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THE SHACKLED GUARDIAN: AN ETHICAL DISCUSSION ON DEMOCRACY AND COUNTER TERRORISM

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Sommario

Introduction

The work will begin with the framing of the theme of state terrorism and counter-terrorism, starting with the defining problems of the concept of terrorism itself. If in modern history the words terrorism and counter-terrorism have often been used, it is just since the beginning of the 21st century that the question of what terrorism is, started requiring an urgent and unequivocal answer. The ever-changing nature of terrorism and the anxiety that this phenomenon creates in the international community has therefore pushed States to adopt counter-terrorism measures and policies, on which however it is necessary to carry out in-depth reflections. Reflections that must accompany another equally relevant issue, that of the so-called State Terrorism.

In common opinion, discussions on terrorism tend to focus on the acts of non-state and, indeed, often anti-state actors. Yet, as will be explained, the word "terrorism" entered for the first time in a political discourse precisely in reference to the acts carried out by a regime against its citizens. The question formulated in the paper is therefore the following: what is terrorism? Seemingly simple and straightforward, however, this question has animated political, legal and academic debates for most of the twentieth century. Even today there is no universally accepted definition of it.

Neither international bodies nor scientific literature have been able to reach an agreement on what exactly is meant by this word which, although commonly used by politicians and the media, continues to trigger many controversies both in the academic and in the field of international institutions. The divergent opinions on what constitutes terrorism, in fact, induce individual countries, regional and international organizations to each adopt a different approach; the imprecise language used by states leaves doubts about which actions are prohibited and which should or should not be criminalized under international law. United Nations Resolution 49 of 1994 will be mentioned, which vaguely declares what are the criminal acts considered terrorism, as well as Security Council Resolution 1566 of 2004 which reaffirms and clarifies the concept. The definitions proposed by the academician Kolb and his three approaches will be considered, arriving at Shmidt and Jongman and their admission of scarce literature, in 1980, concerning the topic dealt with in the paper. Despite the vast growth in terrorism research, following the 11th September 2001, the issue of state terrorism is still poorly understood, theoretically underdeveloped. Definitions of academics such as Stohl, Lopez, Blakeley and Claridge will be considered and studied in depth. Shay's vision, like Gus Martin's, will be analyzed on the issue of state terrorism. We will then move on to brief notes on counter-terrorism, highlighting United Nations Security Council resolution 1638, the main feature of which is its invocation of the right to individual or collective self-defense, pursuant to Article 51 of the Charter

of Nations United and with which a historical turning point in international relations is achieved, as the use of force for the fight against terrorism is legitimized. Finally, emphasis will be placed on the difference between counterterrorism and anti-terrorism, two terms often used to describe similar activities, but in reality, not interchangeable.

The second chapter will focus on the difficult cohabitation of counterterrorism with the protection of human rights. I will initially address what is the counter-terrorism measures compliance with human rights standards. Although devoid of a univocal definition, terrorism is commonly considered as a phenomenon that aims at the destruction of human rights, democracy and the rule of law itself. In recognizing the close link between human rights and terrorism, the final declaration of the UN world conference held in Vienna in 1993, calls for steps forward to combat and prevent terrorism, the same issues which were also pursued in the aftermath of the attack on the twin towers in New York in 2001. Resolution 1368 and 1373 establish the obligation of measures to combat it, inviting all states to adopt suitable means of repression and also of porevention. However, these measures can also pose problems in terms of respect for human rights.

The latter, in fact, must necessarily be observed even against those who trample them. Having the duty to respect and protect human rights, States, on the one hand, cannot interfere in their enjoyment, on the other hand they must take positive measures to ensure that no one else poses obstacles to their full expression. With respect to certain urgencies, however, the actions that a State undertakes can clash not only with legitimacy issues, but also with ethical issues. In particular, in fact, Article 4 (2) of the International Covenant on Civil and Political Rights identifies the right to life, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and bondage, the ban on deprivation of liberty for debts, freedom from retroactive penalties, the right to be recognized as a person before the law and the freedom of thought, conscience and religion. For other rights, however, the possibility of derogation, provided for by art. 4 of the Pact, requires that there is a public emergency that threatens the life of the nation itself. However, the question of the actual nature and certain identification of the exceptional nature of the emergency from which to derive the legitimacy of the exemptions remains somewhat uncertain.

The measures taken by various western countries over the past 18 years are measures that severely limit personal freedoms and consequently fundamental human rights. Actions, these, which beyond the ethical connotation, on which we will focus more specifically within the work, have the ability to corrode the rule of law, good governance and human rights.

For a better understanding of the difficulty of balancing respect for human rights in the fight against terrorism and, therefore, in safeguarding the security of a nation, I will focus on some specific human rights and their possible violation. I will start with the right to life, inevitably mentioning targeted killings and making a careful analysis of the issue in its various facets. Subsequently, I will move on to the violation of the prohibition of torture, from the definition expressed in 1987 by the "Convention against torture and other cruel, inhuman or degrading treatment or punishment", passing to the opinion on the European Court of Human Rights.

The third right that I will focus on will be the violation of the principle of non-refoulement and extraordinary renditions, an expression used to indicate the unofficial surrender of individuals suspected of terrorism to the authorities of other States where such persons are presumably at risk of being tortured or mistreated. Once these rights have been examined, all mandatory even in wartime, a perspective will be presented to raise the issue of ethics as opposed to the security of the country.

At this point I will resume the theme of state terrorism in parallel with that of counterterrorism, a dichotomy which is the beating heart of this elaborate. Counterterrorism, also perpetrated by the state, has the clear aim of defending the nation from terrorist attacks. Moved by this reason, the state resorts to an illegitimate use of violence, repressions and intimidation, that is to say, to a whole series of actions that are not compatible with respect for human rights.

Similar methods and tactics, including the intention to create fear in society or to intimidate an entire population, are also used by terrorist organizations, liberation movements, state terrorism and the so-called war on terrorism.

So, is there a real distinction between counterterrorism and state terrorism? And between these two concepts and those of terrorism tout court?

To answer this question, beyond international treaties, official declarations of heads of state or human rights organizations, we can use more strictly ethical considerations.

The starting point is therefore to ask ourselves about the moral question. Is there morally acceptable terrorism? To answer this question, various illustrious academics will be called into question, including the Russian philosopher Igor Primoratz with his consequentialist and or consequentialist ethical theories. Like Russian, Nielsen Kai will be reported in the paper, too.

The widespread tendency, for example, is to accuse insurgents who use violence to assert their own reasons and claims of terrorism, while there is total reluctance to mention terrorism when dealing with the violent actions of the own state. What Primoratz said will open a debate on Israeli-Palestinian terrorism where both sides seem to want to deny any involvement in terrorist activities. The examples cited are those of totalitarian states such as Nazi Germany, the Soviet Union in Stalin's time or Cambodia under the rule of the Khmer Rouge, who pursued the goal of total domination of society

by resorting to extreme means: incessant terrorism inflicted by state officials who used systematic violence and threats of violence against their citizens to produce compliance and stifle the opposition. Examples such as those of totalitarian states such as Nazi Germany, the Soviet Union in the time of Stalin or Cambodia under the rule of the Khmer Rouge, who pursued the goal of total domination of society by resorting to incessant terrorism inflicted by the government officials using systematic violence and threats against their citizens to produce compliance and stifle the opposition. Finally, we will talk about many states, both totalitarian and non-totalitarian, that have used terrorism outside their own country, as a means to achieve foreign policy objectives, during the war, or as a method to maintain their occupation of the land. of another people.

To conclude the chapter, I will examine Primoratz's concept of "moral disaster" and Michael Walzer's "supreme emergency" concept.

The third and final chapter will focus on the difficult relationship between freedom and security. From the attacks on the World Trade Center to the subsequent "war on terror", in fact, journalistic articles, the work of jurists, judicial debates, speeches by politicians, government proposals, as well as the speeches of ordinary people refer constantly to them. The eternal question, made even more current by collective fear, is whether it is preferable to be free and insecure or if, rather, it is better not to give up part of our freedom in exchange for reassuring protection.

Far from being purely conceptual, the issue involves concrete situations, which have to do with everyone's daily life. The perception that we have today of terrorism, therefore, is not that of an exceptional threat, but rather an almost constant risk that is inherent in the relationship existing between the international community and the non-state groups present within it. The famous Patriot Act was followed by several laws enacted to deal with the terrorist emergency in almost all western countries: from Canada, to the United Kingdom, from France to Germany.

The claims for freedom seem to clash with the counterproposal to security and, implicitly or explicitly, the recurring opinion is that citizens must give up a certain portion of freedom in exchange for the desire for security. In order to guarantee the latter, therefore, states must constantly reduce the fundamental rights of their citizens. Freud will be mentioned, as in fact, in addition to be a classic combination of political philosophy and sociology, the theme of security-freedom is also very well known in psychoanalysis. In the chapter, with the support of the analyzes carried out by Barberis and Neoclous, the essential historical lines of the binomial security-freedom will be traced and then we will come to carry out some considerations regarding the theory of balance and the criticisms addressed to it by some illustrious thinkers. In fact, the concept of freedom is one of the great philosophical problems that have been discussed since the dawn of time, even before it really existed

and, likewise, security is one of the primary needs of the human being. Man is constantly looking for a condition of stability that guarantees protection and safety for himself and for everything he considers important for himself. Understood as values, however, security and freedom are concepts born in the modern era. The entire Hobbes conceptual system will be exposed regarding the search for safety, and Locke's challenge aimed at overturning this system. We will talk about Montesquieu, one of the first authors who associated freedom and security.

All the great constitutional documents, in fact, in addition to life, mention freedom and security which are therefore finally considered rights in all respects and indissolubly connected with what is considered the aim of every fundamental card: human dignity. We will try to expose a possible balance between freedom and security, which often results in a request for limitation of the former in favor of the latter.

After 11 September, many legal systems have given absolute priority to the protection of security, therefore adopting new and more stringent regulations on rights. It follows that today the criminal law on the terrorist phenomenon is largely aimed at preventing and taking into consideration the risk factor rather than the actual guilt. Proponents of the so-called balance rhetoric, however, believe that the balance between the two concepts is absolutely necessary because only in this way can an individual be free to do anything he wants and at the same time society will be able to protect itself from any danger deriving from some of those things that the individual wishes to do. This concept will be studied in depth considering Waldron's academic criticism, which however affirms that in the contemporary world surely something has changed, both in terms of facts and perceptions and opinions and that this change has shifted the balance more on one value than on the other. With Waldron's proposal of his five arguments, the conclusion of the final chapter of the thesis will come.

1. State terrorism and counter-terrorism: Framework of the theme

1.1 Defining problems

Terrorism is not a new phenomenon, nor is the dilemma faced by those States that, in the "war on terror", try to achieve some balance between the guarantee of national security and respect for the human rights[1].

If, however, in modern history, the words terrorism and counter-terrorism have often been used, it is above all from the beginning of the 21st century that the question of what terrorism is demands an urgent and unequivocal answer. In the last twenty years, in fact, terrorist groups, often transnational, have become more and more structured and act, for the most part, moved by religious reasons, committing acts of increasing brutality, in terms of civilian victims.

The perpetually evolving character of terrorism and the anxiety that this phenomenon creates in the international community, has therefore pushed States to adopt counter-terrorism measures and policies, on which however it is necessary to carry out in-depth reflections. Reflections that must be accompanied by another equally important issue, that of the so-called State Terrorism.

In the social sciences, in the legal world, in international institutions, as well as in the common language and the media, discussions on terrorism tend to focus on acts performed by non-state subjects and, indeed, very often anti-state[2]. And yet, as will be explained, the word "terrorism" entered for the first time in a political discourse precisely in reference to the acts performed by a regime against its own citizens.

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[1] Koufa K.K., *Terrorism and Human Rights, Additional progress report prepared*, *Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights*, UN document E/CN.4/Sub.2/2001/31, 27 June 2001, par. 25, p.8.

[2] Primoratz I., *State terrorism and counterterrorism*, in Meggle G. (a cura di), *Ethics of Terrorism & Counter-Terrorism,* Ontos, Heusenstamm 2005, pp. 69 ss.

In order to introduce this concept, in an attempt to understand its meaning and characterizing elements, it is first of all necessary to provide a definition of terrorism. This necessity derives essentially from the fact that the problems and ambiguities that are encountered in framing the more general term are similar to those with which we are confronted in the attempt to define the specific concept of state terrorism[3].

The question to be asked is therefore the following: what is terrorism?

Apparently simple and direct, however, this question has animated political, legal and academic debates for most of the twentieth century. As Andrew Silke has acutely observed, most studies and speeches about terrorism begin with a discussion of the various problems associated with the term in question and the failure of various scholars to reach an agreement[4].

Before mentioning some of the many definitions proposed, it should be remembered that, historically, the word in question appeared for the first time in 1798 (in the same year Kant used this term to express the pessimistic view of man's destiny) in a supplement of the Dictionnaire of the Academie francaise[5], to designate the abuses perpetrated by the French revolutionary power regime. The word "Terrorism", in fact, was associated with the intimidating and violent acts carried out by the Jacobin government between 2 June 1793 and 27 July 1794.

The first historically documented form of terrorism, therefore, is revealed as a State Terrorism.

It is in fact a method of government which, with the primary purpose of maintaining power, used every means to intimidate opponents and suppress their political demands[6].

Through terror, which Maximiliem Robespierre believed to be "justice, prompt, severe and inflexible", the Jacobins therefore intended to instill fear in anyone who challenged the authority of

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[3] Kraus J., *The Concept of State Terrorism in Relation to Ir*an, in "Slovak Journal of Political Sciences", volume 16, 2016, n. 1, p. 35 ss.

[4] Silke A., *Research on Terrorism: Trends, Achievements and Failures*, Frank Cass, London 2004.

[5] Bonanate L., Terrorismo internazionale, Giunti, Roma 2001, p. 9

[6] De Nardis P., Malizia N., Arena G., Falzone D., Marchetta P., Pellerone M., Salerno M., Severino S., *Dalle violenze alle politiche di sicurezza urbana*, Giappichelli, Torino 2016, p. 58.

the newly born Republican government[7]. About the French revolutionaries, Burke wrote "Thousands of those rascals of hell called terrorists"[8].

At the end of the nineteenth century, however, following the attacks perpetrated in Russia by the so-called "nihilists" and exponents of the anarchist movement in other European countries, the word terrorism went on to identify the terror that people or groups of individuals exercise against the State or, more generally, "the use of illegitimate violence, aimed at instilling terror in the members of an organized community and destabilizing or restoring order"[9].

If, however, we paused to recall all the events of the past century, we would realize that the term terrorism was used in reference to situations, from time to time, very different, often not even comparable to each other[10].

Even today there is no universally accepted definition of it.

Neither international organizations nor scientific literature have in fact been able to reach an agreement on what is meant exactly by this word which, although commonly used by politicians and the media, continues to trigger many controversies both in the academic field (from many disciplines including jurisprudence, sociology and political sciences) and in international institutions[11].

Despite a broad consensus that the threat of terrorism must be urgently addressed, as noted by the UN special rapporteur on terrorism, Kalliopi K. Koufa, "the word 'terrorism' means different things depending on the context in which it is used and who is using it "[12].

Among the less contested definitions in the human sciences we can list those that are mainly focused on the communicative dimension of acts of terrorist violence and that, therefore, consider terrorism

[7] Rees P., *A cena con i terroristi. Incontri con gli uomini più ricercati del mondo*, Edizioni Logos Nuovi Mondi San Lazzaro di Savena (Bo) 2006, p 29.

[8] Cited in Del Re E. C., *Terrore e Terrorismo Internazionale. Breve Excursus Storico e Tentativo Di Definire L'attualità*, in "Rivista Di Studi Politici Internazionali", vol. 73, no. 4 (292), 2006, p. 611.

[9] Bauccio L., *L'accertamento del fatto di reato di terrorismo internazionale*, Giuffrè, Milano 2005, p. 13.

[10] Sossai M., *La prevenzione del terrorismo nel diritto internazionale*, Giappichelli, Torino 2012 p. 168

[11] Salerno D., *Terrorismo, sicurezza, post-conflitto*, libreriauniversitaria.it, Pordenone 2012, p. 12.

[12] Koufa K.K 2001, *op. cit.*, par. 25, p.8.

as "a method of repeated violent action that causes anxiety"[13] and "chronic fear that results from previous acts of violence or from the credible threat of violence "[14]. In this sense, therefore, "terrorism is a method of struggle in which symbolic or casual victims become the target of acts of violence"[15]. The calculated use of violence, against individuals or groups, therefore appears as a sort of threat, blackmail or provocation that manipulates the community through fear and anxiety instilled in it[16]. As pointed out by Chaliand and Blin, "violent action is called terrorism when its psychological effects are far greater than its purely physical results"[17].

Beyond the purely academic field, definitions are extremely important when entering the field of politics and criminal law.

The legal practice of international terrorism, however, is still the subject of profound differences between the States regarding which acts and characteristics complement the case in question.

The divergent opinions on what constitutes terrorism, in fact, induce individual countries, regional and international organizations to each adopt a different approach; the imprecise language used by the states leaves doubts about which actions are prohibited and which should or should not be criminalized by international law[18].

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[13] Terrorism - is a method of repeated violent action that causes anxiety, used by groups or individuals (semi-clandestine or state actors, for idiosyncratic, criminal or political reasons, in which - unlike the assassination - the direct objectives of violence do not are the main objectives of the action: the immediate human victims of violence are generally chosen at random (objectives of opportunity) or selected (representative symbolic objectives) within the population being attacked, and are used as message generators. The communicative dynamics, based on violence and threat, between terrorist (organization), victims (in a state of danger) and main objective are directed to manipulate the latter (public) turning it into a target of terror, requests or attention. (Schmid A., Jongman A., Political Terrorism: A New Guide to Actors, Authors, Concepts, Databases, Theories and Literature, North Holland Amsterdam, 1988 p. 28).

[14] Schmid A., *Political Terrorism: a research guide to concepts, Theories, Data Bases and Literature*, Transaction, New Brunswick 1983, p. 111.

[15] *Ibidem*

[16] Salerno, D. 2012, *op. cit.*, p. 12.

[17] Chaliand G., Blin A. (curated by), *Histoire du terrorisme de l'antiquité à Al Qaida*, Bayard, Paris 2004, cited in Del Re E. C. 2006, *op. cit.*, p. 609.

[18] Echeverria G., *Terrorism, counter-terrorism and torture international law in the fight against terrorism*, Redress Trust, London 2004.

On many occasions, the United Nations has recognized that the existence of a universally accepted definition of terrorism could make the fight more effective, but the attempt has repeatedly failed. The debate in the General Assembly initially focused on what acts should be considered terrorists and, more specifically, on the possibility of understanding in the concept in question only the actions of terrorism "sponsored" by States or to include also that of state terrorism. On the one hand, therefore, the Western states wanted to limit the debate to the terrorism of individuals, on the other the Afro-Asian states intended instead to extend it to the notion of State Terrorism, understood as a form of aggression carried out by the state through its own organs. Another reason for the clash was the willingness of some African-Asian states to avoid confusion between terrorist acts and attacks perpetrated in the context of struggles for the self-determination of peoples[19].

In the Declaration on measures to eliminate international terrorism, contained in Resolution n. 49 of 9 December 1994, the United Nations declared that terrorism includes criminal acts "designed or calculated to spread terror in the population, in a group of people or in individuals" and that such acts "cannot under any circumstances be justified from considerations of political, philosophical, ideological, racial, ethnic, religious or other similar reasons, and are punishable by penalties commensurate with their seriousness "(art. 5).

A decade later, the Security Council, in Resolution 1566 (2004), stated that all acts "which constitute crimes within and as defined in international conventions and protocols related to terrorism, are in no case justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature ".

In an attempt to classify the multiple definitions proposed, Kolb[20] distinguished between three different approaches to the question[21]:

1) Approach based on the search for a distinctive criterion for the qualification of terrorist acts. This category includes the definitions based on the concept of terror (such as the general one contained in Article 1 of the Geneva Convention on the prevention and repression of terrorism of 1937, according to which terrorism is to be understood as "*faits criminels dirigés contre un état et dont le but ou the nature est de provoquer the terreur chez des personnalités déterminées, des groupes de personnes ou*

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[19] Focarelli C., *Le nuove frontiere del diritto internazionale*, Morlacchi, Perugia 2008, pp. 53-54.

[20] Kolb R., *Universal criminal jurisdiction in matters of international terrorism: some reflections on status and trends in contemporary international law*, in 50 RHDI, 1997, p. 43 ss.

[21] Sossai M., 2012, *op. cit.*, p.168.

dans le public ") and those of those who consider terrorist any act that violates the rules of humanitarian law, especially those placed to protect the civil population[22] .

2) Approach based on the elaboration of a complex and articulated definition, which takes into account many different aspects. According to Kolb, both art. 1 of the project drawn up by the International Law Association in 1980[23], and the 1991 definition proposed by the International Law Commission in the framework of the draft Code of crimes against peace and the security of humanity[24].

3) Approach based on identifying the characters that qualify the terrorist phenomenon. Some scholars, for example, have pointed out that the following elements appear regularly in acts of terrorism: violence, civilian victims, fear generation, political and ideological ends[25].

In summary, therefore, the word terrorism, although omnipresent in legal, political and media language, remains devoid of a certain and univocal meaning. In this regard Carpenter T. G. compared this situation to that described by a famous sentence pronounced by the Judge of the Supreme Court of the United States, Potter Stewart, who, in the case of Jacobellis vs. Ohio (378 U.S. 184) of 1964, stated "I cannot define obscenity, but I know when I see it"[26].

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[22] *David E., Le terrorisme en droit international, in Colloque de l'Université libre de Bruxelles, Réflexions sur la définition et la répression du terrorisme, Bruxelles, 1974, p. 763.*

[23] *The Draft Single Convention on the Legal Control of International Terrorism*, in "ILA Report of the Fifty-Ninth Conference Held at Belgrade 1980", London 1982, p. 497 "*Any serious act of violence or threat thereof by an individual whether acting alone or in association with other persons, organizations, places, transportation or communications systems or against members of the general public for the purpose of intimidating such persons, causing injury to or the death of such persons, disrupting the activities of such international organizations, of causing loss, detriment or damage to such places or property, or of interfering with such transportation and communications systems in order to undermine friendly relations among States or among the nationals of different States or to extort concessions from States*".

[24] Terrorism was inteded as a crime against peace

[25] K. Skubiszewski, *Definition of Terroris*m, in "Israel Yearbook of International Law", vol. 19, 1989, p. 42;

[26] Cited in Carpenter T. G., *Cato Handbook for Congress: Reducing the Risk of Terrorism*, Cato Institute Policy Analysis no.625, 12 December 1996.

In the general confusion, a specific problem concerns a particular category of terrorism, the state one, a typology that some scholars have forgotten, or even denied[27]. Some scholars[28] focus almost exclusively on bottom-up terrorism, that is to say on actions and methods used by non-state actors (an insurrectional strategy), for instance groups not subjected to the direct control of the State.

In this case too, as in the general one of terrorism, the first problem consists in the fact that there is no general consensus on the definition of the concept in question.

It is not even codified in international law as an illegal act, although then the actions that fall under the category of State Terrorism constitute a violation of international law.

Consider, for example, the intentional and targeted choice of civilian victims. Such action, in times of peace as in war, violates the principles embodied in international human rights treaties[29]. The fact is that throughout history, and even today, many governments have used the terrorist instrument against their own populations or against external ones, and that in dozens of countries state agents and their delegates are responsible for the killing, kidnapping, torture, rape, mistreatment of thousands of people.

In this regard it should be remembered that the international terrorism of the State is explicitly considered by the Special Rapporteur of the UN on the subsisting relationship between terrorism and human rights[30].

Some scholars, however, as we said, believe that political violence on the part of States should not be classified as terrorism and, therefore, research on state terrorism is rather small. In this regard, at the

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[27] Silke A., 2004 *op. cit.; Sloan, S. 2006. Terrorism: the present threat in context*, New York: Berg., New York 2006; Laqueur W., *Terrorism*, Weidenfeld and Nicolson, London 1977.

[28] *Ibidem*

[29] Kraus J., *The Concept of State Terrorism in Relation to Iran Josef Kraus*, "Slovak Journal of Political Sciences", vol. 16, 2016, n. 1, p. 35 ss.

[30] a) Although war does not necessarily constitute, or at least usually, a form of terrorism, some practices of conducting hostilities can be defined as such. (b) States can commit terrorist acts against other States both in situations of armed conflict and outside conflict. [...] (d) On the juridical level the distinction between State (international) terrorism and State-organized terrorism is irrelevant since both types involve the same consequences (identification of violated international norms, legal classification of the offense, termination of alleged behavior, related issues of international responsibility) (Koufa KK, Terrorism and Human Rights, Progress report prepared by the Special Rapporteur, United Nations Commission on Human Rights, Doc. E / CN.4 / Sub.2 / 2001/31, 27 June 2001, paragraph 67)

end of the 1980s Schmid and Jongman wrote: "There is a notable lack of literature that addresses the much more serious problem of state terrorism"[31].

To date the situation has not substantially changed. Despite the vast growth in research on terrorism, following the events of September 11, 2001, the issue of state terrorism still remains poorly understood, theoretically undeveloped, lacking the empirical data necessary to advance knowledge[32]. We have witnessed for decades the attempts of international legislative bodies to create a complete document to describe, define and explain the phenomenon of international terrorism in its entirety, but the issue of state terrorism is repeatedly avoided[33].

According to Richard Jackson, an important reason for this negligence lies in the political resistance to the idea that states could be involved in terrorist acts at the same time as they are fighting a "war on terror"[34].

Leaving aside more complex and complex considerations for the following chapters, where we will also examine the relationship with counter-terrorism, let us dwell, for the moment, on the use that, over time, has been made of the expression "state terrorism" and, above all, on the question of definition, a fundamental premise of any subsequent study.

As for use, following the explanation given in this regard by Guillaume[35], three different phenomena attributable to the category of state terrorism can be identified:

1) Acts of violence committed by the State against its own population. In this regard the term "State terror" is usually used, which dates back to the regime of terror established in France by Robespierre. In this case the concept serves to describe the behavior of a government that exercises terror over its population, in accordance with the rules of its own internal law[36].

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[31] Schmid A., Jongman, A., 1988, o*p. cit.,* pp. 179-80.

[32] Jackson R., *A Defence of the Concept of 'State Terrorism'*, Department of International Politics, Aberystwyth University, UK, 2010, p. 2.

[33] Zoi Aliozi, *A critique of state terrorism*, in "The crit: a critical legal studies journal ", vol 6, n. 1, 2012.

[34] Jackson R. 2010, *op. cit.*, p. 2.

[35] Guillaume G., *Terrorisme et Droit International*, "Recueil des Cours de l'Académie de Droit International", 215, 1989, p. 297.

[36] Sossai M., 2012, *op. cit.*, p. 197.

2) Organization by the State of terrorist acts (organized terrorism) or state support for the conduct of terrorist activities (supported terrorism)[37]. In the first case there is a direct activity of the State, through the involvement of its own agents, in the second a mere support, which can take different forms, from training, to financing, to the supply of weapons or to making available means transport or intelligence[38].

3) Systemic recourse to armed force in international relations, in order to assert its national interest. Among the most complete definitions of state terrorism can be mentioned those provided by Stohl and Lopez (1988), Blakely (2009) and Claridge (1996).

Stohl and Lopez[39], have analyzed state terrorism in relation to the use of aggressive measures in the context of international relations. In particular, they stated that state terrorism can take an institutionalized form, which developed as a product of changes that appeared after the Second World War. It therefore takes the form of a foreign policy, shaped by the presence and use of weapons of mass destruction.

In an attempt to establish the subtle line that distinguishes state-implemented acts of terrorism from other violent, non-terrorist activities carried out by state bodies, Stohl defined terrorism as "the intentional use or threat of violence whose purpose whether to induce in the victim and / or in the public a state of fear and / or a condescending attitude "[40].

He considers state terrorism as a form of "coercive diplomacy"[41] which is used both in a situation of armed conflict (the example cited by the scholar is that of the 1972 bombing of Hanoi, with which the United States forced Vietnam into negotiations of northern and southern Vietnam), that in the absence of conflict (the example cited by the scholar in this case is the general behavior of Israel towards some Arab countries).

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[37] Todeschini V., *Ripensare il terrorismo nel diritto internazionale*, "Jura Gentium," anno 2013, pp. 7-40.

[38] Trapp K., *State Responsibility for International Terrorism*, New York, Oxford University Press, 2011, p. 9.

[39] Stohl M., Lopez G.A., *Terrible beyond endurance?: the foreign policy of state terrorism*, Greenwood Press Westport, CT 1988.

[40] Stohl M., *International Dimensions of State Terrorism*, in Stohl M., Lopez G.A., (a cura di), *The State as Terrorist. The Dynamics of Governmental Violence and Repression*, Greenwood Press, Westport 1984, p. 43.

[41] *Ivi*, p. 44.

Similarly, Claridge defined state terrorism as "a systematic threat or use of violence, either by or in opposition to established authority, with the intention to communicate a political message to a larger group than the victims, generating fear and thus altering the behavior of the larger group "[42].

On the basis of this definition, it can be stated that state terrorism is used as a systematic strategy that uses intimidation tactics to generate fear, not only in the group of immediate victims but also in society in general[43].

Given these premises, Blakeley[44] argues that a definition of state terrorism must include four elements:

- Those responsible for the terrorist act are aware of the violence (or a threat of such violence) that is used against the people that the State is obliged to protect.

- The act is perpetrated by groups connected to or supported by the State (including private security units and paramilitary groups).

- The act (or threat) is intended to cause fear in a targeted segment of the population.

- By means of this act, this segment of the population is forced to change its behavior in a specific way[45].

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[42] Claridge D., *State terrorism? Applying a definitional m*odel, in "Terrorism and political violence", vol. 8, n. 3, 1996, pp. 47-63

[43] Knight A. N., *State Terrorism in Iran*, Universal-Publishers 2015, p. 53.

[44] Blakeley R., *State Terrorism in the social sciences: Theories, methods and concepts*, in Jackson R., Murphy E., Scott P. (eds.), *Contemporary State Terrorism: Theory and practice*, Routledge, London 2010, p. 15.

[45] Kraus J., 2016, *op. cit.*, p. 35 ss.

1.2 Actors, purposes and means used

The proposed definitions highlight that the intent of state terrorism is to induce chronic fear. This is a goal, therefore, that has nothing to do with that principle, which the theories of the state and international law indicate as the right of the state to use physical violence to maintain order within its borders[46].

Through an illegitimate use of violence, accompanied by acts of repression, violence and intimidation, the State (through its agents or semi-governmental agencies) sends a clear message to specific individuals and groups that are likely to assume political, ideological or religious positions different from those in power and are therefore perceived as enemies that threaten security interests[47]. However, these are civilians not engaged in military (armed) actions against the state. If they were, in fact, they could be considered as combatants and therefore legitimate targets for the application of force by the State.

According to Blakeley[48], what distinguishes state terrorism from other forms of repression is the plaintiff's intention to create an extreme fear among a number of people that is much wider than those who are the direct victims of violence. The number of victims, in turn, is important because it allows us to make a significant distinction between isolated incidents of what we could determine how repression or criminal activity on the one hand, and state terrorism on the other. A means of violence, useful to examine to better understand the distinction between state terrorism and repression is that of torture.

Many victims of state repression are subjected to torture, carried out in secret and mainly aimed at tormenting the victim to force her to behave in certain ways[49]. In order for this act of violence to take the form of state terrorism, it must aim to terrorize a larger number of people than the number of direct victims.

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[46] Bushnell P. T., *State organized terror: the case of violent internal repression*, Westview Press., Colorado 1991.

[47] Knight A. N., 2015, p. 53.

[48] Blakeley R., *State Terrorism in the Social Sciences: Theories, Methods and Concepts,* in Jackson R., Murphy E., Poynting S., *Contemporary State Terrorism: Theory and Practice. Critical Terrorism Studies*, Routledge, Abingdon 2009, pp. 12-27.

[49] *Ibidem*

The scholar remembers in this regard the torture inflicted by the State of Guatemala during the counter-insurgency war of the 70s and 80s. In this regard, Amnesty International reported the following: "Operations against the Guatemalan guerrillas in the early 1980s ... included the terrorization of rural populations in an attempt to ensure that they did not provide support for the guerrilla. Tortured and dying villagers were shown to relatives and neighbors who were prevented from helping them. The newspapers in urban areas during this period were authorized to publish photographs of mutilated bodies, apparently as an aid to families in search of their missing relatives, but also as a warning to all citizens not to oppose the government "[50].

The description offered by Amnesty International shows very clearly how, in the case of Guatemala, torture, far from being kept secret, was deliberately advertised as the goal was to terrorize the population of entire cities. It was therefore part of a model of state terrorism[51].

However, state involvement in acts of terrorism can take different forms.

Gus Martin[52], for instance, in a recent analysis on the subject in question, classified state terrorism according to two criteria:

- Sphere of influence: on the basis of this criterion terrorism can be divided into national (or internal) or international. The first takes place when the State uses terrorist methods against its own population, in order to preserve or establish a specific system of government; eliminate a political interlocutor and intimidate a population; create a state of emergency that justifies an authoritarian drift. In the case of external terrorism, on the contrary, the State is involved in terrorist actions beyond its national borders to pursue foreign policy objectives.

- Type of sponsorship: Martin makes a distinction between patronage and assistance. In the event of sponsorship, the State is actively involved in acts of violence and repression conducted by different groups or organizations. The assistance, instead, describes a silent form of activity of the State that takes part in violence carried out by sympathizers, mainly pro-government extremists or groups of vigilantes that are tolerated or supported by the State.

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[50] AI (Amnesty International), *Guatemala*, Amnesty International Brieing Papers, 8, London 1976.

[51] Blakeley R. 2009, *op. cit.*, p. 14.

[52] Gus M., *Understanding Terrorism*, Sage Publications, Thousand Oaks 2006, p. 117-122.

The involvement of the State in terrorist activity, both in the form of advocacy and in that of assistance, can take place in different ways. Martin, in particular, identifies four modes[53]:

- moral support: the State, either openly or secretly, recognizes terrorist activities, entire terrorist groups and their motivations;

- technical support: the State actively or indirectly participates in the training of terrorists, the supply of weapons, the provision of shelters, etc .;

- selective participation: the State actively supports a single act of terrorism or a series of such acts;

- active participation: the State is actively and directly involved in terrorist operations. Its representatives, therefore, cooperate with an affiliated terrorist group and can also take part directly in the attacks or their preparation[54].

 By showing more attention to the individual steps taken by the state in supporting terrorism, Shaul Shay[55] has instead identified the following five categories:

1.propaganda and political support (public proclamations of support, criticism of the terrorist group, approval of the group's actions)

2. management of terror (leadership, coordination, provision of information necessary to carry out terrorist acts);

3. financing;

4 education and training (education and training in terrorist techniques);

5. transfer of weapons and materials[56].

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[53] *Ivi*, pp. 125 - 130.

[54] *Ibidem*.

[55] Shay S., *The axis of evil Iran Hezbollah and the Palestinian Terror*, Transaction Publishers, New Brunswick 2005, pp. 147-148.

[56] Kraus J. 2016, *op. cit.*, p. 35 ss.

1.3 Identification of state terrorism

The identification of state terrorism is made particularly difficult by the fact that, while typical subversive terrorist groups tend to claim responsibility for their actions, the state, on the other hand, mostly tries to hide its traces[57].

As Josef Kraus explains in this regard, in fact, the States accused of supporting terrorist activities, generally, deny any responsibility and involvement, making among other things rather difficult to gather impartial information from primary sources[58].

Even if the connection between the person responsible for a terrorist act and the structure of a particular state can be identified, the type of such connection may also remain unclear[59]. It is not always easy, in fact, to understand whether the actions of the individual are independent (and such as to rule out any involvement of the State), or whether the completed one is a well planned, ordered, assisted or recognized mission by a specific State.

According to Blakeley, in summary, the problems of identifying State terrorism mainly involve two factors: the agents and the motive. The problem of the agents, in particular, can be expressed by the question: when is it possible to affirm that the representatives of the State act on behalf of the latter? Before reaching the immediate conclusion that a terrorist act, as committed by a representative of the State, should be understood as State terrorism, it is necessary to go into some questions in greater depth. First of all, in fact, it is necessary to understand if the act is or is not the criminal and isolated gesture of a single individual and if, therefore, it has not received any sanction from the State. Blakeley argues that one way to have more clarity in this regard is to carefully consider the reaction of the state. We cannot speak of State terrorism if, following an attack committed by a state employee (member of a secret service, member of a government program, a diplomat, etc.), the Government provides for a harsh sanctioning of this activity, to punish or by any disciplinary means and legally the person responsible and to compensate the victims, without trying any justification for the action committed and, finally, if there is no evidence of a larger model of such incidents. Vice versa, the

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[57] *Ibidem*

[58] *Ibidem*

[59] *Ibidem*

gesture can be considered part of an institutionalized policy of State terrorism[60], which therefore configures its motive.

In this regard, Blakeley recalls the case of the photographs that emerged in 2004 that revealed torture, by US personnel, to which inmates were subjected in the Abu Ghraib prison in Iraq.

In that case the Pentagon and the administration of President George W. Bush argued that such torture was not part of any institutionalized policy and that, therefore, the state was not involved. However, there was no consistent reaction to the statements. The judicial proceedings were few and the sentences very light. Punitive measures also remained limited to low-ranking soldiers, not extending to the officers involved, or to Bush administration officials who, on the contrary, fought to ensure that torture was permitted in case of suspected terrorism. In a speech on Iraq in May 2004, shortly after the public learned of the torture, President Bush declared "under the dictator [Saddam Hussein], prisons like Abu Ghraib were symbols of death and torture. That same prison became a symbol of shameful conduct by some American troops who dishonored our country and ignored our values "[61]. Despite this, and similar statements, several facts were discovered that testified to the administration's responsibility in numerous torture attempts. The leaders (the White House, the Justice Department and the president's senior counsel), in fact, had from time to time approved policies that included: the refusal to protect (as instead provided by the Convention of Geneva) of prisoners; the approval of specific forms of torture (the use of stress positions; the imposition of extreme temperatures; the hooding; interrogations for 20 hours; forced grooming and removal of clothes; water boarding; l 'use of scenarios designed to persuade the prisoner of imminent death or severe pain).

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[60] Blakeley R. 2009, *op. cit.*, p. 14.

[61] Bush, cited in Milbank D., *Bush Seeks to Reassure Nation on Iraq*, Washington Post, 25 Maggio 2004.

1.4   Brief notes on counter-terrorism

On 12 September 2001, the United Nations Security Council unanimously adopted Resolution 1368 (2001), whose main characteristic lies in its invocation of the right to individual or collective self-defense, pursuant to Article 51 of the Charter of United Nations. It called on all Member States to work together to "bring the perpetrators, organizers and sponsors" of terrorists to justice and "redouble their efforts to prevent and suppress them".

With this resolution, a historic turning point is made in international relations, as the use of force to combat terrorism is legitimized.

The fight against international terrorism, in fact, is today one of the priority strategic objectives of most nations, each of which puts in place a series of strategies aimed at guaranteeing the defense of one's own vulnerability.

The activities generally intended to counter terrorism are divided into two general categories: anti-terrorism and counter-terrorism, words borrowed from the Anglo-Saxon language which provides two distinct definitions of them.

Although in fact anti-terrorism and counter-terrorism are often used to describe similar state activities, they are by no means interchangeable.

Let us first consider anti-terrorism.

Implicitly, as many definitions as there are of terrorism can be found. The concept of anti-terrorism, in fact, emerges from a thorough examination of that of terrorism.

In general, however, anti-terrorist activities are understood as defensive measures that governments adopt to hinder and prevent possible terrorist attacks. In US military doctrine, they are defined as "measures taken to prevent, deter and respond to terrorism"[62].

The measures put in place can be of various types, such as patrolling sensitive points, controlling explosive ordnance traffic, finding information through secret services and international espionage, controlling access to sensitive buildings.

As for counter-terrorism, conceptual work is very small.

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[62] US Department of Defense, *Dictionary of Military and Associated Terms*, Joint Pub. 1-02, 12 Apr. 2001 (as amended through 9 Jan. 2003) (Joint Chiefs of Staff: Washington, DC, 2003), p. 130.

Referring to the next chapter for a reflection on the concept in question and, in particular on the relationship between this and state terrorism, let us pause for the moment on the question of definition. Very generally, we can say that when we talk about counter-terrorism we refer to the offensive measures that governments adopt against terrorism. They include lethal forces, such as the establishment of special forces recruited within the armed forces, and of police forces that can intervene in the event of a terrorist emergency, such as hostage-taking and the use of unconventional weapons.

2. Counterterrorism and the difficult cohabitation with the human rights

2.1 *The compliance of counterterrorism measures with human rights standards*

Every part of the world has faced, in one way or another, the tragedy of terrorism and the human costs associated with it.

In fact, the death toll that comes with the actual attacks adds up to another kind of price to pay, that linked to the enjoyment of fundamental rights.

While lacking a univocal definition, terrorism is commonly considered as a phenomenon that aims at the very destruction of human rights, democracy and the rule of law. Its destructive impact and its ability to destabilize governments, undermine civil society, endanger peace and security and threaten social and economic development have in fact been widely recognized by the United Nations[63].

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[63] To recognize the destructive impact of terrorism were, in particular: the Security Council (resolutions 1373 and 1377 of 2001); the General Assembly (resolutions 48/122, 49/185, 50/186, 52/133, 56/160 and 58/174, 49/60); Human Rights Commission (resolutions 2001/37 and 2004/44) and the new Human Rights Council (resolution 6/28; 7/36). Furthermore, the member states of the United Nations have established that terrorism: "threatens the dignity and safety of human beings, has a negative effect on the establishment of the rule of law, has links with transnational organized crime, has negative consequences for the economic and social development of states, threatens territorial integrity and state security "(UN Office of the High Commissioner for Human Rights (OHCHR), Human Rights, Terrorism and Counter-terrorism, July 2008, Fact Sheet No. 32, at https://www.refworld.org/docid/48733ebc2.html last accessed 7 June 2019, p. 7

In this regard, in acknowledging the close link between terrorism and human rights, the final declaration of the UN World Conference (Vienna, 14-25 June 1993) established: "the acts, methods and practices of terrorism in every form and manifestation, as well as the links in some countries with drug trafficking are activities aimed at destroying human rights, fundamental freedoms and democracy, threatening territorial integrity, the security of states and destabilizing legitimately constituted governments. The international community should take the necessary steps to increase cooperation in preventing and fighting terrorism [64]".

These themes were re-proposed the day after the attack on the Twin Towers (11 September 2001). In Resolution 1368 (12 September 2001), in fact, the Security Council established that "terrorism" constitutes a threat to international peace and security and, in the following 1373 (28 September 2001), sanctioned the international obligation in adopting specific measures to combat it, inviting States to adopt appropriate means of prevention and repression.

Therefore, after September 11, the member states of the United Nations not only enjoy the right to defend their "national security", but are obliged to implement measures, strategies and actions to protect citizens from any terrorist threat[65].

Even such measures, however, as we shall see, can pose serious problems in terms of respect for human rights.

The latter, in fact, are universal and, therefore, belonging intrinsically to all human beings[66] must necessarily be observed "even against those who trample them[67]".

Having the duty to respect and protect human rights, States, on the one hand, cannot interfere in their enjoyment, on the other they must adopt positive measures aimed at ensuring that no one else poses obstacles to their full expression.

Under the "International Covenant on Civil and Political Rights" (1966), for example, States Parties have the obligation to ensure that private persons or entities do not inflict torture, cruel, inhuman or degrading treatment or punishment on other subjects[68].

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[64] UN Doc. A / CONF. 157/23, 25 June 1993, part I, par. 17.

[65] Redress Trust, *Terrorism, Counter-Terrorism and Torture: International Law in the Fight Against Terrorism*, London, July 2004, p.14, at https://redress.org/wp-content/uploads/2018/01/July-TerrorismReport .pdf, last access 7 June 2019.

[66] OHCHR 2008, *op. cit.*, p. 3.

[67] Cassese A., *I diritti umani oggi*, Laterza, Roma Bari 2005, p. 198.

[68] OHCHR 2008, *op. cit.*, p. 5.

A specific attention in the field of human rights that must also be taken into consideration in the fight against terrorism was put by the Security Council which, on January 20, 2003, with resolution 1373 and subsequent ones, declared "States must guarantee that all the measures taken to combat terrorism comply with all obligations under international law and must take such measures in accordance with international law, in particular international human rights, refugee law and humanitarian law ".

Similarly, in the report of April 27, 2006[69], the UN Secretary-General defined human rights as essential for the realization of all aspects of an anti-terrorist strategy and stressed that, far from being confrontational, effective counter-terrorism measures and protection human rights are complementary objectives that find mutual support and a common strength[70].

Furthermore, from 15 March 2006, the Human Rights Council (established by resolution 60/251) carries out a political control activity on the observance of human rights, through special procedures and universal periodic review.

Basically, therefore, the United Nations has affirmed the inextricable link between human rights and security, placing respect for the rule of law and human rights at the center of every effort, national and international, to combat terrorism.

Beyond the declarations of principle and the obligations assumed, however, combining the fight against terrorism with the protection of human rights raises important practical problems for individual states.

Think of a state that must necessarily protect intelligence sources, with the consequent limitation of disclosure of evidence relating to acts of terrorism, while at the same time also having to respect the right that each individual has to a fair trial.

This example, although exposed in very simplistic terms, nevertheless provides an opportunity to reflect on the fact that states, in particular circumstances, require substantial flexibility with respect to international law on human rights. Indeed, terrorism can represent an exceptional danger that threatens the very existence of a nation.

Compared to certain urgencies, however, the actions that a State undertakes can clash as well as questions of legitimacy, also (as we will see later) with ethical issues.

Article. 4 of the International Covenant on Civil and Political Rights, art. 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 27 of the

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[69] United Nations Secretary-General, *United against terrorism: recommendations for a global strategy to fight terrorism*, A / 60/825, 27 April 2006.

[70] OHCHR 2008, *op. cit.*, p. 23.

American Convention on Human Rights recognizes that, in certain very specific situations, States can legitimately restrict the exercise of certain rights (for example to freedom of expression, freedom of association and assembly, freedom of movement), provided that comply with four specific conditions[71]:

- the principles of equality and non-discrimination must be respected;
- any limitation must be prescribed by law[72];
- the exceptions must be provided for specific legitimate purposes, which, although variable according to the subjects involved and the international conventions considered, can generally be motivated by the following causes: national security, public order, health, morals, human rights and freedom;
- the limitations must be understood as "necessary in a democratic society", that is they cannot prejudice the democratic functioning of society but must always satisfy the requirement of proportionality.

In summary, any limitation to the free enjoyment of rights and freedoms must be legitimate, non-discriminatory, necessary to pursue an urgent objective and, finally, its impact on rights and freedoms must be strictly proportional to the nature of that objective.

The Human Rights Committee, moreover, in the general comment n. 29, adopted on 24 July 2001[73], established that "the measures must be exceptional and of a temporary nature" and that "all persons deprived of their liberty must be treated with respect for their dignity", also sanctioning the "prohibition of hostage capture" , arrest and arbitrary detention "and condemning the" deportation and forcible transfer of populations[74] ".

The conventions mentioned, therefore, also stipulate that some rights can never be subject to derogation.

In particular, in fact, Article 4, paragraph 2, of the International Covenant on Civil and Political Rights identifies the right to life, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the prohibition of slavery, as non-derogable servitude, the prohibition of deprivation of

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[71] Council resolutions 1456 (2003), annex, par. 6 and 1624 (2005), par. 4.

[72] OHCHR, *Human rights: a common framework*, E / CN.4 / 2002/18, annex, points 3, letter a) and 4.

[73] UN Doc. CCPR / C / 21 / Rev.1 / Add.11, General Comment n. 29, States of Emergency (article 4), 31 August 2001.

[74] Sossai M., *The prevention of terrorism in international law*, Giappichelli, Torino 2012, p. 237.

liberty for debts, freedom from retroactive penalties, the right to be recognized as a person before the law and freedom of thought, conscience and religion.

For other rights, instead, the possibility of derogation, provided by the art. 4 of the Pact, requires that two conditions are met: the existence of a public emergency that threatens the very existence of the nation; communication to the Secretary-General of the United Nations by the State concerned about the rights it intends to derogate from and the underlying reasons.

However, the question about the actual nature and the certain identification of the exceptional nature of the emergency from which the legitimacy of the exceptions derives remains somewhat uncertain.

In this regard, in fact, starting from September 2001, the measures adopted by the States in their counter-terrorism action have posed serious problems in terms of respect for human rights.

To use the words of Cofer Black, former head of U.S. Counterterrorism Center "there was a first September 11th and there was an after September 11th ... after September 11th, gloves must be taken off"[75].

In fact, the Western democracies, in an attempt to combat jihadist terrorism, have felt called to react to an unprecedented threat, whose atypicality and novelty may perhaps "explain the degeneration of the reaction"[76]. The danger against which it is fought is an "other" enemy in the sense of, so different from "us", that it suffers a sort of dehumanization. He commits a crime so unacceptable that, once captured, he is not perceived as a victim of illegitimate measures, so that torture is understood as something necessary to steal information, or just to punish the person responsible for atrocious actions[77].

These statements describe the cultural climate in which, over the past 18 years, counter-terrorism actions undertaken by various Western countries find their place. Specifically, these are measures that strongly limit personal freedoms, clearly violating fundamental human rights.

Some states, in fact, have practiced torture and other ill-treatment; repatriated persons suspected of terrorism in countries where they face a real risk of torture or other serious human rights abuses; adopted repressive measures to suppress the voices of human rights defenders, journalists, minorities, indigenous groups and civil society[78].

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[75] Casebeer W.D., *Torture interrogation of terrorists: a theory of exceptions*, document presented at the Joint Services Conference on professional ethics, Washington D.C. 2003, in www.usafa.af.mil/jscope/JSCOPE03/Casebeer03.html

[76] Forni L., Vettor T., *Sicurezza e libertà in tempi di terrorismo glo*bale, Giappichelli, Torino 2018, p 179.

[77] Ibidem

Actions, these, that beyond the ethical connotation, on which we will dwell in a more specific way in the continuation of the work, have the ability to corrode the rule of law, good governance and human rights, revealing themselves completely counterproductive for the efforts national and international in the fight against terrorism[79].

For a better understanding of the difficulty of balancing respect for human rights with the fight against terrorism and, therefore, for safeguarding the security of a nation, let us dwell on some specific human rights and their possible violation.

2.1.1 Violation of the right to life. The targeted killings

As has been said, in response to the threat of jihadist terrorism, several Western countries, over the past few years, have adopted measures to combat terrorism which, in fact, are extremely limiting as far as personal freedoms are concerned, if not in a complete contrast with the respect of human rights[80].

Indeed, some of the measures that states have taken to protect people from acts of terrorism have themselves posed serious challenges to the right to life. Among the measures in question must certainly be mentioned that of the so-called targeted killings. With this expression reference is made to extrajudicial targeted executions, now practiced mainly through the use of armed drones, but which in reality were already in place before the introduction of the most modern technological tools. With the use of the latter, however, the "targeted" elimination of the enemies has certainly increased, widening well outside armed conflicts.

On February 27, 2014, a Resolution of the European Parliament (2014/2567, RSP) strongly condemned the targeted killings by drones and attempted to set legal bases for this practice.

The use of armed drones in international counter-terrorism operations, in fact, poses problems that, besides being moral, are primarily legal.

To analyze the issue in question, it must first of all be remembered that there is a legal difference between the targeted killings carried out in war and to which humanitarian law is applied and those

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[78] OHCHR 2008, *op. cit.*, p. 1.

[79] Ibidem

[80] Forni L., Vettor T., 2018, *op. cit.*, p 179.

carried out beyond hostilities, to which the international law on human rights applies and, in general, criminal law. Although even in time of war, as established by the International Court of Justice and the European Court of Human Rights, protection to the right of life is by no means withdrawn, yet it is outside an armed conflict that the guarantee becomes binding upon it and the space to derogate from it is limited to the maximum. The reasons for such an exception are precise: recourse to this practice must take place only for preventive and never punitive purposes; the purpose must be to protect human lives from an imminent attack; the measure in question is the ultimate rationale and the target must be a military objective, that is, it must not fall into the categories protected by humanitarian law unless it is a civilian to participate directly in hostilities; each operation must be planned to minimize any collateral damage.

To date, however, states that resort to targeted killings through drones have not made clear the legal bases of their policies or the measures taken to avoid collateral damage[81].

In 2006, the Israeli Supreme Court[82] ruled that the legitimacy of target killings operations must be ascertained on a case-by-case basis through a thorough investigation, which is independent, and which meets the requirements set by international law[83].

In this regard, therefore, it has argued that upon the occurrence of certain conditions, suspected terrorists can be subjected to targeted raids by Israeli forces, since "civilians directly participating in hostilities".

In general, however, as pointed out by Chantal Meloni, the lack of transparency on the applicable legal standards has allowed the States to "have their hands free", assigning them a vague "license to kill" and created a serious "accountability vacuum", thus a substantial absence of judicial checks[84].

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[81] IRIAD, *Droni Militari: Proliferazione o controllo?* Rapporto di ricerca, Istituto di Ricerche Istituzionali IRIAD, Roma, aprile 2017, p. 146, in https://www.disarmo.org/rete/docs/5137.pdf

[82] Supreme Court of Israel, The Public Committee against Torture in Israel (PCATI), *Palestian Society for the Protection of Human Rights and the Environment v. The Government of Israel et al*, 13 December 2006.

[83] IRIAD, 2017, op. cit., p. 86.

[84] Meloni C., *Fare la guerra con gli omicidi mirati tra questioni morali e aspetti giuridici*, in "La Finestra sul mondo", n. 5, 2013, pp. 853 e 859.

2.1.2 Violation of the ban on torture

Resuming the definition proposed by the UN General Assembly on 9 December 1975 ("Declaration on the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment", Article 1), the "Convention against Torture and other cruel, inhuman or degrading treatment or punishment "(June 27, 1987) defines torture as" any act by which a severe pain or suffering, physical or mental, is intentionally inflicted on a person in order to obtain from her or from a third person information or a confession, to punish her for an act that she or a third person has committed or is suspected to have committed, to intimidate her or put pressure on her or to intimidate or put pressure on a third person, or for any another reason based on any form of discrimination, if such pain or suffering is inflicted by a public official, by any other person considered as an agent for that purpose, or on his instigation, or with his express or tacit consent. This term does not extend to pain or suffering resulting only from legitimate sanctions, inherent in such sanctions or caused by them".

The European Court of Human Rights, considering torture as an intentional inhuman treatment that causes very serious and cruel suffering[85], stated that the so-called "disorientation" or "sensory deprivation" techniques must be prohibited by international law because " cruel, inhuman or degrading treatments ".

2.1.3 Violation of the principle of non-refoulement. Extraordinary renditions

International refugee law (article 33 paragraph 1 of the 1951 "Refugee Convention"); the international law of human rights (for example art. 3 of the "Convention against torture" of 1984 and art. 16 of the "International Convention for the protection of all persons from the enforced disappearance" of 2006) and the Charter of the fundamental rights of the 'European Union (art. 19) have codified the principle of non-refoulement, that is the right of migrants who return to the status of refugees not to be rejected,

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[85] Ireland v. United Kingdom, Eur. Ct. H.R., Series A, No. 25, para. 167.

directly or indirectly, to a State in which they fear persecution. On this principle, in a field different from the original one of refugee law, it has been widely discussed in relation to the revelations about a practice carried out by United States agents, starting from 11 September 2001, that of the extraordinary renditions. This expression is used to indicate the unofficial delivery of individuals suspected of terrorism to the authorities of other States in which presumably such individuals risk being tortured or abused. The debate on the subject in question was also crossed by the hypothesis that the US government makes use of the renditions with the express purpose of delegating to the bodies of other States, those in which torture is widespread, the obtaining of useful information[86].

As has been pointedly noted[87], although it is a measure used in the fight against international terrorism, this practice can still be reasonably assimilated to enforced disappearances. Even if there are noticeable differences regarding the systematic nature of their executions, in fact, the two actions are similar in terms of the severity of the human rights violations and the quality of the rights affected by these violations[88].

2.2   Impairment of rights

Those presented are mandatory rights even in times of war or during an emergency that threatens the life of the nation.

Some commentators, however, said that the attempt to balance the fight against terrorism with respect for human rights translates into a useless experiment. Consider, in this regard, the situation of "time bombs", that is the one in which information is given on the imminence of an explosion that could cause immeasurable damages in terms of human lives. In this case, torture would be considered as the only way to obtain information necessary to save lives.

A prospect of this kind could be accepted by those who believe that the interests of the majority (the possible victims of the explosive device) are greater than the need to protect human rights and dignity (of terrorists or presumed terrorists).

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[86] Association of the Bar of the City of New York and Center for Human Rights and Global Justice, *Torture by Proxy: international and Domestic Law Applicable to "Extraordinary Renditions*", New York 2004, citato in Marchesi A., *Diritti umani e Nazioni Unite. Diritti, obblighi e garanzie*, Franco Angeli, Milano 2007, p. 53.

[87] Forni L., Vettor T., 2018, *op. cit.*, p. 180.

[88] *Ibidem*

The law professor of Harvard, Alan Dershowitz[89] states that, in cases like the one just described, the temptation to resort to torture can prove so strong and the pressure to save the situation so urgent that no one could do otherwise, regardless of which the personal opinion on torture can be[90].

According to the professor, therefore, on the subject in question it is not useful to wonder about the possibility of avoiding torture, but it is rather necessary to wonder how to regulate this practice, thus how to regulate it through judicial proceedings. In summary, it is a matter of legalizing torture in specific cases, so as to prevent it from becoming a practice for interrogators. In such a defined condition, only those who used torture outside the regulated conditions, according to Dershowitz, would be responsible for a criminal offense.

In 2004, the Supreme Court of Israel found itself in the position of having to express itself on the question of the "time bomb" in a significant judgment concerning the interrogation methods employed by the Israeli General Security Service (GSS).

In that specific situation, the State of Israel did not deny the use of the contested interrogation methods, but, however, maintained that they did not constitute torture, cruelty, inhuman or degrading treatment or punishment and that in any case they were to be considered legal[91]. In particular, it appealed to the need for defense and therefore claimed that, as a last resort, in urgent cases, it was legitimate to resort to "moderate physical pressure"[92] in conducting interrogations.

The Supreme Court, however, considered that the principle of the need for defense could not be invoked to justify the use of torture or other prohibited interrogation methods[93]. According to the conclusions of the judges, in fact, the nature of the "need for defense" is based on an individual's response to a given series of facts, while the authorization to resort to an illegal or prohibited act must come from legislative sources[94].

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[89] Dershowitz A., *The torture warrant: A response to Professor Strauss*, New York Law School law review, vol 48, pp.275-94, 2004.

[90] Ignatieff M., *Il male minore. L'etica politica nell'era del terrorismo globale*, Vita e Pensiero, Milano 2006, p. 200.

[91] Supreme Court of Israel, *Judgment concerning the legality of the general security service's interrogation methods*, 6 September 1999, International Legal Materials, vol 38, pp.1471-1490.

[92] *Ibidem*

[93] *Ivi,* par. 38.

[94] *Ivi*, par. 36.

Nevertheless, the Court admitted that the justification of necessity could be accepted as a defense in exceptional situations, for example in the scenario of a "time bomb" which implies an imminent danger, where - the judges specified - the imminence refers to the nature of the act rather than to that of danger. It follows that "the criteria of imminence are met even if the bomb is destined to explode in a few days, or perhaps even after a few weeks, on condition that the danger materializes and that there are no alternative means to prevent its materialization. In other words, there is a concrete level of imminent danger of the occurring of the explosion"[95].

2.3   Counterterrorism and State terrorism: Igor Primoratz

Although, as explained in the previous chapter, the concept of state terrorism lacks an in-depth and systematic academic treatment, we can agree that it is generally understood as a particular form of aggression or intimidation that a state performs through its own organs, with the aim of inducing chronic fear, for specific reasons that, from time to time, are historically and socially different.

Counter-terrorism, also perpetrated by the State, has the overt aim of defending the nation from terrorist attacks. Motivated by this reason, the State resorts to an illegitimate use of violence, repression and intimidation, that is to say to a whole series of ill-reconcilable actions with respect for human rights.

 Similar methods and tactics, including the intention to create fear in society or to intimidate an entire population, are also used by terrorist organizations, liberation movements, state terrorism and the so-called war on terror.

Is there therefore a real distinction between counter-terrorism and state terrorism? And between these two concepts and those of terrorism tout court?

To answer this question, beyond international treaties, official statements by heads of state or organizations defending human rights, we can make use of more strictly ethical considerations.

The starting point is therefore to ask ourselves about the moral question. Is there a morally acceptable terrorism?

This illustrious question was reflected by a distinguished Russian philosopher, Igor Primoratz, who, in analyzing the nature of terrorism, focused on the hypothesis of being able to justify some form of terrorism. To this end, he carefully studied consequentialist and non-consequentialist ethical theories.

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[95] *Ivi*, parr. 34 - 35.

According to the thesis of consequentialism, the correctness of actions depends on a limited set of consequences. Terrorism, therefore, is not considered wrong in itself, but only if it has negative consequences in terms of cost-benefit balance. In certain circumstances, therefore, a limited use of terrorism can be the only way to ensure that the rights of all human beings are respected within a society.

According to Nielsen Kai[96], a professor of philosophy at the University of Calgary, for example, acts of terrorism are justified when they appear as politically effective measures in the revolutionary struggle; when there are good reasons to believe that, with the use of that kind of violence rather than without it, there will be less injustice and suffering[97].

Historical experience, according to Nielsen, tells us that small-scale terrorism, used as the sole method of struggle to provoke the masses into revolutionary actions, is ineffective and often counterproductive.

However, it used in conjunction with the guerrilla war in a long war of liberation could prove useful and therefore also considered justified, as happened in Algeria and in South Vietnam. Instead, within a non-consequentialist conception of moral justification, terrorism is considered wrong in itself, because of what it is, rather than just because (and to the extent that) its consequences are very bad.

None of the two approaches to the problem, however, convinces Primoratz.

In reality, before we continue to illustrate the reasoning of the Russian philosopher, we find that it is difficult to provide a precise answer to the questions formulated at the beginning of this paragraph, since, as he himself explained, the necessary condition to find an explanation is to define the term terrorism in a unique way, beyond any relativism.

As we know, the global public debate on terrorism, which has lasted for over a decade, has involved scholars with backgrounds in political science, international relations, laws and public policies, but also politicians and ordinary citizens. Overall, however, as repeatedly emphasized, there is no essential data: clarity on what terrorism is and who should be considered a terrorist.

In this regard, Primoratz's concern is that terrorism often arouses morally distinctive emotions, characterized by moral relativism and double standards. More clearly, no one applies the word "terrorism" to their own actions or those of those for whom one feels sympathy or whose actions or struggle is supported. In fact, as the famous adage states: "A person's terrorist is the freedom fighter of another person". From this derive the double standards of the "us-them" formula. The widespread

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[96] Nielsen Kai, *Violence and Terrorism: Its Uses and Abuses*, in Leiser B. M. (ed.), *Values in Conflict*, Macmillan, New York 1981, pp. 435 – 49.

[97] *Ivi*, p. 446

tendency, for example, is to accuse insurgents who resort to the use of violence to assert their reasons and claims to terrorism, while there is total reluctance to mention terrorism when dealing with the violent actions of the own state[98].

This leads to the formulation of the double standard "state use of rebel terrorism", that is to say the conviction that whatever it is and whatever definition it may be attributed to, in any case terrorism is carried out by subjects not belonging to the State[99].

What is stated by Primoratz seems to be reflected in the debate on Israeli-Palestinian terrorism where in fact both sides seem to want to deny any involvement in terrorist activities, accusing each other in this sense and justifying the violence used as a defense against others' terrorism. The Palestinians, in fact, consider their struggle as just, because it is aimed at putting an end to territorial occupation and oppression. Their actions, therefore, morally justified, are not considered terrorism but are configured as a struggle for freedom and self-determination[100].

For their part, however, the Israelis explain that the use of armed forces and security services has the specific purpose of defending their own state. Theirs are, therefore, actions that any country would carry out if threatened by terrorist attacks[101].

In general, the debate on the moral evaluation of the use of violence and terror is essentially based on a distinction between two types of terrorism.

1) Actions that threaten the idea of democracy and freedom. This is the kind of terrorism that meets the general social blame. It is in fact considered morally wrong and to be condemned in its entirety because it is in contrast with universal human rights.

2) The use of methods of intimidation and terror to focus the attention on particular injustices of an ethnic, religious or socio-economic nature ignored by existing political institutions or supported by them. This is the terrorism that, to be morally accepted, appeals to the will to fight against social or economic oppression, colonial domination or foreign occupation.

According to Primoratz, however, to define terrorism in a useful way for any moral or political debate, it would be necessary to set aside both the identity of those who have recourse to it, and their political,

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[98] Primoratz I., *Terrorism: A Philosophical Investigation*, Polity, Malden, MA, 2013.

[99] *Ibidem*

[100] *Ibidem*
[101] *Ibidem*

ideological or religious goals and analyze it in relation to what it makes and the most immediate goals that arises.

The key concepts of the definition he proposed[102] are therefore the following: terrorist acts are violent, immediate victims are innocent people, the killing or injury of such people is a way to influence the actions of others. More specifically, the intent is to influence the leaders who have decision-making power.

This definition, although morally neutral, highlights those characteristics of terrorism that explain its being so strongly and generally condemned. A fundamental aspect, in fact, is the reference to innocent victims, that is, people who have done nothing to deserve to be hurt or killed.

This attention to the nature of the victims of terrorism is in line with the principles of the theory of the conduct of war, according to which it is permissible to attack soldiers but not to kill or intentionally injure innocent civilians.

When Primoratz raises the question "can terrorism ever be morally justified?", that question is equivalent to the question "is it ever morally justified to attack innocent civilians?"

In an attempt to answer, let us return to the morally neutral definition provided by the Russian philosopher.

An implication of it is that state terrorism, at least logically, is possible.

Indeed, Primoratz provides evidence to show that states are often perpetrators of terrorist acts. This is an important issue to highlight since government agencies, media and the general public tend to assume that terrorism is reserved for non-state agents and finds it difficult to discern and recognize the terrorist character of certain state acts and policies.

That said, however, according to the Russian philosopher, when it comes to the involvement of the state in terrorism, there are fundamental distinctions to be considered, both as regards the degree of involvement and as regards the victims[103].

It is not possible, he says, to classify any state that has used terrorism, directly or by proxy, as a terrorist state.

As such, in his opinion, the state that uses terrorist methods in a lasting and systematic way can be defined. The examples cited are those of totalitarian states such as Nazi Germany, the Soviet Union at the time of Stalin or Cambodia under the Khmer Rouge domination, which pursued the goal of

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[102] "The deliberate use of violence, or the threat of its use, against innocent people, in order to intimidate others during an action that they would not otherwise have undertaken" (Primoratz I. 2013, *op. cit.*, p. 24).

[103] Primoratz I., *State Terrorism And Counterterrorism*, in Textor M., Kemmerling A., Meggle G. (eds.), *Ethics of Terrorism & Counter-Terrorism*, G. Meggle (ed.) Ontos, Heusenstamm 2005, pp. 69-81

total domination of society by resorting to extreme means: incessant terrorism , inflicted by state officials who have used systematic violence and threats of violence against their citizens, to produce conformity and stifle the opposition[104].

In such cases, the effectiveness of this kind of method is explained by the arbitrary nature of the same and the unpredictability of the choice of victims[105].

Non-totalitarian regimes, such as Chile under Pinochet and Argentina under the generals, have used these tactics against their own citizens, but in a less systematic way.

There are also many fundamentally democratic and liberal states that have resorted to terrorism on a much more limited scale and for more specific purposes, directly or by sponsoring non-state agencies whose modus operandi includes terrorism.

Their appeal, however, is occasional and therefore they cannot be defined as terrorist states[106].

Finally, many states, both totalitarian and non-totalitarian, have used terrorism outside their own country, as a means of achieving foreign policy objectives, during the war, or as a method of maintaining their occupation of others' land.

This can happen because the two types of terrorism are not mutually exclusive but rather, they are often complementary. Examples are Nazi Germany or the Soviet Union.

According to Primoratz, therefore, in practice the dichotomy of state and non-state terrorism does not always apply. Attempts to draw rigid lines between one and the other cannot always succeed because of the widespread phenomenon of terrorist organizations that receive various types and degrees of support from States.

Not being able to realize this simple distinction between state terrorism and non-state terrorism, then any moral evaluation becomes much more complex[107].

The most common situation that sees a state resorting to terrorism in foreign policy is that which occurs during a war.

In this context, the attacks and the number of victims is extremely wide. Indeed, if one reflects on wars, it is possible to affirm, according to Primoratz, that states have carried out greater and more destructive terrorist violence than any non-state group.

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[104] Primoratz I., 2005, *op. cit.*, p. 72.

[105] *Ibidem*

[106] *Ivi*, p. 73

[107] *Ivi*, p. 74.

Returning then to the question of the complex moral evaluation, the Russian philosopher, while criticizing any attempt to justify terrorism, defends the view that, although terrorist acts are virtually always wrong, there are extreme cases, which he calls "moral disasters", in which attacks against civilians could be morally justified.

With the notion of "moral disaster" Primoratz proposes an opinion which, although structurally similar to that of other philosophers, is however much more restrictive.

Michael Walzer[108], for example, speaks of a "supreme emergency", referring to the situation in which deliberate attacks against innocent civilians are to be understood as the only way to face an imminent threat to the survival and freedom of a political community.

The Russian philosopher, on the other hand, considers moral disaster as an imminent threat of extermination or ethnic cleansing of an entire people, or as a situation in which there are good reasons to believe that terrorism is the only way to prevent disaster by stopping it or canceling a wide range of its consequences.

The moral rule that rejects terrorist acts, therefore, is for Primoratz "almost absolute"[109]

That said, however, he does not offer historical and contemporary examples of a morally justified act or campaign of terrorism.

"Such an extreme type of violence, used to terrorize and coerce, should be extremely difficult to justify. So, it should not be strange to think that no case of terrorism has so far been morally justified, or that any recourse to it in the future is extremely unlikely ".

Moreover, beyond any other consideration, he defines terrorism "absolutely morally wrong "[110].

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[108] Walzer M., *Just and Unjust Wars*, Basic Books, New York 1977.

[109] Nathanson S. (2013*). Igor Primoratz, 'Terrorism: A Philosophical Investigation': A Critical Review,* *"*Iyyun: The Jerusalem Philosophical Quarterly" 62, 2013, pp. 261-275, in http://www.jstor.org/stable/23685952, p. 261.

[110] Primoratz I. 2013, op. cit., chapter 6.

3.   Freedom and Security

3.1   Premise. The normalization of the emergency

"When democracies fight terrorism, they act to defend an ideal of political life without violence. But defeating terrorism requires the use of violence. Not only that, it can also involve coercion, deception, secrecy and even violation of certain rights. How can democracies employ these means without destroying the same values they are fighting for"[111]

In a world like the one described in the previous chapters, in which the actions implemented by the States to combat terrorism, now global, end up assimilating with the latter, with regard to the use of terror and the violation of fundamental rights, the words " freedom "and" security "are recurrent.
In fact, from the attacks on the World Trade Center to the subsequent "war on terror", journalistic articles, the work of the jurists, the judicial debates (for example Hamdi v. Rumsfeld, June 2004[112]), the interventions of politicians, are constantly referred to. government proposals (eg British Home Office, 2004[113] and UK Presidency 2005[114]) as well as the speeches of the common people and the reflections of ethics and political philosophy[115].

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[111] Ignatieff M., *Il male minore. L'etica politica nell'era del terrorismo globale*, Vita e Pensiero, Milano 2005, p. 15.

[112] Supreme Court of The United States, *Hamdi Et Al. V. Rumsfeld, Secretary Of Defense, et al.,* n. 03–6696, argued April 28, 2004 - decided June 28, 2004, in https://www.supremecourt.gov/ opinions/03 pdf/03-6696.pdf

[113] British Home Office, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper*, 2004.

[114] UK Presidency (of the EU), *Liberty and Security: Striking the Right Balance*, 2005.

[115] Neocleous M., *Security, Liberty and the Myth of Balance: Towards a Critique of Security Politic*s, "Contemporary Political Theory", 6, 2007, pp. 131-149.

The eternal question, made even more current by the collective fear, is whether it is preferable to be free and insecure or if, rather, it is not better to cede part of our freedom in exchange for reassuring protection[116].

The issue, far from being purely conceptual, involves concrete situations, which have to do with the daily life of each person.

When it is said that the contemporary age lives in a situation of perpetual tension, in fact, no hyperbole is used[117].

Think of today's Europe. Here the chronicle gives us too often account of terrorist attacks: on 1 October in Franca in Marseille, even before in Barcelona, London, Manchester, Paris, St. Petersburg, Brussels, Nice, Berlin. The whole of Europe, therefore, directly or indirectly, has been and continues to be the scene of terrorist phenomena which, after a decade of relative safety, resumed in 2015 when two massacres hit France: the first on 6 January at the editing of the satirical newspaper Charlie Hebdo, and the second, on November 13, at the Bataclan of the French capital[118].

The perception that today we have of terrorism, therefore, is not that of an exceptional threat, but rather of an almost constant risk that is inherent to the relationship existing between the international community and the non-state groups present within it.

Pföstl E.[119] speaks, in this regard, of a "normalization of the emergency" which, precisely because of the perception of constant risk, rather than being dealt with by the most suitable instruments, ie those exceptional and limited in time, is instead often used to legitimize special laws, rules that by their very nature should regulate extraordinary events. They, therefore, devoid of the requirement of temporariness that should give them the formal character of specialty, stand alongside the ordinary normative system, going, as a matter of fact, to undermine the apparatus of fundamental guarantees at the base of modern democracies[120].

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[116] Priulla G., *Raccontar guai: che cosa ci minaccia, che cosa ci preoccupa*, Rubbettino, Soveria Mannelli (Cz), 2005, p. 15.

[117] Forni L., Vettor T., *Sicurezza e libertà in tempi di terrorismo globale*, Giappichelli, Torino 2018, p. 3

[118] *Ivi*, p. 4.

[119] Pföstl E., *Sicurezza e libertà fondamentali*, Apes, Roma 2008, p. 12.

[120] *Ibidem*

In the aftermath of 11 September 2001, for example, the American Congress in fact approved measures to combat terrorism (Patriot Act) which, as has been pointed out by various commentators[121], are for the most part the expression of a real reaction by panic and a poor understanding of the indefinite threat and show "*to what extent the response to a crisis can seriously compromise the relationship between state security and civil liberties.*"[122]

The Patriot Act was followed by several laws issued to address the terrorist emergency in almost all Western countries: from Canada, to the United Kingdom, from France to Germany.

The British government, for example, has responded to terrorism with laws that provide more police powers to withhold and interrogate suspects[123].

Similarly, international bodies, such as the UN, the Council of Europe and the European Union, have acted with repressive and restrictive legislation on the rights of foreigners, accompanied by serious derogations from procedural rules and the reduction of fundamental rights such as publicity in trials, guarantee of defense in the acquisition of evidence, or reinforcement of prevention measures[124].

According to Pföstl, therefore, in a general climate of this kind, characterized by fear and strong sense of uncertainty for individual and collective safety, the political tradition of the West has been partially set aside, which finds its highest expression in the philosophy of Immanuel Kant which identified freedom as the main vehicle of security.[125]

Vice versa, today, the claims for freedom seem to clash with the counterproposal to security and, implicitly or explicitly, the recurring opinion is that citizens must renounce a certain portion of freedom in exchange for the desire of security. In order to guarantee the latter, therefore, states must constantly reduce the fundamental rights of their citizens[126].

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[121] Ackerman B., *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism*, Yale University Press, 2006, p. 2; Heyman P.B, Kayyem J.N, *Protecting Liberty in an Age of Terror*, MIT Press, 2005, p.5.

[122] Ifeolu Tokimi, *Liberty and security in the age of terrorism: negotiating a new social contract*, "Plymouth Law and Criminal Justice Review" 2015 1, pp. 195-212

[123] Ifeolu Tokimi, 2015, *op. cit.*

[124] Lorenzon S. Vaccari G., Zanetti V. (a cura di), *Sicurezza collettiva e diritti fondamentali in tempo di terrorismo. Atti del workshop Ferrara*, 26 settembre 2007, Aracne, Roma 2008.

[125] Pföstl E. 2008, *op. cit.*, p. 12.

[126] Ifeolu Tokimi, LIBERTY AND SECURITY IN THE AGE OF TERRORISM: NEGOTIATING A NEW SOCIAL CONTRACT, Plymouth Law and Criminal Justice Review (2015) 1, pp. 195-212

Some scholars[127] have highlighted how, today, the theory of Hobbesian memory according to which the aim of preserving peace, to which an absolute value is to be attributed, appears to be revived and justifies the attribution to the government of uncontrollable powers, both by citizens and from other states.

"*How is it possible* - an Italian diplomat and writer asks himself in this regard - *that eminent jurists, even liberals, have begun to seriously debate the pros and cons of torture against terrorists?*" and goes on affirming "*the zero point of politics for individuals, focused exclusively on defending the threat from their own vulnerability, becomes the starting point of power. We have returned to Hobbes, and to that constant vulnerability and threat that bases the sovereign power on fear and legitimacy*"[128].

The subject in question is not new at all.

In addition to be a classic binomial of political philosophy and sociology, in fact, the theme of security-freedom is also very well known in psychoanalysis. Freud spoke of a barter that man operated between his individual freedom and the restrictive rules of social life aimed at guaranteeing him greater security.

He wrote: "(The essence of civilization) *consists in the fact that the members of the community limit themselves in their possibilities of satisfaction, while the individual knew no such restrictions. Therefore, the first requisite of civilization is justice, that is the security that the order established will not be broken in favor of anyone* ". [129]

In this regard, the Polish sociologist and philosopher Bauman, in describing the suffering of a humanity torn by the conflict between freedom and insecurity, enriches its considerations of Freudian quotations on the discomfort of civilization and comes to affirm that "*Instead of following a linear process true greater freedom and greater security, a third dimension places us in a pendulum movement: first firmly and markedly in the direction of one of the two values, then an oscillation*

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[127] EG: Pföstl E., *Sicurezza e libertà fondamentali*, Apes, Roma 2008, p. 12.; Marconi P., Dalla libertà alal sciurezza, in Vincenzo Ferrari (a cura di), Filosofia giuridica della guerra e della pace: atti del XXV Congresso della Società italiana di filosofia del diritto, Milano e Courmayeur, 21-23 settembre 2006, Franco Angeli, Milano 2008 p. 269

[128] Toscano R., *La violenza, le regole*, Einaudi, Torino 2006, p. 10

[129] Freud S., *Il disagio della civiltà e altri saggi*, Boringhieri, Torino 1929, p. 231.

towards the other "[130]and adds" *at present we would be inclined to believe that the hostility towards insecurity prevails over the fear of not being free* "[131].

In the following chapter, with the support of the analyzes carried out by Barberis and Neoclous, the essential historical lines of the safety-freedom binomial will be traced and then some considerations on the theory of balancing and on the criticisms made by some illustrious thinkers will be developed.

3.2   The dyad freedom-security in history

The concept of freedom is one of the great philosophical problems that has been discussed since the dawn of time, even before it actually existed.

Likewise, security is one of the primary needs of human beings[132].

The risk, in fact, defined as "*possibility of suffering damage, connected to more or less predictable circumstances*"[133] or "*possibility of harmful or negative consequences due to circumstances that are not always predictable*"[134], is a natural factor in any human activity[135]. Aware of this, man is constantly looking for a condition of stability that guarantees protection and safety to himself and to everything he considers important for himself.

Safety, therefore, is a fundamental value, perhaps, Barberis[136] states, the one on which all others depend.

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[130] Bauman Z., *L'etica in un mondo di consumatori*, Feltrinelli, Milano 2010 p. 22

[131] *Ivi*, p. 30.

[132] Pföstl E., *Sicurezza e libertà fondamentali*, Apes, Roma 2008, p. 19.

[133] Treccani, *Vocabolario della Lingua italiana*.

[134] Zanichelli, *Vocabolario della Lingua italiana*.

[135] Lamanna Di Salvo D., *L'influenza del fattore rischio nella gestione aziendale*, Editrice UNI Service, Trento 2004, p. 1.

[136] Barberis M., *Non c'è sicurezza senza libertà. Il fallimento delle politiche antiterrorismo*, Il Mulino, Bologna 2017.

But, according to the scholar, it has not always been considered in these terms.

Understood as values, in fact, safety and freedom are concepts born in the modern era. In ancient times, such as in the classical, Greek and Roman civilizations, although known, they were however understood very differently than today.

The explanation of this fundamental difference is relatively easy for Barberis: in human history the war conflict represents a constant of normality and, therefore, the condition of security, like that of freedom, was lived in a very different way from what happens today .

It is sufficient to think, in this regard, that all the pagan pantheons featured a god of war or that the biblical god himself was the lord of armies.

In the Greek poleis and in the Roman res publica there was a duty to shed blood for the homeland and, therefore, security, far from being a value, was indeed understood as an ignoble good. The *libertas*, similarly, had a purely political meaning, since only the one who could participate in the active life of the city was free.

The Rome republic, in the name of the salvation of the people, was ready to sacrifice all the other laws. The Latin maxim "*salus republicae suprema lex*", in fact, placed few limits on the right to security on the right to freedom[137]. In the event of a serious threat to the survival of the State, therefore, acts of suspension of civil liberties, the detention of individuals and the secret assassins of the enemies were considered condonable[138].

With the sunset of the Republic and the birth of the Principality and Empire, however, *libertas* takes on a different meaning.

The idea of "*pax* or *securitas Augusti*" substitutes the idea of participation in government or even that of not subjection to a master, and is imposed the concept that security comes before freedom, an idea taken up by the founding fathers of the modern politic thought, Machiavelli and Hobbes.

The first supported a republican or democratic project thanks to which *securitas* and *libertas* could come closer. Freedom is in the Florentine secretary, "*that common utility which can be drawn from*

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[137] Ignatieff M. 2006, *op. cit.*, p. 23

[138] *Ibidem*

free living ... is to be able to freely enjoy its things without any suspicion, not to doubt the honor of women, of that of children, do not be afraid of oneself"[139] .

Security, on the other hand, is conceived in the narrow terms of public order and does not consist in anything but fighting to defend freedom[140].

Hobbes, in favor of an autocratic project with liberal implications, assimilated *libertas* to the superior need for *securitas*.

In *De Cive* we read that "*the ultimate foundation of natural law is that each defend his life and his members as much as he can*"[141].

"*Security is the purpose for which men submit to others ... and it must not be assumed that a man is obliged to do anything ... before his security has been provided.*"

In the Hobbesian political philosophy the search for security and the need to protect oneself against the threats addressed to each man by anyone else are at the base of the creation of sovereign power[142]. The idea of freedom, on the other hand, coincides with the right to keep alive.

Human beings, therefore, renounce individual sovereignty, in exchange for protecting the government from all that they perceive as risk, present or future[143].

The conceptual system of Hobbes is overturned by John Locke, for whom the state of nature is a condition of "perfect freedom" where there is no absolute or arbitrary power[144].

The goal indicated by the thinker is to build a society in which citizens are assured of freedom and in which everyone has the right to dissolve the government if it is deemed to be attentive to this right[145].

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[139] Vivanti C. (a cura di), *Machiavelli, Discorsi sopra la prima deca di Tito Livio, seguiti dalle considerazioni intorno ai discorsi del Machiavelli di Francesco Gucciardini*, Einaudi, Torino, 2000, I, 16, p. 49.

[140] Belloni I., *Ex obligatione salus? Diritto, obbedienza, sicurezza. Percorsi della modernità*, Giappichelli, Torino, 2013, p. 30.

[141] Magri T. (a cura di), *Hobbes T., De Cive (1642)*, Editori Riuniti, Roma 1988, p. 84.

[142]Neocleous M., *Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics*, "Contemporary Political Theory", 2007 6, (pp.131-149) p. 135.

[143] Lorenzon S. Vaccari G., Zanetti V. (a cura di), 2008, *op. cit*.

[144] Neocleous M. 2007 *op. cit.*, p. 134.

[145] Locke, J. (1690), *Two Treatises of Government,* Cambridge University Press, Cambridge 1988.

The purpose of men who unite in a society and submit to a government is solely to preserve their freedom[146]. Security is its essential precondition.

Barberis pointed out that it was liberal thought, as a whole, that poured the greatest energy into the attempt to reconcile firmly.

An interesting interpretation on the subject in question is that of Neoclous who, taking up some of Foucault'[147]s reflections, analyzes the place that the concept of security occupies in the work of some authors, classic and contemporary, considered pillars of liberal thought.

The starting point of this analysis is the following observation: it is usually believed that the defense of freedom against security is a typically liberal idea. As underlined by Foucault[148], liberalism has historically been identified with the idea that the state is always able to trample civil society in general and freedom in particular.

A typical expression of this concept is Benjamin Franklin's assertion that "*those who can renounce the essential freedom to get some temporary security deserve neither freedom nor security*".

Neoclous, on the other hand, explains that for liberal thinkers the terms "freedom" and "security" are in no way in opposition.

The freedom project announced with the beginning of modern liberalism was in fact deeply linked to the security project[149].

Among the first authors of the "liberal pantheon"[150], which have associated freedom and security, is Montesquieu which, in the *Esprit des lois* (1748), wrote "*Political freedom, in a citizen, consists in that tranquility of spirit that comes from the opinion that everyone has his own security and because we have this freedom, the government must be such that a citizen cannot fear another citizen* "[151].

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[146] *Ibidem*

[147] Foucault, M., *Governmentality* (1978), in Burchell G., Gordon C., Miller P. (eds.) *The Foucault Effect: Studies in Governmentality*, London: Harvester Wheatsheaf, 1991 pp. 87–104.

[148] Foucault M., *History of systems of thought, 1979*', in "Philosophy and Social Criticism", 8(3), 1981, pp. 353-359.

[149] Neocleous M. 2007, *op. cit.*, p. 139

[150] *Ibidem*
[151] Montesquieu (1748), *Lo spirito delle leggi*, Milano 1989, libro XI cap. VI, p. 310.

Similarly, in Adam Smith's thinking the freedom of the individual is linked to the "feeling that everyone has their own security"[152] and it is from this security that "the administration of justice depends".

Far from affirming that we must deny a certain freedom to achieve security, he therefore argues that the two elements of the binomial are reunited or, also, that security is something possessed for freedom - ontologically and politically before the commitment to freedom.

This link between the concepts in question is also recognized by Bentham[153] who, in fact, claims that "*political freedom is another branch of security*"[154] or "*security against injustice on the part of government ministers."[155]*

With this brief review of ideas, therefore, Neocleus clarifies how by the end of the 18th century the terms "freedom" and "security" for liberal thinkers are neither in antithesis nor much less in search of some balance. Indeed, rather than as opposites, they are configured as synonyms[156].

An important phase in the definition of the relationship between the two terms in question is that of constitutionalism.

All major constitutional documents, in fact, in addition to life, mention freedom and security: the *Virginia Declaration* (1776), the *Declaration of Human and Citizen Rights* (1789)[157], the *Universal Declaration of Human Rights* (1948[158]), the *European Convention on Human Rights and Fundamental Freedoms* (1950).

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[152] Smith A., *Lectures on Jurisprudence (1762-63)*, Liberty Fund, Indianapolis 1982, pp. 405, 412, 540.

[153] Bentham J., *Principles of the Civil Code*, in *The Works of Jeremy Bentham,* 1843, vol. I, Edinburgh William Tait., p. 307.

[154] *Ibidem*

[155] Neocleous M. 2007, *op. cit.*, p. 141

[156] *Ibidem*

[157] "*The purpose of every political association is the preservation of the natural and imprescriptible rights of man, These rights are freedom, property, security and resistance to oppression* "(Declaration of Human Rights and Citizens' Rights 1798, art 2).

[158] Art. 3 of the Universal Declaration of Human Rights (1948) proclaims that "*everyone has the right to life, liberty and personal safety"*.

Freedom and security, therefore, formalized within constitutional documents, are finally considered rights in all respects and inextricably connected with what is considered the end of every fundamental chart: human dignity[159].

However, their institutionalization during post-war constitutionalism rarely corresponded to a real protection for individuals. As Barberis explains, in fact, the recent history of the West is characterized by a real increase in insecurity, especially of mass[160] and, therefore, like past eras, even today any claim to freedom seems to clash quickly against the demand for security.

The answer to which we will try to answer, therefore, is whether today we must speak of a balance between the terms in question or whether, as Jef Huysmans said "*Security talk and write is never innocent*", because "*always risks contributing opening a window of opportunity for a fascist mobilization or ideology of internal security* "[161].

3.3   Balance between security and freedom

In the aftermath of 11 September, the Western public debate raised by the growing state power in the fight against terrorism, was mostly focused on the search for some balance between freedom and security[162], research that often results in a request for limitation of the former in favor of the latter.

In a speech given in 2003 at the "National Forum in the War on Terrorism and the Rule of Law", Philip Maxwell Ruddock, a member of the Australian Parliament, expressed himself in the following terms:

 "*We do not live in an ideal world. We live in a world of compromises. And now we live in a world where we have to accept the costs associated with protection from terrorism ... There will always be*

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[159] Barberis M. 2017, *op. cit.*, pp. 19-21.

[160] *Ivi*, pp. 27-28.

[161] Huysmans J., *Defining social constructivism in security studies: the dilemma of writing security regulation*, "Alternatives" 27: 41–62, 2002, p. 43

[162] Waldron J., *Security and Liberty: The Image of Balance*, "The Journal of Political Philosophy" 11(2), 2003, p. 191.

a compromise between national security and individual rights. The task of the government is to recognize these compromises and preserve our security without compromising fundamental rights and freedoms. "[163].

Heads of government, in serious difficulties and in sharp decline of consensus, frequently find themselves proclaiming wars against terror, therefore appealing to a sort of hybrid, a concept halfway between war and repression, which uses exceptional measures to address long-term problems.

After September 11th, many legal systems have given absolute priority to the protection of safety, thus adopting new and more stringent regulations that have an impact on rights. It follows that today the criminal law on the terrorist phenomenon is largely aimed at preventing and taking into consideration the risk factor rather than the actual culpability. Furthermore, the new anti-terrorism legislation underlies the suspicion that preparatory acts can be carried out for crimes with a terrorist purpose.

The verification of such suspicions leads to justify the arrest in flagrante delicto regardless of the ascertainment of specific acts[164].

"*Nowadays* - says Bonfanti in this regard - *the worst violations of liberties, in Western democracies, are made in the name of security*"[165].

The supporters of the so-called balancing rhetoric, however, believe that the balance between the two concepts is absolutely necessary because only in this way can an individual be free to do whatever he wants and at the same time the society will be able to protect itself from any danger deriving from some of those things that the individual wants to do[166].

Although a main feature of public policies in the field of counterterrorism, the balancing approach has however been the subject of multiple academic criticisms, among which one of the most careful

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[163] Ruddock P., *The Commonwealth Response to September 11: The Rule of Law and National Security*, *Speech delivered at the National Forum in the War on Terrorism and the Rule of Law*, New South Wales Parliament House, 10 November 2003.

[164] De Vergottini G., *Guerra e Costituzione. Nuovi conflitti e sfide alla democrazia*, in Forni L. Vettor T. (a cura di), *Sicurezza e libertà in tempi di terrorismo g*lobale, Giappichelli, Torino 2018, p. 55

[165] Bonfanti T., *La dialettica tra sicurezza e piacere*, in Fortin D., Colombo F*., Sentire e sicurezza nel tempo delle paure*, Franco Angeli, Milano 2011, p. 143

[166] Ifeolu Tokimi, *Liberty and Security In the Age of Terrorism: Negotiating a New Social Contract*, "Plymouth Law and Criminal Justice Review" 2015, 1, pp. 195-212

and punctual is that proposed by Jeremy Waldron[167]. He claims that since the attack on the Twin Towers onwards, the general opinion has been crossed by the belief that "*some adjustments in the pattern of civil liberties are inevitable*"[168]. In a climate of "political defeatism", therefore, states have used the terrorist emergency to carry out interventions to limit civil liberties. The latter, says Waldron, do not constitute a homogeneous class, but rather correspond to all those guarantees, such as freedom of speech, religion, travel, but privacy, procedural rights, etc. which cannot be limited by the State.

In reflecting on the theme of freedom and security, however, the scholar states that in the contemporary world surely something has changed, both in terms of facts and of perceptions and opinions, and that this change has moved the balance more on one value than on the other .

In this regard, one cannot fail to admit that the terrorist attacks perpetrated in recent years have led to an imbalance in favor of security, which in the face of threats aimed at states and citizens, governments considered security of individual freedoms to be more important. According to Waldron, however, the notion of equilibrium is much more complex than it is described by the discourses that are based on a concept of hierarchy of values and, in the name of this complexity, he suggests guidelines for subjecting the rhetoric of equilibrium to careful analysis.

He states (he cites the example, as well as the United States, also of France) that the reasoning used to justify the need for the most extreme measures of counterterrorism are usually supported by the rhetoric of the balance between freedom and security, values that "*pull us to opposite directions* "[169]. Against this rhetoric, therefore, in the name of which the sacrifice of a part of freedom in the name of security would be admitted, the scholar therefore proposed the following five arguments:

 1) Non-independence of freedom and security. Anglo-American political philosophy and European-continental public law conceive the concepts of security and freedom as heterogeneous values. Security, in fact, is understood as the public good par excellence, while freedom is seen as an individual right. It follows that the relationship between them can be represented as a zero-sum balance ratio. Since the growth of one decreases the other and vice versa. Waldron, however, argues

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[167] Barberis M., *Pluralismo dei valori, nuovo costituzionalismo e bilanciamenti tra libertà e sicurezza*, in http://iusfilosofiamundolatino.ua.es/download/Ponencia%20Barberis.pdf, ultima consultazione in data 23 giugno 2019

[168] Waldron J. *Security and Liberty: The Image of Balance*, "Journal of Political Philosophy", vol. 11 2003 (pp. 191-210), p. 191.

[169] Waldron J. 2003, *op. cit.*, p. 191.

that, if we analyze the concept of security, which is instead neglected by philosophers such as Thomas Hobbes, Jeremy Bentham and Montesquieu, we understand that the two elements of the dyad under discussion are deeply interrelated, at a conceptual and defining level[170]. In "Security as a Basic Right"[171], the scholar invites us to conceive of security as an individual right, argues that liberal liberty, that is to say as a negative freedom, and individual security as aggressions or external invasions, are in reality to be understood as a right to same goods, or rights to life and physical and mental integrity[172].

2) Anti-consequentialism. To criticize the rhetoric of balancing, Waldron questions consequentialism, thus rejecting the idea that the consequences are sufficient for the purposes of moral judgments. According to the scholar, in fact, the theory of balance and the consequences due to changes in balancing freedom and security may not be suitable with respect to civil liberties. By associating civil liberties with rights, which are generally considered anti-consequentialists, it comes to consider these freedoms immune to the consequences and excluded from any kind of balancing. In this regard, he recalls how the "*libertian*[173]" culture of North America maintains that rights cannot be weighted since each of them is an absolute constraint on the will of the majority. Similarly, the English theory of justice - from Rawls to Dworkin - excludes the use of balances between individual rights and collective interests. The continental *dignitarian theory* (Susan Glendon[174] attributes this perspective to the European courts) - based on the idea that rights prevail over social utility and that dignity is, instead, the criterion to use to resolve conflicts between rights - substains that there are not absolute constraints as, rather, a "liberal presumption" with regard to the sacrifice of individual rights to collective interests. Therefore, in order for a balancing to be necessary, extremely rigorous justifications must exist.

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[170] Waldron J., *Torture, Terror and Trade-offs. Philosophy for the White House*, Oxford U.P., 2010, pp. 160-161.

[171] Waldron J, *Security as a Basic Right* (after 11/9) (2009), in Waldron J 2010, *op. cit.*, pp. 166-185.

[172] Barberis M., *Pluralismo dei valori, nuovo costituzionalismo e bilanciamenti tra libertà e sicurezza*, *op. cit.*

[173] Libertianism is understood as a set of perspectives of political philosophy according to which individual freedom is to be understood as a fundamental value that must be placed at the base of all social relations, economic exchanges and the political system. The state must not redistribute wealth, promote culture, or help small businesses, but simply protect individual rights and allow citizens to pursue their goals in a peaceful manner.

[174] Glendon M. A., *Rights Babel. Thoughts on Approaching 5oth Anniversary of the Universale Declaration of Human Rights*, in "Gregorianum", 79, 4, 1998, pp. 611-624.

3) Distribution. Waldron states that any change in the budget should be subjected to a more detailed examination in order to determine its "distributive character". The "*decrease in freedom can affect some people more than others*"[175]. Therefore, it would be necessary to investigate these changes and the impact of their side effects on all populations and different categories of people: majorities and minorities, citizens and foreigners, suspects of terrorism and all others. As shown by the case of US citizens of Japanese origin interned in concentration camps after Pearl Harbor, without Congress and Supreme Court blinking an eye, the individual rights of minorities are always at risk of being sacrificed in the name of the collective security of the majority.

Secondly, Waldron believes that any change in the financial statements should be subjected to a more detailed examination in order to determine its "distributive character". In fact, he argues for example that "*diminishing freedom can affect some people more than others*"[176]. Therefore, it would be necessary to investigate these changes and the impact of their side effects on all populations.

4) Unintended effects. Many theories, starting with Hobbes, have attributed to the protection of security the main function of the State, considering collective security as a pre-condition for the protection of all individual rights. However, some institutions created to guarantee individual freedom and security can be used against them. If this happens, Waldron states, to appeal to the principle of collective security as a pre-condition of individual freedoms, so as to limit the latter, translates itself into an essentially specious topic[177].

5) Symbolic consequences. We can speak of collective security in reference to the level or degree of protection that can be guaranteed, as it cannot exist in its entirety. No one will ever be able to say that they are perfectly safe or protected from external risks or threats. While admitting that the restriction of individual freedoms makes it possible to increase this security, the increase in question would still be infinitesimal, thus translating into a mere symbolic measure. Perhaps able to give some dose of reassurance to citizens, but certainly not able to make suicide bombers desist. On the basis of the parameters of constitutionalism, measures of this type, therefore, suitable for increasing the security

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[175] Waldron J. 2003, *op. cit.*, p. 194.

[176] *Ibidem*

[177] Waldron J., *Torture, Terror and Trade-offs. Philosophy for the White House*, Oxford U.P., 2010, pp. 160-161.

of States, and at the same time limiting individual freedom, do not respect the constitutional principle of proportionality

In summary, Waldron has provided a whole series of arguments aimed at criticizing the balance rhetoric which deals with freedom and security as monolithic and measurable entities. Rights, on the other hand, have an internally complex structure, so much so that they enter into a mutual collision or with other individual or collective interests.

Discerning the mechanism underlying civil liberties is even more difficult when so many changes in society influence the factors that make up their definition. Before considering a shift in the balance between rights, therefore, it would be appropriate to first establish how new facts and new considerations affect the very definitions of civil liberties.

Furthermore, the scholar adds that the balance exists, regardless of terrorist emergencies since the very definition of the various rights is the result of a complex weighting by virtue of which they are "weighed" both in their mutual relations and in relation to other individual interests and collectives.

Instead of discussing a balance between something we all love (freedom) and something else that everyone likes (security), the discussion should focus on the interests of a dissident individual or a minority against the interests of the community as a whole[178].

Terrorism, although it cannot be excluded a priori among the relevant factors, cannot however represent a sufficient reason to modify the previous balances.

The scholar arrives at this conclusion, as we have seen, firstly through two simple considerations: security measures are often only symbolic; the sacrifice of rights requires the absolute certainty of security. To complete the reasoning is then the logic of distributive justice: it is not acceptable to sacrifice the rights of some (the majority) to guarantee the safety of others (the minority). The *tradeoff* would not be placed between security and freedom but rather between the security of many and the freedom of a few.

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[178] Waldron J. 2003, *op. cit.*, p. 201.

4.   Conclusion

In the first chapter the topic of terrorism was investigated, starting from what may be the defining problems of the term itself, from what may be the ambiguity that is revealed when one tries to catalog the general term as much as when one tries a more specific concept. The question of what terrorism is has animated political as well as legal rather than academic debates throughout the twentieth century. In the chapter, therefore, some reports have been proposed, both of state terrorism, which as we have seen is the first historically documented form of terrorism, and of terrorism seen as terror that people or groups of individuals exercise against the state. The fact that even today it is not an agreement on what exactly I mean by word story, it has functionally considered the purely academic side, as much as that of politics and criminal law. Indeed, precisely because of this difference of opinion, each state, regional or international organization is led to welcome those who present a different approach. The United Nations has argued that the existence of a universally recognized definition could make the fight against terrorism more effective by concentrating debates on what acts should be considered terrorists and if including state-sponsored terrorism or omitting it. In this part of the chapter were therefore considered the academic opinions, the judgments that made jurisprudence and observe the United Nations.

From the needs expounded, it is clear that the debate has shifted to what the actors, means and aims of a terrorist action are, and a point of view has begun my focus on state terrorism. Citing academics such as Blakeley, Gus or Shay, the paper was therefore directed towards a cataloging of state terrorism and the various ways of applying it.

I have always dealt with the conception of counterterrorism, taking into consideration and analyzing the literature concerning the theme, what defines it as mentioned and explained by United Nations Resolution 1368 which marks an epochal turning point for the topics I dealt with in this paper.

The second chapter was on the difficult cohabitation of counterterrorism with the protection of human rights. I initially addressed what the counter-terrorism measures compliance is with human rights standards. Although devoid of a univocal definition, terrorism is commonly considered as a phenomenon that aims at the destruction of human rights, democracy and the rule of law itself. In recognizing the close link between human rights and terrorism, the final declaration of the UN world conference held in Vienna in 1993 was reported, since it asked for steps forward to combat and prevent terrorism. Resolution 1368 and 1373, establishing the obligation of measures to combat it,

and inviting all states to adopt suitable means of repression and also of porevention was presented, too.

With respect to certain urgencies, however, the actions that a State undertakes can clash not only with legitimacy issues, but also with ethical issues, and a part of the work tackled this theme.

The measures taken by various western countries over the past 18 years, as specified in the previous chapters, are measures that severely limit personal freedoms and consequently fundamental human rights, and that's why I focused on it more specifically within the work.

To clarify the difficulty of balancing respect for human rights in the fight against terrorism, I focused on some specific human rights and their possible violation, starting with the right to life, moving on to the violation of the prohibition of torture, passing to the opinion on the European Court of Human Rights.

The third right that I focused on was the violation of the principle of non-refoulement and extraordinary renditions. Once examined these rights, a perspective was presented to raise the issue of ethics as opposed to the security of the country.

At this point I resumed the theme of state terrorism in parallel with that of counterterrorism, a dichotomy which is the beating heart of this elaborate.

So, is there a real distinction between counterterrorism and state terrorism? And between these two concepts and those of terrorism tout court?

To answer this question, beyond international treaties, official declarations of heads of state or human rights organizations, we used more strictly ethical considerations.

The starting point was therefore to ask ourselves about the moral question. Is there morally acceptable terrorism? To answer this question, various illustrious academics were quoted, including the Russian philosopher Igor Primoratz, and Nielsen Kai was reported in the paper, too.

What Primoratz said gave me the possibility to open a debate on Israeli-Palestinian terrorism where both sides seem to want to deny any involvement in terrorist activities. The examples cited are those of totalitarian states such as Nazi Germany, the Soviet Union in Stalin's time or Cambodia under the rule of the Khmer Rouge. Finally, we talked about many states, both totalitarian and non-totalitarian, that have used terrorism outside their own country, as a means to achieve foreign policy objectives, during the war, or as a method to maintain their occupation of the land. of another people.

Primoratz's concept of "moral disaster" and Michael Walzer's "supreme emergency" concept were faced in conclusion of the chapter.

The third chapter focused on the difficult relationship between freedom and security. The eternal question, made even more current by collective fear, was whether it is preferable to be free and

insecure or if, rather, it is better not to give up part of our freedom in exchange for reassuring protection.

Since it is far from being purely conceptual, and since this issue is involving concrete situations, I wrote about the famous Patriot Act, followed by several laws enacted to deal with the terrorist emergency in almost all western countries: from Canada, to the United Kingdom, from France to Germany.

Freud was mentioned, as in fact, in addition to be a classic combination of political philosophy and sociology, the theme of security-freedom is also very well known in psychoanalysis. In the chapter, with the support of the analyzes carried out by Barberis and Neoclous, were traced the essential historical lines of the binomial security-freedom and then we carried out some considerations regarding the theory of balance and the criticisms addressed to it by some illustrious thinkers. The entire Hobbes conceptual system was exposed, since it regards the search for safety, and Locke's challenge to overturn this system was mentioned, too. We faced Montesquieu, one of the first authors who associated freedom and security.

I tried to expose a possible balance between freedom and security, which often is resulting in a request for limitation of the former in favor of the latter.

After 11 September, many legal systems have given absolute priority to the protection of security, therefore adopting new and more stringent regulations on rights. Proponents of the so-called balance rhetoric were reported, believing that the balance between the two concepts is absolutely necessary because only in this way can an individual be free to do anything he wants and at the same time society will be able to protect itself from any danger deriving from some of those things that the individual wishes to do. This concept was tackled and analyzed in depth considering Waldron's academic criticism. The conclusion of the work came together with the study of Waldron's proposal of his five arguments.

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Abstract

The whole report revolves around a simple question: to what extent should human rights be trampled to guarantee the security of the state and consequently of the population? In fact, very often, especially nowadays, public safety and human rights are issues that easily come up against one another. If you look for one thing, you are inevitably forced to give up one portion of the other. The paper, which consists of three main parts, primarily analyzes state terrorism and counter-terrorism, exposing a framework of the issue. We start with the defining problems, then move on to the actors, the reasons for which a certain type of measures can be taken, and the means by which the above procedures can be applied. I then proceed with the identification of what can be called state terrorism and with some notes on counterterrorism. After having mentioned the theme, the paper goes deeper into it, considering all the difficulties that may be, especially today, in cohabitation with human rights. Three fundamental rights are exposed, inviolable in all circumstances: right to life, violation of the prohibition of torture and violation of the principle of "non refoulement". The paper then proceeds with a parallelism between state terrorism and counter-terrorism, considering Igor Primoratz and other famous academics who have pronounced on it. The third and final part of the paper, however, consists of an in-depth analysis of the relationship between freedom and security, both nowadays, and this dyad considered from a historical point of view. It will all end with a consideration about the necessary balance between the two.