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Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul

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Inter-American Commission Human Rights: Human rights situation in extraterritorial security operations (PS 195-1864), United States of America

Submission by the Special Rapporteur, 4 March 2026

A. Introduction

1. The Special Rapporteur welcomes the opportunity to provide a submission, explaining the incompatibility with international law of the United States' military attacks on an estimated 45 vessels on the high seas allegedly transporting drugs to the U.S. since September 2025, killing at least 151 people and injuring others. The attacks follow an unpublished order reportedly signed by the U.S. President in August 2025 authorizing the U.S. Armed Forces to use force, in international waters and possibly foreign territory, against Latin American drug cartels, including those the U.S. has designated as "Foreign Terrorist Organizations". The submission also addresses the related issues of U.S. attacks on Venezuela; threats of force against Mexico and Colombia; the legal distinction between terrorism and organized crime; and protecting the right to life under U.S. drug control policy.

B. Executive Summary

2. The Special Rapporteur submits that the attacks on vessels on the high seas are not consistent with international law because they:

   (a) Violate the right to life under international human rights law, since there is no evidence that those targeted posed an imminent threat of causing death or personal injury;

   (b) Violate the customary international law of the sea, which does not authorize unprovoked lethal attacks on civilian vessels in peacetime, and requires a law enforcement-based, graduated use of necessary and proportionate force in intercepting stateless vessels and any use of force in personal self-defence or defence of others;

   (c) Lack authority under the international law on the use of force, since the vessels targeted were not engaged in any armed attack on the U.S. which could give it a right of national self-defence;

   (d) Lack authority under international humanitarian law, which does not apply in the absence of an armed conflict, due to a lack of any military violence against the U.S. by the targeted groups, and in the alternative a lack of sufficiently intense hostilities and an absence of military organization among the targeted groups; and

   (e) Lack authority under any other area of international law, including counter-terrorism law and laws concerning the suppression of illicit narcotics.

3. The Special Rapporteur further submits that the attacks:

   (a) Likely constitute offences against civilian maritime safety under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, to which the U.S. is a State party, and which include conduct by State personnel; and

   (b) Fall within best practice international definitions of terrorism, including under Security Council resolution 1566 (2004), as intentionally causing death or serious injury with the purpose of terrorizing a group of persons.

4. The Special Rapporteur additionally argues that the U.S. designations of drug cartels and gangs as “terrorist”, which were a precursor to authorizing the use of force against some of them, exceeds best practice international standards on the definition of terrorism, which limit terrorism to political violence and exclude profit-motivated organized crime. Designations of organized crime group as terrorist has occurred elsewhere in the Americas.

5. The related U.S. use of force against Venezuela in January 2026, in part based on a U.S. claim of countering the Maduro Government’s alleged involvement in “narco-terrorism”:

   (a) Violated the prohibition on the use of force under article 2(4) of the United Nations Charter and customary international law; amounted to an armed attack within the meaning of article 51 of the Charter; and constituted prohibited aggression, which also attracts the individual criminal liability of responsible U.S. political leaders and military commanders; and

   (b) Triggered an international armed conflict between the U.S. and Venezuela governed by international humanitarian law, entitling the captured Venezuelan President to prisoner of war status (POW) as the operational commander-in-chief of the Venezuelan armed forces. The U.S. denial of his POW status violates humanitarian law and constitutes arbitrary detention contrary to the international human right to liberty.

6. The U.S. has also threatened to use prohibited force against drug cartels in other Latin American States without their consent, including Mexico and Colombia, in violation of article 2(4) of the United Nations Charter and customary international law.

7. Finally, the Special Rapporteur submits that the U.S. duty to protect the right to life against the risks of extensive substance abuse in its territory requires it to consider:

   (a) Expanding and strengthening law enforcement and intelligence capabilities, cross-border cooperation and intelligence sharing, and foreign technical assistance and capacity building in narcotics source and transit States;

   (b) Supporting economic and social development in remote and disadvantaged communities in source and transit States, and strengthening State authority, infrastructure and services, to provide alternatives to engaging in the narcotics industry;

   (c) Pursuing effective domestic drug prevention, public education and public health initiatives, to reduce drug addiction and drug-related violence; and

   (d) Imposing effective domestic and cross-border controls on the production, sale, possession, export and transfer of U.S. military-grade weapons and munitions, in order to reduce drug-related violence and supply in the U.S. and in source and transit States.

C. The mandate of the Special Rapporteur

8. The mandate of the Special Rapporteur was established by the United Nations Commission on Human Rights in 2005 and has been regularly renewed by resolutions of the Human Rights Council, most recently in 2025 by resolution 58/14. The Special Rapporteur is an independent expert mandated to promote and protect human rights and fundamental freedoms while countering terrorism. The current mandate holder is Professor Ben Saul.

9. 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."[1] The Special Rapporteur was selected for his "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity."[2] Special Rapporteurs "undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith" and "do not receive financial remuneration."[3]

10. In the performance of his mandate, the Special Rapporteur has the legal status of an expert on mission for the United Nations within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. In accordance with Article VI, Section 22, of the Convention, as a United Nations expert on mission, the Special Rapporteur enjoys the privileges and immunities as are necessary for the independent exercise of his functions, including immunity from legal process of every kind in respect of words spoken or written and acts done by him in the performance of his mission.

11. This submission is provided voluntarily, without prejudice to, and should not be considered or interpreted as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, in accordance with the Convention on the Privileges and Immunities of the United Nations of 1946. Further, the Special Rapporteur clarifies that authorization for the position and views expressed by him in the this submission, in full accordance with the independence afforded to his mandate, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any officials associated with those bodies.

[1] https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx.
[2] A/HRC/RES/5/1.
[3] OHCHR, *Special Procedures of the Human Rights Council.*

D. U.S. attacks violate the human right to life

12. Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992, and customary international law prohibit the arbitrary deprivation of life. Extrajudicial killings are universally understood as a violation of the right to life. The right to life is a *jus cogens* norm that cannot be derogated from, even in armed conflict or public emergency (Human Rights Committee, General Comment No. 36, para. 12).

13. Jurisdictionally, States must respect the right to life not only in their territory, foreign territory under their control, or wherever they have custody of a person abroad, but also whenever their military activities have a direct and reasonably foreseeable impact on the right to life of individuals outside their territory (General Comment No. 36, paras. 22 and 63). This includes on the high seas and in foreign territory (including foreign territorial seas) that is not otherwise under the States's control (as through occupation or lease).

14. Under international human rights law, the use of potentially lethal force by State agents is only permitted where it is strictly necessary and proportionate in personal self-defence or defence of others. It is an "extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat" (General Comment No. 36, para. 12). It must be strictly necessary in view of the threat posed by the attacker; it must represent a method of last resort after other alternatives have been exhausted or deemed inadequate; the amount of force applied cannot exceed the amount strictly needed for responding to the threat; the force applied must be carefully directed, only against the attacker; and the threat responded to must involve imminent death or serious injury (para. 12). The use of force should also comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Law enforcement must "give a clear warning of their intent to use firearms" unless doing so would unduly place the officer or another person at risk (Basic Principles, para. 10).

15. There is no evidence publicly available to suggest, and the U.S. has not claimed, that any person on board any of the vessels attacked by the U.S. posed any imminent threat to the lives of U.S. military personnel or to any other person at the time of the U.S. attacks, or that the U.S. gave any warning of their intent to use force. Indeed, the U.S. Secretary of State has indicated that the U.S. could have intercepted vessels but instead chose to attack to destroy them and to deter other drug traffickers.[4]

16. The concept of an imminent threat to life does not stretch beyond its breaking point to encompass speculative future deaths in the U.S. as a result of subsequent decisions by individuals in the U.S. to consume illegal drugs trafficked into the U.S.. Such deaths are not "imminent" in any meaningful sense and are too remote in any rational chain of causation due to the intervening conduct of others (from drug distributors in the U.S. to drug consumers) and the time elapsed between point of entry trafficking and consumption. In addition, there are other less invasive measures available to address the risks of deaths by drug consumption. These include effective law enforcement action in the U.S. and public health policy measures to prevent consumption and to mitigate dangerous methods of consumption. There is no authority under international human rights law supporting such attenuation of the criterion of "imminence".

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[4] https://www.cnn.com/2025/09/03/politics/rubio-blow-up-drug-ships.

17. Relevantly, the International Narcotics Control Board, a body of independent experts mandated by States to monitor the implementation of the three international narcotics conventions, has recently declared that "[e]xtrajudicial responses to any alleged drug-related activities are in violation of fundamental human rights and the international drug control conventions" and expressed concern at "increasing use of the extrajudicial targeting of persons suspected of drug-related trafficking and of extrajudicial killings carried out during the taking of measures to interdict trafficking" (Report 2025, para. 760).

Duty to investigate unlawful killings and to ensure accountability and remedies

18. Under international law the U.S. must investigate these apparent extrajudicial killings and, where appropriate, prosecute the perpetrators (General Comment No. 36, para. 27). These steps are elements of the obligation to provide an effective remedy for violations of the right to life to victims and their families under articles 6(1) and 2(3) of the ICCPR. In order to facilitate prosecutions, States must ensure they establish criminal jurisdiction over violations of the right to life, including where State officials act extraterritorially.

19. Investigations and prosecutions should be undertaken in accordance with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (General Comment No. 36, para. 27).

20. Investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent (General Comment No. 36, para. 28). They should address the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates (ibid, para. 27), which in the present case includes at least the U.S. President and Secretary of War, as well as the U.S. military commanders responsible for ordering the attacks. Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy (ibid, para. 27). In this respect, the absolutely immunity under U.S. law of the U.S. President for the exercise of his constitutional powers is not compatible with the duty to ensure effective remedies for the violation of the right to life.

21. Where a violation of the right to life is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction (ibid, para. 28). States must also take steps to prevent the occurrence of similar violations in the future.

E. U.S. attacks violate the international law of the sea

22. Any use of force on the high seas must additionally comply with the international law of the sea. There is a treaty duty on States to cooperate in suppressing illicit traffic in narcotic drugs on the high seas (article 108 of the United Nations Convention on the Law of the Sea 1982), but the U.S. is not a party to that treaty. The law of the sea does not recognize any right to unilaterally use force to destroy vessels suspected of trafficking drugs. In peacetime (outside situations of self-defence under the international law on the use of

force, and outside armed conflict governed by international humanitarian law), the customary international law of the sea permits the use of force in limited circumstances, namely where necessary and proportionate: (i) to intercept and board vessels in defined situations, (ii) to take specified law enforcement action under certain treaties (that are not relevant for present purposes, such as in relation to regulating fisheries), or (iii) in personal self-defence or defence of others, pursuant to an law enforcement paradigm.

23. There is a right of States to unilaterally intercept and board stateless vessels; and to intercept and board flagged vessels with flag State consent (see United Nations Convention on the Law of the Sea 1982, articles 110–111, reflecting customary international law binding as such on the U.S.). A treaty right to intercept and board flagged vessels suspected of transporting illegal drugs is still subject to flag State consent (see article 17 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, ratified by the U.S. on 20 February 1990, which is explicitly requires any measures to be taken in conformity with the international law of the sea (article 17(1))).

24. The rules concerning the use of force at sea in order to intercept a vessel are not codified in the Convention on the Law of the Sea but are governed by customary international law, binding on the U.S.. Under customary law, authority to use force is implicit in the above-mentioned rights to intercept and board vessels. Customary law "requires that the use of force must be avoided as far as possible and, where … unavoidable, it must not go beyond what is reasonable and necessary in the circumstances": *M/V 'Saiga' (No 2) (Saint Vincent and the Grenadines v Guinea) (Judgment)*, International Tribunal on the Law of the Sea, (1999) 38 ILM 1323 at paras. 155-156.[5] The use of force must be "unavoidable, reasonable and necessary": *Guyana v Suriname* (2008) 47 ILM 164 at para. 445. The use of force must be graduated, commencing with an auditory or visual signal to stop, using internationally recognized signals; where this does not succeed, shots may be fired across the bows of the ship; and only then, after further appropriate warnings, may force be used as a last resort, and even then "all efforts should be made to ensure that life is not endangered": *The M/V 'Saiga' (No. 2) Case*, paras. 155–156.

25. Treaty practice supports this law enforcement approach to the use of force at sea. For example, the Protocol 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, ratified by the U.S. on 28 August 2015, recognizes a right to board with flag State consent but provides that "the use of force shall be avoided except when necessary to ensure the safety" of officials and persons on board, or where officials "are obstructed in the execution of authorized actions" (article 8 bis (9)). Further, any use of force "shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances" (ibid). Similar constraints are in the United Nations Fish Stocks Agreement.[6] The above-mentioned 1988 Narcotic Drugs Convention requires boarding to "take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo" (article 17(5)).

[5] See also Commission of Enquiry established by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark, *The Red Crusader (Denmark v UK)*, *Award* (1962) 35 ILR 485 and U.S.-Canadian Claims Commission*, SS I'm Alone (Canada v United States), Award* (1935) 3 RIAA 1609.

[6] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, article 22(1)(f).

26. Beyond interception and boarding outlined above, any other use force at sea in peacetime is governed by a human rights and law enforcement paradigm, discussed earlier. Thus, the use of potentially lethal force must be necessary and proportionate, as a last resort, in personal self-defence or defence of others from an imminent threat of death of serious injury – for example, if a person aboard a vessel was threatening to fire upon another vessel, or to use a vessel as a means of deliberately colliding with another vessel.

27. According to the available evidence and in the light of U.S. explanations, the U.S. attacks were clearly not authorized under of the rules governing the use of force in peacetime against vessels on the high seas. The U.S. has not attempted to intercept and board vessels alleged transporting illicit drugs, whether stateless vessels or flagged vessels with flag State consent, and whether under customary international law or a specific treaty framework. The U.S. has not alleged that any of the vessels or persons on board posed an imminent threat to life of serious injury to other persons. Outside these contexts, there is no right in peacetime to use force against a vessel on the high seas, let alone to militarily target it in order to destroy it with the deliberate or foreseeable loss of life of those aboard.

F. U.S. has no authority under the international law on the use of force

28. According to long-established international law, a State may exercise the right of self-defence under article 51 of the United Nations Charter and customary international law only where it is necessary and proportionate in response to an actual or imminent "armed attack" committed by a foreign State, whether directly by State forces or where a State sends non-State forces to carry out an attack of the gravity of an attack by State forces.[7]

29. Drug trafficking by cartels or other organised criminal groups, and criminal violence associated with them, do not constitute an "armed attack" giving rise to self-defence. In 2025, the U.S. President invoked the Alien Enemies Act to claim that the Venezuelan gang Tren de Aragua was engaged in an "invasion" or "predatory incursion" against the U.S. on behalf of the Venezuelan Government, in order to invoke the Act to summarily deport alleged members of that organization to El Salvador.[8] Various U.S. courts have rejected the Government's claims that criminal violence amounts to an invasion or predatory incursion within the meaning of the Act.[9] United Nations independent experts have also repeatedly condemned the President's order as having no factual basis.[10]

30. Irrespective of the position under U.S. law, under international law the activities of Tren de Aragua or other groups do not comprise an "armed attack" for three reasons. First, they do not involve military-grade violence against the U.S.. The illicit trafficking in drugs and deaths resulting from their consumption in the U.S. in no rational way equates with a military attack by those groups on the U.S.. Secondly, their conduct does rise to the level

[7] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14 at para. 195.
[8] See communication by United Nations independent experts USA 14/2025, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29899.
[9] See the cases of *J.G.G. v. Trump* (US District Court for the District of Columbia) 2005; *A.R.P., et al. v. Trump, et al.* (US Court of Appeals for the Fifth Circuit (en banc), 2005; *A.V., et al. v. Trump* (District Court for the Southern District of Texas), 2005.
[10] See e.g. https://www.ohchr.org/en/press-releases/2025/04/un-experts-alarmed-illegal-deportations-united-states-el-salvador.

of "gravity" or "scale and effects" equivalent to convention military attack by State forces, as is required for violence by a non-State group to qualify as an armed attack. Thirdly, even if such organized crime qualified as military violence of sufficient gravity, international law further requires a State to "send" the armed group to attack, and the right of self-defence does not extend to attacks launched autonomously by private groups.

U.S. attacks as potentially prohibited uses of force

31. Article 2(4) of the United Nations Charter and customary international law prohibit a State from the use of force against the territorial integrity or political independence of another State. Stateless vessels do not engage the prohibition for lack of connection with any State interest subject to protection under this rule. The constraints of international human rights law and the international law of the sea discussed above continue to apply.

32. In the event that it is shown that the U.S. attacked any flagged vessel, such attack could potentially constitute a prohibited use of force against the State of registration/nationality. The International Court of Justice has suggested, albeit not dispositively, that attacks on civilian shipping could potentially "equate" to an armed attack on the flag State: *Oil Platforms (Islamic Republic of Iran v United States of America)*, Judgment of 6 November 2003, para. 64. The U.S. itself has recently taken this view in relation to attacks by the Houthis on civilian shipping transiting the Red Sea and has accordingly exercised individual and collective self-defence. If this reflects the current law, U.S. military attacks to destroy foreign flagged civilian ships allegedly trafficking drugs would constitute at least prohibited uses of force under article 2(4) of the Charter and customary international law, and could also constitute armed attacks depending on their gravity.

U.S. attack on Venezuela constituted a prohibited use of force

33. The U.S. attack on Venezuela of January 2026 was justified in part on the pretext of countering alleged "narco-terrorism" by the Venezuelan President Nicolás Maduro. On 25 July 2025, the U.S. sanctioned Cartel de los Soles (a.k.a. Cartel of the Suns) as a Specially Designated Global Terrorist, alleging that it is a "Venezuela-based criminal group headed by Nicolas Maduro Moros and other high-ranking Venezuelan individuals in the Maduro regime that provides material support to foreign terrorist organizations threatening the peace and security of the United States, namely Tren de Aragua and the Sinaloa Cartel."[11]

34. The U.S. claimed that its military operation against Venezuela to depose and abduct the Venezuelan President was a limited extraterritorial law enforcement operation. However, under international law, it clearly constituted a prohibited use of force under article 2(4) of the Charter and customary international law, an armed attack pursuant to article 51 of the Charter and customary law, and an act of aggression under customary law – which also attracts individual criminal liability for the responsible U.S. political and military leaders under customary international law. There is no lawful exception under international law permitting the use of force to prevent or suppress alleged "narco-terrorism" by individuals or a State. States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto the right to life under article 6 of the Covenant (Human Rights Committee, General Comment No. 36, para. 70), whether in relation to the deaths of Venezuelan military personnel or civilians.

[11] https://home.treasury.gov/news/press-releases/sb0207.

35. The illegal use of force on foreign territory also violates the foreign State's sovereignty and the international duty of non-intervention. When the U.S. previously used illegal force in 1989 to arrest Panama's head of Government, who had been indicted in the U.S. on drug trafficking charges, the action was condemned by the United Nations General Assembly as "a flagrant violation of international law and of the independence, sovereignty and territorial integrity of States" (resolution 44/240 (1989), para. 1).

Consequent international armed conflict under international humanitarian law

36. Relatedly, the U.S. aggression against Venezuela triggered a limited international armed conflict under international humanitarian law, which does not require a minimum intensity or duration of armed hostilities between two States (see common article 2 of the four Geneva Conventions of 1949 and the ICRC Commentaries thereto), and the existence of which does not depend on recognition by the belligerents. Again, the U.S. claim that the operation was extraterritorial law enforcement is immaterial given the heavy military operations carried out by the U.S. against Venezuelan military objectives and personnel.

37. As the operational and not merely titular or de jure commander-in-chief, and thus as a member, of the Venezuelan armed forces, President Maduro was entitled to prisoner of war status upon capture under article 4 of the Third Geneva Convention. Should there be any doubt about his status, the U.S. is required by article 5 of the Convention to determine his status in a competent tribunal. The denial of POW status also constitutes arbitrary detention, contrary to article 9 of the ICCPR. The abduction and detention of his wife also amounts to arbitrary detention. To avoid doubt, international law further does not permit extraterritorial "law enforcement" to arrest or detain individuals in foreign territory without the foreign State's consent. Venezuela did not give such consent.

Unlawful threats of prohibited force against other Latin American States

38. On a number of occasions since 2025 the U.S. President has publicly stated that he would consider the direct use of force against drug cartels in other Latin American States without the apparent consent of those States, including Mexico and Colombia, resulting in public protest from the presidents of those States. Article 2(4) of the United Nations Charter prohibits the threat of unlawful force against other States, which would include threats of U.S. military operations on foreign territory without foreign State consent.

39. Extraterritorial law enforcement action without foreign consent, that is, not involving military force, at a minimum would separately violate foreign State sovereignty and the international law duty of non-intervention (i.e. by coercive means) in a foreign State.

G. U.S. has no authority under international humanitarian law

40. Under common article 3 of the four Geneva Conventions of 1949, the threshold of a non-international armed conflict is met where the violence between the parties has reached a certain intensity and the relevant parties are sufficiently organized.[12] A range of factors are considered relevant to evaluating the criteria of intensity and organization.

[12] International Committee of the Red Cross, Commentary (2025) to article 3 of the Fourth Geneva Convention, para. 492. See also International Criminal Tribunal for the former Yugoslavia (ICTY), *Tadić* Decision on the

41. The political or profit-oriented motive of a group is not strictly relevant to the legal existence of a conflict. In principle it is possible for an organized criminal group to be a party to a conflict (and for an armed group in armed conflict to be engaged in organized crime, as previously in the case of the Revolutionary Armed Forces of Colombia (FARC)).
42. The U.S. is manifestly not, however, involved in an armed conflict with Tren de Aragua, or any of the other criminal groups potentially targeted in the U.S. attacks, so as to engage the application of international humanitarian law, including its rules on permissible military targeting and prohibited war crimes (including, for instance, for attacking survivors hors de combat). As such, humanitarian law is not the applicable framework by which to examine the legality of the U.S. attacks, and the focus must instead remain on human rights law and the law of the sea.

Lack of military violence

43. First, since the criminal groups concerned are not systematically using military-type violence against the U.S. at all, it is unnecessary to even consider whether the intensity criterion is met. Drug trafficking and consequential deaths from drug consumption are not phenomena that even fall within the field of violence of concern to international humanitarian law, but are properly the subject of ordinary criminal law enforcement action.

Insufficient intensity

44. Secondly, to the extent that such criminal groups have used or threatened violence against the U.S., such violence is clearly of the nature of criminal violence, not violence of a military nature even remotely approaching the intensity requirement under humanitarian law. Almost none of the indicators of intensity in the international jurisprudence are present, including as regards: the seriousness of attacks and any increase in armed clashes; the spread of clashes over territory and over time; the type and distribution of military weapons among both parties; whether the conflict has attracted the attention and resolutions of the United Nations Security Council or other international interventions and peace-making; the numbers of civilians forced to flee from the combat zones; the blocking or besieging of towns; the extent of destruction and the number of casualties caused by fighting; the quantity of troops and units deployed; control of territory and denial of movement; and cease fire orders and agreements.[13]

45. While the U.S. has certainly deployed military forces on the high seas in the Americas and resorted to military force against the criminal groups, it has not been compelled to do so by the level of military threat posed by those groups, which could be adequately addressed by ordinary law enforcement responses. Intensity requires sufficient bilateral military violence between the parties. An armed conflict is not constituted merely by a Government pursuing a unilateral “turkey shoot” against suspected criminals or vessels.

Lack of organization

46. In relation to the “organisation” criterion, Tren de Aragua and the other criminal groups concerned are not sufficiently organised in the relevant sense of humanitarian law. While

Defence Motion for Interlocutory Appeal on Jurisdiction, 1995, para. 70; ICTY, *Tadić* Trial Judgment, 1997, para. 562.

[13] See e.g. ICTY, *Prosecutor v. Boškoski and Tarčulovski*, Trial Judgment, 2008, para. 177.

they may possess a structure as criminal groups, they lack almost all of the organisational characteristics that are indicative of military forces in armed conflict, namely: a command structure and disciplinary rules and mechanisms; the existence of a headquarters; control of territory; the ability to gain access to military weapons and equipment; the ability to militarily recruit and train; the ability to plan, coordinate and carry out military operations, including troop movements and logistics; the ability to define a unified military strategy and use military tactics; and the ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.[14]

No basis for military targeting

47. Since no armed conflict exists and humanitarian law does not apply, it is unnecessary to consider the rules on targeting which could potentially authorize attacks. Nonetheless, it may be emphasized that transporting illicit drugs would not qualify as civilian direct participation in hostilities, including on an enduring basis by persons performing a continuous combat function. While illicit financial or criminal activities by armed groups may indirectly support the group's combat operations, such activities do not comprise "direct" participation in hostilities, since they lack a direct causal link to inflicting military harm on the adversary.[15]

48. Further, there is no support in international humanitarian law for the U.S. position that "war sustaining" economic objects – conceivably including illicit drug trafficking where it raises funds for the military operations of a group – may be militarily targeted. Under humanitarian law, only military objectives may be attacked, meaning "objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage" (ICRC Customary International Humanitarian Law, rule 8). State practice in the interpretation and application of international humanitarian law does not accept the expansion of military objectives to encompass economic activities, whether illicit or licit. Other legal frameworks address economic crime, including international laws against organised crime, terrorist financing, and money laundering, among others.

Wider abuse of the armed conflict paradigm in Latin America

49. The U.S. attacks are an example of a wider problem in the Americas of an armed conflict paradigm being abusively applied to organized crime and "narco-terrorism" in the absence of sufficiently intense military violence involving organized armed groups. Most notably, the Constitutional Court of Ecuador has repeatedly found that Ecuador's declaration of a non-international armed conflict against 22 organised crime groups designated as "terrorist

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[14] ICTY, *Prosecutor v. Haradinaj*, Trial Judgment, 2008, para. 60.

[15] See ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities ("In order to qualify as direct participation in hostilities, a specific act must meet the following cumulative criteria:

- The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (*threshold of harm*), and
- There must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (*direct causation*), and
- The act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (*belligerent nexus*).")

organisations and non-state belligerent actors" (Executive Decree No. 111 of 9 January 2024), thus authorizing the armed forces to "neutralize" them (that is, "shoot to kill"), does not satisfy the intensity and organization requirements of humanitarian law.[16] The Court indicated that serious criminal violence is not the same as intense military hostilities; and the various criteria evidencing organization are not met (such as command structure, territorial control, uniforms, military camps, communication and negotiating authority). Further, the 22 groups were not acting in concert so as to enable the aggregation of their conduct for the purposes of assessing intensity and organization.

H. No other international legal frameworks authorize the U.S. attacks

50. There is no other authority under international law to unilaterally use military force on the high seas against vessels or persons allegedly (i) transporting illicit drugs or otherwise suspected of participating in (ii) organized crime groups or (ii) terrorist organizations.

I. U.S. attacks constitute treaty offences against civilian maritime safety

51. Under article 3(1) of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988, ratified by the U.S., it is a criminal offence where "any person" unlawfully and intentionally:

    (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

    (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

    …

    (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

52. The Convention is among the so-called international counter-terrorism conventions. A "ship" is defined (article 1) in a manner that is not limited to flagged vessels and includes stateless ships. The Convention applies to ships, inter alia, on the high seas (article 4). The International Court of Justice has confirmed that the criminal liability of "any person" under the similarly worded International Convention for the Suppression of the Financing of Terrorism 1999 "covers individuals comprehensively" and "applies both to persons who are acting in a private capacity and to those who are State agents".[17]

53. The U.S. appears to (falsely) claim that its attacks are directed at both the ships themselves, as military objectives, as well as the against the persons on board, as members of an armed group directly participating in hostilities. Accordingly, the U.S. attacks on (stateless or

[16] Judgments I-24-EE/24 of 229 February 2024; 2-24-EE/24 of 1 August 2024; 5-24-EE/24 of 9 May 2024; 6-24-EE/24 of 13 June 2024 and 7-24-EE/24 of 1 August 2024.

[17] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) (Preliminary Objections)*, 8 November 2019, para. 61; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, 31 January 2024, para. 56.

flagged) vessels on the high seas and/or persons aboard constitute the commission of all three Convention offences above – intentionally destroying ships or causing damage to ships likely to endanger their safe navigation (article 3(1)(c)), committing acts of violence against person on board that are likely to endanger safe navigation (article 3(1)(b)), and killing or injuring any person in connection with the other two offences (article 3(1)(g)).

54. The Convention offences must be committed "unlawfully", a standard which is prima facie determined by reference to national law. However, this qualification does not permit States to abusively or bad faith create and invoke domestic legal authority to permit the commission of Convention offences by State personnel. In implementing a similar qualification concerning the offences under the conventions on terrorist bombings (1997) and terrorist financing (1999), the U.S. itself explained that the unlawfulness criterion "is not meant to exempt state-sponsored terrorism" but clarifies only that states are 'not required to criminalise conduct which *under common principles of criminal law* is not considered unlawful (e.g., properly authorized use of force by its own police forces or conduct permitted as self-defence)".[18] The U.S. declared that domestically authorising State terrorism would be "at odds with the purpose" of the conventions.[19] Consequently, any U.S. domestic law authorizing the attacks on vessels since September 2025 – even if it were valid under U.S. law, an unknown question given the secrecy and lack of independent review of the U.S. Presidential order – would not exempt U.S. personnel from liability for the Convention offences of unlawfully endangering ships.

55. Under the Convention, as a State party the U.S. is required to prevent its offences (article 13), to criminalize the offences in domestic law (article 5), to apprehend alleged offenders (that is, including State officials and military personnel) found in its territory and investigate the alleged offences (article 7), to submit the case without delay to the competent authorities for the purpose of prosecution, if it does not extradite the person (article 10), and to punish perpetrators by appropriate penalties that take into account the grave nature of the offences (article 5).

56. States parties must establish jurisdiction over offences committed against their flagged vessels, in their territory, or by their nationals (article 6(1)), the latter being relevant to the U.S. attacks, being perpetrated by U.S. nationals. Jurisdiction may be optionally established, inter alia, by States whose nationals are seized, threatened, injured or killed (article 6(2)), which could engage the jurisdiction of a number of States whose nationals were killed by the U.S.. The Convention does not remove the functional immunity from foreign criminal jurisdiction of State officials for acts performed in their official duties under customary international law, for instance in the event that any of the U.S. attacks were committed against foreign flagged vessels or foreign nationals whose States of nationality are States parties to the Convention. However, the U.S. is entitled to waive immunity to enable foreign prosecutions.

57. While the Convention does not apply to warships (article 2(1)), this concerns the exclusion of warships as the object or victims of offences, which are confined to civilian vessels. It does not imply that offences committed by persons on board warships against other vessels are outside the Convention, such as where U.S. naval vessels attack vessels allegedly carrying drugs. Further, while the Convention does not affect the immunities of warships

[18] Response from US Department of State to Additional Questions, "Anti-Terrorism Conventions", US Senate Executive Report 107-2, 27 November 2001 (emphasis added).
[19] Ibid.

(article 2(2)), this concerns the immunities from seizure of or enforcement against the warship (including interception and boarding) and does not exclude or bar criminal jurisdiction over offences committed by persons on board warships against other vessels or persons aboard.

58. The U.S. is a State party to the 2005 Protocol to the 1988 Convention, which excludes "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law" (article 3(2), adding article 2*bis* to the revised Convention).[20] This would exclude from the scope of the revised Convention the U.S. attacks on the vessels in question, since such attacks are committed in the exercise of their official duties, even if they are unlawful under international law; the Convention does not limit official duties to acts in conformity with international law.

59. However, the 2005 Protocol applies only between States parties to both the Protocol and the Convention. In accordance with treaty law, the U.S. remains bound by its obligations under the 1988 Convention alone in its relations with States that are only parties to the 1988 Convention and not also the 2005 Protocol. As mentioned, under the Convention the U.S. must criminalize offences and establish jurisdiction over its nationals, and investigate and prosecute or extradite offenders in its territory, and there is no exclusion for the activities of State military forces exercising their official duties.

J. U.S. attacks fall within the best practice definition of terrorism

60. In addition to constituting offences against maritime safety, the U.S. attacks appear to fall within best practice international definitions of terrorism. Non-binding Security Council resolution 1566 (2004), supported by the U.S. as a Council member, defines terrorism to include criminal acts committed with the intent to cause death or serious bodily injury, "with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, [or] intimidate a population", and where constituting an offence under the international counter-terrorism conventions. The Special Rapporteur's 2026 revised model definition of terrorism contains similar elements, adding that the conduct must be committed with a political or ideological purpose, while not requiring an underlying treaty offence. The U.S. attacks are intended to kill; they are further intended to terrorize members of that group of persons involved in illegally transporting narcotics by sea, or alternatively intimidating; and they are committed for the political purpose of enforcing the U.S.'s narcotics policy.

K. U.S. designations of drug cartels and gangs as "terrorist" exceeds international standards on the definition of terrorism

61. A essential precursor to the U.S. attacks was the U.S. Department of State's designation of eight organized criminal groups – gangs and cartels – as Foreign Terrorist Organizations

[20] A further exclusion in the same provision for the activities of armed forces in armed conflict governed by international humanitarian law is not relevant, given the lack of any armed conflict, discussed above.

and Specially Designated Global Terrorists on 28 February 2025.[21] The U.S. listings asserted that six groups were based primarily in Mexico, one originated in Venezuela, and one began in the U.S. but expanded to Central America. The U.S. alleges some of these groups are present in Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru, and Venezuela. As mentioned, on 25 July 25, 2025, the U.S. also sanctioned Cartel de los Soles (a.k.a. Cartel of the Suns) as a Specially Designated Global Terrorist. The U.S. also listed two Haitian gangs as Foreign Terrorist Organizations on 2 May 2025[22] and two Ecuadorian criminal groups on 4 September 2025.[23]

62. United Nations independent experts have expressed concerns about the U.S. designation of organized crime groups as terrorist organizations in communication USA 14/2025, on the basis that terrorism and organized crime are distinct phenomena to which different legal frameworks should apply, to ensure that the respective responses remain necessary and proportionate.[24] In that communication, concern focused on the use of the terrorist listings in applying the Enemy Aliens Act to carry out unjustified deportations in contravention of international law. Experts were further concerned that the terrorist listings were a first step toward justifying other illegal measures such as the unlawful use of force, a concern which was since borne out in practice.[25]

63. False counter-terrorism designations and narratives appear designed to delegitimize the organizations in order to lower the legal restraints inherent in an ordinary law enforcement response. The U.S. President's unpublished executive order of August 2025, reportedly authorizing the U.S. Armed Forces to use military force against drug cartels, appears to be based on this process of inflating the threat of organized crime into "terrorism" and war.

64. The U.S. designations are part of a wider recent trend in the Americas towards listing organized crime groups as terrorism, including in Canada, Ecuador, Argentina, Paraguay and Honduras, and with proposals to do so in Brazil. This approach is not desirable from the standpoint of international law and human rights law as explained below.

Functional nexus between terrorism and organized crime

65. Globally, there are certainly links between some terrorist groups and some organised crime groups. Drug trafficking is one of the most common organised crimes committed by terrorist groups to finance their operations. Others include illicit trafficking in cultural property, illicit exploitation of natural resources and environmental crimes, and kidnapping for ransom. These activities of some terrorist groups can clearly come within the legal frameworks for combating organised crime.

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[21] https://www.state.gov/designation-of-international-cartels#:~:text=Today%2C%20the%20Department%20of%20State,as%20Foreign%20Terrorist%20Organizations%20(FTOs.
[22] https://www.state.gov/releases/office-of-the-spokesperson/2025/05/terrorist-designations-of-viv-ansanm-and-gran-grif.
[23] https://www.state.gov/releases/2025/09/terrorist-designations-of-los-choneros-and-los-lobos/.
[24] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29899.
[25] https://www.ohchr.org/en/press-releases/2025/09/us-war-narco-terrorists-violates-right-life-warn-un-experts-after-deadly#:~:text=GENEVA%20%E2%80%93%20UN%20experts*%20today%20condemned,another%20vessel%20on%2015%20September.

Definition of terrorism differentiates terrorism from organized crime

66. However, the activities of organised crime groups will rarely qualify as terrorism. The key legal distinction is that the Transnational Organised Crime Convention defines organised crime as essentially crime for profit – for "a financial or other material benefit" (article 2(a)). During the drafting of the Convention, it was the US itself who indicated that this profit motive is what distinguishes crimes under the Convention from terrorism, and drafting proposals to conflate terrorism and organised crime were rejected.

67. In contrast, terrorism is essentially violence for a "political purpose", as indicated by the consensus of the United Nations General Assembly in its 1994 Declaration on Measures to Eliminate International Terrorism. According the 2026 revised model definition of terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,[26] terrorist acts must pursue a political or ideological purpose, which must also be a substantial motive of their conduct, and this element differentiates terrorism from violence for profit or other private reasons.

68. While some drug cartels and gangs use violence to terrorise or intimidate parts of the population, or to coerce or compel governments to do something, which are legal elements of many definitions of terrorism, including under the Terrorist Financing Convention 1999, Security Council resolution 1566 (2004), and the Special Rapporteur's model definition. However, organised crime usually lacks the additional element of political motive, which is an essential defining characteristic of terrorism. Only where organized crime groups additionally pursue political goals could they also be classified as terrorist groups; and this is not the case in relation to the cartels and gangs designated as terrorist by the U.S..

69. Terrorism is not always more dangerous than organised crime, but it is a qualitatively different threat because of its instrumental political goals. Each type of crime requires customised legal frameworks, to ensure that inappropriate powers and tools are not misused when they are not justified as necessary and proportionate responses, including when restricting human rights.

L. U.S. duty to protect the right to life from extensive substance abuse

70. The U.S.'s obligation to protect the right to life requires it to take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, specifically including "extensive substance abuse" (General Comment No. 36, para. 26). Such measures could include the following in order to effectively protect the right to life.

Expanding and strengthening law enforcement and intelligence capabilities

71. The human rights-compliant response to the challenge of transnational organized crime is foremost to make effective use of multilateral law enforcement cooperation tools. The United Nations Convention against Transnational Organized Crime 2000 and its three protocols, and the international narcotics control conventions and mechanisms, criminalise various organised criminal offences, including participation in an organised criminal

[26] A/HRC/61/52, https://www.ohchr.org/en/documents/thematic-reports/ahrc6152-defining-terrorism-respect-and-protect-human-rights.

group, provide for extraterritorial jurisdiction, and enable law enforcement information sharing, mutual assistance and extradition, all while safeguarding human rights.

72. These multilateral frameworks are properly supplemented by bilateral and regional cooperation and building cooperative relationships of mutual trust and benefit with other States. The U.S. has a long history of cooperation with States in the Latin American region, including through intelligence sharing, technical assistance, and building the capacity of foreign State law enforcement and intelligence partners. The U.S.'s comparative advantage in electronic, financial and technical intelligence, and special investigative techniques, in particular can be better leveraged to supplement the human intelligence and local knowledge of partner States in the region.

73. To the extent that stronger legal powers or new tools are needed to keep pace with the scale or changing nature of organised crime in particular contexts, the appropriate response is to proportionately tailor and adapt the organised crime legal frameworks, not to escalate the response to falsely classify organised crime as terrorism or even as warfare.

Development and strengthening State authority in source and transit States

74. In addition, instead of focusing narrowly on kinetic suppression and law enforcement interdiction of narcotics, the U.S. should invest much more in addressing the root causes of the illegal narcotics industry. The U.S. should contribute more to long term economic and social development, public services and infrastructure in disadvantaged and remote communities in source and transit countries, in order to provide secure and sustainable livelihood and educational opportunities that empower people with alternatives to cartel and gang activity and coca farming and production. Further, the U.S. should assist States, at their request, to expand State authority and institutions in remote and disadvantaged areas, to strengthen security for the population and facilitate public services and infrastructure and sustainable economic development.

Domestic drug and public health policy

75. Cartels have continued to grow more powerful despite decades of expensive and securitized suppression efforts, and more people in the U.S. have fallen victim to addiction, ill-health and death. Domestically, the U.S. could also do much more to preventively address the root causes of organised drug crime. It needs to more seriously confront the demand-side of drug use in the U.S., through prevention, public education and public health interventions. It could expand the availability and accessibility of medications, services and treatments to address drug addiction; provide supervised, safe spaces and materials (e.g. needles) for personal consumption; strengthen health interventions in prisons; engage organised crime groups in "ceasefire" and other violence mitigation efforts; decriminalize certain personal drug possession, and take other targeted measures to destroy the profitability of the cartels' business model.

76. The U.S. also needs to strengthen efforts to combat the root causes of drug use, including socio-economic disadvantage and lack of opportunity, untreated mental and physical health conditions, over-incarceration, homelessness, loneliness, domestic violence and abuse, parental neglect and peer pressure. A securitized and militarized response distracts from and undermines these more effective responses.

Effective regulation and control of U.S. weapons and munitions

77. Crucially, the U.S. needs to more effectively regulate the licit and illicit trade in powerful U.S.-manufactured military-grade weapons and ammunition, that fuel cartel violence and corrode political and justice systems in Latin America and the U.S.. It is estimated that 70 per cent of cartel weapons in Mexico originated in the U.S.. In order to protect the right to life, the U.S. needs to more stringently and responsibly regulate domestic arms production, sale and possession, as well as foreign exports and transfers. It should also take steps to reduce the number of military weapons in private hands in the U.S., through "buy back" and gun amnesty schemes, which have very successfully reduced arms in other countries.

M. Recommendations

78. The Special Rapporteur urges the Inter-American Commission on Human Rights to:

Attacks on vessels

(a) Declare that the U.S. attacks on vessels on the high seas allegedly transporting illicit drugs violate the human right to life, including on the basis that the attacks are not authorized under any relevant *lex specialis*, including the international law of the sea, the international law on the use of force, international humanitarian law, international counter-terrorism law, or the international narcotics suppression conventions;

(b) Urge the U.S. to investigate and prosecute the alleged perpetrators, including civilian and military superiors, and to provide reparation, including compensation, rehabilitation and satisfaction, and guarantees of non-repetition;

(c) Advise other Member States of the Organization of American States to refrain from aiding or assisting the U.S. to commit such violations of the right to life,[27] including by refraining from sharing intelligence or permitting the use of military facilities;

(d) Acknowledge that the U.S. attacks could constitute offences against civilian maritime safety under international counter-terrorism treaty law binding on the U.S.;

Attack on Venezuela

(e) Declare that the related U.S. attack on Venezuela to combat alleged State "narco-terrorism" was contrary to international law, as involving a prohibited use of force, an armed attack, and aggression; a violation of sovereignty and a prohibited intervention; a violation of prisoner of war status under international humanitarian law; and a violation of the human rights to life, security of person and liberty;

Threats of force against other American States

(f) Declare that threats of prohibited force against organized crime groups in other States in the Americas are contrary to article 2(4) of the United Nations Charter and threaten the human right to life;

[27] See International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001, article 16.

Abuse of counter-terrorism laws and narratives

(g) Caution States against other abuses of counter-terrorism laws and narratives in the context of combating organized crime, including by:

(i) Recognizing that national designation of organized crime groups as terrorist organizations in the U.S. and other American States is contrary to best practice international definitions of terrorism and organized crime, and improperly apply counter-terrorism frameworks to the different challenge of organized crime, unless groups are also substantially motivated by a political or ideological purpose; and

(ii) Opposing subjective State declarations of the existence of non-international armed conflicts where the objective intensity and organization criteria under international humanitarian law are not met, so as to avoid unjustified resort to "shoot to kill" policies under the rules on the conduct of hostilities;

Duty to protect the right to life in relation to substance abuse

(h) Implore the U.S. to take all feasible steps to protect the right to life in the U.S. of persons vulnerable to substance abuse, including:

(i) Non-securitized, non-criminal justice measures of prevention, public education, public health, and socio-economic intervention;

(ii) Strengthening cross-border law enforcement and intelligence cooperation;

(iii) Supporting development and State building in remote and vulnerable communities in narcotics source and transit States; and

(iv) Enforcing effective domestic and export controls on U.S. military-grade weapons and munitions;

Request an advisory opinion

(i) Request an advisory opinion from the Inter-American Court of Human Rights on the illegality of the U.S. attacks under human rights and related international laws and the abuse of counter-terrorism laws and narratives.

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Professor Ben Saul, Special Rapporteur

Sydney, 4 March 2026