

---

# BALANCING NATIONAL SECURITY WITH HUMAN RIGHTS

---

Siddharth Abhishek, National Law University Odisha

Gracy Tanwar, National Law University Odisha

## ABSTRACT

This paper argues that in the rush to respond to the 9/11 attacks, countries around the world created a new security playbook that has consistently valued a vague idea of 'national security' over the clear, written rules of international human rights.<sup>1</sup> By looking at the laws passed in the United States, the UK, and India, I'll show a disturbing pattern. Governments have given themselves sweeping new powers – to spy on citizens, to water down due process – all by using fuzzy, convenient definitions of terrorism.<sup>2</sup> And the long-term damage? It's been immense. It's not just about individual rights; it's about the erosion of the rule of law itself, the weakening of democratic oversight, and the fraying of our social fabric, especially for minority communities who are so often the first to be targeted.<sup>3</sup> In the end, I argue that this security-first approach is not just wrong; it's a failure on its own terms. It's often counter-productive.<sup>4</sup> Let's be clear: we don't find real, lasting security by sacrificing our rights. We find it by making a huge shift—getting smarter, preventing threats before they start, and building trust within communities, all without breaking the law. That's not a soft stance. It's the only one with a real shot at making us safe.

---

<sup>1</sup> Fionnuala Ní Aoláin, 'The Half-Life of 9/11: The Enduring Demise of Human Rights in the Name of Counter-Terrorism' (2024) 38 Emory International Law Review 1343.

<sup>2</sup> UNODC, 'Defining Terrorism' (E4J University Module Series: Counter-Terrorism) [https://www.unodc.org/documents/e4j/18-04932\\_CT\\_Mod\\_01\\_ebook\\_FINALpdf.pdf](https://www.unodc.org/documents/e4j/18-04932_CT_Mod_01_ebook_FINALpdf.pdf) accessed 1 October 2025.

<sup>3</sup> Equality and Human Rights Commission, 'The impact of counter-terrorism measures on Muslim communities' (Research Report 72, 2011) <https://www.equalityhumanrights.com/sites/default/files/research-report-72-the-impact-of-counter-terrorism-measures-on-muslim-communities.pdf> accessed 1 October 2025.

<sup>4</sup> Geneva Academy of International Humanitarian Law and Human Rights, 'Exploring Counterterrorism Effectiveness and Human Rights Law' (Working Paper, 2022) <https://www.geneva-academy.ch/joomla-tools-files/docman-files/Working%20Paper%20-%20Counterterrorism%20Effectiveness%20and%20Human%20Rights%20Law.pdf> accessed 1 October 2025.

## Introduction

At the heart of every modern state, there's a constant tug-of-war: the government's duty to protect its people versus its duty to protect their freedom. And nothing brings that fight to a more raw and urgent breaking point than terrorism. It forces a collision between three powerful and competing ideas: the state's demand for 'national security,' the universal principle of human rights, and the immediate, terrifying threat of a violent attack. How a country balances – or fails to balance – these three concepts says everything about its character.

But here's the critical vulnerability in the whole system, the gaping loophole that everything else falls into: in international law, there is no universally agreed-upon definition of what 'terrorism' actually is.<sup>5</sup> This isn't just an academic problem. It allows the very concept to become a political weapon. 'National security' used to mean something simple: protecting our borders from an army. But now, it's become this amorphous, ever-expanding excuse.<sup>6</sup> It's a magic phrase, a 'carte blanche' that governments use to justify almost any action, especially when the thing they're fighting – 'terrorism' – is whatever they say it is.

And all of this stands in stark contrast to the world of human rights. Human rights aren't supposed to be vague. They are spelled out in international law, like the Universal Declaration of Human Rights.<sup>7</sup> They are meant to be universal, to belong to everyone, and to act as a hard limit on state power – a set of rules the government simply cannot break. They're the guardrails. But think about the mismatch. On one side, you have crystal-clear, written-down rights. On the other? A hazy, undefined threat—'terrorism'—used to justify an equally hazy and ever-growing idea of 'national security.' That right there is the whole problem. That gap in definition? It's a kill zone for human rights.<sup>8</sup>

And let's be blunt: this ambiguity isn't an accident. It's a tool. A weapon. Since 9/11, it's the main weapon states have used to systematically tear down the foundations of human rights. This was never a fair debate between security and liberty—that's a false choice. It's a setup. Human rights are supposed to be a concrete wall protecting us from state power. But 'national

---

<sup>5</sup> UNODC, 'Defining Terrorism' (n 2).

<sup>6</sup> Graduate Institute of International and Development Studies, 'National Security in International Law' (2015) <https://repository.graduateinstitute.ch/record/294643> accessed 1 October 2025.

<sup>7</sup> United Nations, 'Human Rights' <https://www.un.org/en/global-issues/human-rights> accessed 1 October 2025.

<sup>8</sup> Clive Walker, 'The Legal Governance of Counter-Terrorism and Human Rights' (OHCHR, 2016) <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/Walker.pdf> accessed 1 October 2025.

security' became a blank check that governments wrote to themselves. That imbalance is precisely what unleashed the flood of legislative overreach in the 'war on terror.' The game was rigged from the very beginning.

Sure, the fight between state power and freedom is old news—just look at America's Alien and Sedition Acts. But 9/11 was different. It was a tidal wave. Suddenly, the entire globe adopted a 'security-first' mantra that rewired how our world works.<sup>9</sup> To really get the scale of the damage, you have to look at what was broken: the legal framework built after World War II for one simple reason—to put a leash on governments.

### **International Legal Framework and its Post-9/11 Rupture**

At the center of that system was the ICCPR—the International Covenant on Civil and Political Rights. It wasn't a friendly suggestion; it turned the high-minded ideals of human rights into hard, legal rules.<sup>10</sup> It locked in the big ones: the right to life, freedom from torture, fair trials, privacy, all of it.

Now, the framers weren't naive. They knew countries face real dangers. So, they included an emergency brake: Article 4, which lets a state pause some rights, but only during a “public emergency which threatens the life of the nation.”<sup>11</sup>

But – and this is a huge but – this power was severely limited. You could only do what was “strictly required,” and you couldn't discriminate. More importantly, there was a core set of rights that were non-derogable.<sup>12</sup> Rights that could never be suspended, no matter what. The right to life. The ban on torture. These were absolute. This was the system: a framework with built-in flexibility, but one that protected the absolute core of human dignity at all costs.

The 9/11 attacks blew this delicate balance apart. Almost overnight, the political climate shifted into a frenzy to erode civil liberties, and at the heart of this transformation was the UN Security

---

<sup>9</sup> John B Bellinger III and others, 'The 9/11 Effect and the Transformation of Global Security' (Council on Foreign Relations, 7 September 2021) <https://www.cfr.org/councilofcouncils/global-memos/911-effect-and-transformation-global-security> accessed 1 October 2025.

<sup>10</sup> OHCHR, 'International Covenant on Civil and Political Rights' <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed 1 October 2025.

<sup>11</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4(1).

<sup>12</sup> ICCPR art 4(2).

Council. Just weeks after the attacks, the Council passed Resolution 1373.<sup>13</sup> It was a pivotal moment. Acting under Chapter VII – its most powerful authority – the Council did something unprecedented. It didn't just target a specific country; it imposed a sweeping set of legally binding counter-terrorism duties on every single UN member state.<sup>14</sup> In a flash, it created a whole new global security architecture, forcing everyone to criminalize terror financing, freeze assets, and deny safe haven.

But here's where things get really dangerous, and to me, this is the most crucial part of the story. The resolution had a critical – and you have to wonder if it was intentional – omission. It never actually defined 'terrorism'.<sup>15</sup>

Think about that. The Security Council forced every country on earth to create a comprehensive anti-terrorism regime without defining the very crime they were supposed to be fighting. They created a massive definitional vacuum. It was a blank check. It effectively outsourced the definition of 'terrorism' to individual states, giving them the green light to write their own rules and define the term in ways that often, and conveniently, targeted their own political opponents or minority groups.<sup>16</sup>

This wasn't just some new item on the legal to-do list; it flipped the entire hierarchy of international law on its head. Suddenly, a vague order from the Security Council to pursue “security” felt more important than the concrete human rights treaties that states had honored for decades. By forcing this sweeping mandate on everyone, the Council essentially declared that counter-terrorism was now the world's top legal priority. This created an impossible choice at the national level: follow the immediate, heavily enforced UN order to crush “terrorism,” or uphold the broader, less-policed human rights duties of the ICCPR?

The wave of new national laws that followed gave us a clear answer. The UN's move essentially “securitized” international law, turning human rights from a bedrock principle into just another factor to be “balanced” – and usually outweighed – by counter-terrorism.<sup>17</sup> Later resolutions tried to add language about rights being “mutually reinforcing,” but the damage was already

---

<sup>13</sup> UNODC, 'Terrorism - International Framework - General UNSC Resolutions on Terrorism' (SHERLOC) <https://sherloc.unodc.org/cld/en/education/tertiary/organized-crime/module-16/key-issues/terrorism-international-framework---general-uns-resolutions-on-terrorism.html> accessed 1 October 2025.

<sup>14</sup> *ibid*

<sup>15</sup> Ní Aoláin (n 1).

<sup>16</sup> *ibid*

<sup>17</sup> Bellinger (n 9).

done. The initial, forceful order to act, combined with that critical definitional void, had already tilted the world's legal compass permanently toward state security.

### **Thematic Impacts: Corroding Rights and the Rule of Law**

The anti-terror laws that rolled out in the U.S., UK, and India weren't just minor legal changes; they were earthquakes. They've hammered core legal principles, normalized mass surveillance to a terrifying degree, and unleashed a social rot that's now eating away at democracy itself. To see the true cost of this obsession, you have to look at how it twisted the concepts of necessity and proportionality, how it sold us on constant surveillance, and how it made locking people up without trial seem normal.

Think of necessity and proportionality as the two main guardrails in international law.<sup>18</sup> They aren't just fancy theories; they're the rules meant to stop a state from completely stomping on our rights. Necessity says you have to use the smallest hammer for the job. Proportionality is simpler: the cure can't be worse than the disease.

But the "war on terror" took these ideas and stretched them until they broke.<sup>19</sup> How can you prove an action is "necessary" when you're fighting a never-ending war against ghosts? You can't. In that kind of atmosphere, any power grab can be sold as essential. Proportionality gets just as mangled. Suddenly, governments are justifying huge surveillance networks or indefinite detention for foggy goals like "dismantling a network"—things that would sound completely unhinged if aimed at a specific crime. And the courts, who were supposed to be the refs, have mostly just shrugged and let it all pass as long as it had a "national security" sticker on it.

Then came the surveillance. If one thing defines our post-9/11 world, it's the explosion of government spying.<sup>20</sup> The sales pitch never changes: "We have to watch everyone to find the bad guy." It's the old "needle in a haystack" line. But this turns policing completely upside down. It used to be that the government needed a reason to watch you. Now, they watch everyone, just in case.

And for what? The evidence that it even works is flimsy. But the damage to our rights? That's

---

<sup>18</sup> Program on Humanitarian Policy and Conflict Research at Harvard University, 'Proportionality' (HPCR International) <https://guide-humanitarian-law.org/content/article/3/proportionality/> accessed 1 October 2025.

<sup>19</sup> Thomas Howard, 'The Proportionality Principle in the Post-9/11 Era' (2002) 88 *Cornell Law Review* 145.

<sup>20</sup> Council of Europe, 'Factsheet on Mass Surveillance' (July 2018) <https://rm.coe.int/factsheet-on-mass-surveillance-july2018-docx/16808c168e> accessed 1 October 2025.

not a question. It's a fact. This non-stop watching has a "chilling effect" that poisons a free society.<sup>21</sup> People get scared to speak out. Journalists can't protect their sources. Activists can't organize. We all start looking over our shoulders, censoring ourselves before we even speak. And that silence? That's the sound of democracy dying. Because privacy isn't some perk for law-abiding citizens; it's the bedrock of all our other freedoms.

And just when you think it can't get worse, it does. Enter preventative detention.<sup>22</sup> The justification is that it's a "necessary evil," a way to take dangerous people off the streets before they can act, because our courts are just "too slow" for this new world of terror. At least, that's the story they tell.

But I, and many others, see it for what it is: a complete rejection of due process.<sup>23</sup> It throws the entire rule of law – the presumption of innocence, the right to a fair trial – out the window. It creates legal "black holes" like Guantanamo Bay, where people are trapped without rights.<sup>24</sup> To me, this isn't just unjust; it's counter-productive. It delegitimizes the state and can fuel the very grievances that lead to radicalization.<sup>25</sup>

And that's where you see the long-term collateral damage. This isn't just about the individuals who are targeted. When you normalize emergency powers and use vague definitions of crime, the rule of law itself starts to erode for everyone. Worse, these policies have consistently alienated and stigmatized minority communities. Anti-terrorism has all too often become a code for targeting Muslims, creating what's been called a "suspect community."<sup>26</sup> This breeds resentment and destroys trust in the government. And when you criminalize vague things like "glorifying" terrorism, you create a powerful weapon that can be used to silence legitimate political criticism and intimidate activists.<sup>27</sup> You shrink the space for a healthy democracy to breathe.

---

<sup>21</sup> DNI, 'Effect of mass surveillance on journalism'

<https://www.dni.gov/files/documents/RG/Effect%20of%20mass%20surveillance%20on%20journalism.pdf> accessed 1 October 2025.

<sup>22</sup> Michael Ghanayim, 'Preventive Detention in the 'War on Terror': A Comparison of How the United States, Britain, and Israel Detain Terrorist Suspects' (2009) 5 Homeland Security Affairs 1.

<sup>23</sup> 'The Prevention of Terrorism Act and the Erosion of Rule of Law Principles in Chile' (2010) 8 Northwestern Journal of International Human Rights 148.

<sup>24</sup> Ghanayim (n 22).

<sup>25</sup> United Nations, 'Plan of Action to Prevent Violent Extremism' (24 December 2015) UN Doc A/70/674 [https://www.un.org/sites/www.un.org.counterterrorism/files/plan\\_action.pdf](https://www.un.org/sites/www.un.org.counterterrorism/files/plan_action.pdf) accessed 1 October 2025.

<sup>26</sup> Equality and Human Rights Commission (n 3).

<sup>27</sup> OHCHR, 'Human Rights, Terrorism and Counter-terrorism' (Fact Sheet No 32)

<https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> accessed 1 October 2025.

## **Conclusion**

Two decades later, the legal jargon fades, but the legacy is brutally simple. We were offered a deal: give up your rights, and we'll give you security. We took the deal. But it was a bad one. The security we were promised has proven to be an illusion, while the damage to our laws and liberties is painfully real. The constant surveillance, the legal black holes, the targeting of entire communities – these aren't temporary measures; they are permanent scars on our legal landscape.

Forget the myth of a simple “trade-off.” It was never a fair trade. Sacrificing our rights didn't make us safer; it just made us less free and our societies more divided. It's often been completely counter-productive.

The only way out is to stop trying to tweak a broken model. We have to call this experiment what it is: a failure. Real, lasting security doesn't grow from the barrel of a surveillance camera or from behind the walls of a detention camp. It comes from the resilience of our democratic institutions and from an absolute, unwavering commitment to the rights of every single person. Human rights aren't an obstacle to security. They are its only true foundation.<sup>28</sup>

---

<sup>28</sup>OHCHR, 'Human Rights, Terrorism and Counter-terrorism' (Fact Sheet No 32) <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> accessed 1 October 2025.

## **Bibliography**

### **Table of Cases and Legislation**

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

### **Journal Articles**

Ghanayim M, 'Preventive Detention in the 'War on Terror': A Comparison of How the United States, Britain, and Israel Detain Terrorist Suspects' (2009) 5 Homeland Security Affairs 1

Howard T, 'The Proportionality Principle in the Post-9/11 Era' (2002) 88 Cornell Law Review 145

Ní Aoláin F, 'The Half-Life of 9/11: The Enduring Demise of Human Rights in the Name of Counter-Terrorism' (2024) 38 Emory International Law Review 1343

'The Prevention of Terrorism Act and the Erosion of Rule of Law Principles in Chile' (2010) 8 Northwestern Journal of International Human Rights 148

### **Online Sources and Reports**

Bellinger J B III, and others, 'The 9/11 Effect and the Transformation of Global Security' (Council on Foreign Relations, 7 September 2021) <https://www.cfr.org/councilofcouncils/global-memos/911-effect-and-transformation-global-security> accessed 1 October 2025

Commissioner for Human Rights, Council of Europe, 'Misuse of anti-terror legislation threatens freedom of expression' (28 May 2018) <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression> accessed 1 October 2025

Council of Europe, 'Factsheet on Mass Surveillance' (July 2018) <https://rm.coe.int/factsheet-on-mass-surveillance-july2018-docx/16808c168e> accessed 1 October 2025

DNI, 'Effect of mass surveillance on journalism' <https://www.dni.gov/files/documents/RG/Effect%20of%20mass%20surveillance%20on%20j>

ournalism.pdf accessed 1 October 2025

Equality and Human Rights Commission, 'The impact of counter-terrorism measures on Muslim communities' (Research Report 72, 2011) <https://www.equalityhumanrights.com/sites/default/files/research-report-72-the-impact-of-counter-terrorism-measures-on-muslim-communities.pdf> accessed 1 October 2025

Geneva Academy of International Humanitarian Law and Human Rights, 'Exploring Counterterrorism Effectiveness and Human Rights Law' (Working Paper, 2022) <https://www.geneva-academy.ch/joomlatools-files/docman-files/Working%20Paper%20-%20Counterterrorism%20Effectiveness%20and%20Human%20Rights%20Law.pdf> accessed 1 October 2025

Graduate Institute of International and Development Studies, 'National Security in International Law' (2015) <https://repository.graduateinstitute.ch/record/294643> accessed 1 October 2025

OHCHR, 'Human Rights' <https://www.un.org/en/global-issues/human-rights> accessed 1 October 2025

OHCHR, 'Human Rights, Terrorism and Counter-terrorism' (Fact Sheet No 32) <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> accessed 1 October 2025

OHCHR, 'International Covenant on Civil and Political Rights' <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed 1 October 2025

Program on Humanitarian Policy and Conflict Research at Harvard University, 'Proportionality' (HPCR International) <https://guide-humanitarian-law.org/content/article/3/proportionality/> accessed 1 October 2025

United Nations, 'Plan of Action to Prevent Violent Extremism' (24 December 2015) UN Doc A/70/674 [https://www.un.org/sites/www.un.org.counterterrorism/files/plan\\_action.pdf](https://www.un.org/sites/www.un.org.counterterrorism/files/plan_action.pdf) accessed 1 October 2025

UNODC, 'Defining Terrorism' (E4J University Module Series: Counter-Terrorism)

[https://www.unodc.org/documents/e4j/18-04932\\_CT\\_Mod\\_01\\_ebook\\_FINALpdf.pdf](https://www.unodc.org/documents/e4j/18-04932_CT_Mod_01_ebook_FINALpdf.pdf)  
accessed 1 October 2025

UNODC, 'Terrorism - International Framework - General UNSC Resolutions on Terrorism' (SHERLOC) <https://sherloc.unodc.org/cld/en/education/tertiary/organized-crime/module-16/key-issues/terrorism-international-framework---general-unsc-resolutions-on-terrorism.html> accessed 1 October 2025

Walker C, 'The Legal Governance of Counter-Terrorism and Human Rights' (OHCHR, 2016) <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/Walker.pdf>  
accessed 1 October 2025