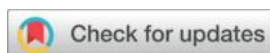




The War on Terrorism between the Imperatives of Securitization and the Challenge of Protecting Human Rights after 2001



Sahnine Hebri

Faculty of Law and Political Science, Saida University, Algeria

Email : Sahninehebri20@gmail.com

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Abstract

After the events of 11/09/2001, many states adopted a set of exceptional measures primarily aimed at combating terrorism. However, addressing the terrorist phenomenon became a complex dilemma directly linked to respect for human rights, especially since counterterrorism measures were often contradictory and involved numerous human rights violations. This was particularly evident with the adoption of the global strategy led by the United States of America, which moved toward a global security option for states at the expense of human rights, tipping the balance of the equation in favor of security over human rights.

Keywords: war, terrorism, securitization, challenge, protection, human rights.

Introduction:

The terrorist phenomenon is considered a global, transnational phenomenon with multiple causes and dimensions, associated with threat and the use of organized violence, and lacking a comprehensive definition. All this occurs under the influence of globalization, the information revolution, and the events of September 2001, which were considered a decisive turning point in viewing terrorism as a global security threat. This led to the growth of the capacities of terrorist organizations that aim to threaten international security and stability, distinguished by their rapid spread.

In the face of this danger, most countries of the world hastened, following urgent calls issued by United Nations bodies, to deal firmly with this phenomenon by adopting all necessary measures and procedures to confront it. Most states rushed to declare states of emergency and enact exceptional laws and other laws to combat terrorism. However, these measures and procedures restricted individual freedoms and disregarded human rights by all standards. In light of these paradoxes, the following problem is raised:

To what extent have states, in combating terrorism, been able to balance achieving internal security with enabling human rights?

Based on this problem, the following questions were raised:

What are the requirements of combating terrorism?

To what extent does the terrorist phenomenon affect human rights?

How can a balance be achieved between counterterrorism measures to ensure security and the human rights system?

Based on the problem, the following general hypothesis can be proposed: the belief that adopting a securitized approach enables achieving a balance between counterterrorism measures to ensure security and the human rights system.

This problem will be addressed through the following axes:

First axis: The requirements of combating terrorism.

Second axis: The dual impact of the terrorist phenomenon on human rights.

Third axis: Human rights violations in the name of combating terrorism: the securitization discourse in the external behavior of the United States of America.

First Axis: The Requirements of Combating Terrorism at the Domestic and Global Levels

Reaching a comprehensive and precise concept of terrorism remains problematic and subject to debate, and academic definitions in this field are numerous. Among the most important is the definition provided by Alex P., who offers a broader and more comprehensive definition. According to him, terrorism is a method of spreading fear through the repeated use of violence, employed by an individual, a group, or state-affiliated elements covertly (or semi-covertly), for specific criminal or political reasons, where the immediate targets are not the primary targets, unlike assassination. Meanwhile, the direct victims of violence are generally chosen randomly (targets of opportunity) or selectively (representatives or symbols of targets) from the targeted population, to serve as messages. Communication processes based on threat or violence are used between terrorists (the organization), the victims (those at risk), and the main targets, to exploit the primary targets (the public) and transform them into a target of terrorism, or of demands, or to attract attention, depending on the original aim of intimidation, coercion, or propaganda¹. Through this definition, we conclude that terrorism constitutes a threat to international peace and security, as well as a destabilization of internal security. This is due to the developments that have occurred in the pattern and scale of terrorist operations, especially in recent years, at the level of actors, victims, and targeted objectives. The climate of globalization and the technological revolution has helped open wide horizons for the spread of the terrorist phenomenon and enabled it to benefit from the advantages of this environment.

On this basis, combating terrorism, to the extent that it is an internal matter that falls upon the state aimed at protecting its citizens and preserving its national security is also an international matter that requires cooperation and solidarity among all states to contribute to its eradication. Accordingly, it can be said that combating terrorism constitutes an internal obligation for the state, whether through preventing terrorist acts and anticipating their occurrence by adopting appropriate measures and procedures, or by pursuing perpetrators and bringing them to trial in the event of their occurrence.

It is also an international obligation, in view of the legal developments that have taken place in the field of international legal texts related to combating terrorism, especially after the events of September 11, 2001². Since the League of Nations drafted the Convention for the Prevention and Punishment of Terrorism in 1937, the issue of combating terrorism has remained on the agenda of the international community. Thus, starting from 1937, sixteen global legal instruments related to the prevention and punishment of terrorist acts have been adopted.

Moreover, for more than a decade, the United Nations General Assembly, at the initiative of the Sixth Committee, has adopted an annual resolution on measures aimed at combating international terrorism. The Security Council has also adopted numerous resolutions in the field of counterterrorism, including Resolution 1373 (2001), which was adopted following the events of September 2001 and holds a special status. This resolution calls upon all states to work together urgently to prevent and eradicate terrorist acts through enhanced cooperation and the full implementation of international conventions related to terrorism. It also recognizes the need to complement international cooperation with additional measures taken by states to prevent and suppress the financing of any terrorist acts or preparations for them within their territories by all lawful means³.

Accordingly, these global instruments constitute an international foundation for cooperation in criminal matters, as the sources of these international obligations almost all include criminalization provisions and the mechanisms of cooperation necessary to combat terrorism at the international level.

There are also other regional or national mechanisms used to criminalize terrorist acts⁴; however, these instruments and the measures adopted to confront the terrorist phenomenon have themselves come to raise many human rights violations. In this regard, Paul R. Pillar, National Intelligence Officer for the Near East and South Asia at the U.S. National Intelligence Council, states: “The concept of countering terrorism includes a set of activities that go beyond the concept itself and involves the effective use of a range of tools. Each of the tools for countering terrorism is difficult to use, and it is even more difficult to use these tools well; nevertheless, the use of these tools in confronting terrorism remains decisive.”

Second Axis: The Dual Impact of the Terrorist Phenomenon on Human Rights

The terrorist phenomenon exerts clear and direct effects on human rights, beginning with violations of the right to life and extending to the destruction of economic and social well-being. However, its effects do not stop at this level; they go further to include other indirect effects caused by states confronting this phenomenon through the restriction of the scope of human rights and individual freedoms within the framework of measures and procedures aimed at combating and eradicating terrorism. The following is a detailed account of these effects.

Direct impact on human rights:

“Terrorist acts aim to eliminate human rights, fundamental freedoms, and democracy, to undermine the foundations of pluralistic civil society, and they have harmful effects on the economic and social development of states.⁵”

As they endanger the lives of innocent people, violate human dignity and human security everywhere, threaten the social and economic development of all states, and undermine stability and prosperity at the global level⁶, Terrorist acts have a direct destructive impact on the enjoyment of human rights⁷, After the right to life, which is the most targeted and violated right in terrorist attacks carried out by armed groups against civilian citizens, through various terrorist methods such as sudden and focused attacks, including mass killings and collective massacres based on the extermination of individuals and families, resulting in a large number of victims reaching hundreds and thousands.

This also includes the establishment of fake roadblocks on roads in front of drivers and vehicles in general, which often end with casualties and abductees, constituting a violation of the right to life and the right to freedom of movement. In addition, there are booby-trapped devices, including bombs, explosive devices, and explosive packages, which are used to intimidate individuals and assault their lives. Terrorist groups also adopt the method of individual assassinations, as their attacks have increasingly been directed against political figures⁸.

There is no doubt that terrorism spreads fear and terror in people's hearts, creating an atmosphere of dread, panic, and anticipation. From this perspective, it contradicts the human right to security and to living in peace. It may also drive the state to divert certain resources toward combating it, thereby obstructing development efforts that affect various aspects of social, economic, and cultural life, and threatening the human rights related to these fields. Thus, terrorism becomes incompatible with human rights in terms of its objectives, methods, means, and forms, as it represents the destruction, negation, and immediate elimination of these rights. The kidnapping and detention of hostages constitute an assault on the human right to life, which is a natural and inherent right and the source of all other rights. Bombings constitute an assault on the human right to security and bodily integrity and may deprive individuals of their right to life, which is a gift from God that even the state may not dispose of except on the basis of legitimate reasons⁹.

Indirect impact on human rights:

If this represents the direct impact of terrorism on human rights, there are also indirect effects of terrorism on these rights. These are reflected in the measures taken by states to combat or limit terrorism, which inevitably entail restrictions on human rights and, consequently, the confiscation of those rights¹⁰. States often invoke the danger posed by terrorist operations in order to adopt arbitrary measures that constitute an assault on fundamental human rights, such as the right to freedom of movement and the freedom of thought and belief, among other rights. Individuals find themselves with no choice but to submit to such measures under the pretext of combating terrorism, which in many cases amounts to an undermining of human rights.

If terrorism clearly threatens and violates fundamental human rights such as the right to life, liberty, and the security of persons, as stipulated in Article 03 of the Universal Declaration of Human Rights which condemns disregard or contempt for these rights resulting from barbaric and brutal acts that shock the human conscience—then the protection of these rights also requires extraordinary measures. However, such measures must in no way involve the confiscation of human rights¹¹. However, the acts of violence committed by terrorist groups are criminal in nature and fall outside the laws of the state. This pushes the targeted government to resort to violent reactions to suppress these groups, such as searching homes, arresting citizens and imprisoning them without trial, enacting emergency laws that restrict freedoms, and other measures which, in most cases, do not lead to ending violence and terrorism, nor to eliminating these groups. On the contrary, all these repressive actions carried out by some governments may lead to further terrorism and violence. Consequently, the country lives in an unbroken cycle of terrorism and counter-terrorism, between the terrorism of individuals and groups on the one hand, and the terrorism of states and governments on the other¹².

This was clearly expressed by the Secretary-General of the United Nations at one point in his historic report, when he wrote: "Terrorists are not accountable to anyone, but we must not lose sight of our responsibility to citizens everywhere. It is our duty, as we wage the war on terrorism, to ensure that human rights are never compromised. If we do so, we will have facilitated the achievement of one of the terrorists' objectives..."¹³

In light of this, states are faced with two challenges:

The First Challenge:

It lies in deterring terrorism with restraint, without infringing upon human dignity or undermining human rights, on the basis that every person has the right to freedom and, to the same extent, the right to security. The state is required to work to guarantee the enjoyment of these two rights under all circumstances, without viewing them as contradictory. This can be achieved within the framework of regulations established by the state in a manner that ensures the activation of both rights, so that society enjoys security and freedom in a balanced way.

The Second Challenge:

The state's defense of its political system and principles must be consistent, and the use of force must be disciplined so as not to exceed certain limits that represent the very boundaries of democracy itself. This entails that the measures adopted by state authorities to combat terrorism must be based on a legal foundation, and that any restrictions imposed on human rights must be defined as precisely as possible and be necessary and proportionate to the intended objective ¹⁴363.

Third Axis: Human Rights Violations in the Name of Combating Terrorism: The Securitization Discourse in the External Behavior of the United States of America

The events of September 11, 2001 led many states to adopt new measures and legislation to confront terrorism and prevent any future terrorist attacks. States thus became engaged in what is known as the war on terrorism, which in reality turned into a war on human rights, in which all means were permitted, including inhumane ones.

In other words, some Western states, foremost among them the United States of America, revived the old wisdom of Saint-Just, who laid the foundations of the theory of terror, which states: "No freedom for the enemies of freedom." This can also be translated in another way as: "I will terrorize the terrorists," a famous phrase uttered by a French Minister of the Interior in the 1980s.

The United States of America declared war on terrorism after the terrorist attacks of 2001/09/11 and launched military operations against states it claimed were supporting international terrorism. This came to represent a dangerous transformation in a world led by a single pole that imposes whatever visions and policies it wishes, while other states stand by as mere spectators ¹⁵.

The United States sought, as much as possible, to rely on the repercussions of September 11, 2001, as it framed and exploited the event, in cooperation with the State of Israel, to achieve its objectives of absolute global hegemony. It also exploited the issuance of Security Council resolutions, including Resolutions (1386) and (1373), which explicitly consider terrorism a threat to international peace and security, in order to justify all its unlawful actions. All its actions were cloaked in appealing slogans such as self-defense and the war on terrorism, through which it sought to justify its hidden colonial ambitions.

The use of military force undertaken by the United States of America and the states allied with it under the pretext of combating international terrorism has led to serious dangers to the existing international order. It produced numerous flawed concepts and resulted in violations of the most important principles of public international law, including, for example, the violation of the principle of sovereignty, the principle of non-intervention in the internal affairs of states, and the principle prohibiting the use of force in international relations. In addition, it involved violations of the rules

of international humanitarian law embodied in the four Geneva Conventions of 1949 and their Additional Protocols. What occurred at Guantanamo detention center and Abu Ghraib prison constitutes the clearest evidence of this¹⁶.

Among the most important examples that demonstrate the flagrant violation of human rights by the United States of America in the name of combating terrorism are the following:

Violation of the Prohibition of Torture and the Ill-Treatment of Prisoners of War:

The right to the prohibition of torture is an inviolable right that allows no restriction or exception. States may not practice torture or degrading treatment, whether under normal circumstances, in times of war, during a public emergency threatening the life of the nation, or under any other exceptional circumstances. Therefore, this right constitutes part of the core essence of human rights. In this regard, the European Court of Human Rights stated in its decision dated 07 July 1989 as follows: this right is considered among the most fundamental values in democratic societies that form the Council of Europe¹⁷. However, the United States of America disregarded this principle under the banner of combating terrorism. The actions carried out by the United States and its allied states in their war against Afghanistan resulted in thousands of members of the Taliban and Al-Qaeda falling into the custody of the United States. Many were eliminated, while large numbers exceeding (600) individuals were transported by aircraft to an American military base established on a bay known as Guantanamo, located on the territory of Cuba¹⁸.

Reports by journalists, especially the correspondent of the French newspaper Libération, revealed the inhuman, unethical, and unlawful nature of the conditions of these detainees. The camp was described as being outside the law, given the harsh security procedures and the declared and implicit will to strip them of their humanity and humiliate them. They were placed in cages and chains that shackled their hands and feet, and they could not distinguish night from day due to powerful spotlights constantly directed at them. They were treated as if they were beings from another planet, having no connection to laws or international conventions¹⁹.

Among the most extreme forms of violations of human rights in all their aspects were the acts committed by U.S. forces inside Abu Ghraib prison, which shook the conscience of humanity. The number of detainees reached thousands since the fall of 2003, most of whom were civilians, including children and women.

Information contained in a report prepared by the American General Antonio Taguba indicated that the prison was overcrowded beyond capacity and that detention was carried out without proper screening, meaning that many innocent people were wrongfully detained. In addition, detainees lived under poor health conditions due to the lack of even the minimum standards of health and hygiene inside the prison²⁰.

Violation of the Right to Liberty and Personal Freedom:

U.S. President George Bush issued a military order dated 13/11/2001 allowing the arrest, treatment, and trial of certain individuals in violation of the ordinary criminal procedural rules known in the United States. On this basis, hundreds of individuals were detained in the United States of America, most of them Muslims, in addition to those detained in Afghanistan from among members of Al-Qaeda who were transferred to the Guantanamo detention camp.

The aim of this was to remove them from the legal protections that could be granted to them under U.S. law. The number initially reached approximately 1000 individuals, then was reduced to 500

detainees who were held under inhumane conditions for an indefinite period and without being charged with specific offenses^{21,1}

Under the Patriot Act, the government obtained broader powers to tap telephones, monitor electronic communications, and search public databases. It significantly restricted many of the rights of migrants, even those with legal status, including subjecting them to preventive administrative detention based on an order from the Attorney General, even if no charges were brought against them and even if they could not legally be deported.

In addition to this law, the government seized extensive powers over U.S. citizens and even broader ones over migrants, and invoked the status of “enemy combatant,” which it introduced. This status could lead to life imprisonment without trial until the end of the war on terrorism, which appeared to have no end²².

Racism and Violations of Minority Rights:

Professor Fitzpatrick argues that the military order issued on 09/13/2001, which referred foreign detainees in the war on terrorism to military commissions, was discriminatory, as it made citizenship a criterion for referral to these commissions. Religion also constituted one of the most significant manifestations of discrimination in this law, albeit implicitly. In addition, the U.S. Department of the Treasury froze the financial assets of many Islamic charitable associations on the basis of religious affiliation, under the pretext of suspicion of financing terrorism, despite the absence of clear evidence confirming such accusations. Among these associations were the Al-Baraka Association, the Al-Taqla Association, and the Al-Haramain Association.

These measures violate the International Covenant on Civil and Political Rights 367, which does not permit the adoption of exceptional measures based on a state of emergency when their justification is discrimination between individuals solely on the basis of color, sex, language, religion, or social origin²³.

Conclusion:

The relationship between human rights, security, and terrorism is a negative one, as when terrorism prevails, security disappears and human rights are violated. This has led states to adopt a security-based approach, especially after the events of 11/09/2001, whereby the security option became a global dimension at the expense of human rights, individual freedoms, and democratic principles. Consequently, counterterrorism measures themselves turned into a form of terrorism state terrorism directed against individuals since states have been driven by the Machiavellian logic that claims that the end justifies the means, in a manner that makes freedom an acceptable price to pay for achieving security.

The terrorist phenomenon is characterized as a fundamental threat to human rights, particularly after it acquired more dangerous dimensions following the attacks of September 11, 2001. This event served as a formal declaration of the war on terrorism, after which states moved toward adopting more counterterrorism measures and procedures to achieve internal security, at the expense of human rights, individual freedoms, and democratic principles. As a result, counterterrorism measures themselves became a form of terrorism state terrorism against individuals because states followed the Machiavellian logic that the end justifies the means, making freedom an acceptable cost for achieving security, or even the Hobbesian logic of the social contract, whereby individuals relinquish some of their freedoms in order to ensure security and stability.

Moreover, the legitimization of inhumane practices under the pretext of combating terrorism, as adopted by major powers, constitutes a flagrant violation of human rights and ultimately leads to more violence and terrorism. This calls on states to carry out a fair balancing process between imposing security on the one hand and respecting the rights and freedoms of individuals on the other, in order to ensure the success of counterterrorism efforts.

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