform but not another.

With this in mind, this paper recommends minimum standards in the core requirements of a definition of terrorism. Acts of violence should constitute pre-existing criminal sssssss, either enacted for the purpose of compliance with an existing treaty against terrorism or identified as a serious crime in national law. The range and level of harm caused by the act should be restricted to those that cause death/endanger life, cause serious bodily injury, or involve hostage-taking or kidnapping. The purpose of the act is to impact a target being a wider audience beyond the immediate victims, including the population, the government, or an international organization. Proof of intention is necessary, and definitions should take a cumulative approach to intention, including a general intentional primary act (of violence) and a specific intention to accomplish the purpose of impacting the target. The specific

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 130 Dia Kayyali, "Mnemonic Joins Open Letter Calling on Social Media Platforms to Improve Practices Globally," Mnemonic (Blog), April 22, 2022, <https://mnemonic.org/en/content-moderation/Mnemonic-open-letter-social-media-platforms>.

intention should be qualified as to intimidate, coerce, or compel.

It is recognized that general definitions of terrorism present the danger of applying to conduct that does not constitute a terrorist act. While applicable human rights standards can act as a safeguard to a certain degree, it is not the case that the same standard of rights protection applies across jurisdictions and to tech companies. Therefore, it is recommended that definitions include express exemptions such as protest, industrial action, advocacy, and dissent, and exclude activities carried out during armed conflict as determined under international humanitarian law. Moreover, to avoid the application of TVEC moderation policies to individuals in oppressive regimes, it would be beneficial to limit definitions to violence against non-state actors.

Table 2: Minimum Standards in the Core Requirements of a Definition of Terrorism

Minimum Standards in the Core Requirements of a Definition of Terrorism	
Act of violence	Constituting pre-existing criminal offenses, enacted: 1. for the purpose of compliance with existing treaty against terrorism; or 2. a serious crime in national law
Indicating the level of harm resulting from the act	Cause death, endanger life, cause serious bodily injury, or involve hostage-taking or kidnapping
Target (wider audience)	Population, government, international organization
Psychological impact on target	Intimidate, coerce, or compel
Proof of intention is necessary	Cumulative approach: general intention to carry out the act of violence and a specific intention to accomplish the purpose of the psychological impact on the target
Expressly exclude	Protest, industrial action, advocacy, and dissent
Expressly exclude	Activities carried out during armed conflict as determined under international humanitarian law

The inclusion of a motive requirement generally was identified as an anomaly or outlier in the definitions included in this study, and it is recommended in the interests of moving toward greater interoperability and identifying a common understanding that definitions of terrorism should not include a religious motive.

A query was raised during deliberations on this paper about the purpose of violent extremism as a label and category for platforms—specifically (1) whether the label encouraged the explanation of rights-impacting measures beyond what is envisaged by lawmakers and (2) whether more precise labels that have a clear basis in law were preferable (for example, incitement of violence or publication of violent material). Further research into the purpose and value of tech companies defining violent extremism is recommended. It would be useful if transparency reports included data

illustrating how much content is removed as being violent extremism but not terrorist in nature and the procedures that lead to such a decision. It follows that it would be useful if tech companies more clearly and precisely define some of the related terminology used in their terms of service such as harmful, offensive, and violent. This would help to ensure that content related to violent extremism is suitably captured by content moderation policies.

The scope of this study has been to examine the interoperability of definitions of terrorism/terrorist acts. This is only a starting point and as next steps a further area of timely research would be to examine definitions of terrorist content with the view to identifying clear and workable definitions for tech companies. Particular attention should be directed to the difficult question of how to determine the intention of the user posting particular types of TVEC,¹³¹ as the scope has been limited to the intention of an individual committing a terrorist act. The circumstances in which online posts about a terrorist act are a separate area of inquiry.

Recommendations

- Tech companies should clearly define terrorism and not rely solely on list-based approaches. It follows that there is an advantage for tech companies in moving towards greater interoperability with respect to definitions of terrorism.
- There are minimum standards identified in this paper that should be included within the core requirements/standard features of a definition of terrorism.
- Definitions should expressly exclude protest, industrial action, advocacy, dissent, and activities carried out during armed conflict as determined under international humanitarian law.
- Religious motives should not be included in definitions of terrorism. A general motive requirement is not recommended in the interest of moving towards greater interoperability.
- Further research is needed into the value of companies defining violent extremism. This would include transparency in outcomes and procedures of TVEC removed as being violent extremist but not terrorist.
- Further research is needed to identify clear and workable definitions of terrorist content. Particular attention needs to be given to the issue of establishing the intent of a user.

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 131 On this issue in the context of the U.K.'s Draft Online Safety Bill, see Independent Reviewer of Terrorism Legislation, "Missing Pieces: A Note on Terrorism Legislation in the Online Safety Bill," April 20, 2022, <https://terrorismlegislationreviewer.independent.gov.uk/missing-pieces-terrorism-legislation-and-the-online-safety-bill/>.

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Appendix 1

Definitions of Terrorism

International Instruments

[International Convention for the Suppression of the Financing of Terrorism](#), opened for signature on 9 December 1999, No. 38349 (entered into force 10 April 2002)

[International Convention for the Suppression of Acts of Nuclear Terrorism](#), opened for signature on 13 April 2005, No. 44004 (entered into force 7 July 2007)

Nuclear Terrorism Convention

[UN GA Res 49/60](#) (9 December 1994)

UN GA Res 49/60

[UN SC Res 1566 \(2004\)](#).

UN SC Res 1566

Regional Instruments

[Directive \(EU\) 2017/541](#) of the European Parliament and of the Council of 15 March 2017 on combating terrorism

EU Directive

Organization of Islamic Cooperation, [Convention on Combating International Terrorism](#), Annex to Resolution No: 59/26-P (1 July 1999)

OIC Convention

Organization of African Unity, [Convention on the Prevention and Combating of Terrorism](#), open for signature on 1 July 1999 (entered into force 6 December 2002)

OAU Convention

Shanghai Cooperation Organization, Shanghai [Convention on Combating Terrorism, Separatism and Extremism](#), opened for signature 15 June 2001 (entered into force 29 March 2003).

Shanghai Convention

League of Arab States, [The Arab Convention for the Suppression of Terrorism](#), opened for signature 22 April 1998 (entered into force 7 May 1999)

Arab Convention

Domestic Legislation

Australia, [Section 100.1 of the Criminal Code](#).

U.S., [Title 18 United States Code § 2331\(l\)](#)

U.S. (18 USC 2331(l))

U.S., [Title 18 United States Code § 2332b\(g\)\(5\)](#)

U.S. (18 USC 2332b(g)(5))

U.S., [Title 22 United States Code § 2656f](#)

U.S. (22 USC 2656f)

U.S., [Title 31 Code of Federal Regulations § 594](#)

U.S. (31 CFR 594)

France, [Article 421-I \(Code Penal\)](#) (Amended by LAW n° 2016-819 of June 21, 2016 – art. 1)

Indonesia, Act 5, 2018 Ch1 P2.

Tech Companies

- [Meta](#)
- [Twitter](#)
- [YouTube](#)
- [Microsoft](#)

Special Rapporteur

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Ten areas of best practice in countering terrorism” (A/HRC/16/51, 22 December 2010).

Definitions of Violent Extremism

Regional

Shanghai Cooperation Organization, [Shanghai Convention on Combating Terrorism, Separatism and Extremism](#), opened for signature 15 June 2001 (entered into force 29 March 2003).

Shanghai Convention

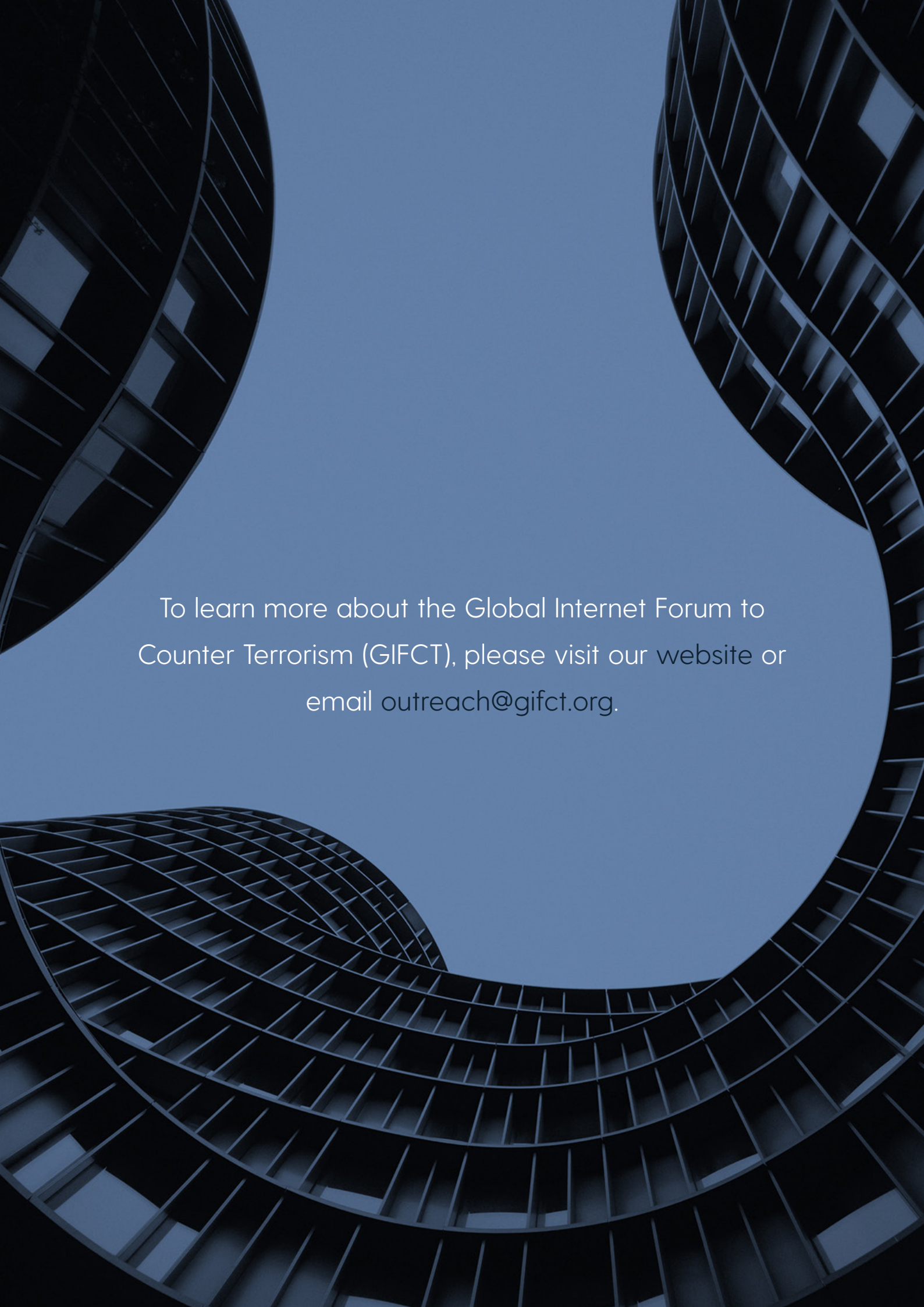
National

Australia

- Australian Government Department of Foreign Affairs and Trade, "[Developing Approaches to Countering Violent Extremism](#)."
- Australian Government Department of Home Affairs, "[Countering Violent Extremism](#)."

U.S.

- [Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States](#).
- Government Accountability Office report, "[Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts](#)"



To learn more about the Global Internet Forum to
Counter Terrorism (GIFCT), please visit our website or
email outreach@gifct.org.