Is the global counter-terrorism agenda shrinking civic space?

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FUNDERS INITIATIVE FOR CIVIL SOCIETY

Source: Krasovski Dmitri | Man jumps over obstacle, via Shutterstock

About the Funders Initiative for Civil Society (FICS)

FICS' vision is a world in which people – both collectively and as individuals – have the power to hold their leaders accountable and shape their government, economy, and society towards justice, equality and fairness for all. In order to achieve that goal, FICS defends and expands civic space – the physical, digital, and legal conditions through which progressive movements and their allies organise, participate, and create change.

FICS forecasts the trends affecting civic space and works with others to identify opportunities to disrupt these. It hosts new civic space initiatives which enable multiple donors to support this work collaboratively, and offers grants alongside field-building and technical assistance to civil society actors across progressive social movements.

Acknowledgements

Contents

Foreword

by Poonam Joshi, FICS Director

The Funders Initiative for Civil Society (FICS) commissioned this paper in order to get a better understanding of the links between the global counter-terrorism agenda and the unprecedented attacks on civic space in recent years – unabating attacks on freedom of expression, freedom of association, and freedom of assembly by governments on every continent. In 2019 the UN Special Rapporteur on protecting human rights while countering terrorism, Fionnuala Ní Aoláin, reported that two thirds of the mandate's communications relate to counter-terrorism procedures being used against civil society groups, and referred to the "hard-wiring of misuse into counter-terrorism measures" . We saw then how urgently needed a mapping of the key sites of international counter-terrorism governance and policy-making was.

We worked with a team of international experts on the impact of counter-terrorism and national security on human rights to map all the United Nations agencies and transnational bodies with policy-making power and influence in this area. We wanted to pin down who now holds power over the determining of counter-terrorism measures, to whom are they accountable, and how civil society can regain some influence when it has clearly been excluded. We were genuinely shocked however at what we have uncovered - the sheer expanse of more than 200 agencies with security and terrorism-related mandates and very questionable accountability mechanisms, which include: new and old UN bodies; transnational networks, intergovernmental bodies and regional organisations; private companies, industry and trade associations, and lobby groups; informal taskforces, special programmes and 'multi-stakeholder initiatives'; NGOs, think-tanks and academic institutions (often funded to evidence a policy direction). The large majority of these, and the connections between them, are opaque. And, there is an almost total absence of civil society representatives as they proceed in the ongoing negotiation and reproduction of what are radical new norms for the conduct of counterterrorism.
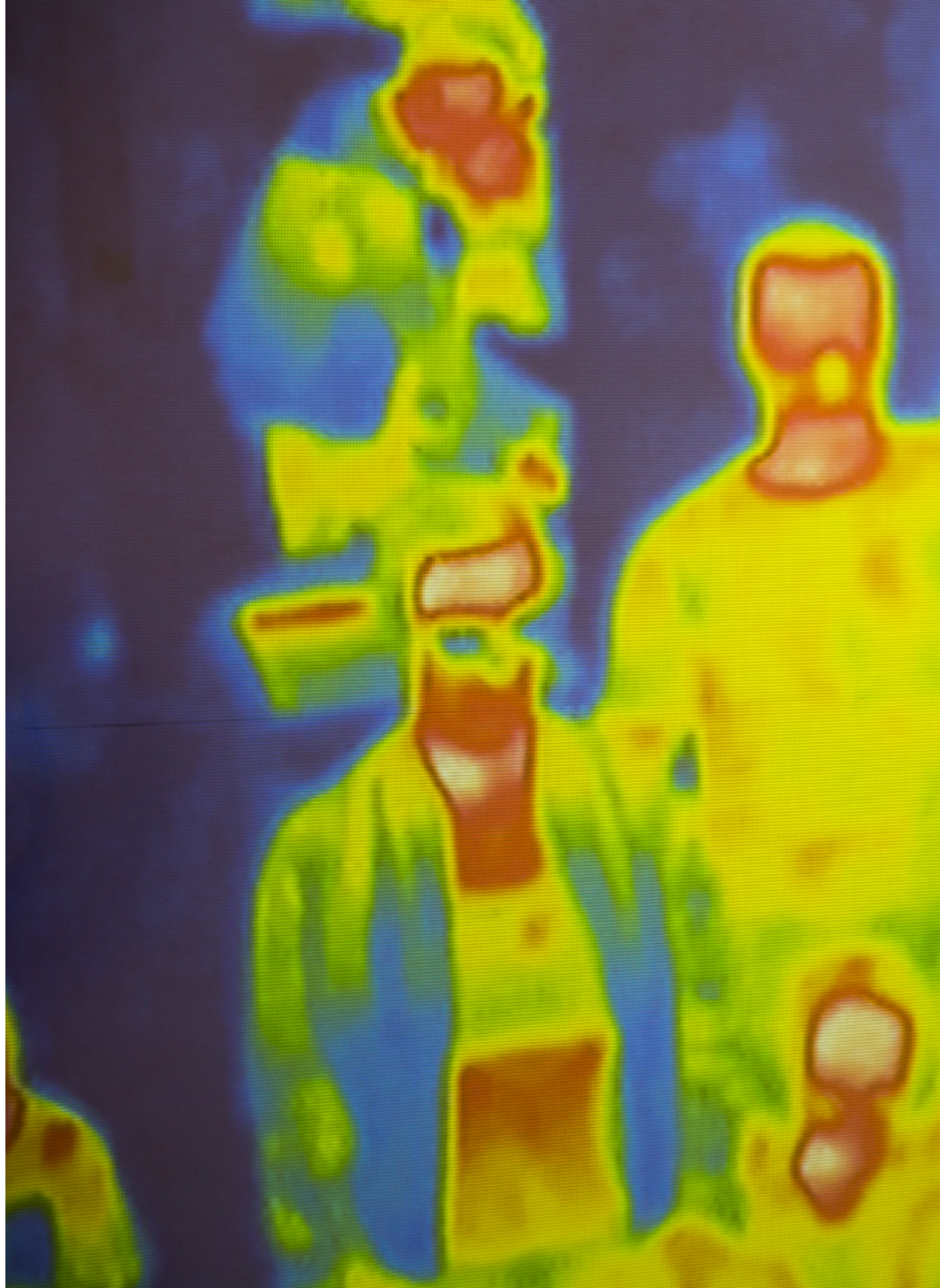
Source: Angyalosi Beata | Group of people under thermal imaging camera, via Shutterstock

Reflecting on these findings, we set out in this report some analysis of the structural causes and drivers of this proliferation. The response to the 9/11 terror attacks began a new era in international law-making, with the UN Security Council at its helm, and in particular an 'international (never ending) state of emergency' narrative as its fuel.

The lack of clear definition of terrorism or violent extremism is significantly enabling states to abuse these measures, and when this is combined with the gearing of law, policy and 'on the ground' policing practices toward pre-empting terrorism/extremism, it grants a 'blank cheque' to smear and pursue government opponents using a security justification.

Governments and the sprawling counter-terrorism mandated agencies have quickly seized on new technologies to make surveillance and the collection of vast amounts of personal data, including biometric data, an assumed permissible practice, within and across borders. States, powerful economic actors and the proliferating agencies are also operating with an unacceptable level of informality and lack of transparency and accountability, which is contributing to the exclusion of civil society and far-reaching impacts on human rights including civic freedoms.

Many have observed that human rights has been effectively relegated to just one possible approach or perspective among many, despite being a pillar of the UN Charter.

The downstream impact on civic space of the norms being set by the transnational security architecture includes the criminalising of activists, protestors and journalists under the guise of security; severe restrictions on civil society's access to funding; and the routine harassment, smearing and surveillance of civil society groups, with protest restricted and many subject to travel bans and other restrictions on their movement. Governments are clearly deploying this useful "security playbook" of laws, technology and security narratives against their opponents, leading to a huge erosion of human rights protections and the rule of law by stealth.

The power and hubris of the international counter-terrorism agenda can feel unstoppable. Over the last two years we have seen it reframe the Covid pandemic as a threat to security requiring a toolbox of emergency powers and surveillance technologies rather than tried and tested rights-based approaches to public health. Security agencies and governments are already describing the climate emergency as a security issue and threat multiplier. But reform is possible.

Civil society groups from around the world have run an effective and co-ordinated campaign to expose and push back the enormous harm wrought by the FATF terrorism financing regulations.

In Summer 2021, after being excluded from UN level policy-making on counter-terrorism for almost two decades, civil society groups insisted on a place at the table and secured some progress on recognition of human rights impacts during the annual review of the UN Global Counter-Terrorism Strategy.

Key UN Special Rapporteurs are documenting human rights and civic space harms (at time of writing, Mary Lawlor has just made high level criticism of the widespread hacking of human rights defenders' phones, and Fionnuala Ní Aoláin has landed a stinging critique of the counter-terrorism Watchlisting Toolkit pushed by unaccountable forums and endorsed by the UN Office of Counter-Terrorism). And while last year's Pegasus hacking revelations contain truly frightening detail of the scale of surveillance of every kind of state critic, they are also a formidable example of the power of public interest journalism, the skill and commitment of determined investigators, and the power of technology to hold to account as well as to persecute.

FICS exists to track the trends affecting civic space and motivate the funding community to shift resources to those best placed to challenge the attacks. No one funder or NGO can tackle this alone, but the counter-terrorism agenda has so seriously damaged our civic space 'engine room' that we have perilously little time to restore basic rights and freedoms in civic space, and we must collaborate to do so – activists on the frontline experiencing the way this is playing out, advocates at national and international levels with a bird's eye view across territories, and the funding community.

We need to fortify ourselves to tackle the infrastructure of counterterrorism, not just its outputs. FICS' next piece of research will identify the bodies most implicated in restrictions on civic space, which we hope will support strategizing and collaboration between all those of us who need to work together.

FICS has launched a Global Initiative on Civic Space and Security with founding partner The Fund for Global Human Rights, which is bringing together those enduring rights violations, policy and advocacy experts, and funders, and we invite all who think they may be able to add value to this collaboration to get in touch.

As well as tracking and spotlighting the harms, we aim to bring people together and give them the space and the resources to develop a transformative agenda. While we are caught in the nightmare loop of pre-emptive security-justifies-anything arguments, we must develop the alternative vision of communities built on trust and care, reliable rule of law, equality and fairness.

Philanthropy needs to step up its ambition and be willing to take risks given the scale of the task ahead. Let us aim to make this decade the one we will look back on as when we grasped and restored expansive civic space, humanity's most precious creative asset.

1. https://www.ohchr.org/EN/Issues/Terrorism/Pages/FionnualaNiAolain.aspx
2. https://fatfplatform.org/
3. https://www.saferworld.org.uk/resources/news-and-analysis/post/969-un-should-ensure-independent-oversight-of-un-counter-terrorism-architecture
4. https://srdefenders.org/information/more-reports-of-spyware-attacks-on-hrds/
5. https://www.justsecurity.org/79994/looks-are-deceiving-the-rebranding-and-perpetuation-of-counterterrorism-watchlisting-in-multilateral-spaces/

01

INTRODUCTION: ABOUT THIS PAPER

i. Overview

This summary report presents the interim findings of a research project supported by the Funders Initiative for Civil Society (FICS) that maps key sites of international counter-terrorism (CT), security governance and policy-making. The project seeks to provide a preliminary assessment of relevant actors, norms and processes and identify their potential impact on security policy and practice and, in turn, on human rights, fundamental freedoms and civic space.

The misuse and overbroad application of national counter-terrorism (CT) policies and practices is key to understanding the 'shrinking space' phenomenon affecting civil society organisations (CSOs) across the globe. Since the 9/11 attacks those policies and practices have increasingly been enabled and shaped by far-reaching transformations in international and transnational security governance. Security risks are often co-regulated by public and private actors through public-private partnerships and networks. Formal law-making mechanisms (traditional multilateral fora, state legislation and other 'hard-law' measures) and informal governance mechanisms (transnational policy networks, multi-stakeholder initiatives, standard-setting and other 'soft-law' measures) often work together to achieve

particular results and security objectives. Technical and financial assistance is available at scale in support of the implementation of these initiatives. While 9/11 was a major catalyst for the development and expansion of this institutional architecture, it continues to expand even as the specific terrorism challenges that justified its existence wane.

6. Rita Abrahamsen and Michael Williams. Security beyond the state: Private security in international politics (Cambridge UP, 2010)
7. Alejandro Rodiles, Coalitions of the Willing and International Law: The Interplay between Formality and Informality (Cambridge UP, 2018)

Source: Cris Da Silva | video surveillance camera, via Shutterstock

Pre-emptive security – that is, identifying and countering risks and threats in advance before they materialise – has been the focus of national, regional and international security strategies and practices since 9/11. The collection, analysis and exchange of data, and in particular personal data, has become a key component of international CT efforts. With increasing 'digitisation' and automation this trend will expand further in the years to come. These interplays – between international-national, public-private and informal-formal – and the dynamics of pre-emptive security are often overlooked in analyses of how CT and security measures are undermining human rights protections and constraining space for CSOs, both directly and indirectly:

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8. David Cole and Jules Lobel. Less safe, less free: Why America is losing the war on terror (New Press, 2007); Nathanael Tilahun Ali, Regulatory Counter-Terrorism: A Critical Appraisal of Proactive Global Governance (Routledge, 2018)

- Direct impacts include CSOs' access to financial services and curbs on the international mobility of groups and individuals, the overt and covert political policing of activism and religious expression, and the invocation of security threats to curtail protest.

- Indirect impacts include the exclusion of CSOs from key sites of decision-making and the framing of security policy debates in ways that obfuscate or marginalise civil society demands and perspectives. Among the key civic space problems in this respect is the lack of definitional certainty (e.g. in respect to terrorism, extremism, radicalisation etc.) which provides States with a wide margin of discretion to target civil society using laws designed for terrorism and other serious crimes.

This report argues that grappling with these broader dynamics is critical for effectively addressing these problems. To date, CSO responses to these cross-cutting issues have – with some notable exceptions (e.g. the FATF coalition) – been limited, piecemeal and defensive, with a focus on their downstream effects. This report aims to support stakeholders to be more offensive in targeting the underlying drivers of CT securitisation. Our objective is to stimulate strategic thinking among stakeholders about a long-term change agenda for CSOs to build power and reform CT and security governance.

This summary report is structured in four sections:

- First, we introduce the main objectives of the report and project and discuss the methodology used for the research (see below).

- Second, we briefly outline the initial findings of the mapping project, highlighting six thematic issue areas that warrant further critical attention and CSO engagement.

- Third, we analyse these findings, situating them in the context of broader shifts in international law and governance, and explain why these shifts matter for the CSO sector.

- We close by setting out draft recommendations for CSO engagement going forward and articulating questions for stakeholder discussion and debate during the workshop.

Source: Kosuke Kobayashi | Crosswlak, via Shutterstock

ii.Methodology

Initial research was commissioned by FICS and carried out by the counter terrorism and human rights experts from March-May 2020. Desk research sought to:

(a) compile an overview of sites of international security governance;
(b) assess the extent to which the work of those bodies may facilitate human rights violations or otherwise impact human rights protection in the context of 'closing space';
(c) benchmark those bodies against some basic standards in respect to transparency, accountability and democratic control of decision-making;
(d) indicate some tentative next steps for addressing the issues identified.

A database was established and initially populated with actors known to the team. A taxonomy was then created to help the team identify the diverse range of actors engaged in international security governance. It included: international organisations; international agencies/bodies; regional organisations; regional bodies; informal bodies (e.g. task forces, initiatives, programmes, platforms and other informal governance bodies); multi-stakeholder initiatives; NGO/NPOs; academic groups; think-tanks; industry/trade associations and lobby groups; and transgovernmental and transnational networks.

Further leads were then generated by examining publicly available information on the work of those bodies – for example, their partnerships and projects – and through targeted keyword searches in order to identify further bodies for database inclusion. Criteria for inclusion were set widely. Inclusion in the database was deemed justified if a body operated on a regional, international or global scale and was concerned with 'security' broadly speaking – that is, working on CT or security, law enforcement, migration, military or 'other' relevant policies. Involvement in security governance was either direct (e.g., as set out in its mission or objectives) or indirect (e.g., as a partner in a CT project or programme).

This expansive approach sought to establish as broad a base of information as possible, from which themes, regions and activities of greater interest could then be distilled. All empirical research was based on publicly-available information, for three reasons. First, as a short-term scoping project the aim was to gather as much information as possible to inform the subsequent analysis and gathering. Using publicly-available information is swifter than undertaking in-depth investigation, interviews or surveys.

Second, notwithstanding the specialised knowledge of the team, it was considered important to make use of only that information that would be available to a member of the general public taking an interest in these issues.

The availability of the information sought provides a useful, if crude, measure of the transparency surrounding the bodies of interest and their general 'legibility'.

Third, while more in-depth research would permit a more detailed and nuanced understanding of the work of these bodies, assessing them on the basis of their formal mission and objectives is the most suitable way of obtaining a broad, high-level overview.

02

KEY FINDINGS

i. The proliferation of agencies with counter-terrorism mandates ▬▬

The rapidly produced database compiled for this report contains around 250 separate entities categorised by type, themes of their work, and activities within those themes.

A significant number of these entities can be considered as falling within two or more 'types', resulting in the following distribution: (See data on the next page)

NGO (1)

Industry body (2)

Network (3)

Private company (3)

Academic group (4)

Lobby group (5)

Trade association (8)

Regional organisation (10)

International organisation (16)

Regional body (17)

Programme (17)

Intergovernmental body (20)

Multistakeholder initiative (27)

Transnational network (29)

UN body (32)

Think-tank (35)

Informal body (63)

Transgovernmental network (8)

Project (8)

NPO (19)
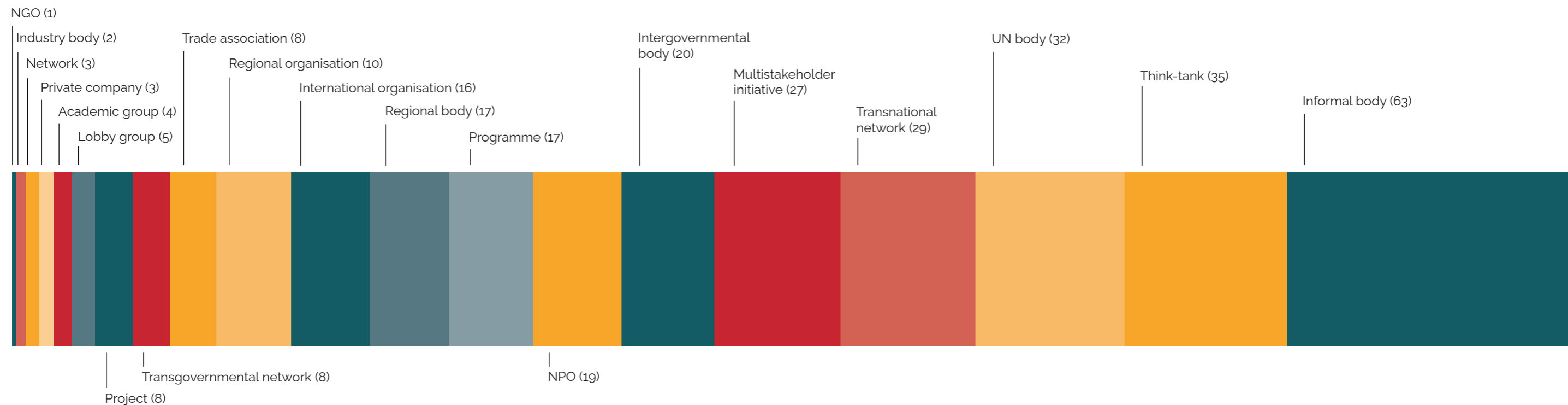
By theme, the database provides the following distribution:

- Security and counterterrorism (184)
- Law enforcement (99)
- Migration (44)
- Military (53)
- Cybersecurity (28)
- Other (50)
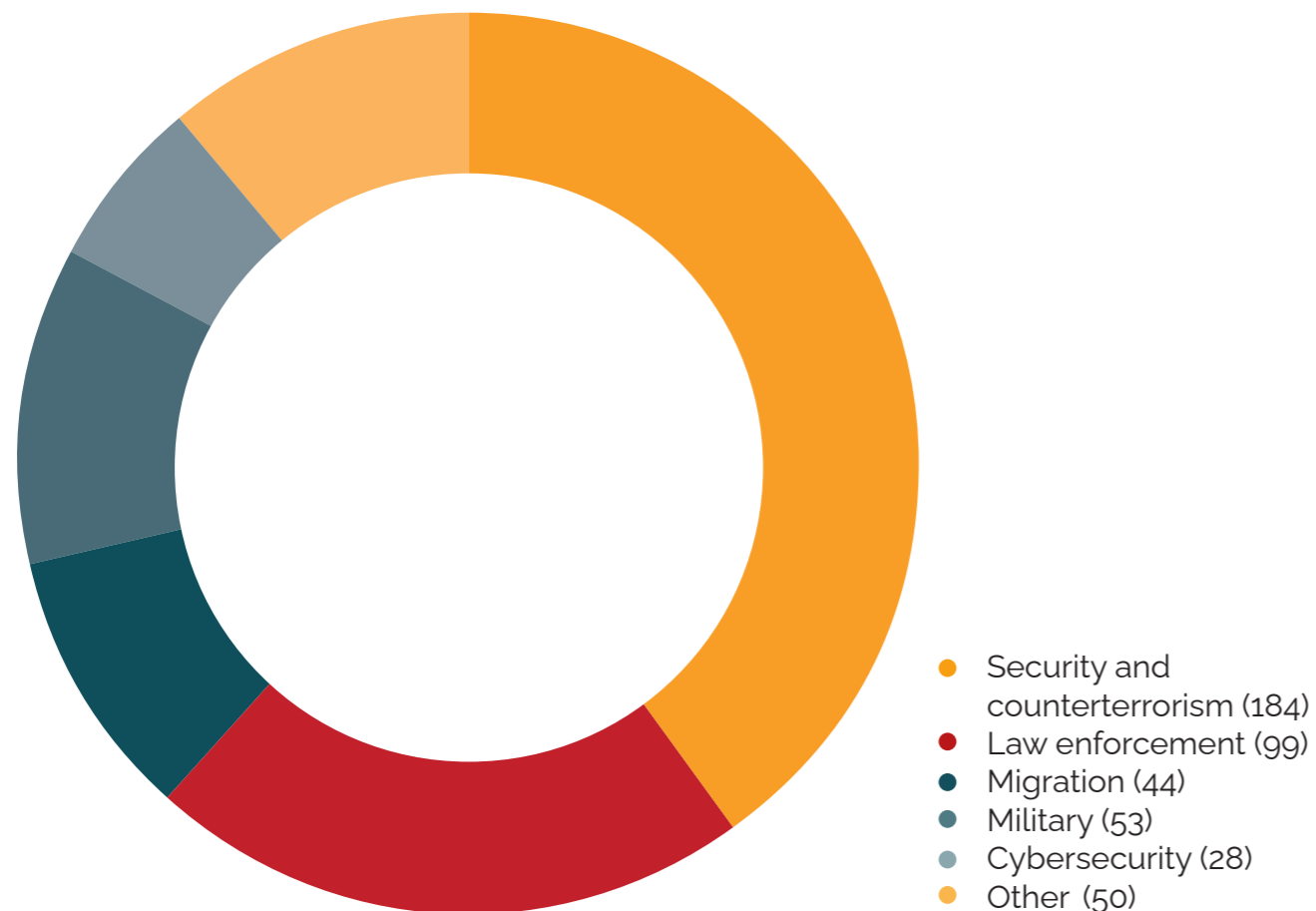
While the sheer number of entities identified surprised even the researchers, it should be highlighted in some key respects the database barely scratches the surface of bodies operating in this area. For example, there are scores, likely hundreds, of think-tanks operating in the security space, but our database only contains those we perceive to be better-known and influential.

We have also not at this time included the myriad of international security thinktanks which provide legitimacy, partnership, venues, expertise and advocacy for many of the transnational bodies we identified. There are no doubt hundreds more transnational projects or programmes, whether bilateral or multilateral, that we have not yet encountered in our research. Moreover, our research does not take into account massive bilateral direct funding on counter-terrorism and security

between states (e.g. China's transfer of security technology to states as part of the 'Belt and Road Initiative', US transfer of technology for surveillance and border control, etc.).

Finally, we have not highlighted all of the thematic issues that we 'catalogued' in the database to keep this briefing digestible.

Other noteworthy areas of transnational securitisation with downstream impacts on civic space include migration and border control (44 entities), cybersecurity (28 entities) and EU bodies with an 'external relations' or foreign security mandate.

9. https://thediplomat.com/2019/06/is-chinas-belt-and-road-initiative-undermining-human-rights/; https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/transfer-air-passenger-name-record-data-and-terrorist-finance-tracking-programme_en

ii. The counter-terrorism and Countering Violent Extremism nexus ____

The extent and impact on civic space of the UN counter-terrorism apparatus is perhaps the best-known transnational security edifice. Spawned by UN Security Council Resolutions on counterterrorism, the past two decades have seen a massive expansion in the number of specialised UN agencies, international organisations (IOs) and global governance bodies working to implement counter-terrorism (CT) norms through standard-setting, best practices, capacity building and the provision of technical and financial assistance to states.

These include: the UN Counter-terrorism Committee (CTC) and Counter-terrorism Executive Directorate (CTED), with powers delegated from UNSC; and the Office of Counter-terrorism (OCT), created by the UN General Assembly in 2017 but already one of the largest and most powerful entities within the UN system. Implementing global CT norms is now a core component of the work of many UN agencies (e.g. UNDP, UN Women, UNESCO) and other IOs (e.g., ICAO, Interpol) that previously had little to do with CT. Issues such as Countering Violent Extremism (CVE), sanctions and countering terrorist travel have transformed new domains into frontline sites for global CT governance (e.g. peacebuilding, development, humanitarian action). More and more issue areas and fields

of practice are becoming securitised as they are inexorably drawn in and reshaped by global CT norms issued by the UNSC and other international bodies.

The scale of the work carried out by the Office of Counter-Terrorism, in particular through the United Nations Counter-Terrorism Centre, is immense and its impact on human rights and civic space is not well-documented. Its work includes implementation of over 40 capacity-building programmes directed at more than 70 Member States. Based on self-reporting from the Secretary-General's report in 2019 OCT trained more than 2,500 people, conducted 19 expert meetings, 11 technical missions, 29 outreach events, 13 thematic regional events and 6 regional high-level conferences.

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10. For an overview, see: UN Doc. A/HRC/34/61, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (21 February 2017), 15 – 21; UN Doc. A/74/335, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (29 August 2019), 4 – 23.
11. Secretary-General's Report 2020. The majority of these regional conferences were also held in States traditionally hostile to both human rights and civil society e.g. Hungary, Tajikistan, Mongolia, Belarus, and the United Arab Emirates. Few independent civil society groups could participate in these conferences, and notably they gave a substantial platform to these governments to promote claims about terrorism that are antithetical to human rights protection (e.g. the view in Hungary that migrants and asylum seekers should be viewed as potential terrorist threats)

Within the global CT architecture, the globalisation of Countering Violent Extremism (CVE) policies is the most significant development in counter-terrorism policy in the last decade. What began as a rhetorical commitment from a handful of agencies has developed into a plethora of policies, deployed from Finland to the Philippines. At the UN level some 105 projects have been completed since 2016 (271 are currently being implemented and 87 are in the planning stages), by 20 United Nations entities, to support Member States in preventing and countering violent extremism conducive to terrorism.

Completed and ongoing projects include 101 global, 124 regional and 151 national projects that have directly benefitted 102 Member States. Surprisingly, UNESCO is the UN entity leading the largest number of projects in the realm of preventing and countering violent extremism. It is evident that the capacity to negatively affect human rights and civic space is substantial.

Outside of the UN framework a plethora of further transnational and regional bodies have dedicated CVE programmes of their own: the Global Counter-terrorism Task Force (GCTF), the Council of Europe, the Organisation for Security Cooperation in Europe, the G20, the African Union, the European Union, the Association of Southeast Asian Nations and initiatives like the Strong Cities Network. The GCTF in particular is shaping the global legal and policy space on 'extremism', and in turn national policy and practice. Regional bodies provide a bulwark against external criticism on human rights for groups of states, in order to support and reinforce certain key messages around security, terrorism and extremism, to the exclusion and detriment of human rights protection, rule of law and civil society.

12. Id., para 16 building on the Secretary-General's Plan of Action to Prevent Violent Extremism (A/70/674).
13. https://en.unesco.org/preventingviolentextremism

iii. Counter-terrorism justified travel watchlists ─────

Since the collapse of the caliphate in Syria and Iraq, identifying and controlling the movements of known and suspected foreign terrorist fighters (FTFs) has become an issue of global concern. The UNSC have adopted resolutions that introduce sweeping measures to stem the flow of people travelling to and from conflict zones to fight, train with or support terrorist groups. These measures also put in motion far-reaching global data infrastructure programs that require new forms of information exchange, public-private collaboration and data-driven governance to identify and control the cross-border movements of suspected terrorists, FTFs and 'risky' persons.

Airlines and the aviation industry are required to provide Advance Passenger Information (API) and Passenger Name Record (PNR) data to states for algorithmic analysis, while states themselves must "intensify and accelerate the exchange of operational information", including biometric data, across a range of different areas and formats. Watchlists and databases of known or suspected terrorists are to be built for screening all travellers. All this data should be shared between states and IOs and distributed amongst law enforcement, border security, customs, military and intelligence agencies in ways that are supposed to comply with human rights law, but in the absence of any binding global legal frameworks in crucial areas such as data protection.

Source: Jaromir Chalabala | Aerial view of airport, via Shutterstock

14. UNSCR 2178 (2014); UNSCR 2396 (2017)

This governance is being extended by the work of the informal counter-terrorism bodies such as the GCTF, who produce best practice guidelines to assist states and others to meet their security governance obligations, channel technical expertise to support technical capacity building across different areas and promote 'flexible partnerships' between public, private and civil society actors.

Their New York Memorandum of Good Practices on Terrorist Travel and Watchlisting Guidance Manual Initiative will effectively export the controversial US terrorism watchlisting system around the globe as best practice, whilst integrating the analysis of biometric, travel and other data.

This carries severe implications for CSOs, human rights NGOs and political activists, yet there has been no CSO engagement with this issue to date. 'Countering terrorist travel' is now a flagship program of the UN Office of Counter-terrorism that includes private sector bodies, states,

international organisations, industry lobby groups and informal global bodies – including the production of a UN Compendium of Best Practice on using biometrics in counterterrorism, in partnership with the industry led Biometrics Institute. Again, to date there has been little CSO/NGO engagement.

The FTF threat has catalysed swathes of other informal best practice initiatives and collaborative governance programs. Concerned by the clear threats that these UNSC measures pose for the protection of human rights, in 2018 the UN Office for the High Commissioner for Human Rights produced a guide for states with best practices on human-rights compliant responses to the FTF threat, with input from human rights experts. CTED, meanwhile, produced the Madrid Guiding Principles on Foreign Terrorist Fighters, consisting of 52 'practical tools' to help states stem the flow of FTFs.

These non-binding principles have been repeatedly endorsed by the

UNSC, bolstering their legitimacy and power as transnational norms. Again, there has been little engagement or input from CSO actors, despite the obvious risks and adverse consequences for human rights protection that these far-reaching security measures pose.

15. https://www.thegctf.org/LinkClick.aspx?fileticket=8cF0-KwDAGM%3d&portalid=1
16. https://www.thegctf.org/Initiatives/New-Watchlisting-Guidance-Manual
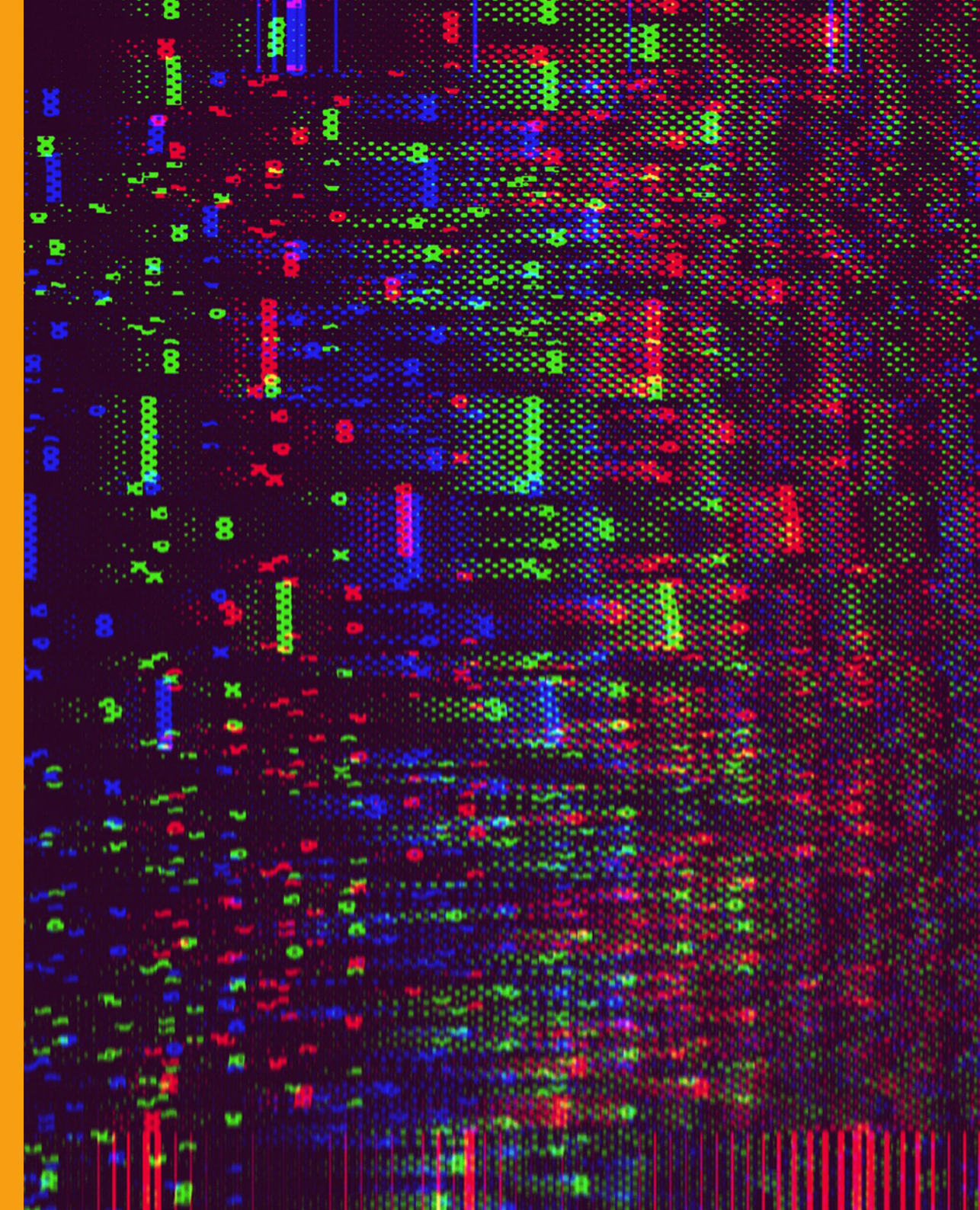17. https://www.un.org/cttravel/

iv. Countering terrorism and extremism online

The sophisticated use of the Internet by ISIL to recruit fighters from other countries to Syria and Iraq made terrorist use of the internet and online extremism an urgent issue of global security concern. Both states and international organisations, however, are limited in what they can do to prevent online extremism, because much of the internet's infrastructure and data is administered by the world's privately-owned internet platforms. To address this problem, online terrorism is now subject to novel transnational governance arrangements involving private platforms, states and IOs, using mostly private norms and regulatory techniques along with machine learning algorithms and other digital technologies to 'clean' the Internet.

In June 2017, for example, four of the world's largest tech companies – Microsoft, YouTube, Twitter and Facebook – launched the Global Internet Forum to Counter Terrorism (GIFCT). The GIFCT was set up by the tech industry as a voluntary self-regulation initiative to disrupt the promotion of extremist propaganda online. It also administers a program of knowledge-sharing and technical collaboration between larger and smaller platforms and formulates best-practices for transnational governance in this area. The EU has mirrored this activity, with its own informal 'Internet Forum'.

This private regulatory activity is taking place within a context where there is no internationally agreed definition of terrorism or extremism, but where algorithmic governance and other digital technologies are critical because of the immense scale of moderation required. 98% of the videos YouTube removes for violent extremism for example are detected by machine-learning algorithms. The way that algorithms associate scraps of data to infer 'terrorism' or 'extremism', however, remains opaque, presenting complex accountability and governance problems. Independent media, CSOs and self-determination campaigns are frequently caught in the algorithmic net.

Another crucial governance technology used by the GIFCT to regulate online terrorism and extremism is the Hash-Sharing Database. A hash is a unique digital 'fingerprint' of an image or video file. Because the same files have the same hash, these databases can quickly identify duplicates online and automate their removal. There are more than 200,000 unique hashes of 'known terrorist images and videos' in the GIFCT database. It was used by Facebook after the Christchurch terrorist attacks to remove 1.5 million online videos of the attacks within 24 hours.

Again, how offending content is classified, included, shared and removed from the database remains poorly understood. Because it removes all copies of flagged content across all platforms and jurisdictions in which the platforms operate, there is a clear risk that legitimate online expression may be indefinitely and globally deleted without any form of redress by being included in the hash-database.

The GIFCT is not the only transnational governance platform active in this space. In 2019, after the Christchurch attacks, France and New Zealand convened the Christchurch Call to Action Summit. The Call has rapidly grown since inception and currently includes 50 states, 8 leading online service providers (including Amazon, Facebook and Google), the Council of Europe, UNESCO, the European Commission and an Advisory Network of more than 40 civil society organisations.

As with the GIFCT, the Christchurch Call extends new forms of privatised governance on the Internet.

This transnational governance is enacting and reshaping rights (e.g., to freedom of expression) through the technical design choices and user agreements deployed by platforms to regulate online security. While many civil liberties and digital rights NGOs are concerned about the impacts on free expression and accountability for wrongly censored content, efforts to address the transnational apparatuses that now occupy this space have been piecemeal and disparate.

v. Biometrics and digital lD

Another crucial issue is the intersection of frameworks for the use of biometrics, legal and financial inclusion, which are combining to produce an unprecedented global drive for high-tech national ID systems that civil society advocates are concerned will be used for mass surveillance and the targeting of activists and minorities.

While extensive technical standards have been established and agreed upon to guide the development of digital and biometric ID, these systems are being rolled out without thorough consideration of the human rights impact of the technology and its possible uses, misuses and future applications, or a comprehensive and appropriate human rights framework in place to ensure protections for enrolled individuals.

The emerging global framework for identity management is centred on a set of interlinked solutions to problems identified and framed by the international community with the support of technology vendors and integrators. This includes UN Sustainable Development Goal (SDG) 16.9, which envisages the provision of formal legal identity to an estimated 1.1 to 2.4 billion people worldwide who lack such a status, along with numerous other SDGs with a "financial inclusion" target. Identity management is central in this context because global anti-money laundering and counter-financing of terrorism conventions (AML-CFT

rules) oblige financial institutions to 'Know Your Customer'. Biometric enrolment has proven an attractive means to provide financial services to the "unbanked" in compliance with AML-CFT requirements.

In turn, the digital identity and financial inclusion agendas are converging through partnerships and innovations that promise both. While social inclusion provides a new justification for new identity management initiatives at the international development level, immigration and border control remains a key driver for many states developing these systems. International Civil Aviation Organisation (ICAO) standards provide a common format for travel documents, including biometric passports, and the EU and USA have provided and continue to provide extensive technical and financial assistance to states establishing national ID systems linked to border control, "entry-exit" and asylum infrastructure – linking back, in turn, to the systems being introduced for 'countering terrorist travel' discussed above.

Humanitarian organisations have also implemented biometric ID systems in increasing numbers and locations. Led by the United Nations' Refugee Agency (UNHCR), World Food Programme (WFP) and International Organisation for Migration (IOM), which have pioneered the use of fingerprints and iris scans in their operations, these actors see biometrics as the most efficient way to distribute aid, reduce beneficiary duplication and fraud, enhance social and economic inclusion and facilitate travel.

A similar transformation is underway in the development sector, which is also innovating rapidly to enhance development effectiveness and accountability and address fraud and waste. Projects like the World Bank's 'ID for development' (#ID4DEV) are premised on the transformative potential of digital ID to facilitate longer-term "beneficiary-centric" programming.

States are offered support to establish interoperable biometric population registries, and to enhance the "digital social protection" capacity of development and humanitarian actors. The World Bank and European donors have made billions available to finance these kinds of initiatives alongside dedicated national programmes. Public-private partnerships such as ID2020 and ID4Africa have become highly influential and have the veneer of transnational formality by virtue of their relationships with UN bodies.

Source: Trismegist San | Face recognition and personal identification technologies, via Shutterstock

vi. The Sahel

Over the last decade the Sahel has become a site of massive geopolitical interest and a laboratory for informal international initiatives that, so far, have objectively failed to arrest the worsening crises in the region. Research for this project identified eight prominent initiatives in the region, although there are a myriad of other bilateral and multilateral development, security and governance initiatives ongoing.

Of these, two recently established informal frameworks are attempting to coordinate the numerous programmes, projects and policies, which has led to the establishment of two key informal frameworks: the Sahel Alliance and the International Coalition for the Sahel, both of which encompass a vast array of other actions. The French government has described the Sahel Alliance as a "mechanism for improving the coordination of partners," primarily European development agencies and international financial institutions, working on issues ranging from basic services to internal security. It was founded in July 2017, promising to channel over €9 billion in spending. More recently, the Alliance has been brought under the umbrella of the International Coalition, "a community of shared interests" that appears to be modelled on the Global Coalition Against Daesh. It was announced in January 2020 and held its first meeting, with more than 60 states present, in June.

The "four pillars" of the Coalition place a heavy emphasis on counterterrorism, internal security and military activities. This institutionalisation of informal initiatives raises important questions regarding democratic scrutiny, transparency and accountability. The partners of the Sahel Alliance are explicitly committed to experimenting with the provision of aid in order to increase private sector involvement, raising questions not just about the form of the Alliance, but its preferred type of political economy. Equally, with the members of the Coalition keen to continue bolstering the repressive functions of states that frequently demonstrate little interest in human rights and justice, including through the extended use of 'traditional' military operations, actions by special forces, increased border controls and renewed commitments to 'preventing violent extremism' by partners, both the procedures and the substance of the Coalition require closer examination.

Source: Alphorom | Women from agricultural cooperative. Tidjikja, Tagant, Mauritania via Shutterstock

While CSOs and think-tanks have questioned the legitimacy and impacts of the transnational security interventions in the Sahel, and highlighted the downstream impact of security measures on civic space, particularly CVE, there appears to have been little analysis and even less engagement with the myriad bodies that prevail over the decision-making, financing and programmatic priorities.

vii. 'Health security' and Covid-19

In the wake of the 9/11 attacks, a small group of states determined that concerted efforts were needed to address 'health security', going beyond the scope of World Health Organization (WHO) rules to address broader issues such as 'bioterrorism' and the proliferation of weapons of mass destruction. The resulting body, the Global Health Security Initiative (GHSI), aims to achieve substantive changes in national planning and procedures on a host of issues. However, it is unclear what it has concretely achieved and decision-making is largely by ministerial fiat. A more recent informal initiative, the Global Health Security Agenda (GHSA), has similar interests but a broader membership, encompassing non-profit organisations and a dedicated 'Private Sector Roundtable'. Both organisations have developed partnerships with policing, security and intelligence agencies and the GHSA's work programme explicitly calls for greater engagement with bodies in the "security, defence, law enforcement, development assistance, foreign affairs, research and finance sectors, among others."

State responses to the coronavirus pandemic have already raised far-reaching concerns about human rights and civic space. At the transnational level we can already see established CT bodies pivoting towards the pandemic. On the one hand they are suggesting that Covid-19 may exacerbate the terrorist threat, on the other they are proposing CT experience, expertise and programming as relevant to public health responses. The synergies in emergency powers, digital surveillance, travel monitoring and restriction and counter-disinformation regimes are already abundantly clear. In June 2020 CTED launched a report on the convergences between Covid and CT and set out a long-term Covid agenda for the UNSC. Coupled with the informal international initiatives on 'health security' that have been in place for many years, there is a significant risk that the securitisation of public health at the transnational level will undermine nascent and urgently needed efforts to check the highly securitised responses we have seen at the national level.

18. https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2021/Jun/cted-paper-the-impact-of-the-covid-19-pandemic-on-counter-t_0.pdf (updated Dec 2021)

Source: Alex Linch | Reflection shadow of a man walking in the city, via Shutterstock

03

3. ANALYSIS: STRUCTURAL CAUSES AND DRIVERS

i. Transformations in international law-making and organisation ——

The findings summarised above are consistent with the widescale transformations in international law-making and governance that have been reshaping the international order for at least the last twenty years.
These include:

    a) the post-9/11 international state of emergency enabling UN Security Council (USNC) global legislation and the expansion of national executive powers through counter-terrorism (CT);
    b) the proliferation of international agencies and bodies tasked with implementing these global CT norms;
    c) the fragmentation of international law into specialised regimes dominated by technical expertise;
    d) the increasing informality of international law-making. Each of these elements are briefly discussed below.

The 9/11 attacks and global war on terror (GWOT) catalysed a new era of international law-making that radically altered the basis for state action. The UNSC's use of binding

Resolutions based on Chapter VII of the UN Charter required states to change their legal frameworks and introduce pre-emptive CT practices to counter terrorist threats. The UNSC has assumed the role of 'global legislator', issuing norms that all states must adopt after each successive crisis - including 9/11 and the threats of ISIL and FFTFs.

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19. See, in particular, UNSCR 1373 (2001), UNSCR 2178 (2014) and UNSCR 2396 (2017); Paul Szasz, 'The security council starts legislating', (2002) 96(4) American Journal of International Law 901.

This 'international state of emergency' has enabled the expansion of executive power at the national and international levels and allowed national executives to use the cover of international law to undermine human rights and constitutional protections across the globe. As Scheppele notes:

"Transnational links among national executives, national militaries, national police and national security agencies have been strengthened … and links between national executives and their own domestic parliaments and courts have been attenuated".

The designation of the threat and broad shape of the programs to fight it are determined and monitored by the UNSC, whilst the concrete strategies are designed and implemented by states. This dynamic has expanded the power of both transnational bodies (e.g. the UNSC) and executive actors within national states.

As noted above, UNSC global legislation has been accompanied by a massive expansion in the number of specialised UN agencies, international organisations (IOs) and global governance bodies working to implement CT norms through standard-setting, best practices, capacity building and the provision of technical and financial assistance to states.

This global CT architecture has exponentially expanded since 9/11 to encompass national, regional, bilateral, multilateral, international and private sector dimensions. It is dominated by an epistemic community of security experts that speak the same language of overcoming practical obstacles to implementing CT norms, and has little input from human rights experts or CSO engagement.

This fragmentation of international law into specialised regimes with practical focus on CT implementation excludes normative issues – like human rights protection and the values of humanitarian engagement or peacebuilding – by default. It makes human rights protection only one approach among many, rather than the bedrock of rules-based international order.

Unless effectively challenged, this marginalisation of human rights will likely continue. The largest funders in the global CT architecture (Saudi Arabia and Qatar) have, unsurprisingly, shown little interest in integrating human rights protections into UN CT programmes. As the former UN Special Rapporteur on Counter-terrorism and Human Rights, Ben Emmerson, put it:

"When all the threads are drawn together, there is simply insufficient emphasis on human rights protection in the United Nations counterterrorism acquis".

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20 Kim Lane Scheppele, 'The International State of Emergency: Challenges to Constitutionalism after September 11'. Available at: https://bit.ly/3eZjH6z
21 Ibid, at 5.
22. Martti Koskenniemi, 'Hegemonic Regimes' in Margaret Young (ed.) Regime Interaction in International Law: Facing Fragmentation (Cambridge UP, 2012) 305.
23. UN Doc. A/HRC/34/61, at para. 63. See also: UN Doc. A/74/335 (29 August 2019).

Alongside these shifts in international organisations, the post-9/11 environment has seen a proliferation of informal international law-making bodies active in the CT space. Informal bodies engage in cross-border policy coordination and/or standard setting and are informal in three ways.

- First, in terms of outputs – they do not produce traditional forms of international law (e.g. treaties) but rather other 'soft' forms of law (e.g. best practice guidelines).

- Second, in terms of process – they cooperate through loosely-coordinated networks or forums, rather than on the basis of conventions or other such agreements.

- Third, the actors involved are not typically heads of state/foreign ministers, but regulators and technical experts.

The 2010 US National Security Strategy put the rationale for informality in the following terms:

"Today, we need to be clear-eyed about the strengths and shortcomings of international institutions that were developed to deal with the challenges of an earlier time and the shortage of political will that has at times stymied the enforcement of international norms … We need to spur and harness a new diversity of instruments, alliances, and institutions … This requires enhanced coordination among the United Nations, regional organizations, international financial institutions, specialized agencies, and other actors that are better placed or equipped to manage certain threats and challenges."

24. Joost Pauwelyn, Ramses Wessel and Jan Wouters (eds.) Informal International Lawmaking. (Oxford UP, 2012).
25. White House, National Security Strategy (May 2010), at 3, 46. Available at: https://bit.ly/3gtrbip

Source: Drop of Lights | UN General Assembly in New York, via Shutterstock

This informality has led to two important developments. First, informal global standard-setting bodies have become much more influential and closely coordinated with formal IOs in shaping CT norms. The expansion of the Financial Action Task Force's (FATF) powers to implement UNSC norms countering terrorist financing is the best-known example of this dynamic in the CT space.

Second, it has enabled powerful states to create new informal global CT bodies and networks for generating and implementing CT norms outside traditional international law-making institutions. The Global Counter-terrorism Forum (GCTF) – created as an "informal, action-orientated and flexible" platform for shaping "the international architecture for addressing 21st century terrorism" – is the most powerful illustration of this shift.

Issues too politically contested for conventional international fora like the UNSC are taken into the informal and technical space of the GCTF to produce best practice guidelines. These guidelines are then re-routed back into the formal CT arena to expand the scope of CT norms and guide international capacity building efforts. Because this mechanism is relatively fast, 'apolitical' and able to bypass the accountability constraints of traditional multilateral fora, the GCTF has dramatically expanded its scope, power and influence since its inception in 2011.

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26. https://www.fatf-gafi.org/
27. https://www.thegctf.org/
28. Other key examples of powerful informal CT lawmaking and standard-setting bodies include the Shanghai Cooperation Organization (SCO) and the Global Internet Forum to Counter-terrorism (GIFCT).

ii. The pre-emptive security paradigm and its adverse effects

Alongside these shifts in international law-making and organisation, post-9/11 CT law, policy and practice has been framed through the lens of pre-emptive security – that is, the need to identify and counter terrorist risks and threats in advance, before they materialise. Pre-emptive security measures cast a deliberately wide net. The focus is not only on 'terrorists' but on those potentially 'associated with' them or who may (directly or indirectly) provide them with support.

In this way, peacebuilders, humanitarian and development organisations and CSOs working in proximity to individuals and non-state armed groups listed as terrorist, for example, have been indirect targets of CT sanctions regimes. It is why, for example, CVE is now a key part of the work performed by international agencies like UNESCO and UNDP and is deeply integrated into the EU's internal and external CT strategies, or why terrorist travel is a key concern of the International Civil Aviation Organisation (ICAO).

Pre-emptive measures are often administrative in nature and bypass the criminal justice system. This has further reduced entry points for political contestation, expanded the use of unaccountable executive powers and weakened the rights of those affected. They are also often based on secret intelligence, which has created conflicts with legal systems accustomed to the use of evidence, due process and the protection of human rights. Because of its focus on countering future harms, the preventive paradigm eschews the use of evidence-based policy making and the adverse effects of such measures are rarely empirically monitored or used to inform their reform/redesign. In short, pre-emption is the key theoretical and policy framework that binds the disparate post-9/11 CT practices together and provides a 'blank cheque' for the targeting of political activists and dissidents. Yet the key tenets of this approach to CT have not yet been seriously challenged by the CSO/HR sector. The 'shrinking space' for CSO action is a direct effect of this process of pre-emptive securitization.

29. Louise Boon-Kuo. Ben Hayes, Vicki Sentas and Gavin Sullivan, Building Peace in Permanent War: Terrorist Listing and Conflict Transformation (Berghof Foundation, 2015). Available at: http://bit.ly/2BnFmmz

iii. Datafication and predictive analytics ───

The third factor that accounts for these findings – particularly, the rapid expansion in countering terrorist travel and terrorist watchlists, countering terrorism and extremism online and the growth in biometrics and digital ID systems – is the increasing 'datafication' of global governance and rise in predictive analytics. Global threats are increasingly countered through new forms of data exchange, analysis and governance made possible by rapid advances in machine learning (ML) and AI. Private actors (like social media platforms, airlines and financial institutions) now work closely with states and IOs to implement ambitious data-led security projects.

Terrorism lists and databases are being interconnected with AI-based systems in new ways, to govern flagged individuals and identify 'future terrorists' in advance. Western funding streams are used to build remote border posts in the Sahel equipped with fingerprint readers and information systems connected to national, regional and international databases. The GCTF's Terrorist Watchlisting Guidance Manual , currently under construction, effectively exports the US watchlisting system as best practice around the globe. Internet platforms are deploying ML to identify and remove online 'terrorist' and 'extremist' content at an unprecedented global scale. Datafication, automated decision-making and the rise of predictive analytics is not unique to the CT field. The effects of this shift are, however, already transforming it in far-reaching ways that will directly affect the work of the CSO sector. At present, human rights experts and CSOs have very little access or input into data-led CT governance systems, and NGOs may have limited awareness, technical knowledge or capacity to respond.

30. https://www.thegctf.org/Who-we-are/Structure/Initiatives/Watchlisting-Guidance-Manual

iv. The significance of these findings for FICS' stakeholders and (many) CSOs ——

The interim findings of this research are important for the CSO sector for a number of reasons. First, the report highlights some of the key structural conditions and drivers of pre-emptive securitisation. This focus on structural conditions is important because it suggests that the transformations and adverse effects of CT that the CSO/human rights sector have experienced to date - including the increasing marginalisation of human rights protections; the widening disconnect between global CT and civil society actors and lack of engagement on CT policy issues; the complexity of global CT law and governance; the ever-increasing securitisation of diverse fields of practice previously outside the scope of CT; and the continued exclusion of principled values-based and evidence-based arguments for reform – are likely to worsen unless effectively challenged. It is our hope that this serves as catalyst for new strategic thinking by the CSO sector on what a positive transformative agenda might look like in relation to reforming this global CT architecture.

Second, these findings underscore that much of the response undertaken by the CSO sector to these changes to date has been too limited, reactive and ineffective. In short, the 'shrinking space' for civil society action is a downstream effect of these structural shifts. Unless steps are taken to more proactively and effectively challenge the structural conditions and drivers reshaping the CSO field, these downstream effects will likely worsen, leading to a further deterioration of conditions and securitisation. For these reasons, we recommend strategic thinking, dedicated resources and more research on the processes through which human rights and CSOs are excluded from CT law and policy-making be undertaken as a matter of urgency, with a view to identifying entry points, stepping stones, milestone and structural reforms for a long-term progressive change agenda. The CSO sector has much to learn here from labour and environmental organisations undertaking long-term strategic organising work to effect structural change and protect their collective values. An organising approach has the benefit of developing a more targeted and offensive change agenda.

Third, these findings highlight that the stakes of securitisation are particularly high for the CSO field. Traditional accountability mechanisms and multilateral institutions are being bypassed and weakened.

Human rights law gives individuals rights vis-à-vis national states, but does not provide redress with respect to transnational CT capacity building efforts or cross-border data exchange or rights violations by IOs, private actors and global governance bodies.

Core values of fields of practice – such as inclusive engagement for peacebuilders, independence and impartiality for humanitarian actors, patient best interests for doctors and education for teachers – are being undermined and reshaped by global CT norms. Focus on the structural conditions and drivers of CT securitisation helps to underscore that the stakes of these transformations are high.

The pre-emptive paradigm that connects the threads of the global CT architecture is often incommensurable with these core values. CSO advocacy responses must be robust if these values are to be protected going forward.

Fourth, the global health crisis opened through Covid will act as an accelerator of these changes. We are already seeing powerful interests and actors bringing CT and health governance together, using the crisis to push through changes in population-wide digital surveillance and data governance practices that were unacceptable in non-emergency conditions.

The processes of datafication discussed above are being rapidly extended through the proliferation of public-private partnerships between states and tech platforms in response to Covid. Crises are productive opportunities for realigning values and effecting structural change. But the nature of their resolution is not given.

As Covid will continue to act as a driver of CT transformation into the foreseeable future, it is important that the CSO sector takes stock and reflects critically now on how best to harness the opportunities of the crisis to push for change.

04

RECOMMENDATIONS FOR THE FUNDING COMMUNITY

1. Provide resources for further research on mapping the pathways of securitisation and highlighting the diverse assemblages of actors, institutions, practices and policies that produce, shape and constrain outcomes in particular fields and issue areas of counterterrorism. The mapping should highlight the commodification and securitisation of UN and other critical bodies and pathways by which global pre-emptive security is being delivered, including public-private security partnerships which are seeing new technologies of surveillance and control put at the service of governments and used to restrict civic space. The aim should be to identify possible entry points or ways to intervene/ reverse engineer aspects of the global counter-terrorism (CT) architecture to push for change. Incorporate the results of this research into CSO advocacy and strategic planning – including the agenda planning outlined below – in a more structured and targeted way.

2. Provide resources for CSO networks to pursue a long-term agenda of structural reform targeting the drivers of securitisation and assumptions underpinning global CT architecture. A long-term agenda should identify:
(i) a vision of where we want to be 20 years from now with respect to CT;
(ii) Game-changing structural reforms to enact that vision; (iii) stepping stones, or issues and campaigns that move us closer toward larger reforms; (iv) milestone (mid-range) reforms that help us see over the next 'ridge' toward the longer-term transformations; and (v) strategic pathways that help orient efforts to move structural reforms that can shift power and protect core values.

Source: As-artmedia | CCTV cameras in surveillance room, via Shutterstock

3. Resource and build diverse global platforms and transnational CSO/NGO coalitions to advocate for greater accountability and oversight on international CT matters and to highlight their adverse/counterproductive effects. Such platforms should operate as a counterweight to the many similar networks used by states, IOs, global governance bodies, private and security actors to shape outcomes in the global CT space.

4. Resource and build networks amongst sympathetic states to advance CSO advocacy objectives in multilateral fora. Notwithstanding an apparent deterioration in the appetite of once 'progressive' states to support progressive change, the 'Group of Like-Minded States on Targeted Sanctions' offers a useful example of what might be practically achieved through such networks. Allies should be especially sought amongst states (i) disproportionately impacted by global security norms; and/or (ii) in favour of progressive UN Charter/ UNSC P5 reform.

Source: Tomertu | Test Screen Glitch, via Shutterstock

Source: Chuyuss | National flags of countries all over the world, via Shutterstock

5. Support the forging of explicit links between national and transnational law-making and governance, enabling the initiatives taken 'on the ground' to be located in the mandates and programmes of international bodies and programmes. These links should: (i) help evidence and demonstrate the impact of transnational securitisation on civic space and other harms such as undermining the SDGs and the displacement of "root causes" approach to protracted security problems, peacebuilding and conflict resolution; (ii) enable local and national civil society actors to engage more strategically and effectively in security policy-making by drawing on international expertise and analysis.

6. Sharpen analytical focus on informal sites of international counter-terrorism law and governance and push for greater CSO/HR engagement in informal fora. The Global NPO Coalition on FATF is a good example that the CSO sector should seek to emulate elsewhere. – This work could target key UN entities being securitized (e.g. UNDP, UNESCO, UN WOMEN) and bodies or groups of bodies working across thematic areas with particularly pernicious impacts (in the same way as the FATF was identified, "scandalized" and opened up).

7. Provide resources for CSOs to coordinate CT advocacy objectives across the full range of different UN Special Procedures to maximise effect, amplify key messaging, and enhance potential for international CT law and policy critique/reform;
Resource CSO advocacy campaigns to critique/reform pre-emptive security measures, as the pre-emptive paradigm is the framework that binds disparate counter-terrorism policies and practices together in the different thematic areas studied.

Place the adverse effects of pre-emptive measures at the fore of the CSO response to show how pre-emptive measures are ineffective/ counter-productive in practice and push for an evidence-based approach to counter-terrorism where possible. 'Friendly' states (e.g. Canada, UK, US, Australia, NZ, Switzerland, Nordic states) and regional bodies (EU) who insist on their human rights credentials in Geneva but fail to deliver in the NY security architecture should be put under sustained pressure about the mismatch between their stated human rights and civil society values and the effects of pre-emptive security measures and their CT programming.

8. Resource and support CSO advocacy campaigns that focus on and problematise the increasing involvement of private actors in CT governance and highlight the power and influence of the security industry to show "who profits" politically and financially. This advocacy should have three aims:
(i) to establish IHRL as the baseline for public-private partnerships in this area (i.e. Ruggie Principles);
(ii) to create enforcement mechanisms to monitor compliance with IHRL norms and accountability mechanisms to ensure effective oversight of private sector CT governance; and
(iii) to push for greater participation of CSOs and human rights actors in public-private partnerships in the CT area.

Source: Joaquin Ossorio Castillo | The Headquarters of the United Nations, New York, via Shutterstock

10. AI/automation and digital infrastructure for data collection and analysis is now central to international CT efforts and stands to deepen existing power asymmetries (e.g. UNSCR 2396, GCTF Watchlisting Guidance Manual). To meet this digital challenge, CSOs must cultivate expertise in this field and/or build networks with relevant tech organisations to identify key lines of critique and points of intersection with CSO advocacy goals. Enhanced CSO coordination with progressive tech and digital rights organisations should be prioritised.

Source: Zu_kuni | Night view of Tokyo seen from Hamamatsucho, Minato-ku, Tokyo, via Shutterstock