LIBERTY

SUBMISSION TO THE UN SPECIAL RAPPORTEUR'S THEMATIC REPORT ON THE DEFINITION OF "TERRORISM"

1. Liberty is an independent human rights and civil liberties membership organisation founded in the UK in 1934. Our submission responds to questions two and six of the Special Rapporteur's call for input, with a specific focus on *actus reus* elements relating to property damage, and protest activity.

2. This submission argues that the definition of terrorism should include property damage without intentionally causing death or injury only if the threshold is sufficiently clear and high, and that requirements clarify and narrow the definition such that the activity it captures is foreseeably and reasonably terrorist in nature. This may include that the damage creates a serious risk to life or the health and safety of the public. Without these requirements, a property damage element risks broadening the terrorism definition such that it captures legitimate protest activity or activity that can be effectively addressed through the ordinary criminal law. If a definition is adequately clear and narrow, protest exceptions would be redundant. Any protest exception must clearly define protest activity.

QUESTION 2, SUBQUESTION 3

Should the definition include damage or destruction to property (public and private) without intentionally causing death or injury? If so, (i) what types of property should be included and (ii) what thresholds of damage, destruction or other consequences (e.g., major economic loss) should be required?

3. Some acts that would reasonably be considered terrorism may involve damage to property without involving intentional death or injury. This could include, for instance, circumstances in which a group or individual provides a warning before setting off an explosive to allow for people in the vicinity to evacuate, with the intention of subverting or coercing a government. Whether these acts should be covered by a terrorism definition depends on, among other factors, (1) the nature and scale of the threat of this type of activity in a particular jurisdiction, and (2) whether the ordinary criminal law in that jurisdiction is insufficient to address this threat, i.e., whether it is both proportionate and necessary to make use of exceptional counter-terror powers and offences in order to disrupt, prosecute, or prevent this type of activity.

4. The UK's terrorism definition, for example, includes a serious damage to property element primarily due to the prevalence of bombs that were detonated following telephoned warnings in the 1990s, potentially indicating an intention not to kill or injure.[1] This element of the definition seeks to cover "actions which might not be violent in themselves but which can, in a modern society, have a devastating impact" and would reasonably be considered terrorism.[2] Yet the definition is overbroad; the property element can be summarised as:

   An act or threat of action involving serious damage to property and firearms or explosives, for the purpose of advancing a political, religious, racial, or ideological cause. Or, where firearms or explosives are not involved, where an act or threat of action is also designed to influence a government or intimidate the public or a section of the public.[3]

5. The UK definition's property damage element captures activity that one would not reasonably consider terrorism, and against which it would be neither necessary nor proportionate to employ counter-terror powers and offences. For instance, it could capture protesters toppling statues. It also captures the mere threat of such activity.

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[1] Lord Lloyd (1996) 'Inquiry into Legislation Against Terrorism' Cm 3420.
[2] *Terrorism Act 2000, c. 11:* Explanatory Notes
[3] Section 1, *Terrorism Act 2000, c. 11.*

6. Any damage to property element should, therefore, be narrowly circumscribed such that it is clear and foreseeable when an activity crosses the threshold into terrorism, and such that it only captures activity that cannot be dealt with under the ordinary criminal law. In addition to ensuring the threshold for property damage is sufficiently clear and high, (such as the 'serious' threshold in UK criminal law which accounts for harm or risk of harm caused rather than simply monetary value), we recommend that any property damage element contains requirements that clarify where it crosses the threshold into terrorism and therefore necessitates and renders proportionate extraordinary, rights-restricting powers and preparatory or precursor offences. These could include, for instance, that the damage:
    a. Creates a serious risk to life, or
    b. Creates a serious risk to the health and safety of the public or a segment of the public.

7. While Canada's counter-terror regime poses its own issues of overbreadth and concentrated executive power,[4] the way the Canadian definition treats property damage is potentially instructive although broader still than our recommendations above.[5] The *actus reus* component of the definition includes, in part, acts that:
    a. Cause death or serious bodily harm to a person by the use of violence,
    b. Endanger a person's life,
    c. Cause a serious risk to the health or safety of the public or any segment of the public,
    d. Cause substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (a) to (c), [...]

QUESTION 6, SUBQUESTION 1

Should the definition of terrorism contain any of the following exceptions (and if so, subject to what qualifications): 1. Acts of protest which do not intentionally cause death, serious injury or hostage taking.

8. If included in the definition, exceptions must be well-defined to avoid introducing any degree of unclarity that could compromise the foreseeability provided by the terrorism definition as a whole. A poorly-defined protest (including direct action) exception could create the potential for misuse, by allowing governments and courts to declare what is and is not legitimate protest or direct action activity without reference to a clear, statutory set of factors or tests. On the other hand, it could also create the potential for misuse by individuals and groups engaged in what could be reasonably considered to be terrorist activity.

9. Ideally, a terrorism definition would clearly and narrowly specify the type of activity it intends to target such that explicit exceptions are unnecessary. Where property damage is insufficient on its own and must have also caused a serious risk to life or the health and safety of the public, a protest- or direct action-specific exemption is not needed to safeguard against misapplication of counter-terror powers and offences against people engaged in protest, dissent, or advocacy. The UK definition does not contain an explicit exception, and Liberty would therefore encourage consultation with civil liberties organisations in countries where such an exception exists, such as Canada and Australia, to better understand whether their exceptions have acted as adequate safeguards against overbroad definitions.

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[4] It has, for instance, enabled the Canadian Government to designate organised crime groups engaged in drug manufacture and distribution as terrorist entities, despite these groups being profit- rather than ideology-driven. See: Public Safety Canada (2025) 'Government of Canada lists seven transnational criminal organizations as terrorist entities' *Government of Canada.*
[5] *Criminal Code*, RSC 1985, c. C-46, s 83.01 (1)(b)(ii)