Witness: Professor Benjamin Saul
Statement: First (Amended)
Exhibits: BS1, BS2, BS3/1-BS3/4
Date: 14/07/2025 (amended on 10/11/2025)

AC-2025-LON-002122

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
~~**IN THE MATTER OF AN APPLICATION FOR PERMISSION TO BRING A CLAIM FOR JUDICIAL REVIEW**~~
BEFORE THE HON. MR JUSTICE CHAMBERLAIN

BETWEEN:

THE KING **(On the application of Huda AMMORI)**	**Claimant**
- v -	
SECRETARY OF STATE FOR HOME DEPARTMENT	**Defendant**
(1) UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM **(2) AMNESTY INTERNATIONAL UK** **(3) LIBERTY**	**Interveners**

AMENDED WITNESS STATEMENT OF PROFESSOR BEN SAUL UN SPECIAL RAPPORTEUR ON COUNTER-TERRORISM AND HUMAN RIGHTS

I, Professor Ben Saul, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, will say as follows:

Introduction

1. I hold the mandate of United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism ("the Special Rapporteur").

2. My mandate was created specifically to address concerns over the misuse of legislation and policies to combat terrorism or alleged terrorism, and the growing adverse impact on human rights and fundamental freedoms.

3. In April 2005, the UN Commission on Human Rights in resolution 2005/80 created the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The UK was a State member of the UN Commission on Human Rights at the time of the creation of this mandate.

4. The Special Rapporteur is part of "[t]he system of Special Procedures" that "is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social." As a mandate-holder, the UN Special Rapporteur is independent human rights expert selected for his or her "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity." UN Special Rapporteurs "undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith" and "do not receive financial remuneration."

5. In performing his mandate, Special Rapporteur is accorded privileges and immunities as an expert on mission under the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946. This submission is provided voluntarily without prejudice to, and should not be considered as a waiver,

express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, under the 1946 Convention. In accordance with his independence, the Special Rapporteur has not sought authorization for this submission from the United Nations, Human Rights Council, Office of the United Nations High Commissioner for Human Rights, or any officials associated with those bodies.

Expertise of the Special Rapporteur

6. The Special Rapporteur is an independent expert mandated by the Human Rights Council to investigate, analyse, advise, give technical assistance and make recommendations to member States and the United Nations system regarding human rights and fundamental freedoms while countering terrorism. I am also mandated to address the human rights and fundamental freedoms of victims of terrorism. I exhibit to this statement the key resolution which outlines my mandate: 15/15, **Exhibit BS1**.

7. In this context, the mandate has submitted amicus curiae briefs to national, regional and international courts and tribunals on issues of human rights protection in the context of countering terrorism. I am the current mandate holder, and am also regarded as among the world's leading scholarly experts on the definition of terrorism in international law, including as author of *Defining Terrorism in International Law* (Oxford University Press, 2006).

8. For two decades the mandate has consistently considered issues relating to the definition of terrorism in international, regional and national law, proscription of terrorist organizations, and organization-based terrorist offences from a human rights standpoint. The Special Rapporteur has done so through communications to many United Nations member States, both in cases involving individual victims as well as in legislative communications assessing the consistency of national criminal laws with international human rights law. These legal issues have also been raised with States in fact-finding country visits, reporting to the Human Rights Council, and in thematic reports to the Human Rights Council and General Assembly. The mandate has also advised States on these issues in discharging its technical assistance function. The mandate has thus acquired unique comparative knowledge and expertise on the issues in diverse contexts and is uniquely placed to impartially assist the Court in this case.

9. Among other duties, the mandate assists courts in the interests of the proper

administration of justice because the relevant international standards properly inform the application and interpretation of national law, given the importance of international frameworks (including counter-terrorism treaties and Security Council resolutions) in shaping the European Convention on Human Rights as well as national counter-terrorism laws and imposing human rights obligations in relation to the implementation of counter-terrorism standards. Further, the mandate is uniquely well-placed, by reason of its long expertise and special international responsibilities, to provide impartial and objective submissions to the Court on these issues.

10. The political and factual context in which this case arises is particularly sensitive. It is respectfully submitted that the Court may be assisted by submissions from the mandate of the Special Rapporteur as an impartial third-party intervener with specialised expertise and experience in counter-terrorism law and human rights across numerous jurisdictions on all continents.

11. The Special Rapporteur recognizes the challenges that States face in addressing terrorism. The obligation to respect international human rights law while countering terrorism has been repeatedly affirmed by the United Nations General Assembly, Security Council and Human Rights Council. The General Assembly's 2006 Global Counter-Terrorism Strategy recognized that "effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing".[1]

The reasons given for the proscription of Palestine Action

12. The written reasons given by the Home Secretary on 23 June 2025 and the very similar Explanatory Memorandum for the proscription order, centre on serious criminal damage to property. For example, the Memorandum states:

> "5.3 The UK Government assesses that Palestine Action commits and participates in acts of terrorism. In several attacks, Palestine Action has committed acts of serious damage to property with the aim of progressing its political cause and influencing the Government…
>
> 5.4 Palestine Action prepares for terrorism. The organisation has provided practical advice to assist its members with conducting attacks that have resulted in serious damage to property…
>
> 5.5 Palestine Action promotes and encourages terrorism. Through its media output, Palestine Action publicises and promotes its attacks involving serious property damage, as well as celebrating the perpetrators…".

[1] A/RES/60/288, annex, pillar IV.

13. The Memorandum notes that the criminal damage to property has included targets affecting national security. It also states that members of Palestine Action have been charged with offences involving violence and weapons, and that one individual was convicted of violent crime in respect of the Thales incident in 2022.

14. It is for the court to determine what the Home Secretary's reasons were. But the above suggests that the Home Secretary considered that serious damage to property could without more amount to terrorism. It also suggests that the Home Secretary considered it was open to her to proscribe an organisation as terrorist, based on the violent acts of one or a few of its individual members, and that it was not necessary to attribute responsibility for planning, ordering, facilitating or committing those violent acts to the organisation. Finally, there appears to be no consideration in the decision or before it of whether the proscription of Palestine Action was proportionate to fundamental rights such as freedoms of expression, ~~or~~ assembly ~~or~~ and association, and the right to participate in public affairs[2] under articles 19, 21, 22 and 25 respectively of the International Covenant on Civil and Political Rights ("ICCPR", ratified by the UK on 20 May 1976), in particular as regards the consequences for individuals who are not involved in any alleged property damage or other offences.

15. Assuming that the Home Secretary did take the approach set out above, it is the view of the Special Rapporteur that this would constitute an unnecessary and disproportionate restriction on the affected fundamental human rights and would also be inconsistent with best practice international standards on the definition of terrorism. The lack of proportionality arises individually and cumulatively from the following four elements: (1) serious damage to property is not sufficient to amount to terrorism under international law; (2) proscribing the whole of Palestine Action is not justified based on the actions of a small minority of individuals involved with it, in circumstances where the overwhelming majority of people associated with it are engaged in the legitimate exercise of fundamental expressive rights; (3) the criminal offences flowing from proscription are overbroad because in practice they mostly incriminate conduct that does

[2] The right to participate in public affairs under article 25 of the ICCPR includes by individuals "exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association": Human Rights Committee, General Comment No. 25 (1996), para. 8.

not proximately contribute to the commission of actual terrorist violence, and in so doing they penalise the legitimate exercise of expressive rights; and (4) proscription and its consequences will have chilling effects on the legitimate exercise of expressive rights generally, including beyond any connection with Palestine Action.

Serious damage to property not sufficient to amount to terrorism

16. It is the view of the Special Rapporteur that "direct action" protest causing serious damage to property is not, without more, sufficient to qualify as an act of terrorism in international law[3].

17. Many international law definitions of terrorism require acts intended to cause death, serious injury or hostage taking. To the extent that certain international instruments contain definitions of terrorist offences which encompass serious property damage, these add vital qualifications that very substantially narrow the scope of offences. In particular:

18. The *Council of Europe Convention on the Prevention of Terrorism 2005* (binding on 35 member States) defines, in Article 1, "terrorist offence" as any of the offences as defined in the 11 treaties listed in the Appendix.

19. As to those treaties in that Appendix, the offences which concern damage to or seizure of property, explicitly require that the act endangers life or limb, or concern acts which would endanger life or limb (subject to the caveats below). They are as follows:

- *Convention on the suppression of unlawful seizure of aircraft 1970*. The preamble states that unlawful acts of seizure or control of an aircraft in flight jeopardize the safety of persons and property. The offence, defined in Article 1, is to unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of, that aircraft, or attempts to do so. Thus, the offence entails jeopardizing the safety of persons.

- *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971*. The preamble states "unlawful acts against the safety of civil aviation jeopardize the

[3] This assumes that the word "serious" means simply that the extent of the damage to property is serious. If "serious" is interpreted in a different way, to include the vital qualifications listed below, then that could be consistent with international law.

safety of persons and property…". A person commits the offence defined in Article 1 if (so far as relevant) he "destroys and aircraft in service or causes damage which renders it incapable of flight or which is likely to endanger its safety in flight". Again, the offence entails jeopardizing the safety of persons.

- *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973*. The offence in article 2 covers certain violence against diplomats and other internationally protected persons, and a "violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person" but only if such attack is "likely to endanger his person or liberty".

- *Convention on the Physical Protection of Nuclear Material 19798~~87~~*. The preamble notes the "potential dangers posed by the unlawful taking and use of nuclear material". The offence in Article 7 concerns the use, theft, etc. of nuclear material (preamble and Article 7). The offence is inherently dangerous due to the nuclear material involved.

- *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1971*. The offence in Article 1 includes destroying or seriously damaging the facilities of an international airport, "if such an act endangers or is likely to endanger safety at that airport". The preamble notes that those acts "which endanger or are likely to endanger the safety of persons at [international] airports… disturb the safe and orderly conduct of civil aviation for all States".

- *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988*. This contains equivalent thresholds to the Civil Aviation 1971 Convention (preamble and Article 3), and entails jeopardizing the safety of persons.

- *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988*. This also contains equivalent thresholds to the Civil Aviation 1971 Convention (Article 2).

- *International Convention for the Suppression of Acts of Nuclear Terrorism 2005*. The preamble notes that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security. The criteria for the offence in Article 2 include possessing or making radioactive material or a

radioactive/nuclear device. The offence is inherently dangerous due to the nuclear material concerned.

- *The International Convention for the Suppression of Terrorist Bombings 1997*. Article 2 notes that a person commits an offence within the meaning of this Convention:

> "if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility: (a) With the intent to cause death or serious bodily injury; or (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss."

Serious damage to property is insufficient to meet that definition. In addition, it is necessary for the damage to be caused by an explosive device (which is inherently dangerous); that there is the intention to cause "extensive destruction" to the specified facilities; and that this results in or is likely to result in "major economic loss". The notion of "extensive destruction" was transposed from the war crime of extensive destruction of property under international humanitarian treaty law of 1949 (namely the grave breaches (war crimes) provision in article 147 of the Fourth Geneva Convention 1949), further signifying the severity of (war-like) harm required. According to the authoritative 2025 Commentary on this provision by the International Committee of the Red Cross (at paragraph 6789), "an isolated act would not normally be enough", except in a very exceptional case "such as the blowing up of a hospital". There are other qualifications. For example, Article 5 suggests acts not intended to provoke terror may be justified.

- The remaining Conventions in that Appendix do not concern serious damage to property, but concern violence against persons, taking of hostages (see International Convention Against the Taking of Hostages 1979) or other unconnected offences. See, for example, the International Convention for the Suppression of the Financing of Terrorism, Article 2(1), by which terrorist offences are those in the first 9 Conventions in the Appendix of the 2005 Council of Europe Convention, set out above, and also "Any other act intended to cause death or serious bodily injury…".

20. The Council of Europe Convention on the Prevention of Terrorism 2005 contains further qualifications to the available offences. It states in the preamble that "all measures taken to prevent or suppress terrorist offences have to respect human rights and fundamental

freedoms" and "this Convention is not intended to affect established principles relating to freedom of expression and freedom of association". Article 12(1) requires the implementation and application of Convention offences to respect human rights obligations, "in particular the right to freedom of expression, freedom of association…". Article 12(2) further requires that criminalisation under the Convention "be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society".

21. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism is binding on 27 European member States. It defines terrorist offences in Article 3(1), as doing or threatening to do the following intentional acts "which, given their nature or context, may seriously damage a country or an international organization…

(a) attacks upon a person's life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage-taking;

(d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;

(g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

(i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (19) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;…"

22. The Recitals contain further qualifications to the available offences. For example, Recital

35 declares that the Directive has to be implemented in accordance with the fundamental rights and freedoms recognized by the EU Charter and Article 2 TEU, including the rights to "freedom of expression and information, freedom of association and freedom of thought, conscience and religion". It further emphasizes "the principles of legality and proportionality of criminal offences and penalties": see similarly Recital 39.

23. Thus, to fall within Article 3(1)(d) of the Directive, it is insufficient for the act to be serious damage to property. There must be "extensive destruction" to the specified facilities; and it must be shown both that this is "likely to endanger life or result in major economic loss" and "may seriously damage a country". Further, the implementation of terrorism offences should be proportionate to any interference with the freedom of expression, assembly or association or the right to participate in public affairs. Thus, where (as here) the offence is carried out for the purpose of legitimate political protest, it should only be classified as terrorist if that is proportionate to the harm caused.

24. The laws of various common law States exclude from the definition of terrorist offences, acts of advocacy, protest, dissent or industrial action where they do not cause death or serious injury (Canadian Criminal Code, s. 83.01(1)(E); Australian Criminal Code, s. 100.1(3); Terrorism Suppression Act 2002 (New Zealand), s. 5(5)(a); Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004 (South Africa), s. 1(4)).

25. On 1 July 2025 I, along with George Katrougalos, Independent expert on the promotion of a democratic and equitable international order; Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Gina Romero, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, affirmed our view that "According to international standards, acts of protest that damage property, but are not intended to kill or injure people, should not be treated as terrorism": **Exhibit BS2** (press release). I further exhibit, the formal Special Procedure communication to the UK Government upon which this public press release was based: **Exhibit BS3/1**.[4]

[4] On 2 September 2025, the UK Govt submitted its response to our communication, in which they affirmed that the "*UK Government remains firmly committed to upholding the rule of law, democratic values, and the protection of fundamental rights and freedoms, including those detailed in the International Covenant on Civil and Political Rights (ICCPR)*", and that "*the UK has a comprehensive counter terrorism (CT) legislative framework,*

26. We also explained: "The UK supported this approach in voting for Security Council resolution 1566 in 2004, … Mere property damage, without endangering life, is not sufficiently serious to qualify as terrorism." Paragraph 3 of that Resolution concerns criminal acts committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism. It explains that those acts may not be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature. While resolution 1566 is not binding on the UK, it provides a best practice international standard which helps to ensure that restrictions on rights flowing from criminalisation are strictly necessary and proportionate. The resolution was adopted by the Security Council precisely in response to the many excessive definitions of terrorism that were adopted after the terrorist attacks of 11 September 2001, pursuant to the duty on States to criminalise terrorist acts under Security Council resolution 1373 (2001), which fueled rampant human rights violations worldwide that were documented by the United Nations human rights mechanisms.

26.A Security Council resolution 1566 makes clear that the offences in the above-mentioned so-called international "counter-terrorism" conventions should not of themselves be regarded as terrorist offences unless they also involve an intention to cause death, serious bodily injury or hostage taking. Thus, for example, the offence under the Terrorist Bombings Convention of causing extensive destruction to public property that results in major economic loss is only a "terrorist" offence according to the Security Council if the perpetrator further intends to kill or seriously injure persons. While the Security Council called on States to criminalise "terrorist attacks" intended to destroy or disable "critical infrastructure" in resolution 2341 (2017), that resolution is not binding and there is no internationally agreed definition of critical infrastructure. Because the Security Council calls for the criminalisation of "terrorist attacks" on critical infrastructure, the provision must be interpreted as being subject to all of the previously mentioned qualifications on the definition of "terrorism": namely, terrorist attacks on critical infrastructure are those which are intended to cause death or serious injury.

which strikes the right balance between protecting national security and individual freedoms, including the right to freedom of expression under Article 10 European Convention on Human Rights (ECHR) and Article 19 of the ICCPR." **Exhibit BS3/2**

27. ~~This has long been the position of the person of my office.~~ My office has long shared a similar approach to the definition of terrorism as the Security Council. The UN Special Rapporteur on Human Rights and Terrorism's Annual Report 2010, A/HRC/16/51 noted "26… The adoption of overly broad definitions of terrorism therefore carries the potential for… unintended human rights abuses". The 2010 Report also contained a model definition of terrorism – consistently used by the mandate over the past 15 years of monitoring State compliance with human rights – which concerned action (being an offence under the international counter-terrorism conventions or a serious crime under national law) which:

> " (a) Constituted the intentional taking of hostages; or (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it…"[5]

28. The Security Council's Counter-Terrorism Executive Directorate also considers that mere property damage, without endangering life or limb, should not be categorized as terrorism. In its Analytical Brief: A Commentary on the Codification of the Terrorism Offence, June 2024, page 16-17, the CTED notes that there is a common practice that terrorist offences must (i) comply with their obligations under international human rights law; and (ii) restrict the outcome element of serious property damage, to damage that is likely to cause death, serious injury or serious risk to health.

29. Thus, within all of the above international measures, and within all of the European Convention on Human Rights ("ECHR") Member States and other States to which they are applicable, serious damage to property for the purpose of political protest is not sufficient to amount to the act which constitutes terrorism. Considerably more is required.

30. Further, for the purpose of the Council of Europe Convention 2005, the EU Directive, (and the common law states) where the implementation of terrorist offences interferes with fundamental rights to freedom of expression of association, that interference must be necessary and proportionate to the harm caused. This qualification ensures that terrorism-related offences do not unjustifiably criminalise acts committed in the context of the exercise of the rights to freedom of expression, opinion, assembly, association and

[5] The action must also be done "with the intention of: (a) Provoking a state of terror in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something".

political participation in a democratic society, which are also popularly understood not to be genuinely terrorist in character.

31. Where such acts entail serious damage to property, then pursuant to the measures set out above, they should normally be prosecuted as ordinary or public order offences. At present, the overbroad application of the definition of terrorism by the Home Secretary in making her proscription decision, subject to challenge in these proceedings, potentially enables the application of counter-terrorism powers to non-violent political protest that is not genuinely terrorist in nature.

The link between individual crimes and proscription of an organisation

32. I note that under section 3(4 and 5) of the Terrorism Act 2000 that the Secretary of State must believe that the organization being proscribed is itself concerned in terrorism. It is not sufficient for an individual member or members to be concerned in terrorism. For example, under s.3(5)(a), the organization – rather than merely an individual member or members acting alone – must have committed or participated in acts of terrorism. I understand that those responsible must share with the organisation an ideology which pursues its objectives through a terrorist methodology; and must act with the common purpose to pursue those objectives. The nexus between the organisation and the commission of acts of terrorism should be close and obvious: *Lord Alton of Liverpool v Secretary of State for the Home Department* [2008] 1 WLR 2341, para 36.

33. Proscribing an organization based on the individual or isolated criminal acts of its members, when those acts do not show the organization itself committed or was otherwise concerned in terrorism and the organisation's activities are otherwise legitimate, may amount to an unnecessary and disproportionate interference in human rights under international law: see also the Special Rapporteur's report to the General Assembly, "Best practices to protect human rights while using administrative measures to prevent terrorism: restrictive orders, terrorist listings, security detention and compulsory interventions", 31 July 2025, UN Document A/80/284, paras. 21 and 23.

34. The Special Rapporteur has been particularly alert to the compounding violations of human rights law arising from the often complex structure of terrorism offences, as where an over-broad definition of terrorism enables an over-broad category of "terrorist organization", which in turn triggers overbroad offences relating to that organization, such as membership, support, association, recruitment, training, financing and other

provision (and see further at paragraph 35E below).

35. In the experience of the UN Special Rapporteur's mandate, definitions of "terrorist organization" (or eligibility for proscription) should require that the entity has the substantial purpose of intentionally committing or facilitating terrorist acts, as properly defined: UN Document A/80/284, para. 23. It is liable to be unnecessary and disproportionate to proscribe an entire organization as a result of a terrorist crime committed in isolation by an individual member or a few members of the group, where the organization is not itself concerned in that crime but is overwhelmingly concerned in legitimate non-terrorist political protest activity. Both the decision to proscribe Palestine Action as well as the underlying statutory power engage concerns about disproportionality. In this regard, the Witness Statement of Benjamin Farrant at paragraph 8 indicates the inherent disproportionality permitted by the statutory scheme: "Parliament intended the statutory regime to be applicable to an organisation even if the majority (if not almost all) of the actions of that organisation are not 'concerned in terrorism'. Indeed, there is no requirement in the statute that any action 'concerned in terrorism' happens at a certain regularity or pace".

35.A I note further that although the UK authorities point to a number of alleged offences by individuals associated with Palestine Action as a basis for proscription, none of those individuals has been charged with an actual terrorist offence. At most, there is a suggestion of a "terrorist connection" for the purpose of sentencing. Invoking essentially non-terrorist offences to proscribe the group as terrorist is not compelling.

35.B Even where an individual or entity meets the formal criteria, listing must still be necessary and proportionate in the circumstances, including by demonstrating that less invasive means, such as surveillance and criminal investigation, would be ineffective: UN Document A/80/284, para. 25. Special care is required when an organization has mixed purposes, as where it predominantly engages in legitimate activities and these outweigh any minor terrorist activity: UN Document A/80/284, para. 25. In the case of Palestine Action, I am aware that the legitimate expressive activities (freedoms of association, assembly and expression, and the right to participate in political affairs) of potentially thousands of people have been affected by its proscription, in order to stem the allegedly unlawful activities of a small minority of individuals associated with the organisation. Proscription is a very aggressive and blunt instrument; as such, it must be used as a last resort in exceptional circumstances, particularly where it has heavy collateral impacts on

otherwise lawful activities, particularly fundamental rights.

35.C In this regard, it is my understanding that UK law provides numerous means for adequately addressing such threats which would have far less invasive impacts on the otherwise lawful exercise of expressive rights by the overwhelming majority of individuals associated with Palestine Action. These include, for example, the many preparatory terrorism offences concerning individual conduct (i.e., offences unrelated to a proscribed group); the law of criminal conspiracy, which can address group criminality in a more targeted and tailored manner than a blanket ban on the whole of Palestine Action; surveillance; preventive policing; and administrative control measures such as Terrorism Prevention and Investigation Measures (TPIMs). It is noteworthy that prior to proscription, the UK authorities did not find it necessary to charge any individual associated with Palestine Action with terrorist offences, but instead charged other criminal offences, suggesting that the ordinary criminal law was sufficient.

35.D Proportionality will also depend on the nature and scope of the restrictive measures that flow from designation, including whether they apply automatically or in a tailored manner, and whether any offences are overbroad: UN Document A/80/284, para. 25. This issue is discussed in the following paragraphs.

The adverse impact of proscription on freedom of thought, expression, assembly and association

35.E The Special Rapporteur has been particularly alert to the compounding violations of human rights law arising from the often complex structure of terrorism offences, as where an over-broad definition of terrorism enables an over-broad category of "terrorist organization", which in turn triggers overbroad offences relating to that organization, such as membership, support, association, recruitment, training, financing and other provisions: UN Document A/80/284, para. 33. Where listing activates criminal liabilities, the link between the organisation and any offences must be articulated in a sufficiently narrow and precise manner to avoid unjustified liability. In particular, an individual's conduct should materially and proximately contribute to the commission of a terrorist act by the group, namely, death or serious injury for a terrorist purpose: UN Document A/80/284, para. 34. It is not sufficient that the individual has made some contribution to the group that is not rationally connected to the ultimate commission of terrorist violence by the group or others associated with it (UN Document A/80/284, para. 34), such as

public expressions of support for or identification with the organisation's core mission to protest violations of international law by governments, or to advocate respect for international law and human rights by governments – especially where there is no evidence of any intention by such individuals to express support for the violent terrorist activities of others. Special caution is needed where the clear majority of members of the group is engaged in legitimate expressive activities. It is thus erroneous to assume that support for a proscribed group necessarily involves support for terrorist violence by the group, as suggested in the Defendant's Open Amended Detailed Grounds of Defence at paragraphs 49-50.

36. Proscription of Palestine Action will have a grave and widespread impact on fundamental rights, including the rights to freedom of thought, expression, assembly and association and the right to participate in public affairs. In the UK, proscription triggers terrorist criminal liability for various forms of conduct relating to the organization that do not of themselves causally, materially and proximately contribute to the commission of any criminal offence (such as property damage), let alone genuinely terrorist violence against persons. These include acts such as membership, support or inviting support (related to access to resources, including financial), expression of an opinion or belief which is supportive, arranging a meeting in support, and publicly wearing clothing or carrying articles in public (including pins, stickers, etc) in such a way or in such circumstances as to arouse reasonable suspicion of membership or support (see, for example, sections 11, 12, 12A and 13 of the 2000 Act).

37. Thus, a very wide range of acts which would otherwise be perfectly legitimate protest against Israel's activities in Palestine, would become offences under the Terrorism Act, or at least ordinary members of the public may reasonably think such activities may be criminal, which could have a deterrent effect on the exercise of rights. They include wearing clothing or holding signs that were worn by members of people who were associated with the organisation; wearing a flag that might be associated with the organisation or the broader protest movement; protesting in similar locations to where that organisation did; ~~donating money to people~~ providing financial contributions, material resources, in-kind support, or volunteer services to individuals formerly involved in the organisation who have moved on to other groups protesting in favour of Palestine, etc. This is borne out by a number of examples that I have seen in the media, ~~in the week~~ since the proscription, as well as in the voluminous witness statements

adduced by the Claimant. For example, it has been reported that individuals have been told by security services to remove items of clothing featuring the Palestinian flag and/or containing references to Palestine either by images, symbols or simply the word 'Palestine'. I am further concerned that even legitimate protest against the proscription of Palestine Action, whether expressed on legal or other grounds, could possibly be interpreted as criminally supporting Palestine Action.

38. The fear of being subjected to a terrorism conviction and the very heavy sentences that are available for these offences, is likely to have a widespread chilling effect, which is likely to dissuade many people from a range of what would otherwise be perfectly legitimate protest. Under international human rights law, the existence of a chilling effect can be relevant to the lawfulness of a restriction on freedom of expression (General Comment No. 34, para. 47), including as to its proportionality. Given the numbers of people in the UK who wish to protest in support of Palestine (which has been evident in the last 25 months), this proscription is likely to adversely impact on a very large number of people. This includes individuals who were already associated in some way with Palestine Action prior to its proscription as well as others who may have chosen to associate with it in future, as their preferred channel or method for supporting Palestinian human rights, if it had not been proscribed. The rights to freedom of association and assembly are individual rights that are also recognised as having a collective dimension under international law: Human Rights Committee, general Comment No. 37, paras. 4 and 100. The same is necessarily true of freedom of expression and the right to participate in public affairs, which may be – and are often – exercised in common cause with others. Freedom of expression does not only protect the content of expression, but the form in which it is expressed, including where individuals choose to advocate through a collective entity such as Palestine Action. As such, it is inaccurate to assert that the proscription of Palestine Action does not interfere with the right to express views about Palestine, as suggested in the Defendant's Open Amended Detailed Grounds of Defence at paragraph 48.

39. As well as deterring people from engaging in protest in support of Palestine, individuals in the UK can now be convicted, and sentenced to imprisonment, for engaging in what would otherwise be legitimate protest. They could be subjected to lengthy custodial sentences and subject to serious stigma and harm to their human right to reputation under article 17(1) of the ICCPR. A conviction for a terrorist offence is

likely to have life-long consequences for their careers, family and private life, and may have such consequences for their psychological well- being.

40. It may be further observed that the classification of conduct and an organization as terrorist triggers special investigative and detention powers under UK law that could also unjustifiably interfere in a range of fundamental rights where the organization and connected offences cannot be genuinely or proportionately regarded as "terrorist".

40.A To the extent that proscription criminalises the exercise of the right of peaceful assembly in support of Palestine Action, I support the authoritative view of the UN Human Rights Committee that "[b]lanket restrictions on peaceful assemblies are presumptively disproportionate" and that restrictions on national security grounds must be "necessary to preserve the State's capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force. This threshold will only exceptionally be met by assemblies that are 'peaceful'": General Comment No. 37, para. 42. Furthermore, "the mere act of organizing or participating in a peaceful assembly cannot be criminalised under counter-terrorism laws: ibid, para. 68. In general, "the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted", except "where such symbols are directly and predominantly associated with incitement to discrimination, hostility or violence": ibid, para. 51; see also Special Rapporteur on freedom of opinion and expression, A/79/319, paras. 70-75. Restrictions must not be used "to stifle expression of political opposition to a government challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination": General Comment No. 37, para. 49.

40.B As regards these matters, the Court will also wish to take into account the contributions I have received from Gina Romero, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and Irene Khan, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, (both of whom endorse this statement, see **Exhibits BS3/3** and **BS3/4** respectively).

41. All of the above means that the proscription constitutes a grave and widespread interference with the fundamental rights of freedom of expression and opinion, assembly, and association and the right to participat~~ion~~ in public affairs, protected under articles

~~9,~~ 19, 21, 22 and 25 of the ~~International Covenant on Civil and Political Rights ("ICCPR", ratified by the UK on 20 May 1976),~~ICCPR and analogous rights in the ECHR. Arrests and detention for suspected offences relating to the proscribed organisation would also consequentially infringe the right to liberty and freedom from arbitrary detention under article 9 of the ICCPR, while the stigmatisation of individuals as "terrorists" would likely violate their right to reputation under article 17(1) of the ICCPR.

Wider context and implications

42. Proscription of Palestine Action sets a precedent for the proscription of other robust protest and "direct action" movements hitherto regarded as unruly but never as terrorist, such as certain climate change activism and for example groups such as the Campaign for Nuclear Disarmament who have a recent and continuing history of direct action protests. I am aware of other persuasive evidence in the Claimant's witness statements in these proceedings suggesting that this chilling effect has already occurred in relation to organisations working on issues such as environmental activism. It is also out of step with comparable liberal democracies, including in Europe and various common law States, as has been explained above.

43. Indeed, most responsible States globally have limited terrorism designations to extremist actors engaged in grave large scale atrocities, such as Al Qaeda or ISIL and their associates, groups involved in intense armed conflict against State authorities (e.g. Hezbollah, Hamas, PKK, LTTE and so on), or other organized campaigns of intense violence by separatist, socialist, far-right, religious or other causes. Protest movements claiming to defend human rights, that are an irritant to property rights or affect certain national security interests, but which do not engage in sustained campaigns of murder, are not typically treated as "terrorist", even where they could technically come within a national terrorism definition. This is also true of European States specifically in relation to "direct action" protest movements which do not habitually engage in violence against persons, even where they may allegedly commit certain ordinary criminal offences relating to property, public order, or resisting arrest. Definitions are frequently over-inclusive, but good judgement and restraint also need to be exercised in a democracy committed to human rights and a substantive not merely procedural conception of the rule of law. There is a rich tradition of "direct action" and civil disobedience in liberal democracies and such conduct may attract ordinary criminal liability, and hence lawful

restrictions on human rights, in the appropriate case. However, the exceptional powers (including special offences and heightened penalties), criminological denunciation and social stigma that accompanies labelling conduct as "terrorism" should not normally apply to direct action in this democratic tradition. Rather, the proscription power should be exercised in light of the context in which it was legislatively adopted and for which it was intended, namely, to confront organisations that are intrinsically criminal and extremely dangerous because their raison d'etre is the commission of extreme violence by organised, clandestine methods – methods that cannot be adequately countered by ordinary legal means.

44. In the work of the Special Rapporteur in monitoring counter-terrorism laws globally, abuse of laws to proscribe organizations as terrorist that are not genuinely so has more commonly occurred in States that are authoritarian and lack legal and political cultures of respect for human rights, legality, due process and independent judicial safeguards, in order to target civil society organizations, human rights defenders, political dissidents and minorities. These include egregious abuses, such as Russia's listing of the global LGBTQI movement as an "extremist" organization. Organizations must never be listed as terrorist for engaging in protected speech or legitimate activities in defence of human rights; see also United Nations Global Counter-Terrorism Coordination Compact, Basic Human Rights Reference Guide: Proscription of Organizations in the Context of Countering Terrorism (2021), guiding principle 7 ("The national proscription of organizations must not be used to suppress or deny the rights to freedom of association and of peaceful assembly, or as a means of quashing political dissent, silencing of unpopular or minority views or limiting the peaceful activities of civil society").

45. The excessive suppression of political protest could also have the counter-productive effect of fuelling grievances that could undermine the UK's national security. Pillar I of the United Nations Global Counter-Terrorism Strategy 2006, adopted by the consensus of the General Assembly including the UK, emphasizes that State violations of human rights while countering terrorism can be conditions conducive to violence. In addition, UK counter-terrorism law and practice can also influence other States and thus undermine fundamental rights in relation to protest movements in other countries.

46. In conclusion, the UN Special Rapporteur mandate acknowledges that protest action

that is not genuinely terrorist, but which involves alleged criminal damage to property, should appropriately be investigated and prosecuted as ordinary criminal offences or any specific security offences against defence installations or national security. Terrorism should not be legally conflated with other categories of offences with different policy rationales. Terrorist proscription should be cautiously reserved for addressing the most serious campaigns of sustained violence against life and person.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Professor Ben Saul (UN Special Rapporteur on counter-terrorism and human rights)

Date: ~~***14 July***~~ ***10 November*** ***2025***