

Counterterrorism and Human Rights: A Global Perspective

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ABSTRACT This paper explores the intricate balance between counterterrorism measures and the protection of human rights, with a focus on liberal democracies. It examines how practices such as detention without trial, torture, and extrajudicial killings infringe upon fundamental human rights, which are essential for human dignity. Through case studies, including Northern Ireland in the 1970s and the United States' post-9/11 "war on terror," this paper highlights the key mechanisms shaping counterterrorism strategies and their broader implications for civil liberties.

The research engages with international law and human rights frameworks, analyzing the impact of counterterrorism efforts on the global protection of human rights. Furthermore, the paper addresses a critical gap in the academic literature: the limited discussion surrounding the effectiveness of counterterrorism policies in achieving security while maintaining rights standards. A comparative analysis of international and national court decisions, including the European Court of Human Rights and the UK Supreme Court, is conducted to illustrate judicial reasoning in counterterrorism cases, particularly concerning the proportionality test.

This study concludes that existing counterterrorism policies often fail to justify the extensive curtailment of rights, particularly where their effectiveness remains uncertain. The paper calls for more rigorous, empirical evaluation of counterterrorism measures, advocating for the development of standardized models that assess both security outcomes and broader societal impacts. By doing so, it aims to contribute to a more nuanced discourse on counterterrorism and human rights at a global level.

KEYWORDS *Counterterrorism, Human right, Liberal democracies, Judicial review, Proportionality test*

1. Introduction

Background: The global fight against terrorism has significantly intensified since the events of 9/11, resulting in the development of robust counterterrorism strategies by nations worldwide. Governments have introduced a variety of measures aimed at preventing terrorism and ensuring national security. However, these efforts have frequently come at the expense of fundamental human rights. The protection of the right to life, liberty, and security has been compromised by state actions, including arbitrary detention, torture, and

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enhanced surveillance. While the need to safeguard citizens is clear, counterterrorism measures have raised significant concerns about the infringement on civil liberties and the rule of law. The international community, through institutions like the United Nations, has sought to address these tensions, emphasizing the importance of balancing security with human rights.¹

Research Question: This paper will explore the following central question: What is the global impact of counterterrorism measures on human rights, and how can a balance be struck between national security and fundamental freedoms? By examining various legal frameworks and case studies, this paper aims to assess how counterterrorism policies intersect with human rights concerns, and to propose strategies to ensure both security and the protection of civil liberties.²

Significance of the Topic: Striking a balance between counterterrorism efforts and human rights obligations is of crucial legal and ethical importance. Governments have a duty to protect their citizens from terrorist threats, but at the same time they must uphold international human rights standards. Violating these standards does not only undermine the legitimacy of counterterrorism measures but may also fuel grievances that contribute to further radicalization. Therefore, it is essential to examine the legal, social, and economic ramifications of counterterrorism strategies on human rights and to develop a framework that respects both national security and fundamental freedoms.

Thesis Statement: While counterterrorism is necessary to ensure global security, many of the measures employed since 9/11 have infringed upon fundamental human rights. This paper argues that greater oversight and reform are needed to ensure that counterterrorism efforts remain effective without violating human rights, proposing a model that integrates security concerns with international legal obligations.³

2. The Legal Framework of Counterterrorism

2.1 International Counterterrorism Instruments

International counter-terrorism instruments primarily take the form of multilateral treaties and United Nations (UN) Security Council resolutions, establishing binding legal frameworks that guide states in preventing and combating terrorism. These instruments are crucial in creating a coordinated global response to terrorism, ensuring that all states adopt common standards and practices.

¹ Dan E Stigall, Chris Miller, and Lauren Donatucci, "The 2018 US National Strategy for Counterterrorism: A Synoptic Overview," *Nat'l Sec. L. Brief* 10 (2020): 1.

² Scott N Romaniuk, *Under siege: Counterterrorism and civil society in Hungary*. Rowman & Littlefield, 2022.

³ Elisabeth Kardos-Kaponyi, "Upholding human rights in the fight against terrorism", *Society and Economy. In Central and Eastern Europe | Journal of the Corvinus University of Budapest* 29, no. 1 (2007): 1–41.

One of the key instruments in this area is the International Convention for the Suppression of the Financing of Terrorism (1999), which obliges states to criminalize the provision of funds to terrorist groups, freeze terrorist assets, and cooperate with other states to prevent terrorist financing. Similarly, the Palermo Convention (2000), or the Convention against Transnational Organized Crime, addresses terrorism as a transnational crime and mandates international cooperation in preventing and prosecuting such activities.⁴ The United Nations Security Council (UNSC) plays a pivotal role in shaping counter-terrorism measures, particularly through its binding resolutions. Resolution 1373 (2001), passed in the aftermath of the September 11 attacks, requires all UN Member States to take specific actions to prevent and combat terrorism. These include criminalizing terrorist activities, improving border controls to prevent the movement of terrorists, freezing terrorist assets, and promoting international cooperation in law enforcement. It also emphasizes the need to prevent the misuse of refugee systems by terrorists, although it reaffirms that existing refugee protections must be upheld.⁵

2. 2 Role of International Human Rights Law

International human rights law is essential in providing guidance to states in their efforts to prevent terrorism. Although terrorism presents substantial risks to the exercise of essential human rights, such as the right to life, security, and freedom, it is the responsibility of states to implement efficient counterterrorism measures. Nevertheless, it is imperative that these measures adhere to international human rights norms. As emphasized in Chapter I, terrorism has a direct effect on human rights. However, the state's obligation to combat terrorism does not excuse it from upholding these rights during the process.⁶ Counterterrorism measures and the protection of human rights are interdependent and mutually supportive goals. States have both the right and the responsibility to safeguard their populations against terrorism, while also being required to ensure that any counterterrorism measures comply with international human rights commitments. The 2006 United Nations Global Counter-Terrorism Strategy highlights the significance of incorporating human rights into all facets of counterterrorism endeavors. The United Nations Security Council and the General Assembly have expressed their dedication to ensuring that states adhere to international law, including human rights law, refugee law,

⁴ Pierre Klein, "International Convention for the Suppression of the Financing of Terrorism," *United Nations Audiovisual Library of International Law* (2009): 1–5.

⁵ Trevor P Chimimba, "United Nations Security Council Resolution 1373 (2001) as a Tool for Criminal Law Enforcement," in *The Pursuit of a Brave New World in International Law*, ed. Tiyanjana Maluwa, Max du Plessis, and Dire Tladi (Brill Nijhoff, 2017), 359–394.

⁶ Andrea Carcano, *Notable Cases of the European Court of Human Rights on the Right to Life* (G. Giappichelli Editore, 2020), 7.

and international humanitarian law, when implementing measures to combat terrorism.⁷

For instance, Security Council Resolution 1373 (2001), which was passed in response to the September 11 attacks, delineates counterterrorism strategies while also reiterating the importance of adhering to human rights standards. States must guarantee that while strengthening security and promoting collaboration in law enforcement, they do not infringe upon fundamental rights. The Counter-Terrorism Committee (CTC), created by the resolution, oversees the execution of these measures, with a specific emphasis on ensuring adherence to human rights norms.⁸

The field of human rights law possesses intrinsic flexibility and adaptability, allowing it to effectively address unusual circumstances, such as terrorism. It permits certain restrictions on rights, as long as they satisfy the requirements of legality, necessity, proportionality, and non-discrimination. During periods of public emergency, specific rights can be legally limited or suspended, as allowed by the International Covenant on Civil and Political Rights (ICCPR), on the condition that these actions are essential for safeguarding national security and are strictly confined to what is necessary given the circumstances.

3. Human Rights Implications of Counterterrorism Measures

3. 1 Key Human Rights at Stake

International human rights legislation plays a crucial role in dealing with the consequences of terrorism and guaranteeing that counterterrorism actions do not infringe upon basic rights. States encounter the task of achieving a balance between fulfilling security requirements and safeguarding human rights, including civil and political rights. Commonly jeopardized human rights in counterterrorism endeavors encompass the following concepts:

3. 2 Right to Life

Counterterrorism efforts, namely military interventions and drone attacks, often result in the unintended harm or death of innocent civilians. Although states possess the authority to protect their population against acts of terrorism, it is mandated by international law that these operations must strictly abide by the standards of necessity and proportionality in order to minimize any harm inflicted upon civilians. As an illustration, the utilization of unmanned aerial vehicles to attack individuals suspected of being terrorists has led to

⁷ Ralph Crawshaw, and Leif Holmström, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” *Essential Texts on Human Rights for the Police*, ed. Ralph Crawshaw and Leif Holmström (Brill Nijhoff, 2001), 257–263.

⁸ Eszter Polgári, and Boldizsár Nagy, “The chances of observing human rights in an illiberal state: diagnosis of Hungary,” in *Research Handbook on Compliance in International Human Rights Law*, ed. Rainer Grote, Mariela Morales Antoniazzi, and Davide Paris (Edward Elgar Publishing, 2021), 95–120.

unintentional fatalities among non-combatants, prompting apprehensions about the arbitrary denial of the right to life.⁹ The right to life is an absolute right that cannot be suspended, even in times of crisis. States have the responsibility to ensure that their counterterrorism measures align with this essential safeguard.

3.3 Privacy Rights

The widespread implementation of mass surveillance and data collection practices in counterterrorism efforts has resulted in the gradual degradation of individuals' privacy. These acts are frequently justified by governments on the grounds of the necessity to surveil terrorist activity and avert potential attacks. Nevertheless, extensive monitoring initiatives have the potential to violate individuals' right to privacy, particularly when executed without adequate supervision or judicial examination.¹⁰ The utilization of technology for the extensive gathering of data, such as the surveillance of communications and the monitoring of online activities, gives rise to apprehensions regarding excessive government intervention and the possibility of misuse.

4. The concept of freedom of expression

Counterterrorism legislation is occasionally employed to stifle opposition and curtail freedom of expression. Critics have raised concerns about the targeting of individuals in anti-radicalization initiatives based on their political or religious ideologies. States have implemented comprehensive counterterrorism legislation in certain instances, which makes it a criminal offense to demonstrate support or sympathy for terrorist ideas.¹¹ This might lead to the suppression of valid critique of government policy or the articulation of political perspectives. These limitations frequently clash with the fundamental right to freedom of speech, which is crucial for a democratic society.

5. Procedural Justice and Unjustified Detention

Detention without trial, torture, and extrajudicial renditions have emerged as major human rights issues in the realm of counterterrorism. Persons who are suspected of engaging in activities related to terrorism are occasionally held in custody for an indefinite period of time without being formally charged or given

⁹ James Cockayne, "Challenges in United Nations Counterterrorism Coordination," in *Research Handbook on International Law and Terrorism*, ed. Ben Saul (Cheltenham: Edward Elgar Publishing, 2014), 666–682.

¹⁰ Stefano Costanzi, Gregory D. Koblenz, and Richard T. Cupitt, "Leveraging cheminformatics to bolster the control of chemical warfare agents and their precursors," *Strategic Trade Review* 6, no. 9 (2020): 69–92.

¹¹ Hoe Lim, "Trade and Human Rights What's at Issue?," *Journal of World Trade* 35, no. 2 (2001). <https://dx.doi.org/10.2139/ssrn.1682245>.

a trial, thereby infringing upon their entitlement to due process. Practices such as extraordinary rendition, which involves transferring detainees to foreign nations without judicial control, have the potential to result in torture and inhumane treatment. These measures violate the fundamental foundations of international human rights law, namely the right to a fair trial and the prohibition of torture.

6. Rights pertaining to the economy, society, and culture

Counterterrorism policies often neglect the impact they have on economic, social, and cultural rights, despite their efforts to combat terrorism. For example, specific sanctions like asset freezes and travel restrictions can significantly limit persons' ability to get education, employment, and healthcare.¹² These tactics can have an impact on both the individuals who are targeted and their families and communities, rendering socio-economic marginalization worse.

States have acknowledged the importance of tackling the underlying factors that contribute to terrorism, such as poverty, inequality, and insufficient development, in order to effectively prevent terrorism. Through the United Nations Global Counter-Terrorism Strategy member nations have highlighted the importance of addressing factors that promote terrorism, such as socio-economic deprivation and the absence of human rights. Diverting resources from social programs to security measures can weaken the long-term economic and social stability, resulting in increased marginalization and creating conditions that promote the growth of terrorism.

Ultimately, although counterterrorism is crucial for safeguarding societies, it is imperative that it is carried out in compliance with international human rights legislation to avoid infringing upon basic liberties. Ensuring the safeguarding of all fundamental human rights, encompassing civil, political, economic, social, and cultural rights, is essential in attaining global security goals and tackling the root causes that contribute to terrorism.

7. Case study

7. 1 The United States: Guantanamo Bay and Enhanced Interrogation Techniques

The detention facility located in Guantanamo Bay, Cuba, has emerged as a highly contentious emblem of counterterrorism strategies in the United States, particularly in the aftermath of the 9/11 attacks. Established in 2002 for the purpose of detaining persons suspected of terrorism, Guantanamo Bay has faced

¹² Jo Beall, Thomas Goodfellow, and James Putzel, "Introductory article: on the discourse of terrorism, security and development," *Journal of International Development: The Journal of the Development Studies Association* 18, no. 1 (2006): 51–67.

extensive criticism for its infringement on human rights.¹³ This criticism mostly stems from the practice of indefinite detention without trial and the utilization of enhanced interrogation techniques, which numerous legal experts classify as a type of torture.

The fundamental right to due process has been eroded, as several individuals have been detained for extended periods of time without being formally charged or granted the opportunity to participate in impartial legal proceedings. Certain individuals have been subjected to the practice of extraordinary rendition, which involves the transfer of suspects to different nations for the purpose of interrogation, often accompanied by the use of torture. Although there are international legal frameworks in place, like the Convention Against Torture, tactics including waterboarding, stress postures, and sleep deprivation were used under the pretext of acquiring intelligence.¹⁴

7. 2 China: Persecution of Uighur Muslims Disguised as Counterterrorism Measures

China's counterterrorism measures, namely in the Xinjiang Uyghur Autonomous Region, have faced global criticism due to their egregious violation of human rights, specifically targeting the Uighur Muslim minority. China has conducted "re-education" initiatives under the pretext of combatting terrorism and extremism. These efforts have actually resulted in the widespread imprisonment of Uighurs which Chinese commonly referred to as vocational education and training centers but are widely recognized as internment camps.¹⁵ Approximations indicate that more than one million Uighurs and other Muslim minorities have been apprehended since 2017. Detainees in these camps endure compulsory indoctrination, coerced work, and physical mistreatment. According to reports, Uighurs are being compelled to renounce their religious practices, to consume pork (which is prohibited in Islam) and are isolated from their family and cultural customs.

These activities egregiously infringe upon the rights to freedom of religion, freedom of expression, and freedom of movement, all of which are safeguarded by international human rights law.¹⁶ Nevertheless, China asserts that these measures are vital in addressing terrorism and separatism in the region.

¹³ Reed Brody, *Getting away with torture: The Bush administration and mistreatment of detainees* (Human Rights Watch, 2011), 1–2.

¹⁴ Nations, U. "United Nations Human Rights Office of the High Commissioner," in *The Convention on the Rights of Persons with Disabilities*. 2014.

¹⁵ Julia Stern, "Genocide in China: Uighur re-education camps and international response," *Immigration and Human Rights Law Review* 3, no. 1 (2021): 2.

¹⁶ Maya Wang, *Eradicating Ideological Viruses: China's Campaign of Repression Against Xinjiang's Muslims* (Human Rights Watch, 2018), 27.

7. 3 France: Implementation of Emergency Measures Following the Terrorist Attacks of 2015

Following the 2015 Paris terrorist attacks, in which 130 individuals lost their lives, France implemented a state of emergency that endured for almost two years. The government was given extensive authority through these emergency measures, which encompassed activities such as carrying out searches without a warrant, imposing house arrest on individuals, and prohibiting public rallies. These policies were specifically formulated to promptly tackle the menace of terrorism, although they also gave rise to substantial apprehensions regarding human rights.¹⁷

The widespread implementation of house arrests on suspicion of terrorism, frequently without substantial evidence or the chance for individuals to contest their confinement, raised apprehensions over the entitlement to personal freedom and the right to unrestricted mobility. Moreover, the extensive authorities bestowed upon law enforcement during the state of emergency have faced criticism for resulting in ethnic and religious profiling, specifically focusing on the Muslim community.

Multiple human rights organizations, including Amnesty International, expressed concerns about the excessive utilization of these authorities. France's counterterrorism laws were criticized for violating privacy rights, as law enforcement carried out numerous raids without judicial supervision, according to critics.¹⁸ Protests and meetings were frequently prohibited under the pretense of averting other attacks, thus limiting the freedom to peaceful assembly.

8. Justifications and Criticisms over Counterterrorism Policies

8. 1 State Security vs. Individual Rights

States frequently encounter the dilemma of reconciling national security with safeguarding individual rights in their continual efforts to combat terrorism. Counterterrorism policies are designed to protect the public from terrorist threats, but they can also result in substantial violations of civil freedoms. The fundamental conflict arises from the need to safeguard national security while also ensuring that individual liberties are not excessively infringed upon. Typical reasons for restricting individual rights include the need for it, the appropriate scale of the restriction, and its conformity to the law. These ideas are frequently employed to justify limitations on rights but can attract criticism when they are seen as excessive.¹⁹

¹⁷ Powell Wright, "France's State of Emergency: The Human Rights Cost of Security," *Europe* (2017), 1–2.

¹⁸ Cyprien Fluzin, and ICCT Policy Brief, *Administrative Measures, Human Rights, and Democracy in Turbulent Times* (International Centre for Counter-Terrorism, 2024).

¹⁹ Frank Foley, and Max Abrahms, "Terrorism and counterterrorism," in *Oxford Research Encyclopedia of International Studies*. 2010.

Proportionality is a commonly employed framework for determining the justifiability of restrictions on rights. The process entails assessing whether a specific limitation is essential to accomplish a valid public objective (such as safeguarding national security) and whether it is the least invasive method to achieve that goal.²⁰ Proportionality analysis evaluates the advantages of state security measures in comparison to the potential infringement on individual liberties.

Counterterrorism legislation may impose limitations on freedom of expression or privacy in cases when these rights are considered to pose a threat to public safety. Proportionality tests evaluate the justification of these constraints, taking into account the particular circumstances and the degree of the restriction. The objective is to guarantee that actions implemented by the government to safeguard security do not excessively violate individual rights.²¹

Counterterrorism measures are frequently justified based on the principle of indispensability. Amidst a perceived or actual terrorist threat, governments assert that exceptional measures are necessary to avert attacks and safeguard populations. Legislation permitting indefinite imprisonment, widespread monitoring, and advanced interrogation methods are often justified as essential measures to avert catastrophic harm.

The justification of these actions is also heavily influenced by their legality. Several states contend that they are justified in limiting certain rights as long as their counterterrorism measures are implemented through legitimate legal means and comply with international law. This may encompass emergency powers or specialized counterterrorism legislation that confers the government with extensive jurisdiction during periods of crisis.²²

Although there may be reasons given to support them, counterterrorism tactics are frequently condemned for their adverse effects on civil liberties. The primary areas of concern typically encompass privacy, freedom of expression, and due process.

The implementation of mass surveillance programs in numerous nations, justified as anti-terrorism measures, has faced significant criticism for undermining the right to privacy. These programs frequently entail the unselective gathering of data, which can violate the privacy of regular individuals, not only suspected terrorists.

Counterterrorism efforts occasionally result in the curtailment of dissent and the inhibition of freedom of speech. Legislation aimed at combating radicalization or extremism can be employed to specifically target political activists, journalists, and human rights defenders, thereby eroding democratic principles.

²⁰ Cynthia Lum, Leslie W. Kennedy, and Alison Sherley, "Are counter-terrorism strategies effective? The results of the Campbell systematic review on counter-terrorism evaluation research," *Journal of Experimental Criminology* 2 (2006): 489–516.

²¹ Kate Mackintosh, and Ingrid Macdonald. "Counter-terrorism and humanitarian action," *Humanitarian Exchange* 58 (2013): 23–25.

²² Claudia McGoldrick, "The state of conflicts today: Can humanitarian action adapt?," *International Review of the Red Cross* 97, no. 900 (2015): 1179–1208.

The absence of trial, the existence of covert courts, and the implementation of torture during interrogation have sparked significant apprehensions regarding the infringement of due process rights. The Guantanamo Bay detention facility in the United States is a prominent illustration of how counterterrorism strategies can circumvent legal protections, leading to the prolonged confinement of individuals without a trial and the implementation of more aggressive methods of questioning.

The discourse surrounding counterterrorism policy fundamentally centers on achieving a satisfactory equilibrium between the security of the state and the rights of individuals. Critics contend that although security is crucial, it should not be prioritized over fundamental liberties. They highlight the enduring negative consequences of implementing excessive counterterrorism measures, such as the gradual loss of confidence in government and democratic institutions.²³ In addition, imbalanced counterterrorism tactics have the potential to exacerbate animosity, which may in turn contribute to radicalization instead of avoiding it.

8. 2 Critiques of Global Counterterrorism

Global counterterrorism endeavors, while intended to battle the menace of terrorism and protect national security, have garnered significant censure due to their excessive scope, discriminatory methods, and questionable efficacy. Critics contend that authorities have frequently exploited these indicators to achieve authoritarian goals, single out marginalized populations, and undermine essential civil rights.²⁴ Moreover, there are doubts regarding the true effectiveness of these techniques in diminishing terrorism, since they may instead perpetuate cycles of violence and marginalization, while also compromising human rights.

One major critique of global counterterrorism programs is the apparent excessive exercise of governmental authority. States often employ counterterrorism legislation to extend their authority and consolidate power, surpassing the laws' intended scope. Governments have implemented extensive measures that suppress political opposition, limit freedom of the press, and violate civil liberties, all under the guise of fighting terrorism.²⁵ This excessive exercise of authority has enabled certain governments to strengthen their control

²³ Walter Enders, and Todd Sandler, "The effectiveness of antiterrorism policies: A vector-autoregression-intervention analysis," *American Political Science Review* 87, no. 4 (1993): 829–844.

²⁴ Mark D Kielsgard, and Tam Hey Juan Julian, "Stopping Terrorism at its Source: Conceptual Flaws of the Deterrence-Based Counterterrorism Regime and Committing to a Preemptive Causal Model," *JL & Pol'y* 26 (2018): 487.

²⁵ Iffat Naheed, "Human Rights in Un Counter-terrorisim Debate: Imperative or Impediment," *The Journal of Social Science* 5, no. 10 (2021): 510–519.

by singling out political adversaries, advocates for human rights, and marginalized communities, thus repressing fundamental democratic values.²⁶

An exemplary illustration of this phenomenon may be observed in Turkey, where the government has utilized counterterrorism legislation to suppress opposition leaders, activists, and media. After the unsuccessful coup attempt in 2016, the Turkish government announced a state of emergency. During this period, numerous individuals were arrested, media organizations were closed, and civil society groups were disbanded, all in the name of national security. In Egypt, there have been similar patterns seen, where the government has employed counterterrorism legislation to rationalize widespread detentions, torture, and unlawful executions of political opponents, all purportedly ideals by suppressing opposing opinions in the name of combating terrorism.²⁷

China has implemented counterterrorism measures in the Xinjiang region to suppress the Uighur Muslim people. The Chinese government has presented its repressive measures, such as the widespread detentions in “re-education” camps, as part of its counterterrorism and anti-extremism initiatives. Nevertheless, these measures have faced widespread criticism for their role in suppressing the Uighur culture and religion, exemplifying a flagrant abuse of official authority under the guise of security.²⁸

This excessive exercise of authority frequently leads to egregious infringements on human rights. Governments take advantage of the expansive definitions of terrorism in their domestic legislation, enabling them to classify a diverse range of nonviolent activities as acts of terrorism. Consequently, this leads to the unjustifiable imprisonment of individuals who have minimal or no affiliation with terrorist acts. These activities violate fundamental human rights, such as freedom of speech, assembly, and the right to a fair trial. Additionally, they weaken democratic and restrict civic participation.

Another significant criticism of global counterterrorism strategies revolves around its selective implementation, specifically targeting Muslims, migrants, and ethnic minorities. Many countries have counterterrorism legislation and policies that unfairly focus on these communities, resulting in their stigmatization, estrangement, and marginalization. This biased approach has substantial social and political ramifications, impacting not only the specific groups being targeted but also society at large.²⁹

There is a tendency to unfairly link Muslim populations with terrorism, as counterterrorism efforts primarily target Islamic extremism and overlook other

²⁶ Irene Zempi and Imran Awan, *The Routledge international handbook of Islamophobia* (London: Routledge, 2019) 18–31.

²⁷ Konrad Lachmayer, *Counter-developments to Global Constitutionalism, Global Constitutionalism and Its Challenges to the Westphalian Constitutional Law* (2018) (Hart Publishing 2018), 81–101.

²⁸ Makenzie D. Briglia, “Big Brother XI: How China's Surveillance of the Uyghur Population Violates International Law,” *Geo. Wash. Int'l L. Rev.* 53 (2021): 85.

²⁹ Ambassador T. Hamid Al-Bayati, “Counter-terrorism,” *Behavioral Science in the Global Arena: Addressing Timely Issues at the United Nations and Beyond* (2020): 125.

types of violent extremism, like far-right terrorism. In Western nations such as the United States, the United Kingdom, and France, Muslims have faced increased monitoring, discriminatory targeting, and distrust in the name of counterterrorism efforts.³⁰ Initiatives such as Prevent in the United Kingdom, which seek to counteract radicalization, have exhibited a disproportionate focus on Muslim communities, leading to the cultivation of animosity and suspicion between these groups and the government. Furthermore, the increase in Islamophobia has been intensified by political discourse that equates terrorism with Islam, resulting in additional marginalization and isolation of Muslims.

Likewise, those who migrate or seek refuge, especially those originating from countries with a Muslim majority, have faced more stringent immigration regulations and biased counterterrorism actions. The travel bans implemented in the United States, which specifically targeted persons from certain Muslim-majority nations, were defended as essential counterterrorism policies, but faced significant backlash due to its discriminatory characteristics. These policies not only infringe upon the rights of persons seeking refuge, but also reinforce damaging preconceptions that associate migration with terrorism.

Counterterrorism regulations have had a disproportionate impact on ethnic minorities. For instance, in France, the implementation of emergency measures following the terrorist attacks in 2015 had a disproportionate effect on Muslim and North African communities. The implementation of these measures, such as conducting searches of homes without a warrant and imposing limitations on people's freedom of movement, faced significant backlash due to their biased application.³¹ These policies exacerbate societal differences and prolong systemic prejudice by unfairly singling out specific racial, ethnic, and religious groups.

These discriminatory acts not only subvert the values of equality and justice but can also have a counterproductive outcome. Through the process of alienating and marginalizing entire groups, authorities may unintentionally contribute to the very process of radicalization that they aim to stop. When individuals perceive themselves as being singled out or treated unjustly, they may become more vulnerable to extremist ideas, thus perpetuating a cycle of violence and government oppression.

The efficacy of global counterterrorism measures in effectively diminishing terrorism while upholding human rights remains a topic of contention. Although governments frequently assert that stringent counterterrorism laws and regulations are crucial for safeguarding national security, evidence indicates that these measures do not regularly achieve the desired results. There is a rising apprehension that certain counterterrorism measures may actually exacerbate

³⁰ Paul Wilkinson, *Terrorism versus democracy: The liberal state response* (Routledge, 2006).

³¹ Sikander Ahmed Shah, *International law and drone strikes in Pakistan: the legal and socio-political aspects* (Routledge, 2014).

long-term instability and radicalization, rather than effectively mitigating the threat of terrorism.³²

For instance, military operations and drone strikes, commonly employed in counterterrorism efforts, have faced criticism due to their restricted efficacy and substantial unintended harm. Drone strikes in nations such as Yemen, Pakistan, and Afghanistan have effectively targeted prominent terrorist leaders, but they have also caused significant harm to innocent civilians. The loss of innocent lives not only diminishes the credibility of counterterrorism endeavors but also fosters animosity towards the participating nations, let alone generating fresh recruits for terrorist organizations. Moreover, the act of damaging infrastructure and means of living during these interventions frequently results in additional instability, so worsening the exact circumstances that contribute to the emergence of terrorism initially.³³

Mass surveillance programs, a frequently used counterterrorism measure, have also encountered scrutiny due to their dubious efficacy and substantial infringement on private rights. Although these programs have the objective of identifying and stopping terrorist activity, there is limited evidence to indicate that the extensive gathering of data and surveillance have played a crucial role in preventing major terrorist plots. Furthermore, the violation of private rights gives rise to significant ethical issues, as individuals are being monitored by the state without any valid grounds for suspicion, which undermines trust in government institutions and democratic procedures.

Furthermore, the overall efficacy of counterterrorism strategies is frequently compromised by their inability to tackle the underlying causes of terrorism. Several counterterrorism methods primarily prioritize security measures while disregarding the socio-economic and political variables that contribute to radicalization and violence. Commonly, matters like poverty, social exclusion, political grievances, and limited access to education and economic opportunity are disregarded in favor of measures that prioritize militarization.³⁴ In the absence of addressing these fundamental causes, counterterrorism measures are improbable to attain enduring success in the prevention of terrorism.

9. The Role of International Organizations and Civil Society

9.1 United Nations and Other International Bodies

The involvement of international organizations and civil society in combating terrorism has played a crucial role in influencing global plans and reactions. An

³² Magdalena König, “Preventing extremism–riskifying enlargement: Prevention imaginaries of counter-terrorism in EU enlargement towards South East Europe,” (PhD diss., University of Groningen, 2024).

³³ Mark D Kielsgard and Juan Julian Tam Hey, “Stopping Terrorism at its Source: Conceptual Flaws of the Deterrence-Based Counterterrorism Regime and Committing to a Preemptive Causal Model,” *JL & Pol'y* 26 (2018): 487.

³⁴ Makenzie D Briglia, “Big Brother XI: How China's Surveillance of the Uyghur Population Violates International Law,” *Geo. Wash. Int'l L. Rev.* 53 (2021): 85.

important milestone in this matter is the acceptance of the United Nations Global Counter-Terrorism Strategy by the General Assembly on September 8, 2006. This strategy is the initial, all-encompassing, worldwide framework created to address terrorism, providing a clear set of specific actions for Member States to implement both individually and collectively.³⁵

The plan includes several primary goals: addressing the factors that promote terrorism, preventing and defeating terrorism, improving the ability to handle these threats, and protecting human rights and the rule of law while battling terrorism. Importantly, it emphasizes the need for Member States to cooperate with the United Nations system in order to carry out these measures, and for the United Nations institutions to assist in these endeavors.

To achieve these goals, the United Nations created the Counter-Terrorism Implementation Task Force (CTITF) in 2005. The CTITF functions as a central coordinating entity, guaranteeing coherence and synergy among the various UN organizations involved in counter-terrorism endeavors.³⁶ The task force has established a well-organized work program and formed specialized working groups to promote key elements of the strategy.

Enabling the coordinated execution of the strategy: This group's primary objective is to create effective approaches to help Member States incorporate the counter-terrorism policy into their national frameworks. This is done in cooperation with several United Nations institutions.

Combating Radicalization and Extremism that Result in Terrorism: This organization's primary objective is to assist Member States in comprehending and combating the mechanisms of radicalization and extremism, with the ultimate goal of diminishing the allure of terrorism.

The objective of this group is to combat the exploitation of the Internet for terrorist purposes. It aims to gather relevant parties to find effective solutions on a national, regional, and global scale.

Regional and international legislative acts have had a considerable impact on the development of counterterrorism measures. The aftermath of the 9/11 attacks in the United States initiated a contemporary surge of counterterrorism legislation, with numerous European states commencing the development of such laws only after the events of 9/11. As of 2013, the European Union had implemented more than 200 counterterrorism measures.³⁷ Following the emergence of 'foreign fighters,' a fresh wave of legislation was introduced around 2013-2014. By 2016, at least 47 states had implemented new laws in response to this situation.

³⁵ Kent Roach, "Accountability Mechanisms for Transnational Counterterrorism," *Security and Human Rights* (2019): 179.

³⁶ Fiona De Londras and Josephine Doody, *The impact, legitimacy and effectiveness of EU counter-Terrorism* (London: Routledge, 2015).

³⁷ Letta Tayler, "Foreign terrorist fighter laws: Human rights rollbacks under UN Security Council Resolution 2178," *International Community Law Review* 18, no. 5 (2016): 455–482.

The legislative frameworks consist of a variety of laws, including national laws, EU regulations, and adherence to regional and international counterterrorism treaties like UN Security Council resolutions. Nevertheless, the increasing array of counterterrorism measures has produced diverse effects, particularly on ‘limitable’ rights, which can be constrained in the interest of the public, unlike ‘absolute’ rights which cannot be restrained.

9. 2 NGOs and Advocacy

Non-governmental organizations (NGOs) like Amnesty International and Human Rights Watch have been instrumental in promoting a human rights-oriented strategy for counterterrorism. Following the post-9/11 global proliferation of counterterrorism rules, these organizations have endeavored to contest laws and policies that violate civil liberties and human rights, while advocating for enhanced openness and accountability in governmental procedures. Non-governmental organizations have reacted to counterterrorism initiatives variably, contingent upon the political context and legal structures of the nations in which they function.³⁸

Numerous NGOs have taken a position of vocal dissent against counterterrorism legislation that encroaches upon fundamental liberties. Amnesty International constantly underscores how counterterrorism legislation in numerous countries, including the U.S., the U.K., and other Western nations, infringes upon human rights. Amnesty's initiatives concentrate on safeguarding civil freedoms, including the right to privacy, freedom of expression, and freedom of association. They contend that governments frequently rationalize extensive powers under the guise of national security yet neglect to uphold proportionality and necessity—two essential components of international human rights law.

Certain NGOs have adopted a more direct strategy by engaging in lawsuit against state-enforced counterterrorism regulations. Human Rights Watch has actively opposed legislation permitting indefinite detention without trial, torture, and excessive surveillance practices. In nations such as the United States and the United Kingdom, NGOs have engaged in or endorsed legal actions contesting the legality of specific counterterrorism measures, including rendition programs and clandestine detention.³⁹ These legal challenges seek to guarantee that counterterrorism initiatives adhere to international human rights responsibilities.

Besides protest and lawsuits, NGOs have also participated in governmental policy-making processes. In Germany and Canada, NGOs have been afforded the opportunity to contribute to the formulation of counterterrorism rules. They

³⁸ Maria T Baldwin, “Amnesty International, Human Rights & US Policy” (PhD diss., Bowling Green State University, 2006).

³⁹ Lynn Welchman, “Rocks, hard places and human rights: anti-terrorism law and policy in Arab states,” *Global Anti-Terrorism Law and Policy* (2005): 581–608.

frequently engage in consultations to guarantee that the new legislation conforms to international human rights norms. Through participation in the legislative process, these NGOs promote the incorporation of safeguards that protect individual rights while addressing security issues.

NGOs prominently critique the biased enforcement of counterterrorism legislation, especially towards underprivileged populations. Non-governmental organizations have recorded the disproportionate targeting of Muslims, migrants, and ethnic minorities by counterterrorism initiatives. Amnesty International and Human Rights Watch have documented racial profiling, discriminatory law enforcement, and the stigmatization of particular communities under the pretext of counterterrorism.⁴⁰ Their reports advocate for the cessation of behaviors that discriminate against individuals based on religion or ethnicity, and they promote reforms that prioritize equality and non-discrimination.

Internationally, NGOs such as Amnesty International and Human Rights Watch leverage their global networks to initiate campaigns to confront the adverse effects of counterterrorism legislation globally. They frequently provide reports to international organizations such as the United Nations Human Rights Council or the Special Rapporteur on Counterterrorism and Human Rights. These proposals aim to prioritize human rights issues in global counter-terrorism initiatives. Through these international efforts, NGOs strive to align counterterrorism policy with human rights standards across many countries.

10. Toward a Balanced Approach: Recommendations

10.1 Legal Reforms

In combating terrorism, it is essential that counterterrorism measures adhere to human rights, necessitating meticulous consideration of legislative frameworks and their revision. The covert nature of terrorist activities and organized crime typically require specific investigative techniques, including surveillance, undercover operations, and informant collaboration. Nonetheless, in the absence of stringent legal protections, these measures may readily result in power abuses, privacy infringements, and the deterioration of civil freedoms. To provide a more equitable framework, numerous essential legislative reforms are proposed, concentrating on augmenting judicial monitoring, bolstering accountability, and overhauling surveillance legislation.

A fundamental worry in contemporary counterterrorism initiatives is the insufficient judicial control of security organizations and law enforcement entities. To resolve this issue, it is imperative to enact reforms that impose greater checks and balances on the application of special investigative techniques (SITs).⁴¹ SITs frequently entail covert operations that may violate

⁴⁰ Human Rights Watch (Organization), and Judith Sunderland, *Preempting justice: Counterterrorism laws and procedures in France* (Human Rights Watch, 2008).

⁴¹ Musa Karyah Inusa, "Combating terrorism in Nigeria: a critical analysis of the legal framework" (PhD diss., School of Law, 2018).

individual rights, such as eavesdropping, monitoring, or undercover activities. Although essential for information collection without notifying targets, these approaches must undergo rigorous legal examination.

Judicial bodies should be authorized to evaluate all Special Investigation Teams (SITs) in real-time or promptly following their deployment, guaranteeing their proportional usage and application alone when indispensable. Reforms may require that any implementation of surveillance, wiretaps, or other intrusive methods receive authorization from a judge or an independent entity proficient in counterterrorism and human rights legislation.⁴² This method would mitigate abuses and guarantee adherence to human rights standards, hence diminishing the likelihood of excessive or arbitrary acts.

The absence of accountability for counterterrorism abuses is a critical concern. Security agencies frequently function in secrecy, complicating the accountability of personnel for criminal actions, such as disproportionate force, arbitrary detention, or racial profiling. To address this issue, legal reforms must prioritize the accountability of security forces and intelligence organizations for their conduct.⁴³

It is advisable to create independent monitoring committees that routinely evaluate the operations of counterterrorism units, with particular emphasis on situations involving the deployment of Special Intervention Teams (SITs). These supervisory entities ought to possess the authority to examine allegations of misconduct and, when warranted, recommend cases for prosecution. Furthermore, explicit criteria must be formulated for the utilization of SITs, accompanied by transparent reporting obligations that guarantee a record of accountability.

Additionally, systems must be established to safeguard whistleblowers and informants who reveal corruption in counterterrorism operations.⁴⁴ In the absence of sufficient safeguards, individuals within these organizations may apprehend retaliation and so choose to remain silent regarding violations.

Surveillance legislation frequently ignites problems related to counterterrorism, as it can readily violate individuals' privacy rights. Amending these laws is essential to reconcile national security interests with the safeguarding of civil liberties. Surveillance must not function in a legal void; rather, it should be rigorously regulated, with protections that guarantee its necessity, proportionality, and legality.

⁴² James Cockayne, "Challenges in United Nations counterterrorism coordination," in *Research handbook on international law and terrorism*, ed. Ben Saul (Edward Elgar Publishing, 2014), 666–682.

⁴³ Katerina Akestoridi, and Sofia Tzortzi. "The United Nations' Current Legal Approach to Terrorism, Organized Crime and 'Organized Criminal Terrorism'," *Organized Criminal Terrorism* (Brill Nijhof, 2024), 39–73.

⁴⁴ Martin Scheinin, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN Doc. E/CN.4/2005/103, February 7, 2005, para. 37.

Legislation regulating surveillance ought to be amended to incorporate enhanced data protection protocols, restrictions on data retention, and more stringent access controls. Authorities must establish a clear and impending threat prior to commencing monitoring on individuals, and all surveillance efforts should be precisely directed at authorized objectives. Mass surveillance initiatives, specifically, present a considerable threat to privacy and are ought to be restricted unless there exists a unique, evidence-based justification for targeting extensive populations.

The procedure for acquiring surveillance warrants should be rendered more rigorous. Law enforcement must provide substantial proof prior to the authorization of surveillance, and courts should evaluate whether the invasion of privacy is warranted by the perceived threat.

The employment of informants and insider collaboration has been a persistent strategy in counterterrorism and organized crime investigations. Although informants can furnish essential intelligence to avert assaults, the strategies employed to motivate their collaboration may occasionally result in human rights infringements.⁴⁵ Leniency agreements or plea bargains extended to informants might engender moral hazards, as they may feel pressured to fake or embellish their information to evade punishment.

Legal changes ought to provide a more stringent evidence standard prior to the imposition of sanctions, accompanied by explicit procedures for appeal and review.⁴⁶

10. 2 Human Rights-Based Approach to Counterterrorism

In the progressing worldwide battle against terrorism, it is imperative to promote a counterterrorism policy that conforms to international human rights commitments. This methodology underscores the concepts of proportionality, need, and non-discrimination, guaranteeing that initiatives to prevent and combat terrorism do not infringe upon fundamental human rights.⁴⁷ Integrating a human rights framework into counterterrorism strategies enables authorities to enhance security while safeguarding civil freedoms and preserving public trust. A human rights-oriented strategy for counterterrorism commences with the notion of proportionality. States must ensure that their activities to combat terrorist threats are commensurate with the real level of risk. Measures must be

⁴⁵ Matthew Manning, Gabriel TW Wong, and Nada Jevtovic, "Investigating the relationships between FATF recommendation compliance, regulatory affiliations and the Basel Anti-Money Laundering Index," *Security Journal* 34 (2021): 566–588.

⁴⁶ David Webber, Marina Chernikova, Arie W. Kruglanski, Michele J. Gelfand, Malkanthi Hettiarachchi, Rohan Gunaratna, Marc-Andre Lafreniere, and Jocelyn J. Belanger, "Deradicalizing detained terrorists," *Political Psychology* 39, no. 3 (2018): 539–556.

⁴⁷ Kyle K. Bradley, "A Mending Wall: A Critical Look at the International Court of Justice's Analysis in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory," *Temp. Int'l & Comp. LJ* 19 (2005): 419.

meticulously designed to target specific risks, avoiding sweeping measures that may unduly affect innocent civilians.

Large-scale surveillance initiatives and indiscriminate detentions not only violate individual privacy and freedom but also jeopardize community cohesion, potentially exacerbating radicalization instead of mitigating it. Proportionality guarantees that counterterrorism programs maintain an appropriate equilibrium between security and human rights, reducing superfluous harm while addressing genuine dangers.

The principle of necessity, closely associated with proportionality, stipulates that counterterrorism measures must be enacted solely when they are truly essential to prevent or mitigate terrorist activity.⁴⁸ This concept guarantees that states refrain from implementing excessively wide or intrusive policies under the guise of counterterrorism.

This entails refraining from activities that violate rights, such as arbitrary detention or excessive force, unless there is unequivocal proof necessitating such steps for public safety protection. By implementing the necessity requirement, governments guarantee that all actions are substantiated and grounded on a clear, evidence-based comprehension of the threat.

A fundamental principle of a human rights-based counterterrorism approach is non-discrimination. Counterterrorism legislation and tactics should be implemented generally, without discrimination against certain racial, ethnic, religious, or political groups. Discriminatory measures, such as racial profiling and the unequal targeting of Muslim or migrant communities, not only infringe against human rights but also exacerbate social divisions and animosity.

Incorporating non-discrimination into counterterrorism policies promotes a more inclusive society and enhances the credibility of governmental efforts to address terrorism.⁴⁹ A human rights approach promotes the formulation of laws that safeguard all individuals uniformly, thereby averting the stigmatization of specific groups.

UNESCO has emphasized the significance of education, dialogue, and scientific integrity in fostering a culture of peace and mitigating terrorism. UNESCO's frameworks advocate for human rights-based methodologies in education, fostering inclusive pedagogies and varied content that enhance understanding, tolerance, and solidarity among diverse communities.⁵⁰

Initiatives like UNESCO's UNITWIN program and the Global Learning Portal offer youth opportunity to participate in discourse and cultivate critical thinking abilities, crucial for combating extreme beliefs. The educational initiatives are a

⁴⁸ Pascal Boyer, Rengin Firat, and Florian van Leeuwen, "Safety, threat, and stress in intergroup relations: A coalitional index model," *Perspectives on Psychological Science* 10, no. 4 (2015): 434–450.

⁴⁹ Eric Rosand, "The Role of the United Nations in Combating Terrorism," *Global Governance* 10, no. 3 (2004): 333–349.

⁵⁰ Chiara Altafin, Veronika Haász, and Karolina Podstawa, "The new Global Strategy for the EU's Foreign and Security Policy at a time of human rights crises," *Netherlands Quarterly of Human Rights* 35, no. 2 (2017): 122–143.

fundamental component of a comprehensive approach aimed at tackling the underlying causes of terrorism by fostering intercultural understanding and preventing the exploitation of scientific research for terrorist objectives.⁵¹

A counterterrorism strategy grounded on human rights necessitates strong procedures for accountability and oversight to avert abuses of power. This entails the creation of autonomous entities to oversee the conduct of security forces and intelligence services, guaranteeing that their operations conform to both national and international legal norms. Furthermore, those impacted by counterterrorism measures ought to possess access to transparent legal redress, safeguarding their ability to contest unfair actions.

This strategy necessitates that the international community holds states accountable for human rights breaches committed under the guise of counterterrorism. The establishment of global norms and the enhancement of institutions such as the United Nations Human Rights Council can facilitate the adherence of counterterrorism strategies to fundamental human rights.

10.3 International Cooperation

International collaboration in counterterrorism is essential for tackling the global aspect of terrorism while protecting fundamental human rights. The World Summit Outcome, ratified by the UN General Assembly in 2005, emphasized that counterterrorism initiatives must conform to international law, particularly the UN Charter and pertinent conventions. States must ensure that their counterterrorism measures adhere to human rights, refugee law, and international humanitarian law, as reaffirmed by the UN Security Council in Resolutions 1456 (2003) and 1624 (2005).

The 2006 report by the UN Secretary-General, “Uniting Against Terrorism,” underscored that successful counterterrorism and the protection of human rights are not mutually exclusive goals. They are mutually reinforcing, as the protection of human rights strengthens the credibility and effectiveness of counterterrorism efforts. This methodology has been reiterated by multiple UN entities and international accords, guaranteeing that global counterterrorism initiatives adhere to international human rights standards.

Switzerland actively engages in global counterterrorism initiatives, having ratified 16 of the 18 UN agreements on terrorism and cooperating in European Union security frameworks such as Europol and Schengen. Additionally, Switzerland partners with other countries and international organizations to enhance global counterterrorism collaboration, with a special emphasis on aligning these initiatives with human rights commitments. The nation's participation in the Global Counterterrorism Forum and its leadership in efforts such as the International Process on Global Cooperation in Combating

⁵¹ Todd C Helmus, Miriam Matthews, Rajeev Ramchand, Sina Beaghley, David Stebbins, Amanda Kadlec, Michael A. Brown, Aaron Kofner, and Joie D. Acosta, *RAND program evaluation toolkit for countering violent extremism* (Santa Monica, CA: RAND Corporation, 2017)

Terrorism demonstrate a dedication to ensuring that international security protocols do not infringe upon fundamental rights.

Switzerland's emphasis on human rights has been essential to its contributions to the UN Global Counter-Terrorism Strategy, established in 2006. Switzerland, in conjunction with other countries, has played a pivotal role in promoting discourse on the equilibrium between security and human rights. The 2009 International Workshop of National Counter-Terrorism Focal Points in Vienna and subsequent global conferences provide venues for governments to exchange ideas that effectively mitigate terrorism while upholding human rights.

Conclusion

This essay underscores the persistent issue of reconciling counterterrorism initiatives with safeguarding of human rights in a post-9/11 context. Although global security is paramount, numerous counterterrorism initiatives have encroached upon fundamental rights, such as privacy, freedom of expression, and due process. Legal frameworks, including international human rights laws and UN resolutions, establish a basis for safeguarding these rights; nevertheless, implementation is fraught with challenges, as evidenced by case studies from the U.S., China, and France.

Legal reforms are essential to improve judicial monitoring, accountability, and compliance with human rights norms. A human rights-based strategy emphasizing proportionality, necessity, and non-discrimination is not merely desirable but indispensable. Furthermore, international collaboration must be enhanced to establish global norms that ensure safety while preserving fundamental freedoms.

However, achieving this balance requires a deeper understanding of the root causes of terrorism. Beyond legislative measures, policymakers must address structural drivers, such as socio-economic disparities, political marginalization, and systemic inequalities. Investment in education, community engagement, and deradicalization programs is essential to dismantle extremist narratives and foster resilience among vulnerable populations.

As novel threats, such as cyberterrorism, arise, counterterrorism strategies must evolve. Forthcoming policies should leverage technological innovation while ensuring robust accountability mechanisms to prevent misuse. Transparent oversight structures are critical to maintaining trust and preventing the erosion of democratic values during security operations.

Ultimately, safeguarding security and human dignity must be intertwined. Governments must strike a sustainable equilibrium, where the pursuit of safety does not come at the expense of human rights. By promoting transparency, inclusivity, and justice, global counterterrorism efforts can transcend mere reactionary measures, evolving into proactive, human-centric strategies that ensure both security and the enduring protection of fundamental freedoms.