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"Compatibility of National Anti-terrorism Legislation with International Human Rights Laws"

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Abstract:

One of the most debated arguments within the realm of international law is the eventual overlapping between legislation on prevention and elimination of terrorism and the main principles for human rights.

Indeed, it is undoubted that terrorism represents a current threat to the geopolitical order and security of single nations and of the whole world in general; consequently, one can understand why most States have tried to adopt counter terrorism laws, which are able to prevent attacks, but which can also potentially lead to numerous human rights violations. Indeed, since these types of laws often deal with important liberties of the individual, such as freedom of expression, freedom of movement and right of due process, along with privacy rights, controversies on the possible infringement of human rights may arise. In fact, as a result of the ever growing counter terrorism measures, the aforementioned rights are often threatened, and since these rights are considered the crucial points of human rights, it is evident that concerns regarding the overlapping of counter terrorism measures and human rights emerge.

Therefore, this dissertation will delve into the eventual incompatibility of international and national counter terrorism legislation with international human rights law . More specifically, the dissertation will firstly explore the international framework of counter terrorism, providing a definition of terrorism and critically exploring the role of international institutions in addressing this topic. Then, the second part of the dissertation will analyze the possible interferences between international legislation on terrorism and human rights law, taking into account the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights. Lastly, the dissertation will focus on the incompatibility between national legislations on counter

terrorism and human rights in the United States, United Kingdom and France with the presentation of three different case studies.

CHAPTER ONE:
Terrorism and International Legislation

1. Introduction

This chapter will introduce the concept of Terrorism, delving into the difficulty that international organizations had in developing a uniform definition of terrorism, which is still lacking. In particular, the Chapter will explore the development of the definition of terrorism within the international realm with reference to the main international law organisms and with a particular focus on the role of the United Nations and of the UN Security Council, underlining the impact that the terrorist attacks of September 11, 2001 had on the definition of the international legislation in terms of terrorism. Additionally, the chapter will delve into the activity of the UN and of the UN Security Council, exploring some of the most important resolutions in terms of counter-terrorism and the operative role of the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate (CTED).

2. Definition of Terrorism Under International Law

One of the most debated definitions within the realm of International Law regards terrorism. Indeed, it has been particularly critical to provide a solid legal definition to terrorism

and since the 1920s, countries have provided national definition for terrorism and its subsequent legal boundaries, however, there has not been a solid single definition until recent times.[1]

According to an international level, all the countries agree on the fact that terrorism can be defined as criminal violence aiming to intimidate a population or to force a government or an international organization.[2] However, it has to be noticed that this general agreement is often questioned by national laws, which provide specifications to the definition, including intentions, such as political, religious and ideological cause.[3] Additionally, it is possible to identify strong political disagreements among countries regarding the role of self-determination violence and the eventual relationship between counter-terrorism law and International Humanitarian Law.[4]

Since there has not been a general agreement on the definition of terrorism, many countries implemented national domestic laws in order to define the boundaries of terrorism.[5] However, at an internal level, the most important international effort to legally define and target terrorism occurred after the 1934 assassination of King Alexander of Yugoslavia and the French Foreign Minister Louis Barthou, which took place in France by a Macedonian separatist.[6] In particular, on this occasion, the Italian government rejected the request of extradition of the fugitives, who were escaped to Italy in the meanwhile, according to the political offense exception.[7] In order to avoid potential conflicts

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[1] Ben Saul, "GlobaLex - Open Access Electronic Legal Publication Dedicated to International, Comparative, and Foreign Law Research." GlobaLex | NYU Law School. https://www.nyulawglobal.org/globalex/defining_terrorism_international_law.html. (Accessed July 04, 2024)
[2] *Ibidem.*
[3] *Ibidem*.
[4] Crelinsten, Ronald D. "The Discourse and Practice of Counter‐terrorism in Liberal Democracies." *Australian Journal of Politics & History* 44, no. 3 (September 1998): 389–413. https://doi.org/10.1111/1467-8497.00028.
[5] Ben Saul, "GlobaLex - Open Access Electronic Legal Publication Dedicated to International, Comparative, and Foreign Law Research."
[6] *Ibidem.*
[7] *Ibidem*.

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on the matter, from 1934 to 1937, the League of Nations ratified an international Convention to target the crime of terrorism and another treaty, which established the creation of an international criminal court, which had the power to prosecute it.[8] In particular, the 1937 Convention for the Prevention and Punishment of Terrorism asked states to criminalize terrorist offenses. More precisely, Article 1, comma 2, defined terrorism as, "criminal acts directed against a [foreign] State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public."[9] Furthermore, Article 2 listed the physical and material acts, which states had to criminalize, including "crimes against persons and property, weapons offenses, and ancillary offenses."[10] Consequently, it can be argued that terrorism was defined through three different criteria, being the intended aim of the creation of a state of terror, the ultimate target, being the State, and the use of prohibited means. However, the Convention's extradition provision maintained terrorism within the political offense exception. Since this Treaty was drafted some years before the breaking out of the second global conflict, the Treaty never entered into force, since the League of Nations was demised.[11] As a result of this, the general approach to terrorism was to prosecute it as ordinary, political or security crimes.

Between 1954 and 1998, the concept of terrorism has been the subject of study by the International Law Commission, which was aiming to define international crimes.[12] Within these decades, terrorism's definition experienced a shift: in fact, it passed from being a state-sponsored

[8] Ben, "GlobaLex - Open Access Electronic Legal Publication Dedicated to International, Comparative, and Foreign Law Research."
[9] Dugard, John. "Towards the Definition of International Terrorism." *The American Journal of International Law* 67, no. 5 (1973): 94–100. http://www.jstor.org/stable/25660483, 99.
[10] *Ibidem.*
[11] *Ibidem.*
[12] Balagopal, K. "Law Commission's View of Terrorism." *Economic and Political Weekly* 35, no. 25 (2000): 2114–22. http://www.jstor.org/stable/4409410.

phenomenon to being a violence by non-state actors. In 1954, the ILC provided a weak definition of terrorism as "criminal aggression by one state to another,"[13] and in 1991, stated, "undertaking, organizing, assisting, financing, encouraging or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public."[14] This definition of terrorism was enriched in 1995 by the same commission, which added "that acts must be committed in order to compel the victim State to grant advantages or to act in a specific way."[15] The final draft of the ILC of international crimes was approved in 1996, but the section devoted to terrorism offenses was erased.[16] Terrorism definition re-entered the international law in 1998 within Article 5 of the Draft Rome Statute, which was presented to the 1998 Rome Diplomatic Conferences, which divided crimes of terrorism according to three different offenses. The first offense was, "Undertaking, organizing, sponsoring, ordering, facilitating, financing, encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create terror, fear or insecurity in the minds of public figures, groups of persons, the general public or populations, for whatever considerations and purposes of a political, philosophical, ideological, racial, ethnic, religious or such other nature that may be invoked to justify them."[17] The second offense included any offense present in the six-sectoral anti-terrorism treaties.[18] The third offense stated, "the use of firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or groups or persons or populations or serious damage to property."[19] Even though 34

[13] Balagopal, "Law Commission's View of Terrorism."
[14] *Ibidem.*
[15] *Ibidem.*
[16] *Ibidem*.
[17] International Criminal Court,Rome Statute of the International Criminal Court, 1998.
[18] *Ibidem.*
[19] *Ibidem.*

states agreed on the necessity of including the definition of terrorism within the 1998 Rome statute, in the end, "A conference resolution regretted that despite widespread international condemnation of terrorism, no generally acceptable definition… could be agreed upon."[20]

Therefore, it can be affirmed that the turning point for the definition of terrorism according to international law was the terrorist attacks on the United States of September 11, 2001. Indeed, after the terrorist attacks, numerous states started to put in action 'terrorism' offense, promulgated by the UN Security Council's obligation on states, according to its resolution 1373 (2001). Therefore, for the first time at the level of international law, the notion of 'terrorism' became particularly functioning and operative. However, it has to be noticed that, even though many countries share the same offenses for terrorism, a global and well recognized definition of terrorism is far to be identified.

3. The Role of the United Nations in Addressing Terrorism

A primary role in the definition of Terrorism was provided by the United Nations, which started dealing with the definition of terrorism within the 1970s. In particular, since the beginning of the discussions, disagreements on the definition of terrorism immediately emerged and they mainly dealt with the liberation violence and state terrorism's matters.[21]

A general greater consensus emerged from the 1980s and saw an improvement in the 1990s, after the end of the Cold War.[22] A relevant role was played by the Declaration on Measures against International Terrorism (A/RES/49/60), which defined terrorism as, "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or

[20] *Ibidem.*
[21] Ben, "GlobaLex - Open Access Electronic Legal Publication Dedicated to International, Comparative, and Foreign Law Research."
[22] United Nations, Declaration Measures against International Terrorism.

particular persons for political purposes."[23] Furthermore, the Declaration defined these acts as unjustifiable in any occasions.[24] This definition led to a general consensus, however, numerous countries differentiated self-determination violence from terrorism, which insisted on the need for a legal definition.

In 1999, the UN drafted the Draft Comprehensive Terrosism Convention, on Indian proposal, which found agreement on 27 articles by 2002. Thanks to this Convention, countries identified an agreement on definition pushed by the 9/11 terrorist attacks. Even though a partial agreement was found, negotiations are still stalling regarding the scope of application about state and non-state violence during armed conflict.[25] Draft Article 2, defines terrorism, "if a person unlawfully and intentionally causes: death or serious bodily injury to any person; serious damage to public or private property; or damage to property, places, facilities, or systems… resulting or likely to result in major economic loss. The purpose (or specific intent) of such conduct, by its nature or context, must be to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."[26] According to the definition of the UN, there is no reference to political, religious and ideological purposes. However, general controversy arose regarding the offenses.

4. UN Security Council and Terrorism

The UN organ, which is responsible in matters of terrorism and international peace, is the UN Security Council, which has primary responsibility in terms of international peace and security. It is composed of 15 members and each member has one vote and every country, joining

[23] *Ibidem.*
[24] *Ibidem.*
[25] United Nations, Draft Comprehensive Convention on International Terrorism.
[26] *Ibidem.*

the UN, is forced to deal with Council decisions. In particular, the Security Council proposes parties, in case of violence and conflict, diplomatic methods to adjust disputes and in some cases, the Council can propose the use of force to restore peace and/or impose sanctions.[27]

The UN Security Council usually did not deal with Terrorism, but the terrorist attacks on the Twin Towers in the United States radically changed the approach to terrorism. In fact, by resolution 1374 (2001), which has been adopted under Chapter VII of the UN Charter, the UN Security Council gave directions to all the countries to insert the crime of terrorism within domestic law.[28] The resolution did not provide an universally accepted definition of terrorism, but granted freedom to each country to define it as they preferred. The absence of a general definition of terrorism is particularly controversial, since this creates issues between countries in terms of extraditions and cross-border cooperation in terms of prosecution of terrorism.[29]

In Resolution 1566 (2004), the Security Council identified terrorism as, "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offenses within the scope of and as defined in the international conventions and protocols relating to terrorism."[30] This definition of terrorism was particularly important, since it connects terrorism to the convention offenses, and satisfies the principles of legality, including precision and foreseeability.[31]

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[27] United Nations, Resolution 1374 (2001).
[28] *Ibidem*.
[29] *Ibidem.*
[30] United Nations, Resolution 1566 (2004).
[31] *Ibidem.*

5. Counter-Terrorism Committee (CTC)

In addressing terrorism, in the immediate period after the 2001 terrorist attacks on the American country, with resolution 1372 (2001), the Counter-Terrorism Committee of the Council was created.[32] This organism is directly supported by the Executive Directorate, whose aim is to implement political decisions and to propose expert assessments of 193 UN states.[33] From its foundation in 2001 until now, the CTC and CTED ratified over 20 Security Council Resolutions, and most of them have been adopted in the last seven years, underlining how terrorism is a problem which is far to be solved. The CTED's main mission is to produce analysis and recommendations regarding the matter of its assessments, which include aid to UN Member states in the identification and addressing gaps in implementation and capacity and to refer to the UN Office of Counter-Terrorism (UNOCT) all the UN funds and programs aiming to develop long term technical assistance in projects regarding anti terrorism measures.[34]

Additionally, the CTED does regular country visits on behalf of the Counter-Terrorism Committee in order to practically assess and evaluate the efforts and commitments of single countries to address terrorism.[35] The CTED mainly monitors the progress made by each country in terms of anti-terrorism as well as deficiencies along with the priority areas where technical assistance is needed.[36] These visits are crucial for the Committee, since it is the most important tool used by the CTC in order to reach its aim of monitoring, promoting and helping Member states to implement counter terrorism measures, as underlined by the UN resolutions, including

[32] Security Council Resolutions 1372 (2019), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[33] *Ibidem.*
[34] *Ibidem.*
[35] *Ibidem.*
[36] *Ibidem.*

Security Council resolutions 1373 (2001)[37], 1624 (2005)[38], 2178 (2014)[39], 2396 (2017)[40], 2462 (2019)[41] and 2482 (2019)[42] and other relevant Council resolutions. During these visits, the CTED has the duty to dialog with national partners and experts in order to evaluate strengths and weaknesses of the country's anti-terrorism measures.

In order to carry out its mission, the CTED adopts two important tools in order to assess the country's measures against terrorism. In particular, the CTED implements the Overview of Implementation Assessment (OIA) and the Detailed Implementation Survey (DIS). Moreover, the CTED supports the Counter-Terrorism Committee in facilitating technical assistance. In particular, according to the Security Council Resolution 1377, the CTC has the duty to, "explore with international, regional and subregional organizations: the promotion of best-practice in the areas covered by resolution 1373 (2001) , including the preparation of model laws as appropriate, the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of resolution 1373 (2001), the promotion of possible synergies between these assistance programmes."[43] Therefore, it is evident that the CTED has the duty to monitor the application of the UN Security Council Resolutions within member states and to help them enact such rules.

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[37] Security Council Resolutions 1373 (2001), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[38] Security Council Resolutions 1624 (2005), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[39] Security Council Resolutions 2178 (2014), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[40] Security Council Resolutions 2396 (2017), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[41] Security Council Resolutions 2462 (2019), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[42] Security Council Resolutions 2482 (2019), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.
[43] Security Council Resolutions 1373 (2001), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)." United Nations.

Additionally, it has to be argued that the CTED does not work alone, yet it cooperates with various organs within the Security Council. More precisely, the CTED mainly operates with "the 1267/1989/2253 ISIL (Daesh) and Al-Qaida Sanctions Committee; the Security Council Committee established pursuant to resolution 1540 (2004); and the Security Council Committee established pursuant to resolution 1988 (2011)."[44] However, the CTED does not only cooperate with these organs, but also with "the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning Islamic State in Iraq and the Levant (ISIL) (Daesh), Al-Qaida and the Taliban and associated individuals and entities on actions taken by Member States to disrupt terrorist financing, prepared pursuant to paragraph 37 of Council resolution 2462 (2019)."[45]

Additionally, it has to be noticed that the Committee aims to work with many organisms and partners in order to enhance the capillary fight against terrorism. In fact, the CTED has the duty to:

- "Participating in conferences, national workshops, round-table discussions, Ministerial Meetings and working-group meetings organized by relevant stakeholders.
- Strengthening and expanding its engagement with civil society, including by organizing regular consultations with civil society, convening several multi-sectoral virtual discussions on, inter alia, PRR, safeguarding civic space when implementing CFT measures, masculinities in the context of counter-terrorism and CVE.
- Expanding its work with the private sector, including through Tech against Terrorism, in partnership with the Global Internet Forum to Counter Terrorism (GIFT). In this context,

[44] *Ibidem.*
[45] Security Council Resolutions 2462 (2019), "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)."

CTED and Tech against Terrorism organized a webinar on "Cooperation between the United Nations and smaller tech platforms in countering use of the Internet for terrorist purposes".

- Strengthening its engagement with the research community via the GRN, including by co-organizing several events (e.g., a panel on "COVID-19 and Counter-Terrorism: Key Global Trends and Challenges" and a virtual round table on "Emerging trends in violent extremism conducive to terrorism: a focus on extreme-right wing terrorism").
- Working with other United Nations agencies to support regional-level strategies developed by Member States and regional organizations that are relevant to CTED's mandate (e.g., the LCBC Regional Stabilization Strategy (in particular its sub-strategy on SPRR)).[46]

Lastly, it has to be noticed that the CTED collaborates with other organizations, such as the United Nations Office of Counter Terrorism (UNOCT) and with this organism, there is a continuous cooperation in terms of providing support for technical assistance to single countries in terms of anti-terrorism measures.

6. UN Main Measures to Address Terrorism

In order to address the terrorism phenomenon, the UN and its Security Council did not only implement organs, such as the CTC and the CTED, yet it promulgates important resolutions, which legally shape the phenomenon of terrorism through the lens of international terrorism.

[46] Security Council Resolutions, "Security Council Resolutions | Security Council - Counter-Terrorism Committee (CTC)."

Among the main resolutions, which have been implemented, it is essential to underline the Resolution 1267 (1999), which ratified economic sanctions to the Taliban regime in Afghanistan, as a result of the support given by the state to Al-Qaeda operations.[47] In particular, sanctions imposed travel bans, arms embargoes and the freezing of bank accounts and money of individuals and entities, associated with the terroristic association.[48] These sanctions have been particularly important, since the disrespect of these sanctions prepared the ground for the further sanctions imposed on the Taliban regime.

According to a chronological order, the Resolution 1373 (2001) was particularly crucial to the extent that it can be considered a real turning point. Indeed, this resolution was adopted after the 9/11 attacks and it was particularly critical, since it aimed to force countries to improve their abilities to fight terrorism.[49] In particular, it forced countries to criminalize terrorism and its support, to improve border controls and to promote international cooperation, aiming to mitigate terrorism's effects and attacks.[50]

In 2004, the UN promoted the resolution 1540, which worked under another level of counter terrorism. In fact, this resolution is centered on the prevention of non-state actors from having access to weapons of mass destruction.[51] More precisely, the Resolution pushed countries to legislate reading measures which prevent and impede non-state actors, such as terrorist organizations, from having access and purchase of nuclear, chemical and biological weapons.[52] This resolution is particularly important, since it regards not only the direct access to this kind of

[47] United Nations, Resolution 1267 (1999).
[48] *Ibidem.*
[49] United Nations, Resolution 1373 (2001).
[50] *Ibidem.*
[51] United Nations, Resolution 1540 (2004).
[52] *Ibidem.*

weapons, but also to their means of delivery, leading countries to strictly monitor the delivery and supply chain of these types of mass destruction weapons.[53]

In 2004, the UN implemented Resolution 1566, which is a further step in the defeat of terrorism.[54] In fact, this resolution gave birth to the condemnation of all acts of terrorism as threats to peace and security.[55] Therefore, the resolution provided a definition to the terrorist phenomenon. Additionally, the resolution pushed states to implement international corporations to allow the prosecution of terrorists, granting a greater effectiveness of the international counter terrorism fight. [56]

In 2005, the UN promulgated Resolution 1624, which dealt with a further aspect regarding terrorism.[57] In particular, this Resolution targeted the incitement to terrorism and to commit terrorist acts.[58] Indeed, the Resolution led states to legislate regarding the prohibition of incitement to terrorism. Moreover, the Resolution underlined the centrality of the promotion of dialog and comprehension among the civil population in order to prevent terrorism and the causes of terrorist attacks.[59]

In 2014, the UN adopted Resolution 2178, which dealt with different aspects of terrorism. Indeed, after the terrorist attacks on European land in the 2010s, the UN decided to address the issue of foreign terrorist fighters.[60] In particular, the Resolutions asks countries to impede the travel and recruitment of individuals for terrorist activities. In particular, the resolution asks

[53] *Ibidem.*
[54] United Nations, Resolution 1566 (2004).
[55] *Ibidem.*
[56] United Nations, Resolution 1566 (2004).
[57] United Nations, Resolution 1624 (2005).
[58] *Ibidem.*
[59] *Ibidem.*
[60] United Nations, Resolution 2178 (2014).

member states to increase border controls and to enhance the level of international information sharing, in order to not allow the traveling of individuals who are trained by terrorist groups to perpetrate terrorist attacks on the international soil.[61]

In 2015, the UN adopted Resolution 2253, which aimed to target the terrorist groups ISIL, also known as Daesh, and Al-Qaeda.[62] In particular, the UN Security Council made a list of individuals and entities, which will be subjected to asset freezing, travel bans and arms embargoes in order to weaken the possibility of these terrorist groups to perpetrate terrorist actions.

In 2017, the UN adopted Resolution 2396, which is intimately connected to Resolution 2178 (2014). In fact, with this resolution, the UN aimed to return to the matter of the relocation of foreign terrorist fighters. In fact, the UN underlined the necessity of collection and sharing of information regarding terrorist identities and traveling and to rehabilitate and reintegrate these individuals, once captured.[63]

In 2019, the UN adopted Resolution 2462, which is considered a milestone in terms of measures regarding the financing of terrorism.[64] In fact, this Resolution led member countries to criminalize the economic support and funding of terrorist groups. In addition, the Resolution calls for the enhancement of international cooperation to prevent terrorist financing networks.[65]

In 2019, the UN adopted Resolution 2482, which dealt with a further aspect of terrorism, such as the connection between terrorism and organized crime.[66] More precisely, the Resolution

[61] *Ibidem.*
[62] United Nations, Resolution 2253 (2015).
[63] United Nations, Resolution 2178 (2014).
[64] United Nations, Resolution 2462 (2019).
[65] *Ibidem.*
[66] United Nations, Resolution 2482 (2019).

determined the necessity of implementing coordinated international efforts to fight both terrorism and organized crimes and their interconnection. Moreover, the resolution underlines the necessity for countries to strengthen the legal frameworks in terms of terrorism and organized crime and the activity of intelligence-sharing mechanisms.[67]

Therefore, it is evident that the UN is legislating to a consistent extent in terms of terrorism, not only dealing with its definition, but also in order to defeat all the aspects of the terrorist phenomenon.

7. Conclusion

In conclusion, it can be argued that the development of a definition of terrorism has been quite difficult throughout the decades. Indeed, international organizations, such as the UN, struggled in identifying an unambiguous definition of terrorism, which had not been reached yet, however, a general consensus was identified, pushed by the terrorist attacks of 9/11, which made international and national governments prioritize terrorism within their agenda. It can be also noticed how the UN is structured and organized in order to fight terrorism in all its forms, including legislation efforts and operative efforts to fight terrorism. This theoretical framework of the main international laws regarding terrorism is crucial in order to understand how counter-terrorism legislation can eventually interfere with human rights and this topic will be explored in depth in the following chapter.

[67] *Ibidem.*

Chapter Two:

Counter-terrorism and possible Interferences International Human Rights Law

1. Introduction

Despite being a fundamental component of national security, counter-terrorism measures have raised a number of human rights concerns not only domestically, but on the international plane as well. This is due to the fact that terrorism has proved to be a global threat and as a result, states have come up with more measures which more extreme, such as surveillance, administrative detention, torture, and battlefield insurgencies. Such measures, many of which are preventative in nature, often run afoul of the core human rights enshrined in international treaties like the International Covenant on Civil and Political Rights and the Convention on Torture, which embody the protection of the life and dignity of the individual. Thirsty for safety in performance of nation, one of the fundamental troubles of due process abuse occurs, where state parties resort for instance to unending bans without trial, in some instances in undisclosed locations, this neatly undermines the right to a hearing and freedom from detention without trial provision encompassed in Article 9 of ICCPR. The other concern is with the use of military courts for the prosecution of certain cases that would otherwise be prosecuted in a regular civil court and the readiness to resort to such studies suggests a lack of confidence in the proper handling of the cases by the government. So that is why this chapter will describe the clashes caused by counter terrorism measures on human rights.

2. Universal Human Rights instruments adopted under the auspices of UN

2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights, enacted in the United Nations General Assembly in 1948, contains all factors pertaining to human rights in a unique document which can be regarded as the basis for the development of international human rights legislation. Governments have often enacted laws for the sole purpose of combating terrorism that says, for a greater good, this often ill-adequates these human rights, which has stirred many concerns regarding the validity of such actions and its motives.

Universal Declaration of Human Rights (UDHR) Article 3 outlines the right to life, liberty and security of a person. This is a basic right and is inclusive of protection from utmost dependency because no one is allowed to become a hostage, even during emergencies.[68] This protective right quite often comes under threat particularly in the fight against terrorism. Targeted drone strikes have emerged as tools of state policy within the war on terror, especially in the USA's covert war against terrorism in Pakistan, Yemen, and Somalia.[69] Although it is claimed that these infernos are reasonable because they would eliminate terrorist threats, most of them ended up causing more tomfoolery than eliminating the terrors for averting the loss of lives.[70]

The problem of extrajudicial killings will also make an appearance in this instance. Executing terrorist offenders through extrajudicial means circumvents the provisions of

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[68] Zedner, L. (2005). *Securing Liberty in the Face of Terror: Reflections from Criminal Justice*. Journal of Law and Society, 32(4), 507-533.
[69] *Ibidem.*
[70] *Ibidem.*

international legal instruments designed to protect the detainee's rights.[71] Such measures may affect not only the right to life but also the right to a fair hearing (Article 10) and the right to be presumed innocent until proven guilty (Article 11). The absence of any transparency or accountability in these operations is even more disturbing, since states use secret evidence to support even unbelievable actions which raise such questions of legitimacy and proportionality in law, particularly international law.[72]

Article 9 of the UDHR states that no one shall be subjected to arbitrary arrest, detention or exile. However, these unconventional and controversial best practices, such as the indefinite detention of individuals without trial as in Guantanamo Bay, have received mixed reactions among counter-terrorism practitioners.[73] Persons deprived of liberty frequently wait for years without being charged with any offense or bestowed a hearing, which is a breach of their fundamental individual liberty and security. Such policies are adopted by the authorities under the national security pretext where these classes are termed as dangerous in nature.[74] To this extent, the Guantanamo Bay saga aptly synthesizes the relationship between counter terrorism and respect for the principle of human rights.[75] Since it was opened, the detention facility has held so-called enemy combatants as part of the "War on Terror," Many detainees undergo brutal treatment, torture, isolative confinement and endless detention without trial.[76] While various international human rights activists and organizations including the United Nations have castigated and urged for its closure due to detrimental violations of international human rights

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[71] Dyzenhaus, D. (2006). *The Constitution of Law: Legality in a Time of Emergency*. Cambridge University Press.
[72] *Ibidem.*
[73] Sands, P. (2006). *Lawless World: America and the Making and Breaking of Global Rules*. Penguin Books.
[74] *Ibidem.*
[75] *Ibidem.*
[76] *Ibidem.*

law, it stands as a testament to the war on terror and raises questions regarding the balancing of fundamental rights and security.[77]

Torture, inhuman treatment, and degrading punishment are prohibited wholly as per article 5 of UDHR. It is also true that in spite of the universal condemnation of torture, reports of torture on allegations of terrorism are frequent.[78] Even ways of logic such as the ticking time bomb scenario which is where states would explain they tortured suspected individuals for others scratching identifiers such as "it's only necessary."[79] It is also impossible for the states to argue. As a human rights prohibition torture is simply implacable; there are no light calculus supposing its partial approval.[80] "Enhanced Interrogation Techniques," a catchy phrase for torture targeting mostly those convicted of terrorism has earned a lot of criticism post 911 from one section – the rest carried on with implementing more of it.[81] These activities were all carried out in "black sites" or supposed isolated detention centers, and both practices violated and were in time US signed CAT, among others, since these practices include many more psychological as well as physical trauma to the victims, discrediting the image of the nations practicing it and adversely affecting the already brittle human rights system.[82]

Article 12 of the UDHR forces the states to refrain from arbitrary interference by targeting the individual's privacy, family, home, and correspondence. However, under the pretext of fighting terrorism, numerous states have enhanced their intelligence apparatus systematically never before.[83] As Edward Snowden revealed in 2013 the magnitude of the National Security

[77] *Ibidem.*
[78] Van der Herik, L., & Schrijver, N. (2013). *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges*. Cambridge University Press.
[79] *Ibidem.*
[80] *Ibidem*.
[81] *Ibidem.*
[82] *Ibidem.*
[83] Mégret, F. (2019). *'War'? Legal Semantics and the Move to Violence in Countering Terrorism*. European Journal of International Law, 20(2), 361-383.

Agency's NSA's mass surveillance programs, the conflict of security and privacy also exists. These so-called security measures, which include indiscriminate collection of telephone metadata along with the internet communications to identify and prevent terrorist activities, were justified as fundamental in combating terrorism.[84] Yet, widespread surveillance has implications for the right to privacy and therefore may deter individuals from exercising their rights to freedom of expression and freedom of association.[85] The absence of accountabilities, as well as a lack of judicial scrutiny of those surveillance regimes, deteriorates further the scope of action of these human rights treaties. In fact, given that some countries have amended their surveillance laws in light of these concerns, the fundamental tension regarding national security and the right to privacy has proven difficult to manage.[86]

As set out in Article 19 of the UDHR everyone's right to freedom of expression is at times infringed for anti-terrorism purposes. There were laws introduced that punish statements that support or glorify the terrorist cause, thus bypassing the normal obstacles to doing so for legitimate dissent and dissenting criticism.[87] In a good number of circumstances, these laws are ambiguous and overreach so extreme that individuals who pose no threat to society are dragged to court merely to punish them for their opinions as far opposed as they may be to the official outlook. Associated with this, it is acknowledged that freedoms of expression, press, assembly, association, and other related human rights and civil liberties are also directly constrained by such measures and policies.[88] Not to mention, the Right to a fair trial as provided in Article 10 is usually abused in cases of terrorism and counter terrorism. Special courts or military

[84] *Ibidem.*
[85] *Ibidem.*
[86] *Ibidem.*
[87] Bonner, D. (2007). *Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed?* Ashgate Publishing.
[88] Ibidem.

commissions are common in terrorism cases and new types of terrorism related security measures' normal stringent protection of courts may be relaxed or removed. Take the U.K. for example where such measures were that under no—such probability was there bringing forward such materials in terrorism issues and on behalf of the national security concerns.[89]

Article 2 of the UDHR guarantees the rights and freedoms set forth in the declaration to every person irrespective of any form of discrimination. Peace and security measures, however, have been subjected to abuses against certain ethnic, religious and national groups that could be regarded as discriminatory.[90] For example, in the West and around the world Muslims and people of Middle Eastern descent have faced increased scrutiny and surveillance and profiling.[91] Hence, this type of targeting clearly contravenes the basic principle of non-discrimination as well as increases division within and between communities, encouraging extremism that the measures are trying to eradicate in the first place.[92]

2.2 International Covenant on Civil and Political Rights

The broad and detailed convergence between human rights, especially as stated in December 1966 International Covenant on Civil and Political Rights (ICCPR), and counter-terrorism policies is a troubling and at times controversial terrain.

A press thereus of the security concerns measured towards constitutionally established liberty under the article 9 of ICCPR as due process rights is compromised by the measures taken under the counter terrorism. Article 9 of the ICCPR protects the negative rights which assures

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[89] *Ibidem.*
[90] Golder, B., & Williams, G. (2006). *Balancing National Security and Human Rights: Assessing the Legal Response of Common Law Nations to the Threat of Terrorism*. Journal of Comparative Policy Analysis, 8(1), 43-62.
[91] *Ibidem.*
[92] *Ibidem.*

that no one is arbitrarily arrested or detained and provides assurance of liberty and security of the person. For instance, the practice of core neatline without litigation of people accused of terrorism related crimes has been growing rapidly in the world since September eleven. Hence most countries seem to consider this action as against the fair trial status and unreasonable arrest policies. It is noteworthy that, "counter-terrorism measures have resulted in striking out of the right to liberty for the people meaning no alternatives are made available to ensure the welfare of individuals within the state."[93]

Also, articles of the ICCPR are hostile to terrorism practices so, due to the measures taken in such a scenario siege mentality, Article 26 on Non-discrimination of the ICCPR, is violated. In fact, there have been issues concerning the invasion of privacy as very few people had apprehended the vast growth of surveillance application to cover and enhance transformation of state power over communication. Indeed, such measures encouraged by the authorities, in the name of counter-terrorism, which should be taken against those involved in unlawful actions, can result in excessive harvesting of data even on Law abiding citizens and in this respect Scheinin argues that, "albeit aimed operationally at protecting national security, mass surveillance programs have frequently overstepped and innocently contradicted the fundamental tenet of the ICCPR – the right to privacy."[94]

In addition, there are also other concerns such as the right to freedom of expression enshrined in Article 19 of the ICCPR which has suffered great constraint owing to counter terrorism measures. Generally, there are political and social reasons however that explain why the development of political dissent is suppressed under the guise of counter-terrorism. Terrorism and information-related terrorism laws have often been implemented to restore and maintain

[93] Saul, B. (2015). Terrorism and International Human Rights Law. Oxford University Press, 215.
[94] Scheinin, M. (2013). Counter-terrorism and Human Rights. In International Human Rights Law (pp. 130-145). Oxford University Press, 132.

social order, and for this reason, the laws on glorifying terrorism or imposing certain harmful materials can be used for political persecution and the restriction of liberties. Macklem draws attention to that idea, while arguing that, "Widespread and ambiguous legal definitions of Terrorism have a tendency to be abused in many jurisdictions to quiet legitimate activities of dissent which hinders the concept of free speech."[95]

Even worse, the use of torture such as extraordinary rendition and enhanced interrogation which have been advocated by some states to fight terrorism amount to torture or cruel inhuman or degrading treatment and punishment under article 7 of the ICCPR. As it is commonly mentioned, terrorism cannot be cured unless intelligence from persons who had such tendencies is acquired, however, as Nowak notes, "Torture, ill treatment, and other forms of coercion destroy the one most productive component of the law, i.e. public cooperation, and lead to false confessions."[96]

However and lastly, although countering terrorism is an absolute necessity for the protection of national interests, it often requires sacrificing some of the human rights provided for in the ICCPR. The difficulty is with states attracting those and enabling them to protect citizens from the threat of terrorism, knowing all the while that their counter terrorism measures should not undermine the fundamental rights and freedoms that they are intended to promote. According to Scheinin, "human rights protection should not be regarded as an impediment to effective counter-terrorism, rather it should be considered as the bedrock of appropriate and long-term security strategies."[97] Such equilibrium is crucial for not only observing international

[95] Macklem, P. (2006). Human Rights in International Law: Legal and Policy Issues. Oxford University Press, 189.
[96] Nowak, M. (2008). Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Oxford University Press, 264.
[97] Scheinin, M. (2013). Counter-terrorism and Human Rights. In International Human Rights Law (pp. 130-145). Oxford University Press, 145.

legal obligations, but also for protecting the primary fitting ethics and morals of counter terrorism initiatives.

3. Regional human rights systems

3.1 The system established by the European convention on human rights and fundamental freedoms

Debates surrounding the erosion of human rights while implementing counterterrorism strategies have remained contentious within the context of the European Convention on Human Rights. There have been many political litigations which the European Court of Human Rights (ECHR), an institution mandated with regard to protecting these rights, has been called upon to arbitrate due to the countries seeking to eradicate terrorism sometimes trampling on individual rights quite heavily. Surely, it is possible to illustrate the tensions inside the court as the attempts to guarantee the national security prevailing over the basic rights which are embodied in the ECHR.

Another area of concern that stood out to the parties was the right to liberty and security as provided in Article 5 of the ECHR. This is interference of human rights due to anti-terrorism policies which in most instances involve arrest and movement limitations prescribed by this Article. For example, in the case of A. and Others v. The United Kingdom (2009) the ECHR faced policies of the UK Government seeking to detain indefinitely foreigners suspected of terrorism without charge. The Court ruled that these detention constitute a breach of Article 5(1) and relates to the protection of individuals from being detained without legal justification. As it has been put, “the Court's ruling hailed that because there are even considerable security threats

an implementation of the rule of law within the nation's states can never be curtailed."[98] In a more straightforward statement, any interference with an individual's right of liberty must be permissible, just and appropriate.

A related problem concerns further still the issue of torture and inhuman or degrading treatment as enumerated in Article 3 of the ECHR, bet itself. This prohibition is understood to be absolute to the extent that even in an emergency it cannot be derogated. This has far reaching consequences for the policies and tactics on the war against terrorism particularly regarding the implementation of waterboarding techniques. In El-Masri v. The Former Yugoslav Republic of Macedonia (2012) the ECHR looked unfavorably upon extraordinary rendition where the petitioner has http://www.echr.coe.int/... undergone inhuman and degrading treatment by the CIA and Macedonian authorities. The Court was clear in stating that, 'the Convention, in its provisions, does not permit", in any circumstances, torture, in human treatment or degrading punishment, including the case of the victim's misconduct."[99] This case in many ways indicates the so-called absolute prohibition against torture and clarifies the importance of fighting 'terrorism' without violating human dignity.

A cause of human rights abuses including the right to privacy under Article 8 of the ECHR. When confronted with the issue of bulk surveillance in the case of Big Brother Watch and Others v. the United Kingdom (2021), the ECHR contemplated a different perspective which involved the importation of boring surveillance means as part of the counter-terrorism measures. The Court concluded that there was a lack of adequate safeguards likely to be found in the UK's requests on bulk interception and infringement of article 8 was established, "whereas everyone

[98] Tomuschat, C., Human Rights and International Humanitarian Law (February 2010). European Journal of International Law, Vol. 21, Issue 1, pp. 15-23, 2010, Available at SSRN: https://ssrn.com/abstract=1601732 or http://dx.doi.org/10.1093/ejil/chq003
[99] El-Masri v. FYR Macedonia, 2012.

accepts the fact that militant terrorism presents a real international menace, the instruments with which it is dealt must not contravene the fundamental principles of democracy, which are sought to be maintained."[100] In such a case, this ruling demonstrates that the Court emphasizes the need to strike a fair compromise between security measures on the one hand, and any undue interference with private life on the other hand.

The execution of Article 6, the right to a fair trial under the European Convention on Human Rights, is very frequently violated in counterterrorism cases. This practice poses a number of difficulties especially in military or other special courts impending challenges to offending sections of evidence not contested by the defense. In Al-Nashif v. Bulgaria (2002), the ECHR found a breach of the applicant's Article 6 rights when it expounded that the applicant was removed from Bulgaria upon suspicion of being a threat to national security upon the authorities who did not disclose their reasons. It emphasized how, "It may even be accepted that national security considers further types of restrictions to access, but even those have limits." The great danger here is that "in every human rights case there is something that touches on questions of national security…some elements of the rule of law can easily be disregarded."[101] This decision illustrates how national interests should not in the process undermine the human rights of violence especially where it is a question of rule of law.

Citing the ECHR's case-law, it emphasized the need to improve the counter-terrorism measures while adhering to human rights. Legg points out that "the Court has consistently advocated for the protection of human rights at all times including in situations of emergency, although the very essence of such rights has to be observed even when the security of nations is at stake."[102] This is based on the idea that human rights and security are both universal goals and

[100] Big Brother Watch and Others v. UK, 2021.
[101] Al-Nashif v. Bulgaria, 2002.
[102] Hassan V. The United Kingdom, 2014.

therefore cannot be achieved in opposition to each other. It is stated that both interests can coexist and that action should be taken to obtain both of them.

To sum up, though the ECHR system accounts for the effectiveness of preventive terrorist measures, it makes policies that such measures do not violate the rights enshrined in the Convention. ECHR ensures that states enjoy both security and rights of persons through proportionality in any limitation of rights. In the ECHR's vision, measures in the fight against terrorism have to be target-oriented. The rights of an individual's freedoms which the legal system strives to enforce should be at the very heart of a democratic system, and for that reason defense against terrorism should also be provided in compliance with such rights.

3.2 The system established by the American Convention on Human Rights

With respect to the American Convention on Human Rights (ACHR), the relation between the practice of counter terrorism and the protection of human rights is multifaceted. The ACHR was adopted in 1969 under the OAS and is one of the key documents which comprise the system for the protection of human rights in the region. Nevertheless, with the war against terrorism, member states to this treaty have attempted to incorporate counter-terrorism scientists which often brings forth serious violations to the provisions of the treaty. Balancing between security and the rights of the populace is something that is still contentious and remains a concern to many researchers, legal practitioners, and human rights organizations.

Paradoxically, one of the most vexing points of conflict emanates from certain derogation clauses that have been incorporated into the ACHR. Article 27 relates to the: “derogation of the American Convention” and it states: “in time of war or public danger or other emergency threatening the independence or security of a State Party, certain obligations can be derogated

upon."[103] It operates under limited emergency conditions and circumstances and there can neither be oppression or discrimination on any of these classifications. Furthermore, some rights, particularly the right to life as protected under article 4 and right to human treatment enshrined in article 5 along with freedom from slavery contained in article 6 cannot be limited at all. There is significant information revealed that after the events of 911, States included have exceeded the limits set out in the provisions of the Achr in their fight against what they termed as terrorism, depoliticizing terrorism. For instance, the Inter-American Court of Human Rights has also denounced, on many occasions, arbitrary arrests, torture and extrajudicial killings of people in as an excuse offered once more by state coping with the terrorism arguments. "Counter-terrorism activities usually leads to human rights abuses such as detention without trial, secret courts, and torture, which all contravene some of the unqualified basic rights found within the ACHR," documents scholar Diane Orentlicher.[104]

The protection of the right to due process is another source of worry. The right to a fair trial as guaranteed by Article 8 of the ACHR embraces the right to be presumed innocent, the right to defend oneself, and the right to have one's case heard by an independent and unbiased judiciary. Many of these principles have not been upheld in counter-terrorism instances, for example, where countries have instituted military courts or extraordinary chambers that have not been in accordance with the guarantees of impartial courts as prescribed in different instruments of international human rights law. As pointed out by Viviana Krsticevic, Executive Director of the Center for Justice and International Law (CEJIL), "the establishment of special tribunals with

[103] American Convention on Human Rights, 1969.
[104] Orentlicher, D. (2005). *Human Rights: A Global Perspective on Counter-Terrorism*. Harvard International Review, 27(1), 120-127, 123.

a view to conducting counter-terrorism campaign undermines the very fundamental principles of the key ACHR provisions as it encourages and patronizes injustice."[105]

Unobtrusive surveillance or invasion of privacy is also another fundamental problem. Article 11.2 of the ACHR provides for the right to respect for privacy that includes the home, correspondence and family. Of course, however, states have extensive surveillance systems in place which are sometimes misused without considering this right, because it is necessary for national security. The broad use of such measures as collection of personal information, the surveillance of activities and relationships, and all other protective activities have created some important matters concerning the abuse of privacy. Diego Garcia-Sayan, a member of Peru's judiciary and former judge of the Inter-American Court of Human Rights points out that "the escalation of state's power to conduct espionage in the name of counter-terrorism constitutes a direct danger to the privacy protection that the American Convention on Human Rights provides."[106]

Article 13 of the ACHR provides for a right to freedom of expression. Another dimension in which this right becomes threatened instantaneously or more so in addressing terrorism menace like counter-terrorism. Governments have been known to silence opposition voices, curtail press freedom, and stifle political opposition using terrorism legislation. Speaking about terrorism is not uncommon in public discourse, particularly in legal discourse. These are usually vague and overly powerful bills that restrict impure expression. Catalina Botero Marino, former Special Rapporteur for Freedom of Expression from the Inter-American Commission on Human Rights maintains that "any prohibition on antiterrorism legislation can produce adverse

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[105] Krsticevic, V. (2008). *The Role of the Inter-American Human Rights System in Counter-Terrorism*. American University International Law Review, 23(1), 65-88, 75.
[106] García-Sayán, D. (2016). *The Impact of Counter-Terrorism Measures on Human Rights in the Americas*. Human Rights Quarterly, 38(1), 193-210, 204.

consequences in countries where democracy is not complete because these freedoms, which are vital in a democracy, are interrelated."[107]

Thus, taking into account the fact that states have the right and the obligation to ensure their people's security from terrorism, this however, should not detract from the fulfillment of the human rights contained in the ACHR. In addressing counter-terrorism policy, any derogation or limitation measures should be guided by the principles of necessity, proportionality, and nondiscrimination.

Mitigating the adverse effects of terrorism is the paramount duty of every state. However, such measures should not violate international standards, and this is where the Inter-American Court of Human Rights, along with the Inter-American Commission on Human Rights, will be able to assist.

4. Conclusion

Legislation against terrorism is, as shown in this chapter, in many ways the threat to some of the fundamental human rights, and if not carefully weighed, they may even lead to the diminishing of civil liberties. To illustrate, one of the HR violations due to implementing counter-terrorism measures is practices of excessive stacking of defense in the nation, which in turn leads to wrongful imprisonment in the form of detention without trial, per se the right to fair trial is violated, another infringement developed because of anti-terrorist legislation. Furthermore, counter-terrorism statutes do also at times abuse some citizen's rights and freedom – free speech; there are restrictions and even criminalization to unpopular expression and antiterrorism is one of those motives used. Such interferences draw attention to the necessity to

[107] Botero Marino, C. (2013). *Freedom of Expression and the Inter-American Court of Human Rights: Contributions and Current Challenges*. Journal of International Law, 25(2), 85-102, 89.

enact legal measures which will not only provide for security but the human rights guaranteed by international law will not be violated and any restrictions placed will not be excessive, relevant or discriminate. The next chapter will be devoted to analyzing case studies that aim at assessing the nature of restrictions on individual human rights in the course of implementing counter terrorism measures.

Chapter Three:

National Legislations on counter-terrorism and potential Human Rights violations

1. Introduction

The intersection of counterterrorism legislation and human rights in the US, UK, and France is a complex legal controversy, since in order to answer to escalating threats, these nations ratified stringent laws to increase national security, damaging civil liberties. Even though these measures aimed to protect citizens from the threat of terrorism, these measures led to significant concerns regarding potential violations of fundamental human rights, and among these, the most threatened rights result in being: the right to privacy, freedom of expression and protection against arbitrary detention. This continuous tension emphasizes the delicate balance between protecting national security and granting international human rights standards and consequently, this chapter will explore this tension within three national legislations, being US, UK and France, with the support of three case studies.

2. Antiterrorism Legislation in the US

2.1 Possible incompatibilities with Human Rights International Law

In the past decades, including the recent decades, there has been a positive criticism of the incompatibility between US anti-terrorism legislation and the international human rights law legal systems, and these concerns basically concern the gap between preserving national security and safeguarding personal liberties. This is particularly because there have been measures approved all over the world to curb terrorism following the September 11 terrorist attacks, particularly after the advent of the USA PATRIOT Act, that have raised concerns over how far states- overwhelmingly superpower states might get in the fulfillment of their security challenge without overstepping the acceptable norms of international human rights and rule of law.

The broadening of the U.S. government surveillance powers is potentially the USA PATRIOT Act, which is one of the best examples of the potential incompatibility. In more detail, it should be added that for instance Section 215 of the Act allowed the government to conduct warrantless surveillance with the bulk collection of telecommunication meta which allowed the government to gather large amounts of individual information without probable cause.[108] Particularly this measure has been denigrated for contravening article 17 of the International Covenant on Civil and Political Rights ICCPR as an infringement of the privacy right. This right states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."[109] With regard to this, it has been polled that the surveillance measures adopted in the USA under the PATRIOT Act would violate the privacy of its occupants due to the fact that such measures are not tolerated in international law and that is how the

[108] U.S. Congress. USA PATRIOT Act, 2001.
[109] United Nations. International Covenant on Civil and Political Rights (ICCPR), 1966.

United States falls short of international standards of human rights law, as it oversteps domestic standards.

Equally, the policies and practices in relation to detainees during the US 'War on Terror' is another worrying aspect. As a matter of fact, detention of persons in Guantanamo Bay for an unlimited period of time without trial or charge has been met with bipartisan outrage for medical ethics revolutionizing laws by denial of the right to a fair trial which is one of the usual laws concerning human rights. In this regard, Article 9 of the ICCPR states that: "anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and subsequently of any charges preferred against him."[110] However, many of the detainees at Guantánamo bay have been kept in custody for years without facing any charges or being put on trial which is why there has been an outcry concerning the international legality of the actions taken by the U.S government.

It must be asserted that the United States government has legitimacy for these detentions because they have labeled the detainees as 'enemy combatants' who have no protection under any international human right statutes or the Geneva convention for that matter. However, legal scholars have challenged the categorization and have stated like the way Oona A. Hathaway et al states that "the holding of enemy combatants without trial for an ongoing war challenges expectations of safeguarding rights by the Geneva and the ICCPR norms."[111]

There's a further adverse effect that follows on from the treatment described above, and this one has to do with torture, in fact the torture and other cruel, inhuman, or degrading treatment or punishment of terrorism suspects is one of those major areas of U.S. human rights abuses. Under international law, torture is not permitted in any situation, whether during times of

[110] United Nations. International Covenant on Civil and Political Rights (ICCPR), 1966.
[111] Hathaway, Oona A., et al. The Law of War: Detention in the Conflict with Al-Qaeda. Columbia Law Review, 2009, p. 23.

peace or war, as stated in Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and the Committee Against Torture (CAT).[112] Nonetheless, the practice of employing "enhanced interrogation techniques," such as waterboarding, has come in for a great deal of criticism for being torture. In particular, as Conor Gearty states: "the practice of torture by us authorities in the post 911 era is unambiguous breach of international law to say the least especially in relation to the inviolable provisions in the ICCPR and CAT."[113]

In response to this criticism, the U.S. claimed these actions were essential to ensure the security of the nation, but as the united nations human rights committee has out rightly maintained over and over again that no exceptional circumstances including national security may be invoked as a justification for torture. For this reason, this position, in turn, exposes the fundamental weakness in the U.S. contradiction with its international human rights obligations in the fight against terrorism.

To this end, it should be noted that within the United States, U.S. anti-terrorism legislative measures have to a large degree been in conflict with international human rights law particularly with respect to legislative efforts in the post-September-11 context. It is because of violations practices such as extended surveillance, the prolonged detention of terror suspects without trial and torture are major undoings and contradictions of some provisions of prescribed international human rights instruments that the United States is a signatory to. Even though the U.S. government has justified these acts in the name of protecting the nation, still, these practices are very much conflicting with the international legal obligations of the nation.

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[112] United Nations. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, 1984.
[113] Gearty, Conor. *Can Human Rights Survive?* Cambridge University Press, 2006, p. 54.

2.2 Case study: Turkmen v. Ashcroft

In the United States's post-9/11 period, there was a great deal of development of anti-terrorism laws, which raised very interesting dilemmas regarding the protection of national interests and the observance of human rights. One of the dilemmas that highlight the possibilities of conflicts between the US against terrorism measures and the international human rights law of was Turkmen v Ashcroft, as this case deals with hsi sentiment concerns, eg the concerns over due process, equal protection and too arbitrary detention while international law is subdued to the treatment of minority Muslim and Arab non citizens after September 11 events.

To be more specific, Turkmen v. Ashcroft is a class action suit concisely filed by a group of Muslim, South Asian, and Arab non-citizens who were rounded up by the US officials after September 11 have a history of Muslim, South Asian and Arab who lost their citizenship. More particularly, these individuals had absolutely no connection with terrorism but were included as "persons of interest" in the campaigns surrounding the attacks. The plaintiffs were likewise brought to testify as regards being subjected to moderation of their imprisonment, physicians tormenting them, and being discriminated against because of the plaintiffs race, religion, and ethnicity, more so it is Worldwide cases against high-level U.S. officials including former Attorney General John Ashcroft, who was tortured by discrimination. The case also highlighted several areas where the application of anti-terrorism measures in the USA does not fully comply with the obligations undertaken within the framework of international human rights law, and arbitrary detention and discrimination, and the right to a fair trial are among the issues debated.

One of the focal points in the Turkmen v. The Ashcroft case may concern the reason and reportedly arbitrary detention of the plaintiffs for an unreasonable period. Indeed, the detention period was not noted and the detainees remained incarcerated for months and in most instances

under solitary confinement without any case against them. This behavior runs counter to the advice of international Human rights hence Arbitrary detention is not permitted. Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which the U.S. is a party, states that "no one shall be deprived of his liberty, except on such grounds and in accordance with such procedures as are established by law."[114] More specifically, "Anyone who is arrested shall be informed of the reasons for his arrest…and shall be entitled to a trial or to be released within a reasonable time."[115]

As legal experts have participated in the examination of the case of Turkmen v. Ashcroft, they have expressed the view that the imprisonment of such people was not warranted in that it was rather religious and ethnically based as opposed to evidence of crime. To be more precise, as expressed by Aziz Huq in another comment, "It is in persecution of these individuals, in which their ethnicity, Arabic or Muslim, serves as the only reason, without any charge, that the ICCPR is most evidently violated: Arbitrary detention – no charges, arbitrary reasons."[116] The example demonstrates the inconsistency between the implementation of national policy on the fight against terrorism in the USA, based on aspirations to protect national interests, and the observance of human rights treaties, ratified by the USA.

Another critical issue in Turkmen v. Ashcroft is the character of the detentions: such detentions are discriminatory. In fact, the plaintiffs were discriminated against on the basis of their race, religion and national origin, thus raising concerns regarding the non- discrimination principle. In international law, it has been made clear in ICCPR that there is to be no discrimination against any race, religion and national origin thus article 2 of the ICCPR ratified

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[114] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[115] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[116] Huq, Aziz Z. *What Good is Habeas?* Columbia Law Review, vol. 120, no. 3, 2020, pp. 1007–1076, p. 1018.

that “Everyone is equal before the law and is entitled to the equal protection of the law without discrimination.”[117]

Hence, such intra- discrimination within the United States as presented in the case of Turkmen v. Ashcroft leaves a gap under international law non- discrimination principles. Indeed, David Cole comments about the “post-911 round-up” as "the after-911 round-up was undertaken principally based on racial and religious considerations in violation of all norms pertaining to the discrimination prohibition in human rights,” this was the outreach of these legal review processes.[118] Consequently, the situation illustrates how the policies of the USA in the sphere of the fight against terrorism may severely breach one of the tenets of international law – equal treatment of all people with regard to race and religion.

The absence of any meaningful process recognizing basic rights of the detainees in Turkmen v. Ashcroft is also a matter of concern in the area of international human rights law. In fact, the ICCPR provides for the right to a court, so that, for instance, a person is informed in due time of the accusations brought against him or her, is defended in court by professional legal counsel and is supported in any legal proceedings regarding the question of his or her custody.[119] But the plaintiffs in this case were quite obviously and regrettably deprived of all those due process rights, as they endured prolonged pre-trial detention without formal charges and representation by an attorney. Legal thinkers have been usually appalled by the issue of denial of fair trial rights in such detentions, in fact as Margulies notes, “the lack of representation of detainees and the failure to inform them of the charges brought against them are fundamental

[117] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[118] Cole, David. Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism. New Press, 2003, p. 24.
[119] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.

breaches of international fair trial rights."[120] This part of the case illustrates the clear conflict between the counterterrorism measures employed by the U.S. and the international human rights law.

For that reason, Turkmen v. Ashcroft illustrates well how U.S. anti-terrorism laws may fail to be consistent with international human rights laws. Indeed, the fears and the discriminatory treatment and violations of due process of the individual plaintiffs speak to far wider issues of the consequences of national security on the basic rights of the people. The U.S. is also still under the constant obligation of its international legal obligations that are meant to protect individual rights even as it fights the war on terrorism.

3. Antiterrorism Legislation in the UK Law

3.1 Possible incompatibilities with Human Rights International Law

It has been argued that the United Kingdom has had a coherent and multifaceted counter-terrorism strategy especially taking into consideration the growing terrorism threat in the twenty first century. On the contrary, over the past several years there has been considerable expansion of anti-terrorism statutes which quite often have raised the issues of their compliance or otherwise with international human rights law. Likewise, the efforts of the UK states to find absolution in regards to national security and civil liberties have resulted in several controversies in the legal and moral fields concerning such aspects as privacy, freedom of speech, – and arbitrary detainment.

In relation to these aspects one of the key concerns is the extensive surveillance frameworks of the UK's authorities particularly with regard to the Investigatory Powers Act

[120] Margulies, Peter. *Law's Detour: Justice Displaced in the Bush Administration*. New York University Press, 2010, p. 43.

2016 known popularly as ‘Snoopers Charter’ There have been so many instances of governments using legislation, which gives them very wide powers to intercept, hack, retain and adopt bulk data, such that it is improperly applied against the population, undermining the right to privacy as protected under international human rights instruments including Article 8 of the ECHR and Article 17 of ICCPR.

Especially, let us focus on the European Court of Human Rights (ECHR) which has previously ruled against the UK surveillance policies. For instance, in Big Brother Watch and Others v. United Kingdom (2018) the court decided, That there was a bulk interception system operated by the UK which infringed people’s privacy due to improper limitation on its use. Of course, the court held, “Such advocacy for policies in place to systematically eavesdrop on all communications data of everybody without taking the care of how such information will be used is a breach of treaties such as the European Convention on Human Rights.”[121] So, this decision highlights the conflict between the interests of a state in terms of national security and ensuring the rights of an individual under international law.[122]

There has also been a provision of counter-terrorism law in the UK which has affected the human right of freedom of speech, especially during the fight against online extremists. The 2006 Terrorism Act, which includes the offense of the "encouragement of terrorism," has been noted to have extremely vague provisions since such language poses the risks of squashing speech, which is acceptable. Indeed, Article 19 of the ICCPR protects the individual right to freedom of speech and expression but is not omnipotent as it is subject to certain limitations that are reasonable and necessary.[123] Nonetheless, some legal scholars have been of the opinion that

[121] European Court of Human Rights (ECHR). *Big Brother Watch and Others v. United Kingdom*. 2018.
[122] *Ibidem.*
[123] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.

the way that the United Kingdom has legislated with regard to the issues of fighting online extremism such as the regulation of speech has too much room for abusive application. Under these provisions, there are some responses which this legal expert has noted in the statement made by Helen Fenwick concerning the obscure and broad nature of the provisions, "the vague and broad nature of the provisions in the Terrorism Act 2006, particularly regarding the encouragement of terrorism, risks undermining the right to freedom of expression by casting too wide a net."[124]

Concern has also been raised with respect to the fact that such laws could be applied too robustly, such as prosecuting individuals for extremist related materials without establishing the intention of violence, and this practice raises even greater questions in ensuring the respect of such laws taking into consideration the international human rights obligations of the UK.

One more issue worth noting refers to the pre-charge detention and control orders, policies that have been highly effective among the strategies employed to combat terrorism within the UK. Indeed, the Terrorism Act 2000 has permitted the Police to detain terrorism suspects without bringing up charges for as much as twenty-eight days, but this law has since been amended to twenty days. This kind of detention without trial has also been under attack for contravening the other provisions of the ICCPR especially Article 9 on the individual right of liberty and security of person and ECHR Article 5 on the right to freedom.[125]

In addition, people have also expressed concerns about the imposition of control orders and its replacement, the Terrorism Prevention and Investigation Measures (TPIMs) which impose draconian constraints on individuals' liberties in the absence of his or her guilt proving beyond reasonable doubt. These TPHPs contain "measures" such as curfews, or electronic

[124] Fenwick, Helen. *Civil Liberties and Human Rights*. Routledge, 2017, p. 37.
[125] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.

tagging, which have been critically been described as house arrest without any trial. More specifically, in A v. United Kingdom (2009), the ECHR has ruled that the practice of indefinite detention of foreign nationals under the Anti-terrorism, Crime and Security Act 2001 is a violation of Article 5 of the European Convention of Human Rights which provides for liberty and security of persons. Some legal scholars state that such actions actually violate every legal principle such as presumption of innocence or the right to fair trial.[126] Certainly as it has been pointed out in the past, by David Anderson the ex- Independent Reviewer of Terrorism Legislation: "Control orders and TPIms are instituted without proper legal approval, which is detrimental to the absolute principles of justice, including the fair trial right."[127]

As such, the UK anti-terror legislation notwithstanding the enhancing measures aimed at safeguarding the ideal of national security reveals some challenges which are likely to conflict with the duties under international law and human rights. It is true that challenges are evident in striking an optimum compromise between security provision and the guarantee of individual liberties, which are in increase in surveillance despair, curtail splashes of free press, detention before charges are leveled, and control orders. While the UK's counterterrorism approach is likely to evolve, such measures must be in line with the demands of international human rights law and settle on rights of individuals such as privacy, freedom of speech and fair trial within the due process.

3.2 Case study: Belmarsh Case

The territory where the UK counter-terrorism law and international human rights law intersect has had a fair share of controversy, more so with regard to the "Belmarsh Case" (A v

[126] European Court of Human Rights (ECHR). A v. United Kingdom. 2009.
[127] Anderson, David. The Terrorism Acts in 2015: Report of the Independent Reviewer of Terrorism Legislation. HM Stationery Office, 2016, p. 65.

Secretary of State for the Home Department [2004]). This landmark case, which addressed the issue of treating suspected foreign terrorists as 'prisoners of war' and jailing them without trial indefinitely, brought to the fore very crucial contrasting perspectives regarding most of the programs associated with combating terrorism in the UK and those in the realm of international human rights law, because it posed difficult challenges around detention, equality, due process, and other relative issues.

In response to the September 11, 2001, attacks, the government of the United Kingdom went ahead and enacted the Anti-terrorism, Crime and Security Act 2001 (ATCSA), section 4 of this Act made provision for the law on terrorists also on indefinite based in the U K, who could because of the fear of persecution or inhumane treatment in their countries be not deported. Such people were held in special conditions, grave prisons such as HMP Belmarsh, hence leading to the case popularized by the name The Belmarsh Case.

The captured terrorists who made it to Britain appealed against Esther's detention claiming it was a breach of ECHRs rights, especially Article 5 (Liberty Security) and discrimination Articles 14.[128] Liberty as human rights norms advocacy is enshrined by most, if not all constitutions as lucid Article 5 of ECHR and Article 9 ICCPR. "Everyone is entitled to the freedom and security of a person."[129] In the Belmarsh Case, the House of Lords (now the Supreme Court) held that indefinite detention of foreign nationals without trial under the ATCSA, amounts to a breach of the liberty provision under Article 5 of the ECHR. In his own words however Lord Nicholls of Birkenhead stated that the fact that the detention is of an indefinite nature made it more barbaric stating: "In fact, it should be emphasized, there is no room even in the most legalistic of authoritarian regimes for thirty years' imprisonment without

[128] European Court of Human Rights. European Convention on Human Rights (ECHR), 1950.
[129] *Ibidem.*

charge or trial."[130] Besides, this ruling spelled out the extent of the conflict between UK counter-terrorism laws and human rights laws of other nations by pointing out that national security cannot be used as a justification for the extreme practice of detaining people forever without allowing fair trials.

Discrimination was also another critical issue that arose in the Belmarsh Case. For the ATCSA was designed in such a way as purely for the non-citizens, in this case, perpetrators of terrorism: such individuals could be locked up in jail without trial indefinitely.[131] But, there were no such provisions for British nationals who were suspected of the same types of terrorist activity. This discrimination raised concerns related to Article 14 of ECHR, which protects against discrimination in the exercise of any of the rights and freedoms guaranteed within the Convention. According to the House of Lords, the practice of deploying discriminatory attitudes towards foreign nationals was opposed to the principles of justice since such treatment could not be solely based on nationality. Lord Bingham stated, "The power conferred upon the State to imprison suspected terrorists without trial is exercised in relation to foreigners in the United Kingdom. There is no sufficient reason why this difference in treatment has occurred."[132] Hence, this judgment brought to the center-stage the high principle that all antiterrorism measures must be implemented without distinction as required by international human rights law.

The fair trial right enshrined in Article 6 of the ECHR and Article 14 of the ICCPR was yet another pivotal point under discussion in the context of the Belmarsh Case.[133] For example, in the case of the detainees, they were captured in the absence of a charge and absent was the right to an appeal while therefore deferring to the evidence adduced against them and this equally

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[130] *A v Secretary of State for the Home Department* [2004] UKHL 56.
[131] European Court of Human Rights. European Convention on Human Rights (ECHR), 1950.
[132] *A v Secretary of State for the Home Department* [2004] UKHL 56.
[133] European Court of Human Rights. European Convention on Human Rights (ECHR), 1950.

undermined that every person has a right to a fair hearing in a court of law, where the bench is impartial. It has been argued by legal748 poems that the fact that there was no fair hearing in regard to the issues of the Belmarsh immigrants was an unfortunate and gross breach of international law as it pertains to human enquiries. As David Bonner points out, "Indefinite detention without charging puts the right of liberty in disrepute, and more shockingly, wilfully violates the right to fair hearing which is an abiding pillar of all international justice including Justice in the European Convention on Human Rights and the International Covenant on Civil and Political Rights."[134]

This leads to the conclusion that the Belmarsh Case and its implications is a perfect illustration of the possible conflicts that exist between the UK's counter terrorism laws and the protection of human rights. Indeed, the practice of detaining foreign nationals without a fair trial on the basis of their nationality, and without sufficient judicial oversight was held to be in breach of the ECHR obligations by the United Kingdom, especially the right to liberty, the right to non-discrimination and a fair trial. Hence, the case highlights yet again that the purpose of maintaining security shall not be discriminating against essential human rights practices even amid daunting security threats.

4. Antiterrorism Legislation in France

4.1 Possible incompatibilities with Human Rights International Law

France, like many other countries after significant terrorist attacks – in this case, the Charlie Hebdo shooting in January 2015 and the Paris attacks in November 2015 - has implemented why issues raised in the present article are sensitive in the Somali context where

[134] Bonner, David. *Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed?* Ashgate, 2007.

concerns have shaped biases towards such measures terrorism free framework with a series of extreme deviations from normalcy and increasingly stringent antiterrorism measures. Then, this focus on state security has also raised questions of how these measures can be applied within the confines of international human rights law. More specifically, the implications arise chiefly in areas such as the boundaries of privacy, free speech and protection against arbitrary arrests and detention.

Perhaps one of the most important points of contention is the right to privacy within the scope of French anti-terrorism legislation. Indeed, the French Intelligence Act of 2015 broadened the French government's ability to spy on its citizens and their personal activities using the legal capacity of intercessions that capture an individual through information and telecommunications technologies. This move has been condemned on the ground that such powers violate the right to privacy as it is enshrined in such international human rights treaties as Article 17 of the International Covenant on Civil and Political Rights (ICCPR)[135] and Article 8 of the European Convention of Human rights (ECHR).[136]

The European Court of Human Rights has analyzed the implications of giving such broad surveillance powers and the court in a case, Zakharov v. Russia has stated, "The legislative framework must delineate the range of discretion granted to competent authorities and how such discretion would be exercised."[137] This means any legislation that interposes on privacy should be clearly defined within the law. As a matter of fact, French legislation particularly concerned with the Law on Intelligence has also come under unfavorable light on the grounds of inadequate checks and balances which could be in breach of the ECHR and ICCPR provisions on privacy rights. Legal scholars argue that the three broad categories under which surveillance powers are

[135] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[136] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.
[137] European Court of Human Rights (ECtHR). *Zakharov v. Russia*. 2015.

exercised by the intelligence agency as provided under the Intelligence Act may foster privacy invasion. For instance, Raphaële Parizot has argued that "The French surveillance system as it is now is dangerous for individual privacy as there is no guarantee of any reasonable judicial control and appropriate limitations on the amount of information extracted are absent."[138] So, it can be stated that this critique shows the ambivalence of France on the one hand trying to engage in the war against terrorism and on the other trying to do so while respecting her international legal engagements in terms of the right to privacy.

Furthermore, the French anti-terrorism law has also been criticized in regards to its potential effects on freedom of speech. Thus, for instance, a 2014 anti-terrorism law introduced criminal responsibility for the 'justification' of terrorism such as for supportive discourses. Seeking to stop the violent out-break of conflicts is indeed the noble cause behind so many legislative measures taken up against hate speech. However, such well meaning laws are misinterpreted vastly by government bodies and lead to unnecessary limits on fundamental liberties. The above mentioned breaches of Article 19 are usually allowed under international laws including except in ICCPR Article 19[139] or ECHR Article 10[140] which deals with freedom of expression however they are not unlimited and may be limited by law to protect national security. French concepts of an apology for terrorism have also dealt a blow to the freedom of expression as defenders subordinate general speech to the prohibition of terrorism. Indeed, Didier Reynders is quoted as saying that "France's ban on certain forms of expressions as part of combating terrorism creates a worry, which is the meeting of the necessity and proportionality

[138] Parizot, Raphaële. "The Intelligence Act and the Right to Privacy in France." *Journal of International and Comparative Law*, vol. 5, no. 2, 2017, pp. 245-260, p. 259.
[139] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[140] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.

standards of international human rights law."[141] Hence, this analysis conforms to the risk that French anti-terrorism legislation might be abused by limiting basic freedoms in ways that are not consistent with the norms of international law.

It has been compellingly pointed out that following the November 2015 attacks in Paris, more than worrying about arbitrary detention and rights to a fair trial, to the critics, emotional power was in heavy use with even emergency powers especially the state of a temporary constitution. The state of emergency, however, was in place for two years which however empowered the officials to make searches without a warrant, impose house arrests, and prohibit public assembly without any legal authority to do so. Such measures embraced by the authorities have been dismissed as traditional procedures of the rule of law taken or abused for purposes that contravene the right to liberty and security of person as set out in article 9 of the ICCPR[142] and article 5 of the ECHR.[143]

These powers taken by the states have been condemned by these organizations as ordinary practice of abusive policies and arbitrary arrest. In quite a worrying situation, "the emergency measures in place in France as a result of the September 11 attacks have been abused and directed to the Muslim population resulting in arbitrary arrests as well as restrictions on movement," said Amnesty International.[144] Among others, the rapid misuse of these powers raised serious questions over the issues of their necessity and proportionality which are fundamental aspects of international law on human rights.

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[141] Reynders, Didier. "Counterterrorism and Freedom of Expression: The French Experience." *Human Rights Law Review*, vol. 19, no. 1, 2019, pp. 31-52, p. 44.
[142] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[143] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.
[144] Amnesty International. *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe*. Amnesty International, 2017, p. 12.

Consequently, this has affected international relations as the antiterrorism laws in France have raised a lot of issues with regards to international human rights law concerns. What is more, the heightened surveillance, limited participation, and exercising of emergency powers have raised concerns as to whether the rights of privacy, freedom of expression, and freedom from arbitrary detention might be compromised. While France is fighting terrorism, it is important to challenge the interests of state security against the requirements of international law and human rights protecting people from pure and simple breaches, not from absurdities that others perfectly well deal with.

4.2 Case study: Carem V. France

In recent years, France has taken the lead in counterterrorism measures throughout Europe, especially after a spate of terrible attacks within the last decade, nonetheless, its stringent legislative measures have often raised eyebrows as to how such laws fit within the framework of international human rights law. The case of Carem v. France is emblematic of these concerns, particularly regarding issues of freedom of movement, privacy and the notion of proportionality.

The Éric Carem v. France judgment was also important since it raised a challenge to the measures applicable in France, due to the state of emergency, emerging after the November 2015 jihadi attacks on Paris. The state of emergency was prolonged at least seven times until November 2017 and gave the authorities a free hand to legitimize extreme actions, including but not limited to house arrest of individuals suspected of threatening national security without a court order. Indeed, a French national, Eric Carmen, was put under house arrest on the basis of flimsy accusations of being involved in radicalisation. Carem also contested the limitation

claiming it as a violation of his right under the ECHR provisions more especially Article 5 and 8 which entitles an individual to liberty and respect of family life.[145] There was heated debate on the case on the issue of individual rights as opposed to the rights of the nation The development of international law.

In the case of Carem v. In France, house arrest was one of the violations of liberty that emerged as one of the key concerns of the case as it was a measure which did not have to be sanctioned by a court prior. This indeed is the case since the state of emergency allowed the authorities to enforce house arrests on the basis of suspicions without evidence or charges and raised alarms of unlawful detention as it bypassed the Efficiency of Detention guarantees as offered under Article 5 of the ECHR[146] and Article 9 of the ICCPR.[147]

The European Court of Human Rights (ECHR), as a settled position, has sought to ensure that a deprivation of liberty regarding the person is accompanied with sufficient procedural measures aimed at preventing the abuse of the system and in the case of Carem, the concerns where there is imposition of house arrest where there is judicial absence were problematic because such imposing mechanisms have no adequate provisions as to why or how long such ones will be held. In the words of legal scholar Claire Macken, “The French government’s use of house arrests during the state of emergency speaks to a larger problem of liberty suppression in the name of national security and growing erosion of fundamental human rights.”[148]

Through the Carem’s case, important questions of how the government ought to duly respect a person’s right to privacy emerged especially when more surveillance powers were

[145] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.
[146] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.
[147] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[148] Macken, Claire. "Emergency Powers and Human Rights: The Case of France." *Global Security Review*, 2018, p. 21.

wielded due to the state of emergency. Authorities' capacities to monitor and supervision individuals' movements outside judicial control posed serious threats to individual privacy rights as safeguarded by the ECHR in Article 8[149] and ICCPR in Article 17.[150] According to the ECHR, such restrictions on privacy must serve a democratic purpose and be appropriate in relation to the goal pursued. In Carem v France the extensive and stringent Orders served on the Claimant raised some apprehension as to whether such measures could be justified. Increased worries regarding potential abuse were created with these as Didier Bigo put it, "The Presidency of the CDDMI et. al. Teresa A. New York: LL.D. 2021 includes discussions on terrorism crimes defined under international as well as national legal frameworks. Furthermore, such attorney-client privilege protections have proven inadequate in explaining these issues."[151] The rapid growth and expansion of the market due to aggressive law and/or voluntary self-regulatory counter terror measures have remained at center for all policy approaches taken. In the Carem case, the house arrest was also challenged on its proportionality, since Carem could not be related to any terrorist act in a tangible way and the scope of measures seemed to depend more on the far fetched and biased beliefs rather than on a credible threat.

This issue relates to other more general problems of discrimination posed by international human rights law. The article 14 provides that the prohibition of discrimination shall apply to the participant enjoying any rights granted under the Convention.[152] Opponents to the French state of emergency have pointed out that the actions taken were unjustifiably in nature and were likely unfairly directed toward a demographic analytical group, the Muslims, hence contravening the non-discrimination principle. It is indeed correct that, as Mathias Vermeulen has also noted, "The

[149] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.
[150] United Nations. *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
[151] Bigo, Didier. "The French Surveillance State: Human Rights at Risk." *Journal of Human Rights and Counterterrorism Studies*, vol. 6, no. 2, 2019, pp. 87-104, p. 91.
[152] European Court of Human Rights. *European Convention on Human Rights (ECHR)*, 1950.

discriminatory effects of the emergency laws in France, in particular to Muslim groups, show how laws can be misused to achieve aims which are contrary to human rights."[153]

It follows a glaring inconsistency of the assembly of Carem v. France is that domestically guaranteed legal protection against the implementation of terrorist laws is not applicable to foreign legal norms. Hence, concerns about possible developments of negative liberty and even civil liberty in wake of anti-terrorism policies of France vis-a-vis liberty, privacy and non-discrimination remained largely unaddressed. Therefore, Ghaffour even without activities, had violated the measures to protect in isolation suspected terrorist offenders, was plainly violated.

5. Conclusions

To sum up, in the US, UK and France, the legal counterterrorism measures adopted seem to reveal the similar problem of maintaining national security while undertaking international human rights commitments. These nations' innate concern is the potential infringement of fundamental rights through state powers exercised in the form of surveillance, detention without charges or trial, restrictions upon the right to freedom of expression. These laws are however intended to meet real threats, their broad and often ambiguous provisions tend to 'infect' – one way or another – the universally accepted standards of liberty, privacy, and non-discrimination established by international human rights law. The cases of Turkmen v. Ashcroft in the US, the Belmarsh Case in Great Britain, and Carem v. France depict some of the situations where such democracies find it a trade-off in security on the expense of respect for human rights. Thus, it is

[153] Vermeulen, Mathias. "Discrimination and Emergency Powers in France." *Human Rights Law Journal*, vol. 10, no. 3, 2017, pp. 221-238, p. 225.

very important to add that active judicial control, respect for the law in fighting against terrorism and keeping counter-terrorism measures within reasonable bounds is vital.

Conclusions:

This dissertation demonstrated that there is some incompatibility between the international legislation in matters of counter terrorism and human rights.

Indeed, there are numerous concerns, especially between human rights, such as privacy and freedom of speech and movement, and preventive measures of counter terrorism as well as mass surveillance programs. In fact, the research made emerge a vast usage of preventive detention and a vast usage of mass surveillance programs, which are clearly in contrast with human rights and it is noticeable how these profiles of incompatibility are common to different countries.

One shall thus inquire whether there is a way to overcome these issues and eventually what aspect has to be prioritized: national security or safeguarding human rights. Answering this question would be beyond the scope of this dissertation, whose aim was to demonstrate the presence of a controversial and particularly complex issue in terms of terrorism legislation and human rights. However, the dissertation was capable of identifying a leit motiv regarding the profile of incompatibility between human rights and measures which prevent anti terrorism across the globe, including privacy and freedom of speech and movement, and preventive measures of counter terrorism.

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