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Interview with H.E. Ambassador Vladimir Tarabrin

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1. On the growing effect/impact of counterterrorism policies on the humanitarian space: Especially over the past two decades, the counterterrorism space has seen an expansive growth in terms of policies and frameworks to curb acts of terrorism and hold terrorists accountable. How are these measures formulated from the Russian perspective, keeping in mind the need to protect the humanitarian space as well as other general human rights standards?

First of all, I would like to emphasize that the expansion of the counterterrorism legal framework in the Russian Federation is a direct response of our country to changing and evolving terrorist threats which have become over the recent years extraordinarily sophisticated and multifaceted: terrorists are complicating their tactics, resorting actively to information communication technologies, and using propaganda with the aim of disseminating radical ideas and recruiting newcomers. In this regard, the Russian law-making activity in the prevention of counterterrorism is reasoned by the aspiration of our government to effectively respond to real terrorism-related threats, and, despite all fears, is not aimed at "overregulating" this sphere, with the Russian Federation as one of the world leaders in counterterrorism having elaborated an extremely detailed and practicable counterterrorism legal framework.

The fundamental principles to which the Russian Federation adheres whilst preventing and countering terrorism include the principle of the maintenance and protection of human rights and fundamental freedoms of a person and a citizen, the principle of legality, and the principle of the protection of rights of victims of terrorism (these principles are envisaged amongst the first in Article 2 of the *Federal Law of the Russian Federation of 6 March 2006 No. 35-FZ "On Countering Terrorism"*). All these regulations entirely correspond to Article 18 of the *Constitution of the Russian Federation* (which is part of Chapter 2 thereof, which is not subject to amendments), which says that rights and freedoms of a person and a citizen shall be directly operative; they determine the essence, meaning, and implementation of laws, the activities of the legislative and executive and local authorities, and shall be ensured by the administration of justice.

However, the enjoyment of human rights, with the exception of certain so-called absolute rights (such as the right to be free from torture), can always be subject to derogations, when they are law-based, proportionate, and necessary in a democratic society (this approach correlates with the provisions of the *European Convention on the Protection of Human Rights and Fundamental Freedoms*). Additionally, sacrificing the interests of national security for human rights not only goes beyond the bounds of common sense, but also it can scarcely be consonant with the very concept of human rights. Therefore, there is a good reason why many international documents on counterterrorism contain a clause that counterterrorism measures and human rights are not mutually exclusive, but mutually reinforcing.[1]

1 For instance, in paragraph 7 of the preambular part of *United Nations Security Council Resolution 2178*, the Council underscores that respect for human rights, fundamental freedoms and the rule of law are

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The principled position of the Russian Federation upon which the domestic legislation in counterterrorism is based consists in the assumption that any person who participates in the financing, planning, preparation, or perpetration of terrorist acts or in supporting terrorist acts should unconditionally be brought to justice. In that respect, the principle of the inevitability of punishment for terrorist offences, which is reflected in paragraph 2(e) of the operative part of *United Nations Security Council Resolution 1373* and duly followed by the Russian Federation, is an indispensable prerequisite for quite harsh counterterrorist measures, especially from a criminal justice perspective. Particularly, the statutory criminal law provisions relating to counterterrorism are amongst the most detailed in the world and are in harmony with general principles of *lex certa* and *nullum crimen sine lege*: the majority of the respective *corpora delictorum* are categorized as grave or particularly grave ones;[2] terrorist offences in Russia are not subject to statutes of limitations; there is no possibility to impose a conditional sentence for individuals convicted for terrorist offences; it is also impermissible to impose on terrorists more lenient punishment than that provided for the given crime; when having endured punishment, all former terrorists who are released from penitentiary institutions are subject to a special administrative surveillance carried out by competent law enforcement agencies. Nevertheless, the necessity of such severe measures is reasoned not only by considerations of general prevention and high level of danger that terrorists pose to the public, but also it stems from the international legal obligations of the Russian Federation making it incumbent for us to qualify terrorist offences as serious ones in accordance with domestic legislation and duly punish them.

2. On the "terrorism–violent extremism" terminology used for classification and adjudication of justice: Considering the challenge posed due to a lack of a universally recognized definition for terrorism as well as the expansion of the preventing and countering violent extremism (PVE/CVE) narrative – how does the Russian Ministry of Foreign Affairs work around these terminologies in their policy making/legislative drafting, so as to ensure that principles of international law are not infringed upon?

To begin with, it is important to clarify what principles are meant. If you ask about *jus cogens* principles, I consider it suitable to make a reference to Article 15, paragraph 4, of the Constitution of the Russian Federation which says that universally recognized norms and principles of international law and

complementary and mutually reinforcing with effective counterterrorism measures, and are an essential part of a successful counterterrorism effort. Moreover, in the preambular paragraph 6 of *United Nations Security Council Resolution 2395*, the Council underscores that effective counterterrorism measures and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing, and are an essential part of a successful counterterrorism effort.

2 According to Article 15 of the *Criminal Code of the Russian Federation*, grave crimes are intentional acts for the commission of which the maximum punishment stipulated by the Code exceeds five years' deprivation of liberty, but does not exceed ten years' deprivation of liberty, whereas particularly grave crimes are those punishable by deprivation of liberty for a term exceeding ten years or a more severe punishment.

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international treaties of the Russian Federation shall be an integral part of its legal system. As interpreted in the *Decree of the Plenum of the Supreme Court of the Russian Federation of 10 October 2003 No. 5 "On the Application of Norms and Principles of International Law and International Treaties of the Russian Federation by Regular Courts of the Russian Federation"*, a universally recognized norm of international law is the rule accepted by the whole international community as legally binding. Given the fact that the *United Nations Charter* enshrining fundamental *jus cogens* principles is a component of the Russian national legal system, the problem of "non-ensuring" principles of international law does not exist in Russia, since such principles are guaranteed by the Constitution of the Russian Federation.

You are quite right in underlining the non-existence of a universal definition of terrorism. Nevertheless, such a fact does not mean that there are no "meeting points" amongst various members of the international community; otherwise, no international document in this sphere could be agreed upon either in the United Nations, or in any regional organization dealing with counterterrorism.

First, now we have nineteen universal international treaties (conventions, protocols thereto, and one amendment) criminalizing different types of terrorism (from hijacking to attacks against nuclear installations). References to them are included in almost all regional international legal treaties, in particular, for instance, the *2005 Council of Europe Convention on the Prevention of Terrorism* which was ratified by the Russian Federation as its first State party.

Second, we have the *1999 International Convention for the Suppression of the Financing of Terrorism* which actually counts 189 States parties and hereby makes it one of the most well-represented international treaties of contemporary international law. In accordance with Article 2, paragraph 1, subparagraph (b), of the Convention, it is prohibited to carry out acts intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such acts, by their nature and context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

Third, in conformity with Chapter I, paragraph 3, of the *1994 Declaration on Measures to Eliminate International Terrorism* (approved without a vote by United Nations General Assembly Resolution 49/60), any criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them, are condemned.

To sum up, a notion that terrorism always implies the commission of illegal and ideologically motivated violent acts for the purpose of spreading terror or coercing an authority to do any act or to abstain from doing it has already emerged within the international community. Everything seems rather clear. However, it is so only at first glance, for then there are nuances. For example, the Russian Federation, alongside the majority of the United Nations Member States,

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does not recognize the doctrine of state terrorism, utilized by certain countries for labelling their political adversaries and justifying interventions in matters which are essentially within the domestic jurisdiction of sovereign States, contrary to the *United Nations Charter*. In this case, the Russian Federation adheres to a generally recognized approach that terrorist offences can be perpetrated by private persons only.

As to violent extremism, questions regarding this Anglo-Saxon concept have been raised by us from the beginning.

Why is extremism *violent*? It follows that there can also be non-violent extremism, cannot there? In context of violent extremism, the question is: if the term implies extremism involving violence, why is it necessary to contemplate such extremism in a counterterrorism context only? If it seems to be the case, what is the difference between violent extremism and terrorism? In the Russian Federation, non-violent extremism is also criminalized (for instance, public propaganda of extremist ideas).

What is *extremism*? Once Voltaire claimed: "If you wish to converse with me, define your terms." When it comes to drafting international documents, there is a well-established common practice to cite internationally agreed terms which (in this case) do not exist. Against the backdrop of the incapacity of the international community to agree on the definition of terrorism, it seems unclear why – putting it in great medieval scholastic philosopher William Ockham's terms – we should multiply entities without necessity and introduce in the international discourse a new vaguer concept.

Is it possible to imagine such *forms of violent extremism that are outside a counterterrorism context*? In the case of a positive answer, it should be noted that such "terrorism-unrelated" extremism is a rather different issue which has nothing to do with a counterterrorism agenda, due to its different purpose and subject matter, and, consequently, remains outside of the boundaries of the existing counterterrorism legal framework. Our reply is negative, since the Russian Federation insists all references to violent extremism in international counterterrorism documents to be used in conjunction with the phrase "conducive to terrorism",[3] for otherwise it will run counter to the purpose of the respective international documents and undermine their subject matter.

3. Treatment of foreign fighters; their repatriation, return and domestic adjudication: A brief note on the foreign fighter phenomenon and its effect in Russia. How are they being treated in terms of domestic prosecution, repatriation, etc.?

From the outset, let me challenge the terminology used in your question. The term "foreign fighter" is neither incorporated in any of the existing international treaties

3 A reference can be made to paragraphs 6, 9, 17, 24 and 31 of the preambular part of *United Nations Security Council Resolution 2396* and to paragraphs 7 and 9 of the preambular part and paragraph 17 of the operative part of *United Nations Security Council Resolution 2482*.

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in the field of international humanitarian law (IHL) or international criminal law, nor it is used in the United Nations Security Council resolutions or United Nations General Assembly resolutions on counterterrorism. There are no compelling reasons for the usage of that term in a counterterrorism context. In this regard, we believe that "foreign terrorist fighter" is a more suitable term, which has an international legal dimension: in particular, in accordance with paragraph 8 of the preamble of *United Nations Security Council Resolution 2178*, foreign terrorist fighters are individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict. In furtherance of *United Nations Security Council Resolution 2178*, the Council of Europe elaborated *the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* addressing the phenomenon of foreign terrorist fighters. In accordance with the *Additional Protocol*, a serious of *corpora delictorum* are criminalized, namely receiving training for terrorism, travelling abroad for the purpose of terrorism, as well as funding, organizing or otherwise facilitating travelling abroad for the purpose of terrorism. All relevant provisions of the *Additional Protocol* are duly implemented in the domestic criminal legislation of the Russian Federation. Specifically, in light of the interpretative declaration made by the Russian Federation when signing and ratifying the *Additional Protocol*, travelling abroad for the purpose of terrorism is considered as a preparation for or an attempt to commit a terrorist crime and in this regard entails criminal responsibility (such legal construction is provided for in Article 30 of the *Criminal Code of the Russian Federation*).

If an offence perpetrated by a foreign terrorist fighter is completed, the delinquent is subject to criminal responsibility in conformity with the specific articles of the *Criminal Code of the Russian Federation*: the Russian Federation has produced a substantial jurisprudence of holding foreign terrorist fighters accountable in accordance with Article 205.4 "Organization of a Terrorist Community or Participation therein", Article 205.5 "Organization of a Terrorist Organization or Participation therein" and Article 208 "Organization of an Illegal Military Formation or Participation therein". The jurisdictional grounds allowing for the prosecution of foreign terrorist fighters who committed relevant offences abroad are laid down in Article 12 of the Criminal Code of the Russian Federation.

As to the repatriation of foreign terrorist fighters, despite the urgency of this issue, there are various opinions thereupon. Under international law, any person has the right to return to the country of his/her nationality. Anyway, the Russian Federation has gathered a unique experience in repatriating children of foreign terrorist fighters: relevant activities are carried out under the auspices of the Office of the Presidential Commissioner for the Rights of the Child. The Russian Federation is willing to share it with other countries.

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4. What are the different types of sanctions or restrictive measures that are implemented by Russia?

Alongside criminal law measures described above, the Russian Federation applies a variety of administrative measures: asset freezing, restrictions placed on the freedom of movement over the course of the administrative surveillance, terrorist designations, and restrictions imposed on financial transactions.

Since it is a very big topic, I will give you just two examples.

In 2016, the President of the Russian Federation signed a bill prescribing that the perpetration by a naturalized person of a terrorist offence serves as grounds for the revocation of a previously taken decision to grant such a person the nationality of the Russian Federation. In particular, according to Article 22 of the *Federal Law of 31 May 2002 No. 62-FZ "On Nationality of the Russian Federation"*, the fact established by a court decision that a person committed, prepared, or attempted to commit at least one of the offences criminalized,[4] if its commission involved terrorist activity, shall be treated as being equivalent to the establishment of a fact of a willingly false commitment made before the naturalization to observe the *Constitution of the Russian Federation* and the legislation of the Russian Federation. Thereby, on the one hand, this measure is not a deprivation of nationality, since it implies the revocation of a previously taken decision to grant nationality and does not entail statelessness; on the other one, this mechanism possesses a sufficient preventive potential and underscores the willingness of the Russian Federation to take harsh and severe measures to combat terrorism for the sake of national security.

Moreover, within the context of sanctions regimes relating to terrorists, the Russian Federation has been duly and timely implementing sanctions against individuals and entities associated with Islamic State in Iraq and the Levant (ISIL) or Al-Qaida listed by *United Nations Security Council Committee 1267/1989/2253*, since the obligation to observe the relevant sanctions regime stems from Article 25 of the *United Nations Charter*. In particular, the Federal Financial Monitoring Service of the Russian Federation is administering the List of Entities and Individuals Engaged in Extremism or Terrorism, which is subject to amendments, *inter alia*, in accordance with relevant decisions of the United Nations Security Council.

5. Implementation of IHL in counterterrorism policies and sanctions regimes: How are human rights standards and IHL principles incorporated in the counterterrorism policies and sanctions regimes used in the region?

First and foremost, there are no regional sanctions regimes with the participation of the Russian Federation. However, there is more than one way to skin a cat. In this respect, I would like to underline that at the regional level there are more effective

4 See Articles 205, 205.1, 205.2 (paragraph 2), 205.3–205.5, 206, 208, 211 (paragraph 4), 281, 282.1–282.3 or 361 of the Criminal Code of the Russian Federation.

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mechanisms of countering terrorism which fully conform to the universally accepted human rights standards.

For instance, as provided for in the *2002 Charter of the Shanghai Cooperation Organization*, the protection of human rights is considered as one of the fundamental purposes and principles of this influential regional organization. It is under the auspices of the Shanghai Cooperation Organization (SCO) that the *2009 Yekaterinburg Convention against Terrorism* was elaborated. The *Yekaterinburg Convention* is one of the well-designed, most inclusive and extensively developed international legal instruments laying a solid basis for the intergovernmental cooperation amongst SCO Member States in the field of counterterrorism. Not only does the *Yekaterinburg Convention* accurately and legally irreprehensibly envisage what "terrorism"[5] and "act of terrorism"[6] mean, but also it scrupulously defines principles and mechanisms of criminalization of different types of terrorist offences[7] (including terrorist propaganda or public justification of terrorism;[8] recruitment to terrorism;[9] other forms of the facilitation of terrorist activity), stipulates exceptionally concrete measures of holding legal entities accountable for terrorism,[10] provides for clear mechanisms of mutual legal assistance (MLA) and extradition,[11] as well as information exchange amongst the competent authorities of States parties.[12]

The *Yekaterinburg Convention* duly reflects universal human rights standards. The extradition mechanism provided for in Article 11 corresponds to all generally recognized criteria, including those of specialty, dual criminality, and *aut dedere aut judicare*. The treaty also introduces the strictest possible confidentiality requirements whilst applying MLA procedures, which is especially relevant when it comes to sensitive information relating to the fundamental rights of a person. In a similar vein, the disposition of the norm included in Article 17, paragraph 2, of the *Yekaterinburg Convention* leaves room for refusing an MLA request if it is contrary to laws of a requested party; therefore, States parties to the *Yekaterinburg Convention* can refuse an MLA request if its execution comes into collision with domestic human rights laws. Moreover, in accordance with Article 11, paragraph 8, of the *Yekaterinburg Convention* the procedure of the transfer of sentenced persons can be applicable only if the consent of a convicted person is obtained, which is totally compliant with a universal practice. Above all, Article 7, paragraph 1, of the *Yekaterinburg Convention* stresses the necessity to maintain, as and when appropriate, an inter-religious and inter-cultural dialogue which can involve various stakeholders, including non-governmental organizations and other civil society actors. A particular emphasis should be laid

5 Article 2, paragraph 1, subparagraph 2, of the *Yekaterinburg Convention*.
6 Article 2, paragraph 1, subparagraph 3, of the *Yekaterinburg Convention*.
7 Article 5 of the the *Yekaterinburg Convention*.
8 Article 9, paragraph 1, subparagraph 4, of the *Yekaterinburg Convention*.
9 Article 9, paragraph 1, subparagraphs 5 and 6, of the *Yekaterinburg Convention*.
10 Article 10 of the *Yekaterinburg Convention*.
11 Article 11 of the *Yekaterinburg Convention*.
12 Article 12 of the *Yekaterinburg Convention*.

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upon Article 23 which prohibits States parties to grant refugee status to individuals engaged in terrorism and therefore contributes to elevating the significance of international refugee law as well as to preventing terrorists from abusing fundamental guarantees that refugee status endows to refugees.

Special attention should be given to the Commonwealth of Independent States (CIS) with its absolutely unique counterterrorism regime. The *1999 Treaty on Cooperation amongst CIS Participating States against Terrorism* lies at the heart of this regime. Under the umbrella of the Treaty, a series of special agreements were developed.[13] All the above-mentioned agreements were drafted in strict accordance with the key human rights standards and bearing in mind the provisions of Article 2 of the *1991 Agreement on the Establishment of the Commonwealth of Independent States* providing for the obligation to observe human rights on the territory of CIS participating States. Another big achievement of CIS is the elaboration of a model law for the prevention of terrorism adopted by the CIS Inter-Parliamentary Assembly in 2009. This model law also categorizes the principle of the protection of human rights as a cornerstone of counterterrorism activities in CIS.

Regarding IHL, the Russian Federation believes that the subject matter and purpose of IHL is different from those of international legal counterterrorism instruments.

First, the subject matter of IHL is the relations of parties to an armed conflict and in connection with an armed conflict, with the purpose of IHL consisting in minimizing the horrific consequences of war for persons (primarily, those who do not take part in hostilities or ceased their participation therein). On the contrary, the subject matter of international counterterrorism treaties is the cooperation amongst States and other subjects of international law for the elimination of terrorism by means of different mechanisms, including those of criminalization of relevant offences, establishment of criminal jurisdiction, exercise of MLA and extradition, with the purpose consisting in the eradication of terrorism as a phenomenon.

Second, a vast majority of norms and principles of IHL are inherent in general international law and, consequently, directly enforceable, whereas international counterterrorism conventions need to be implemented into national legislation. Therefore, serious violations of IHL constitute international crimes (or core crimes) which are subject to universal jurisdiction, with responsibility for offences criminalized by international counterterrorism conventions arising insofar as a State party thereto prescribed it in its domestic legislation.

To sum up, we do not see any convincing legal grounds to include IHL provisions in the regional counterterrorism treaty law. I can assure you that it is a world common practice.

13 E.g. the 2008 Agreement on Cooperation amongst CIS Participating States for the Protection of Persons subject to Protective Measures, the 2012 Agreement on Cooperation in Training of Specialists in the field of the Prevention of Terrorism in Educational Institutions of CIS Participating States, and the 2012 Agreement on the Exchange of Information in CIS for the Prevention of Terrorism and Other Violent Forms of Extremism and Their Financing.

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6. Need for humanitarian exemptions in the counterterrorism/sanctions space: What does the Russian Ministry of Foreign Affairs think about the need for humanitarian exemptions being incorporated in domestic counterterrorism legislations to ensure that the work done by humanitarian actors is not affected by the measures that are incorporated? As these clauses vary between States, is there an ideal framework/model that the Russian Ministry of Foreign Affairs believes should be used as good practice?

The Russian Federation is quite cautious about such exemptions. We believe that the protection of humanitarian workers and medical personnel is one of the key elements of IHL enforcement. According to Article 9 of the *1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, there are no obstacles to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief. Furthermore, actors that impartially and upon a non-discrimination basis participate in relief actions at the approval of the party in whose territory they carry out such activities are also under the protection of IHL, namely Article 71 of the *1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Conflicts*, and Article 18 of the *1977 Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*. Therefore, any attack against such actors constitutes a violation of IHL, whilst those responsible for it should be brought to justice.

Nevertheless, we find unacceptable any abuses of guarantees envisaged in IHL in this field. Furthermore, we consider absolutely inappropriate when medical and humanitarian actors support terrorism or in any way contribute to their criminal activities, for it undermines international counterterrorism efforts, including in the sphere of the suppression of the financing of terrorism. Such a strict approach that the Russian Federation adheres to is fully compliant with operative paragraph 24 of *United Nations Security Council Resolution 2462* urging States, when designing and applying measures to counter the financing of terrorism, to take into account only those activities that are: (1) exclusively humanitarian, (2) carried out impartially, and (3) carried out in a manner consistent with IHL. This approach was confirmed in the recent United Nations General Assembly Resolution 75/291 on the seventh review of the Global Counter-Terrorism Strategy.

7. Decision making/drafting process in the formulation and implementation of sanctions regimes: Which divisions within the Russian Ministry of Foreign Affairs are involved in the drafting, adoption, implementation and enforcement of Russia's sanctions policy and legislation? Could you briefly describe the decision-making process? Have there been any major shifts in Russia's approach recently?

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The Ministry of Foreign Affairs of the Russian Federation is fully involved in the drafting, adoption, implementation and enforcement of the sanctions policy of the Russian Federation as far as the United Nations Security Council sanctions regimes are concerned. The respective activities are exercised by the Department of International Organizations of the Ministry of Foreign Affairs of the Russian Federation and the Department on the Issues of New Challenges and Threats of the Ministry of Foreign Affairs of the Russian Federation in close coordination with competent governmental agencies of the Russian Federation. Under paragraph 2, subparagraph (b), of the *Decree of the President of the Russian Federation of 8 November 2011 No. 1478 "On the Coordinating Role of the Ministry of Foreign Affairs of the Russian Federation in Conducting a Unified Foreign Policy of the Russian Federation"*, the Ministry of Foreign Affairs is authorized to coordinate international activities of various Russian federal public agencies and their officials with the aim of ensuring the principle of unity of foreign policy and observing the international legal obligations of the Russian Federation.

The Russian Federation sticks to a well-balanced and depoliticized approach in finding solutions to relevant problems.

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