THE BALANCING OF HUMAN RIGHTS AND COUNTER-TERRORISM: A COMPARATIVE ANALYSIS OF TURKEY AND THE UK

by

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ABSTRACT

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Key Words: *human rights, counter-terrorism, securitization, exceptionalism*.

One of the most salient manifestations of the age-old tension in international politics between international norms versus security concerns is nowadays evidently conveyed in the tense relationship between human rights and counter-terrorism. While commitment to human rights became a benchmark of legitimate state conduct in contemporary politics, the fight against terrorism particularly in the post-9/11 era has given way to contentious practices that tend to undermine long established democratic values. At this juncture, this research investigates how state actors balance the often contradictory entailments of counter-terrorism and human rights. Given that the relationship between discourse and policy of counter-terrorism is a mutually constitutive process, the study undertakes a multi-method qualitative research composed of a comparative policy coupled with a frame analysis of parliamentary debates in the context of Turkey and the UK. The study argues that in an attempt to by-pass human rights obligations state actors securitize areas of political life replacing them beyond the boundaries of normal politics by invoking a sense of exceptionalism. The institutionalization of the state of exception in the long-run brings grave ramifications for the status of human rights and the functioning of democracy.

ÖZET

İNSAN HAKLARI VE TERÖRLE MÜCADELENİN DENGELENMESİ: TÜRKİYE VE İNGİLTERE VAKALARININ KARŞILAŞTIRMALI ANALİZİ

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Anahtar Kelimeler: *insan hakları, terörle mücadele, güvenlikleştirme, istisnailik.*

Uluslararası politikada, uluslararası normlar ile güvenlik kaygıları arasındaki gerilimin en dikkat çekici tezahürlerinden biri, günümüzde insan hakları ve terörle mücadele önlemleri arasındaki gergin ilişkide açıkça görülmektedir. İnsan haklarına bağlılık, çağdaş politikada meşru devlet idaresinin bir referans noktası haline gelmişken özellikle 11 Eylül sonrası dönemde terörle mücadele köklü demokratik değerleri zayıflatma eğilimindeki tartışmalı pratiklerin yolunu açmıştır. Terörle mücadele söylemi ve politikası arasındaki ilişkinin karşılıklı kurucu bir süreç olduğu göz önüne alınarak, karşılaştırmalı politika analizinin yanı sıra Türkiye ve İngiltere bağlamındaki meclis tartışmalarının çerçeve analizinden oluşan çok yöntemli bir nitel araştırma yürütülmüştür. Çalışma, devlet aktörlerinin insan hakları yükümlülüklerden feragat etmek amacıyla politik yaşam alanlarını güvenlikleştirdiklerini (*securitization*), bir istisnacılık (*exceptionalism*) anlayışına başvurarak normal politika sınırlarını aşan alanlar haline getirdiklerini tartışmaktadır. İstisna halinin uzun vadede kurumsallaşması insan haklarının konumu ve demokrasinin işleyişi için ciddi sonuçlara sebep olmaktadır.

To those who will not be silenced.

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AKP	*Adalet ve Kalkınma Partisi* (Justice and Development Party)
ATCSA	Anti-Terror Crime and Security Act
CECPT	Convention on the Prevention of Terrorism
CHP	*Cumhuriyet Halk Partisi* (Republican People's Party)
CSS	Critical Security Studies
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FATF	Financial Action Task Force
HC	House of Commons
HM	Her Majesty's
ICCPR	International Covenant on Civil and Political Rights
ICIS	International Commission on Intervention and State Sovereignty
IRA	Irish Republican Army
KCK	*Koma Civaken Kurdistan* (Group of Communities in Kurdistan)
PKK	*Partiya Karkeren Kurdistani* (Kurdish Worker's Party)
SIAC	Special Immigration Appeals Commission
SCR	Security Council Resolution
TPIM	Terrorism Prevention and Investigation Measures
TBMM	*Türkiye Büyük Millet Meclisi* (Turkish Grand National Assembly)
UK	United Kingdom
UN	United Nations
US	United States

Part I. National Security and International Norms: Sovereignty in the Nexus of Counter-terrorism and Human Rights

Introduction

Since the end of the cold war, human rights has become the dominant moral vocabulary in foreign affairs. The question after September 11 is whether the era of human rights has come and gone.

Michael Ignatieff, New York Times 5 February 2002[1]

In the aftermath of the 9/11 events, with the decision to pass the *Anti-Terrorism, Crime and Security Act 2001* the United Kingdom became the only European country to derogate from the European Convention on Human Rights by introducing the notorious provision of indefinite detention for non-nationals. The implementation of this provision ensued in HM Belmarsh Prison in London being referred to as 'Britain's Guantanamo Bay' (Winterman, 2004) premised on a legal lacuna. In a different setting in Turkey, by the end of 2012 the country has been characterized as the 'world's biggest prison for journalists', most of whom are charged under counter-terrorism legislation, either allegedly being member of a terrorist organization or promoting such ideals. (Reporters Without Borders, 2012) In a revealing report the Associated Press has indicated that for arrests due to terror-related crimes, among 350,000 people convicted since 2001 world-wide, Turkey accounted for one thirds of such arrests (Mendoza, 2011). As the concept of 'terrorism' has come to be increasingly articulated by government officials, it has created new sites of 'security' and new grounds for bypassing core human rights principles.

In world politics today, there is an evident conundrum arising from the clash of national security interests and international human rights obligations, particularly in the post-9/11 era as the concept of terrorism has resuscitated realist concerns within and across

[1] http://www.nytimes.com/2002/02/05/opinion/is-the-human-rights-era-ending.html

national borders. A growing number of states are becoming signatories to key international human rights treaties, while concomitantly pledging loyalty to the 'War on Terror' launched by the United States, which often entail contradictory policies. On the one hand, the normative power of human rights has become an indispensable dynamic in the political arena, conferring legitimacy to state conduct. On the other hand, the inflated environment of emergency triggered by the concept of terrorism has produced a perception of perpetual threat that necessitates extraordinary measures. As the state of exception becomes the norm in fighting terrorism, it seriously risks debilitating the status of fundamental rights and freedoms with long-term repercussions for the functioning of democracy.

The concept of human rights has become ever more salient in the political arena since the end of World War II, as a result of and a response to the arbitrary use of power by governments. The concept has come to signify a limitation to the employment of state power vis-à-vis its citizenry, as 'universal' and 'inalienable' rights that every individual is entitled *qua* humans. There is a general acceptance of the moral status of human rights norms manifested in the fact that every state is part of at least one human rights instrument and no state dares to openly denounce such rights. (Ruggie, 1983: 98) Many scholars have come to celebrate what has been termed as 'the global human rights regime', with reference to the various international bodies and conventions that have ingrained these norms, in addition to the normative power they hold in world politics (Donnelly, 1999; Brown, 2002; Forsythe, 2000). In this respect, international human rights constitute one of the most important normative apparatuses of our age, by promoting the acceptable scope of state-conduct towards its citizens. (Freeman, 2002: 94-97) Some have even argued that the principle of

sovereignty has become conditioned upon the protection of fundamental rights in conferring political legitimacy. (Reus-Smith, 2001; Chowdhury, 2011)

On the other hand, another salient concept that has come to the fore in international politics particularly since the end of Cold War has been 'terrorism'; a concept that has invoked the notion of national security once again and resurfaced realist concerns over survival and national interest at the expense of moral considerations such as human rights. Notwithstanding different articulations of the term in different national settings, the accentuated perception of insecurity has culminated in controversial counter-terrorist measures that suspend established norms. In the last decade, the world has witnessed some of the most atrocious human rights violations under counter-terrorist measures, which are likely to have long-term reverberations in democratic societies. The concept of national security becomes rather elusive in the context of terrorism, since this notion is associated with non-state actors and a form of violence that is distinct from conventional warfare. Hence, the process of defining, circumscribing and addressing this concept is a process of constitution which bears significant policy outcomes. As put by Fierke,"[a]rticulating a threat or declaring a war are speech acts that bring a particular state of affairs into being." (2010: 200)

At this junction, this study undertakes an investigation of the trade-off between international human rights and national security concerns in the contexts of Turkey and the United Kingdom. It seeks to uncover different mechanisms involved in governments' attempts to strike a balance between the entailments of human rights obligations and counter-terrorism policies. As such, the study addresses the following questions:

1. How do state officials balance counter-terrorism and human rights norms?
2. How are controversial counter-terrorism measures legitimized by state officials vis-à-vis human rights obligations?
3. What are some salient framing strategies employed by state officials?
4. Why does United Kingdom as a long-established liberal democracy display similar tendencies found in a yet democratizing country like Turkey?

This study argues that in an attempt to by-pass human rights obligations state actors securitize areas of political life replacing them beyond the boundaries of normal politics by invoking a sense of exceptionalism. In order to legitimize the suspension of basic rights and principles of due process, the purview of the security apparatus is broadened along with special powers granted to the executive and security forces. The institutionalization of the state of exception in the long-run yields serious ramifications for the status of human rights, where difference and dissent come to be identified as existential threats to national security that need to be silenced and eliminated. Hence, as governments pay lip service to human rights norms that are considered as 'scripts of modernity' (Krasner, 1999) signaling membership to 'the civilized nations', they endeavor to maneuver their obligations in the context of counter-terrorism through acts of securitization.

Therefore, this study focuses on the interplay between language and policy, in an attempt to investigate how these two terrains shape the status of rights vis-à-vis security. The relationship between counter-terrorism policies and the security narrative is a mutually constitutive phenomenon: while the language on terrorism (and hence counter-terrorism) shapes perceptions of threats to national security and who is to be deemed 'the enemy', these perceptions are in turn translated into policy outcomes with real and often severe

consequences. In other words, the legitimization and institutionalization of security policies are two interconnected processes that reinforce one another. Conversely, the security narrative is challenged by the discourse of rights which confronts the stronghold of exceptionalism by invoking commitment to international norms and democratic values. These principles are endorsed as international obligations that state parties ought to follow, often signaling membership to the 'civilized nations'. As a result, the conflicts, bargains, and negotiations among these two narratives, at times borrowing from each other's symbolic repertoire, ultimately produce policies that shape the trade-off between human rights and security concerns.

In order to shed light on the intertwined workings of policy development and political discourse, this study undertakes a dual investigation of the phenomenon at hand. Employing a multi-method qualitative research design, the study is comprised of a comparative analysis of policy development and a frame analysis of the legislative process to offer a comprehensive picture of different dynamics at work. Also known as triangulation, this methodology is conducive to linking discourse to policy output by building on the centrality of context in the analysis. Thus, the first part of the study seeks to trace and map out the historical development of human rights and counter-terrorism policies, in light of international and domestic trends, key events, and actors involved. Moving on from this background, the second part of the analysis aims to investigate the official representation of issues pertaining to national security and human rights through a frame analysis of parliamentary debates. This bipartite research design is formulated to address two cases, namely Turkey and United Kingdom, which convey significant similarities due to their common experiences with terrorism and their approaches to counter-terrorism measures.

Although the UK is a long-established liberal democracy while Turkey still strives in its quest for democratization, not only do both governments adopt similar security policies, but at critical junctures the UK is taken as a model for counter-terrorism legislation in Turkey. Interestingly, such parallels in the policy output are accompanied by similarities in the political discourse, as recurrent concepts, themes, and arguments travel across both settings. Hence, the contexts of Turkey and the UK offer valuable insights into the politics of law-making and how this process is informed by language.

As a result, this plan of research is novel on several grounds. Firstly, it offers a rigorous analysis of how states balance human rights and counter-terrorism, by linking policy outputs to dominant political representations. There is an apparent lacuna in the IR literature when it comes to the tension between human rights and fight against terror, since it is either studied in solely legal terms or from a normative philosophical perspective. In this regard, the contextual and discursive aspect of the interplay between norms and security concerns remains largely understudied. While considerations of both power and morality inform one another in concrete processes of policy formation, cognitive frames prevalent in the cultural pool of meanings and values shape how issues are to be problematized and in turn handled with. Secondly, by bringing together the structural components of frame analysis and the analytical tools offered by the qualitative research programme ATLAS.ti, the study offers a systematic analysis of political language that is successfully applied in different settings. As a result, the research demonstrates how similar representational constructs and policy frames reverberate across both the Turkish and the British cases through visible discursive patterns. Moreover, the study contributes to the literature in demonstrating how counter-terrorism policies have come to culminate in unforeseen

protracted forms of injustice that jeopardize the functioning of democracy in a society. Although the literature focuses predominantly on notorious forms of rights violation such as torture or indefinite detention (Lazarus & Goold, 2007), a less palpable but more pervasive manifestation of such exceptional measures has been the spill-over effect of the security logic to everyday politics and the democratic process. Therefore, the study illustrates how acts of securitization yield serious ramifications for democratic forms of political opposition as they become more and more entrenched in the legal framework.

In what follows, the study is composed of three parts: the first part elaborates the theoretical and methodological structure, the second part offers a comparative policy analysis, and the third part provides a frame analysis of parliamentary debates. *Chapter 1* will delineate alternative accounts of studying security in international relations and how the notion of 'securitization' borrowed from the Copenhagen school is a useful analytical tool for examining the language of security. This chapter also provides an overview of the state of exception borrowing from Schmitt ([1922] 1985) and Agamben (2003), as well as the theoretical foundations of international human rights norms and the resuscitation of (in)securities triggered by terrorism. *Chapter 2* elucidates the contours of the methodology, predicated on a multi-method qualitative research design analyzing policy development and policy frames as two interconnected processes in the cases of Turkey and the UK. Part I will finish off by adjoining the theoretical framework with the methodology. *Chapter 3* depicts the historical development of both counter-terrorism and human rights policies in the UK context, whilst highlighting international trends and key events such as 9/11 as well as 2005 London bombings. On the other hand, *Chapter 4* highlights similar policy dynamics in Turkey, explicating the impact of the EU-accession process in Turkey, especially with

respect to the role of the military, and the onset of a reverse process of securitization that has hindered the momentum of political reforms. Part II concludes with a comparative analysis that traces similar trends in these two contexts. Lastly, *Chapter 5* and *Chapter 6* provide a structured frame analysis of parliamentary debates with the help of ATLAS.ti, pertaining to important counter-terrorism legislation in the House of Commons and the Turkish Grand National Assembly respectively. Once again, at the end of Part III a comparative account of discursive patterns and recurrent themes are presented alongside distinctive national narratives and representations. The study concludes by bringing together policy outcomes and framing patterns, with an aim to illustrate how the language and policy shape and influence each other in the balancing of human rights and counter-terrorism.

Chapter 1. Theoretical Framework and Literature Review: Sovereignty between Security and Human Rights Norms

One of the most salient manifestations of the age-old tension in international politics between international norms versus security concerns is nowadays evidently conveyed in the tense relationship between human rights and counter-terrorism measures. Within this nexus, the field of national security as the sacrosanct terrain of the realist paradigm is juxtaposed vis-à-vis the normative power of human rights principles. While commitment to fundamental rights and freedoms is recognized as a benchmark of sovereignty in contemporary politics, the fight against terrorism and the resuscitation of security interests particularly in the post-9/11 era has given way to contentious practices that tend to undermine the former. At this juncture, the question is how do governments balance the often contradictory entailments of fighting terrorism and human rights obligations? In an endeavor to strike a balance between human rights commitments and national security, states often seek to legitimize the policies and measures they undertake to both domestic and international audiences. As a given issue area is rebranded as a matter of national security, policies that suspend basic rights and freedoms attains legitimate grounds for being enacted. In order to explore various entwined dynamics that are at play in the attempt to balance security and rights, this chapter provides a general overview of the state of the art.

1.1 The Concept of 'Security' and its Study:

The task of defining the concept of security and circumscribing its contours used to be the privileged realm of the realist paradigm, with its emphasis on the military dimension and the security dilemma. Realism has long designated a trivial role to any form of norms, ideas and values, rendering them as epiphenomena that are ultimately manifestations of power politics. Realist scholars view the nation state as the main actor in world politics

upholding their exclusive right to sovereignty, and therefore, international politics (as implied in the wording) is a domain of state interaction underscored by competing national interests and power struggles. As famously put by Waltz, "…discussions of foreign policy have been carried on since 1945, in the language of political realism-that is, the language of power and interest rather than of ideals or norms." (1979: 9). Congruently, Morgenthau indicates that ethics and politics belong to analytically distinct domains, where the former is evaluated by moral norms and the latter assessed by its political consequences. (Morgenthau, [1967] 1993: 13) In a realist world order marked by distrust, since there is no higher authority to resort, states ultimately pursue security via self-help at the risk of inciting insecurity on part of other states. Other states or institutions are not to be trusted, since the anarchic system fuels uncertainty and suspicion regarding others' motives. (Waltz, 1979) While gains for one actor translates as losses for another, cooperation through international institutions or regimes is perceived as promoting the interests of powerful actors, thereby reflecting the extant power relations. (Mearsheimer, 1994) Hence, realism has usually depicted world politics as premised on an anarchic order where might and power capabilities are essential in determining each actor's place.

Although the realist school has historically been the dominant paradigm in International Relations literature owing to its theoretical depth and analytical rigor, particularly with respect to the terrain of security, it has nonetheless remained indifferent towards the growing influence of international norms and how they exert power through logic of appropriateness in world politics. As such, this approach fails to explain why a notion such as human rights that by and large challenges the principle of sovereignty and meddles with a state's relationship with its citizens on normative grounds has become

widely recognized and institutionalized in international politics. This tendency is premised on the main tenets of realism that on the whole overlook other equally compelling yet less tangible dynamics in world politics such as beliefs, values, norms, and identities, in addition to those evident material factors that constitute national interests. Thus, since 1980s prominent figures from different camps of IR theorizing have undertaken the endeavor to redefine the concept of security and propose alternative conceptualizations of world politics to those presented by the realist paradigm. As an 'essentially contested concept' security has come to be defined in myriad different ways, particularly with respect to its referent object and perceptions of threat. Three such endeavors come to the fore, *inter alia*, those approaches that have challenged cardinal realist assumptions, namely the Constructivist Security Studies, Critical Security Studies, and the Copenhagen School. In what follows, this section will provide a theoretical overview of these three relatively novel approaches that have challenged the realist camp at its sacrosanct terrain, the politics of security.

To begin with, the Constructivist research agenda rests on the assumption that security is a social construct that is constituted via intersubjective understandings, rather than an objective entity to be investigated. This position is employed by Adler and Barnett (1998), who take up social constructivism in a way to extrapolate how international communities can replace 'power' as the main source of security in world politics. Borrowing from the Deutschian concept of *security communities*, they argue that a common set of values and understanding of 'proper behavior' engender a process of redefining the concept of power to signify defending those common norms against an external threat. The main argument is that as states become drawn into established sets of social relations in a network, their expectations and behaviors also tend to converge, thereby creating fertile

grounds for peaceful change. (Adler & Barnett, 1998: 3-12) As such, Adler and Barnett introduce identities, norms and values as explanatory variables in security studies, contrary to the power-driven and conflict-laden realist account of world politics. Yet, the nation state is still taken as the main actor in the international arena and also the primary object of security.

One of the mainstay arguments of constructivism is that shared identities, values and norms can culminate in institutional entities promoting a common culture of 'proper' state behavior. In this sense, Katzenstein's constructivist account of security is illustrative of how the perception of and meanings attributed to central concepts such as security and power exerts an impact in world politics. Particularly vis-à-vis the liberal and realist strands of theorizing, Katzenstein evokes 'culture', 'identity', and 'norms 'as explanatory concepts that can be applied to the traditional terrain of military security. (Katzenstein, 1996: 4-10) In so doing, together with Jepperson and Wendt, Katzenstein argues that: 1) cultural or institutional environments exert an impact on national security outlooks; 2) global and domestic settings (pertaining to culture and norms, rather than material elements) shape state identity; 3) a change in identity translates as a change in national security agenda; 4) state identities are intertwined in normative inter-state structures; and finally 5) state actions in turn have a bearing on such structures. (Jepperson et. al., 1996: 52-53) Through these central assumptions, the impact of inter-subjective understandings and normative considerations on the traditional military account of 'security' are developed.

All in all, the Constructivist camp brings into play ideational and normative factors that have long been absent in the realist paradigm. They aim to point out the ways in which identities, norms and values come to shape national interests and security agenda of nation

states. Nonetheless, the constructivist account has been criticized for keeping intact the main realist premises, such as a positivist research agenda and a traditional conceptualization of national security. According to Smith (2005), the constructivist security studies rests on "a form of rationalism" shared with realism, in which ideational factors merely work to supplement the material explanations proposed by the latter. A similar point is also made by Waever (2002), who maintains that such a dichotomous conceptualization of idealism versus materialism fails to capture "…in a systematic way … why the same cultural and historical background can sustain highly contradictory foreign policies, or to explain change, especially discontinuous change." (2002: 22) This shortcoming is important with regards to explaining changes in policy orientation and differences in various contexts with similar historical experiences. Secondly, this line of constructivism is preoccupied with the security of the nation state, thereby failing to employ a critical angle towards extant power relations this notion is premised on. Subsequently, by failing to criticize the conventional conceptualization of 'national security' constructivism tends to overlook security of the individual or the society, as pointed out by the Critical Security Studies approach.

The starting point of Critical Security Studies (hereafter CSS) is a critique of the realist approach to security, which they deem as part of the problem of world politics today. Borrowing from Cox's distinction of 'problem solving theories' versus 'critical theories', CSS considers realism to be "…a textbook exemplar of a problem masquerading as the problem-solver," (Booth, 2005: 4) since it takes into account a single depiction of reality and endorses predefined questions that entail predefined answers. As an alternative, CSS engages with a wider array of issues that does not privilege extant power-holders as the main political units and undertakes what is termed as a *post-naturalist* research agenda that

refuses to equate social sciences with natural sciences (the latter being an attribute of positivist epistemology). (Ibid.: 10-11) Thus, the definition of security as it takes place in the CSS approach is defined as the following:

> Security is conceived comprehensively, embracing theories and practices at multiple levels of society, from the individual to the whole human species. "Critical" implies a perspective that seeks to stand outside prevailing structures, processes, ideologies, and orthodoxies while recognizing that all conceptualizations of security derive from particular political/theoretical positions; critical perspectives do not make a claim to objective truth but rather seek to provide deeper understanding of prevailing attitudes and behavior with a view to developing more promising ideas by which to overcome structural and contingent human wrongs.
>
> (Booth, 2005: 15-16)

Since the political realm is not exempt from considerations of morality, CSS undertakes the task of discovering possible niches for social progress through the use of 'immanent critique'. In line with this stance, security within the contours of CSS theorizing is conceptualized as "an instrumental value" in world politics that does not consist of a military dimension, but rather includes other equally pressing issues such as poverty, environmental degradation, communal identities that are under threat…etc. (Ibid.: 23) It is claimed that the concept can be utilized to promote emancipatory politics if it is adopted to different issue areas that are not present in the realist agenda. As put by Booth, "[w]hile never neglecting the military dimension of security, students of CSS must seek above all to try to overcome the traditional prioritizing of the victims of politics (wars/tyranny) over the victims of economics (poverty/oppression)." (Ibid.: 110)

In a similar vein, Buzan (1983) argues that the concept of security is a multifarious phenomenon that cannot be adequately grasped through a unidimensional vantage point. Instead, he offers an account of security that encompasses five interwoven sectors, namely

the military sector along with the political, the economic, the societal, and the environmental sectors. According to Buzan, the neorealist agenda posits that any formulation of security, be it national or international, is set against the background condition of anarchy, which in turn endorses three preconditions: states are the main referent object of security, national security is a relational and interdependent phenomenon, and hence security can only be relative not absolute. (1983: 22-23) Buzan disagrees with this stance, and instead contends that security has many referent objects on different levels of actors that cross-cut the abovementioned five sectors, from the subnational individual level to the international system as a whole. (Ibid.: 26) What is novel about this multifarious perspective is that by including the individual dimension into the analysis, Buzan illustrates the ways in which the state might be both a major source of and a major threat to the security of the individual. As such, it can be argued that *inter alia* two salient themes differentiate CSS from constructivist security studies, namely its focus on a variety of sectors in addition to the military sector and its critical stance towards the positivist research agenda. In so doing, CSS is able to overcome the aforementioned criticisms raised against the constructivist account in their plea to offer an alternative to the realist paradigm.

One of the most important points raised by the CSS approach pertains to the dichotomous characterization of ideational factors versus material factors that is prevalent in constructivist studies, particularly with respect to the conceptualization of the state. Buzan (1983) offers an alternative account of the nation state that interconnects these two dimensions of this political entity. Whilst the physical base of the state is constituted by the population and the territory, the institutional base comes into being in order to govern the latter. On the other hand, the 'idea' of the state is significant in acquiring *legitimacy* which is

predicated on the 'nation' and its organizing ideology. As such, Buzan puts forth the issue of 'national identity' as a critical element of the security problematique, despite the fact that the relationship between the state and the nation is not straightforward most of the time. Moreover, the official ideology of the state is also an inextricable component of the legitimacy of the state that is embedded in the institutional make-up, wherein the grounds for determining relations between the government and the society are set. (1983: 70)

This conceptualization is quite conducive to an analysis of state legitimacy in the nexus of international norms versus national security concerns and operational for acquiring a better grasp of the ideational aspects of the state apparatus. Building on from this point, it is plausible to investigate how states acquire legitimacy via the official state ideology and the construction of a 'national identity' that supplements the latter. Moreover, it allows the analyst to inquire in what ways such national interests are posited as being under threat in a security environment, thereby legitimizing exceptional measures. Such a framework is largely absent in the realist account that opts to focus on the material bases of the nation state and their positioning in the wider international context, with the exception of classical realism which indeed pays considerable attention to the power wielded by ideational factors such as state ideology and nationalism.[2] (Carr, [1939] 1964; Morgenthau, [1967] 1993)

Lastly, bringing to the fore the indispensable role played by language, the Copenhagen school defines security as a situation in which a given referent object faces an existential threat, hence security is a search of survival. In this respect, "[t]he invocation of

[2] E.H. Carr (1946) in his canonical work explains in detail the political weight of both the moral basis of the nation state as well as the importance of the power of propaganda and rhetoric. Similarly, Morgenthau (1993) in his account of political power makes a lucid differentiation between legitimate and illegitimate state power by highlighting the indispensable role played by ideological elements in the international arena.

security has been the key to legitimizing the use of force, but more generally it has opened the way for the state to mobilize, or to take special powers to handle existential threats." (Buzan et. al., 1998: 21) Once an issue-area is deemed as a security issue *per se*, state officials are evoking a sense of emergency that bestows upon them the right to use extraordinary measures in overcoming such threats. Consequently, any issue can be placed in a spectrum that ranges from *nonpoliticized*, *politicized* and to *securitized*. The first denotes a situation where an issue is not deemed as susceptible to public debate or decision-making, while the second is a condition in which a given issue is taken into consideration for governmental decision and policy implementation. On the other hand, a securitized issue is one which is 'beyond politics', requiring emergency measures that are exempt from the rules of 'normal politics'. (Ibid.: 23) Thus, the framing of an issue bears tremendous significance when it comes to the juncture it is dealt with. This is an essential theme that runs throughout this study, in order to illustrate the ways in which the perception and subsequently the categorization of an issue determines the policy outcome, particularly depending on whether it is classified as a 'security' issue or not.

As such, the study of security for the Copenhagen school is a study of 'discourse' and 'political constellations'. The main question is therefore the following: "When does an argument with its particular rhetorical and semiotic structure achieve sufficient effect to make an audience tolerate violations of rules that would otherwise have to be obeyed?" (Ibid.: 25) This problematique is interconnected to the central research questions of this study, which seek to investigate how the framing of counter-terrorism policies takes place,

and the extent to which such framing justifies the suspension of human rights obligations.[3] Congruently, the act of securitizing manifests itself on the rhetorical plane and displays a certain discursive logic (i.e. an existential threat and emergency action). As put by Buzan et. al., "[f]or the analyst to grasp this act, the task is not to assess some objective threats that really engender some object to be defended or secured; rather, it is to understand the process of constructing a shared understanding of what is to be considered and collectively responded to as a threat." (1998: 26) In other words, the concept of securitization is to be understood as a *speech act*. Still, certain conditions need to be met for the speech act to operate: firstly the internal condition of the grammar of security including the conceptualization of an existential threat and a scenario of handling it; secondly the external condition of the context and social actors which can involve political actors that articulate security concerns, and thirdly the citizens as the audience of the speech act. (Ibid.: 32-34) These components articulated by the Copenhagen school will form the backbone of our study, as the internal composition of the discourse, the actors involved, and the context are inseparable elements of the analysis.

The Copenhagen School distinguishes itself from CSS which employ a similar theoretical perspective. What they have in common is a critical stance towards traditional accounts of security and a focus on the social construction of the concept. Yet, unlike the Copenhagen school, CSS is premised on the assumption that since key concepts are socially constructed, emancipation is possible. This is exemplified in its reconceptualization of

[3] A point that needs to be stressed is that the Copenhagen school states that framing a certain issue as a security issue entailing emergency measures does not in itself culminate in securitization, but merely constitutes a *securitizing move*. The act of securitization fulfills itself only when it finds a resonance through its audience, which accept the arguments that legitimizes the necessity of emergency measures, thereby granting the right to condone infringement of established rules.

security to connote 'human security', thereby attributing an instrumental value to the concept. Subsequently, CSS incorporates different aspects of the security problematique, such as unemployment, pollution, poverty…etc, and as such treats threats as 'real' and objective. Buzan et. al. (1998) instead opt to remain within the traditional purview of the notion of 'security' since they argue that once constituted, socially constructed phenomena often have a structure of their own and remain largely intact. Yet, by understanding the dynamics of such structures one can avoid the processes of 'securitization', which is the expansion of the security outlook upon other areas of social and political life. Thus, Copenhagen school sticks to the traditional domain of security and underscores its discursive and constructed disposition, while being critical of such expansion[4] (Ibid.: 204)

This point is also echoed by Waever in his criticism of over-stretching the boundaries of security to a point where it signifies every aspect of human life that is deemed desirable and loses its explanatory power. (Waever, 1995: 47) Waever is adamant in remaining in the traditional terrain of 'national' security, and insists that the subfield of security has "an established set of practices and…has a rather formalized referent," contrary to a viewpoint of "security of whomever/whatever…" (Ibid.: 48) He is also critical of Buzan's (1983) early tripartite model that includes the individual and international levels in addition to the state level as objects of security. Yet, Buzan asserts that this move was intended to demonstrate how state practices have significant ramifications on different levels. Hence, at the last instance both Buzan and Waever occupy a position that prioritizes the concept of national security in order to asses in what ways conventional security issues are extended onto non-military areas. It is indicated that while hard-core military

[4] In so doing, they regard their work as radical constructivism.

connotations have diminished in contemporary world politics, the understanding of 'threats to sovereignty' employ a prevalent position. In this regard, the logic of war imbued with motives such as challenge/resistance, offense/defense, victory/defeat, is expanded to different sectors. (Waever, 1995: 50-54)

The conceptualization of security as a *speech act* enables the analyst to observe situations where the state elites endeavor to gain control over an issue by rendering it a matter of 'security'. Through the act of framing, the state and its officials retain a special position to determine national threats and declare control over it. As put by Waever, "[b]y uttering security, a state-representative moves in a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it." (Ibid.: 55) As such, Waever's account of security differs from CSS in that security is not construed as something positive and desirable to be carried on other issue-areas, but quite to the contrary, it is depicted as a negative phenomenon that ought to be limited. (Ibid.: 56) Therefore, a more inclusive redefinition of the concept that is advocated by the critical approach is refuted in favor of the classical understanding, which enables the analyst to grasp articulations of security by elites.

As illustrated above, these three camps of security studies convey distinctive similarities as well as clear points of departure (See *Table 1*). All three approaches undertake a critical assessment of the mainstream paradigms as a starting point, primarily the conventional conceptualization of security prevalent in the realist school of IR theorizing. Both the constructivist camp and Copenhagen school opt to maintain the conventional terrain of 'security' in world politics. Nonetheless, while constructivism adopts this stance in order to verify the explanatory power of sociological concepts such as culture

and identity, Buzan and Waever are motivated to demonstrate how the logic of security permeates to nonconventional sectors as a result of securitizing discursive acts by state elites. In so doing, both approaches place the nation state in the center of their research agenda. On the other hand, CSS scholars prefer a more inclusive redefinition of security that can respond to new forms of threats such as poverty or environmental degradation. Their focus on individual security is both an empirical and a normative stance that aims to bring about emancipatory politics, a viewpoint that is not shared by the other two camps.

This study shares with the Constructivist scholars an intersubjective understanding of security as a social construct that can exert its power through the logic of appropriateness as well as the logic of consequence. Yet, the epistemological and theoretical premises of Constructivism render this approach susceptible to the criticism of merely supplementing the voids left by the realist research agenda, in the absence of a critical conceptualization of the notion of 'security' itself. When it comes to the research agenda of Critical Security Studies, this study concurs with the point that most 'positivist' theories fail to acknowledge the workings of power and ideology in the acts of defining and redefining social phenomena that are taken as hard objective facts. Nevertheless, the theoretical framework of this study does not adopt an inclusive conceptualization of 'security' or an objective of emancipatory politics for the reasons congruent to those presented by the Copenhagen School. Instead, and in line with the latter approach, a limited and traditional operationalization of 'security' is applied as to shed light on acts of securitizing by state elites, as well as the wider ramifications of this act in policy making. Therefore, the framework provided by Copenhagen school is quite conducive to the study of the trade-off between counter-terrorism and human rights. Particularly, Waever's focus on securitization is fruitful for

analyzing how state actors endeavor to attain legitimacy by framing hitherto non-securitized issues as existential threats to the sovereignty and national interests, which in turn translate to policy outcomes. The next section will elucidate what is meant by the concepts of 'sovereignty' and 'legitimacy' in greater detail.

Alternative Schools of Security Studies	Contribution	Shortcomings
Constructivism	-social construction of security -intersubjective process -ideational factors	-does not problematize the traditional notion of 'security' - fails to criticize extant power relations -dichotomous conceptualization of ideational and material factors
Critical Security Studies	-critical analysis of the conventional security apparatus -interconnects the ideational and the material foundations of the nation state -instrumental value of security	-over-stretches the concept of security into all forms of human security (poverty, environmental degradation…etc.) -mars its analytical strength
Copenhagen School (Securitization)	-securitization as a speech act, not an objective condition -maintains the traditional conceptualization of security to illustrate how it expands onto other areas	-most befitting for the topic of investigation, yet insufficient by itself -needs to be supplemented by other theories in order to better address the research questions

Table 1 Alternative Approaches to Security

1.2. Sovereign Power and the 'State of Exception':

Most theoretical accounts of 'sovereignty' adopt a Hobbesian understanding that is based on the capacity of the state apparatus to provide security to its citizenry. According to Burke, "…the modern idea of the political community- the Westphalian sovereign state based on the disappearance of individuals into the unity of the nation- is premised on a brutal and deeply relativistic claim about security." (Burke, 2009: 65) While the nation state continues to retain the sole authority on security matters, the 'sovereign' is entitled not only to revoke the established legal order for the sake of security, but also to designate those elements that pose a threat to the well-being of the nation. This study opts to construe the concept of sovereignty along the lines of both as an authority to determine threats to national security and concomitantly as a form of power that ultimately relies on legitimacy. This section will firstly explicate the concept of sovereignty through the authority to declare a state of exception and designate those elements that pose an existential to the nation.

By virtue of being the single entity to demarcate the state of exception, the sovereign stands as the ultimate authority to confirm and guarantee the validity of the law within the borders of a nation state. Schmitt defines the sovereign as the one "…who decides in a situation of conflict what constitutes the public interest or the interest of the state, public safety and order…and so on." (Schmitt, [1922] 1985: 6) Yet, the exception cannot be encoded in law and thus takes place outside the legal order. Schmitt contends that the only clause that can be incorporated in the constitution would be designating authority to who can act on such situations. Moreover, holding the authority to decide on the state of exception along with the power to specify the enemy within, Schmitt ([1922] 1985) construes the act of eliminating radical political groups from domestic politics within the purview of *sovereign power*. The monopoly over declaring the state of exception also entails the power

to determine how this exception is to be handled with and when to shift back to the normal order of politics. (Ibid.) As such, the principle of sovereignty confers the state contours of legitimate authority and concomitantly the means of sidestepping it by invoking the notion of security.

Schmitt maintains that the sphere of politics is distinct from other spheres such as morality or economics, and as such, it is imbued with a concern over who is friend and who is deemed the enemy. This distinction is constructed by the state, who in turn can command its citizens to sacrifice their lives to fight the enemy in case of war. The recognition of the enemy does not stipulate its perception as evil or a potential competitor, but relies merely on the grounds that the enemy is the other or a stranger. Schmitt argues that the friend-enemy divide is different from other divides such as good-evil, aesthetic-ugly, or economically detrimental-beneficial. An existential difference assumed by an alien instigates a threat to one's way of life, and thereby justifies conflict. In other words, the 'enemy' does not necessarily have to be 'evil' or 'detrimental', the mere fact that s/he is existentially different is sufficient in itself. ([1927] 1996: 27) Thus, in this line of argument according to Schmitt "...war is the existential negation of the enemy." (Ibid.: 33)

For the state to be able to ordain risking one's life is what discerns this institution from other forms of organizations and places it above all others. Hence, Schmitt's conceptualization of the state is in line with Hobbes' Leviathan, whereby the primary task of the sovereign is to ensure order and safety within the given legal framework, and with the help of armed forces and bureaucracy. (Schmitt, [1927] 1996: 20-35) Since the principal aim

of the state is to preserve itself, the sovereign can suspend the extant legal order[5] in circumstances deemed as posing an existential threat, thereby demonstrating its superiority over the law. (Schmitt, [1922] 1985: 12) Concurrently, the state is also the ultimate authority to classify the enemies 'within', those groups of individuals that jeopardize the existence of the political community.

The theme of friend-enemy distinction is also taken up by Blaney and Inayatullah (2000) from the vantage point of 'difference', who revisit the concept of Westphalian sovereignty which they take as one of the most preponderant principles in international politics. Taking the issue of difference versus equality as a starting point, the authors elucidate the underlying concern of the Peace of Westphalia: the containment of difference (manifestly religious and cultural difference) within the borders and the purview of the state, while acknowledging equality amongst the latter. The contemporary repercussion of this phenomenon is the attribution of 'difference' to populations of distinct states, compared to the conceived 'sameness' within borders. Congruent to Schmitt's account, these scholars indicate that the construction of 'sameness' versus 'difference' engenders a political environment wherein diversity is perceived as a threat, whether it is found within the borders of a nation state or pertaining to other cultures and societies. The function of demarcating difference and determining 'otherness' is crucial in the context of counter-terrorism, as those political elements or social groups within and beyond the borders of a society that are deemed as belonging to this category usually become suspect communities and thereby subject to 'emergency measures' executed by state agents.

[5]Which does not equate to anarchy or chaos, but to yet a different order under the unlimited powers of the sovereign.

In a similar vein, Giorgio Agamben (2003) elaborates on the Schmittian formulation of the 'sovereign' as the one to decide on 'the state of exception', applying it particularly in the post-9/11 political context. Resting on the notion of 'necessity', the state of exception stands at the grey zone between law and politics. He claims that the modern state of exception is a product of democratic governments, not absolutist states, wherein "the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system [takes place]." (2003: 2) Thus, what took place in the aftermath of September 11 is a legal limbo in which the individual is stripped of any legal status and therefore fundamental rights. As a staggering practice, the authorization of 'indefinite detention' for noncitizens suspected of terrorist acts on 13 November 2001 has ensued in a category of 'detainee' in the US, rendering such individuals to be susceptible to what Agamben defines as the "de facto rule" of the sovereign. Previously issued the same year on 26 October, the U.S.A Patriot Act bestowed the attorney general the power to take into custody aliens suspected of being involved in activities against national security, to be either released or charged by a criminal offense within seven days. Nevertheless, the introduction of 'indefinite detention' for non-nationals suspected of involvement with terrorist activities signifies their containment outside of the legal order, as they are not charged with a crime according to the American laws. (Ibid.: 3) An equivalent measure has been adopted in the UK on 19 November 2001 with the enactment of *Anti-Terrorism, Crime and Security Act 2001* that has introduced indefinite detention of non-citizens, ensuing in the derogation from ECHR.

In contemporary politics, there seems to be a proclivity among Western democracies to ingrain the declaration of state of exception within the purview of the security paradigm.

Institutionally speaking, the state of exception entails the extension of executive powers to include 'decrees having the force of law'. This phenomenon translates itself as the blurring of the lines that demarcate legislative, executive, and judicial powers of the state. (Agamben, 2003: 4-7) Thus, the principle that 'necessity creates its own laws' becomes enshrined in the institutional make-up of the state apparatus, notwithstanding the fact that necessity is a subjective notion that comes into life only when it is uttered. (Ibid.: 30) Consequently, in line with Schmitt's account, the state of necessity according to Agamben is a "space devoid of law," which does not equate with a state of nature, but rather connoting the suspension of law. (Ibid.: 50) Agamben's account of sovereignty is imperative in shedding light to the processes framing 'extraordinary measures' and how this practice is imbued within the notion of sovereignty itself. Hence, the 'sovereign' is endowed with the capacity to sidestep the grounds of its own authority and revoke legal principles for the sake of security. This conceptualization has important bearings in the context of counter-terrorism, as it succinctly illuminates how state actors are able to violate rights and freedoms whilst invoking legitimacy. A multitude of practices that overtly sidestep due process and basic rights, such as extremely long pre-trial detention periods, being deprived of a right to defense or a right to be informed on what charges the individual is suspected of, are cogent examples of this phenomenon where individuals are dealt outside of normal criminal procedures as existential threats to be contained.

As can be seen, the concept of 'sovereignty' is a complex phenomenon that lends itself to different articulations. In the accounts provided above, the first characteristic that comes to the fore is the sovereign's role as the provider and maintainer of security in a given territory. Schmitt in his famous account identifies the sovereign as the one who can stand

out of the law while concomitantly vindicating the legal order when circumstances require it so, particularly in times of pressing security concerns. By virtue of being the sole provider of security, the sovereign is depicted as the ultimate authority to decide on the friend-enemy divide both inside its borders and outside. Blaney and Inayatullah illustrate how this theme reverberates in contemporary politics through acts of 'othering' those ways of life that are deemed alien to 'us'. Likewise, Agamben adopts Schmitt's conceptualization to explain the ways in which democratic states have normalized and institutionalized the 'state of exception' as a practice of sovereignty in the post-9/11 era. These accounts are helpful in answering the question of how states can legitimately revoke established norms and principles in the context of national security.

Nonetheless, in order to place the notion of sovereignty within the framework of logic of appropriateness, one must first elaborate what is meant by 'legitimacy'. Defined as "a political space, but not an unbounded or normatively autonomous one," the concept of *legitimacy* only makes sense in the context of an international society that is built upon a set of principles, norms and values. (Clark, 2005: 29) In contemporary politics, universally accepted principles and norms have come to constitute one of the primary benchmarks of sovereignty, and thus exert a limit on the execution of 'sovereign power'. This conditioning has been taken up by David Held: "Sovereignty can no longer be understood in terms of the categories of untrammeled effective power. Rather a legitimate state must increasingly be understood through the language of democracy and human rights. Legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards." (2004: 137) The next section will elaborate international norms in

general and human rights principles in particular that demarcate the standards of appropriate state behavior.

1.3. International Norms and Human Rights:

Scholars from different paradigms have come to acknowledge the fundamental role played by international norms in conferring legitimacy to state actors in the post-war world politics. Finnemore and Sikkink define a norm as a "standard of appropriate behavior for actors with a given identity." (1998: 891) Pertaining to the symbolic order, international norms attribute 'meaning' to state conduct and endeavor to shape it in line with globally accepted principled beliefs. (Khagram et. al., 2002: 11-12) Due to their ideational disposition and power of invoking a sense of justice and legitimacy, international norms have been utilized, appealed to and promoted by different actors within world politics, such as international organizations, nation states, and civil society actors that operate within and across state borders. This is also the case for international human rights, as they are being ever more incorporated into the discourses of various political actors.

Normative and ideational concerns have always underscored international politics, even within the realist paradigm in the form of legitimacy and ideology. (Carr, [1939] 1964; Morgenthau, [1967] 1993) During the behavioralist revolution of 1960s and 1970s the focus of research premised on 'observable' variables, while concern over norms and ideas have been sidelined only to resurface in 1908s under what has been known as the 'ideational turn'. (Finnemore & Sikkink, 1998: 248-252) But how norms come to be accepted and endorsed by political actors in the first place? In order to grasp such change, Finnemore and Sikkink elaborate on the life cycle of norm, where norm entrepreneurs operating on a transnational platform strategically frame issues in order to evoke a sense of appropriateness. According

to Finnemore and Sikkink, increasing number of states start recognizing the newly emergent norms due to a concern over legitimacy as well as international and domestic reputation. (Ibid.: 255-258) As a product of a process of socialization, it is argued that these norms become internalized and institutionalized within the state apparatus. (Ibid.: 260)

International human rights principles *inter alia* have become one of the most influential norms accepted in international politics since the end of World War II, as a result of and a response to the arbitrary use of power by governments. The concept has come to signify a limitation to the employment of state power against its citizens, as 'universal' and 'inalienable' rights that every individual is entitled *qua* humans. In world politics today there is a general acceptance of the moral status of human rights norms mainly in the West, as manifested in the fact that every state is part of at least one human rights instrument and no state opts to overtly denounce such rights. (Ruggie, 1983: 98) As put by Brown, "[t]he growth of the discourse of rights over the last fifty years has been one of the most striking changes in both the theory and practice of international relations." (Brown, 2002: 116) The growing articulation of this discourse is due to its ability to be applied to claims to justice over different issues and in different contexts (Freeman, 2002), as well as in its power to evoke an understanding of moral objectivity imbued with 'universalism' (Langlois, 2002).

As a result, many scholars have come to celebrate what has been termed as 'the global human rights regime', premised on various international bodies and conventions that have ingrained these sacrosanct rights, owing to the normative power they hold in world politics (Donnelly, 1986; Brown, 2002; Forsythe, 2000). Such celebrations are generally accompanied by arguments about the diminishing prevalence of state authority within its own territories and the growing significance of international norms upheld by respective

institutions, thereby heralding the insufficiencies of the realist paradigm in explaining contemporary politics. (Brown, 2002) Moravcsik suggests that unlike any other form of international institution created for inter-state cooperation, human rights regimes are distinct for regulating the *internal* activities of states, thereby granting individual citizens the power to challenge their own government. (Moravcsik, 2000: 217) States might be compelled to sign human rights conventions even though they are lukewarm or reluctant towards these principles, since being signatories to these conventions are perceived as "part of the script of modernity." (Krasner, 1999: 33) These 'cognitive scripts' can exert the power to circumscribe boundaries of 'appropriate' behavior for nation states at a given context, such as the aftermath of World War II. In so doing, the concept of human rights regime confers a new set of responsibilities upon the nation state, one that bestows groups and individuals equal standing with states in the international arena. (Vincent, 1986: 93)

Despite the fact that most international law pertaining to human rights are non-binding (except for the European Convention on Human Rights), it is argued that they nonetheless exert their influence by setting certain standards for being a member of the international community, and in so doing, converge states' expectations with respect to treating their citizens. (Freeman, 2002: 94-97) Thus, states are no longer the sole authority over their own population, since legitimacy and international standing is conditional on a respect for human rights (Evans, 2005: 1047). Subsequently, the concept of human rights, as they are enshrined in international bodies and documents, have not only come to constitute a legitimate moral claim that can be utilized by individuals or groups against state oppression, but also as a means to distinguish legitimate practices of state sovereignty.

From this vantage point, Reus-Smith repudiates conceptualization of human rights regime as "mutually contradictory" in relation to the sovereignty principle, and argues instead that the legitimacy of the latter (i.e. legitimate statecraft) has come to be defined in terms of the protection of fundamental rights. (Reus-Smith, 2001: 520) As a parallel development, the International Commission on Intervention and State Sovereignty (hereafter ICIS) has endorsed a different conceptualization of the principle of sovereignty, one which is construed as a responsibility to protect the rights of its citizens rather than a right of states. (Chowdhury, 2011: 40) In so doing, it is suggested by Chowdhury that the ICIS has merged the internal and external conceptualizations of sovereignty and imbued it within the contours of international norms. (Ibid.) Hence, generally considered as a discourse appropriated by actors operating in what has been termed as 'global civil society' in order to justify their call for a sense of justice and universality, it is possible to suggest that international human rights norms can also be articulated by state actors for a sense of political legitimacy.

In this respect, human rights constitute one of the most important contemporary international regimes of our age, by promoting the acceptable scope of state-conduct towards its citizens, manifested in international governmental and non-governmental organizations, coupled by international legal documents. As cogently put by Savic, "[t]he unhindered functioning of human rights, and related to this, the democratic regulation of political and legal life, have become standard criteria for the legitimization of modern states." (Savic, 1999 :5) The issue of legitimacy carries material bearings as well, since human rights records of a country is one of the key indicators for allotting international loans or political/military help. (Ignatieff, 2001:11) This phenomenon is posited by Ignatieff: "Naming and shaming for human rights abuses now have real consequences."

(Ibid.: 12) As a result, an appeal to international human rights by state actors has become a common phenomenon, since respect for such norms has come to constitute one of the pillars of legitimizing sovereignty.

The most sophisticated account of the role human rights play in international politics have been elaborated in Risse et. al.'s work, entitled *The Power of Human Rights* (1999). The spiral model of human rights change that the authors have developed is predicated on the notion of socialization, defined as "[t]he process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour which then lead to changes in identities, interests, and behaviour." (Ibid.: 11) This notion is borrowed from the social constructivist theory of IR, which lays emphasis on ideas and norms in shaping state's behaviour. In their account of norms socialization, the authors provide a two-fold critique to the dominant rationalist approaches in IR theory, which take states' identities and interests as given and fixed and state behaviour as mainly influenced by material conditions. Firstly, they elucidate how interests and identities are formed via intersubjective and cognitive processes, thereby culminating in the development of collective meanings, as well as a set of values and norms that guide state behaviour. This vantage point is significant with respect to the growing salience of international human rights that have come to constitute a major element in determining the 'civilized nations', and in shaping actors' identities and interest that aim to be part of it. Secondly, Risse et. al. circumvent the problem of treating states as a "black box," by drawing attention to the domestic, international and transnational dynamics that exert a considerable impact on state policies. (Risse & Sikkink, 1999.: 7)

The complex model that these scholars have developed is premised on a five phase process of norms socialization. The first phase of *repression and activation of network* involves the interaction of transnational advocacy networks with domestic societal opposition in gathering enough information to put the norm-violating state on the international agenda and alerting Western governments. (Ibid.: 22-23) This phase is followed by a phase of *denial*, in which the norm-violating government not only rejects the accusations themselves, but also questions the legitimacy of the opposition, thereby avoiding engagement with these actors. (Ibid.: 24) The third phase of *tactical concessions* occurs vis-a-vis incremental international pressures, engendering the government to resort to instrumental adaptation and strategic bargaining over concerns of their international image or domestic legitimacy. Towards the end of tactical concessions, transnational networks and domestic opposition acquire greater recognition, and their claims are taken more seriously by the government, leading to the fourth phase of *prescriptive status*. (Ibid.: 26-28) The transition to this phase is marked by concrete steps such as the ratification of international human rights doctrines, institutionalization of human rights norms in the domestic law, establishment of complaint mechanisms, and articulation of human rights in the discourses of governments. Lastly, the final phase of *rule-consistent behaviour* is established when human rights are institutionalized and norm compliance becomes habitualized in state conduct. (Ibid.: 32-33)

Thus, it can be argued that Risse et. al.'s work has been predicated on the following assumptions:

a. States have an a priori interest to avoid human rights norms.

b. Initiation of the spiral model necessitates the involvement of civil society actors.

c. The spiral model applies to the socialization of 'abusive' states that have a tendency of defying international moral conduct. In so doing, it takes for granted that 'liberal western states' are part of a transnational advocacy network that aims to promote human rights.

As noted earlier, human rights used to be construed as inimical to the sovereign power of the state since it entailed intervention in domestic affairs, however, in contemporary world politics, the concept has come to constitute one of the main pillars of sovereignty. This is due to the legitimacy conferred by the concept, which might yield material benefits, such as membership to international organizations, international funding, or even appeal to the relevant constituency. Hence, this study holds that even in the absence of the first phase of the spiral model, that is state repression followed by subnational and international reaction, states have an interest in exhibiting a stance that upholds human rights principles in order to acquire both internal and external legitimacy. Moreover, the logic of causality in the model presumes that international pressure is initially instigated by local or international NGOs, which might not be the case in the presence of an international monitoring institution (an obvious example would be the European Union or the Council of Europe). Risse et. al.'s theory rests on an *ex ante* scenario in which a substantial repression takes place that is able to trigger national and international responses and thereby initiate the spiral model. This study argues that states might be compelled to straighten their human rights record and legislation without a significant involvement of civil society actors if there is a considerable influence of an international institution, particularly in the presence of clearly set conditionality.

Another problematic assumption is that the model deals with 'abusive' states and how they are 'socialized' into complying with international human rights norms, but not

possible regressions in liberal democratic states. This perspective condones the violations inflicted by the liberal democratic states that have long extolled the human rights ideal, or instances where hitherto granted and protected human rights are withdrawn under conditions deemed as 'state of emergency'. This is a rather pervasive phenomenon particularly in the aftermath of 9/11 events, as a growing number of liberal democracies have adopted counter-terrorism measures that are debilitating for human rights principles. Hence, a key vantage point adopted by this study is to investigate in what ways consolidated democracies sidestep human rights principles by bringing into play the language of security and how such endeavor is perceived by the national and international audiences.

1.4. Terrorism and Counter-terrorism:

There has been a general tendency in the post-9/11 era on part of state officials and the measures they put forth to sidestep rights and freedoms as obstacles in the pursuit of 'national security'. Particularly with respect to counter-terrorism legislation since the 'War on Terror' a perceived inherent trade-off between human rights and security concerns tends to undergird this balancing act. Golder and Williams (2006) explicate some common features that can be traced in counter-terrorism measures in the aftermath of 9/11: firstly, these new laws undertake defining the concept of terrorism and terrorist acts, and mostly opt to formulate overly general definitions that cover additional offences; secondly they endow governments with the power to penalize membership to certain organizations; thirdly these measures aim to 'quarantine' the resources of these groups, while the authority of the police is by and large expanded; and lastly, these laws engender changes in deportation, immigration and asylum laws. (2006: 45-47) It is argued that there is a tendency on part of governments that pass counter-terrorist measures as a reaction to recent events, miscalculating the effectiveness of these measures and making rash decisions. Neal (2012)

concurs with this point, suggesting that following a terrorist attack politicians are often inclined to portray themselves as 'doing something'; therefore, hastily passing new pieces of legislation that are difficult to reverse in the future. (Neal, 2012: 265) In turn, these counter-terrorism laws that are predicated on an understanding of emergency and exceptionalism go on to violate long-established civil and political rights to an unnecessary extent.

Yet, on what grounds do officials legitimize the bypassing of long-established rights and liberties in modern democracies? In her investigation of the US, the UK and Australia cases, Wolfendale (2006) notes a shared inclination to posit suspending certain rights and norms of legality as the most befitting strategy to effectively cope with the threats that are conceived as jeopardizing 'our civilization' or 'our way of life'. Wolfendale contends that the fear of terrorism outweighs the actual threat posed by this phenomenon. She asserts that while it is statistically proven that different forms of threats such as environmental disasters or epidemics pose a greater threat to society, counter-terrorism measures evoke future possibilities of terrorist attack and hence enter the realm of *uncertainty*. In so doing, suspension of legal protections and civil rights, along with vast defense budgets are justified vis-à-vis the construction of an inflated notion of 'super-terrorism'. (2006: 753-760) Thus, she indicates that the disproportionate counter-terrorism measures implemented by governments are in themselves grave security threats for individuals.

On the whole, counter-terrorism legislation that has tremendous bearings on how the limitations of certain rights are formulated on the basis of perceptions and interpretations of policy makers, rather than on an objective threat. As a result, by evoking notions such as uncertainty, necessity, and emergency, policy-makers are able to justify the enactment of provisions that contradict with democratic principles. Notwithstanding this aspect of

lawmaking, there is an evident absence in conventional terrorism studies regarding the discourses and representations of terrorism, particularly in the context of liberal democracies (Stokes, 2009: 87), where the last decade witnessed some of the most draconian measures being passed under the banner of counter-terrorism. Still, there have been a number of studies that have addressed novel questions and undertaken innovative approaches in shedding light to this phenomenon. Most of these studies adopt a critical angle to the issue and tend to focus on the constitutive dimension of discourse in articulating terrorism, such as how understanding of threat is constructed and categorized, how subsequent policy outlooks are developed, in what ways the official rhetoric on terrorism shapes/resonates public opinion, and how counter-terrorism measures are legitimized and frame. Therefore, these studies illustrate in what ways liberal democracies have come to normalize illiberal practices for fighting terrorism.

From the vantage point of the legitimate execution of sovereign authority, large-scale policies that entail the use of violence and a great amount of public resources need to be justified in the eyes of the constituents. Such a task requires the construction of persuasive discourse that is imbued with symbols of *necessity*, *urgency* and *achievement* in order to garner public approval and eliminate imminent doubts. One of the leading figures in critical terrorism studies, Jackson (2005) elaborates the inextricable relationship between the practice and the language of counter-terrorism, asserting that the former is premised on the latter. Jackson contends that the language of counter-terrorist measures is neither objective nor incidental, but rather is a product of carefully worked out assumptions and discursive formulations. The central aims of the construction of a language on 'terror' is: "…to normalize and legitimize the current counter-terrorist approach; to empower the authorities

and shield them from criticism; to discipline domestic society by marginalizing dissent or protest; and to enforce national unity by reifying a narrow conception of national identity." (2005: 2) Jackson's account of a political discourse is one which exhibits a certain coherent structure, a network of meanings and underlying assumptions.

What is equally important for a discourse is its relationship to other narratives as well as those concepts or symbols that are deliberately left out. For instance, in the context of 'War on Terror', the construction of a category of 'evil terrorist' is intertwined with the notion of 'innocent Americans', which in turn necessarily rules out the articulation of the possibility of negotiation as a method of conflict resolution. As such, the framing of events and discursive constructions yield solid policy outcomes. This is also the case in the decision to call an event 'political violence' or 'terrorism', whereby the latter conveys a moral judgment rather than a mere description. Hence, discourses are a form of power that in time can become institutionalized and ingrained into the political culture of a society. (Ibid.: 19-23)

The construction of the counter-terrorism discourse juxtaposes extant national myths and narratives and links them with dominant foreign policy discourses based on binary oppositions of 'we' versus 'them' or 'good' versus 'evil'. The decision to exclude certain notions and frames have significant bearings as well as the act of articulating opaque terms and concepts, such as 'terror', 'freedom', or ''civilization'. As a result, a successful discourse that has managed to prevail over other alternative narratives is one which is normalized in the larger society and can be traced in the public sphere. (Jackson, 2005: 153-159) This is also the case in the context of the EU, where the rhetoric on how to fight terrorism has been mutually constitutive with the dominant public opinion, and in turn has

influenced subsequent policy outcomes. In line with the US discourse on terrorism, the language articulated in EU policy-making is similarly imbued with notions of threat to a certain 'way of life' and 'civilization' carried out by networks of individuals that belong to marginalized groups in the society. (2007a: 236) The purported 'way of life' that is perceived as being under threat is usually articulated with conceptions of democracy, human rights, peace as well as the international system *per se*. A recurrent theme that permeates discussions on terrorism is that terrorist groups are taking advantage of the liberal and democratic structures in these societies in order to freely pursue their activities. Jackson illustrates this argument in the EU context by referring to the EU Counter-terrorism Strategy that proclaims "increasing openness" and "free movement of ideas, people, technology and resources" offer a conducive setting for terrorist objectives. (Jackson, 2007a: 237)

While the EU language on terrorism has historically construed this concept as an external criminal activity even in the aftermath of 9/11, the following London and Madrid bombings marked a significant shift in this approach. The ensuing discourse tends to frame terrorism as both an internal and external threat with religious undertones that deems dialogue or diplomacy redundant. (Jackson, 2007a: 237) This argument presupposes that such a new form of threat requires new forms of counter-measures, such as an enhanced usage of surveillance, information sharing with US, and limitations on civil liberties. The upshot of this change of discourse can also be traced in new institutional setups, for instance the establishment of the Office of the Coordinator for Counter-Terrorism, increased administrative powers of the Commission, and new responsibilities for Europol and Eurojust with respect to terrorism. (Ibid.: 241) As such, both in the context of the US and the EU,

new measures and laws are constituted through and backed up by discursive formulations on the nature of the threat and effective ways of handling it.

These theoretical and methodological insights offered by Jackson are invaluable for the purposes of this study. Firstly, he lucidly explicates the fundamental aims of the discourse on terrorism thereby allowing us to investigate traces of the constitutive elements of this security narrative in a systematic way. Hence, his approach to the language of security provides a helpful framework for analyzing how state officials endeavor to balance and subsequently legitimize the trade-off between human rights and national security; and in turn, how these conceptualizations translate into concrete policies. In a similar vein, putting forth the power of discourse in the making of counter-terrorist strategies, Chowdhury and Krebs (2010) highlight the role played by public rhetoric in justifying policy alternatives. In line with Jackson, they argue that discourse employs a central role in deciding on the course of action to be taken, since it determines what constitutes a threat and what alternative routes are deemed plausible and necessary for dealing with it. As put by Chowdhury and Krebs, "…discursive fields constitute the range of socially sustainable counterterrorist rhetoric and thus shape policy outcomes as well." (Chowdhury & Krebs, 2010: 127) Since counter-terrorist strategies acquire authority through their legitimation, they are representational and thus the product of a public process. Hence, the elaboration of an ideal representational strategy entails a clear understanding of the societal context, the target audience to be persuaded and the deliberation of a message.

The normative argumentations articulated by government officials are also addressed by Heller et. al. (2012), who analyze the trade-off between national security and human rights in the post-9/11 period. Turning Finnemore and Sikkink's (1998) 'life cycle' theory of

norms upside down, they argue that amidst the exacerbated environment of security there has been a reverse trend of 'bad norms' diffusion, whereby long-established human rights norms have become eroded vis-à-vis claims of emergency and necessity. It is suggested that the innate value of these norms remain intact despite their infringement and hence, in order to justify such actions actors need to redefine what is 'appropriate' in a given context. This proclivity finds expression in rhetoric such as 'right to security' over the 'right to liberty' for instance. As such, governmental actors utilize their predominance over security issues by resorting to strategic framing such as the appeal for 'exception', the 'trivialization' of rights curtailments, or reaffirmation of certain norms while condoning others (i.e. zero tolerance for torture but not ill-treatment). (2012: 280-288) The authors use *framing analysis* in order to assess how these frames find resonance in target audiences and maintain that the more frequent and convergent particular frames become, the higher it attains resonance from a wider variety of audiences. (Ibid.: 302)

A similar theoretical and methodological angle is undertaken by Pisoiu (2013), who employs frame analysis for investigating the discourses of counter-terrorism measures and their ramifications for human rights norms in the EU and the US. Pisoiu argues that despite the growing literature on the discourse of 'War on Terror', there is a conspicuous absence of studies that focus on counter-terrorism discourse and how it is construed in relation to normative principles such as basic rights and freedoms. (2013: 297) As put by Pisoiu:"…a more thorough analysis of the argumentative structure and mechanisms of governmental counter-terrorism speech, as it relates to breeches of human rights, is necessary both on the empirical and theoretical level." (Pisoiu, 2013: 298) Moving on from the assumption that governmental actors attempt to legitimize and justify norms violating counter-terrorism

measures, Pisoiu suggests that such actors usually resort to the strategy of argumentation and persuasion. In order to justify policies that entail the restriction of fundamental liberties, these policies are 'framed' by drawing on from shared values and beliefs that are available in a cultural pool of meanings. Hence, for instance, the articulation of a neutral issue into a 'threat frame' is tantamount to the securitization of the relevant issue. (Pisoiu, 2013: 298-300) The finding of the study suggests that there are seven main justification patterns were detected, namely *legality* (the proposed measures are in line with the extant legal framework), *judicial* (individuals should be brought to justice), *defense*, *prevention* from future attacks, *protection* of the object of security, operational *effectiveness* (technical necessity of the relevant policy), and lastly the argument of *exception*. Pisoiu maintains that, contrary to the generally held belief the exception argument was hardly salient in the discourse of counter-terrorism, whereas, the pragmatic argument of operational effectiveness was more visible. (2013: 302) The framework provided by Pisoiu is helpful in interconnecting the concept of securitization formulated by the Copenhagen school and critical terrorism studies, by illustrating how certain frames operate to securitize certain aspects of social life, thereby depicting the suspension of rights as legitimate.

One interesting manifestation of the plea for higher security measures and a concern over legitimacy presents itself when state officials resort to the language of 'rights' in order to restrict such 'rights', denoting the normative power of 'rights-talk'. Both the language of security and that of rights are susceptible to a plethora of different interpretations and articulations. Lazarus and Goold (2007) point out that one such example is the conceptualization of security as a right, which sits oddly with the generally held dichotomy between rights and security. The authors suggest that the notion of 'right to life, liberty, and

security' which has been conventionally held to connote freedom from state intervention has been incrementally adopted as a positive duty on part of the state to provide its citizenry. (Ibid.: 18-21) Hence, amidst the tension between fundamental rights and security concerns, Lazarus and Goold point out to new articulations of this theme in a framework of the 'responsibility to protect' invoke a sense of legitimacy on part of the state by virtue of its claim to sovereignty. It is suggested that an alleged 'super-terrorist' threat has culminated in a 'culture of control', where the main task of the state is to provide 'security' to its citizens as a fundamental right. As cogently elucidated by Goold and Lazarus:

> In countries like the United States and the Unites Kingdom, the threat of super-terrorism starkly exposed the limits of the state's capacity to provide security for its citizens. But equally, this threat presented governments with a novel opportunity to develop new and powerful rhetorical arguments, in particular the claim to exceptionalism in favor of increased state power. Seen in this light, the popularity of exceptionalism is a product of a social transformation whereby the legitimacy of late-modern states has become increasingly bound up their role as the guarantor of security and with a politics of security that seeks both to allay and exploit communal feelings of insecurity and fear.
>
> (Goold & Lazarus, 2007: 5-6)

From a different vantage point, Zarakol undertakes a constructivist assessment of different conceptualizations of 'terrorism' by resorting to the modern functions of the state. According to Zarakol, historically the modern state came to replace three sorts of authority, namely the religious, the personal, and the local. In so doing, the Westphalian state has acquired the monopoly over the use of force, a power that is circumscribed within the contours of legitimacy and 'rightful' state action. (Zarakol, 2011: 2313-2314) As such, Zarakol concurs with Schmitt ([1927] 1996) that state's function in providing security does not solely manifest itself physically, but also discursively by being the authority to decide on the distinction between 'friend' and 'enemy'. As put by the author, "[t]he modern state is

tasked therefore by not only providing physical security for citizens, but also the image of control and manageability through categorization and other symbolic ordering acts…" (Ibid.: 2314) At this juncture, terrorism as a concept jeopardizes the certainty and determinacy provided by the state since it challenges orderings and categorizations such as 'citizen/threat', 'stranger/enemy', 'civilian/official'…etc.

Against this backdrop, Zarakol argues that it is possible to make a distinction between what she terms as 'system-affirming' and 'system-threatening' terrorist movements based on the level of ontological threat they trigger in the host state. More specifically, secessionist and national liberation movements that are rendered as 'terrorism' receive more legitimacy and are perceived as less ontologically threatening since their claims rest on the Westphalian ordering of the modern state and imbued with the undertone of territoriality. Such claims to local authority are not ultimately inimical to the international system and thus are named as 'system-affirming'. On the other hand, the 'system-threatening' type of terrorist activity lends its name from the fact that its claims and justification are contrary to the main principles of the Westphalian order. Such instances can be anarchist movements in the past or religiously motivated groups such as the Al Qaeda and Taliban as the most salient manifestation of current political arena. (Ibid.: 2316)

The insight offered by Zarakol is noteworthy, especially regarding the distinction being made on the basis of the perception of different terrorist motives. Such distinction is important to keep in mind in the post-9/11 political environment, particularly in the Turkish and British cases which will be the focus of this research. As both countries have experienced these two different types of groups, namely 'separatist terrorism' of IRA and PKK, as well as religiously motivated incidents such as the 2005 London and 2003 Istanbul

bombings, Zarakol's constructivist classification of different forms of terrorism and their perception is helpful for analytical clarity. The next section will on go to elaborate the methodological contours of this study and offer a detailed account of the two cases that will be the focus of our analysis.

Chapter 2. Methodology: Comparative Policy Analysis and the Language of Law-making

"If counter-terrorism rhetoric were a currency, it would have by now lost all its value through inflation."

(Gearty, 2007: 14)

In world politics today, there is an marked challenge posed by the clash of national security interests and international human rights obligations, particularly in the post-9/11 era as the concept of 'terrorism' has resurfaced realist concerns within and across national borders. A growing number of states are becoming signatories to key international human rights treaties, while concomitantly pledging loyalty to the 'War on Terror' launched by the United States, which often lead to contradictory policies. At this junction, this study undertakes an investigation of the trade-off between international human rights and national security concerns in national contexts. As such, the study addresses the following questions:

1. How do state officials balance counter-terrorism and human rights norms?
2. How are controversial counter-terrorism measures legitimized by state officials vis-à-vis human rights obligations?
3. What are some salient framing strategies employed by state officials?
4. Why does United Kingdom as a long-established liberal democracy display similar tendencies found in a yet democratizing country like Turkey?

The relationship between the discourse and policy of counter-terrorism is a mutually constitutive process: while the language on terrorism shapes perceptions of 'threats to national security', these perceptions are in turn translated into concrete policy outcomes. In this regard, the study sheds light into the legitimization and institutionalization of security

policies that restrict human rights as two different processes that reinforce one another. Therefore, this study undertakes a dual investigation of the research questions, in which both a comparative analysis of policy process and a frame analysis of the legislative process are presented in order to provide a comprehensive picture of different dynamics at work. Also known as *triangulation*, this approach to qualitative studies is suitable for enhancing the validity and the reliability in qualitative research, as well as offering a more thorough understanding of the phenomenon in question. In what follows, this section will first elaborate the tenets of discourse analysis in general, and the method of frame analysis in particular, as to elucidate in what ways this method is apposite for the research questions of the study. It will then go on to elaborate the advantages of the application of triangulation, entailing the mapping of policy outcomes that are underscored by discursive formations. After presenting an outline of the two selected cases for the analysis, the section will conclude with a brief discussion on validity and reliability.

2.1. Discourse and the Language of Security

Contrary to most quantitative studies, qualitative research is not premised on testing the relationship between a clearly defined dependent and independent variable. Instead, qualitative research firstly identifies the phenomenon to be investigated and specifies what exactly is intriguing in this particular subject. (Strauss & Corbin, 1998: 41) The study of discourse is rooted in the interpretivist tradition of qualitative research that opts to focus on *understanding* of social phenomenon rather than *causal explanations* advocated by positivist science. (Potter & Lopez, 2001: 8-9) Also termed as *hermeneutics*, or the theory of interpretation, this approach to social science maintains that all human action and interaction is embedded in understanding, without which society would cease to exist. In this paradigm,

language is taken as a social tool that is utilized to serve functions in human interaction, one which is intertwined with other social and cognitive phenomenon. (Alba-Juez, 2009: 11)

The 'linguistic turn' in social sciences came about at a time when the constitution of knowledge or the conventional path to explanation was being questioned. While all academic knowledge is premised on forms of classification which is a function of language, the role of language itself in constituting knowledge came to the fore, setting the scene for discourse analysis. Jaworski and Coupland depict this process as extension of academic interest into "[c]onsiderations of meaning in general, and particularly of how language, meaning and society inter-relate…" (Jaworski & Coupland, 2006: 4) The term *discourse*[6] itself is an essentially contested concept that is subject to myriad different definitions. Amidst various articulations of the term, this study opts to borrow from Schiffrin's definition as connoting "…units of linguistic production (whether spoken or written) which are inherently contextualized." (1994: 41) As such, the term does not merely come to denote the internal structures of a given text, but also that a text is embedded in and produced from a certain socio-political setting. But what do we mean exactly when we talk about discourse analysis *per se*? Although it can come to connote different approaches in a variety of disciplines (a linguist might have a distinct understanding than a critical discourse analyst for instance), this research employs discourse analysis as a method for uncovering "social practices that constitute 'social structures' and …the conventional meaning structures of social life." (Ibid.: 5) As such, the task of the researcher is to problematize systems of meaning that seem 'natural' or 'factual', in other words the social construction of reality.

[6] Although the terms *text* and *discourse* are used in various ways by different analysts, generally the former is taken to connote internal characteristics and structures of a linguistic material;whereas, the latter accommodates a more inclusive meaning, one that takes into account the context that a text is produced. (Alba-Juez, 2009: 8-11)

As mentioned in the previous chapter, one of the main theories that will be guiding this research is the 'securitization' approach developed by the Copenhagen school, which construes security as a speech act, thereby illuminating the impact of discourse in international politics. This approach endeavors to explore the question: "When does an argument with its particular rhetorical and semiotic structure achieve sufficient effect to make an audience tolerate violations of rules that would otherwise have to be obeyed?" (Buzan et al. 1998: 25) Such a theoretical perspective entails a congruent methodology, in which the main aim is to investigate the relationship between texts on the one hand, social and political processes on the other hand. As put by Gee (1999: 5), "[m]ethod and theory cannot be separated, despite the fact that methods are often taught as if they could stand alone." Hence, the question of how states balance counter-terrorism measures and fundamental freedoms invokes a textual analysis, investigating the role of language in acts of securitizing. A discursive approach allows the researchers to study how legitimate forms of knowledge and political practices are being constructed textually, and ingrained in 'common sense' in a particular social setting (Jackson, 2009: 68).

Another important dimension where theory informs methodology is the epistemological position of the research, which deserves a short mention. The critical outlook this study entails is not merely with respect to extant power structures but also of ways of attaining scientific knowledge. In line with Toros and Gunning's (2009) account on 'minimal foundationalism', this study undertakes a self-reflexive and critical research agenda, while acknowledging the centrality of the positivist notions of regularities and evidence. The mainstay lies in being critical of decontextualized timeless laws that are presented as 'universal'. Offering a new research agenda for International Politics, alternative to both

traditional and post-structuralist approaches, Toros and Gunning believe that a minimal foundationalism is conducive to a 'theoretically grounded' and 'concrete' framework. (Ibid.: 88) Hence, this study rests on these epistemological foundations, whereby a critical research agenda that is in line with the primary tenets of scientific research is undertaken.

According to Gee, the human mind does not operate on abstract or decontextualized rules, but rather on the basis of patterns emanated from experience, and is thus dependent upon context. The upshot of this approach is to refute the 'rationalist' model of the individual as a "rule following logic-like calculator," (1999: 50) in favor of a 'social' individual who derives generalizations from situated meanings. (Gee, 1999: 49-51) The significance of context in shaping our perceptions yields two other dimensions of discourse, namely its intertextual and intersubjective disposition. Since "[w]ords have histories" (Ibid.: 54), meaning is *intertextual* in the sense that any text refers to previous situated meanings and experiences in other texts and discourses. The term intertextuality has been coined by Julia Kristeva who has borrowed from Mikhail Bakhtin's linguistic theory, and denotes that texts build on each other both vertically (those that precede and follow it) and horizontally (those that belong to the same category). On the other hand, *intersubjectivity* connotes the fact that meaning can take place only in an exchange by two or more individuals, whereby the participants shape discourse and in turn are influenced by it in the way they perceive the world around them. (Johnstone, 2002: 14)

As such, all discourse one way or another addresses an audience and is therefore rhetorical in the sense of aiming to persuade. Both Johnstone and Wodak distinguish different

strategies of persuasion[7], not only pertaining to the styles in which arguments are presented, but also how they constitute narratives of a given position with predefined identities and normative assumption, which in turn, work to legitimize such position. (Johnstone, 2002; Wodak, 2009) Since the objective of discourse is to persuade, different strategies and styles need to be treated according to the context in which they stem and also to which they reflect. This feature of discourse is eloquently described by Bourdieu: "Since a discourse can only exist, in the form in which it exists, so long as it is not simply grammatically correct but also, and above all, socially acceptable, i.e., heard, believed, and therefore effective within a given state of relations of production and circulation, it follows that the scientific analysis of discourse must take into account… the laws defining the social conditions of acceptability…" (Bourdieu, 2006: 483)

In order for a discourse to appeal and persuade an audience, it articulates argumentative strategies that portend certain conclusions. The concept that links these arguments to the conclusion enforced by the speaker is *topoi* that are "…central to the analysis of seemingly convincing fallacious arguments which are widely adopted in all political debates and genres." (Wodak, 2009: 42) Wodak draws out several salient topoi that are prevalent in political speech: topos of *burdening* (the argument that an institution is burdened by a problem), topos of *reality* (i.e. the reality of a situation entailing certain solutions), topos of *numbers* (statistical evidence demanding a course of action), topos of *history* (lessons learned from the past), topos of *authority* (the position of an actor legitimizes the action), topos of *threat* (identifying threat that requires action) , topos of *definition* (the argument that an object should convey its definitional attributes), topos of *justice* (those with

[7] Since they will not be incorporated into the analysis, they are not dealt in detail. For more information see Johnstone (2002) and Wodak (2009).

equal entitlements should be treated equally), topos of *urgency* (a pressing matter necessitating urgent action). (Wodak, 2009: 44) This typology offered by Wodak is particularly useful for studying securitization, as it shed lights into the workings of the language of security and the prospective arguments that can be invoked for its legitimation, such as call of 'duty', 'threat', 'emergency', 'lessons of history'…etc. In this respect, the notion of topoi is incorporated the study in understanding how certain arguments formulated entail predetermined conclusions.

It must also be noted that while a prevalent discourse is one form of representation, it necessarily suggests that an alternative representation has been revoked or silenced. This silencing is as significant as the words uttered in analyzing the structure and content of a given text. (Johnstone, 2002: 11) As lucidly explicated by Johnstone, "…what is not said or be said is the background without which what is said could not be heard." (2002: 58) This point is also emphasized by Jackson (2009), who describes discourse as indispensably excluding and silencing alternatives modes of representation, thereby historically and culturally contingent. (2009: 67-68) As a result, any study of discourse and meaning conveyed through texts must incorporate an analysis of what is not being said as well as the arguments being presented.

Due to myriad different forms of discourse analysis, there is a common misconception that this type of analysis involves heavy description and not much explanation. In response, Fairclough (1995) makes the distinction between *descriptive* and *explanatory* discourse analysis, where the former mainly engages in an analysis of the form and structure of the text as an isolated artifact, whereas an explanatory analysis employs a wider perspective taking into account discourse practices (the production and the

interpretation of a text) and the larger sociopolitical dynamics the text is embedded in. Fairclough advocates the integration of micro analysis of text and macro analysis of context in order to make sense of social and political processes, in other words the *effects* of discourse. (1995: 98) Congruently, pointing out the centrality of linking internal attributes of a text to the wider external influences, Wilson argues that "[u]terrances within the context of political output are rarely isolated grammatical cases; they operate within historical frameworks and are frequently associated with other utterances or texts." (2001: 404)

Van Dijk (2001) makes a similar point when he suggests that rather than merely describing the structures of a text, discourse analysis aims to explain social processes, especially those pertaining to the manifestation of power and dominance. Power is an important element of discourse, which is defined as the ability to control the minds and actions of others. One of the primary tasks of the analyst is to dismantle this intricate relationship between power and discourse, which is mostly discernable in political texts. According to Van Dijk, much political discourse operates as a means for enacting, reproducing or legitimizing power. Notwithstanding the evident advantages of employing discourse analysis in political science, Van Dijk points out that this method has largely been absent from the state of art with the exception of a number of studies. (Van Dijk, 2001: 353-360) Amongst the latter is the approach of 'frames' which are schemes of meaning that in the field of politics work to organize and structure policies.

2.2. Critical Frame Analysis

The concept of a *frame* as a central organizing idea was first introduced by sociologist Ervin Goffman, to connote "schemata of interpretation" which allows one to identify and make sense of our social world. (1986:10-11) Frames derive their power from the way they

impel individuals to focus on certain aspects of the multifarious social reality we live in, while ignoring others, thereby 'filtering' our perception of the world. (Kuypers, 2009: 181) A comprehensive definition of framing is provided by Kuypers, as "…the process whereby communicators act - consciously or not- to construct a particular point of view that encourages the facts of a given situation to be viewed in a particular manner, with some facts made more or less noticeable (even ignored) than others." (Kuypers, 2009: 182) Hence, by helping individuals make sense of the vast and abounding information we find in our everyday lives, frames provides us with cues that guide the ways of interpreting issues and events. (Snow et. al., 1986)

Moving on from this conceptualization of frames, frame analysis is a form of discourse analysis that focuses on the organization of experience, or how an object of inquiry is defined and problematized as to constitute an explanatory unit. (Goffman, 1986:11) Frames are built upon narratives of certain events that encapsulate interpretive cues such as metaphors, labels, naming, key concepts or symbols. The task of the analyst is to detect these regularly appearing cues which attribute meaning to a neutral event. Kuypers notes that frames are a fruitful tool particularly for comparative analyses, since it allows the researcher to investigate frameworks that operate in different contexts or across different issue areas (2009: 185). As such, critical analysis of policy-frames in a given issue-area entails the following: "Frame-critical policy analysis seeks…to enhance frame reflective policy discourse by identifying the taken-for-granted assumptions that underlie people's apparently natural understandings and actions in a problematic policy situation. It seeks to explicate the conflicting frames inherent in policy controversies so that we can reflect on them and better

grasp the relationships between hidden premises and normative conclusions." (Rein & Schön, 2002: 150)

Critical frame analysis focuses on the representation of an issue as constituting a problem, possible solutions for the problem, as well as actions and actors that are implicated. The main concept of the analysis is a 'policy frame' which is a "scheme that structures the meaning of reality." (Verloo & Lombardo, 2007: 32) In addition to identifying a problem (*diagnosis*) and offering possible solutions (*prognosis*), a policy frame usually includes assertions with respect to the *roles* involved, designating actors that are deemed to be part of the problem and those that are put forth as having the duty to solve the problem, as well as target groups for the proposed actions. Hence, the identifications of actors are essential elements of a policy frame. The allocation of the problem and its solution is not merely a technical matter, but rather involves normative assumptions of the actors, processes, or other intertwined problem-areas. This attribute of a policy frame is called *intersectionality* and constitutes a significant part of the analysis. Other elements that provide useful insight into framing are the identification of a *location* and *mechanism*. While the former signals where the problem of an issue and its solution are located, the latter indicates the processes involved that reproduce or harbor the problem or the solution. (Verloo & Lombardo, 2007: 32-35) In light of the abovementioned criteria, a number of key terms have been formulated based on the literature review, which are utilized for analyzing the selected texts. These sensitizing questions are transformed into codes that correspond to different dimensions of a policy frame.

An application of frame analysis method to the study of counter-terrorism policies is developed by Pisoiu (2013), who focuses on discourses prevalent in the EU and the US

contexts. Moving on from the assumption that governmental actors attempt to legitimize and justify norms violating counter-terrorism measures, Pisoiu suggests that such actors usually resort to the strategies of argumentation and persuasion. In order to justify policies that entail the restriction of fundamental liberties, governmental actors 'frame' policies that draw from shared values and beliefs that are available in a cultural pool of meanings. Hence, for instance, the articulation of a neutral issue into a 'threat frame' is a means for the securitization of the relevant issue. (Pisoiu, 2013: 298-300) Critical frame analysis is quite conducive to studying discourses on counter-terrorism and human rights since it offers a systematic tool for the in-depth analysis of these respective policy frames. One of the advantages of using this technique is that it allows the researcher to make comparisons with respect to different national contexts as well as cross-issue comparisons.

Like all other forms of textual analysis, frame analysis also involves a process of coding, where the researcher seeks for "…regularities and patterns as well as for topics your data covers, and then you write down words and phrases to represent these topics and patterns. These word and phrases are *coding categories*." (Boglan and Biklen, 1992: 166) In order to formulate refined categories, the analyst must engage in a constant procedure of going back and comparing the individuals incidents coded under a category, as well as comparing those coded under different categories. In so doing, the researcher can come up with well-defined categories composed of clear properties and dimensions. Such categories can either be *data-driven* (grounded in the data and materializing throughout the analysis) or *concept-driven* (based on a theoretical perspective or previous academic work). For the purposes of this study, I plan to utilize both by drawing on key concepts and themes initially premised on the literature review and afterwards extracting salient notions throughout the

analysis. Since the researcher does not have a comprehensive knowledge of the texts beforehand the analysis needs to take into account new codes that might be extrapolated from the data during the analysis. The ATLAS.ti programme is well suited for this type of research approach by allowing a variety of options for coding and extracting relations amongst different coding categories, and is therefore utilized for undertaking frame analysis.

Based on the theoretical contours of this study, the analysis aims to unearth the policy frames of counter-terrorism and human rights, as well as their interaction in the legislative process. The main hypotheses of the study is that in the fight against terror, government tend to frame various aspects of social and political life as a security problem by invoking exceptionalism and urgency, which culminates in the securitization of these issue-areas. In so doing, actors lay the legitimate grounds for side-stepping established norms. The interpretive cues can be traced from a range of notions such as state of exception, emergency, necessity, threat, and the like. Moreover, a corollary hypothesis is that such framing is premised on a certain construction of 'the enemy' as the existential other and the victim as 'our people'. On the other hand, as anticipated by the theoretical framework, this policy frame will be confronted by the policy frame of human rights that highlights the need to take into account normative obligations as the legitimacy conferred by them. Arguments for greater security measures are countered by arguments for democratic values and rights in the political arena; therefore, they are ultimately compelled to engage with notions such as international norms, standards of modern-nation states, universal morality, responsibility to uphold and protect rights…etc. Hence, the interplay of these two policy frames and the different concepts and themes that compose them informs the course of the policy-making process, culminating in new legislation. The legislative process in both the Turkish and the British contexts are

conducive for offering insight into the ways in which such conflicting frames find expression and interact with one another. Yet, the discursive approach is not the only method that will be guiding this study; it is one pillar of a twofold investigation, as elaborated in the following section.

2.3. Triangulation and Comparative Policy Analysis

One of the most commonly addressed criticisms against critical discourse analysis is the subjective nature of the research process, or in other words its 'critical bias'. In an attempt to overcome this problem of validity and to go beyond the textual dimension, researchers resort to the application of triangulation by borrowing from different methods as well as different empirical data. Building on the centrality of *context* in explaining the phenomenon at hand, triangulation works to bring into play historical, social and political dimensions to enhance our understanding of the research questions. (Wodak, 2008: 13) The main purpose of utilizing triangulation is to enhance arguments that undergird the analysis in the face of countervailing explanations, provided that different forms of evidences that strengthen one another are incorporated in the study. (Stoker, 2011: 2670-2671) While triangulation can take place at different stages of the research, this study undertakes triangulation involving both data collection and data analysis. (Rothbauer, 2008: 893) In order to complement and contextualize frame analysis which provides insights to the use of language, the study also offers a comparative policy analysis with respect to counter-terrorism and human rights laws. The dual disposition of the analysis allows one firstly to comprehend the political zeitgeist and legal framework where the discussion is taking place, and secondly to determine the important interconnections between discourse and policy.

Contrary to a mixed-method research design which is comprised of both a quantitative and a qualitative analysis, this form of triangulation corresponds to a *multi-method qualitative research design*. (Bergman, 2011) Hence, as put by Rothbauer, "[i]n qualitative inquiry, researchers tend to use triangulation as a strategy that allows them to identify, explore, and understand different dimensions of the units of study, thereby strengthening their findings and enriching their interpretations." (2008: 893) Triangulation particularly endeavors to reduce bias inherent in a mono-method approach and enhance convergence validity, which is the "substantiation of empirical phenomenon" via the employment of multiple methods. (Cox & Hassard, 2010: 945) Moreover, triangulation of data and methods in qualitative research is also a means for strengthening the reliability of the study, since it provides the "…opportunity to repeat observed behaviors together with their explanation…" (Konecki, 2008: 23) As such, the confidence of the conclusions drawn from the research is increased through the verifying role played by complementary methods. Yet, enhancing the validity and reliability of a study is only one benefit offered by triangulation. (Konecki, 2008: 15)

According to Denzin and Lincoln, qualitative research is inherently a multi-method approach, as it brings into play a range of empirical materials such as observation, historical documents, case studies, interviews…etc., and also can utilize different methods for analyzing such data. Employing a pragmatic and self-reflective posture, they define the qualitative researcher as a *bricoleur* and the product of the research process as *bricolage.* In an attempt to acquire an in-depth understanding of a phenomenon, qualitative researchers tend to amalgamate various relevant data and forms of analysis, thereby generating greater

rigor and depth in a study. (1998: 4-5) Alternative forms of triangulation in qualitative data have been explicated by Denzin (1978) as follows:

1. Data triangulation: the use of variety of data sources in a study.
2. Investigator triangulation: the use of several different researchers or evaluators.
3. Theory triangulation: the use of multiple perspectives to interpret a single set of data
4. Methodological triangulation: the use of multiple methods to study a single problem.

Based on this classification, the study undertakes both data and methodological triangulation, as various sources of data are accompanied by two different forms of analysis that complement each other: comparative policy analysis and frame analysis. This strategy is called 'corroboration' where the triangulation is a form of double-check and different sources and methods are utilized to substantiate the arguments presented (Deniz & Lincoln, 1998: 5). Following the guideless offered by Sutton (1999), the first part of the study seeks to trace and map out the development of policies in a given issue-area, including the events and actors that contributed to their production, and the debates they have generated. Congruent to the research questions at hand, the first part addresses how government policies pertaining to human rights and counter-terrorism are developed and weighed in relation to each other in light of international and domestic dynamics. It aims to reveal the process by which governments invoke the 'state of exception' in an attempt to securitize certain areas of social and political life, and in turn how this rhetoric is countered by human rights norms. Both cases have been analyzed in the period after the 9/11 event and the pursuant political environment in order to assess the influence of international expectations on nation states on the fight against terror and the obligations of human rights norms. The comparative policy analysis is developed with the employment of sources such as international covenants,

national legislation on human right and counter-terrorism, news articles, government reports, official declarations, and reports by international organizations.

The second part of the analysis consists of a discursive account with the application of frame analysis as explicated above. This part of the analysis aims to illustrate how securitization works in the decision-making process, as various issues are being problematized as matters of national security, therefore, ought to be dealt with extraordinary measures. In turn, the discourse of human rights and democracy in confronting such arguments constitutes a central part of the investigation. Since the main focus is on the official representation of issues pertaining to national security and human rights obligations, the data analyzed is composed primarily of parliamentary debates, parliamentary commission reports and bills on counter-terrorism. Owing to the principle of democratic accountability, in both contexts parliamentary debates could be accessed easily from online archives. The biggest advantage of parliamentary debates is that unlike interviews or media coverage, they are unedited and unrefined. (Loizides, 2009: 282) More than being a problem-solving body, the parliament also exhibits the performative aspect of policy-making by providing an in-depth insight into political positions and their justifications regarding security and/or human rights, from different perspectives. Since the executive is also present in the parliament in both cases, this entity allows us into the reasoning of law-making of 'the sovereign'. (Neal, 2012 :263) Nonetheless, in the face of an abundance of data, once the texts are chosen further criteria are employed in order to filter and select discourse segments to be analyzed, which was primarily based on key legislation, especially regarding controversial laws that have stirred heated debates not only in the respective parliaments, but also at the national and international levels. As such, *purposeful sampling* will be carried out for the selection of

texts, due to the fact that it allows the researcher to choose documents that are relevant to the research questions, given the large quantity of documents available (Silverman & Marvasti, 2000: 104).

As a result, the plan of research is novel in offering an eclectic perspective in analyzing how states balance human rights and counter-terrorism, through a comparative analysis of policy and discourse that complement each other. There is an evident void in the IR literature when it comes to the tension between human rights and fight against terror, since it is either studied only from a legal perspective or within a normative philosophical approach. In this regard, the contextual and discursive aspect of the interplay between norms and security concerns remains largely understudied. While considerations of both power and morality inform one another in concrete processes of policy formation, cognitive frames prevalent in the cultural pool of meanings and values shape how issues are to be problematized and in turn handled with. This point is also iterated by Rein and Schön (2002), who note the interwoven disposition of facts and values in policy frames, where "the participants construct the problematic situations through frames in which facts, values, theories, and interests are integrated." (2002: 145) Copenhagen School offers productive theoretical and analytical tools for investigating this question at hand, yet interestingly 'securitization' has rarely been applied to the issue of counter-terrorism, with some recent exceptions (Heller et. al., 2012; Pisoiu, 2013). This is particularly the case with respect to the framing of counter-terrorism measures in relation to human rights norms, in which an analysis of the interplay between the two narratives is by and large missing. As such, this study is novel in explaining how the development of counter-terrorism policies, that yield significant ramifications for rights and liberties, are shaped by cognitive frames. Thus, the

analysis seeks to answer the question of how state officials endeavor to balance these conflicting commitments and the ways in which their decisions are premised on frames that legitimize their actions to domestic and international audiences.

2.4. The Cases: Turkey and the United Kingdom

This general research design is formulated and addressed to two particular cases, namely Turkey and the United Kingdom. These different political settings, the former still struggling to consolidate its democracy whilst the latter represents one of the oldest liberal democracies, converge significantly with respect to their experiences with terrorism and policies of counter-terrorism. Both countries have a history of terrorism due to the activities of the separatist organizations of PKK and IRA respectively that have eventually ingrained insecurity and an environment of 'state of exception' in each context. Moreover, both countries have experienced terrorism incurred by radical Islamist groups in the post-9/11 period, namely the 2005 London bombings and 2003 Istanbul bombings, owing to their alliance with the US in the 'War on Terror'. Therefore, both countries have experienced what Zarakol (2011) terms as 'ethnic terrorism' that aims at local authority within the confines of the Westphalian order, and also religiously motivated 'global terrorism' that defies such order. Concurrently, each country has been pursuing strict counter-terrorism measures, including certain draconian provisions infringing human right principles that have generated both domestic and international criticisms. As a result, in both cases there is a growing discontent and rejection of the authority of the ECHR, explicitly voiced by government officials (Travis, 2013; Hürriyet, 13 May 2014). Hence, against a backdrop of different political settings, shared historical experiences with similar forms of terrorism offer interesting observations to assess the discourses and strategies employed in order to balance

security concerns with human rights obligations. The following section will highlight some of the relevant characteristics of each setting.

a. Turkey: Turkey became a member of the Council of Europe in 1949 and ratified the European Convention on Human Rights in 1954. After a long and oscillating relationship with the EU, it was granted candidacy at the 1999 Helsinki Summit. Following European Council's announcement in 2002, which declared that full accession negotiations will begin without delay if Turkey succeeds in fulfilling the Copenhagen Criteria, a process of intense political and legal reforms started to take place, particularly those related to democratization and the diminishing role of military in politics. (Müftüler-Bac,2005) Notwithstanding the momentum launched by the EU accession process, human rights record of Turkey is still the main hindrance to its EU membership-bid. Consecutive progress reports of the European Commission as well as reports written by the Council of Europe have pointed out the need for further reforms with respect to anti-terror laws and counter-terrorism policies. Strikingly, as revealed by the Associated Press's 2011 report on arrests due to terror-related crimes, among 350,000 people convicted since 2001 world-wide, Turkey accounted for one thirds of such arrests (Mendoza, 2011).

b. United Kingdom: The United Kingdom is a fully consolidated democracy with a long history of rights, as the home country of Magna Carta. It is a member of the EU since 1973 and is a founding member of the Council of Europe. At a prima facie evaluation, it would be counter-intuitive to include the UK in an analysis of human rights violations, since most studies concentrate on 'abusive' countries and how they are socialized into complying. Nonetheless, United Kingdom has historically dealt with IRA attacks throughout 1970, 1980s and 1990s, leading to the adoption of several notorious counter-terrorism measures.

Moreover, in the aftermath of the 9/11 attacks in 2001, and also the following London bombings in 2005, there has been an accelerated sense of national security culminating in draconian laws that jeopardize established human rights norms. (Golder & Williams, 2009: 46-47) As such, the UK case provides interesting insights as to how "…a retreat from core human rights values is not unthinkable in the world's liberal heartland." (Dunne, 2010: 153)

As illustrated above, these settings are conducive to examining the trade-off between national security and international norms, as they provide similar cases of terrorism that take place in distinct political and social contexts. Particularly in the post-9/11 period an interesting picture comes to the fore where the UK is relinquishing long-established rights by joining the 'War on Terror', while Turkey launches on the EU accession process marked by democratization and the institutionalization of a rights-based understanding. As will be explicated in detail in the following chapters, not only do both governments adopt similar counter-terrorism measures, but the UK is taken as a model for counter-terrorism legislation in the Turkish context. The comparative analysis of these cases has been particularly revealing in portraying how and why certain representational structures and policy frames in the context of counter-terrorism travel across different settings. Hence, in order to shed light on the politics of law-making and how this process is informed by the employment of language, the study rests on a comparative analysis of the Turkish and UK contexts.

2.5. Validity and Reliability

The issue of validity for qualitative research is a perplexing one, given that an interpretive approach deems it unfeasible to separate the subject from the interpretation. Hence it has often been dismissed as too subjective and relativistic. In spite of such criticisms, qualitative researchers have established sets of standards for testing the validity of

their work. According to Gee, validity in discourse analysis is based on four elements, namely *convergence* (how compatible are the answers that the analysts posit), *agreement* (support from other discourses or other relevant research), *coverage* (the extent to which analysis can be applied to similar data), *linguistic details* (how grammatical structures are interlinked to the functions of the content). (Gee, 1999: 94-95) The first two criteria are addressed through the application of triangulation, whereby two distinct methods that reflect on the same question enhance validity based on convergence and agreement by cross-checking the answers attained respectively. On the other hand, the criterion of coverage is addressed through a comparative analysis of Turkey and the UK, which among other benefits, allows the researcher to assess the implementation of findings in different contexts. Lastly, the criterion of linguistic details does not take up an important part of the discourse analysis, since the focus is more on the content rather than textual details, yet will be referred to when necessary.

As is the case for other research methods, qualitative research is suitable for some type of research questions and not others. One of the weaknesses is with respect to the choice of data, since unlike quantitative methods a random sampling is not employed. Most of the time, qualitative and interpretive approaches will lack the confidence of making generalizations that their quantitative counterparts take pride in. Nonetheless, discourse analysis offers explanatory and critical depth that is by and large missing in quantitative studies which tend to conflate complex social phenomena for the sake of generalization and prediction. (Jaworski & Coupland, 2006: 30-31) As indicated above, the employment of triangulation, and the bipartite disposition of the study helps to circumvent those problems

generally associated with discourse analysis by offering a historical angle to the decision-making process in light of significant domestic and international political dynamics.

Conclusion: Adjoining Theory and Methodology

As explained in detail above, the main objective of this study is to address the tension between national security concerns and international norms, and to investigate how nation states tend to juggle these two often contradictory entailments. Particularly in the aftermath of 9/11 as a growing number of long-established democracies opt to employ what are largely seen as draconian measures, the dissonance between counter-terrorism policies and human rights principles come to the fore that presents state officials with a conundrum: Amidst conflicting expectations, how can security concerns be balanced vis-à-vis human rights obligations? This section has tried to illustrate both the theoretical currents that have shed light upon this problematique as well as the methodological contours most apposite for investigating the phenomenon at hand.

By way of overview, the discussion on the theoretical premises has firstly demonstrated the strengths and weaknesses of alternative approaches to security that aim to challenge the mainstay of realist assumptions on world politics. While the Constructivist position is useful for pointing out the indispensable role played by ideational factors such as identities, norms and values even in the hard-core security domain, it nonetheless fails to problematize the traditional conceptualization of 'security' which takes the state as its primary object. As such, from a Constructivist perspective the question at hand would be construed along the lines of a security community sharing similar values against a perceived common threat, namely the 'War on Terror' initiated by the US and partaken by its allies against Islamist terrorism that is deemed as a threat to a certain civilizational construct and democratic values. In so doing, this analysis of the ideational aspects of a security community fails to acknowledge how the articulation of security and threat are not only

intersubjective but also susceptible to power relations. On the other hand, the CSS school not only employs a critical stance towards the concept of national security *per se*, but also tends to negate the epistemological premises of positivist research agenda on the grounds that it reproduces extant power relations with its claim to objectivity. Instead, CSS scholars provide valuable insight into the relationship between the ideational dimension of the nation state and its material basis through notions such as national identity and official state ideology. Nevertheless, in order to critically evaluate the traditional terrain of security, this approach adopts a much inclusive definition incorporating myriad fields and manifestations of human insecurity (i.e. poverty, environmental degradation…etc.) which ultimately out-stretches the concept and mars its analytical strength. In this respect, from a CSS perspective the study of security ought to undertake the ramifications of phenomena such as the economic crisis or global warming, thereby leading to a conceptual stretching where security becomes coterminous with any form of well-being. As a result, this problem of conceptual stretching overshadows how the security mentality and discourse extends on other issue areas and paralyze the functioning of 'normal politics'.

At this point, the Copenhagen School whilst concurring with the critical perspective of CSS opts to retain the traditional conceptualization of 'security'; not to treat it as an objective reality like the Constructivist school, but to depict how it is discursively constituted and extended to other areas of political life. As a given issue-area is incorporated into the terrain of security through acts of *securitization*, it is rendered beyond political deliberation and handled with the language of emergency, necessity, and exception. Parallel to the central argument of Copenhagen School, the insights offered by Schmitt ([1927] 1996) and Agamben (2003) cogently illustrate that this process eventually lends greater

power to the executive branch and security forces, which become endowed with the authority to by-pass normal legal procedures and practice *de facto* rule. Thus, the 'sovereign' is conferred the capacity to sidestep established norms and revoke legal principles for the sake of security. These theoretical premises have important bearings in the context of counter-terrorism, as it succinctly illuminates how state actors articulate exceptionalism, while others point out the inherent problems associated with such conceptualization.

The theoretical insights offered by Copenhagen school and the accounts of the sovereign formulated by Schmitt ([1922] 1996) and Agamben (2003) converge to form one of the backbones of the framework for this study: how the depiction of exceptional circumstances are primarily speech acts that securitize areas of social and political life, thereby subduing fundamental rights. This point of convergence is adeptly put by Neal, who suggests that "[i]f 'securitization' is translated into 'exceptionalization' the 'real referent' of the exception is rendered a chimera; there is no 'objective necessity' to the exception, all there is is the *exceptionalizing* speech-act." (Neal, 2010: 102) Hence, as noted by Schmitt and later Agamben in a critical light, the sovereign by virtue of being the sole authority to declare a state of emergency and to designate those elements that pose an existential threat to the national interest, is able to portray a given issue as a matter of 'security' or 'existential threat', in order to endorse a certain type of policy outcome.

In order to conceptualize the tension between security concerns and human rights principles, this study recognizes the dual disposition of sovereignty in contemporary politics: firstly as an entity dedicated to providing security and thus entitled to declare state of exception, but also as an entity that is ever more obliged to uphold norms and principles

that are recognized and enshrined in international law. At this juncture, international human rights norms convey tremendous bearings on the legitimacy of a nation state, as they have come to constitute one of the main pillars of sovereignty in world politics. Congruent to Krasner's (1999) conceptualization of human rights as one of the 'scripts of modernity', others have argued that legitimacy and international standing is conditional on a respect for human rights (Evans, 2005; Reus-Smith, 2001; Chowdhury, 2011). Subsequently, the concept of human rights have not only come to constitute a legitimate moral claim that can be utilized by individuals or groups against state oppression, but also as a means to distinguish legitimate practices of state sovereignty. In short, in contemporary politics, while the sovereign retains the authority over national security and emergency powers, it is concomitantly incumbent upon balancing the latter with the standards of human rights norms.

The post-9/11 context and ensuing counter-terrorism measures offer significant insights into how this balancing and the resulting trade-off takes place in different societies with similar experiences. The account provided by Jackson (2005) illustrates how the practice and language of counter-terrorism are premised on one another, whereby the construction of a language of 'terror' justifies certain security policies both to domestic and international audiences. Such a theoretical perspective entails a congruent methodology, in which the main aim is to investigate the relationship between discourse on the one hand, social and political processes on the other hand. As put by Kurki, "constitutive theorizing…is not just about inquiring into conceptual relations (meanings) but about inquiring into how they play themselves out in the social world, giving rise to certain practices and social relations." (2008: 181) Therefore, this study undertakes a twofold

analysis, whereby both a comparative policy analysis premised on historical developments and frame analysis of the legislative process are presented in order to provide a more comprehensive picture of the interplay between multiple dynamics. Also known as *triangulation*, this approach helps to enhance the validity and the reliability of the research design.

Moving on from these grounds, the case studies of policy analysis (Sutton, 1999) offer a comparative account of the evolution of counter-terrorism policies in relation to the entailments of human rights law, as well as the dynamics involved that play a role in the formation of such policies. These chapters aim to provide a socio-political framework of how different and often contradictory obligations under both international and domestic expectations are being evaluated and balanced by state officials. With the purpose of pointing out the similarities and differences in the contexts of Turkey and the UK, it offers insight into how these countries set their preferences and what type of measures they enact, what type of powers and authorities they assign to various actors or bodies, and what principles are sacrificed. In so doing, it seeks to demonstrate how governments endeavor to strike a balance in the decision making process regarding national security concerns on the one hand, fundamental rights and freedoms on the other hand. This empirical section is followed by a section on frame analysis of the parliamentary debates on the drafting and enacting of relevant legislations, as to elucidate various cross-cutting framing strategies and discursive formulations employed. Like all other forms of textual analysis, frame analysis also involves a process of coding, where the researcher seeks for regularities in the data through the representation of words and phrases which constitute the coding categories. (Boglan and Biklen, 1992: 166). For the purposes of this study I plan to utilize both data-

driven and theory-driven categories, where the former is grounded in the data and solidified throughout the analysis; whereas, the latter is premised on the insights offered by the theoretical foundations and previous research on the topic.

The coding process involves double coding, where salient concepts, themes, and arguments are analyzed alongside the structural frame elements. The first set of codes are comprised of *topoi*[8] formulated by Wodak, in addition to an array of concepts that are pointed out in the theoretical framework focusing on both the discourse of security and that of human rights. These set of codes that are utilized in the analysis can be seen in *Table 2* below, with a distinction of data-driven and theory-driven categories. A second categorization involves the analysis of the text as a policy frame premised on relevant frame components, described in *Table 3*. These dimensions that come together to form a cognitive frame are delineated by Verloo & Lombardo (2007) as involving a *diagnosis*, a *prognosis*, *roles* attributed to different actors, *mechanisms* involved (processes that reproduce or harbor the problem), the *location* of the problem or the solution, and finally *intersectionality* (intertwined problem areas, references to other frames). Altogether, the dimensions elaborated above provide the fundamental analytical tools to map out policy frames and the underlying assumptions that support them. As a result of a process of double coding, whereby both sets of codes are coded alongside each other, the *co-occurrence* function of ATLAS.ti allows the researcher to bring together the frame elements with the data-driven and theory-driven codes, to observe which themes and arguments are more frequently articulated in framing the problem or the solution.

[8] Common arguments in political debates, which are seemingly convincing yet generally false or misleading.

All in all, the study is premised on a bipartite analysis of the tension between counter-terrorism measures and human rights, with a section on the empirical processes of policy development and a section on the discursive formulations of such policy outcomes. These different types of inquiry evolve around the theoretical framework and address the manifestations of sovereign power, conception of security and threat, the treatment of legal norms, and the act of balancing. Hence, next section will begin with an overview of the international political zeitgeist in the aftermath of 9/11 and the ensuing international resolutions, then go on to present the process of policy development in the contexts of the UK and Turkey.

Theory-driven Codes	Data-driven Codes	
	Turkey	***United Kingdom***
Abuse of open society Balancing Burden Democratic values Dialogue/diplomacy redundant Duty to protect Enemy Ethnic terrorism vs. international terrorism Exceptionalism Executive powers International community International institutions International norms Legal obligation Lessons from the past Necessity Operational effectiveness Police powers Prevention Right to security Rule of law/due process Threat to our way of life Threatening rights and liberties Threat/urgency/emergency Trivialization Universal morality Vague definition Victim	Abuse of rights and liberties Civil-military relations Democratization Demonstration/protest Example of civilized societies Foreign imposition Freedom of press Freedom of expression Going soft Infamous policy Nationalism National sensibilities Necessary limits to rights and liberties Organized Crime Othering support for human rights Pluralism Pressing reality of terrorism Propaganda Public Opinion Reaffirming commitment to human rights Real terrorists vs. falsely accused Religion Requirement of modernity Separatist vs. fundamentalist terrorism Socio-economic development	Demonstration/protest Discrimination Extremism Freedom of association Freedom of expression Going soft Human rights for ‘us’ Immigration and asylum Infamous policy Minority vs. majority Multiculturalism Necessary sacrifice Organized crime Othering support for human rights Our lands Public demand security Public opinion Reaffirming commitment to human rights Religion The nation/society

Table 2. Theory-driven and Data-driven Codes

Policy Frames	Frame Elements	Sensitizing Questions
Security **Human Rights**	Diagnosis	-What is seen as the problem? -location: where is it located? -mechanism: what produces it? -roles: who is responsible? who is the victim? -intersectionality: other frames involved in the assessment
	Prognosis	-What is seen as the solution? -what are the specific policies proposed? -location: where is the solution located? -mechanism: what are the mechanisms that should be addressed? -roles: who is responsible for the solution? -intersectionality: other frames involved in the solution
	Motivational framing (justification)	-what arguments are put forth? -what is presented as the justification for the proposed policy or strategy?

Table 3. Policy Frame Structure

Part II. Comparative Policy Analysis: The Evolution of Counter-terrorism Policies vis-a-vis Human Right Obligations

Introduction:
International Human Rights and Counter-terrorism in the post-9/11 World Politics

When Strasbourg constantly moves the goalposts and prevents the deportation of dangerous men like Abu Qatada, we have to ask ourselves, to what end are we signatories to the convention?[9]

Theresa May, 9 March 2013

In world politics today, there is an evident tug-of-war between institutionalized human rights norms and national security concerns, particularly in the aftermath of 9/11 as security priorities have become increasingly salient at the expense of fundamental rights and liberties. While commitment to such rights and freedoms is recognized as a requirement of legitimacy in contemporary politics, the fight against terrorism particularly in the post-9/11 era has given way to contentious practices that tend to undermine long established democratic values. A growing number of states are becoming signatories to key international human rights treaties whilst concomitantly pledging loyalty to the 'War on Terror' initiated by the United States, which often entails conflicting policies as well as contradictory expectations on part of the international society. In order to better grasp international obligations pertaining to counter-terrorism, this section will highlight some key documents that yield a substantial impact on national legislature.

Notwithstanding its salience particularly since 9/11, there seems to be an evident difficulty in drawing the boundaries of the concept of 'terrorism' in world politics. As put by Hoffman, "[o]n 9/11, Bin Laden wiped the slate clean of the conventional wisdom on terrorists and terrorisms, and by doing so, ushered in a new era of conflict- as well as a new discourse about it." (Hoffman, 2004: xviii) During this period, a growing number of states

[9] http://www.bbc.com/news/uk-politics-21726612

have adopted new or additional counter-terrorism measures following President G.W. Bush's declaration that "[e]very nation in every region now has a decision to make: Either you are with us or you are with the terrorists." (*CNN.com*, 21 September 2001) Nonetheless, this worldwide trend of joining the 'War on Terror' and subsequently adopting necessary measures did not ensue in a unitary definition of the term, to the contrary, it has emanated in a myriad different interpretations both across different states and on a supranational level. Furthermore, there has also been international incongruence with respect to the state of 'emergency' and what sort of extraordinary powers it bestows state parties, particularly with respect to the status of human rights.

The 1999 *International Convention for Suppression of the Financing of Terrorism* adopted by the UN General Assembly formulates terrorism as "[a]ny other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act." (International Convention for Suppression of the Financing of Terrorism, 1999) By 2001, only four states had ratified the convention, an insufficient number for it to enter into force. Yet, following the 9/11 attacks, the UN Security Council has made a call to state parties with the Resolution 1373, which resulted in a number of 155 states becoming signatories (UN Security Council Resolution 1373, 2001)[10]. This initiative has been considered as one of the first attempts at

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http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20%282001%29.pdf

reaching an internationally recognized definition of the term 'terrorism'. (Steiner et. al., 2008: 376)

If 9/11 was an important watershed in the international security debates and discussions, another major turning point came in 2004 with the Beslan school massacre. On September 1, 2004 School Number One (SNO) in the autonomous region of North Caucasus in the Russian Federation was taken under siege along with 1.100 hostages in the leadership of Chechen separatist organization headed by Shamil Basayev, who was demanding the independence of Chechnya. The event resulted in more than 380 deaths including children, and approximately 780 individuals being injured. (Satter, 2006) This event led to a search for a re-definition of terrorism in the Security Council. The Russian government's aim was to expand the focus on Al Qaeda and the Taliban to include different manifestations of terrorism, which in turn resulted in the 1566 resolution that stipulates "…criminal acts…committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons….are under no circumstances justifiable by consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature…" (UN Security Council Resolution 1566, 2004)[11]

It is important to note that these endeavors did not take place without objections. The Terrorism Financing Convention 1999 was ratified with reservations by Jordan, Egypt and Syria which demanded the recognition of the legitimacy of national armed struggles. Likewise, resolution 1566 in 2004 came into being with the compromises attained by Turkey, Algeria and Pakistan that upheld an adamant stance on the issue of liberation

[11] http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement

struggles and the 'legitimacy of national resistance'. (Steiner et. al., 2008: 378) Hence, there has been an ongoing contestation among nation states over what constitutes international terrorism or international security risks and a key factor leading to this contestation is different perceptions of threat factors.

Another international trend in counterterrorism that came into being in the aftermath of the London bombings with the strong endorsement of the Blair government, has been *the Security Council Resolution 1624* enforced on 14 September 2005. The Resolution firstly condemned "...the incitement of terrorist acts and *repudiating* attempts at the justification or glorification (*apologie*) of terrorist acts that may incite further terrorist acts," and called for all states to "prohibit by law incitement to commit a terrorist act or acts; prevent such conduct; deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct." [12] (Security Council Resolution 1624, 2005) A similar international document is the *Convention on the Prevention of Terrorism* (hereafter CECPT), signed and enacted by the Council of Europe in 2005. This document requires the member states to criminalize 'public provocation to commit a terrorist offence'. (Marchand, 2010: 139) This act is defined in the Convention as constituting "the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed."[13] (Council of Europe Convention on the Prevention of Terrorism, 2005) The Convention also foresees the criminalization of the recruitment and training of individuals for terrorist offence, regardless whether such an

[12] http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf?OpenElement
[13] http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm

offence has taken place or not. Yet, the provisions are limited by the duty of upholding human rights during their implementation, and especially freedom of expression. Moreover, the Convention requires that domestic legislature criminalizing public provocation needs to be proportionate, "with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness." (Ibid.) In order to determine whether the relevant domestic law and measures taken are 'necessary in a democratic society', the two-tiered test of the ECtHR apply: whether the restriction of certain rights and freedoms respond to a *pressing social need*, and whether the restriction is *proportionate* to that need. (Marchand, 2010: 149-150)

The conjuncture of public emergency provides temporary grounds for state parties to derogate from their obligations under human rights treaties which are circumscribed within strict boundaries. For instance, Article 4 of International Covenant on Civil and Political Rights (hereafter ICCPR) stipulates that "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed…" states can derogate from their responsibilities. (International Covenant on Civil and Political Rights, 1976)[14] Nonetheless, by discerning between 'absolute' and 'restrictive' rights, international human rights law endorses a certain limit on the derogatory discretion a state can employ. Those rights that are deemed absolute and thus ought to be protected under all circumstances are namely the *right to life* and *freedom from torture*. One additional right that is posited as absolute by the ICCPR is 'no punishment without due process of law'. The restrictive or derogable rights under public emergency or threat to national security are delineated in every relevant convention with certain limitations, namely that such derogations are *lawful*,

[14] http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

necessary, and *proportionate*. (Sambei et. al., 2009: 348-349) Likewise, the *Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight Against Terrorism* allows for restrictions to the right of defense, such as access to counsel, to the case-file or the use of anonymous testimony, provided that these restrictions are proportionate and that fairness of the proceedings are ensured. (Council of Europe, 2002) As stipulated in Article 15 of the *Guidelines*: "When fight against terrorism takes place…a State may adopt measures temporarily derogating from certain obligations ensuing from the international instruments of protection of human rights…within the limits and under the conditions fixed by international law."[15] (Ibid.)

Since acts of terrorism are not considered within the category of 'core international crimes' (i.e. genocide, war crimes, crimes against humanity…etc.), they are not dealt under the jurisdiction of an international court or tribunal, but rather fall within the purview of domestic jurisdiction. As such, state parties are expected to enact counter-terrorist legislature that is in line with the relevant international law. (Sambei et. al., 2009: 13) The unresolved situation regarding international rules on terrorism is reflected on national legal frameworks which differ both amongst themselves and within every national context, where a number of different definitions can be found in criminal code, in laws regulating immigration and deportation, or for regulating associations. Amidst this variety, the amorphous boundaries of the term trigger problems related to 'legality' and particularly bring up the issue of *fair trial*. This concern has been voiced by the Inter-American Commission on Human Rights, which has maintained that," [a]mbiguities in laws proscribing terrorism not only undermine the propriety of criminal processes that enforce those laws, but may also have serious

[15] http://www1.umn.edu/humanrts/instree/HR%20and%20the%20fight%20against%20terrorism.pdf

implications beyond criminal liability and punishment, such as the denial of refugee status." (quoted in Steiner et. al., 2008: 379) In a similar vein, Sambei et. al. argue that the UNSCR 1373 obliges states to incorporate counter-terrorism measures in their legal framework albeit failing to offer a lucid definition of terrorism, and has therefore culminated in potentially abusive counter-terrorism laws that *stigmatize political opponents* under the rubric of fighting terrorism. (Sambei et. al., 2009: 14-15)

A comparison of the Turkish and the British cases offers interesting insights on the trade-off between international human rights obligations and counter-terrorism policies in national contexts. At first glance, such a comparison might seem untenable since the UK is a consolidated democracy with a long history of liberal rights, while Turkey is still going through a democratization process and has not yet habitualized the observance of human rights principles. Nonetheless, both countries have undergone similar experiences with respect to what have been categorized as both 'ethnic' and 'global' terrorism (Zarakol, 2011), and therefore, have been adopting new anti-terror policies as a response. Overall, a number of revealing similarities come to the fore in terms of the content and implementation of the new counter-terrorism measures, as well as how these have been balanced vis-a-vis human rights principles. These cases not only provide insight into how international trends and expectations are translated into domestic legislation, but also in what ways a long-established liberal democracy conveys striking similarities to a yet democratizing country when it comes to the issue of 'terrorism'. The following sections will explicate the evolving course of both counter-terrorism and human rights policies in these two contexts in the light of political developments.

Document	Date	Aim	Significance
UNSC Resolution 1373	28 September 2001	-Condemning 9/11 attacks -Calling all state parties to become parties to the 1999 Convention -Establishing Counter-terrorism Committee	Culminating in 155 signatories
UNSC Resolution 1566	8 October 2004	-Condemning the Beslan School Massacre -Expanding the definition of terrorism	-International redefinition of terrorism
Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight Against Terrorism	11 July 2002	Setting the limits of derogading from human rights principles	Allows for temporary derogations with the condition od lawfulness, necessity, and proportionality
UNSC Resolution 1624	14 September 2005	-Condemning 7/7 London bombings -Condemning the incitement for and glorification of terrorist attacks	-Calling state parties to prohibit by law incitement of terrorism
Council of Europe Convention on the Prevention of Terrorism	16 May 2005	-Calling for the criminalization of "public provocation to commit a terrorist offense"	-criminalization of 'provocation' in a European context -detailed definition of 'provocation'

Table 4. International documents pertaining to fighting terrorism

Chapter 3. Counter-terrorism Policy in the Heartland of Liberal Democracy: An Account of Policy Development in the UK

The United Kingdom has a history of dealing with 'terrorism' that far predates the September 11 attacks. As such, necessary legislation and strategic measures for countering the threat of terrorism were already intact, before the 'War on Terror' took an international hold. These previous measures took place beginning from 1970s all throughout 1990s at the zenith of the prolonged conflict between the British forces and Irish Republican Army (hereafter IRA), and conveyed primarily a 'reactive' characteristic as temporary responses[16]. Consequently, such legislation gave way to controversial measures with respect to international human rights principles, engendering a perturbed relation between national security and fundamental rights and freedoms in British politics. (Golder & Williams, 2006: 45). As put by Gearty, "[t]he problem of political violence arising out of the conflict in Northern Ireland had produced a large body of anti-terrorism legislation during the preceding thirty years, with the European Court of Human Rights in Strasbourg having been frequently called upon to adjudicate in conflicts between terrorist suspects and the state, and on one celebrated occasion between two states, the United Kingdom and the Republic of Ireland." (Gearty, 2005: 20)

The post-9/11 period brought about a different juncture triggered by the call for a 'War on Terror' that culminated in a new international zeitgeist. In line with international demands, the UK became signatory to a number of covenants that were later adopted in the

[16] The conflict goes back to the 1916-1921 Anglo-Irish War and the 1921 Anglo-Irish Treaty partitioning Ireland whilst establishing Northern Ireland as a British Province. This arrangement culminated in fierce clashes throughout what has been termed as Mainland Campaign between 1939-1945, Border Campaign of 1956-1962, and finally the Troubles of 1969-1998. The clashes came to an end with the Good Friday Agreement in 1998. More a detailed account see Parker (2006).

domestic law, which was tantamount to pledging loyalty to the 'War' launched by the United States. Following the London bombings in 2005, there has been a further shift in policy orientation, whereby the government became more wary of the 'enemies within' and undertook new anti-terrorism measures, due to the perception of the inefficiencies of the previous anti-terrorism acts. Recently, the government published a *National Security Strategy 2010*, wherein terrorism is singled out as one of the gravest threats facing the UK, suggesting that as an open society it is more vulnerable to the new unconventional types of attacks.[17] (UK National Security Strategy, 2010: 3) As put in the *Foreword* of the report, "terrorist groups like Al Qaeda are determined to exploit our openness to attack us, and plot to kill as many of our citizens as possible or to inflict a crushing blow to our economy." (Ibid.)

Despite the fact that the UK has historically been the heartland of rights and liberties, within the framework of counter-terrorism it has condoned controversial policies in violation of democratic values. Amidst a growing sense of security concern, the British government has continued to adopt new and modified laws in order to address the perceived threat of terrorism, while concurrently seeking to legitimize contentious provisions and balance the latter vis-à-vis human rights standards. Hence, the UK context proves to be a conducive case for the study of the tension between international human rights norms and national security concerns, taking into account different actors involved in this struggle. In what follows, this section will first elucidate legislation pertaining to human rights in the UK, then go on to provide an account of the changing course of the counter-terrorism laws and strategies, in light of international and domestic dynamics.

[17] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61936/national-security-strategy.pdf

3.1. Human Rights Legislation in the UK

The principle of *parliamentary sovereignty* in the UK entails that acts of parliaments are the 'supreme law of the land', in the absence of a constitution. As a result, an Act of Parliament cannot be overturned by a judicial court since the judiciary is not endowed with the power of judicial review. One limitation to Parliament's legislative supremacy is the Human Rights Act 1998, which enables a court to decide whether an Act of Parliament is against fundamental rights and freedoms enshrined in the European Convention of Human Rights. In such a case, since the courts lack the authority to overturn a legislation, they instead issue a 'declaration of incompatibility' which, albeit not binding, compels the Parliament to reconsider an issue. (Marchand, 2010: 127)

Although the UK has historically been home to individual rights and liberties, the cornerstone human rights legislation in the UK has been the Human Rights Act of 1998 which came into full force in October 2000. As described by Prime Minister Tony Blair in the White Paper on the Human Rights Bill, the Act aims to "increase individual rights, to decentralize power, to open up government and to reform Parliament."[18] (Human Rights Bill 1997) In the *Introduction* it is stated that the Act intends to "give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes." (Human Rights Act 1998) [19] In short, the main function of the Act is to entrench fundamental human rights as they take place in the ECHR into British law, thereby aligning domestic legislation with the criteria entailed by the international community it is a part of.

[18] http://www.archive.official-documents.co.uk/document/hoffice/rights/preface.htm
[19] http://www.legislation.gov.uk/ukpga/1998/42/introduction

In the aftermath of World War II, the UK was one of the first European states to ratify the European Convention on Human Rights, yet recognizing the jurisdiction of the Strasbourg Court and the right of its citizens to make individual application was only granted in 1966. Due to the dualist system of law prevailing in the UK, the treaty failed to wield any domestic effect and remained as an international treaty until then. The Conservative government since 1951 was adamant in resisting individual petition to the ECHR on the grounds that the Strasbourg Court would be able to scrutinize British common law. (Kirby, 2009) According to Moracsik (2000), the most common reason for avoiding individual applications put forth in official documents is that a judicial review would overshadow parliamentary sovereignty, with a particular concern over political extremes. This stance was evident in Lord Chancellor Jowitt's complaint that "the Convention would prevent a future of British government from detaining people without trial during a period of emergency…" (quoted in Moravcsik, 2000: 238)

The resistance on part of the UK to grant individual application despite being one of the first signatories of the ECHR is illustrative of the tension between sovereign power and universal rights. While pledging allegiance to internationally established norms is a *sine qua non* for a community of modern nation states granting the respective states international legitimacy, individual application to an international court is perceived as corroding the powers of the sovereign. The reaction of Lord Chancellor Jowitt is a case in point that demonstrates how 'sovereignty' is taken in a Schmittean sense as having the authority to demarcate the purview of emergency and thus, the state of exception. Yet, as human rights principles acquire a higher ground in international standards, so does their domestic

institutionalization, which was the case for the UK in 1998 with the introduction of the Human Rights Act.

Given the primary aim of 'bringing rights home' as expounded in the White Paper, the Human Rights Act 1998 introduces a number of significant provisions in the British legal system and enhances the purview of the European Court of Human Rights (Human Rights Bill 1997). To begin with, the Act makes it unlawful for public authorities to act in ways that are incompatible with the Convention, unless an Act of Parliament (as the primary legislation) provides no other choice. Concurrently, the Act allows human rights cases to be handled in domestic courts or tribunals, without the need to apply to the Strasbourg Court. The Act also requires all UK legislation to be in line with the Convention rights; however, if this is not possible judges do not enjoy the right to override primary legislation. Under such circumstances, the higher courts are expected to issue a declaration of incompatibility. In general, section 19 of the Human Rights Act 1998 stipulates a statement of compatibility from the relevant Minister whenever a Bill is proposed, explaining whether or not the Bill is attuned with the ECHR. (Human Rights Act 1998)

One important characteristic of the Human Rights Act 1998 was the provision that foresees the establishment of an independent human rights committee within the Parliament that would ensure enacted legislations are consonant with the ECHR. (Human Rights Act 1998) This provision culminated in the establishment of the *House of Lords and House of Commons Joint Committee on Human Rights* comprised of 12 members chosen from both chambers. The Joint Committee is responsible of evaluating human rights issues in the UK (with the exception of individual cases), thereby formulating proposals for remedial orders, draft remedial orders and consider remedial orders made under the purview of Human

Rights Act 1998.[20] (Joint Select Committee on Human Rights) In order to fulfill its obligations, The Joint Committee is conferred with the powers to ask for written evidence, to examine witnesses, and to appoint specialist advisers. (House of Lords & House of Commons Joint Committee on Human Rights, 2007a)

Nonetheless, despite the long established tradition of rights and liberties in the British society, there is a wide-spread reluctance towards both the ECHR and the Human Rights Act that has entrenched the former in domestic law. The skeptical attitudes towards the ECHR are prevalent both in the discourses of politicians and the media. Loader (2007) points out that a negative stance towards the ECHR is particularly prevalent among conservative circles, which is construed as 'foreign' and a European imposition upon British common law, notwithstanding the fact that the British government played a central role in its creation. Following two recent decisions made by ECtHR, namely endorsing the right to vote for prisoners and the deportation case of Abu Qatada[21], government officials have been criticizing the Court for being too intrusive in national matters. In November 2012, the former Lord High Chancellor of Britain Jack Straw has stated that it is time for the ECtHR to "pull back from the jurisdictional expansion it has made in recent decades. Otherwise, Strasbourg will be the architect of its own demise." (The Guardian, 14 November 2012) A similar remark has been made by Prime Minister Cameron, who has accused the ECtHR of overstepping its own purview and intruding into national decisions where it does not need to. (Cameron, 2012) A number of other MPs have proposed to withdraw from the ECtHR, a move no democracy has ever undertaken. Donald et. al. point out that misleading media

[20] http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/
[21] Initially in 2002, The EctHR did not allow the UK to deport Abu Qatada. Later developments of this case is explicated below.

coverage of the ECHR has reinforced a context of hostility towards human rights. Often times either the costs of ECHR are exaggerated, or inaccurate information is given about the European Court system, such as the common fallacy of portraying Strasbourg Court judges to be unelected, whereas they are in fact elected by the Parliamentary Assembly of the Council of Europe. (Ibid.: 2)

When it comes to public perceptions of the Human Rights Act 1998, there is a widely held belief that the Act receives meager support from the general public. Nonetheless, the findings of a survey commissioned by the Ministry of Justice in 2008 reveal that 84 % of the respondents feel the necessity of having a law in Britain pertaining to human rights. Likewise in *Liberty's* Human Rights Act Poll conducted in 2010, it is reported that 96 % of the respondents endorsed the existence of a law that protects fundamental rights and freedoms in Britain. (Liberty, 2010) Both studies concur that a great majority of British citizens consider rights as crucial, however, this tendency drastically changes when human rights issues are incorporated in a security context. The British Social Attitudes Survey 2008 has asked respondents to choose between the protection of civil liberties and right to privacy or protection of safety and surroundings from terrorism. While 63.4 % of the participants opted for greater security, 33.1 % have indicated that they prioritize civil rights. (British Social Attitudes Survey 2008)

In short, the institutionalization of international human rights norms has not been an easy process in the UK context, despite the long history of liberal rights and freedoms in the political culture of the country. One of the most evident reasons for such lukewarm posture is a concern over the principle of sovereignty, understood particularly in Schmittean terms of the authority to declare state of emergency and invoke extraordinary measures. This was

particularly the case for the recognition of the authority of ECHR, which even though established, is still subject to government criticism especially when dealing with 'terrorist threats'. The public opinion on human rights also exhibit a similar inclination, as a majority of the population express their support for such principles in general, but not when they are weighed against security concerns. This trade-off is also present within the legal framework, as policy makers seek grounds for bypassing the obligations imposed by the 1998 Human Rights Act in the context of counter-terrorism. The following section will provide an account of the counter-terrorism legislation in the UK in the post-9/11 era and its uneasy relationship with human rights.

3.2. Counter-terrorism Legislation in the post-9/11 era

In the eve of September 11 attacks, The British Parliament had already passed the *Terrorism Act 2000* which provided a highly inclusive definition of terrorism that has proved to be quite influential for successive policies. The Act defines terrorism as a "means to use or threat of action where… (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system."[22] (Terrorism Act 2000) According to the Act, the contours of a terrorist activity also includes acts when "…the use or threat is designed to influence the government or an international governmental organization or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause." (Ibid.) In addition, the 2000 Act regards it as a criminal offence for an individual to wear "an item of clothing" or to wear, carry or display an article that raises

[22] http://www.legislation.gov.uk/ukpga/2000/11/section/1

reasonable suspicion that the individual is a *member or supporter* of a terrorist organization. (Ibid.) Overall, this definition of terrorism reflects an understanding of public order as the main object of security in the UK context, and counter-terrorism aiming to maintain such order.

However, this definition of terrorism is manifestly broader compared to previous UK legislation as well as international law pertaining to this issue. For instance, the 1989 Prevention of Terrorism (Temporary Provisions) defines the phenomenon of terrorism as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear." [23] (Prevention of Terrorism Temporary Provisions 1989) The definition in Act 2000 is also more inclusive compared to the definition offered by the 1999 *International Convention for the Suppression of the Financing of Terrorism*[24], especially with respect to the clauses that render property damage or disruptions in electronic services. This characteristic of the legislation is problematic with respect to the expression of discontent, since such an overbroad definition risk criminalizing both legitimate demonstrations and also unlawful protests which pertain to issues of public order, but not terrorism *per se*. For instance, demonstrations including anti-globalization protest, animal rights protests, or even flash mobs can fall within the purview of this provision (Article 19, 2006).

Another pressing problem that presented itself within the framework of Terrorism Act 2000 was the introduction of the controversial stop and search provision known as

[23] http://www.legislation.gov.uk/ukpga/1989/4/section/20/enacted

[24] Which defined a terrorist act as "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act." (International Convention for the Suppression of the Financing of Terrorism 1999)

'section 44'. The provision allows police forces to stop and search individuals and vehicles in the absence of a 'reasonable suspicion' that a crime has taken place. This policy has aimed to address the issue of terrorism from a preventive vantage point, where failure to cooperate with the security forces could result in 6 month imprisonment or £5000 fine, and sometimes both. The implementation of this provision had been restricted by safeguards such as authorization from the Home Secretary, geographic and temporal limits on the practice, assessment of community impact and finally guidance of its usage for the police. (Human Rights Watch, 2010) Human Rights Watch has indicated that the safeguards for section 44 have nonetheless been largely ineffective. Between the years 2007 and 2009, the application of this method has proliferated seven-fold, from 37,000 to 256,000. During this period, there has been a total of 450,000 recorded stop and search cases, none of which resulting in a prosecution of terrorist offense or useful information on a terrorist plot. (Human Rights Watch, 2010: 1-2) As poignantly explained by the report, "[a]uthorizations by the Home Secretary appear to be little more than rubber stamping exercises, with rolling authorizations across the whole of London for April 2002 until May 2009." (Human Rights Watch, 2010: 2)

Moreover, section 44 has been criticized for being abused by the police for intimidating protestors, and therefore discouraging protests. Together with the *Public Order Act 1986*[25] and *Serious and Organized Crime and Police Act 2005*[26] which regulate demonstrations, section 44 has been executed in a way that hinders the right to assembly.

[25] While the Public Order Act does not necessitate a notice in advance for static demonstration, a week's advance notice is required for protest marches. Moreover, with the consent of Home Secretary the police can ban a protest if it is deemed to cause disorder, disruption or damage. (Public Order Act 1986)

[26] The Serious and Organized Crime and Police Act enforced in 2005 resulted in further restrictions upon demonstrations, as it prohibited the right to demonstration within a designated area of one kilometer from any point of Parliament square, in addition to increasing the authority of the police to arrest individuals. (Serious and Organized Crime and Police Act 2005).

The practice has been used in lawful demonstrations, such as the arms fair protest at London's Docklands in 2003, or the demonstrations during the 2005 Labor Party Conference when more than 600 individuals got arrested, including an 82 year old activist. (Article 19, 2006) Eventually in 2010, the Strasbourg Court has overturned the decision by Britain's highest court and in the case of *Gillian and Quinton v. UK*[27] declared that section 44 was in violation of the right to privacy, right to liberty, as well as the principle of non-discrimination considering the ethnic profiling incurred by the practice.

Hence, it can be observed that the two most salient problems inherent in Terrorism Act 2000 have been the extensive 'stop and search' powers granted to the police coupled with the vague definition of terrorism that is against international standards. These characteristics herald the normalization of the 'state of exception' (Agamben, 2003), paving the way for the extension of executive powers under the aegis of security. Particularly interesting is the interactive effect of these two measures, as they lead to the securitization of lawful acts of dissidence, thereby infringing the right to assembly and the right to protest[28]. As put by Waever, "[b]y uttering security, a state-representative moves in a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it." (1995: 55) Thus, one of the most alarming ramifications of extensive police powers coupled with a broad account of terrorism provided by Terrorism Act 2000 has been the *securitization* of dissent or protest, as these areas of political life are deemed possible sites that might harbor elements of threat to national security. This

[27] The full decision of the case can be found at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585.
[28] In addition to the blatant violation of right to privacy induced by section 44.

tendency is also in line with Jackson's (2005) argument that draconian counter-terrorism policies seek to discipline domestic society by marginalizing dissent and protest.

Following the 9/11 bombings, many western countries including the UK enacted new counter-terrorist legislation as required by the Resolution 1373 of the United Nations Security Council unanimously approved by all members in 28 September 2001. The Resolution stipulated that all states shall prevent the financing of terrorist groups and become party to the *1999 International Convention for the Suppression of the Financing of Terrorism*, deny support to any form of terrorist organization and establish necessary domestic laws in order to effectively punish such crime. In addition, this resolution brought about the creation of *Counter-terrorism Committee* (CTC) as a monitoring body, which has requested all states to report within 90 days regarding the steps taken in national legislations. According to Roach, SCR 1373 has played an important role in the adoption of hasty measures in different settings, as well as exerting its impact through reporting duties expected from state parties in compliance with the Resolution. (Roach, 2007: 231)

Notwithstanding the fact the UK was one of the few countries that have ratified the 1999 International Convention for the Suppression of the Financing of Terrorism prior to the September 11 events, the government undertook further steps by enacting the *Anti-terrorism, Crime and Security Act 2001* (hereafter ATCSA). The ATCSA 2001 made several modifications to the preceding Terrorism Act 2000, and also brought to the fore a number of contentious provisions. The Terrorism Act 2000 entailed individuals who are "engaged in a trade, profession, business or employment" to report beliefs and suspicions of terrorist fundraising and money laundering, whose breach stipulates five years'

imprisonment. (Anti-terrorism, Crime and Security Act 2001)[29] Congruous to Security Council Resolution 1373, ATCSA expanded these controversial reporting duties and added a general provision that demands the reporting of any information that an individual deems as "…material assistance in preventing the commission by another person of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism" (Ibid.). Moreover, not disclosing such information is once again considered as a criminal offence. In other words, this provision entails that individuals become informants, reporting on 'suspicious' activities of others, thereby actively partaking in counter-terrorism. Thus, such elevated sense of security stipulates that they either become part of the security apparatus or be punished for not fulfilling the 'duty to report'.

One striking feature of the Resolution was the clause which called upon the states to be vigilant regarding border controls, particularly with respect to issues of immigration and refugee status to make sure it was not being exploited by terrorist groups. The Resolution calls for necessary measures that would ensure "the asylum seeker has not planned, facilitated or participated in the commission of terrorist attacks," and that "refugee status is not abused." (Security Council Resolution 1373) In accordance with this clause, ATCSA included a provision that allowed non-UK nationals suspected of being affiliated with terrorism-related activities to be indefinitely detained, provided that they cannot be sent back to their country of origin or another country. The process of determining and categorizing a detainee as a 'suspected terrorist' or a 'national security risk' is conducted with secret evidence that is not accessible by the suspect, whose final certification must be done by the

[29] http://www.legislation.gov.uk/ukpga/2001/24/contents

Secretary of State for Home Affairs. (Human Rights Watch, 2003)[30] Since the UK government could not deport non-citizens that faced the risk of being tortured in their home countries in light of international law, it opted to condone the practice of 'indefinite detention' instead. Unlike Article 5 of the ECHR, Article 3 is a non-derogable right and therefore must be upheld by the UK government, who contends that the policy does not constitute detention since the detainee is free to leave the country. (Chakrabarti, 2005: 144) Under these circumstances, the only plausible alternative at the detainee's disposal is to appeal to the Special Immigration Appeals Commission[31] (hereafter SIAC) and be represented by a special advocate appointed by the court. Nonetheless, as mentioned above, the detainee is deprived of the right to access the evidence through their advocate, thereby lacking any feasible ground to formulate a defense. (Human Rights Watch, 2003) In fact, the HM Prison Belmarsh in London used to accommodate indefinitely detained suspects without charge or trial, therefore referred to as the 'British version of Guantanamo'. In 2004, 17 men had been detained under this provision, 9 of which have been in Belmarsh for more than 3 years without being charged.

[30] The contentious practice of pre-charged detention in the UK goes back to the *Prevention of Terrorism (Temporary Provision) Act 1984* that aimed to address terrorist activities in Northern Ireland, as exemplified in the well-known 1988 *Brogan and other v UK* case brought before the ECtHR. The four individuals who were detained for being suspected terrorists were held for a period of six to four days in the absence of any judicial oversight and none has been charged after their release. The ECtHR contended that such an act, albeit the underlying objective of protecting the community from terrorism, constituted a breach of the principle of 'promptness' as delineated in Article 5(3). The ECtHR's ruling in the Brogan case has been a leading decision that has been applied to many subsequent cases. Nevertheless, this decision has not been upheld by Strasbourg in the 1993 *Brannigan and MacBride v UK* case, whereby the practice of pre-charge detention was justified on the grounds that there was a threat jeopardizing the "life of the nation." (Donald et. al. ,2012: 60)

[31] SIAC is a significant body that is responsible for striking a balance between human rights obligations of the UK and security risks presented by asylum seekers and immigrants, following the Strasbourg ruling on the 1996 Chahal v. UK case. (Sambei et. al. 2009: 357) One contentious issue regarding the operations of SIAC, *inter alia*, has been the question whether evidence extracted through the use of torture could be accepted. Initially, SIAC and the Court of Appeal concurred that such information could be received on the condition that it was obtained by foreign officials without the complicity of British authorities. As the question was referred to the House of Lords, it was unanimously decided that the usage of any information acquired through torture, with or without the involvement of British officials, was unacceptable. (Ibid.)

This tendency is a cogent example of the trade-off between international human rights norms and national security requirements, where states aim to strike a balance between the two often to the advantage of the latter. As soon as ATCSA came into force, the government submitted a Derogation Order under the ECHR and ICCPR with respect to the new provisions it entailed. (Steiner et. al., 2008: 417) The Derogation Order refers to Article 15 (3)[32] of the ECHR and asserts that the government of UK is acting under its obligations to the SCR 1373 by taking necessary steps in order to "to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks."[33] (Derogation Order, 2001) Furthermore, the Order declares that the context incurred in the aftermath of 9/11 attacks, considering the threat of a possible attack and the presence of foreign nationals suspected of being affiliated with international terrorism, the state is in a situation of *public emergency* as delineated in Article 15 (1)[34]. (Ibid.) Hence, consonant with Immigration Act 1971, the Order sustains that the government has a right to deport individuals on national security grounds or detain them "pending their removal or deportation." (Ibid.)

Being the only European country to invoke indefinite detention that specifically targets non-nationals, the UK has paved the way for the suspension of due process with the onset of ATCSA 2001. Under the state of exception, the government has created a "space devoid of law," (Agamben, 2003: 50) rendering such individuals to be susceptible to what Agamben defines as the "de facto rule" of the sovereign (Ibid.: 3). This is also clearly the

[32] Stating that the derogation must be in compliance with the state's obligation to other international law.
[33] http://www.legislation.gov.uk/uksi/2001/3644/schedule/1/made
[34] This article states that the derogation is permissible if there is a "public emergency threathening the life of the nation." (European Convention on Human Rights) Retrieved at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf

case in the usage of secret evidence to determine those reckoned to be posing a risk to national security and the positioning of the executive above the law. Yet, what is striking is that such a decision to overtly violate established rights is not taken unilaterally, but through the process of compliance with international standards imposed by the ECHR. The decision to issue a derogation order is pivotal in this sense, because the government is appealing to *exceptionality* impelled by the post-9/11 environment while pledging loyalty to human rights norms on the whole, and concomitantly referencing other more pressing 'international duties' as the basis of the derogation. Hence, in the midst of a perceived threat environment the UK government is attempting to frame its derogation from human rights principles on the language of 'state of exception', thereby securitizing the issue area of immigration.

Subsequently, in 2004 the House of Lords have maintained that the derogation was disproportionate and discriminatory, while pointing out that terrorist suspects can also be citizens, which poignantly turned out to be the case in the 7/7 London bombings. Following the 2004 House of Lords' decision in the case of *A and others v Secretary of State for Home Department (2004)*, the indefinite detention provision was repealed by the Parliament, later to be replaced by 'control orders'[35] with the advent of *Prevention of Terrorism Act 2005*. In this landmark case, the appellants rejected the derogation of Article 5 of the Convention in ATCSA 2001 on the grounds that there was no public emergency in the UK that fulfilled the requirements of being imminent and temporary in nature. In addition, the appellants argued that sections 21 and 23 were discriminatory on nationality grounds since it applied only for non-nationals, thereby breaching Article 14 of the ECHR that prohibits discrimination. In his speech, Lord Hope has elucidated the situation as follows:

[35] These measures will be further elaborated below.

> …The distinction which the government seeks to draw between these two groups- British nationals and foreign nationals- raises an issue of discrimination. But, as the distinction is irrational, it goes to the heart of the issue about proportionality also. It proceeds on the misconception that it is a sufficient answer to the question whether the derogation is strictly required that the two groups have different rights in the immigration context. So they do. But the derogation is from the right to liberty. The right to liberty is the same for each group. If derogation is not strictly required in the case of one group, it cannot be strictly required in the case of the other group that presents the same threat.
>
> (House of Lords, 16 December 2004)[36]

The UK had been the only European country to derogate from Article 5 of the ECHR within the context of counter-terrorism, notwithstanding Resolution 1271 of the Parliamentary Assembly of the Council of Europe in January 2002 which clearly asserts that "[i]n their fight against terrorism, Council of Europe members should not provide for any derogation to the European convention on Human Rights." (quoted in Steiner et. al., 2008: 421) In a similar vein, the Council of Europe Commissioner for Human Rights Mr. Alvaro Gil-Robles has elucidated in Opinion 1/2002 that the post-9/11 conjuncture of an elevated sense of national security is not a valid ground for derogating from the Convention. The Commissioner went on to indicate that states that have a history of facing terrorism have not considered it as a necessary measure to derogate, and therefore the decision on part of the UK to derogate from the ECHR needs to be backed up by "[d]etailed information pointing to a real and imminent danger to public safety…." (Joint Committee on Human Rights Fifth Report, 2002)

While the practice of indefinite detention mainly targeted non-citizens and hence securitized immigration policies in general, its annulment brought back the issue of

[36] The full text of the decision made by the House of Lords can be found at http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&others.pdf

deportation into the political debate. Shami Chakrabarti argues that the right to seek asylum as an indispensable international norm first came to be recognized in the UK with the 1951 Refugee Convention in the aftermath of World War I. As put by Chakrabarti, "…it might be argued that much of our polity and judiciary were first introduced to concepts and analysis of fundamental human rights via the 1951 notion of asylum." (2005: 132) The 1951 Convention prohibits the practice of expulsion in Article 32, except for situations where national security is involved. Yet, this 'state of exception' is not exempt from the duty to uphold due process. Since the UK became a signatory to this Convention, it has served as a safe haven for refugees and immigrants fleeing oppressive regimes, ranging from the Jewish refugees to the 'economic migrants' from the old Communist bloc. Nonetheless, official discourse on the matter has started to take a different turn, as portrayed by the ex-Prime Minister Tony Blair's statement that," [t]he UN Convention on Refugees, first introduced in 1951…has started to show its age…" (The Guardian, 26 April 2004)

More recently, discussion revolving around the practice of deportation[37] has come to the fore once again with the case of Abu Qatada, escalating to a point where Prime Minister David Cameron has come to express the possibility of a temporary withdrawal from the ECHR. Arriving to the UK as an asylum seeker[38] in 1996, Qatada was first arrested in 2001 for being involved to plot the bombing of Strasbourg Christmas market, and has been known for his infamous speeches justifying violence against Jews, Muslim converts as well as

[37] Similar to the practice of deportation, the practice of *extradition* is also imbued within the nexus of national security concerns and human rights obligations. Coming into effect in 2003 as a product of the European Arrest Warrant, the Extradition Act allowed for surrender from the UK territory, provided that the offence in question is criminalized both in British law and in the law of the state seeking extradition, in addition to the conditionality that the request for extradition is not premised on political bases. For more information on this topic see *Extradition Act 2003*.

[38] In 1999 while residing in the UK, he has been convicted of terror charges in his native country Jordon.

praising 9/11 attacks. Since August 2005, Qatada had been arrested under the immigration rules while the government tries to find legitimate grounds for his deportation. Finally in 2009, in a landmark decision the Law Lords unanimously supported the government's policy of deporting terrorist suspects, provided that the country of arrival assures the individual will not be subject to inhuman or degrading treatment and will benefit from the right to fair trial.[39] (Bindman, 2012) As deportation preparations were initiated, Qatada's appeal to the ECtHR was rejected on the grounds that he did not face torture if he was removed from the UK and sent to Jordon[40], thereby eliminating the legal obstacles to his deportation and returning Abu Qatada to the purview of British courts. (Travis, 2012) With the objective of legalizing (and concomitantly justifying) his deportation, in April 2013 the British government has signed a mutual assistance treaty with Jordon, ensuring that Abu Qatada will be subject to fair trial and use of torture evidence will not be permitted. (BBC News UK, 24 April 2013)

The Abu Qatada incident is a case in point that demonstrates the acts of balancing and legitimization governments are compelled to undertake in the face of human right obligations. The responsibilities under Human Rights Act 1998 (and thus the ECHR) inhibit British authorities to simply dispose of an individual deemed a security threat. The power human rights exert, even in matters pertaining to national security, is demonstrated by Prime Minister Cameron's proclamation that they might withdraw from the ECHR. Ultimately, the officials are compelled to formulate an arrangement in which the deportation is conditional upon the guarantee of the basic rights of a suspect, thereby seeking to portray the act within

[39] The ECtHR concluded the case by awarding Abu Qatada £2,500 compensation.
[40] Although in an initial ruling the Court maintained that Qatada's deportation and detention without trial as stipulated by anti-terrorism laws in the UK has been against human rights principles.

the contours of international principles. As such, this case clearly exemplifies how the execution of sovereignty in the sense of bestowing security is conditional on the legitimacy conferred by international norms of appropriate state conduct.

3.3. Counter-terrorism Measures in the Aftermath of 7/7 London Bombings

A different international trend regarding counter-terrorism measures was invoked in the aftermath of the London bombings, as Security Council Resolution 1624 came into force on 14 September 2005 with the strong endorsement of the UK government. The Resolution firstly condemned "...the incitement of terrorist acts and *repudiating* attempts at the justification or glorification (*apologie*) of terrorist acts that may incite further terrorist acts," and called for all states to "prohibit by law incitement to commit a terrorist act or acts; prevent such conduct; deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct." (Security Council Resolution 1624) During the Security Council meeting, Prime Minister Tony Blair advocated the Resolution claiming that terrorism could only be eliminated not by sheer acts of condemnation on part of the Council, but also by "fighting the poisonous propaganda" (quoted in Security Council Resolution 1624). He also went on to argue that the Council should seek to eliminate root causes of terrorism "by fighting not just their methods, but their motivation, their twisted reasoning, wretched excuses for terror" (Ibid.).

The British government already displayed a tendency towards limiting freedom of expression and association in relation to terrorism, as in the case of broadcast bans against the IRA or the provision in the Terrorism Act 2000 that criminalizes inciting terrorism overseas. Congruently, following 7/7 attacks the Blair government initially put forth a

proposal that criminalized any statement that "glorifies, exalts or celebrates the commission, preparation or instigation…of acts of terrorism," coupled with a proposal to monitor and close down religious institutions that promote extremism and terrorism. In addition to these measures, the proposal included a notorious provision that extended the pre-charge detention period to 90 days. The Prime Minister made a public announcement regarding the incidents and proclaimed: "Let no one be in doubt. The rules of the game have changed. If you come to this country from abroad, don't meddle with extremism, because if you do, or get engaged with it, you are going to go back out again." (The Guardian, 6 August 2005) In the same speech, he also indicated that the government was willing to engage in a 'war' with the courts for their objections to the new counter-terrorist measures on the grounds of ECHR articles, claiming to amend the Human Rights Act 1998 if necessary. (Ibid.)

Yet on 8 November 2005, the proposed law was rejected in the House of Commons, leading to the first Commons defeat of the Blair government. The draft bill was also rejected by the House of Lords twice due to the controversial 'glorifying terrorist acts' clause. Eventually, while the 90 days detention period was lowered to 28 days, a sanction against 'encouragement of terrorism' was incorporated under section 1 of the *Terrorism Act 2006* despite widespread criticisms not only from civil society actors and the UN, but even Labour MPs. (The Guardian, 19 January 2009) This provision criminalizes any "…statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences." [41] (Terrorism Act 2006) The nature of a statement that falls within the purview of this provision involves those

[41] http://www.legislation.gov.uk/ukpga/2006/11/contents

that "…glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances." (Ibid.) Hence, this provision aims to eliminate 'terrorist speech' including publications and internet activities that are deemed as promoting terrorism. One salient feature of the section is that whether any individual is actually 'encouraged' or 'induced' by the statement at hand is considered to be irrelevant.

The second clause of the Act goes on to criminalize the 'dissemination' of terrorist publication, including its distribution and circulation, as well as the conduct of giving, selling or lending such publication. Other conduct that fall within the purview of this provision include "provid[ing] a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan; transmit[ing] the contents of such a publication electronically; or have such a publication in his possession" with the aim of conducting the aforementioned acts. (Terrorism Act 2006) Under such circumstances, the individual might be found directly or indirectly encouraging terrorist acts. Cram (2007) argues that this clause in particular might ensue in substantial media restrictions, those that are more extensive than the 1988 and 1994 broadcast bans imposed by both the Irish and British governments regarding the *Sinn Fien* interviews. He contends that while denying the 'oxygen of publicity' to terrorists is a common strategy, the previous bans did not prevent the broadcasters from publishing such news, but simply forbid them from using the exact wording of the members of *Sinn Fien*. Hence, it was a narrowly circumscribed provision which was considered by the European Commission of Human

Rights as proportionate. On the contrary, the clause in Act 2006 is a 'content-based measure'; in other words, it also encompasses the broadcaster's own representation of the news and therefore entails a much broader restriction, in the absence of a 'threat of immediate violence'. (Cram, 2007: 345)

The underlying mentality in Terrorism Act 2006 is the perception that the British government has been so far 'soft' on extremism going on in their own territory. It is suggested that the government was already wary of the recruitment of young individuals for jihad within UK borders, yet it was believed that these individuals were to target countries overseas instead of the UK, a belief that was poignantly invalidated with the 7/7 London bombings. (Marchand, 2010) Compared to Irish terrorism, the new type of threat was claimed by government officials to instigate 'change of rules' as it did not seek to bring about political change but merely to cause mass killings triggered by hatred. (Marchand, 2010: 141; Loader, 2007: 35) In the international context, in addition to the UN Security Council Resolution 1624 another source for Terrorism Act 2006 has been the *Council of Europe Convention on the Prevention of Terrorism* (CECPT) that came into force May 2005. The Convention demanded member states to issue laws that criminalize the 'public provocation to commit a terrorist offense'. (Council of Europe Convention on the Prevention of Terrorism, 2005) However, the requirement found in CECPT that the incitement be intentional and create an actual danger was not reflected in the Terrorism Act 2006, which criminalizes 'reckless' incitement instead without the condition of causing danger. The UN Human Rights Commission has voiced its concern over this particular provision, indicating that "a person can commit the offence even when he or she did not intend members of the public to be directly or indirectly encouraged by his or her statement to commit acts of

terrorism, but where his or her statement was understood by some members of the public as encouragement to commit such acts." (UN Human Rights Committee, 2008)

The provision fighting the 'encouragement' of terrorism also finds expression in the official counter-terrorism strategy adopted by the government in 2011, known as *CONTEST* that is comprised of 4 areas of work, namely *pursue* (to stop terrorist attacks), *prevent* (stop people from becoming a terrorist or supporting terrorism), *protect* (to strengthen protection against a possible attack), *prepare* (to mitigate the impact of an attack). Concurrent to the undertones of Terrorism Act 2006, the second working area entitled *Prevent* deals with the ideological challenge posed by terrorism, thereby endeavoring to stop individuals from being drawn into extremist networks and preventing the radicalization of groups. In this respect, it is indicated that the government works with local authorities to provide help and assistance to people in order to stop them from joining radical groups. It is claimed that this strategy does not seek to undermine freedom of speech, yet it purports to challenge radical ideas that are conducive to terrorist inclinations through open debate. (CONTEST, 2011: 9-10) In particular, Prevent includes policies such as preventing "apologists for terrorism and extremism" from travelling to the UK, funding of a special police unit that is in charge of eliminating online content that is against anti-terrorism laws, cooperating with civil society organizations to offer an alternative outlook to "vulnerable target groups."[42] (Home Office UK, 2011)

Interestingly, in 2011 nation-wide student protests against education cuts, the Prevent programme of the Counter-terrorism Command became actively involved in hunting down 'extremism'. It was reported that an officer from the Prevent programme contacted

[42] https://www.gov.uk/government/policies/protecting-the-uk-against-terrorism/supporting-pages/prevent

universities in London and asked for intelligence regarding the students protesting. An e-mail sent by the officer has requested that "any relevant information that would be helpful to all of us to anticipate possible demonstrations or occupations," be passed onto him. (Taylor & Vasagar, 2011) The president of the National Student Union Aaron Porter has responded to this event, underlining the disturbing fact that even student protests are now handled by counter-terrorism measures. (BBC News, 17 January 2011)

On the whole, Terrorism Act 2006 has not only introduced problematic provisions that sit oddly with the freedom of expression, but when coupled with active counter-terrorism strategies like *CONTEST*, it jeopardizes any form of opposition deemed as 'extreme' or 'radical'. Particularly with respect to the articulation of vague terms such as 'indirect encouragement' and 'other inducements', the legislation can lead to the criminalization of peaceful expressions of radical or unpopular views, as was the case in the arrest and imprisonment of a number of Muslim protestors. (Article 19, 2006) Rioting outside the Danish Embassy to protest the cartoon incident which satirized prophet Muhammed, four individuals were sentenced to a highly disproportionate term of six years for encouraging murder and terrorism through offensive slogans (BBC News, 2007). This new legislation has not only rendered the Muslim minority living in the UK as potential 'suspects' (Silvestri et. al., 2011) but also other forms of opposition and protest, while its implementation through security forces have operated in a way where various groups risk being subsumed under the overarching category of 'terrorism'.

Taken together, this political constellation constitutes a *securitizing move* as defined by Buzan et. al. (1998), whereby the government restricts the enjoyment of certain rights by

evoking a sense of emergency and pressing danger not only in material terms, but also as an ideational threat against a certain worldview. Elusive notions such as 'indirect incitement' and the 'dissemination of terrorist publication' lay the grounds for securitizing freedom of expression and the labeling of groups deemed as an 'existential threat', thereby extending the purview of 'the state of exception'. As indicated by Buzan et. al. (1998), once an issue-area is securitized it moves beyond the functioning of normal politics, and in this case minority religious beliefs and worldviews have been drawn under the remit of security. Nonetheless, this was not automatically the case for Terrorism Act 2006 as mentioned above, since the legislation was subject to both domestic and international criticism (even from within the Labor Party), so much so that an earlier more draconian version was repealed and reformed. In the face of reverberating security narrative such challenges illustrates the ongoing authority of established human rights norms even in national security matters.

Two years later in 28 November 2008, the *Counter-terrorism Act 2008* acquired Royal Assent after a period of ping-pong politics amongst the chambers and joined its predecessors in introducing new contentions provisions. The Act aimed to boost the government's power in fighting terrorism through proposed changes such as:

- a provision to allow the pre-charge detention of terrorist suspects to be extended from 28 days to 42 days in certain circumstances[43]
- changes to enable the post-charge questioning of terrorist suspects and the drawing of adverse inferences from silence
- enhanced sentencing of offenders who commit offences with a terrorist connection

[43] Government's proposal to extend this period to 90 days in 2005 was rejected in the Parliament. For more details, see Tempest, Mathew. 2005 "Blair defeated on terror bill," in The Guardian 9 November. Retrieved from http://www.guardian.co.uk/politics/2005/nov/09/uksecurity.terrorism.

- provision for inquests and inquiries to be heard without a jury.

(Counter-terrorism Act 2008)[44]

In addition to the abovementioned changes, the Act also expands the authority to gather and share information as a counter-terrorism measure, along with modifying the law on asset-freezing. Furthermore, section 76 of the Act criminalizes extracting or attempting to extract information about a member of the armed forces, the intelligence services, or a police officer, if there is a likelihood of such information being used for terrorist activities. (Ibid.) Anyone found guilty faces up to ten years imprisonment and an unlimited fine. As a response to this Act in February 2009, a mass protest was held outside of Scotland Yard by journalists who were concerned that the provision would work as a pretext for the police to threaten journalists taking photographs of their activities. (Bone, 2009) The law was nonetheless endorsed by Gordon Brown, who has reiterated the right of the police to restrict taking photography in public places and added that the law applies to anybody else, not just reporters. (Brown quoted in Laurent, 2009)

Although the clause pertaining to secret coroner's inquest was later dropped and the proposal to extend the pre-trial detention period to 42 days was modified into a temporary provision to be held in reserve if the parliament deemed it necessary, the Act was passed following much heated debate in both Chambers. In addition to such a 'reserve power' granted to the parliament, the right to silence and protection from 'oppressive or coercive questioning' are also seriously impeded by the new law, due to the provisions that entail broadening post-charge questioning and drawing adverse inferences from failing to mention facts that are later used in court. These measures by and large undermine the principle of due process, as the sovereign invokes a sense of imminent threat to national security and

[44] http://services.parliament.uk/bills/2007-08/counterterrorism.html

exempts itself from public scrutiny or democratic accountability. This tendency was evinced by Home Office Security Minister Tony McNulty's remark on the new legislation, claiming that Britain could face "two or three 9/11s" in a single day. (quoted in The Guardian, 2009a) Sami Chakrabarti has commented on the bill, stating that this "…new damning evidence…makes embarrassing reading for all of us in the land that gave Magna Carta to the world." (quoted in The Guardian, 2009a) Likewise, Amnesty International released a report on the bill, conceiving it not only as a 'missed opportunity' to amend the illiberal provisions of earlier Acts, but to the contrary as a step towards entrenching such policies. (Amnesty International, 2008: 1) Thus, what is remarkable about Counter-terrorism ACT 2008 is that the provisions it introduces is a normalization of exceptional measures, fortified by the idea that security is constantly under threat.

3.4. New Provisions, Old Practices: Accounting for Lost Liberties

One of the recent legislations pertaining to counter-terrorism has been the *Terrorism Prevention and Investigations Measures Act 2011* that purports to bring "a new regime to protect the public from terrorism."[45] (Terrorism Prevention and Investigations Measures Act 2011) As put by the Home Secretary Theresa May in the Ministerial Foreword, while national security is the primary duty of the government, officials "must…correct the imbalance that has developed between the State's security powers and civil liberties, restoring those liberties wherever possible and focusing those powers where necessary." (HM Government, 2011)[46] This Act foresees the annulment of Prevention of Terrorism Act 2005, along with the controversial control orders that are to be replaced by what has been termed as *Terrorism Prevention and Investigation Measure*s (hereafter TPIMs). The

[45] http://www.legislation.gov.uk/ukpga/2011/23/enacted

[46] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97972/review-findings-and-rec.pdf

Prevention of Terrorism Act 2005 had involved extensive control orders including both citizens and non-citizens suspected of terror-related affiliations that debilitated rights to liberty under Article 5 of the ECHR. (Ibid.: 240) The control orders were intended to apply in the absence of sufficient evidence to undertake criminal prosecution, involving measures such as forced relocation, electronic tagging, limited house arrest, curfews, restrictions in occupation, association and communications. (Steiner et. al., 2008: 430; Ryder, 2011) In fact, control orders were first introduced as an alternative to pre-charge detention of terrorist suspects in Belmarsh prison, following a House of Lords ruling against the practice of indefinite detention of non-nationals. (House of Lords, 2004)

While the new Act aims to account for those rights and liberties sidestepped in the fight against terrorism, it has been criticized for simply 'renaming' old measures yet with a more restricted scope. The changes include the powers of the Secretary of State in imposing control orders, which have been somewhat restricted through alterations such as the abolishment of undue bans on internet and phone access, along with excessive restrictions on association with others. The implementation of TPIMs will be ensued if the Home Secretary 'reasonably believes' they are necessary, a more solid conditionality compared to the 'reasonable suspicion' for control orders. Another significant change is related to the practice of 'exclusion' in which individuals are forbidden to enter certain premises such as airports, mosques, or railways. The TPIMs substantially restricts exclusion measures, and introduces a more limited scope to those enforced by control orders. (Terrorism Prevention and Investigation Measures Act 2011) Although the TPIMs are subject to a two year limitation, the period can be extended for an indefinite amount of time if the home secretary considers the individual in question still poses a threat to national security. The major

problem with TPIMs, as was the case for control orders, is *inter alia*, the circumvention of due process. Control orders had condoned the prerequisites of criminal due process in favor of security measures predicated on 'suspicion' and 'secrecy', an attribute that by and large remains intact with the TPIMs according to Ryder. (Ryder, 2011) Thus, notwithstanding the fact that the government exhibits a stance against control orders, it nonetheless endorses problematic measures as the only guaranteed way of containing a threat when there is insufficient evidence to prosecute a person.

As a result, TPIMs fail to address the most fundamental problem imminent in previous anti-terrorism legislations, namely the fact that terrorist suspects are dealt outside criminal law and thus unable to enjoy their basic rights. While the underlying reason of the control orders was to replace the practice of indefinite detention, they sustained the deprivation of those individuals deemed as 'suspects' from the right to due process. Instead of charging and prosecuting these individuals, control orders provided the grounds for treating them as possible security risks to be contained, in the absence of any clear evidence for their crimes. That being said, as controversial provisions become subject to both domestic and international criticism, they threaten the legitimacy of the government due to their negation of established rights and freedoms, and are therefore replaced by newer, ostensibly less controversial ones. Although most of the powers bestowed by previous legislation are passed on in these new laws under a different banner, the fact that governments cannot hold on to security measures that are blatantly against human rights, or that they opt not to be affiliated with earlier controversial policies is an important aspect of the evolving counter-terrorism prevalent in the UK.

An important recent development has been the enactment of the *Protection of Freedoms Act 2012*, marking a significant step towards protecting civil liberties and reducing the power of the government to intervene in individuals' private lives, as well as bringing new limits to counter-terrorism strategies. According to the new arrangements, fingerprints and DNA profiles of individuals will be destroyed if the "arrest was unlawful or based on mistaken identity."[47] Furthermore, the Act urges the Secretary of State to introduce a 'code of practice' to be applied to CCTV usage, while requiring the judicial approval for disclosing communications data. Another important alteration in counter-terrorism measures has been the reduction in the 28 day pre-charge detention period for terrorist suspects to a maximum of 14 days. (Protection of Freedoms Act 2012) Within this framework, the Regulation on Investigatory Powers Act 2000 (hereafter, RIPA) that dealt with issues of national security in communications and information technology has also been amended. RIPA first came to force in 2000 as a counter-terrorism policy that regulates the execution of covert techniques by the police or government officials in acquiring private information. (Home Office UK, 2013) With the onset of the Protection of Freedoms Act 2012, the employment of RIPA by local authorities came under the condition of obtaining judicial approval from a magistrate for using covert techniques, while the application for lower offences[48] has been terminated altogether. (Ibid.)

One of the most important changes the Protection of Freedoms Act 2012 has introduced is abolishment of the controversial section 44 of Terrorism Act 2000 pertaining to stop and search powers of the police. This practice has been condemned due to the suspect stereotyping it has engendered, in addition to the targeting of peaceful protestors.

[47] http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted
[48] Lower than six month of custody.

(Liberty, n.d.) It has been indicated that between 2009 and 2010, among the 101,248 section 44 searchers, none led to an arrest related to terrorism. (Vallee, 2012) In the 2010 *Gillian and Quinton v. UK* case, the Strasbourg Court had maintained that the stop and search powers were too broad and violated right to private life. This decision was materialized in the Protection of Freedoms Act which albeit retaining the practice, restricted its scope within the purview of a 'code of practice'. With the new provision, a senior officer can grant stop and search powers in a certain location if he reckons there is reasonable suspicion. (Protection of Freedoms Act 2012)

On the whole, while the Protection of Freedoms Act invokes a language of rights and liberties, it attempts to retain former contentious practices within a limited scope. Once again, a similar process can be observed in this recent development. As the infamous practice of section 44 came under heavy criticism both on the level of civil society and also by international institutions such as the Strasbourg Court, the government felt impelled to distance itself from contentious policies that are deemed as violating fundamental rights and liberties. In response, a new Act that accentuates such norms are passed, which restrict the scope of earlier practices whilst concurrently normalizing and keeping them intact. As a result, exceptional measures become ingrained and normalized in legislature as preventive practices.

3.5. Conclusion

In the UK context, neither the plea for security nor that of freedom is an easy path. While being the home of liberal rights and freedoms, the country accommodates some of the most controversial counter-terrorism measures that can be found in a liberal democracy. Yet, unlike the previous experience with IRA, which is perceived as 'system-affirming' terrorism

driven by the incentive of 'national liberation' as an established and recognized principle in international politics, the new religiously-oriented terrorism is considered as 'system-threatening' since they operate outside the Westphalian principles (Zarakol: 2011). As proclaimed in the Foreword of the *National Security Strategy 2010*, new forms of terrorism and terrorist groups are identified as the "most pressing threat" the country faces today, who seek "to kill as many…citizens as possible or to inflict a crushing blow" to the economy (The National Security Strategy, 2010: 3).

In response to these perceptions, the subsequent counter-terrorism legislation have exhibited characteristics of engaging with 'an enemy' deemed as existentially different, and strategically willing to manipulate the assets of a democratic country. One inclination is to contain and strictly monitor the actions of 'foreign' elements which the government cannot simply dispose of, through measures such as indefinite detention, control orders, and more recently TPIMs. This lineage of counter-terrorism measures demonstrates that as diversity is being perceived as a threat, difference is thereby contained (Blaney & Inayatullah, 2000). Another characteristic is the extensive powers conferred to the security forces within the aegis of counter-terrorism, which together with a vague and overbroad definition of terrorism result in excessive employment of such powers upon any form of political opposition that is reckoned as radical or extreme. This is also the case for provisions that infringe the freedom of expression, as their implementation also influences the freedom of demonstration. In the face of perceived security threats, the governments endeavor to securitize areas of social and political life, to exempt themselves from the requirements of international norms. Once an issue-area is deemed as a security issue *per se*, state officials evoking a sense of emergency can legitimately employ the right to use extraordinary

measures in overcoming such threats (Buzan et. al. 1998) Hence, by invoking exceptionalism practices that are tantamount to the suspension of law are introduced and eventually normalized in the legislature, in the face of the ubiquitous threat posed by 'extremism'.

Nonetheless, while the ongoing modifications to counter-terrorism measures are products of the experiences and perceptions of terrorism, there is another discernible dynamic at play, namely the pressure exerted by human rights principles. Particularly with the enforcement of the Human Rights Act of 1998, the UK government has been more susceptible to complying with such norms, through the operations of both domestic (i.e. Joint Committee of Human Rights) and international (i.e. ECtHR) institutions. Consequently, while pursuing security policies, the government is under the obligation of balancing such concerns vis-a-vis rights and liberties, in order to present its conduct as legitimate to its constituents and the international community it is a part of. As indicated by Risse and Sikkink (1999), human rights norms shape actors' identities and interests, thereby determining the codes of 'civilized nations'. The inclination of changing contentious practices, while trying to hold on to most of the content under a different banner is an example of this trade-off UK government has been engaging with. As such, the UK case demonstrates how even in the area of national security, state conduct is circumscribed by human rights norms, which have come to constitute one of the bastions of legitimizing 'sovereignty' (Reus-Smit, 2001). Therefore, in the context of counter-terrorism these two concerns have come to transform a conventional understanding of sovereignty, where state actors endeavor to pave way for greater security powers, whilst ultimately being bound to justify and balance their policies in accordance with established norms.

Document	Date	Aim	Significance
Human Rights Act 1998	9 November 1998 (came into force on 2 October 2000)	-Requires all UK legislation to be in line with ECHR -Makes it unlawful for public authorities to act incompatible with ECHR -Foresees the establishment of an independent Joint Human Rights Committee	Enhances the purview of the ECHR in the British legal system
Terrorism Act 2000	20 July 2000	-Introduction of stop and search powers (in the absence of a reasonable suspicion)	-Expanding the power of the police -highly inclusive definition of terrorism
Anti-terrorism, Crime and Security Act 2001	19 November 2001	-response to 9/11 attacks and Resolution 1373 -introduction of indefinite detention of non-nationals	-securitization of immigration -important balancing move→ cannot deport, instead chosing to detain
Prevention of Terrorism Act 2005	11 March 2005	-introduction of control powers that replace indefinite detention	-limiting the purview of security powers under human rights obligations

Document	Date	Aim	Significance
Terrorism Act 2006	30 March 2006	-response to 7/7 London bombings -aims to eliminate 'terrorist speech' including publications and internet activities	-reconigition on part of the UK that this new type of terrorism signifies 'change of rules' -jeopardizes any form of opposition deemed as 'extreme' or 'radical'
Counter-terrorism Act 2008	26 November 2008	-criminalizes extracting information about a member of the armed forces, the intelligence services, or a police officer -drawing adverse inferences from silence in questioning	-concern that the provision can work as a pretext for security forces to threaten journalists -the latter provision is an impediment to due process
Terrorism Prevention and Investigations Measures Act 2011	14 December 2011	-to bring a new regime to protect the public from terrorism. -to "correct the imbalance between civil liberties and security powers" -annulment of control powers→ introduction of TPIMs	-an example of a tendency to rename controversial provisions under a different banner -signifying a concern over legitimacy -still suspects are dealt outside of criminal law
Protection of Freedoms Act 2012	1 May 2012	-code of practice for CCTV usage -reducing the pre-charge detention period to 14 days -abolishing the stop and search powers	-restricting controversial emergency powers, yet retaining some under a limited scope

Table 5. Development of Counter-terrorism and Human Rights Policies in the UK

Chapter 4. Breaking with the Dark Past? Security Policies and the Status of Human Rights in Turkey

In Turkey, human rights principles have never acquired a higher ground either in the minds of the people or the policy makers. The balance between security concerns and human rights norms in the Turkish political culture always tilted towards the former, as 'state of exception', 'emergency situations', and 'extraordinary powers' granted to the government and security forces have been common practices since the establishment of the Republic. This tendency has been blatantly illustrated in three consecutive military coups in 1960, 1971, and 1980, as well as the fierce clashes that took place between the security forces and the *Partiya Karkerin Kurdistan* (hereafter, PKK) throughout the 1990s, marking some of the most atrocious human rights abuses in Turkey's history[49]. Hence, Turkey has not habitualized upholding fundamental rights and freedoms to start with as was the case with the United Kingdom, or most of its counterparts in Europe for that matter. Yet this legacy gives way to an interesting comparison in the post-9/11 context. As the primacy of human rights have been overridden by security concerns in the post-9/11 context in many Western countries, a reverse process was taking place in Turkey, with the adoption of the EU *aquis*.

While the aftermath of 9/11 has been a turning point in instigating draconian counter-terrorism measures in Western liberal democracies, first and foremost the US and the UK, during the same period Turkey has been undergoing a thorough democratic reform process in order to fulfill the Copenhagen criteria. Nonetheless, the international counter-terrorism trends coupled with domestic criticisms for 'going soft' on security matters ultimately laid the grounds for the Turkish government to reverse such democratizing

[49] Throughout the 1990s, human rights situation was plagued by the widespread practices of torture and disappearances. For more information see Helsinki Watch (1993).

attempts. As such, the case of Turkey provides interesting insights for the study of the tension between human rights principles and national security concerns, since it inhabits various dynamics at work, such as the impact of the EU accession process and democratization, as well as the traditional role of the military and the prevalence of national security. The aim of this section is first to provide an overview of Turkey's EU-membership bid and its impact on the balance between human rights and national security, followed by an account of the evolving nature of counter-terrorism measures in the country.

4.1. Human Rights in Turkey and the EU-accession process

Turkey's quest in taking part in the European integration first started with late 1950s and has proceeded in an uneasy path. The negotiations to become a member of the European Common market were launched in 1959, and continued with the 1963 Ankara Association Agreement, leading to the application for full membership in 1987. Moreover, Turkey became the member of the Council of Europe in 1949 and ratified the European Convention on Human Rights in 1954. Following a long and oscillatory period, the 1999 Helsinki Summit marked a turning point in Turkey-EU relation as Turkey acquired candidacy with the withdrawal of the Greek veto. (Müftüler-Bac, 2000: 21-23) After the European Council's announcement in 2002, which declared that full accession negotiations will begin without delay if Turkey succeeds in fulfilling the Copenhagen Criteria, a process of intense political and legal reforms started to take place. Eventually, as the new developments were found to be satisfactory by the European Council, full accession negotiations have been initiated on 3 October 2005 despite a clause that states the outcome is an open-ended process which cannot be guaranteed in advance. (General Affairs and External Relations Council, 2005)

EU's enlargement process encapsulates a vision of democratization and the creation of open market economy in the rest of Europe, which is expected to culminate in economic and political integration. (Müftüler-Bac, 2008: 201-207) The Copenhagen Criteria have been formulated during the European Council meeting in 1993, to serve as the yardstick for evaluating a country's eligibility for membership. These criteria require a country to prove its competence in the stability of its institutions that guarantee democracy, the rule of law, human rights, respect for minorities and the adoption of EU *acquis*, along with a functioning market economy. (Parslow 2007: 3) The political dimension of the Copenhagen criteria has been a pressing issue in Turkey's membership bid as asserted consistently by EU officials. Among the critical issues that have been voiced on this matter the institutionalization and implementation of human rights, role of the military in politics, transparency of the public sector, and the Kurdish question come to the fore. Turkey's first step towards meeting the EU standards after the 1999 Helsinki Summit came into existence with the 2001 National Programme for the Adoption of the Acquis (Avrupa Birligi Muktesebatinin Ustlenilmesine Iliskin Turkiye Ulusal Programi), which covers a wide range of issues aiming to fulfill institutional, financial, and political criteria for membership in the EU. (Parslow 2007: 2-5) Since 2001 numerous reforms have been made with regards to a broad spectrum of socio-political issues, namely those pertaining to freedom of thought and expression, freedom of association, gender equality, minority rights, recognition of the supremacy of international human rights laws and diminishing the military clout over politics. (Benhabib & Isiksel 2006: 224-226; Kalaycioglu 2003: 10)

The EU accession process and the concomitant legal reforms that were passed in order to comply with the Copenhagen criteria has been an important political stimulus in

Turkey for bringing about a rights-based understanding. According to Müftüler-Bac (2005), both the prospect of membership and the established institutional ties have been decisive in laying the necessary grounds for an "increased assimilation of rules and norms of liberal democracy in Turkey since 1999," and have bestowed the domestic actors pushing for further democratization greater bargaining power. (2005: 17) With the aim of fulfilling the objectives under the adoption of the *aquis*, between 2001 and 2003, a number of important Constitutional reforms have been passed leading to significant steps such as the abolishment of death penalty with the adoption of Protocol 6 and 13 of the ECHR to be converted to life sentences, and the authorization of broadcasting in other languages. (Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, n.d.) The 4th package in January 2003 introduced adjustments to the Penal Code regarding the punishment of torture with the adoption of a measure that prevents torture cases being converted into monetary fines. In a similar vein, in order to prevent occurrences of torture incidents a new clause has been inserted to the Civil Servants Law, whereby ECtHR rulings against Turkey due to torture and mistreatment cases will be claimed from the perpetrators. (Ibid.) In 2005, the government signed the Optional Protocol of the UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment of Punishment which was yet to be ratified six years later in 2011 (Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002). All these developments have been in tandem with the 'zero tolerance for torture' campaign promoted by the government.

One of the most groundbreaking amendments to the Constitution came about during the coalition government in 2001, bringing important modifications with respect to rights and freedoms. Firstly, the 2001 amendment foresaw that Article 13 delineating general

grounds for restricting fundamental rights and liberties, such as national security, the indivisible integrity of the State, the principle of sovereignty, public order and public morality was repealed. This Article was replaced by a provision which stipulates that "[f]undamental rights and liberties may be restricted only by law and solely on the basis of the reasons stated in the relevant articles of the Constitution without impinging upon their essence. These restrictions shall not conflict with the letter and spirit of the Constitution, the requirements of democratic social order and the secular Republic, and the principle of proportionality." (Constitution of the Republic of Turkey) As a result, Özbudun indicates that instead of serving as a restrictive clause, Article 13 was transformed into a protective clause. (Özbudun, 2007) The change of mentality that underscores this ostensibly simple modification in Article 13 of the Constitution is actually a significant one. It is the manifestation of a wider process, whereby the primacy of national security concerns has been challenged by principles such as rule of law and fundamental rights.

Likewise, Article 14 that addressed the 'abuse of fundamental rights and freedoms' was modified to be more in line with Article 17 of the ECHR. While conditions that constitute an abuse were reduced, the new article acknowledges that such abuses can be inflicted not only by individuals but also by the State. Whilst the older version stipulated that "none of the rights and liberties in the Constitution shall be exercised with the aim of…placing the government of the State under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion, or sect…"; the new version states "[n]o provision in the Constitution shall be interpreted in a manner that would enable the State or individuals to destroy the fundamental rights and liberties embodied in the

Constitution or to engage in an activity with the aim of restricting them more extensively than is stated in the Constitution." (Constitution of the Republic of Turkey) Once again, there is a dramatic shift in the understanding that undergirds this Article, from a presumption that rights and liberties are susceptible to abuse by citizens against societal order, to one which accentuates the indispensable role of human rights norms. Similarly, the pre-trial detention period as indicated in Article 19 was reduced to 4 days from 15 days for collectively committed crimes, notwithstanding the condition that the period might be extended under state of emergency, martial law and war. An additional clause was added to this article, which states that individuals who suffer due to unlawful detention or arrest shall be compensated by the State. (Ibid.) Interestingly, these developments were taking place whilst the UK was passing the notorious indefinite detention for non-nationals provision the same year, with the advent of *Anti-Terrorism, Crime, and Security Act 2001*. Such modifications have heralded the move towards establishing a rights-based understanding to Turkish legal framework and an enhanced understanding of the rule of law in general.

Within the democratization impetus provided by the EU accession process, the laws pertaining to counter-terrorism have also undergone some important transformation. In July 2003 with the 6th and 7th harmonization package, Article 7 of the 1991 Anti-Terror Law was amended so that the crime of making propaganda for a terrorist organization was restricted within the contours of "advocating the use of violence and other methods of terror." (Law on Fight Against Terrorism, Law no. 3713)[50] Since one of the most salient problems in anti-terror laws are the overbroad definition of crimes, this narrowing and refining of the provision bears important results, particularly with respect to its implementation. Moreover,

[50] http://www.justice.gov.tr/basiclaws/Law_on_Figh.pdf

Article 8 of the Anti-Terror Law that penalized "written and oral propaganda and mass demonstrations and marches aiming to disrupt the unity of the Republic of Turkey with its land and nation" has been repealed altogether (Ibid.). This was one of the most significant steps taken during this period in eliminating obstacles to the freedom of thought and expression, since this provision has given way to a great number of political prisoners throughout the years.

Finally in 2004, the amendment of Article 90 of the 1982 Constitution has culminated in the supremacy of international human rights conventions ratified by Turkey. In other words, this move ensured that Turkish jurists will need to abide by international law in cases when there is a clash with the domestic law (Benhabib & Isiksel 2006: 224). The 4th and 5th harmonization packages established the grounds whereby ECtHR rulings finding Turkey in violation of the Convention can constitute a basis for a renewal of the trial in civil, criminal, and administrative courts. It was first in 1987, that Turkey recognized that right to individual application to the ECtHR and subsequently in 1989 the binding judicial competence of this international institution[51]. Hence, these last developments marked the institutionalization of ECtHR's authority in Turkey. Other major steps in establishing human rights principles in the legal framework took place during the accession process including the ratification of the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights in 2003, albeit with a number of reservations concerning the rights of women and minority groups. (Müftüler-Bac, 2005: 25)

[51] During this period, both the European convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were also signed.

Since the granting of EU-candidacy, Turkey has established a number of mechanisms and bodies for monitoring the human rights situation in the country. First in 2001, Human Rights Presidency was set up under the aegis of the Prime Ministry, with the aim of monitoring the implementation of human rights principles and the alignment of national legislation with that of international covenants. Likewise, in line with UN Paris Principles and the 2010 revisions made to the Turkish Constitution, a law was passed in 2012 for the onset of a national human rights institution (in other words an Ombudsman's Office), also known as the Public Monitoring Institution (*Kamu Denetleme Kurumu*). (Republic of Turkey Ministry of Foreign Affairs, 2011) As depicted in the Law number 6328, the task of the Ombudsman is to, "…examine and investigate the complaints of natural and legal persons regarding functioning of the administration in the framework of characteristics of the Turkish Republic set out in the Constitution and all kinds of acts, transactions, attitude and behaviors of the administration in the light of justice, respect for human rights and rule of law and to make recommendations to the administration." (Draft Law on Ombudsman, 2012) The first Ombudsman to be elected in 27 November 2012 was Mehmet Nihat Ömeroğlu, an outcome that caused much controversy. Ömeroğlu had been a judge in the Court of Cassation upholding the contentious decision of convicting Hrant Dink for 'insulting Turkishness', an Armenian journalist who was later assassinated. (Bianet, 28 November 2012)

Regarding human rights mechanisms, two additional national bodies come to the fore, namely the Human Rights High Council and the Human Rights Inquiry Commission. The former was established as part of the Council of Ministers and is headed by the Deputy Prime Minister responsible for human rights. Its main task is to consider the reports

submitted by the Human Rights Advisory Council, consisting of governmental officials and NGO members for the purpose of presenting recommendations to the Government. Nonetheless, the Advisory Council became by and large inactive due to the prosecution of the head of the organization and others members for a report they had released in 2005 on the situation of minorities in Turkey. Although later acquitted, members of this body were accused of 'insulting Turkishness' and 'dangerous incitement of public hate and enmity'. (Önderoğlu, 2006; The Observatory for the Protection of Human Rights Defenders, 2012: 23) This incident vindicated that the body cannot operate independently; therefore, many human rights groups refused to cooperate with the Advisory Council. Concurrently, regional Human Rights Boards were set up that worked in cooperation with this higher body composed of the undersecretaries of the Prime Ministry, the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Interior, Ministry of National Education, and Ministry of Health. On the other hand, the Human Rights Inquiry Commission is a parliamentary monitoring mechanism and the first national body on human rights to be found in 1990. (Türkiye Büyük Millet Meclisi, n.d.) Its responsibilities range from inspecting the human rights situations in detention centers and prisons to sustaining dialogue with NGOs. (Republic of Turkey Ministry of Foreign Affairs, 2011)

Although the election of the first Ombudsman and the incident regarding the report prepared by the Advisory Council on Human Rights indicate that a rights-based understanding has not yet been habitualized and embedded in the Turkish political culture, the EU bid has nonetheless offered a significant impetus for initiating an unprecedented process of democratization and institutionalization of rights and freedoms. Particularly in the period leading to the opening of negotiation talks, Turkish officials have pushed forward in

order to fulfill the standards entailed by the Copenhagen criteria, which in turn embedded the conception of international norms and principles in some of the primary laws, first and foremost the Turkish Constitution. This period has marked a transformation in the long-instituted (im)balance between national security concerns vis-à-vis rights and freedoms that traditionally worked to prioritize the former. With the onset of the aforementioned reforms, democratic norms and human rights principles started to acquire a more favorable ground in the Turkish context.

Hence, the accession process of Turkey is a clear example of how the recognition of a state actor in the international community is predicated on its standing with respect to international norms that underwrite appropriate state conduct. As suggested by Finnemore and Sikkink (1998), increasing number of states start recognizing the newly emergent norms due to a concern over legitimacy as well as international and domestic reputation. (1998: 255-258) The Turkish case illustrates how the principle of human rights is a pivotal part of such international legitimacy, which in turn favors the government's domestic standing as well. Human rights has been construed as inimical to statehood since it entailed intervention in domestic affairs, however, in contemporary world politics, the concept has come to constitute one of the main pillars of sovereignty (Reus-Smith, 2001). This is due to the legitimacy conferred by the concept, which might also yield material benefits, membership to the EU being a case in point. Thus, the legal reforms within the purview of the EU accession process have been essential in mitigating the prevalence of the national security and highlighting rights and liberties. The legitimacy and international standing conferred by human rights principles are exemplified in an interview with the Turkish Foreign Minister Ahmet Davutoğlu, who has proudly claimed that while a security discourse has prevailed

around the world in the aftermath of 9/11, Turkey has been the only country to proceed in the opposite direction and strengthen rights and liberties during this period (Anlayış, 21 February 2004). One of the most important manifestations of the EU-accession process and the democratization packages it introduced has been the changing role of the Turkish military, which is explicated in the following section.

4.2. The Changing Role of the Military in Turkish Politics

The military has historically enjoyed a preponderant position in Turkish politics, as the vanguards of the Republic. Such an 'above-politics guardianship' role engendered numerous military coups in the history of Turkey, and has undermined the legitimacy of democratically elected governments. Yet, instead of establishing a direct involvement in politics, which is not only deemed inimical to the principal of democracy but also to its internal 'professional cohesion', the Turkish military has opted to preserve indirect influence. (Cizre-Sakallıoğlu, 1997) As described by Sakallıoğlu, Turkish military has retained a hold on political life by wielding influence "in the structuring and vetoing of political initiatives from a position outside of civilian authorities' Constitutional control." (Cizre-Sakallıoğlu, 1997: 153)

Congruent to the vanguard role of the military, 'national security' concerns have enjoyed a privileged status in the political agenda particularly in the 1990s, superseding concerns over democratization and the entrenchment of rights and freedoms. This was due to the clashes in the south east region with the PKK, which became ever more intensified and spilled-over to relations with neighboring countries. Considered as the primary terrorist threat in the country, PKK (Kurdistan Worker's Party) first initiated violent attacks in 1984, leading to a three decade long armed conflict in the south east region, as well as terrorist

attacks in the main cities of the country. The clashes in the south east led to the application of 'martial law' for 26 years, and subsequently state of emergency from 1987 up until 2002, endowing state officials operating in this area with 'emergency powers'. (Türkiye Cumhuriyeti Dış İşleri Bakanlığı, 2011) The regional governor for this whole region was bestowed with 'quasi-martial law' powers including the authority to remove people who are deemed as a threat to public order from the region. The fight against terrorism that marked the south east during this period culminated in numerous human rights violations, and thus posed one of the biggest obstacle to EU membership. Nonetheless, the granting of EU-candidacy has changed the priorities of the political agenda, shifting the focus on consolidation of democracy and human rights have. In addition to the removal of the 'state of emergency' in 2002 as specified by the Accession Partnership Document, other steps were taken in order to diminish the role of the military from political life. (Cizre-Sakallıoğlu, 2003: 220)

The National Security Council and the State Security Courts have been two key institutions that constituted the backbone of the military presence in Turkish politics. First coming into being with a 1973 amendment to the 1961 Constitution, State Security Courts were established to address cases directly related to the internal and external security of the state and threats posed against the Republic. (*Devlet Güvenlik Mahkemelerinin Kuruluş ve Yargılama Usulleri Hakkında Kanun 1973*) Providing the necessary grounds for the military to exert its influence in the judiciary, these courts tried 'crimes against the state', particularly those crimes classified under terrorism. First in 1999, the military judge of the court was replaced by a civilian judge following a decision by the European Court of Human Rights in 1998. Thus, the composition of the State Security Court in the trial of Abdullah Öcalan in

1999, the leader of the PKK who was captured that year, consisted of all civilian judges in order to prevent criticism from Europe. Yet, subsequent European Commission Progress Reports have indicated the continuing need to bring these courts in line with EU standards. (European Commission, 2001; European Commission 2002) In 2003, the cases decided by State Security Courts were allowed to be retried, including the cases of Democracy Party (*Demokrasi Partisi*, hereafter DEP) parliamentarians who have been in prison since 1994 for supporting Kurdish separatism, including the well-known Leyla Zana case. The retrials that took place in March 2003 resulted in the release of DEP parliamentarians in June 2004. Eventually in 2004, the Constitutional amendment packages foresaw the abolishment of State Security Courts, which were instead replaced by Specially Authorized Courts in 2005. (Müftüler-Bac, 2005: 26)

A similar move in diminishing the role of the military has been changes in the composition and the role of the National Security Council (hereafter, NSC), which is comprised of the Chief of Staff, the Council of Ministers and the President of the Republic. The NSC has occupied a pivotal position and has been the sole organ endowed with the authority to formulate National Security Policy Documents[52] (hereafter, NSPD). These documents are prepared and accepted by the NSC, thereby being implemented as government policy without any involvement on part of the Parliament. As such, it is argued by Cizre-Sakallıoğlu that NSC has been an institution which provided the grounds for the military to put forth its own agenda. (2003: 222) First coming into effect after the 1960 coup, the NSC acquired priority before the Council of Ministers in the aftermath of the 1980 military coup. (Cizre-Sakallıoğlu, 2003: 222) With the EU accession process, initially the

[52] Canonical texts pertaining to the national security outlook of the Turkish State.

internal structure and the regularity of the NSC meetings were modified. Subsequently, in August 2004 for the first time a civilian Secretary General of NSC has been appointed, a post which has traditionally been employed by a military commander. (Müftüler-Bac, 2005: 26)

These democratizing moves did not come about without any contestation. In January 2001, Commander of the Armed Forces Academy Brigidaire General Halil Şimşek made the statement that the EU Accession Partnership Document aspired to "break up our country in the name of 'cultural rights,' 'broadcasting in mother tongue,' and 'educational rights,'" by referring to those rights granted to the Kurdish population in early 2000s. (Hürriyet, 11 January 2001) The next year amidst the ongoing EU reform packages, Secretary General of the NSC General Tuncer Kilinç announced that EU will never accept Turkey, and hence the country ought to seek alternative allies such as Iran and Russia. (Gürgen, 2002) A similar remark has been made by Chief of General Staff Hilmi Özkök, who has stated that the military has been trying to fight terrorism with devotion despite the restrictions in their authority, by suggesting the reforms initiated with the EU accession process. (Milliyet, 14 July 2005) These declarations exemplify how fundamental rights and freedoms were deemed in the eyes of the security personnel either as instrumental norms that would ultimately lead to national interests undergirded by realpolitik calculations, or worse, as threats to national unity and security.

The latest legal reforms that aimed to eliminate the privileged status enjoyed by the military came about with the Constitutional amendments in 2010 that were endorsed by a referendum. The influence of the military has been entrenched in the Constitution of 1982, which was formulated under the auspices of the military coup in 1980. Certain provisions in

the Constitution included exit guarantees for the military manifested in elusive tutelary powers along with specified reserved domains. The latest amendments ensued in the removal of the temporary articles of the 1982 Constitution that bestowed legal impunity to the coup leaders. Furthermore, amendments in the Articles 145, 156 and 157 pertaining to military justice stipulates that crimes against state security inflicted by military personnel shall not be tried in military courts henceforth, but in civilian courts; likewise, the same amendment foresees that civilians shall not be brought forth a military court. (Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun 2010)

On the whole, all these legal reforms aimed at achieving the standards of EU-membership have targeted military power in the political affairs of the country that worked to accentuate a security agenda at the expense of human rights. Nonetheless, particularly since the second term of the Justice and Development Party government (*Adalet ve Kalkınma Partisi*, hereafter AKP), the power of the military was heavily impaired as a result of another dynamic at play. Contrary to the process of democratization and the institutionalization of fundamental rights, a different process that weakened the military's hold on politics has been two terrorism-related cases, namely the *Ergenekon* and *Balyoz* (Sledgehammer) trials. Initiated in June 2007, The '*Ergenekon* trial' came to constitute one of the biggest terror related trials in recent history, as hundreds of former special operations personnel of the police and the military were arrested for being accused of conspiring to overthrow the AKP government. By February 2012, approximately 500 individuals were arrested including journalists, writers, academics, lawyers, businessmen, priests, former and current members of the security establishment for being members of this organization and conspiring against the democratically elected government. (Balci & Jacoby, 2012: 138)

Within the purview of these trials, numerous individuals have remained under custody for several years, generating wide-spread concerns from human rights circles and the political opposition. (Kalaycıoğlu, 2011: 2-4) Finally, in August 2013, the court took a shocking decision of 17 life sentences and other aggravated penalties, including the former Chief of Armed Forces General Başbuğ among nine other generals (BBC, 5 August 2013)

The *Ergenekon* case came to signify more than a trial, but rather embodied the prevalent ideological cleavages in the Turkish society, most eminently reflected along the Islamic-secular and civil-military dichotomies. Congruently, the interpretation of the *Ergenekon* trials within the wider Turkish society has differed tremendously. While some have perceived these developments as part of the democratization of the country and the diminishing role of the deep state structures, others view it as a pretext for the AKP government to eliminate pro-secular oppositional figures as well as their legitimacy. (Balcı & Jacoby, 2012; Deveci, 2013; the Economist, 10 August 2013) On the other hand, some have even gone further as to suggest that the trials have constituted a revenge for the ousting of the previous coalition government led by Welfare Party (*Refah Partisi)* in 1998 by a military memorandum (also known as a post-modern coup), and the closure of Virtue Party (*Fazilet Partisi)* in 2001 by the Constitutional Court, both of which were Islam-oriented parties where most of the current AKP members came from. (Balcı & Jacoby, 2012; the Economist, 10 August 2013)

A similar case has been what came to be known as Operation Sledgehammer (or *Balyoz Harekatı*), which again involved an accusation of plotting a coup d'état against the AKP government by secularist military officials due to its pro-Islamist ideology. (Taraf, 20 January 2010) Hundreds of retired as well as active military officers have been arrested and

subsequently tried in the court house of Silivri prison, including high ranking generals. (Hürriyet Daily News, 04 June 2010) In response to these trials and the extensive application of pre-trial arrests[53], a scandalous wave of resignations took place in the Turkish military, involving first and foremost the General Chief of Staff Işık Koşaner. Following his lead, the head of the army, navy and air force also resigned in protest of the convictions of their colleges which they have deemed as unjust and resting on false accusations. (BBC, 29 July 2011) On September 2012, the final verdict was declared, charging in total 300 of the 365 suspects, most of which have been held in prison during the trial. Furthermore, three retired generals namely Çetin Doğan, İbrahim Fırtına, and Özden Örnek have been sentenced to life imprisonment. (Hürriyet Daily News, 22 September 2012) Similar to the Ergenekon trials, interpretations of the Balyoz case varied amongst different circles. Some have welcomed it as heralding the end of military tutelage in Turkish politics, which has for decades cast its shadow on the democratically elected governments, while others interpreted it as a manifestation of the growing authoritarian tendencies on part of the AKP government, whose objective in diminishing the role of the military is not for the sake of democracy, but instead for revenge (Deveci, 2013; Tisdall, 2012).

In both the Ergenekon and the Balyoz cases, the European Union retained a reserved position in its reflection on the events. In 2010 Progress Report, European Commission has commented on these trials that aim to track alleged criminal networks plotting coup against the government as "…an opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law." (European Commission, 2010) While welcoming these cases as concrete steps towards democratization, the

[53] Pre-trial detention on remand can take up to ten years in terror related offences according to Turkish Criminal Procedure Law. (Ceza Muhakemesi Kanunu, 2004)

Commission has voiced its concerns regarding the handling of the cases and the infringement of due process. The problems that were pointed out include the time lapse between arrests and indictments, as well as pre-trial detention periods. (Ibid.) Notwithstanding Article 19 of the Constitution which restricts pre-trial detention period to 4 days for collective crimes, provisions in the Criminal Procedure Law foresees the extension of this period up to ten years for crimes against 'national security' or the 'Constitutional order', giving way to excessive use of pre-trial detention in terror-related cases. (Ceza Muhakemesi Kanunu, 2004) In the 2012 progress report, the Commission noted that the judicial proceedings of the trials, underscored by 'catch-all indictments', excessive pre-trial detentions and violations of the rights of the defense, have overshadowed the prospect these trials held with respect to strengthening the rule of law and democracy in the country. (European Commission, 2012)

In sum, as the EU accession process initiated ground-breaking political reforms and ingrained fundamental human rights principles in key legislation, it has also altered the traditional role of the military by diminishing its hold on Turkish democracy. Therefore, the steps taken to institutionalize a rights-based understanding also entailed weakening the influence of the military in political life. Only then would the Turkish state acquire legitimacy as a functioning democracy that pledges allegiance to international human rights principles, and thus be accepted as a member of an intergovernmental institution that upholds shared values and norms. That being said, the Ergenekon and the Balyoz cases have come to constitute a paradoxical situation, whereby the undemocratic auspices of the military that entrenched a dominant security agenda in Turkish politics, have been crushed by another security apparatus, namely that of counter-terrorism. Although these cases were

first welcomed within the framework of democratization, as harbingers of the crumbling deep state structures and the end of military tutelage, the unfolding of events and the alarming magnitude of the trials engendering the arrests of hundreds of individuals with heavy penalties, have raised serious concerns. Having the authority not only to classify what constitutes as public order and safety, but also who constitutes a threat to national security, the sovereign has the power to eliminate what it deems as the existential 'others' of the political community (Schmitt, [1922] 1985). Ultimately, these cases have culminated in the silencing of oppositional groups and eliminating old power structures, whereby draconian provisions in the anti-terrorism legislation provided the conducive grounds.

4.3. Counter-terrorism in the Turkish Legal System

The main legal document pertaining to counter-terrorism in Turkey is the 1991 Law on Fight Against Terrorism. Also known as the Anti-Terrorism Law, this document was passed amidst fierce clashes in the south east region between the security forces and the PKK rebels, constituting one of the "strongest legislative tools for the 'securitization' of state and society". (Aytar, 2006) The 1991 Anti-Terror Law (Law no. 3713) defines terrorism as:

> Any criminal action conducted by one or more persons belonging to an organization with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health, is defined as terrorism.
>
> (Law on Fight Against Terrorism of Turkey 1991)

Article 6 of the 1991 Law that deals with 'announcements and publications' stipulates that disclosure or publication of the identities of state officials fighting terrorism shall be

punished by imprisonment of one to three years. The 1991 Law also criminalizes financing and fundraising terrorist organizations; however unlike *Anti-terrorism, Crime and Security Act 2001* of the UK, it does not place duty on part of individuals to report such suspicion, where the failure to do so invokes penalties. (Roach, 2007: 233) Overall, this definition of terrorism clearly reflects on understanding of the nation state as the main object of security in the Turkish context. While the EU accession process as explicated above has pushed forward democratic reforms in anti-terror legislation until 2004; however, the domestic and international zeitgeist henceforth have provided the grounds for the reversal of these developments.

On July 2006, the parliament passed a number of amendments to the 1991 Law on Fight Against Terrorism of Turkey amidst the heightened conflict between the security forces and PKK insurgencies in the region. These amendments took place following the end of a cease-fire with the PKK in 2004 and the Security Council Resolution 1624 that came into force in the aftermath of London bombings in 2005, calling all states to "prohibit by law incitement to commit a terrorist act or acts; prevent such conduct; deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct." (Security Council Resolution 1624) During the same period, Council of Europe Convention on the Prevention of Terrorism (CECPT) came into force in 2005, which also demanded member states to issue laws criminalizing the 'public provocation to commit a terrorist offense'[54]. (Marchand, 2010: 140) Congruently, Turkish officials took the steps to enforce necessary legal arrangements.

[54] Bearing in mind that the common criminal law proved insufficient in persecuting indirect incitement.

Interestingly, the Chief of General Staff İlker Başbuğ had already voiced a request in 2005 for the necessity of new regulations on counter-terrorism, "those that are comparable to the counter-terrorism legislation in the UK". (Aydın, 2005) In turn, a Parliamentary Justice Commission had been formed to draft new amendments to the 1991 Anti-Terror Law, with the reference of both older British legislation and the new Terrorism Bill, whose earlier version had been rejected by both Chambers. (Milliyet, 14 July 2005) At this conjuncture, the controversial amendments have been by and large justified with reference to the Terrorism Act 2006 of the UK, wherein a clause that criminalizes the encouragement or glorification of terrorist acts was first introduced. (Aytar, 2006; Dumanlı 2005) As put by Aytar, "the TMK [Turkish Anti-Terror Law] signifies how global anti-terror fears and some administrative/legal measures such as those in the UK, provide additional pretext or alibis for authoritarian revisions." (2006) During the drafting period, it was asserted that the amendments aimed for a balance between security measures and human rights protection, yet a number of articles incorporated into the law have proved otherwise.

Also known as the Law on the Amendment of the Anti-Terror Law (Law no. 5532), the amendments included provisions such as the Article 3 which lists 50 different offenses in the Penal Code to be considered as 'terrorist offences' if the latter was to be committed within the framework of a terrorist organization. Likewise, Article 5 increases the penalties for the press while concomitantly allowing prosecutors and judges to be able to halt publications of periodicals for a period of one month. Article 6 criminalizes printing or publishing declarations or announcements of terrorist organizations, while Article 7 penalizes "covering the face in part or in whole, with the intention of concealing identities, during public meetings and demonstrations that have been turned into a propaganda for

terrorist organization…as to imply being a member or a follower of a terrorist organization, carrying insignia or signs belonging to the organization, shouting slogans or making announcements using audio equipment or wearing the uniform of a terrorist organization imprinted with its insignia…" (Law on Fight Against Terrorism of Turkey) This clause was also modeled after section 13 of the UK Terrorism Act 2000, which criminalized wearing clothing or an item that raises reasonable suspicion that an individual is a member of a terrorist organization. (Terrorism Act 2000; Milliyet, 14 July 2005) Article 9 limits the number of lawyers that a terrorist suspect can hire and allows a judge to prohibit the communication between a suspect and a lawyer for 24 hours. On the other hand, Article 11 stipulates that security officers are able to hire up to three lawyers, the expenses of which is to be covered by the state. (Aytar, 2006)

Particularly, two modifications have come to the fore in the 2006 amendments, namely, changes in the provision on making propaganda for a terrorist organization and the jurisdiction regarding children. The first brought about changes in the Article 7/2, expanding the purview of 'propaganda' to include demonstrations, speeches, writing or broadcasting. Moreover, with the new amendments children 15 to 17 years of age charged with terrorist offenses were to be tried in Special Authorized Courts, instead of juvenile courts under the Article 250 of Penal Procedures Code dealing with terrorism. Nevertheless, following a campaign pursued by civil society actors and criticism voiced by the United Nations Committee on the Rights of the Child, this provision has been modified in 2010. According to the new provision[55], children will be subject to juvenile courts or adult courts acting as juvenile courts. Secondly, children affiliated with 'propaganda crimes' or who resist the

[55] *Terörle Mücadele Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun 2010 (Kanun no. 6008)*

dispersal of the police will not be charged by "acting on behalf of a terrorist organization," as well as being exempt from subsequent aggravated penalties.

Similar problematic articles have been introduced with the new Penal Code in 2004. Particularly under Article 220, entitled *Forming Organized Groups with the Intention of Committing Crime*, certain clauses have given way to contentious indictments such as the treatment of an individual as a member of organized groups even if they are not. (*Türk Ceza Kanunu, 2004*) Article 220/6 stipulates that, "[a] person who commits a crime on behalf of an organization although he or she is not a member of such organizations shall also be punished as though a member of the organization." Likewise, Article 220/7 states that, "[a] person who aids or abets the organization knowingly and willingly, although he or she does not belong to the hierarchical structure of the organization, shall be punished as though a member of the organization." (Ibid) Moreover, Article 220/8 asserts that "[a] person who makes propaganda for the organization or its objectives shall be punished to imprisonment of one to three years. If the crime is committed by the media or the press, the punishment will be increased by half." (Ibid.)

All in all, these modifications have reversed the earlier reforms that have attempted to bring counter-terrorism legislation in tandem with international norms, with the momentum provided by the EU accession process. Regarding the new provisions introduced in 2006 and its subsequent implementation, Human Rights Watch (2010) has indicated that the counter-terrorism measures pursued by the government have become incrementally tougher in the last couple of years, to a point where individuals are not punished with reference to their violent acts, but on the sole ground that they support the separatist ideology. As such, it is asserted that the extant anti-terror laws violate the rule of law and

human rights both because of their vaguely defined framework giving way to arbitrary execution of the law, and also due to the fact that they infringe freedom of opinion, expression, and assembly. (2010: 1) Contrary to previous court rulings where protestors were being convicted of "making propaganda of a terrorist organization", with the new amendments to anti-terror law such individuals are charged with committing crimes on behalf of a terrorist organization without being a member. As evidence for such accusations, the prosecutors and courts trace PKK's declarations in congresses and various media outlets and interpret public demonstrations as a response to the calls for 'social unrest and uprising'. The fact that whether the individual actually heard such an 'appeal' made by the organization or was motivated by it, let alone having links with the organization, remain irrelevant for court proceedings. (Ibid.: 2-3) Hence, this legal framework fails to distinguish between an armed PKK combatant and a civilian demonstrator.

Such legal framework provided the grounds for a major wave of arrest in relation to the Kurdistan Communities Union (*Koma Civaken Kurdistan*, hereafter KCK) operations, an umbrella organization in which the PKK constitutes the armed branch. The harsh stance of the government on KCK trials amounting to the detention of hundreds of individuals, including renowned academicians, journalists, and other MPs from the Peace and Democracy Party (*Barış ve Demokrasi Partisi*) has been a clear obstacle for the progress of the democratizing move endorsed by the government, also known as the 'Kurdish opening'. (Gunter, 2013:441) Similar to the aforementioned *Ergenekon* and *Balyoz* cases, in the face of growing domestic and international criticism, new waves of arrests continued to take place in the KCK trials, encompassing prominent figures such as Ragıp Zarakolu a renowned publisher and human rights activist and Buşra Ersanlı an international political

scientist. (Ibid.: 443) In 2011 it has been reported that 605 individuals faced pre-trial detention for being affiliated with the KCK, and several thousands imprisoned. The overarching problem is that most accusations are not based on acts of violence, but merely grounded on the fact that these individuals are part of a pro-Kurdish establishment. (Human Rights Watch News, 2011) As a result of this legal framework, by the end of 2012, the country has been characterized as 'world's biggest prison for journalists', most of whom are charged under the controversial provisions of the Anti-Terrorism Law, either allegedly being member of a terrorist organization or promoting such ideals. (Reporters Without Borders, 2012)

Hence, it can be argued that the government started to push forward controversial legislation related to national security and the international zeitgeist of post-9/11 provided a strong pretext. While the 2006 amendments to the Anti-Terror legislation is one example of the reverse steps taken, another move in this direction has been the enhanced powers granted to the police. Similar to the controversial stop and search powers of the British police force, the *Law Amending the Powers and Duties of the Police* passed in 2007 granted the Turkish police equivalent powers. (Polis Vazife ve Salahiyet Kanununda Değişiklik Yapılmasına Dair Kanun, 2007) [56] The new regulations abolished the need for a judge order for practices such as the authority to stop and search, ask for identity cards and de facto arrest individuals. Moreover, the practices of taking fingerprints and photographs that were used only for criminal investigations now became common procedures, resorted to for bureaucratic actions such as applications for passport, citizenship, or refugee, without a judge ruling. Another provision introduced by these amendments is with respect to the surveillance and

[56] http://www.tbmm.gov.tr/develop/owa/kanunlar_sd.durumu?kanun_no=5681

monitoring conducted by the police, which now on can be conducted without a judge order. Most importantly, the new amendments have given the authority to use weapons when faced with resistance, a move that can engender lethal consequences. (Eryılmaz, 2007; Balzacq & Ensaroğlu, 2008) This disturbing development is even exacerbated in light of the 'entrenched culture of impunity' in Turkey, as the state is predisposed to protect its personnel in criminal justice system, rather than the victims. (Amnesty International, 2007)

At the time of writing, a new regulation has been introduced to the Parliament following nation-wide protests that was instigated by the *Gezi movement* of 2013, which turned out to be an unprecedented expression of discontent with the authoritative policies of the AKP government and found wide-spread expression in various parts of the country (Demirsu, 2013). These protests have been followed by demonstrations taken on by the Kurdish political movement on October 2014, due to the lukewarm position of the government in the face of Islamic State[57] attacks on the Kurdish population in the bordering town of Kobane. (Human Rights Watch News, 2014) Amidst such proliferating manifestations of public dissent, the government introduced a new bill that grants the police broader powers, particularly with regards to dealing with protests which have been increasingly framed as sites of potential threat to security.

It is stated that the Draft Law changing various articles on the Law on the Powers and Duties of the Police has been put forth as a result of "public events turning into terrorist propaganda, protestors threatening the wellbeing and bodily integrity of citizens…with the purpose of introducing new measures without upsetting the freedoms-security balance." (*Polis Vazife ve Salahiyet Kanunu ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde*

[57] An armed fundamentalist groups operating in Syria and Iraq, also known as ISIS.

Değişiklik Yapılmasına Dair Kanun Tasarısı, 24 November 2014) This draft law grants extensive preemptive powers to the police, including the authority to detain individuals that 'pose a serious threat to public order' up to 48 hours without the order of a prosecutor or a judge. Congruently, the provision foresees the treatment of protestors covering their face as potential criminals, parallel to the amendments in 2006 that have been modelled after the British legislation. Moreover, the purview of stop and search powers provided in the earlier amendment which is extended, whereby the condition for a strong belief based on concrete evidence is watered down by the new notion of 'reasonable suspicion'. (Ibid.) Hence, the bill epitomizes the attempt on part of the government to securitize expressions of public dissent as suggested by Jackson (2005), thereby pushing them beyond the workings of normal politics into the sphere of exceptional measures.

While the EU-accession process has initiated a stimulus for democratization and institutionalization of human rights, the situation at home and abroad justified the re-launch of a heavy security agenda and congruent counter-terrorism laws. At this juncture, the government has not only enforced provisions similar to those in the UK, but the British legislation was actually referred to as a legitimate model. Whereas the vague and over-inclusive definition of terrorism has already culminated in contentious implementations of the law, with the new contours of 'making propaganda', what is taking place is the securitization of intellectual life and political opposition. Freedom of expression has been heavily undermined, as more and more journalists, academics, lawyers, and other intellectuals are being sentenced for membership to a terrorist organization on basis of their nonviolent opinions, particularly with the KCK and Ergenekon cases. Furthermore, these amendments also jeopardize the right to peaceful assembly and hence demonstrations, since

participating in protests can easily be interpreted as acting on behalf of a terrorist organization. This tendency is exacerbated due to the enhanced powers granted to the police that are similar to the stop and search powers in the UK. As such, the situation in Turkey heralds the normalization of the 'state of exception' (Agamben, 2003), yet unlike the blatant state violence of the 1990s, this time within the contours of an ostensibly democratic regime. Thus, through problematic counter-terrorism measures, individuals are easily categorized as 'terrorists', while those groups that are deemed as an existential threat and unable to be integrated into the political system are eliminated from the public sphere.

More recently, under the scrutiny of the international community and in the face of growing domestic opposition against these draconian measures, the government felt impelled once again to reform counter-terrorism legislation during 2012-2013 via judicial reform packages. These packages aimed to address some of the highly controversial clauses that set the legal grounds for the imprisonment of hundreds of journalists, as well as politicians and academics for expressing their opinions. Two evident impetuses undergird the drive for these latest developments, namely the criticism raised by international institutions and the momentum of the Kurdish peace process[58]. On the one hand, the European Court of Human Rights has cited the Anti-Terror Law as the number one reason for its critical rulings in Turkey (Reporters Without Borders, 2013) while both the European Commission and the Council of Europe have been continually voicing similar concerns and urging Turkey to reform its anti-terror legislation (European Commission, 2012; Council of Europe, 2013) On the other hand, the Kurdish peace initiative sponsored by the AKP government has gained pace with Abdullah Öcalan's announcement during Newroz

[58] A political negotiation process that aims to put an end to the armed conflict between PKK and the Turkish state, initiated by the Justice and Development Party government.

celebrations that henceforth Kurdish rights will be pursued through political means instead of armed clashes, resulting in the withdrawal of approximately 2,000 PKK fighters outside the borders of Turkey. (Reuters, 8 May 2013) According to Yeğen, Öcalan's declaration has constituted a new roadmap for ending the armed conflict once and for all, and channeling the struggle for Kurdish rights on the political platform. (Yeğen, 2013)

Initially in 2012, with the 3rd reform package, Article 6/5 of the Anti-Terror Law had been repealed for violating Article 10 of the ECHR, which used to allow judges the authority to ban future edition of periodicals[59]. In addition, articles 250, 251, 252 of the Criminal Procedure Law have been abolished parallel to the amendments to the Article 10 of Anti-Terror Law, whereby Special Authorized Courts that deal with cases concerning national security have been replaced by regional heavy penal courts. (Hammarberg, 2012) More importantly, the 4th package foresees that the definition of 'propaganda' become more nuanced and differentiated from being a member of an organization. (İnsan Hakları ve İfade Özgürlüğü Bağlamında Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun, 2013) Article 6/2 and 7/2 on "printing or publishing of declarations or statements of terrorist organizations" and "making propaganda for a terrorist organization" respectively, have been revised to penalize only those statements that "praise, legitimize or encourage the employment of methods that involve the use of coercion, violence, or threat". Likewise, Article 215 of the Penal Code which penalizes the' praising of a crime or the criminal' has been conditioned to constitute a crime only when there is an *open and imminent threat* involved due to such statements. Moreover, the statute of limitations for officers convicted of incurring torture or inhuman and degrading treatment have been removed. (Ibid.)

[59] This package also foresaw the possibility of parties to respond the written statement of the public prosecutor before the Council of State, as has been indicated in various ECtHR rulings.

Nevertheless, such endeavor to reform extant counter-terrorism has been found unsatisfactory by human rights circles, particularly in overcoming obstacles to freedom of expression. Amnesty International has indicated that the reforms fall short of addressing the more general problem of convicting individuals as "committing crimes on behalf of a terrorist organization," merely on the basis of their opinions. (Amnesty International, 2013) In an interview, Associate Professor Kerem Altıparmak maintained that the amendments of the 4th judicial reform package are superficial modifications in order to impress the European Commission and the Council of Europe. Altıparmak has pointed out that the new provisions introduced with the amendments are still too broad and vague, therefore, insufficient to engender changes in implementation. For instance, the newly added condition of praising, legitimizing or encouraging methods that involve the use of coercion, violence, or threat can still be interpreted to involve simple expressions of opinion, such opting to term PKK 'guerillas' instead of 'terrorists'. (Karaca, 2013) Furthermore, Article 7 of the Anti-Terror Law pertaining to covering the face or wearing insignia belonging to an organization in demonstrations that are deemed as terrorist propaganda have been rearranged so that such acts are criminalized under this provision even if they take place outside of meetings or demonstrations. (Ibid.) What is significant at this juncture is that the government feels compelled to modify counterterrorism practices that are deemed to be in violation of international norms thereby jeopardizing the international standing of the country. In the face of growing criticism and pressure from different circles, the government opts to repackage old controversial measures under a different and ostensibly more democratic banner. Thus, although such international standards do not automatically exert

enough power to steer a thorough reform process, they nonetheless circumscribe the limits of sidestepping rights and freedoms even in matters of national security.

Most recently, a new law entitled *Law on the Prevention of the Financing of Terrorism* was passed on February 2013, which regulates the entailments of the *1999 UN International Convention for Fighting Terrorism* that was ratified by Turkey in 2002. With the objective of fulfilling obligations to international law, this legislation provides the legal framework for penalizing the financing of terrorist organizations, including freezing assets and imprisonment from 5 to 10 years. While the criteria of 'knowingly and willingly' funding a terrorist activity will be imperative, the condition of such an act occurring is not necessary for a conviction. (Radikal, 07 February 2013; Terörizmin Finansmanının Önlenmesi Hakkında Kanun Tasarısı 2011) According to Paulsworth (2013) the adoption of this law carries important economic ramifications, as it prevents Turkey from being excluded from the Financial Action Task Force (hereafter FATF), which had recently notified Turkish officials "to remedy deficiencies in its terrorist financing offense and establish an adequate legal framework for identifying and freezing terrorist assets consistent with the FATF Recommendations." (Paulsworth, 2013) Failure to do so by 22 February 2013 would have had serious economic ramifications for the country, such as restricted foreign activity for Turkish banks, decrease in its credit ratings, and moving into a black list alongside North Korea and Iran. (Ibid.) The main opposition party, Republican People's Party (*Cumhuriyet Halk Partisi*, hereafter CHP) has condemned the law on the grounds that it is a US imposed piece of legislation in order to fight Al Qaida and Taliban, which will render Turkey susceptible to foreign interests. This concern is grounded in past experience, when Turkey became the target of 'global terrorism' as a relatively new phenomenon, onset

by September 11 events. The attacks of November 15 and 20 in 2003 targeted two synagogues, the British Consulate, and the headquarters of HSBC Bank A.S., resulting in 57 deaths and 700 injured, on the day George W. Bush met Tony Blair in London. According to Çağaptay, not only the fact that Turkey is a secular country upholding Western values, but also a strong ally of the US and the UK, made it a susceptible target for the Al Qaida. (Çağaptay, 2003)

As these recent developments illustrate, while trying to strike a balance between human rights norms and national security concerns in the post-9/11 environment, Turkey is susceptible to various and often contradictory international influences. On the one hand, the contentious anti-terrorism laws that were enhanced in 2006 to include more and more offences under the rubric of terrorism have been subject to severe criticism from the Council of Europe and European Commission. On the other hand, a number of UN resolutions pertaining to terrorism and other international obligations such as the FATF have demanded stricter counter-terrorism measures and international cooperation. It is yet to be seen whether the attempt to narrow and refine the purview of anti-terrorism laws will yield any significant changes in its extensive application. Nonetheless, the Turkish case demonstrates that although the 'War on Terror' has continued to yield its influence in world politics and heightened the security agenda, international norms and human rights obligations exert a limitation to the extent to which state actors can sidestep certain rights and liberties in the name of security concerns.

4.4. Conclusion

With respect to human rights norms, the Turkish context has historically exhibited a dim picture, as the military tutelage overshadowed democratic processes and subjugated

many forms of political expression by invoking 'extraordinary measures'. The fight with the PKK has played an indispensable role in the wide-spread employment of dubious counter-terrorism practices, yielding grave consequences for fundamental rights and freedoms. However, the momentum triggered by the granting of EU candidacy status has provided a good opportunity to push forward political reforms that would strengthen the rule of law and democratic credentials of the country, the biggest obstacle in becoming a full member. As cogently put by Savic, "[t]he unhindered functioning of human rights, and related to this, the democratic regulation of political and legal life, have become standard criteria for the legitimization of modern states." (Savic, 1999:5) During this short period when the prospect of candidacy seemed within reach, a number of groundbreaking legal reforms took place that aimed to ingrain a rights-based understanding in the Turkish legislation.

Within the scope of the EU accession process, a parallel development has been the diminishing hold of the military from the political life, via various legal reforms. As the government adopted new democratic reforms, the military establishment became more susceptible to the legal order by losing most of its impunity. Ironically, the last and the most destructive blow to the military came from two terror-related trials, coupled with the controversial anti-terror laws that allowed any form of opposition perceived as a threat to be categorized under terrorism. Not only the military personnel, but also other vocal figures either adhering to a secular ideology or expressing pro-Kurdish ideas have been arrested in growing numbers under terror-related accusations filling up prisons in large numbers. Thus, as political opposition and the expression of radical views become securitized through counterterrorism legislation, "the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political

system" has taken place (Agamben, 2003: 2). The international counter-terrorism trends incurred by the 'War on Terror' have provided conducive grounds for these controversial practices and the reversal of political reforms. In this regard, the UK legal framework has constituted a viable precedent for adjusting anti-terror laws in Turkey.

In the face of growing domestic and international criticism, as well as the complaints that abound at the ECtHR, more amendments have been made in order to narrow the application of counter-terrorism measures once again. As such, in order to attain international legitimacy, state officials adopt new provisions that are in line with international standards, albeit being criticized for merely repackaging old contentious provisions under a new banner. As put by Clark, "what international society endorses them [states] as being, is possibly more important than what they do, as far as international legitimacy is concerned." (2005: 173) That being said, despite the elevated sense of security provoked by the 'War on Terror' or its authoritative past, the country has become increasingly susceptible to human rights norms due to the international commitments of the Turkish state, *inter alia* its EU-bid. While the government has been enjoying the privileges of sovereign power by invoking terrorism in order to repress dissident groups (even the military establishment), its movements are restricted by the entailments of international norms comprised of fundamental rights and liberties. Hence, the balancing of human rights and counter-terrorism transforms the notion of sovereignty both as an entity bestowed with the authority to declare the state of exception thereby sidestepping the legal order, yet concomitantly one that is ever more bound by the legitimacy conferred by human rights obligations.

Table 6. Development of Counter-terrorism and Human Rights Policies in Turkey

Document	Date	Aim	Significance
Constitutional Reform 2001	3 October 2001	-34 Amendments to the Constitution -Aiming to ingrain a rights-based approach	-improvements made with respect to gender equality, freedom of expression, prevention of torture, shrotening the pre-charge detention period...etc.
Constitutional Reform 2004	7 May 2004	-Further entrenchment of rights and liberties -recognition of the status of international human rights conventions	-abolishment of death penalty -abolishment of State Security Courts, which are replaced by Heavy Penal Courts -recognition of the supremacy of international law on rights and liberties
1st and 2nd harmonization packages	19 February 2002 9 April 2002	-circumscribing security measures in line with basic rights and liberties on par with European standards -freedom of press and association emphsized	--amendments to the Penal Code and Law on Fighting Terrorism in favor of freedom of expression -bringing state of emergency measures in line with due process -Easing the restrictions on forming assocaitions -in line with ECHR decisions, deterrant provisions for torture cases

Document	Date	Aim	Significance
3rd and 4th harmonization packages	9 August 2002 11 January 2003	-further amendments with respect to EHCR and expanding the purview of ECtHR -futher reforms with respect to freedom of exression and broadcasting	-abolition of death penality in line with ECHR Protocol 6 and 13 -broadcasting in languages other than Turkish -property rights for non-Muslim minority foundations -increasing the punishment of torture cases by state officials
5th-6th and 7th harmonization packages	3 February 2003 19 July 2003 7 August 2003	-strengthening the purview of ECtHR -reforming the Law on Fighting Terrorism and State Security Courts towards greater freedom of expression -revision of the National Security Council	-operationalization of reforms on broadcasting in languages other than Turkish -changes in the composition of the National Security Council -Trials in which ECtHR finds Turkey in violation can be reviewed -a refined redefinition of 'terrorism' in the relevant Law -also making terrorist propoganda was classified with the addition of the condition of 'advocating use of violence'
8th harmonizatin package	14 July 2004	-supporting the 2004 Constitutional Reforms	-in line with the 2004 Constitutional reform, operationalizes the abolishment of death penalty and its replacement with life sentence

Document	Date	Aim	Significance
Law Amending the Law on Fight Against Terrorism (law no. 5532)	29 June 2006	-enhancing some provisions within the relevant Law -being on par with international legislation pertaining to counter-terrorism -demonstrated how global anti-terror fears can work as a pretext for authoritarian provisions	-increasing the penalites for press -allowing prosecutors to halt publications -additional crimes within the scope of attending demonstrations -limiting the right to fair trial of suspects -expanding the purviews of 'terrorist propoganda' -children between the ages 15-17 accused of terrorism are to be tried in Special Heavy Penal Courts instead of juvenile courts.
Law Amending the Powers and Duties of the Police (law no. 5681)	2 June 2007	-granting the Turkish police powers similar to the stop and search powers in the UK	-abolishing the need for a judge order for the authority to stop and search -normalization of taking fingerprints and photographs in bureaucratic procedures -granting the authority to use weapons
3rd and 4th reform packages (2012-2013)	2 July 2012 11 April 2013	-In the face of growing international pressure and criticism, aimed to reform some of the draconian provisions pertaining to counter-terrorism	-removal of the article that grants a judge the authority to ban future editions of a periodical. -Special auhtorized courts dealing with national security replaced by local heavy penal courts -refining and conditioning the definition of 'making terrorism propaganda' -statute of limitations for torture cases removed for officers.
Law on the Prevention of the Financing of Terrorism	February 2013	-regulates the entailments of the 1999 UN International Convention for Fighting Terrorism	-provides the legal framework for penalizing the financing of terrorism

Conclusion:
Different Contexts, Convergent Practices

In these two chapters, the study has undertaken an analysis of the process of policy development in an attempt to answer the question: How do states balance human rights commitments and national security concerns? The two cases have demonstrated that this question is particularly relevant as growing number of states are pledging loyalty to the 'War on Terror', whilst institutionalizing human rights norms. These commitments often entail conflicting policies as well as contradictory expectations on part of the international and domestic audiences. Despite such human rights obligations, the UK and Turkey have been adopting new anti-terrorism legislation while attempting to legitimize and justify controversial provisions. At this juncture, a number of similarities come to the fore not only with respect to the content and implementation of the new counter-terrorism laws, but also how they have been balanced vis-a-vis human rights principles. Governments in both contexts securitize areas of political and social life as the 'state of exception' suspends established rights and liberties, yet they are ultimately under the pressure of legitimacy and need to justify their decisions or alter them. Hence, the act of balancing entails a number of convergent trends, not only regarding acts of securitization, but also with respect to the ways in which state actors endeavor to portray their conduct in line with international standards.

1. **Vague definition of terrorism**:

One problematic commonality in both the Turkish and British legislation is the vague and overbroad definition of terrorism, which is not only against the principle of legality, but also incurs controversial implementations. In the UK context, despite the adoption of a number of terror-related Acts, the definition provided by the Terrorism Act

2000 remained intact, which is manifestly broader compared to previous UK legislation as well as international law pertaining to this issue. Such an overbroad definition risks criminalizing both legitimate demonstrations and also unlawful protests which pertain to issues of public order, but not terrorism *per se*. Demonstrations such as anti-globalization protest, animal rights protests, or even flash mobs can fall within the purview of this definition. (Article 19, 2006) In the Turkish context, the main legal document pertaining to counter-terrorism is the 1991 Law on Fight Against Terrorism that also adopts a highly inclusive definition of terrorism. (Law on Fight Against Terrorism of Turkey 1991) Similar to the UK case, this extensive definition has enabled the treatment of myriad forms of political opposition under terrorist charges, including pro-Kurdish, Kemalist, Islamist, and leftist organizations depending on the political context. This picture demonstrates how defining an act as terror can have grave consequences, demarcating the scope of 'sanctioned politics' and those that fall under the category of an existential threat to the nation. Thus, the adoption of vague definitions of terrorism that are susceptible to various interpretations engenders the securitization of political life and the paralysis of the democratic process.

2. **Controversial provisions on 'propaganda/encouragement'**:

A prevalent tendency present in both contexts that is also interconnected with adopting a vague definition of terrorism is the securitization of dissent through controversial measures criminalizing 'propaganda' or 'encouragement'. Following the London bombings in 2005, the UN Security Council Resolution 1624 with the strong endorsement of Blair government called on all states to "prohibit by law incitement to commit a terrorist act or acts...." (Security Council Resolution 1624). Likewise, during the same period Council of Europe Convention on the Prevention of Terrorism (CECPT) came into force in 2005, which

demanded member states to issue laws that criminalize the 'public provocation to commit a terrorist offense'[60]. (Marchand, 2010: 140) These demands were materialized in the UK with the advent of *Terrorism Act 2006* which criminalizes any "…statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or *indirect* encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences." (*emphasis added*, Terrorism Act 2006) This provision has aimed to eliminate 'terrorist speech' including publications and internet activities that are deemed as promoting terrorism. One salient feature of the section is that whether any individual is actually 'encouraged' or 'induced' by the statement at hand is considered to be irrelevant. Moreover, the phrase 'indirect encouragement' is also problematic as it is open to various possible interpretations. Human rights organizations have raised their concern over the possibility that such vaguely worded legislation can lead to the criminalization of peaceful expressions of extreme or unpopular views (Article 19, 2007). This was the case in 2011 amidst nation-wide student protests against education cuts, when the Counter-terrorism Command became actively involved in hunting down 'extremism', where one officer contacted universities in London asking for information about the students. (Taylor & Vasagar, 2011) In tandem with the murky political environment endorsed by utilizing an overbroad definition of terrorism, this provision lays the ground for the securitization of dissent, wherein any idea deemed radical or extreme can be labeled as a threat to national security.

Turkish officials also took the steps to enforce similar legal arrangements. Interestingly, top-ranking military personnel explicitly voiced their demand for new

[60] Bearing in mind that the common criminal law proved insufficient in persecuting indirect incitement.

regulations on counter-terrorism that are comparable to the counter-terrorism legislation in the UK, which was taken up by a Parliamentary Justice Commission incumbent on drafting these amendments. (Aydın, 2005) As suggested by one commentator, "the TMK [Turkish Anti-Terror Law] signifies how global anti-terror fears and some administrative/legal measures such as those in the UK, provide additional pretext or alibis for authoritarian revisions." (Aytar, 2006) This suggests that not only are the two governments adopting similar counter-terrorism measures, but also that Turkey perceives the UK as a model in security matters. The amendments made changes in the provision on making propaganda for a terrorist organization, expanding the purview of 'propaganda' to include demonstrations, speeches, writing or broadcasting. Yet more strikingly, with the new amendments individuals charged by making propaganda for a terrorist organization are legally treated as members of a terrorist organization whether they have ties with the organization or not. Moreover, as a result of this legal framework by the end of 2012 the country has been characterized as 'world's biggest prison for journalists', most of which are charged under the controversial provisions of the Anti-Terrorism Law, either allegedly being member of a terrorist organization or promoting their ideology. (Reporters Without Borders, 2012)

By evoking a sense of emergency and pressing danger not only in material terms, but also as an ideological threat against a certain worldview, the display of dissent whether in the form of expressing an opinion or taking part in public demonstrations are being suffocated by the security constellation. The strategy to 'root-out' ideologies considered to be associated with terrorist motives induces the securitization of dissent, whereby individuals expressing them risk being accused of engaging in terrorist activity. Thus, as

suggested by Jackson (2005), these policies seek to discipline domestic society by marginalizing opposition and protest.

3. **Enhancing the Powers of the Police**:

Another shared characteristic within the framework of counterterrorism is the enhancement of the powers of the police. In the eve of September 11 attacks, the British Parliament had already passed the *Terrorism 2000 Act* which marked the introduction of the controversial stop and search provision known as 'section 44'. This provision allows police forces to stop and search individuals and vehicles in the absence of a 'reasonable suspicion' that a crime has taken place, therefore, is predicated on a preventive perspective. Nonetheless, the incidents of recorded 'stops' have escalated to unprecedented degrees since 2007, increasing almost seven times (37,000 in 2007, 269,244 in 2009) without any prosecution or useful information attained. (Human Rights Watch, 2010) Moreover, section 44 has been criticized for being abused by the police for discouraging protest, since the practice has also been used in lawful demonstrations, such as the protests during the 2005 Labor Party Conference when more than 600 individuals got arrested, including a 82 year old activist. (Article 19, 2006)

Similar to the stop and search powers of the British police force, a law passed in 2007 that granted the Turkish police equivalent powers. While previously, the Penal Code authorized search powers only with a judge order, with the introduction of the *Law Amending the Powers and Duties of the Police* (Law no. 5681) in 2007 the police have attained the authority to stop and search, ask for identity cards in the absence of a judge order and de facto arrest individuals. In line with international trends the practices of taking

fingerprints and photographs that were used only for criminal investigations now became common procedures, resorted to for bureaucratic actions such as applications for passport, citizenship, or refugee, without a judge ruling. (Polis Vazife ve Salahiyet Kanununda Değişiklik Yapılmasına Dair Kanun, 2007) As the state of exception gets normalized in everyday life, close scrutiny and policing of the public become common practices for the greater cause of providing security. Most importantly, the new amendments have given the authority to use weapons when faced with resistance, a move that can engender lethal consequences. This disturbing development is even exacerbated in light of the 'entrenched culture of impunity' in Turkey, as the state is predisposed to protect its personnel in criminal justice system, rather than the victims. (Amnesty International, 2007)

At the time of writing, a new regulation has been introduced to the Parliament that primarily deals with public demonstrations which have been increasingly framed as sites of potential threat to security amidst proliferation of dissent and expressions of discontent with the government. It is stated that the Draft Law changing various articles on the Law on the Powers and Duties of the Police has been put forth as a result of "public events turning into terrorist propaganda, protestors threatening the wellbeing and bodily integrity of citizens…with the purpose of introducing new measures without upsetting the freedoms-security balance." (Polis Vazife ve Salahiyet Kanunu ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun Tasarısı, 24 November 2014) This draft law grants extensive preemptive powers to the police, including the authority to detain individuals that 'pose a serious threat to public order' up to 48 hours without the order of a prosecutor or a judge. Congruently, the provision foresees the treatment of protestors covering their face as potential criminals, parallel to the 2006 amendments modelled after

the British legislation. Moreover, the purview of stop and search powers provided in the earlier amendment which is extended, whereby the condition for a strong belief based on concrete evidence is watered down by the new notion of 'reasonable suspicion'. (Ibid.) Hence, the bill epitomizes the attempt to securitize expressions of political opposition, thereby pushing such public displays beyond the workings of normal politics into the sphere of exceptional measures. This process requires the close monitoring and policing of society to eliminate those elements that are perceived to threaten public order.

4. **Suspension of due process**:

One of the most notorious manifestations of invoking a state of exception and thereby sidestepping established rights is the suspension of due process. In both contexts, various counterterrorism policies have authorized excessive pre-trail and pre-charge detention measures along with practices such as secret evidence that blatantly breach fundamental principles of justice. The contentious practice of pre-charged detention in the UK goes back to the *Prevention of Terrorism (Temporary Provision) Act 1984* that aimed to address terrorist activities in Northern Ireland. Yet, in 2001 with the Anti-Terrorism, Crime and Security Act the practice of indefinite detention was incorporated in the law. This notorious clause in the ATCSA included a provision that allowed non-UK nationals suspected of being affiliated with terrorism-related activities to be indefinitely detained, given that they cannot be sent back to their country of origin or another country. Since the UK government could not deport non-citizens that faced the risk of being tortured in their home countries in light of international law, it opted to condone the practice of 'indefinite detention' instead. In fact the HM Prison Belmarsh in London used to accommodate

indefinitely detained without charge or trial, causing it to be referred to as the 'British version of Guantanamo'.

Being the only European country to invoke indefinite detention that specifically targets non-nationals, the UK has created a "space devoid of law," (Agamben, 2003: 50) rendering such individuals to be susceptible to what Agamben defines as the "de facto rule" of the sovereign (Ibid.: 3). In the face of domestic and international criticisms, ATCSA was repealed along with the provision on indefinite detention, and was replaced by 'control orders' in 2005, and Terrorism Prevention and Investigation Measures in 2011. Therefore, this lineage of counter-terrorism policies have continued to accommodate the most fundamental problem imminent in previous anti-terrorism legislations, namely the fact that terrorist suspects are dealt outside criminal law and thus unable to enjoy their basic rights.

In 2001, within the framework of the EU-accession process, Turkey has passed several reforms that aimed to institute a rights-based understanding in the political structure. These included amendments in the Constitution with respect to the principles of due process and the rule of law. One such instance was reducing the pre-trial detention period as indicated in Article 19 of the Constitution from 15 days to 4 days for collectively committed crimes. Nonetheless, provisions in the Criminal Procedure Law foresees the extension of this period up to ten years for crimes against 'national security' or the 'Constitutional order', giving way to excessive use of pre-trial detention in terror-related cases. (Ceza Muhakemesi Kanunu, 2004) Particularly in the recent terror-related cases which mainly aim opposition figures that are vocal, be it secular Kemalists or pro-Kurdish intellectuals, this practice has been widely resorted to. The official numbers announced by Human Rights Watch in 2011 is that 605 individuals face pre-charge detention only in relation to the KCK operations.

(Human Rights Watch News, 2011) As can be seen, once again by invoking a 'state of exception', governments bypass established rights and the normal legal process, whilst legitimizing such acts on the grounds of national security. In so doing, they treat strip the individual of any legal entitlement and subject to arbitrary treatment under the rubric of containment of threat.

5. **Repackaging old contentious provisions under a different banner**:

Lastly, an interesting tendency of repackaging old problematic counter-terrorism practices under a different banner is observable in both the Turkish and the British context, as governments avoid being associated with what are largely seen as illiberal measures. One of the recent legislations in the UK pertaining to counter-terrorism has been the *Terrorism Prevention and Investigations Measures Act 2011* that purports to bring "a new regime to protect the public from terrorism." (Terrorism Prevention and Investigations Measures Act 2011) As put by the Home Secretary Theresa May in the Ministerial Foreword, while national security is the primary duty of the government, "we must…correct the imbalance that has developed between the State's security powers and civil liberties, restoring those liberties wherever possible and focusing those powers where necessary." (Secretary of State for the Home Department, 2011) The Act foresees the annulment of Terrorism Act 2005, along with the controversial control orders that are to be replaced by what has been termed as *Terrorism Prevention and Investigation Measure*s. The control orders were an alternative practice to indefinite detention of non-nationals (which was later revoked by a House of Lords ruling), and intended to apply in the absence of sufficient evidence to undertake criminal prosecution, involving measures such as forced relocation, restrictions in occupation, association and communications. (Steiner et. al., 2008: 430) Although TPIMs

have retained the central problem of bypassing the due process inherent in their predecessors, they have introduced a relatively more restricted scope. Instead of charging and prosecuting these individuals, control orders provided the grounds for treating them as possible security risks to be contained, in the absence of any clear evidence for their crimes.

As controversial provisions become subject to both domestic and international criticism, they threaten the legitimacy of the government due to their negation of established rights and freedoms, and are therefore replaced by newer, ostensibly less controversial ones. Although most of the powers bestowed by previous legislation are passed on in these new laws under a different banner, the fact that governments cannot hold on to security measures that are blatantly against human rights, or that they opt not to be affiliated with earlier controversial policies is an important aspect of the evolving counter-terrorism policies. In the Turkish context, this tendency is also evident particularly with respect to the recent amendments to the Anti-terror Law in 2012-2013. Under the scrutiny of the international community and in the face of growing domestic opposition against these draconian measures, the government felt impelled to once again amend the counter-terrorism legislation, aimed to address some of the highly controversial clauses that set the legal grounds for the imprisonment of hundreds of journalists, as well as politicians and academics for expressing their opinions. Most importantly, the new judicial reform foresees that 'direct incitement to violence' will be penalized as a terrorist crime, as the definition of 'propaganda' becomes more nuanced and differentiated from being a member of an organization. (İnsan Hakları ve İfade Özgürlüğü Bağlamında Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun, 2013) It has been suggested that these amendments are superficial modifications in order to impress the European Commission and the Council of Europe,

since the new provisions are still too broad and vague, therefore, insufficient to engender changes in implementation. For instance, the newly added condition of praising, legitimizing or encouraging methods that involve the use of coercion, violence, or threat can still be interpreted to involve simple expressions of opinion, such opting to term PKK 'guerillas' instead of 'terrorists'. (Karaca, 2013)

On the whole, in the face of perceived security threats, governments endeavor to securitize areas of social life, to exempt themselves from the requirements of international norms. Once an issue-area is deemed as a security issue *per se*, state officials evoking a sense of emergency can legitimately employ the right to use extraordinary measures (Buzan et. al. 1998). The practices that are tantamount to the suspension of law, where individuals are deprived from due process are poignant manifestations of this phenomenon. Agamben claims that the modern state of exception is a product of democratic governments, not absolutist states, wherein "the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system [takes place]." (2003: 2) Hence, what took place in the aftermath of September 11 is a legal limbo in which the individual is deprived of any legal status and therefore fundamental rights. In both the British and the Turkish case there is a proclivity of utilizing counter-terrorism measures to target those forms of opposition that are deemed as posing an 'existential threat' to the political community (Schmitt, [1922] 1985). In the former case, the focus after 9/11 has not only been the Muslim minority living in the UK, but also other ethnic minorities as potential criminals as well as protestors voicing their discontent with the government, exemplified in the securitization of student protests. In the latter case, one of the targets has been ironically the pro-secular establishment under the purview of the

military vanguards, which had brought down a number of religious oriented parties that were the predecessors of AKP either through legal means or military threat, and also those pro-Kurdish groups who chose not to abide by the government initiated peace process. Participation in the public sphere gets more and more securitized with the new provisions that are formulated in such a way as to render rights and freedoms amenable to be subsumed under the security apparatus. Although the UK is a long-established liberal democracy, it has nonetheless resorted to draconian practices comparable to those of a democratizing country. The international counter-terrorism trends incurred by the 'War on Terror' have provided conducive grounds for these controversial practices and the reversal of earlier established norms.

While pursuing security policies, governments are under the obligation of balancing such concerns with rights and liberties, in order to present their conduct as legitimate to their constituents and the international community. As indicated by Risse and Sikkink (1999), human rights norms have become a yardstick in determining 'civilized nations' by shaping actors' identities and interests. The inclination of purportedly changing contentious practices, while trying to hold on to most of the content under a different banner is an example of this trade-off both the British and the Turkish governments have been engaging in. Therefore, in line with Reus-Smith's argument that respect for human rights norms has come to constitute one of the pillars of legitimizing 'sovereignty' (Reus-Smit, 2001), these cases demonstrates how even in the area of national security, state conduct is circumscribed by the such norms. Nonetheless, as state officials pay lip service to human rights norms and repackage controversial laws, the problematic provisions are being passed on, thereby institutionalized in the extant legal framework. Hence, whilst actors feel the urge to portray

their conduct as upholding such norms, a watered down version of exceptional measures are being normalized is the legislation.

Part III. Securitization and the Language of Rights in the Making of Counter-terrorism Policies

Introduction:
Policy Frames and the Analysis of Parliamentary Debates

The previous section presented a comparative analysis of policy development in the context of Turkey and the UK, elaborating on key political events and trends that have shaped the trade-off between human rights and security concerns. Moving on from a comparative policy analysis, this section presents the main findings of the frame analysis of parliamentary debates in each respective setting. As mentioned earlier, the study argues that the relationship between the discourse and policy of counter-terrorism is a mutually constitutive process: while the language on terrorism is shaped by perceptions of 'threats to national security', these perceptions are in turn translated into concrete policy outcomes. Therefore, the legitimization and institutionalization of contentious security policies are two different processes that work to reinforce one another. In the making of counter-terrorism policies, the security discourse is often challenged by a discourse on rights that problematizes the grounds of exceptionalism the former is premised upon, instead evoking international norms and democratic principles. The confrontation, bargaining, and negotiation among these two prevalent policy frames offer interesting insights not only pertaining to the political culture and repertoire of meaning in each context, but also with respect to the commonalities across different settings in the language of security and rights. Therefore, the second part of the study consists of a discursive investigation of the legislative process through the employment of frame analysis of parliamentary debates with the help of the programme ATLAS.ti.

In order to examine the most frequently used concepts, themes and arguments with respect to counter-terrorism policies and their relationship to human rights principles, this

study analyzes parliamentary debates with a focus on the House of Commons[61] as the chamber of democratically elected representatives in the UK and the Turkish Grand National Assembly in Turkey. Although the legislature is often dominated by the executive in the decision-making of national security matters particularly during times of emergency, the parliament nonetheless encompasses all the argumentation, justifications, concerns and assurances articulated by different parties including government officials. The role of the parliament for political contestation is taken up by Neal: "…Parliament plays a central role in legitimating the symbolic and repressive legislation that is invariably enacted in the eve of spectacular terrorist attacks, but on the other hand, Parliament frequently expresses concerns about how the law may exceed its intentions, scrutiny, and oversight." (Neal, 2012: 265) As such, the parliament is not only a problem-solving body, but also a performative arena for the members of the parliament to stand for and justify certain positions. A point that needs to be made is the culture of debate and parliamentary scrutiny in these two settings. The analysis has shown that on the issue-area of security, the UK legislative process has exhibited a much detailed and rigorous debate on the proposed provisions; whereas, the Turkish case presented less deliberation and argumentation. Although this dimension of the legislative process is not part of the analysis, it is a noteworthy observation demonstrating the difference in the culture of debate and the functioning of the legislative organ.

Amidst the overwhelming extent of counter-terrorism legislation and an even larger volume of parliamentary discussions, the study has opted to focus on those pieces of legislation that have generated extensive debates and brought about a new aspect to counter-

[61] Due to time constraint the House of Lords debates have been left out. The focus on House of Commons allows one to investigate democratically elected politicians' points of views and captures a larger proportion of the spectrum of political ideas.

terrorism legislation through relevance sampling. In the UK context the debates on three key legislations have been analyzed, namely *Anti-terrorism, Crime and Security Act 2001*, *Terrorism Act 2006*, and finally *Terrorism Prevention and Investigation Measures Act 2011*, retrieved from *Hansard* parliamentary records which offer comprehensive access to parliamentary debates and different committee reports. Firstly, ATCSA 2001 came in the aftermath of 9/11 attacks and signified the general zeitgeist of the 'War on Terror'. With the introduction of the practice of indefinite detention, this piece of legislation which has triggered waves of debate both nation-wide but also with an international reach, rendering the UK as the only EU country to derogate from the ECHR. Some of the highlights of the parliamentary debates about this Act included issues pertaining to immigration and deportation, due process and the lack thereof, as well as freedom of expression in relation to a clause criminalizing religious hatred which was later dropped.

The second source of data is comprised of the parliamentary debates on *Terrorism Act 2006*, which was introduced following the 7/7 London bombings in 2005. At this critical juncture, with the shocking insight that the perpetrators were UK nationals this legislation has for the first time approached the issue of terrorism from an ideological vantage point and sought to criminalize the glorification of terrorism. Other controversial provisions included the extension of pre-charge detention period to 90 days and the monitoring of religious institutions against preaching extremism. The debates that surrounded the Bill included the danger of extremism, state of multiculturalism and community relations, and definition of 'glorification'. Lastly, the analysis included parliamentary debates and Public Bill

Committee debates on *Terrorism Prevention and Investigation Measures Act 2011*[62], which are novel in their purported objective of restoring rights and liberties in security policies. According to Theresa May, this legislation has sought to "…correct the imbalance that has developed between the State's security powers and civil liberties, restoring those liberties wherever possible and focusing those powers where necessary." (HM Government, 2011)[63] As such, the legislation vowed to 're-balance' counter-terrorism policy in favor of liberties with the introduction of new measures and the annulment *Prevention of Terrorism Act 2005*, along with control orders. The highlighted issues in the parliamentary sittings have been the burden of extending rights to security measures, problems pertaining to due process, and the issue of exceptionalism.

On the other hand, in the Turkish case the data on parliamentary debates have been retrieved from the Turkish Grand National Assembly website that offers access to parliamentary debates as well as relevant parliamentary committee reports. All the data acquired from this primary source has been analyzed in the original language and translated to English by the author in the reporting of the findings. Three essential legislative periods that aim to amend Anti-terror Law as well as those articles in the Penal Code dealing with terror-related crimes have been chosen for the analysis: the *EU harmonization packages during 2002-2003*, reverse amendments in the *Law amending Law on Fight Against Terrorism in 2006*, and finally the most recent *reform packages during 2012-2013* as a response to the increasing number of cases brought to the ECtHR. Since the enactment of

[62] Due to the fact that unlike the other two legislation, the debate on TPIMs 2011 have taken place both at the House od Commons and also through a Public Bill Committee with select members, the records of both sittings have been included in the analysis.

[63] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97972/review-findings-and-rec.pdf

the notorious 1991 Anti-terror Law, the most groundbreaking development came about with the dynamism of the EU-accession process, as the legal bastion of the military tutelage as well as the national security apparatus underwent a meticulous transformation in favor of a rights-based understanding. During the discussion of these inclusive reforms some of the most salient themes were the conceptualization of democratization as a requirement of modernity and a break with the past regime overshadowed by the military involvement in politics.

The second set of legislative debates involve a reverse wave in the Anti-terror Law in line with the international zeitgeist following the 7/7 London bombings as well as the end of cease-fire with the PKK, that have resuscitated security concerns once again. During the formulation of the new amendments that extend the definition of propaganda and being a member of a terrorist organization, one of the most frequently voiced arguments was that the government has been going soft on terrorists groups and that there should be necessary limitations to rights and liberties to prevent them from being abused. The last legislative data analyzed in the Turkish case are the reform packages introduced in 2012-2013, with the aim of addressing those problematic articles that have culminated in mounting cases brought forth to the Strasbourg Court. The discussions during this period is underpinned by concerns over what is deemed as the undemocratic practices employed by the government with under the rubric of counter-terrorism, in particular its impact on freedom of expression and freedom of the press.

In total, records of parliamentary debates and public bill committees amounting to 8076 single-space pages have been analyzed through the qualitative research programme ATLAS.ti. The analysis was conducted through both concept-driven codes as well as data-

driven codes that have arisen inductively throughout the investigation. The table below differentiates those codes that have been construed on the basis of theory and those on the basis of data. A more detailed explanation of all the codes and what they represent can be found at the codebook provided in the Appendix. These codes have been coded alongside the policy frame template that can be found in *Table 8*, illustrating the different frame elements constituting an overall frame structure. The dimensions that come together to form a cognitive frame involve a *diagnosis*, a *prognosis*, *roles* attributed to different actors, *mechanisms* involved, the *location* of the problem or the solution, and finally *intersectionality* signifying overlaps with other frames. As a result, codes that represent various themes, arguments, justifications, and other relevant concepts have been analyzed as part of the frame elements through a process of *double coding*. The co-occurrence function of ATLAS.ti has helped to analyze code frequencies in relation to each frame dimension, thereby allowing the researcher to observe which arguments and themes have been more saliently articulated in the framing of the problem or the solution. The intertwined composition of codes and the frame structure has set up the pillars of the two policy frames that are prevalent in discussions on controversial counter-terrorism policies and human rights. These analytical tools have been utilized in order to examine relevant parliamentary debates in each setting. In what follows, this section will explicate a comprehensive account of policy frames and their constituent elements in the making of counter-terrorism policies and their relation with human rights principles.

Theory-driven Codes	Data-driven Codes	
	Turkey	*United Kingdom*
Abuse of open society Balancing Burden Democratic values Dialogue/diplomacy redundant Duty to protect Enemy Ethnic terrorism vs. international terrorism Exceptionalism Executive powers International community International institutions International norms Legal obligation Lessons from the past Necessity Operational effectiveness Police powers Prevention Right to security Rule of law/due process Threat to our way of life Threatening rights and liberties Threat/urgency/emergency Trivialization Universal morality Vague definition Victim	Abuse of rights and liberties Civil-military relations Democratization Demonstration/protest Example of civilized societies Foreign imposition Freedom of press Freedom of expression Going soft Infamous policy Nationalism National sensibilities Necessary limits to rights and liberties Organized Crime Othering support for human rights Pluralism Pressing reality of terrorism Propaganda Public Opinion Reaffirming commitment to human rights Real terrorists vs. falsely accused Religion Requirement of modernity Separatist vs. fundamentalist terrorism Socio-economic development	Demonstration/protest Discrimination Extremism Freedom of association Freedom of expression Going soft Human rights for ‘us’ Immigration and asylum Infamous policy Minority vs. majority Multiculturalism Necessary sacrifice Organized crime Othering support for human rights Our lands Public demand security Public opinion Reaffirming commitment to human rights Religion The nation/society

Table 7. Theory-driven and Data-driven Codes

Policy Frames	Frame Elements	Sensitizing Questions
Security **Human Rights**	Diagnosis	-What is seen as the problem? -location: where is it located? -mechanism: what produces it? -roles: who is responsible? who is the victim? -intersectionality: other frames involved in the assessment
	Prognosis	-What is seen as the solution? -what are the specific policies proposed? -location: where is the solution located? -mechanism: what are the mechanisms that should be addressed? -roles: who is responsible for the solution? -intersectionality: other frames involved in the solution
	Motivational framing (justification)	-what arguments are put forth? -what is presented as the justification for the proposed policy or strategy?

Table 8. Policy Frame Structure

Chapter 5. Balancing under the State of Exception: Prevalent Policy Frames in the UK Legislative Process

Unfortunately, there are times when people have to be outside the legal framework.

Gerry Sutcliffe, 23 June 2011[64]

Taking pride in a tradition of civil rights and liberties yet concomitantly enacting controversial counter-terrorism legislation since the last couple of decades yields interesting ramifications in the UK political landscape. The political culture and rhetoric accommodates two strong and often conflicting policy frames regarding counter-terrorism measures, namely the *security frame* and *rights frame*. Congruent to the theoretical premises of this study, the parliamentary discussions are undergird by the contestation and bargaining in the making of counter-terrorism legislation, manifested through various frame elements and framing techniques. The analysis reveals that contrary to conventional conceptualizations, these frame structures are not mutually exclusive, and owing to the political context in the UK, they tend to overlap at certain junctures by barrowing from one another's stock of meaning. As such, this section offers a discursive analysis of the legislative process in the UK parliament in order to shed light on the commonly employed concepts and themes working up to the structure of two salient policy frames and their relationship.

[64] *Hansard* HC Public Bill Committee Deb, 23 June 2011, p. 57.

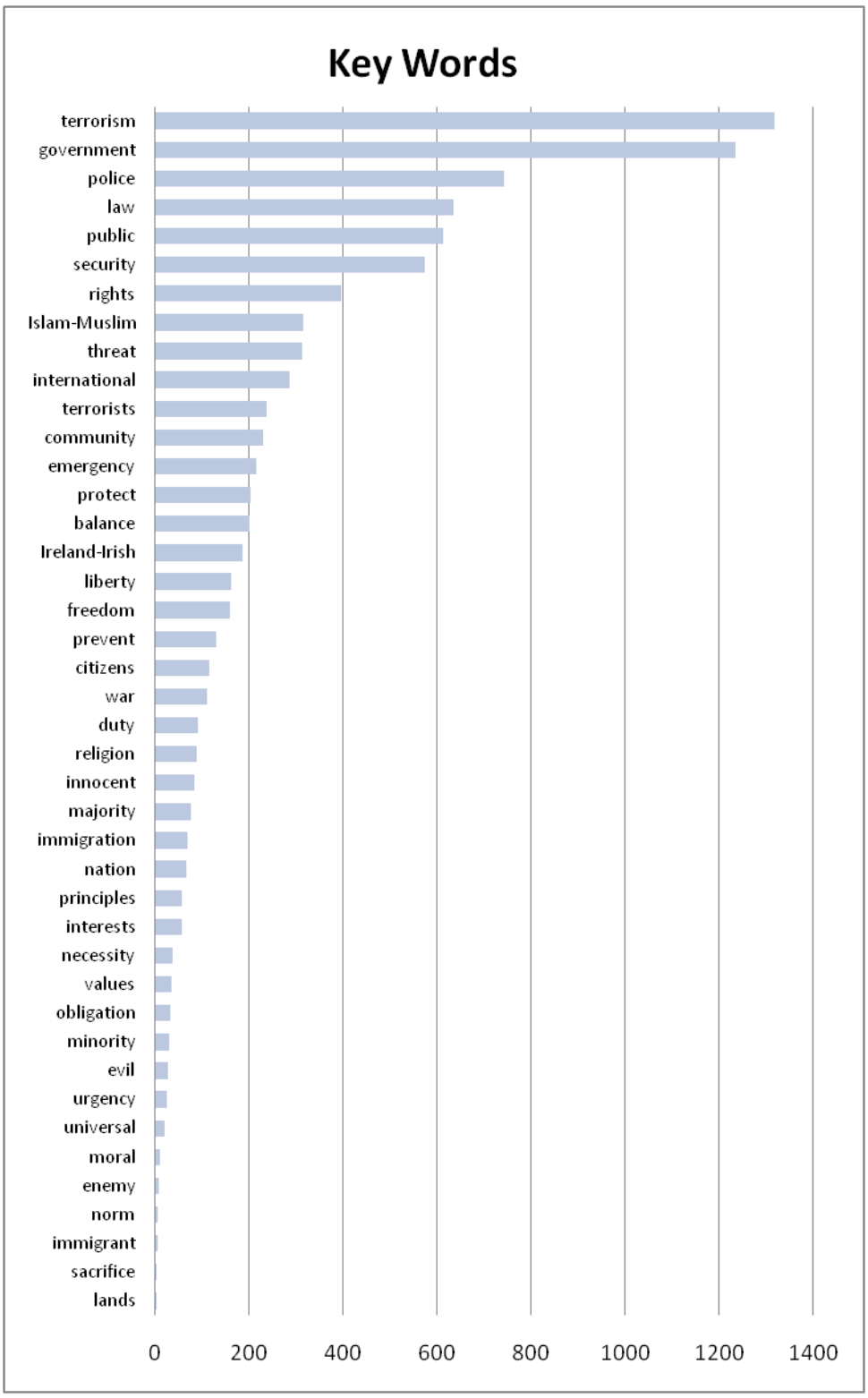

Figure 1. Distribution of Keywords in UK Parliamentary Debates

Before moving on to a detailed account of frame structures, a general distribution of key words can help to acquire a better grasp of the wider picture in the making of counter-terrorism policies. As can be observed in *Graph 1*, the highest frequency is shared between *terrorism* and *government*. Yet, considering all the bureaucratic language present in the parliamentary debates, this is not surprising. The following terms, nonetheless, start to give some hints about the content of the discussions, especially *police*, *law*, *public*, and *security.* From the frequencies of these terms, it is possible to derive that there is an emphasis on the powers of the police in providing security in terror-related matters. Moreover, the high frequency of *law* suggests the significance of the legality and dealing terrorism within a legal framework, a resonant theme that will be elaborated in the following section. Likewise, the high occurrence of *public* illustrates the object of security to be protected against terrorism.

This simple frequency table offers some other clues into the structure of the discussions on counter-terrorism policies. As one observes through the consecutive elements, it is possible to see the *international* dimension of terrorism/terrorists being highlighted, followed by the notions of *emergency* and *community*. While the phrase *rights* ranks much higher compared to *liberties* and *freedom*, acts of *protecting* and *balancing* seem to occupy a similar place within the debates. Furthermore, when the words *Muslim* and *Islam* are coined together their frequency is dramatically higher than the combination of *Ireland* and *Irish*. This picture is indicative of the fact that the issue-area of terrorism is more associated with religious extremism and the Muslim community, thereby superseding the historical focus on Irish separatism or what is defined as ethnic terrorism. Against this backdrop, a detailed account of the structure of the two policy frames in relation to their

respective dimensions and the frequencies of the codes that make up those components will be delineated.

5.1. Structural Components of the Security Frame

5.1.1. Framing of the Problem:

As explicated earlier, the structure of a policy frame is premised on the depiction of a diagnosis followed by a prognosis and supporting arguments or justifications. Two predominant policy frames materialize throughout the analysis of UK parliamentary debates as they confront and bargain with each other. This section will outline the multifaceted components of security framing and the various concepts and themes that constitute it. To begin with, the first frame element is *problem roles* which attribute the cause of the perceived problem to certain groups or bodies. The discussions of three separate counter-terrorism legislation at different time periods have pointed out that the framing of problem roles mainly revolves around the reference to and description of an '*enemy*', whose identified difference is conceptualized as a matter of public security. This depiction is posed vis-à-vis the victim, which is generally constructed as 'innocent' 'law-abiding' citizens, against those that are deemed as abusing the liberties granted by the democratic society. The formulation of the problem roles can be observed below.

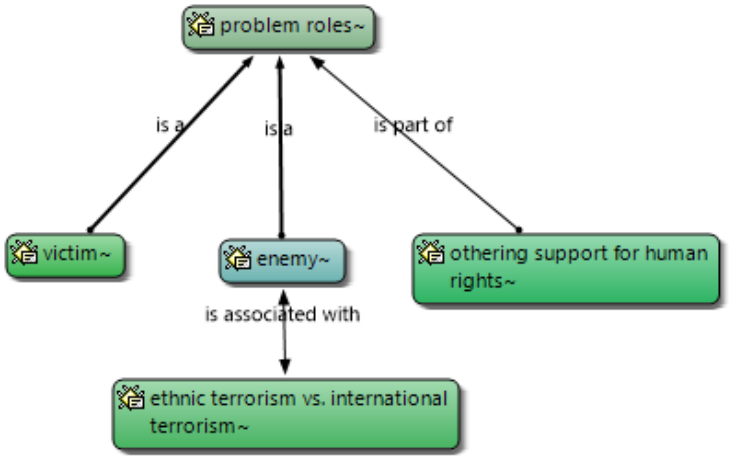

Table 9. Security Frame Problem Roles[65]

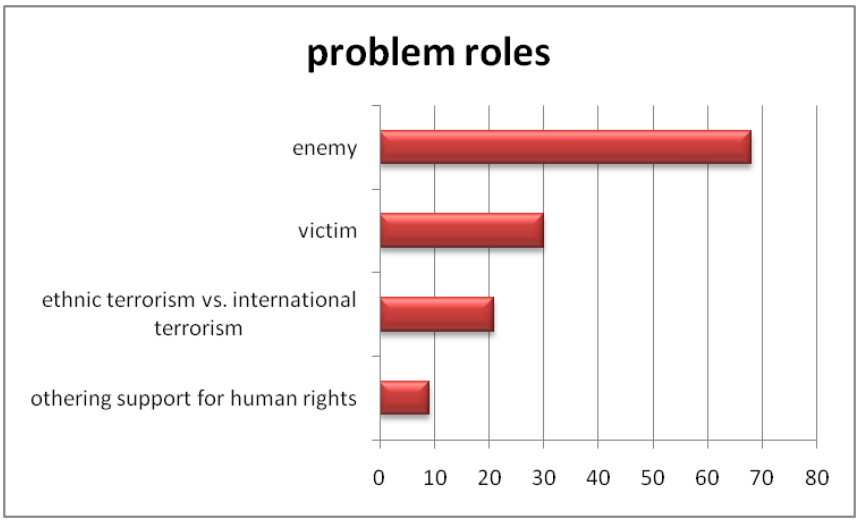

Figure 2. Distribution of Security Frame Problem Roles

The articulation of the enemy is also associated with the differentiation of what is considered as 'ethnic terrorism' and 'international' or 'global' terrorism which usually comes to signify Islamic fundamentalist groups. While the former is construed as negotiable or as suggested by Zarakol (2011) 'system-affirming', the latter is portrayed as 'system-threatening' and against the values of western democracies, rendering dialogue or diplomacy

[65] The nodes represent various codes pertaining to problem roles that are linked with different types of relationship. The groundedness of a code (i.e. number of quotations it is linked) increases it is closer to the color red, as its density (link to other codes) increases it gets closer to the color blue.

redundant. The quotation below from The Secretary of State of the time Charles Clarke is a lucid example incorporating all of these characteristics:

> Those who attacked London in July and those who have been engaged in or committed the long list of previous terrorist atrocities were not the poor and the dispossessed…. [U]nlike the liberation movements of the post-world war two era, they are not in pursuit of political ideas such as national independence from colonial rule, equality for all citizens without regard for race or creed or freedom of expression without totalitarian repression. Such ambitions are, at least in principle, negotiable and, in many cases, have been negotiated. However, there can be no negotiation about the recreation of the caliphate in this country, the imposition of sharia law, the suppression of equality between the sexes or the ending of free speech. Those values are fundamental to our civilisation and are simply not up for negotiation.
>
> (*Hansard* HC Deb, 26 October 2005, vol. 438 col. 325)

A less verbalized yet overt tendency related to problem roles has been denouncing human rights advocacy. Notwithstanding its low occurrence it bears symbolic significance, most lucidly captured by Kevin Hughes's comment during the ATCSA 2001 debate: "…that the yoghurt and muesli-eating, Guardian-reading fraternity are only too *happy to protect the human rights of people engaged in terrorist acts, but never once do they talk about the human rights of those who are affected by them?*" (*Hansard* HC Deb 19 November 2001, vol. 375 col. 30, *emphasis added*) As can be seen, within the security frame not only the perceptions of the enemy, but also those who are considered to be supporting the 'rights of the enemy' are referred to as part of those groups responsible for the problem at hand.

The second frame element of problem location indicates those sites that are deemed to be the sources of the problem. Within the security frame, the nexus of problem locations interconnected to one another, can be found in *Table 10* below.

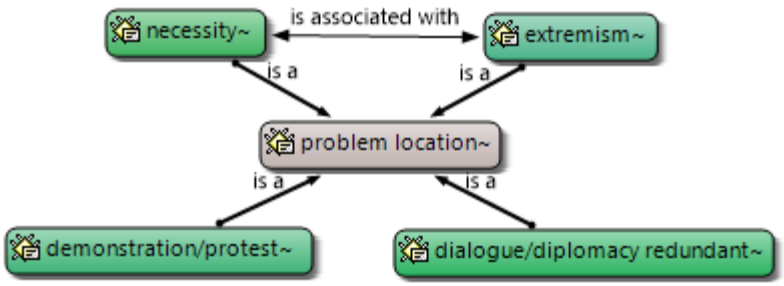

Table 10. Security Frame Problem Locations

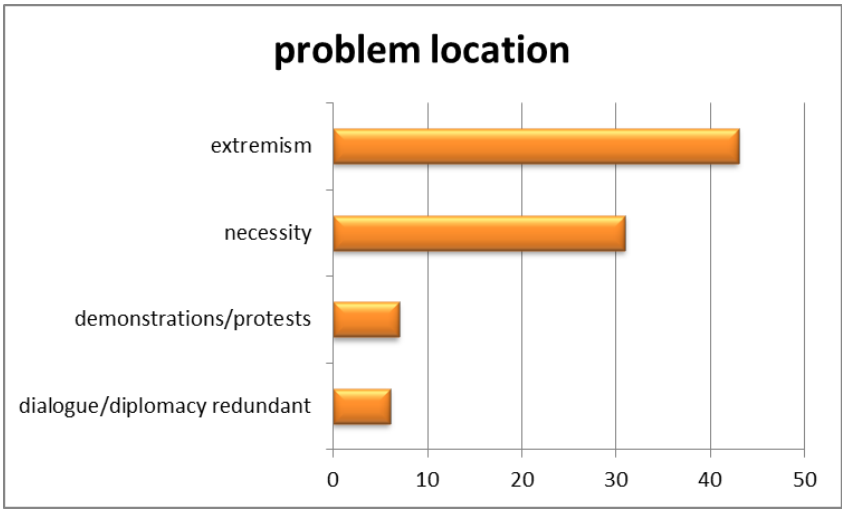

Figure 3. Distribution of Security Frame Problem Locations

Two main pillars of the problem location within the security frame are namely the *necessity* of taking certain steps vis-à-vis an alarming situation, coupled by *extremism* constituting the ideological arm of terrorism. Together, these constitute the most frequently occurring codes from within the security frame, as exemplified by Conservative MP Tobias Ellwood's following comments:

> The threat of terrorism affects *every aspect of our lives*. Every time we step on a train, we are reminded to be vigilant and watch out for suspicious bags. Every time we enter a Government building, we are obliged to have our bags—and, indeed, bodies—scanned. When we switch on the news, there will often be a report of another attack in one part of the world or another…We must tackle the *ideology* behind terrorism, as well as prevent the terrorist attack itself…Sadly,

> history has shown that *Islamic radicalisation* reached our shores a number of years ago…*Terrorism has become part and parcel of our lives*, therefore.
>
> (*Hansard*, HC Deb 7 June 2011, vol. 529 col. 113, *emphasis added*)

This quote illustrates how the threat of terrorism is depicted as ubiquitous, to be expected anywhere at any time, thereby necessitating certain measures. Moreover, it also captures the way in which emphasis is given to the ideology behind terrorism, namely 'Islamic radicalization'. Another clear example of the conceptualization of terrorism and extremism partaking in an intertwined relationship can be traced in MP Shahid Malik's following comment: "I was proud to be elected as Dewsbury's MP, but that pride pales into insignificance compared with the pride I feel at the way in which we have responded, as a united community, against *the twin evils of terrorism and extremism*." (*Hansard* HC Deb 26 October 2005, vol. 438 col.397, *emphasis added*) The depiction of an evil worldview, predicated on the binary opposition of 'us' versus 'them' reinforces necessary measures which make their own laws (Jackson, 2005). This discursive formulation is congruently followed by rendering *dialogue or diplomacy redundant*, since the sort of nihilism upheld by terrorists "means that our societies would cease to be a target only if we were to renounce all the values of freedom and liberty…[o]ur only answer to this threat must be to contest and then to defeat it…" (Charles Clarke in *Hansard* HC Deb 26 October 2005, vol. 438, col. 327)

To a less visible extent, another problem location articulated within the security frame is public *demonstrations and protests*, as epitomized by Beverly Hughes's explanation of the need to criminalize covering the face during demonstrations under the purview of ATCSA 2001, since such sites are conducive to violent behavior for "people whose motives were associated with terrorism or serious crime to use the camouflage of a

large public event to perpetrate certain acts." (Hansard HC Deb 26 November 2001, vol. 375 col. 726) As such, this example is suggestive of how the political act of taking part in protests as a democratic right is being securitized and subsumed by the environment of inflated insecurity and constant threat.

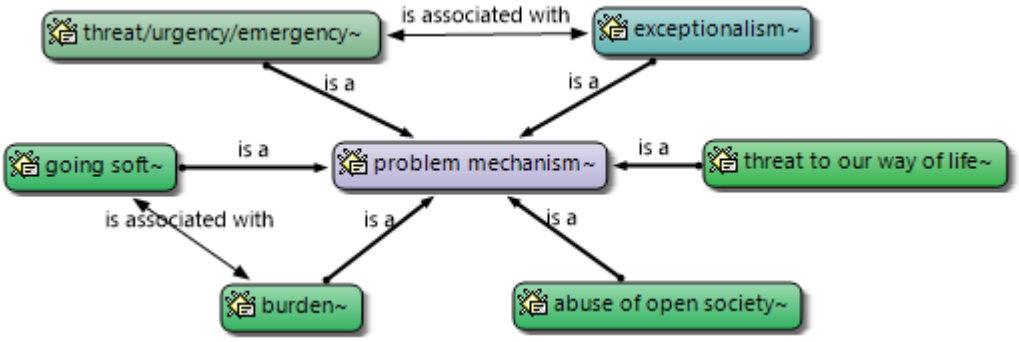

Table 11. Security Frame Problem Mechanisms

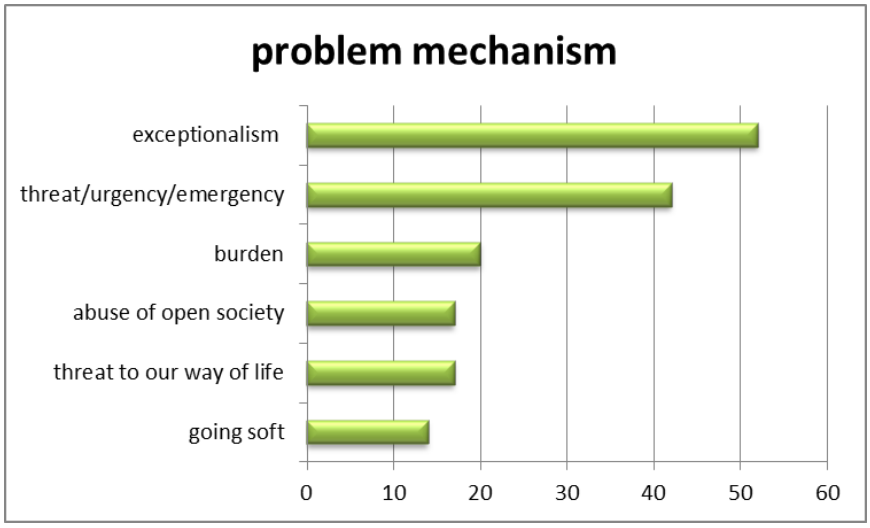

Figure 4. Distribution of Security Frame Problem Mechanisms

A third frame element of the security frame is problem mechanisms, connoting the circumstances and dynamics that produce the problem. The nexus of *threat-urgency-emergency* comes to the fore in tandem with *exceptionalism*, particularly during the ATCSA 2001 discussions. In this context, exceptionalism connotes a deviation from normal levels of

risk, triggered by the perception of a constant threat of terrorism. The zeitgeist of exceptionalism and the conception of a new era in terrorism deemed to be antagonistic to western values are coherently coined with the earlier argument *dialogue/diplomacy redundant* in MP Piara S. Kabra's following comment:

> In an ideal world, we would not have to take these firmer measures—I can believe that—but *11 September indicated once again that we do not live in an ideal world*. It provided yet more evidence—somehow, some people seem to need more evidence—of the *impossibility of reasoning with these people*. A passage in the manual that I have mentioned states: "The confrontation that we are calling for with the apostate regime does not know Socratic debates . . . Platonic ideals . . . nor Aristotelian diplomacy." If we do not act at this precise moment, there is no doubt that the terrorists will.
>
> (*Hansard* HC Deb, 19 November 2001, vol. 375 col. 98, *emphasis added*)

A related theme is *threat to 'our' way of life*, where terrorist groups are perceived to target western values *per se*, due to their ideological disposition: "Does the Home Secretary accept that, in contrast to the society that he has just described, the terrorism that threatens this country is based on the *fascist-type ideology of hatred* and an *obsessive wish to destroy the west and modernity*?" (Louise Ellman in *Hansard* HC Deb 26 October 2005, vol. 438 col. 325) This characterization invokes a sense of perpetual anxiety by construing this form of terrorism directly in opposition to western civilization, and thereby as an existential other in the Schmittean sense ([1922] 1985) that cannot be negotiated with. In a similar vein, the argument of terrorist groups seeking to abuse open society, by manipulating rights and freedoms has also been resonant in the debates, as epitomized in MP Ross Cranston's remarks:

> I cannot accept that we should not act because that is somehow contrary to what are said to be our liberal, democratic traditions. We are vulnerable because a liberal democracy enables people to pursue individual interests, and we act as a refuge for those from other states. We will pay a high price if we ignore the

> minority of fanatics who would abuse the liberties and rights of liberal democracy to destroy it.
>
> (*Hansard* HC Deb 19 November 2001, vol.375 col. 67)

Two other recurrent themes under problem mechanism have been the codes burden and going soft. The first comes to signify an argument whereby human rights obligations are considered to *burden* the authorities in providing greater security. Interestingly, this argument has been presented predominantly during the TPIMs 2011 debates, which purported to 're-balance' counter-terrorism legislation in favor of rights and liberties. As put by Lord Howard: "When that system [indefinite detention] was changed, as a result of the decisions of the courts in order to take into account the Human Rights Act and civil liberty considerations, we ended up with a control order system that… is less effective in protecting the security of the public…" (*Hansard* HC Public Bill Committee Deb, 21 June 2011, p.18) The situation is exacerbated when the authority of the security forces is framed as operating "…in metaphorical handcuffs because they are tied by laws that do not apply to terrorists." (Bob Stewart in *Hansard* HC Deb, 7 June 2011, vol. 529, col. 123)

The second and related notion is the judgment that the government is *going soft* on terrorism in relation to human rights concerns, or in other words "watering down measures proven to prevent terrorist activity." (Yvette Cooper in *Hansard* HC Deb, 7 June 2011, vol. 529 col. 74) Once again this argument is more salient during TPIMs debate that is aiming to modify earlier counter-terrorism measures to bring them more in line with human rights. Gerry Sutcliff has voiced his discontent regarding the proposed bill on the grounds that "…the new regime that the Government is introducing is a step too far, because it gives more freedoms to the controlees... The balance has changed from safety to a more libertarian outlook." (*Hansard* HC Public Bill Committee Deb, 23 June 2011, p. 56-57) Hence, tilting

the balance towards liberties is dismissed as 'libertarianism' and such policies are rendered incompetent to provide security to the public.

Finally, the last element of the problem framing is problem intersectionality that presents those issue-areas that are interlinked with the problem posed by terrorism. One area that is referred to in discussing terrorism is *organized crime* and how the two problem areas are interdependent, particularly during ATCSA 2001 debate. Yet, in the UK context the most notable intersectionality occurs with the interconnected policies of *religion* and *immigration/asylum*. Throughout all parliamentary discussions these two issues are visible, particularly the debates pertaining to ATCSA 2001 and Terrorism Act 2006. The international environment following 9/11 produced the UN Security Council Resolution 1373 which brought the issue of immigration and asylum under the remit of national security, thereby driven out of the borders of 'normal politics' into the state of exception. As such, this piece of legislation exemplified the trend of securitizing immigration and asylum policies with the onset of the 'War on Terror'. Likewise, the term 'glorification' under Terrorism Act 2006 has generated an intense dispute, wherein religious outlooks deemed 'extreme' or 'radical' have been framed as possible sources of terrorism. As a result, the problem of terrorism is directly associated with members of the Muslim minority:

> The Bill needs to be understood in the context of the Prevent agenda that was mentioned earlier, the relationship between the Muslim community and the police, the work of the security forces and international events, interventions and identity. There must be a question about what incited young British Muslim men to blow themselves up in British streets.
>
> (Kris Hopkins in *Hansard* HC Deb 7 June 2011, vol. 529 col. 80)

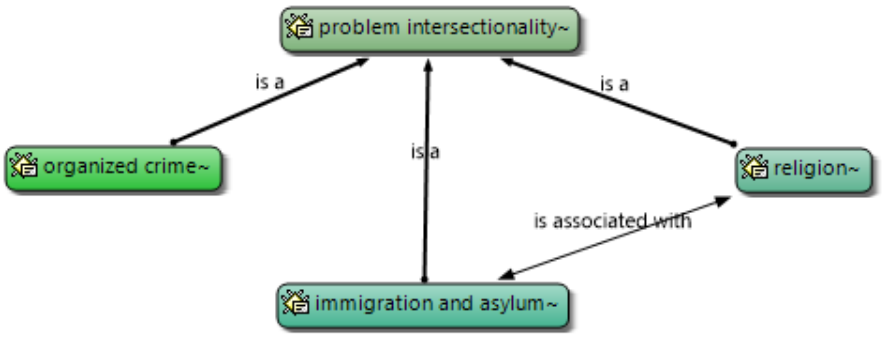

Table 12. Security Frame Problem Intersectionality

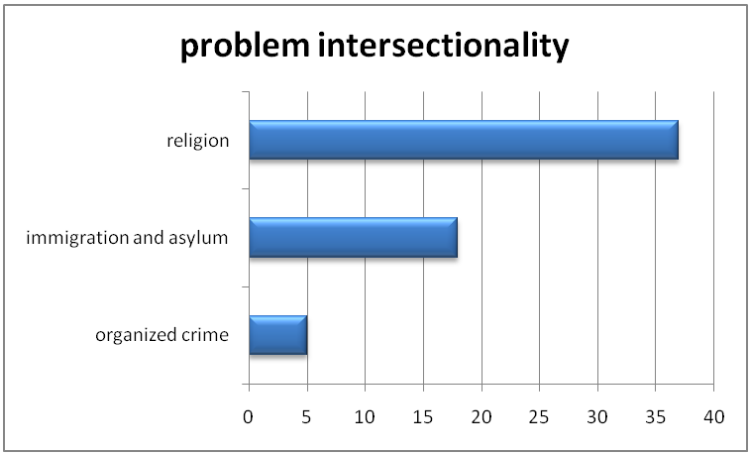

Figure 5. Distribution of Security Frame Problem Intersectionality

5.1.2 Framing of the Solution

Against the backdrop of the formulation of the problem supported by varying and interconnected units, security frame also offers its conceptualization of a solution with identical components. The first element of solution roles defines the authorities and bodies reckoned to be responsible for overcoming the problem of terrorism. Within the security frame, solution roles are attributed to the government's primary *duty to protect* on the one hand, and to the extension of *police and executive powers* on the other. A case for extending executive powers in order to make prompt decisions in times of emergency has been put forth by Paul Goggins: "There may be circumstances where the enhanced powers would be required…Time is crucial…and I would certainly want to give the Home Secretary those

powers, so that she can use them when she judges that to be appropriate." (*Hansard* HC Deb 5 September 2011, vol.532 col. 138) As suggested by Agamben (2003), once again the state of exception is invoked vis-à-vis a context of urgency that necessitates additional powers for the executive.

Another interesting finding has been references to the *international community*, particularly during the discussions on ATCSA 2001 and Terrorism Act 2006 in defense of proposed controversial policies framed as commitment to international cooperation against 'global terrorism'. This narrative of a commitment to an international community with shared values and a fight against 'evil' is expressed by Jack Straw in 2001: "*We have shown that the determined will of the international community can defeat the evil that seeks to destroy us and that destroyed the lives of so many people on 11 September.* We have shown that action to enforce universal values is a powerful force for good. We have shown that we have not forgotten 11 September, and we will not rest until we have made sure that such an atrocity can never happen again." (*Hansard* HC Deb, 12 December 2001, vol. 376 col. 850, *emphasis added*) Hence, loyalty to the international community predicated on shared values and a shared security outlook is being accentuated for embarking on the 'War on Terror'. This tendency is in line with the Constructivist argument that a certain political environment can converge states' expectations and behavior, in this case the perception of a common enemy to western civilization (Adler & Barnett, 1998; Jepperson et. al., 1996).

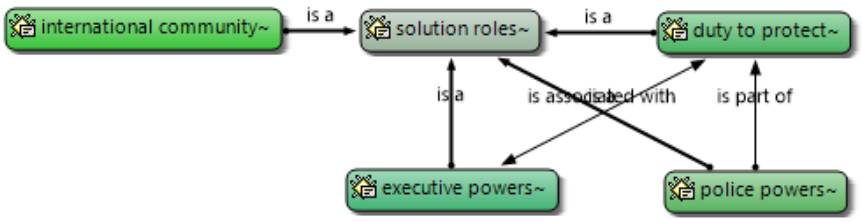

Table 13. Security Frame Solution Roles

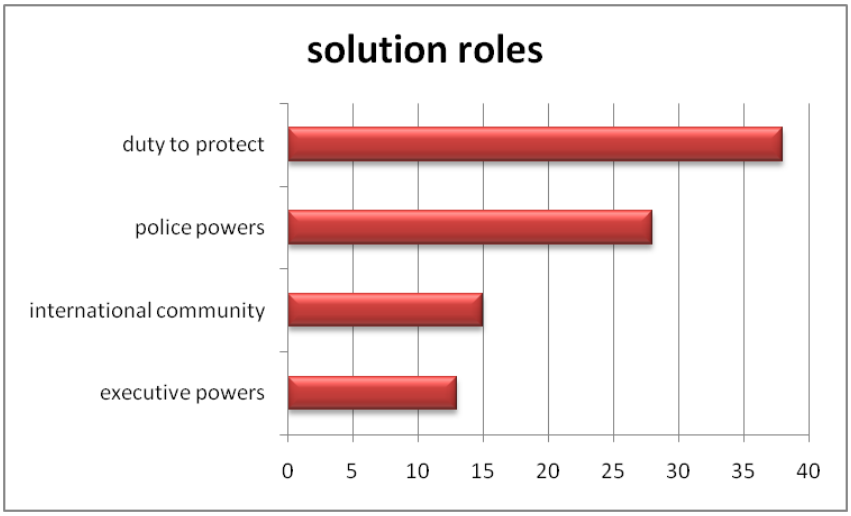

Figure 6. Distribution of Security Frame Solution Roles

When it comes to the solution location, the data-driven code of *our lands* becomes visible, asserting the need for control over 'our' territories against 'foreigners' who take advantage of the open society. An example of this trend is provided by David Blunkett within the framework of immigration and asylum laws: "This is *our home—it is our country*. We have a right to say that if people seek to abuse rights of asylum to be able to hide in this country and organise terrorist acts, we must take steps to deal with them." (*Hansard* HC Deb, 19 November 2001, vol. 375 col. 30) Other two sources for a solution have been the *right to security* based on Lazarus and Goold's (2007) theoretical insights on the normative power of rights-talk, and the argument of *public demands security* which has materialized

through data analysis. The former borrows from a rights-based rhetoric in evoking greater security; whereas, the latter resorts to public opinion in justifying security policies. For instance, the argument of *right to security* can be traced in the words of Lord Howard, who refers to the right to life in promoting (in)security: "…what I regard as the greatest human right and civil liberty of all: the ability of a citizen to walk down the street and go about his business without being at risk of a terrorist bomb." (*Hansard* HC Public Bill Committee Deb, 21 June 2011, p. 18-19) This comment is a striking manifestation of framing security as the most important human right, in other words, the utilization of the language of rights in order to invoke legitimacy and articulate it within the security frame. Likewise, a succinct illustration of the argument on *public demanding security* has been put forth by David Blunkett in 2001: "Circumstances and public opinion demanded urgent and appropriate action after the 11 September attacks on the World Trade Centre and the Pentagon." (*Hansard* HC Deb, 19 November 2001, vol. 375 vol. 22) It is emphasized in this example that the parliament is responsible for fulfilling the will of the people who demand greater security.

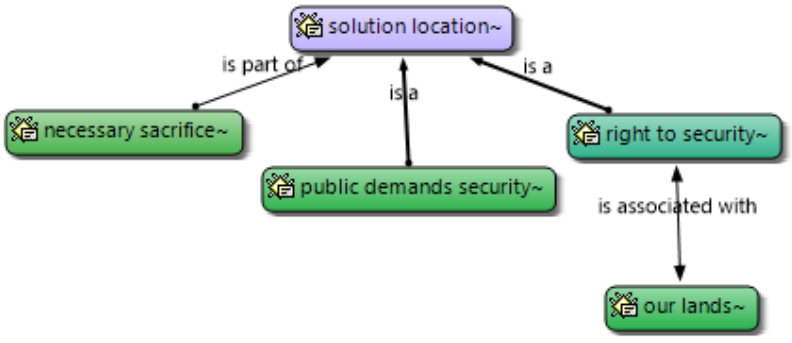

Table 14. Security Frame Solution Locations

The last theme of solution location is *necessary sacrifice*, which differs from that of *necessity*: whilst the latter denotes a situation entailing necessary action, necessary sacrifice constitutes a situation where certain rights and liberties need to be sacrificed for the sake of greater security, therefore acknowledging their status. Significantly salient in the parliamentary debates, the interplay of this concept with exceptionalism can be traced in the following comment made by MP Sutcliffe: "Prosecution and putting people in prison for terrorist activities is where we want to be, but it is accepted that there are occasions when that cannot happen as a result of the sensitivity of the information from the security and intelligence services. *Unfortunately, there are times when people have to be outside the legal framework*." (*Hansard* HC Public Bill Committee Deb, 23 June 2011, p. 57, *emphasis added*) Thus, while recognizing the value of due process and normal criminal prosecution, Sutcliffe invokes the state of exception entailing necessary sacrifices in normal legal processes, thereby carrying the solution to the terrain of exceptional measures.

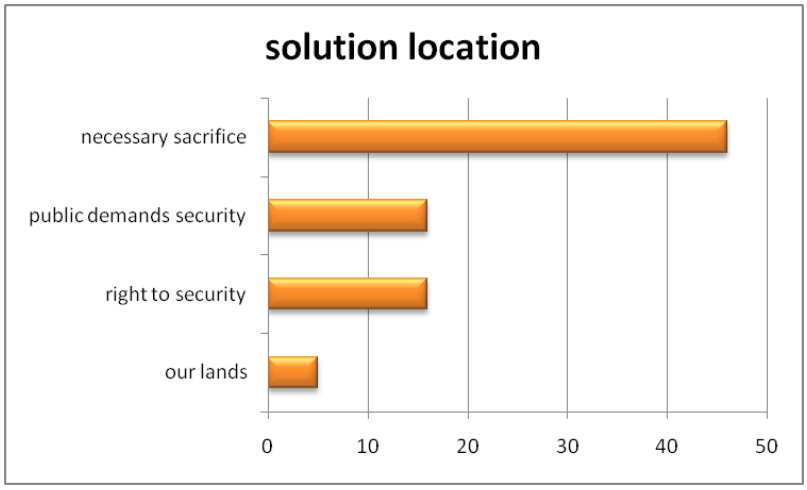

Figure 7. Distribution of Security Frame Solution Locations

The third frame element of solution mechanism is premised on the interplay of various concepts and themes which operate jointly to offer a solution scheme. A relatively

less visible code expressed during the debates is *human rights for 'us'* associated with the earlier theme of right to security, which adopts the language of rights in dichotomizing the public into innocent individuals that deserve human rights and those suspects who do not. Within this nexus another code that is juxtaposed with the previous one is *minority versus majority*, representing the argument that the rights of a 'dangerous' minority should not supersede security of the majority. The workings of these intertwined notions can be found in the cogently put argument by Vernon Coaker:

> Individual human rights are important and must be protected, but so must collective human rights. *A small minority must not dictate to the majority*. If an individual seeks to bring terror to the lives of countless others through the bomb, the gun or other means, *does society not have a right to protect the human rights of those countless threatened people through the denial of that individual's human rights*? That is what causes many to deplore those who use the very freedoms treasured by all of us to undermine and threaten our democracy. It is ridiculous that the Government can do nothing while *terrorists use our immigration and asylum laws*, which offer genuine refugees a safe haven, as a means of staying here and openly pursuing their hostile opinions.
>
> (*Hansard* HC Deb, 19 November 2001, vol. 375 col.107-108)

This quotation interlinks several different nodes of the security frame and condenses them into a coherent reasoning. While acknowledging the status of human rights, Coaker utilizes this normative narrative from a security perspective and argues for the rights of the majority against those of a dangerous minority. From this perspective, the rights of the 'threatened people' must logically supersede the rights of those who are perceived as seeking to exploit open borders and bring about havoc. In this way, while those democratic values of rights and liberties are upheld, they are done so as symmetrically opposed to the conceptualization of an enemy rendered undeserving of the virtues of modernity.

As can be observed, there is a general rhetorical acceptance of the normative weight of the human rights norms and obligations. This trend is also manifested in the prevalent codes of *balancing* and the data-driven code on *reaffirming commitment to human rights*, which have proved to be among the most frequent codes in general. This finding is important on several levels: firstly it illustrates that even from within the security framework it is not possible to blatantly dismiss human rights obligations; and secondly, it points out to a stronger hold of human rights rhetoric within the security discourse as a source of legitimacy. In other words, there is an evident tendency to declare commitment to human rights 'under normal conditions', yet pointing out to the necessity of suspending them due to exceptional circumstances. This phenomenon can be read in Paul Murphy's statement: "None of us wants more counter-terrorism legislation and none of us wants freedom and security constantly balanced, as they must be, but all of us must acknowledge that the world has changed. To protect our freedoms we have always to protect our people." (*Hansard* HC Deb 26 October 2005- vol. 438 col. 356) Hence, the well-being of human rights is conditioned upon security, thereby legitimizing their 'temporary' suspension in due course. Another case in point is presented during the Terrorism Act 2006 debates as the Minister for Policing, Security, and Public Safety of the time Hazel Blears declared that:

> We are all struggling *to reconcile the issues of security and liberty*. How, in our free democracy, do we protect our citizens from harm while at the same time protecting the fundamental values that are so precious to every Member of Parliament? How, in particular, do we protect our freedom to speak, and to debate serious ideas on which we have deeply opposing views, while maintaining a sense of respect and upholding the right of decent people to go about their business in peace and safety? I ask Members to remember what happened on 7 July. *More than 50 innocent people were murdered by terrorists who did not care how many innocent people they killed*. More than 700 people were injured, many of them seriously, and their whole lives will be affected. I say that not in order to make my arguments easier to present, but because it is

always in my mind as we struggle to get the balance right. *We are not talking about a theoretical situation. This is not an academic debate. The threat is real.* We have been attacked, and we must now find the best way in which to *protect the people* of this country, *while upholding and strengthening our values*.

(*Hansard* HC Deb, 26 October 2005, vol. 438 col. 410-411, *emphasis added*)

In a similar vein, this excerpt highlights how exceptionalism is sought after the principled commitment to human rights. In this sense, striking the right balance is depicted as the ultimate aim of a counter-terrorism policy, while being cognizant of the pressing conditions that demand the suspension of norms. Moving on from these grounds, the picture gets even more interesting as exceptionality is being institutionalized in counter-terrorism policies and promoted to a permanent status. As put by John Denham during the Terrorism Act 2006 debates:

This is a long-term fight. Once terrorism is established, it takes years to get rid of. In my view, we will be extremely lucky if we are not facing attacks such as those that we have seen in London for the next 30 years. These are not, therefore, short-term, emergency measures. *To all intents and purposes, they are permanent*. *The fight against terrorism does not lend itself to short-term initiatives*. The public need to be reassured that things are being done, but they want to be safer.

(*Hansard* HC Deb, 26 October 2005, vol. 438 col. 369, *emphasis added*)

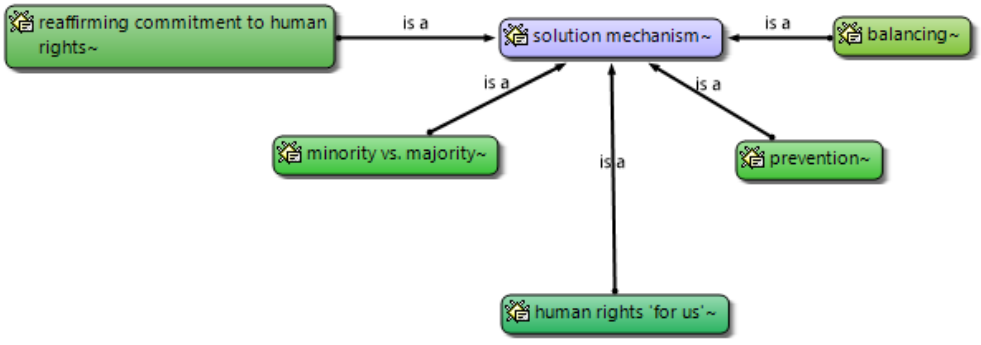

Table 15. Security Frame Solution Mechanisms

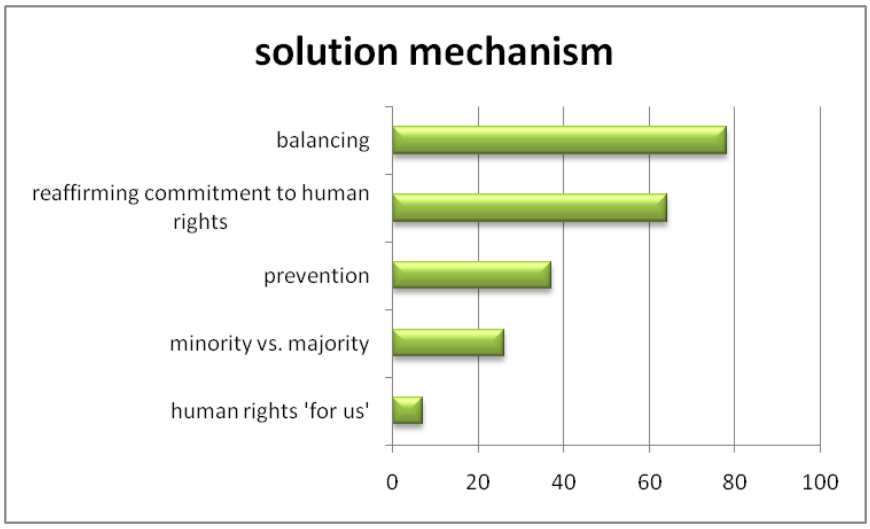

Figure 8. Distribution of Security Frame Solution Mechanisms

Lastly, solution intersectionality with other issue-areas shows relationship to *public opinion* as an important reference point in the formulation of counter-terrorism legislation. This code is also associated with the abovementioned argument of *public demands security*. Clearly more visible during the ATCSA 2001 debate following the 9/11 attacks, the significance of public opinion in the formulation of counter-terrorism policies can be observed in the following comment by Blunkett: "It seems to me that although the nation of course has a right to scrutinise what we are doing and to question us—to ask why on earth we are taking additional measures—we must also face up to things and be prepared to understand that people out there really want us to get a grip on any danger that threatens their or our lives, or the operation of this country—its economy, working and lifeblood." (*Hansard* HC Deb, 19 November 2001, vol. 375 col. 30) Thus, public opinion is put forth as a necessary reference point in shaping security policies, whilst the will of the people is depicted as demanding greater security.

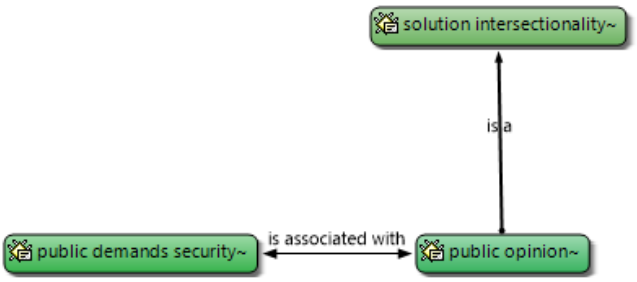

Table 16. Security Frame Solution Intersectionality

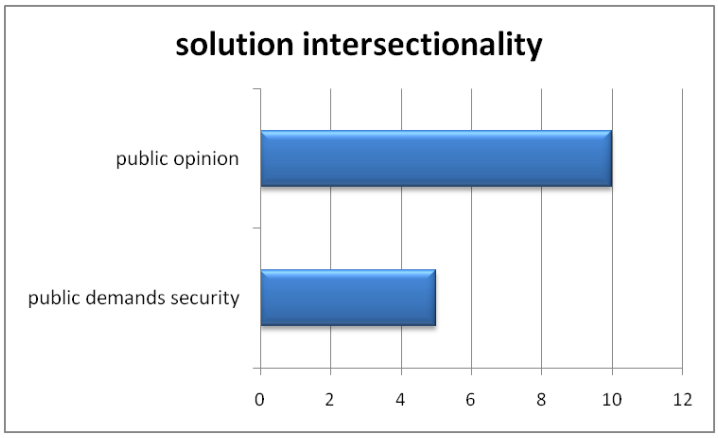

Figure 9. Distribution of Security Frame Solution Intersectionality

In short, the structure of the security frame is the product of these knotted layers which come together to materialize this policy frame. While the identification of the enemy vis-à-vis the victim is ensued by a perceived sense of exceptionality, international terrorism is rendered existentially different and hostile to the values of a modern democracy. Extremism is portrayed as the source of terrorism, and 'suspect' groups are presented as exploiting the liberal values and open borders. The safest option is seen to be preventing such extremism from being dispersed, through tightening immigration laws and fighting certain ideologies and worldviews in the public sphere. Although 'under normal circumstances' the commitment to the principles of human rights and due process are unquestioned, it is suggested that because of exceptional circumstances the duty to protect overrides such norms. Especially the road taken since 9/11 with the fight against the 'evils'

of terrorism, it is maintained that strict security measures are also demanded by international community of countries who share an interest in protecting 'western civilization' from attacks. Hence, security framing proposes that we must suspend those civil rights of a dangerous few in order to protect the right to security of the innocent law-abiding majority. These are the general contours of the security framework that the analysis has presented, constituting different components of the same structure that work in tandem. Yet, there is another equally prevalent policy frame in the UK political context that has been essential in countering acts of securitization.

5.2. Structural Components of the Rights Frame

5.2.1. Framing the Problem

Similar to the security policy frame, the rights framework is also composed of identical frame elements that come together to form the composite structure of the whole. Throughout all three legislative debates, rights frame is highly visible and exerts considerable pressure to the security narrative. It is suggested by the content of the discussions that this is partly due to the tradition of civil rights and liberties in the United Kingdom, and equally owing to the legal obligations entailed by international institutions. The framing of counter-terrorism policies from the vantage point of a rights-based framework exhibits interesting insights into the parliamentary debates, built on and supported by various interconnected themes, concepts, and arguments. In order to acquire a comprehensive understanding of these discursive formulations, we need to look into the construction of the diagnosis and prognosis.

The first element of the problem frame is the associated roles. Within the rights frame two positions are problematized, namely the extension of *executive powers* and that of

police powers. Enlarging the scope of these powers under the auspices of counter-terrorism is conceived to jeopardize the normal functioning of due process, leading to the infringement of a number of civil rights, as well as creating a culture of fear. Bringing forth the example of section 44 of Terrorism Act 2000 which has conferred substantial powers to the police, Alan Simpson warns about the ramifications of their misuse:

> Will he [the Home Secretary] confirm that of the 900 or so people who have been arrested and detained under the Terrorism Act 2000, there has not been a single successful prosecution made for membership of any organisation on the burgeoning proscribed list, which we are told must be banned internationally. What we have done is to create a *culture of fear, and a sense of division and vulnerability, that has nothing whatever to do with successful action against terrorism*.
>
> (*Hansard* HC Deb, 26 October 2005, vol. 438 col. 329, *emphasis added*)

This remark exemplifies the discontent about extensive police powers, which are not only deemed as failing to bring about the desired outcome, but also criticized for triggering an environment of constant anxiety. Further criticism has been expressed regarding the executive powers and the underlying logic behind counter-terrorism policy-making in general, deemed more as a performance than well-evaluated set of solutions:

> There is a feeling in Government—it is the same in all Governments—that when something awful happens, they have to be seen to be doing something. The only thing Governments can do, apart from making statements and providing resources for the forces of law and order, is to pass new legislation. So that is what they do, and I suspect, to some extent, that is what we are doing here today.
>
> (Jeremy Corbyn in *Hansard* HC Deb, 16 March 2006, vol.443 col. 1678)

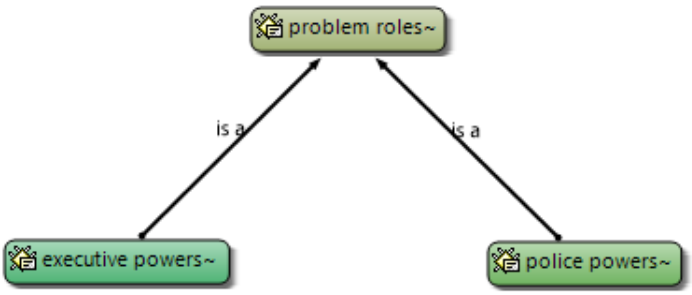

Table 17. Rights Frame Problem Roles

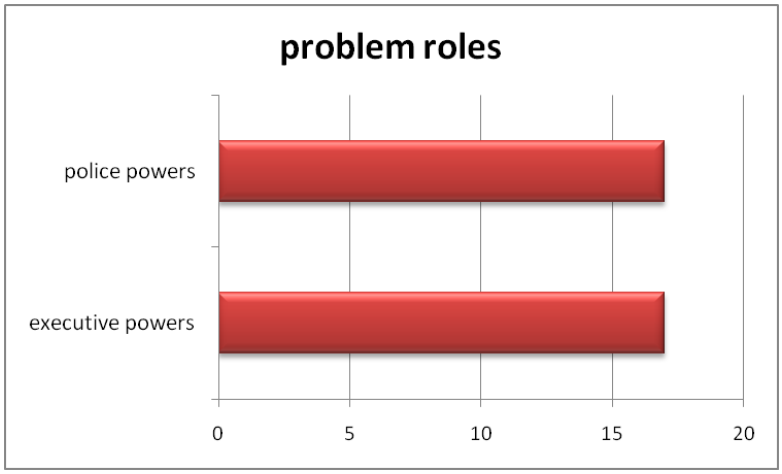

Figure 10. Distribution of Rights Frame Problem Roles

When it comes to the second frame element of problem location, two main strands make an appearance, those related to the highly recurring codes *infamous policy* and *discrimination*. The former either portends that the proposed piece of legislation risks culminating in infamous and contentious measures, or that it reflects earlier controversial practices. In this respect, it is associated with the code on *lessons from the past* which denotes critical historical experiences. Concerns and warnings have been raised regarding provisions found to be unjust and discriminatory, with respect to their impact on community relations and more importantly the potential of leading to sympathy for terrorist activity:

> Does my right hon. Friend agree that before 7 July the worst mass-murder terrorist attack on civilians was the Birmingham pub bombing? Immediate anti-

> terror legislation followed, and then the *wrong people were arrested*, although they were given a full jury trial. There is no doubt that in my city, *the alienation of the Irish community that resulted from all that created a breeding ground for sympathy for terrorist activity in Northern Ireland*. Does my right hon. Friend believe that we are remembering the lessons of those events?

(Clare Short in *Hansard* HC Deb, 26 October 2005, vol. 438 col. 411, emphasis added)

Parallel warnings have been made with respect to the relations with the Muslim community and how the perception of disproportionate punishments can instigate radicalization, generating more 'martyrs' rather than security:

> ….[W]ill the Bill prevent anybody from being drawn into terrorism? I believe not, because *I think it will create martyrs*. However, we must consider the proportionality of the response. If a catch-all provision of the kind contemplated in clause 1 and in particular in subsection (2) also *renders unlawful many acts that in all conscience should never be treated as unlawful*, even if it did prevent one person from being drawn into terrorism, it would be wrong.

(Douglas Hogg in *Hansard* HC Deb, 2 November 2005, vol. 438 col.869, *emphasis added*)

Interestingly, the justification for greater adherence to human rights norms against draconian measures borrows from the security narrative. A similar sense of elevated threat and emergency is in play, undergird by warnings about the possible outcome of unjust policies. Hence, this form of faming demonstrates how the rights language can also appropriate certain themes from the security narrative in order to make a strong case.

A related problem location is the code on *discrimination* that reckons prospective provisions either as discriminatory or conveying the possibility of engendering discriminatory practices. This problem location is also associated with the situation of religious minorities as well as immigrants and asylum seekers, indicating those groups that are subsumed by the process of securitization and ultimately labeled as 'suspects'. Thus, the

risk of creating suspect communities through counter-terrorism has been expressed by Helen Jackson during the debates on ATCSA 2001:

> I should be grateful if my right hon. Friend would clarify this query: to what extent can he be sure that the people who are part of the international network about which we are concerned at the moment are not nationals of the various countries in which they live? *Is there not a danger that we are labeling those individuals who are stateless, and directing this Bill at them…?*
>
> (*Hansard* 19 November 2001, vol. 375 col. 31-32)

Similar problems that underscore proposed counter-terrorism legislation that risk inflicting hate towards a religious minority group has been frequently expressed:

> *The events of 2001, the invasion of Afghanistan, the invasion of Iraq, the Bush-led war on terror, the axis of evil speech and similar things have had an enormous effect on community relations*. They have also generated a degree of *Islamophobia* within our society and continue to do so, which is a very serious matter. The anti-terrorism legislation and the arguments surrounding the Prevent strategy, like so many other things, play into that agenda. My borough suffered on 7/7: more people from my borough died than from any other borough—it was a dreadful, awful, terrible day. I do not believe, however, that counter-terrorism legislation that goes around the principle of the use of the criminal law or goes around the norms of parliamentary democracy and open justice will stop those things happening again. *That whole process does not make us more safe; ultimately, it puts our society at greater risk and makes it more vulnerable*.
>
> (Jeremy Corbyn in *Hansard* HC Deb 7 June 2011, vol. col. 109-110, *emphasis added*)

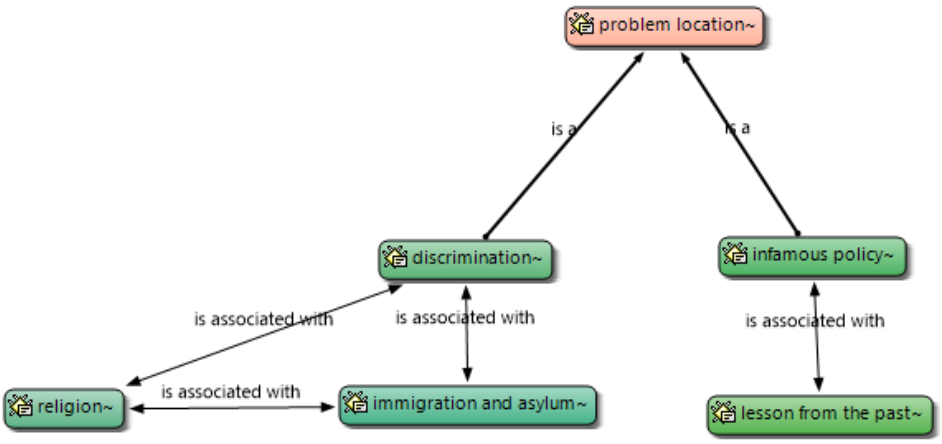

Table 18. Rights Frame Problem Locations

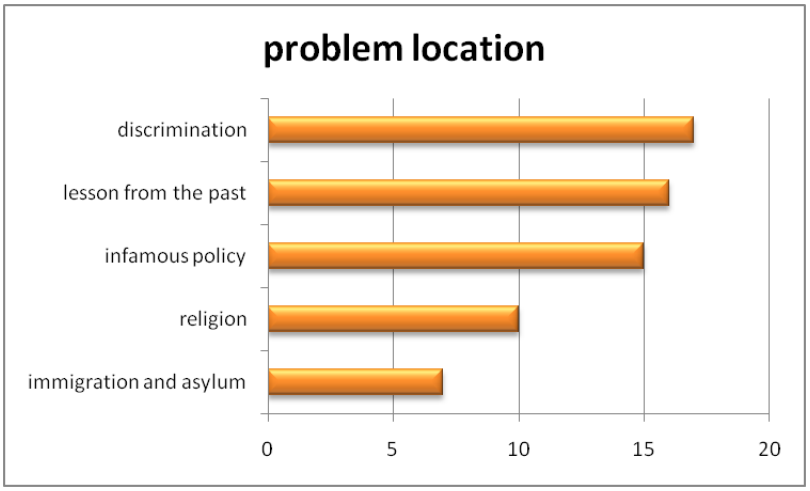

Figure 11. Distribution of Rights Frame Problem Locations

Moving on from these premises, the problem mechanism is predicated on three main dynamics, namely *exceptionalism*, *threatening rights and liberties*, and *vague definition*. The theme of exceptionalism is also present in the security framework, yet as a perceived reality of emergency entailing exceptional measures. In this context it signifies the problematization of exactly those exceptional policies which override the normal functioning of due process, albeit being voiced to a lesser extent. This position is exemplified by Kenneth Clarke's comment regarding the control orders regime introduced in 2005:

> The argument was whether the best way to protect ourselves against terrorism was to leave aside the normal principles of the rule of law and to give rise to the possibility, sooner or later, of cases of gross injustice by giving the Secretary of State the right to deprive someone of their liberty, and by denying them the chance of defense or of proper judicial review. That remains an issue, to which the Government promised they would one day return.
>
> (*Hansard* HC Deb, 15 February 2006, vol. 442 col. 1506)

On the other hand, the problems predicated on utilizing *vague definition* has been voiced in all three parliamentary debates in relation to myriad different topics; nonetheless, it has been more frequently articulated during the discussion surrounding the clause on 'glorification' in Terrorism Act 2006. Similar concerns have been raised with respect *freedom of expression* and the right to protest as corollaries of the more generic code on *threatening rights and liberties*. The particular manifestations of their interaction have ranged from discussions on the interpretation of minority religions to the distinction between 'freedom fighters' and 'terrorists'. An example of the problematization of the term glorification regarding how it can give way to the criminalization of certain religious beliefs has been articulated by William Cash in 2006:

> The Oxford English Dictionary definition is that the word "glorification" means the praise and worship of God. Does my right hon. Friend agree that there will be a grave danger that the courts will try and construe those words in the context of terrorism, which is what the debate hinges on? *If terrorism and religion are conflated, would not the courts have to make a decision based on how praising and worshipping God are interpreted*?
>
> (*Hansard* HC Deb, 15 February 2006, vol. 442 col. 1458, *emphasis added*)

A related topic of discussion that has taken up a substantial space during the Terrorism Act 2006 debates has been the differentiating between 'freedom fighters' and 'terrorists', and how the term 'glorification' can muddle their distinction:

> If, for example, I had said in a public speech to a community of Bosnians in this country at the time of the first Yugoslav war that the acts of those in Bosnia who resisted the Serb forces of the Yugoslav Government were worthy, and that they were conducting themselves honourably and laudably in protecting their community from state aggression, and the speech was a clear encouragement to people to go out and join them—or people inferred that from the words—should that be criminalised? As the clause stands, *it is likely to cover the glorification of Robin Hood*.

(Dominic Grieve in *Hansard* HC Deb, 2 November 2005, vol. 438 col. 839, *emphasis added*)

Hence, these two instances convey how the rights frame operates to construe problems prevalent in broad counter-terrorism measures predicated on exceptionality. Those problems of marginalizing dissent and labeling minority groups as pointed out by Jackson (2005) have been taken up by the rights narrative and frames as problem mechanisms. In a similar vein, the possible impact of vague clauses such as 'indirect incitement' or 'glorification' that can ultimately securitize and restrain the right to protest and demonstration, leading to the labeling of peaceful protestors is forewarned by Jeremy Corbyn:

> Are we advancing anything by designating as terrorists people who, by their very nature, are opposed to violence, terror and the existence of nuclear weapons, and who in many cases are equally opposed to nuclear power? I honestly do not see the point of the clause standing part other than gratuitously to criminalise a large body of people who act for entirely peaceful purposes and who have brought about significant political changes. That is simply not a sensible way to proceed.
>
> (*Hansard* HC Deb, 3 November 2005, vol. 438 col. 1033)

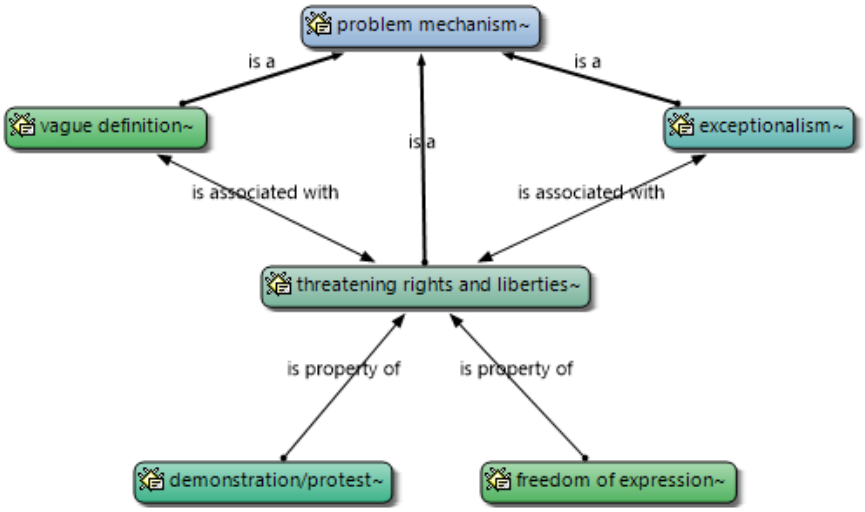

Table 19. Rights Frame Problem Mechanisms

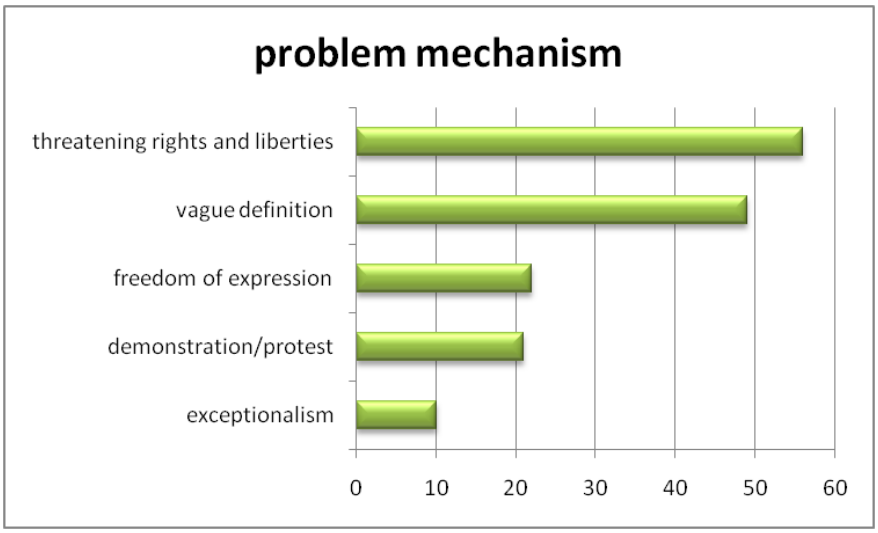

Figure 12. Distribution of Rights Frame Problem Mechanisms

The final frame element of problem intersectionality is parallel to that of the security frame, associated with issues of *immigration and asylum* as well as *religion*. Nonetheless, unlike the security frame, they are problematized in tandem with the code on *discrimination*, thereby connoting the possible side-effect of counter-terrorism legislation for discriminating these social groups. This theme is also present in problem locations and voices a concern over the ramifications of counter-terrorism measures on community relations, in particular

the disadvantages faced by the Muslim minority, who are being labeled as a suspect community:

> …the Muslim community was beginning to feel persecuted by the nature of the Government's terrorism legislation. When one sees conditions framed in such terms, one can certainly understand why. *Why are not more neutral phrases used, such as "place of worship", instead of "mosque"*? Do not the documents lend credence to those in the community who argue that the Government's *anti-terrorism powers are used disproportionately against Muslims*? Will such an approach build the inter-community harmony on which the Government put so much stress?

(Alistair Carmichael in *Hansard* HC Deb, 15 February 2006, vol. 442 col. 1513, *emphasis added*)

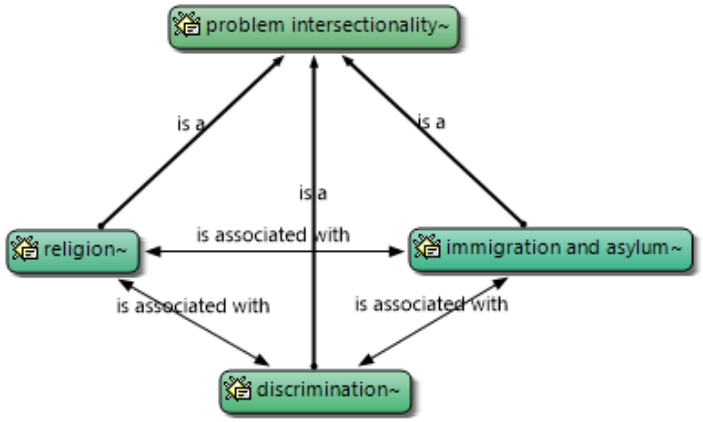

Table 20. Rights Frame Problem Intersectionality

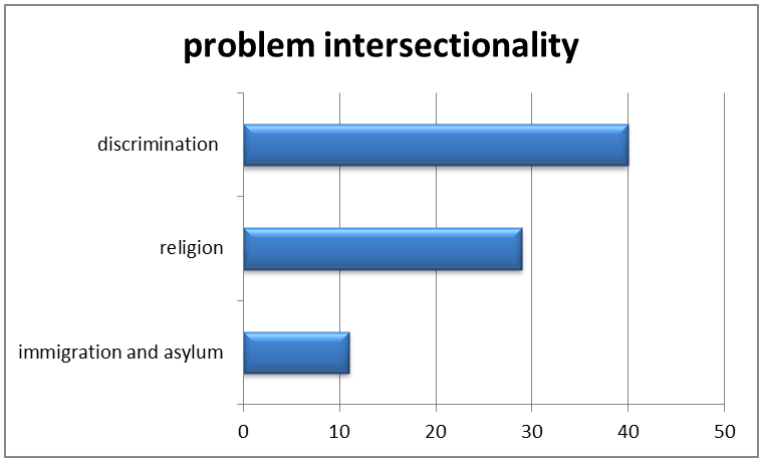

Figure 13. Distribution of Rights Frame Problem Intersectionality

5.2.2. Framing the Solution

Against the construction of the problem, the prognosis offered by the rights policy frame once again rests on the same fundamental elements as elaborated above. The first frame element is solution roles, indicating those entities and authorities that can bring about the desired outcome. Within the rights frame two main bodies come to the fore, namely the *international community* and the *international institutions*. As mentioned earlier, the visibility of the international community representing internationally shared values and identities within the rights framework has been much less evident than the latter; as a matter of fact, it has been referred to more often within the security frame. An interesting finding has been the emphasis made on concrete legal obligations and commitments to certain norms under international institutions. This tendency is visible across all three legislative debates, particularly with references to the obligations under the ECHR. One notable example appears during the ATCSA 2001 debates regarding the decision to derogate from the ECHR: "We would be wrong to derogate from the European Convention on Human Rights and from the Human Rights Act 1998. Nothing that the Home Secretary has said about the issues on which we agree—for example, that there remains an international threat, which I accept without qualification—persuades me that that takes us into the criteria for qualifying for derogation." (Simon Hughes in *Hansard* HC Deb, 12 December 2001, vol. 376 col. 924)

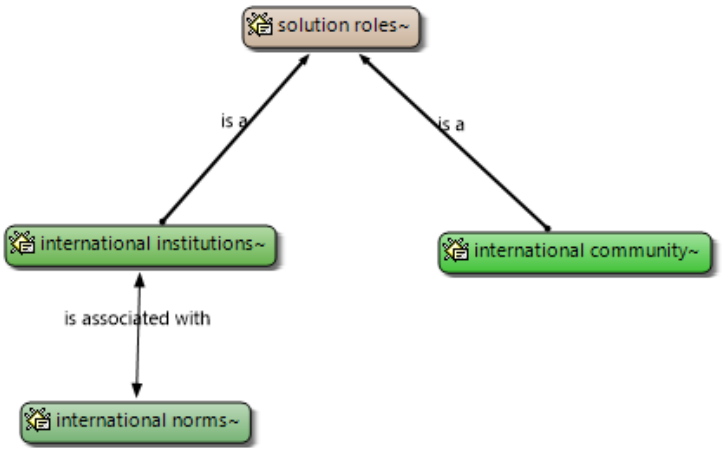

Table 21. Rights Frame Solution Roles

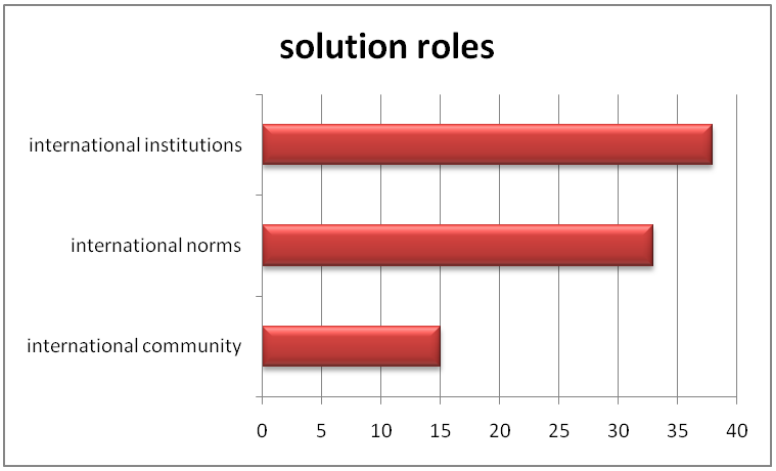

Figure 14. Distribution of Rights Frame Solution Roles

When it comes to solution location, a similar picture comes into view, whereby a sense of legality is being highlighted under *international norms*. This tendency has been vindicated by the significantly low occurrence of the code *universal morality*, particularly in comparison to *legal obligations*, thereby failing to constitute one of the pillars of solution location. The importance of carrying out requirements of international norms can be traced in the following comments made by Edward Garnier:

> ….[I]if [the Home Secretary] wants us willingly, rather than grudgingly, to accept the need to disapply certain provisions of the European Convention on

> Human Rights barely a year after the Human Rights Act 1998 came into force and to accept in a spirit of co-operation that what were so recently thought to be essential freedoms should be curtailed, he needs to be more open with us and, if I may say so, to avoid insulting the very people whom he needs to apply and carry through his new restrictive provisions.
>
> (*Hansard* HC Deb, 19 November 2001, vol. 375 col. 64)

On the other hand, one notable observation has been the characterization of the 'nation' and 'society' as a source of rights and liberties. Although the code of *the nation* has been generated as a generic recurring theme within the data, its expression in accordance with democratic values has produced a commonly employed argument that the nation is characterized by democratic values upholding rights and liberties, which cannot be overridden at any circumstance. During an intense debate on a clause granting the police to ask individuals to remove face covering and its possible implications on the Muslim community, Caroline Flint has justified the measure on the grounds that even in a country such as Qatar such measures are implemented. In response to this argument, Normal Baker has stated that:

> With respect, if we are taking lessons in human rights and civil liberties from states in the Middle East, we need to be rather careful. We should base our system on what we believe correct—*a tradition of civil liberties established over many hundreds of years*. With due respect to Qatar—a country with which I am not familiar—the importation of its powers on human rights and civil liberties should be considered with some trepidation.
>
> (*Hansard* HC Deb, 26 November 2001, vol. 375 col. 757, *emphasis added*)

As such, the rights narrative frames commitment to rights and liberties as part of the national identity, depicting the UK as one of the pioneering countries to assume those 'scripts of modernity' (Krasner, 1999). This framing is also utilized against measures that

are deemed to culminate in discriminatory implementations, in which the tradition of multiculturalism that defines the nation is being exhorted:

> We need to take great care over the way in which we foster the wonderful race relations that we have in Britain's multicultural society. I came to this country at the age of nine as a first-generation immigrant. I have seen race relations develop to such an extent that we have a proud record to show not just in this country but to Europe and the rest of the world. That is why what happened in France did not happen here. We should take great care of that legacy, however, and when we pass laws that will disproportionately affect a section of our community, we should do so with the utmost care.
>
> (Keith Vaz in *Hansard* HC Deb, 15 February 2006, vol. 442 col. 1451)

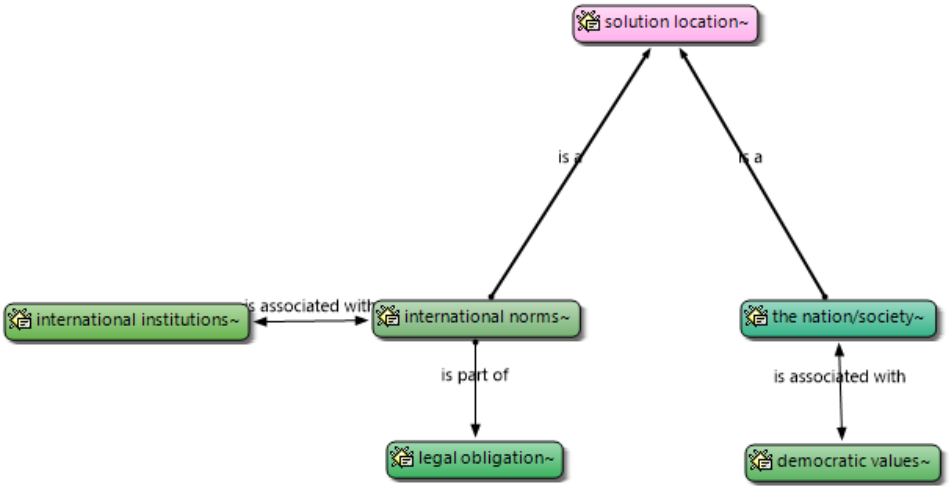

Table 22. Rights Frame Solution Locations

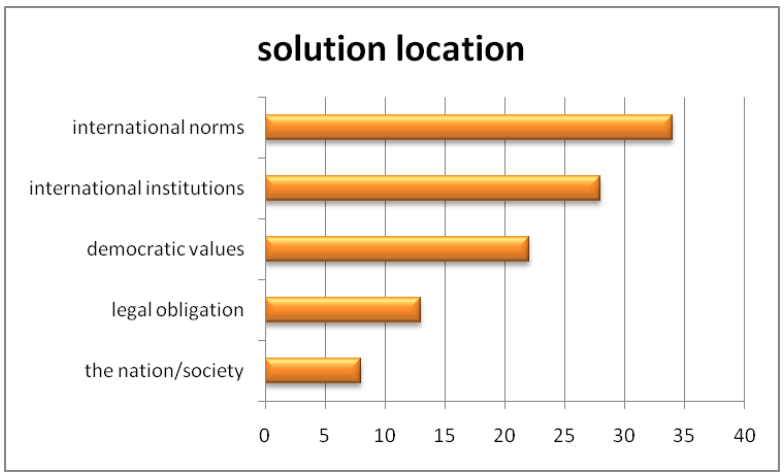

Figure 15. Distribution of Rights Frame Solution Locations

Parallel to the makeup of solution location, the components of solution mechanism incorporate the workings of the *rule of law and due process* along with the functioning of *democratic values*. All of these codes are highly frequent throughout the parliamentary debates. While the notion of due process is enforced concurrently with *legal obligations* to counter exceptional measures, democratic values are underlined against those provisions seen to infringe fundamental rights and liberties. An instance of this discursive formulation can be found in the ATCSA 2001 debate on indefinite detention, as exceptionalism is contested with principles of the rule of law:

> We are supposed to be acting against terrorism and reassuring young people, whether they are Muslim or Catholic, about the fairness of British society and the things that we stand for, but the notion of internment without trial runs clean contrary to the idea of an effective war against terrorism. Even if it were possible to persuade some of us that in certain limited circumstances—much more prescribed than those in the Bill—internment was the only practical option, *the notion of internment without judicial review would be completely unacceptable*.

(Diane Abbott in *Hansard* HC Deb, 21 November 2001, vol. col.395, *emphasis added*)

On the whole, the most frequently voiced mechanism has been striking a *balance* between rights and liberties on the one hand, security of the public on the other. Congruent to that of the security frame, the act of balancing has been by and large the most salient solution conveyed across all three parliamentary debates. The need to balance has also been reiterated by Mark Oaten during the Terrorism Act 2006 debates:

> We accept that there is a terrorist threat. The issue has always been about the level and balance of the response to the threat….I was very taken with the Prime Minister's remarks, at press conference after press conference, about civil liberty and the principle of freedom that we should be able to walk freely without fear of attack. Of course we support that. However, as politicians we also need to argue for other freedoms and civil liberties and for the important principle that we do not hand the terrorists a backhanded victory by doing away with our strong principles of justice.
>
> (*Hansard* HC Deb, 26 October 2005, vol. 438 col. 356)

Oaten's remarks are undergirded by a call for recognition of rights and liberties as national principles, even within the counter-terrorism context. As noted previously, this call for human rights echo the language of the security frame, with its depiction of terrorists as the enemy seeking to destroy those strong principles of 'our' civilization. The notion of balancing has also been pronounced in the parliamentary debates on the introduction of the TPIMs, where the Act has been promoted as a correction to the imbalance present in earlier provisions:

> It [the legislation] has very much at its heart our responsibility to protect the public, but it also recognises that there is a *balance* to be struck. *We believe that the balance has previously been wrong and that it needs to be adjusted*, as contemplated by the Bill, to ensure that our counter-terrorism measures are appropriate, necessary and focused on delivering safety and security in a way that *is judged appropriate on the basis of the evidence*.
>
> (James Brokenshire *Hansard* HC Deb, 7 June 2011, vol. 529 col. 69, *emphasis added*)

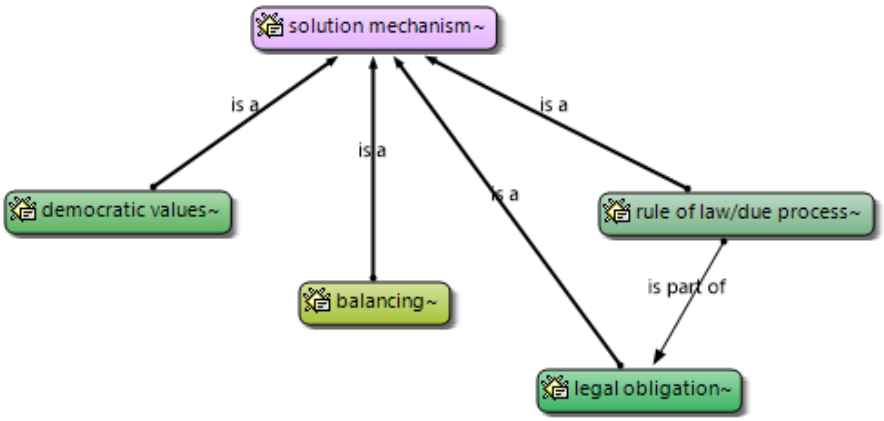

Table 23. Rights Frame Solution Mechanisms

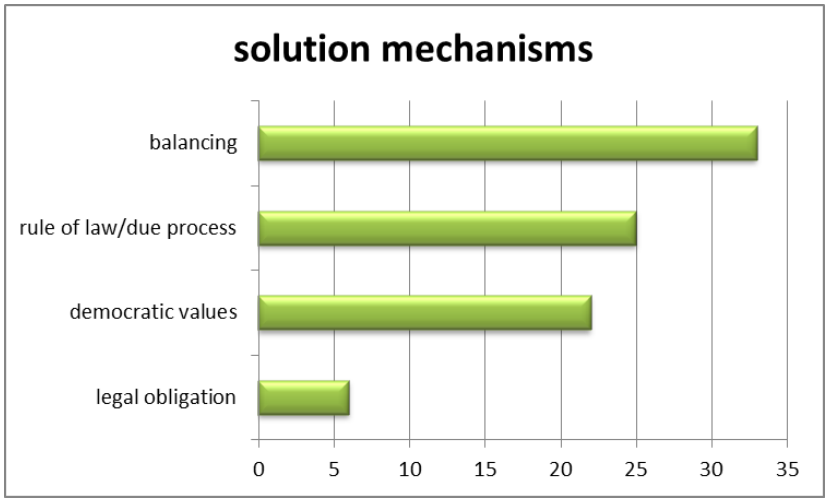

Figure 16. Distribution of Rights Frame Solution Mechanisms

Hence, solution mechanism is attributed to a successful balancing of security and human rights issues, based on democratic values and the proper functioning of due process. The final frame element of the rights policy frame is comprised of solution intersectionality. Congruent to problem intersectionality, this area is premised on *multiculturalism* as a response to concern over discrimination, which is once again interrelated to the issue-areas of immigration and religion. Within the rights framework, preference is given to enhancing good community relations and legislations that treats all individuals regardless of their religion as equal under counter-terrorism policies:

> I have talked in detail to people from those faiths and asked them what they want and need most to give them the maximum protection. *The maximum protection will come from legislation that treats all faiths equally*, that does not give protection to a denomination of one faith and that ensures that the law is clear and does not restrict the freedom of speech, as some people fear might happen.

(Simon Hughes in *Hansard* HC Deb, 26 November 2001, vol. 375 col. 683, *emphasis added*)

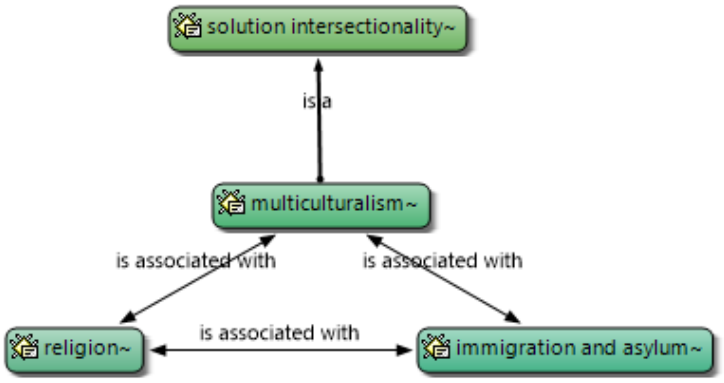

Table 24. Rights Frame Solution Intersectionality

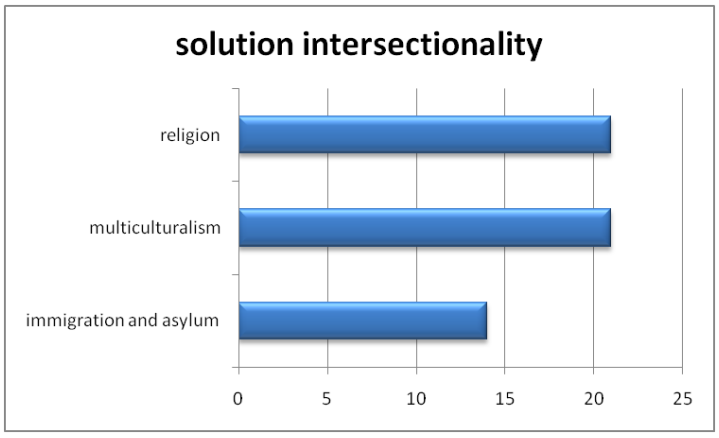

Figure 17. Distribution of Rights Frame Solution Intersectionality

All in all, the rights policy frame is premised on an understanding of legal obligations under extant laws and international institutions, as well as to the tradition of civil liberties attributed to the conceptualization of national identity and national values. The UK is considered to be a leading country in the 'civilized world', in line with Risse and

Sikkink's (1999) arguments, due to the historical status of fundamental rights. This policy frame problematizes exceptional measures and the extension of powers it bestows to both the executive and the police forces, pointing out how the logic of exceptionalism can culminate in the securitization of certain areas of political life, such as participation in demonstrations and the freedom of expression. One striking finding is the formulation of such arguments at a given conjunction, which resonate the security language of depicting 'the enemy' as an existential other, seeking to destroy those values of modern democracies. In so doing, there is an evident thread within the rights framing of the problem along the lines of an 'us' versus 'them' logic. In a similar vein, criticism of draconian and discriminatory measures on the grounds that they risk instigating more radicalization and even lead to creating 'martyrs' once again reflects the symbolism of the security discourse.

5.3. Conclusion

In sum, the analysis of the UK parliamentary debates has illustrated the interplay between the two policy frames and their respective elements that are composed by various concepts, themes and arguments. These discursive cues are translated as codes in the analysis process in order to track the pattern of which cluster of codes work together to constitute the frame structure. The section has tried to elaborate on both the frequencies of these codes and what part of the greater network they partake in attributing meaning to events. The rights frame and the security frame confront, bargain, and negotiate with each other in the policy-making process by offering different vantage points to the problem at hand as well as how it is to be resolved. The security framework is imbued with notions of the enemy versus the victim, alarm of constant threat and emergency, and extremism as the ideological manifestation of terrorism that imperils the democratic values of the nation; whereas the rights framework is underscored by caution towards an environment of inflated

(in)security and the extension of powers it foresees, since these can not only suffocate rights and liberties but also induce discrimination against minority communities. As a result, where the security framework proposes greater exceptional powers and the necessary sacrifice of the normal functioning of due process, the rights narrative emphasizes legal obligations under the rule of law and international norms.

However, this dichotomous positioning is only one part of the picture. Contrary to a mutually exclusive depiction of these policy frames, there are significant overlaps between the two as they borrow from the semiotic vocabulary of the other. One of the most salient tendencies is the acknowledgement and articulation of balancing as the most desirable solution mechanism in both policy frames. In all three legislative debates, the need to strike a right balance is uttered frequently, at times giving way to the criticism of earlier imbalances. Secondly, another area of overlap is the recognition of the moral legitimacy of human rights principles in both policy frames. This is not surprising in the rights framework, yet the security frame also frequently employs a reaffirmation of the commitment to these fundamental principles under 'normal' circumstances and borrows from the language of rights when arguing for greater security measures, as in the case of rights to security. This tendency is in line with Risse and Sikkink's (1999) insights on how paying lip service to human rights is significant in international politics, as these norms have come to constitute a symbol of membership to the 'civilized nations'. Such acknowledgement is usually followed by framing of an environment of emergency and exceptionalism, thereby justifying the suspension of these norms. At certain instances, the relationship between freedom and security is portrayed in such a way as to suggest that the only way to protect rights and liberties is to suspend them in fighting terrorism. Likewise, security is also conceptualized as

a ‘right’, by resorting to what Lazarus and Goold (2007) define as the normative power of rights talk.

A final area of overlap takes place within the rights frame, as the security narrative is mimicked in order to argue against draconian measures that are deemed as instigating more insecurity. This tendency is not only traced in the representation of the enemy from a similar perspective as existentially different and therefore seeking to destroy western values, but also in cautioning against ramifications of policies rendered unjust by the public since they can trigger more threat to the nation rather than eliminating it. Thus, notwithstanding the fact that the allocation of a diagnosis and a prognosis among both frames are in opposition to one another in the parliamentary debates, through strategic framing they borrow the themes and arguments of the other in an attempt to persuade and evoke legitimacy. As these two narratives contest each other in the political arena, they tend to transform one another as well as transforming the notion of sovereignty as the ultimate authority to declare the state of exception in security matters, yet also one that is increasingly bound by the legitimacy that human rights convey.

Chapter 6. Democratization and National Sensibilities: Prevalent Policy Frames in the Turkish Legislative Process

Try to eschew defining terror. Every definition is a limitation. Limitations bring about inadequacies.

Orhan Eraslan, 29 June 2006[66]

The Turkish case offers interesting insights into the trade-off between security and human rights, as an EU candidate undergoing comprehensive transformations against a history of military tutelage and tradition of exceptional measures. While the post-9/11 world order resuscitated realist security concerns over human rights principles as leading democracies started resorting to illiberal measures, Turkey was heading towards a different direction with the impetus instigated by the EU accession process. Yet, the democratization that has fundamentally altered civil-military relations and endeavored to ingrain a rights-based understanding to key legal texts came to a standstill in 2006 with the reverse amendments in the Anti-terror Law. The new extensive provisions have culminated in thousands of individuals imprisoned on ideological grounds, with new files abounding at the ECtHR. As a result of widespread national and international pressure, these problematic provisions have been brought to the parliamentary agenda once again during the reform packages in 2012-2013. During this period of oscillating security policies, a pattern of themes and salient concepts come to the fore in the making of key policies. Parallel to the British case, the Turkish parliamentary debates are predicated on the confrontation, bargaining, and negotiations between the *security frame* and *rights frame* in the making of security policies. The former is primarily embedded in a pervasive discourse of national identity, while the latter advocate further democratization and institutionalization of human

[66] TBMM Tutanak Dergisi, 29 Haziran 2006, Cilt: 126, 122. Birleşim, p. 32.

rights in the Turkish legal framework. In what follows, the relationships and frequencies of different discursive cues that come to form the two policy frames will be explicated in detail.

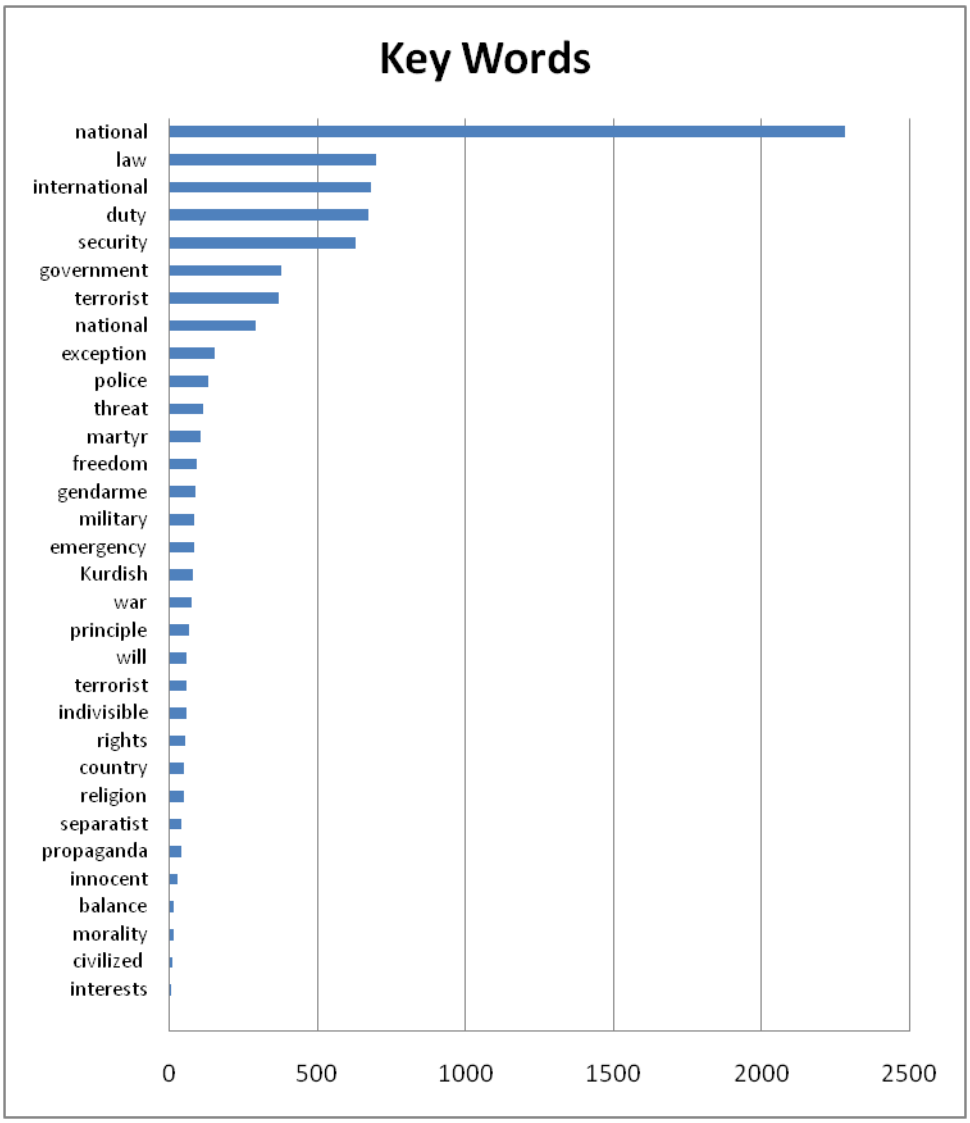

Figure 18. Distribution of Key Words in Turkish Parliamentary Debates[67]

[67] Translation of key words in ascending order: çıkarlar, uygar, ahlak, denge, masum, propaganda, bölücü, din, vatan, haklar, bölünmez, terörist, irade, ilke, savaş, Kürt, olağanüstü, asker, jandarma, özgürlük, şehit, tehdit, polis, istisna, milli, terör, hükümet, güvenlik, görev, uluslararası, hukuk, millet.

Before going into the multifarious structure of individual policy frames, an overall distribution of key words offers some hints on the content of discussions in the Turkish Grand National Assembly. As can be seen the term *nation* ranks the highest in the discussions, followed by *law*, *international*, *duty*, and *security*. From the high frequencies of these terms, one can extrapolate that security and duty to serve the nation is prioritized alongside legality and international standing. These terms are followed by security signifiers such as *terror*, *threat*, *police*, *gendarme*, *soldier* and *martyr*. These terms illustrate the pervasiveness of the security discourse underpinned by a perception of threat, and the role attributed to the police and the military officials. Unlike the British case, the military occupies a significant role in tackling terrorism within the borders of the country, especially in the south east region where clashes with PKK militants take place. As a result, the concept of martyrdom has acquired a central position within the debates on terrorism and counter-terrorism under the category of *victim*, often invoked for pursuing aggressive policies and extending the purview of security measures.

References to the *Kurdish* population is more recurrent than references to *religion* as such in relation to threat perception, although as will be explicated below, the distinction between what is deemed as *separatist* versus *religious reactionary* forms of terrorism has been a visible theme in the debates. The rights discourse is less vocal in the Turkish context, and tend to be mostly associated with international standing and legal obligations. Within the rights discourse, reference to *liberties* rank higher than reference to *rights*. Contrary to the UK parliamentary debates, the articulation of *balance* is less visible in the Turkish case, as can be seen from the low occurrence of the term. This has been one of the most important distinctions between the two cases, as will be elaborated in the frame structures. The

following section will delineate in detail the commonly employed themes, concepts and arguments that work to constitute the structure of policy frames.

6.1. Structural Components of the Security Frame

6.1.1. Framing the Problem

Congruent to the policy frames in the previous chapter, the Turkish parliamentary debates on counter-terrorism measures are also premised on the confrontation and bargaining among two predominant policy frames, namely the security frame and the rights frame. Within the security narrative the first component of the frame structure is problem roles. Similar to the UK parliamentary debates, the articulation of the enemy vis-à-vis the victim is a common theme in the Turkish debates. The conceptualization of the *enemy* in this context is once again an existential other and a threat to the nation, who defies the principles of the Republic and the indivisible unity of the nation. Parallel to the distinction between ethnic versus international terrorism in the British context, there is a differentiation being made with respect to *separatist (bölücü) versus religious reactionary (irtica) terrorism*, as a characteristic for defining the enemy. This distinction can be traced from MP Orhan Eraslan's remark: "…[R]egulations regarding terror are conjunctural. Depending on the conjuncture religious reactionary terror might come to the fore, or separatist terror, or any other form of political terror." (TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p.57) Hence, it is suggested that the political conjuncture determines the classification of the enemy, to be designated by the sovereign (Schmitt, [1922] 1985). The major difference with the UK case is that terrorism associated with religious groups is considered to be an international phenomenon instigated primarily by 'foreigners' or those who have migrated from another country; whereas, in the Turkish case both forms are perceived as 'enemies within', yet often backed up by 'foreign powers'. The argument that

terrorists are supported by foreign powers is implied in the comment made by Süleyman Sarıbaş on how the US deals with El Qaida as opposed to how it deals with Kurdish militants in Northern Iraq:

> We all know the places that feed separatist terror are either those that lack any political authority or the authority in Northern Iraq that harbors evil plans for Turkey. Its support is there, the logistic supports and the camps are there… It has been three years since the US presence in Iraq, they haven't made any move. Why haven't they? Because they are doing everything in their power, with all their weapons and all their soldiers to eliminate El Qaida, what they call as 'their terrorist'. They have every right to do so, but they should not allow the terrorist group of another nation to make camps…*We ought to denounce an international understanding which states my terrorist is bad so I should kill them, but your terrorist is different, your terrorist should live.*

(TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p. 35, *emphasis added*)

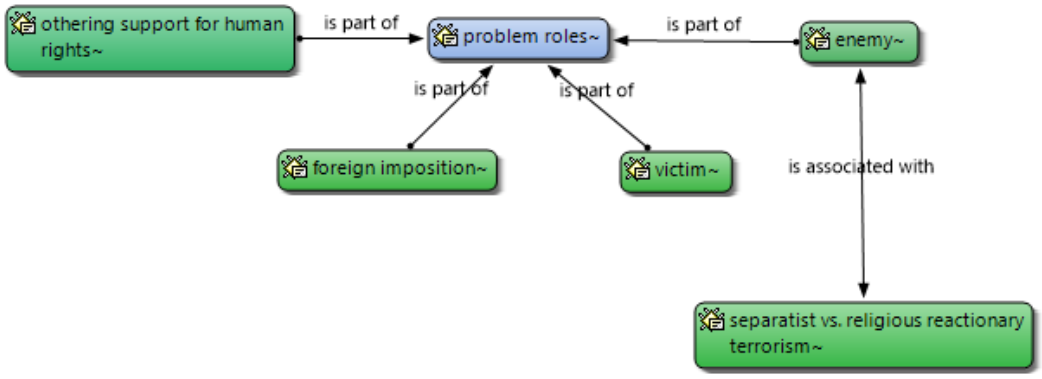

Table 25. Security Frame Problem Roles

Another palpable difference with to the British case has been the recurrent concept of the *victim*, mostly manifested as a praising of martyrs who sacrificed their lives to protect the country from terrorist, instead of referring to 'innocent law-abiding citizens' as in the UK context. "I wish mercy upon those that have sacrificed their lives, running to the status of martyrdom without hesitation for the unity and health of our nation." (Bekir Bozdağ in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p.45) Moreover, those

supporting rights and liberties are also framed as parties responsible for the problem, exemplified in İbrahim Özdoğan's claim that "[a]ll they do is to take refuge in a tawdry arabesque rhetoric of liberties, and continue as such." (TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126. 122. Birleşim, p. 65) This position goes further to the extremes of suggesting that human rights organizations are directly supporting terrorist organizations:

> …[I]n Turkey, a significant number of organizations that operate in the field of human rights are found to be associated with illegal organizations by the intelligence service of the Republic of Turkey…[U]nfortunately, the concept of human rights in Turkey have been abandoned to the alleged representations by illegal organizations and marginal groups, failing to acquire sufficient interest from subsequent governments or an overwhelming majority of the population that form the public opinion.

(İbrahim Özdoğan in TBMM Tutanak Dergisi, 29 June 2006, Cilt.126, 122. Birleşim, p. 64)

A novel finding in the Turkish context has been the theme of *foreign imposition*, whereby certain policies particularly those that aim to extend the purview of rights and freedoms are framed as being imposed by 'foreign powers', usually against national interest. This perception is expressed through denouncing ECtHR decisions as a façade for conceding to the demands of the PKK, or negotiating with Abdullah Öcalan as the imprisoned leader of the organization. (Faruk Bal in TBMM Tutanak Dergisi, 4 April 2013, Cilt. 48, 90. Birleşim, p.586) One such example is questioning the intentions of European officials that point out to the role of the Turkish military in politics and the rights of the minorities:

> My friends, as you can see behind the position of the government there are some expectations of European states, of European officials. We must consider why they are so bothered by the status of the military. Why does this bother them? We are conducting various meetings with European officials. They tell us two things: firstly, the role of the military, and secondly the claim that minorities

cannot enjoy their religious rights in Turkey. Does the government accept such accusations?

(Onur Öymen in TBMM Tutanak Dergisi, 30 July 2003, Cilt. 25, 113. Birleşim, p.481)

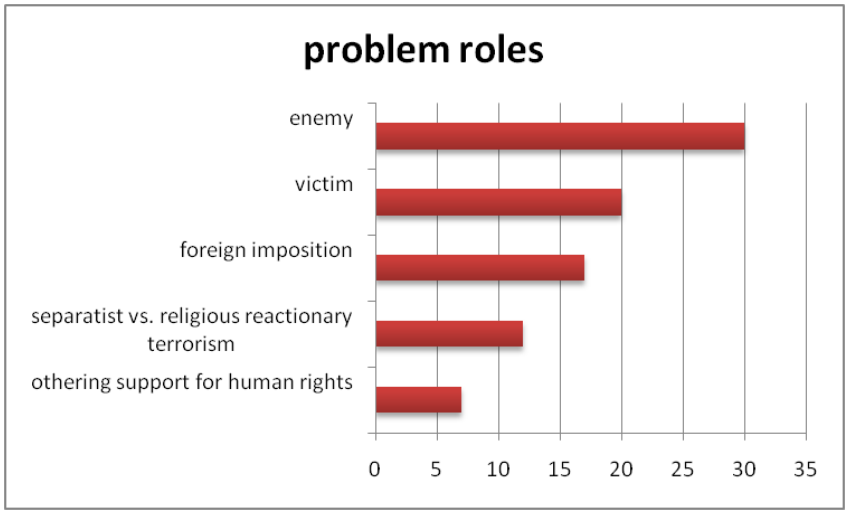

Figure 19. Distribution of Security Frame Problem Roles

The second component of the frame structure is constituted by assigning the problem locations. Congruent to the theoretical framework and parallel to parliamentary debates in the UK, the argument of *necessity* (or a situation entailing certain actions) is also present in the Turkish context, yet to a much lesser extent. An associated theme to that of necessity has been the *pressing reality of terrorism*, which signifies the depiction of a 'reality' necessitating further security measures. The presence of these two interconnected concepts reflect Agamben's (2003) proposition that necessity creates its own laws. Nonetheless, the most frequently expressed problem location within the security frame has been *propaganda*, as embodying the ideological goals of terrorist groups. While in the UK context, emphasis is being made on extremism and the dissemination of extremist ideologies as a serious threat to security, in the Turkish context it is defined as the ideological propaganda of terrorist groups: *"Last week you [the government] have abolished any barriers against propaganda, and enabled the terrorist organization to make its own propaganda*. You have legalized

terror and speeches made by the terrorist organization; you have put an end to the organization being associated with blood, death, and trouble, but instead promoted its internalization by the society." (Enver Erdem in TBMM Tutanak Dergisi 17 April 2013, Cilt: 49, 93. Birleşim, p. 95, *emphasis added*) This quote is an instance of securitization of freedom of expression, where the circulation of dissident ideas are construed as possible sites to be abused by terrorist groups, and therefore to be firmly restricted under the auspices of the security apparatus. A similar remark has been made by MP Mehmet Şandır, who argues that freedom of expression is being manipulated by terrorist for making propaganda:

> …[*T]he main aim of the separatist terrorist organization is propaganda. It can pursue this through guns, it can pursue this through publications, or other means.* It aims to impose its own views to the state it confronts, with the weapon, threat, violence, or other means it chooses. That is the primary aim of propaganda. For this reason, international laws also foresee restrictions on freedom of expression on the grounds of unity of the nation, unity of the territory, and public order.

(Mehmet Şandır in TBMM Tutanak Dergisi, 11 April 2013, Cilt.48, 91. Birleşim, p. 747, *emphasis added*)

A parallel problem location designated within the security frame is the sphere of *demonstrations and protests*. Epitomized in the problematic amendments in 2006, attending demonstrations have become evidence for being treated as a member of a terrorist organization, regardless of actual involvement within the organizational structure. The securitization of the right to protest has materialized throughout the parliamentary debates, and still finds expression in the recent debates. As exemplified by Hakkı Köylü's stance, it is asserted that an individual might 'become' a terrorist by simply attending a demonstration. (Adalet Komisyonu Tutanak Dergisi, 14 February 2012, p.43) Likewise, the act of protesting has been framed as a site of turmoil and vandalism during the debates, in favor of

the notorious clause on charging demonstrators as members of a terrorist organization. Such objection was voiced by MP Faruk Bal, who has pointed out that protestors who resist security forces and invoke violence will get away with the damage they have caused if the Anti-terror Law is to be amended. (TBMM Tutanak Dergisi, 30 June 2012, Cilt. 26, 128. Birleşim, p.41) As put by Jackson (2005), these instances of framing issues pertaining to opposition and protest as national security matters are indicative of disciplining domestic society through marginalizing dissent.

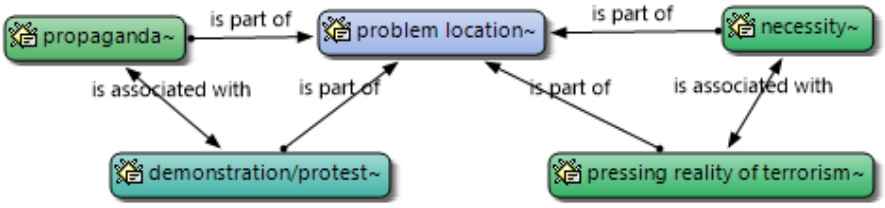

Table 26. Security Frame Problem Locations

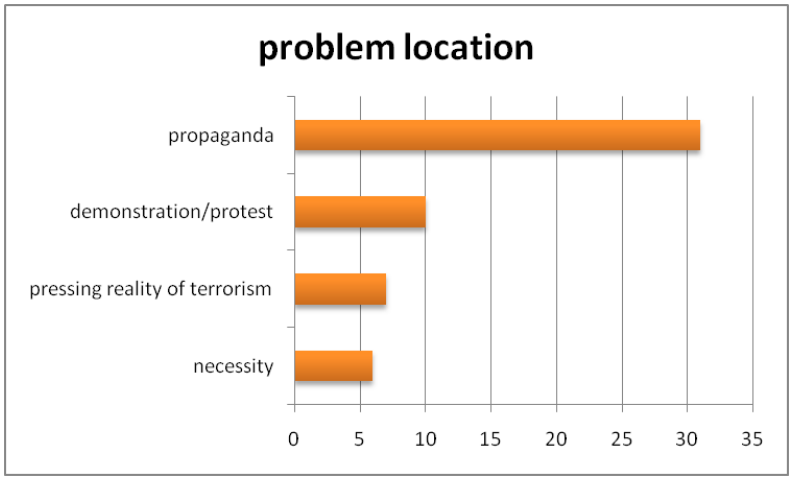

Figure 20. Distribution of Security Frame Problem Locations

The third pillar of the frame structure is comprised by problem mechanisms, referring to those processes that are taken to generate or reproduce the source of the problem. The composition of this element is quite similar to that of the security frame in the

UK parliamentary debates, yet with different frequencies. The most visible argument that underpins the problem mechanism is that the government has been *going soft* on security measures. Given the historical stronghold of the military and the ingrained security culture within the political life in Turkey, the prevalence of this argument within the security discourse is anticipated vis-à-vis ongoing thorough reforms that aim to mitigate military tutelage. An example of this stance can be found in the discussion of the recent reform packages in 2013:

> In a period of negotiating with terror, ceasefire with Kandil, ceasefire with İmralı, you are using these [human rights] as a pretext for freedom of expression, for humane values, for the rulings of the ECtHR; and thereby conceding to terror and terrorists. You are conceding to the terrorist organization that threatens the life and property of the people of Turkey, that threatens our most valuable possession, our life, with force and violence; and we do not know how far this will go.
>
> (Faruk Bal in TBMM Tutanak Dergisi, 4 April 2013, Cilt. 48, 90. Birleşim, p. 586)[68]

This tendency is coupled with the argument that terrorist groups are *abusing rights and liberties*. Similar to the argument in the UK context that terrorists are abusing the open society their country is built upon, it is suggested that the reforms and the extension of rights in Turkey are being taken advantage of by terrorists groups. One instance of this reasoning can be observed in the following excerpt:

> …Therefore, if there is a phenomenon of terrorism haunting Turkey, a phenomenon that finds it easier to maneuver, *that finds it easier to conduct terrorist acts and terrorists crimes by using the shield of democratization, of freedom of expression, of fundamental rights and liberties* within the purview of EU harmonization laws, then we will stand up and say: Turkey's indivisible unity, protection of the public order, Turkey's interests and unity cannot be sacrificed for any fundamental rights and liberties.

[68] İmralı is the island where the leader of the PKK Abdullah Öcalan is being held imprisoned for life, while Kandil is the name of a mountain area that is believed to accomodate camps of PKK fighters.

(Mehmet Eraslan in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, Birleşim 122, p.94, *emphasis added*)

Hence, the security frame is premised on an understanding of problem mechanism whereby granting rights are considered as concessions to terrorist organization (generally connoting the PKK), who in turn utilize such freedoms for pursuing their own criminal conduct. The other two themes that constitute this frame element are firstly the generic code *threat/urgency/emergency* signifying the perception of an elevated sense of threat, and the conceptualization of rights as a *burden* to security policies. What is striking about the latter is the remarkably low occurrence in the Turkish context as opposed to the UK legislative process. While in the British case human rights principles are construed as a burden to tackling with terrorism effectively in operational terms, the Turkish context is more imbued in a nationalist discourse rather than efficiency concerns.

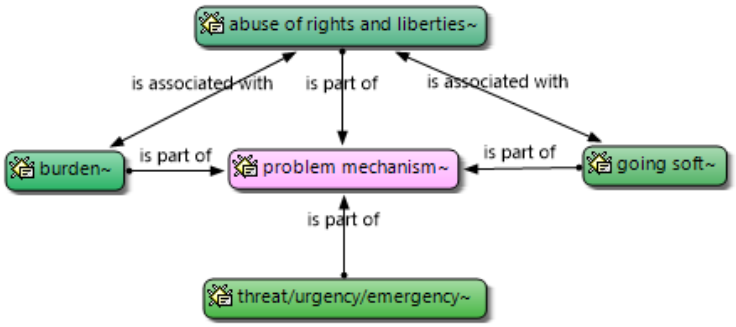

Table 27. Security Frame Problem Mechanisms

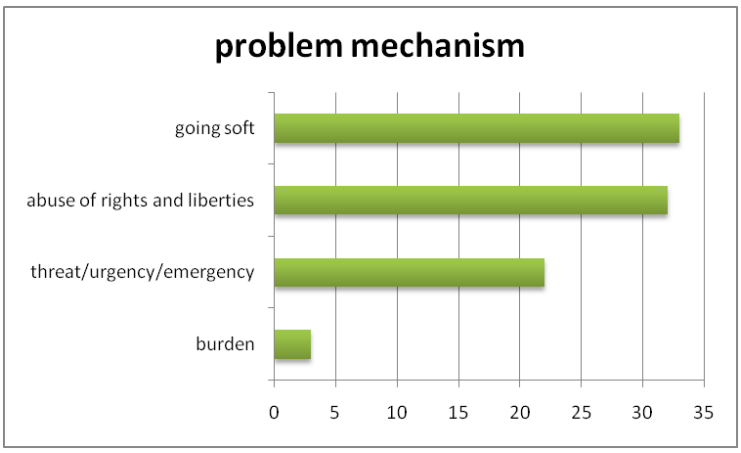

Figure 21. Distribution of Security Frame Problem Mechanisms

Finally, the element of problem intersectionality is premised on two separate issues that are perceived as being interwoven with terrorism, namely *religion* and *organized crime*. These issue-areas are identical with the UK case, yet once again with much lower frequencies. Particularly the notion of religion has been much more salient as a problem in the British political rhetoric and still an ongoing issue. Although, the overlap of religion and terror is less discernable in the political discussion in Turkey, it usually manifests itself with respect to the practices of fundamentalist groups and how they threaten the principle of secularism as well as public order and security. For instance, the warning of Fatma Nur Serter that the government is giving way to the corruption of Islam by seizing power from the Directorate of Religious Affairs and conferring it to dervish lodges "operating in shady corners and fostering hatred," is indicative of this tendency. (TBMM Tutanak Dergisi, 17 April 2013, Cilt. 49, 93. Birleşim, p.112)

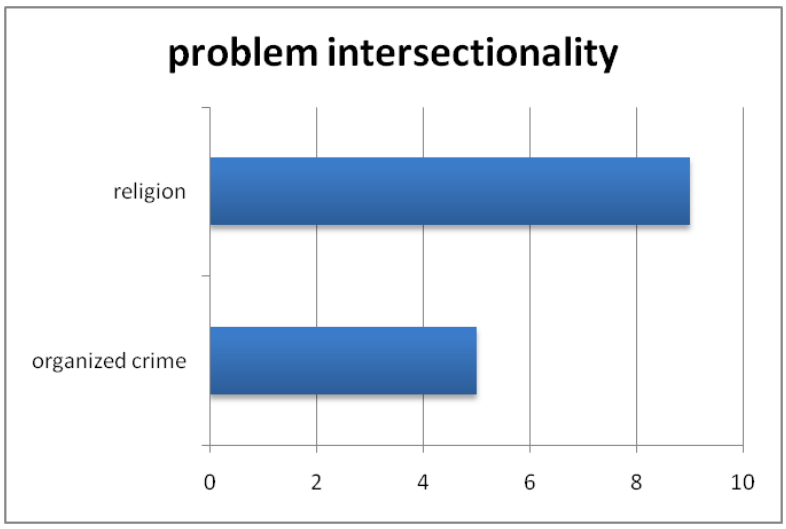

Figure 22. Distribution of Security Frame Problem Intersectionality

6.1.2. Framing the Solution:

Against this backdrop of the diagnosis, the security frame sets on to formulate a consonant prognosis. Once again, the first element of the solution structure is composed by the roles attributed to bringing about a solution. Within this element, there is an emphasis made on the government's primary *duty to protect* the state and provide security. The interesting dimension in this argument has been the articulation of the state and its indivisible unity as the main object of security, where public security comes second or as a byproduct of protecting the state. This is evident in Ahmet İyimaya's claim that "one ought to balance *the state*, democracy, and human rights" when making reforms within the purview of the EU-accession process. (TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p. 272) In a similar vein, extending the scope of rights vis-à-vis counter-terrorism policies is perceived as a threat to the unity of the state, as put by Faruk Bal who accuses the government of "…using the parliament as an instrument for dismantling the state." (TBMM Tutanak Dergisi, 4 April 2013, Cilt. 48, 90. Birleşim, p. 663)

Furthermore, the second most frequent code is the role expected from the *police and the military*. Unlike the UK context, counter-terrorism measures in Turkey are not only expected to be undertaken by the security force, but also the military due to the ongoing clashes in the South East region, with the objective of ensuring the unity of the state. This tendency is observable in the comment made by Süleyman Sarıbaş: "Dear friends, the motivation of our armed forces fighting terror must be ensured… the desire and enthusiasm of those that struggle for the indivisible unity of this country should not be disheartened." (TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p. 34) On the contrary, attributing roles to the executive power in solving terror-related problems has not been expressed contrary to the British case, which might be explained by the continuing primacy of the military in terrorism, understood within the logic of war.

On the other hand, the notion of *international community* once again appears within the security frame connoting shared identities and interests among different states, underlining the importance of international cooperation in fighting terrorism: "A need for establishing a system among states that *share a similar understanding towards terror* acts has arisen… [T]he prospective cooperation among states on counter-terrorism must be hastened." (Haluk İpek in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p. 26, *emphasis added*) The notion of international community reflects Constructivist conceptualization of security communities sharing similar security outlook and interests (Adler & Barnett, 1998; Jepperson et. al., 1996). This tendency is also associated with referring to security practices in western states as a model for proposed provisions in Turkey, as represented by the code *example of civilized societies*. During a period of reverse amendments in 2006, the overbroad terrorism definition has been justified by referring to the

national legislations in other European countries, in particular the United Kingdom: "I know that individuals arrested as a terrorist suspect can be held up to 28 days in the United Kingdom, with more in-depth investigations getting to the bottom of the cases; but it's 24 hours for us. You arrest a terrorist suspect or a criminal and you have to release him in 24 hours without being able to even verify his identity…" (Mehmet Eraslan in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p.58) A similar manifestation of this tendency is present in the following plea for greater security measures:

> In counter-terrorism Europe have adopted such a fierce language, they are …using the term of 'combating' terrorism…which means clash. When there is an attack on their own people, their own citizens, the European mentality combats, it clashes; whereas, you welcome them and make peace. Then you associate this position with the Convention on Human Rights…In America, let alone making terrorist propaganda, with the mere mention of Al Qaida on a phone call, in a message, you will find yourself directly in Guantanamo.
>
> (Faruk Bal in TBMM Tutanak Dergisi, 4 April 2013, Cilt. 48, 90. Birleşim, p. 663)

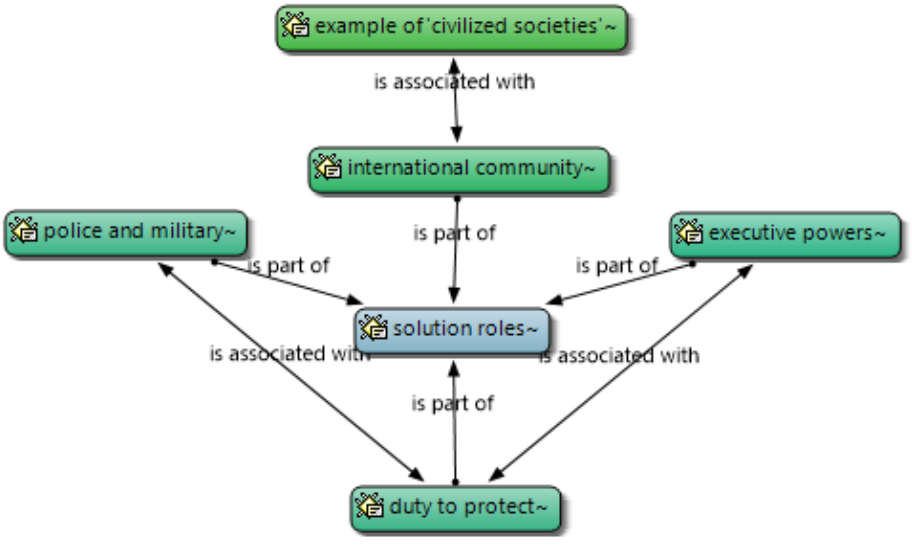

Table 28. Security Frame Solution Roles

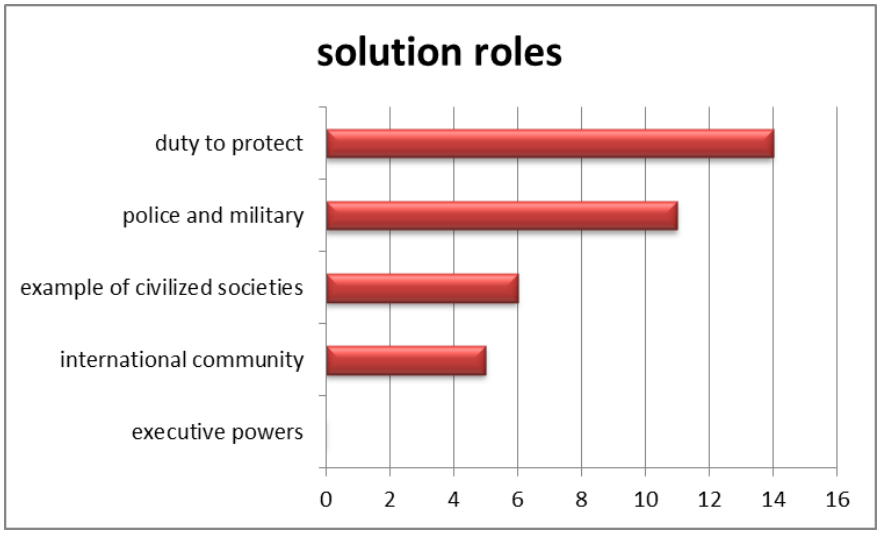

Figure 23. Distribution of Security Frame Solution Roles

The second solution component is solution location, comprised by the interrelated codes of national sensibilities, right to security, and necessary limits to rights and liberties. Similar to the British conjuncture, the argument of *right to security* also appears in Turkish legislative debates, adopting the language of rights in promoting security policies. This strategy can be traced in the following comment: "We know that all liberties are tied to the right to life, they are for people who are alive, but terror obliterates the right to life…*What freedom does a dead person need*?" (Cemil Çiçek in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p. 44, *emphasis added*) Once again, the rights language is adopted within the security narrative in order to invoke normative power (Lazarus & Goold, 2007). On the other hand, a strong concern over *national sensibilities* comes to the fore in discussions of counter-terrorism policies conveying notions such as the principles of the Republic, religious values, the indivisible unity of the nation, not merely in terms of land but also national belonging. The concept of national sensibilities as it materializes in the Turkish parliamentary debates is imbued in nationalist motifs that are placed above rights and liberties: "We claim to re-invoke death penalty and hang those that insult our flag, those that

accuse our nation for murder, and those that want to destroy our state…What is wrong with that? Isn't this a right in every democratic country?" (Adnan Şefik Çirkin in TBMM Tutanak Dergisi, 11 April 2013, Cilt. 48, 91. Birleşim, p.812) Hence, as noted by Buzan (1983), those symbols pertaining to national identity and the official ideology of the state constitute important elements in the understanding of national security. While the state is depicted as the main object of security, its ideology predicated on national values circumscribes sensitive issues to be protected at all cost.

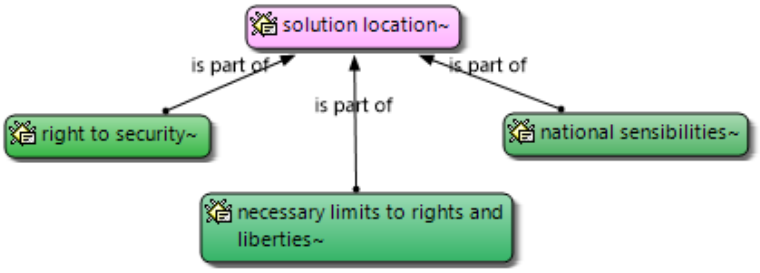

Table 29. Security Frame Solution Locations

A congruent theme is *necessary limits to rights and liberties*, which differs from necessary sacrifice that has been visible in the UK parliamentary debates connoting the necessity of sacrificing rights and liberties whose status have already been established and acknowledged by political actors. Necessary limits entail restricting the purview of those newly introduced rights and liberties which do not enjoy such an established position in the Turkish context, but are rather perceived as possible impediments to the primacy of national interest. This position has been taken up by MP İsmail Köse, who contends that a necessary limit should be placed upon human rights principles as a bulwark for national sensibilities. His comments echo Buzan (1983) is illustrating how national identity is a critical element of the security problematique:

> Now in Turkey, we have faced with a horrible demand to have *the right to insult state institutions, the state's view of its establishments, and feelings of hatred towards the state*. We perceive freedom of expression to be our people's rights to express their own opinions and beliefs, without insulting….[W]e say, yes to freedom of opinion and freedom of expression, but if your freedom of expression voices ideas of separatism, or ideas that provoke hatred in a period where our Turkey carries certain sensibilities… While expressing an opinion, you should not abuse religious sensibilities shared by 99 percent of the population, or issues of social class, through separatist ideas… In other words, you should express your opinions in a befitting way for a human being.

(TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.258, *emphasis added*)

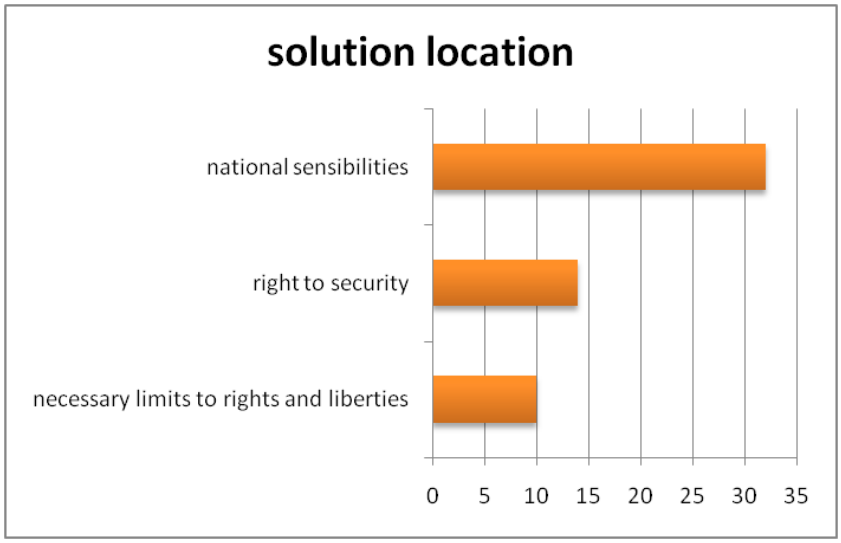

Figure 24. Distribution of Security Frame Solution Locations

A third pillar of the solution frame is solution mechanisms, which are parallel to those found in the UK case, namely reaffirming commitment to rights and liberties, balancing, and prevention. One major difference is that *balancing* human rights and security measures is not as pronounced as the primary solution mechanism, as was the case in the previous context. An instance of this theme is elaborated by Hüseyin Güler: "Without conceding from human rights, tolerance and traditions, we should fight terror in the best possible way. This is a matter of equilibrium…" (TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p. 55) The frequency of balancing lags behind the theme of

reaffirming commitment to rights and liberties which is once again conditioned upon nationalist sentiments:

> As a sign of state's respect for human rights and for its own citizens, *all of us wish to see progress made in the rule of law and commitment to human rights principles*. Fundamental rights and freedoms should take place in the law extensively, revoking limitations of the freedom of expression and opinion. However,*….[e]very state takes into consideration its own sensitivities and special conditions*…. The reason Article 8 has remained on the agenda is because *supporters of terrorism seek refuge in the excuse of freedom of expression*.

(Ali Günay in TBMM Tutanak Dergisi, 6 February 2002, Cilt.85, 61. Birleşim, p. 276-278, *emphasis added*)

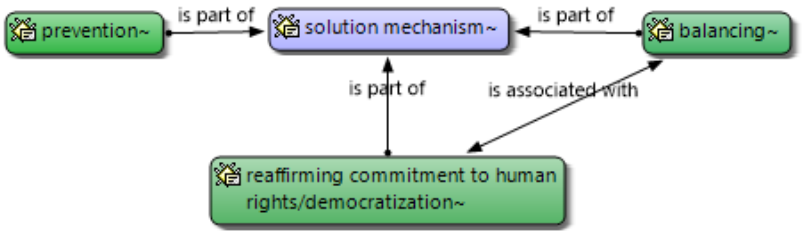

Table 30. Security Frame Solution Mechanisms

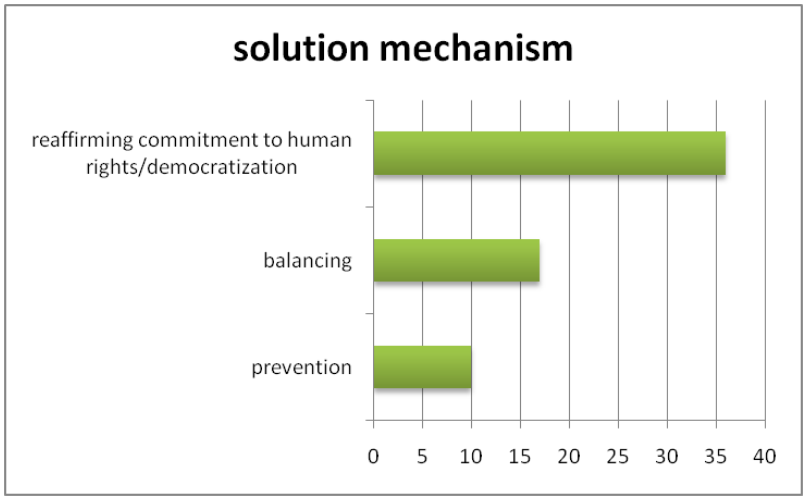

Figure 25. Distribution of Security Frame Solution Mechanisms

Lastly, solution intersectionality comes into play as the final frame element in the security frame, signifying those terrains that are associated with solving the issue of terrorism. A common theme with the British security frame has been the resort to *public opinion*, as a sphere that is interconnected to the formulation of counter-terrorism policies. On the other hand, a novel site of solution intersectionality has been *socio-economic development*, indicating the need for investing in the south east region as a counter-terrorism strategy, to drain the financial support of the terrorist organization: "The problem is to make our children the citizens of our own nation. One of the most important causes of the problem is the unresolved issue of unemployment. By overcoming this issue, the source of terrorism will also wither." (Commission Report of the Ministry of Interior, 27 Nisan 2006, Esas no:1/1194, Karar no: 40, p. 10)

Cross-cutting other themes and concepts in the security frame, the most pronounced intersectionality with counter-terrorism has been the realm of *nationalism*. In the Turkish context, nationalist narrative has permeated the security discourse intensely, also palpable in the aforementioned concepts of necessary limits and national sensibilities. Therefore, such a framework reflects Buzan's (1983) conceptualization of state ideology and national identity as inextricable elements in the security sector, representing the idea of a nation and shared values as the objects of security. The juxtaposition of these two terrains is demonstrated by claims such as "…there is no problem of terrorism in Turkey, there is a problem of separatism, and terror is a product of it," which opts to frame the issue along the lines of national identity and unity of the nation. (İbrahim Özdoğan in TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p.48) Another lucid instance of this tendency is

presented by MP Metin Lütfi Baydar's following comments that construe the issue of terrorism along the contours of denouncing nationalist values:

> …[W]e have two roads ahead of us since the letter by the person imprisoned to life in İmralı has been read. First one is the road that will be pursued by those who belong to the Turkish nation,… who are on the side of the Great Leader Ghazi Mustafa Kemal Atatürk,… those who are committed to the Republic wholeheartedly and those who have no problems with the Turkish flag or the Turkish language. The second one is the road for *those who do not want to belong to the Turkish nation, who feel proud of going back to their genetic code, … who do not like the Great Leader Ghazi Mustafa Kemal Atatürk and want to get rid of him,… who do not want the Turkish flag nor the Turkish language*.

(TBMM Tutanak Dergisi, 11 April 2013, Cilt. 48, 91. Birleşim, p.832, emphasis added)

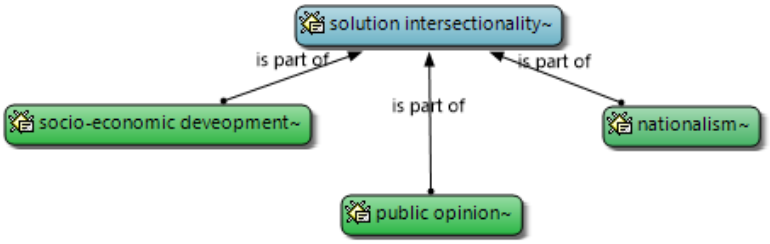

Table 31. Security Frame Solution Intersectionality

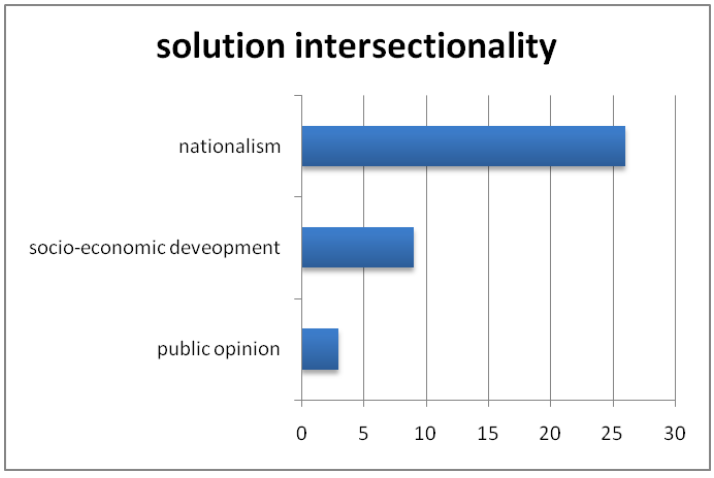

Figure 26. Distribution of Security Frame Solution Intersectionality

On the whole, the security frame in the Turkish context conveys certain similarities as well as differences from the UK security frame. In constructing the enemy as the existential other posing a threat to national security and national values, a distinction is being made between separatist versus religious reactionary terrorism. One significant aspect in the problem roles is an understanding of rights and liberties being a form of foreign imposition that jeopardize national interests. Moreover, propaganda comes to the fore as a predominant location for the problem of terrorism, signifying primarily the ideology of the Kurdish movement, as opposed to the concept of extremism in the British case involving extremist religious views of minority groups. While the government is perceived as going soft on the issue of terrorism with the reform process initiated by the EU-accession, such rights and liberties are in turn found to be susceptible to abuses by terrorist groups. Building on this formulation of the problem, the security frame attributes substantial responsibility to the police as well as the military in tackling the issue of terrorism, which highlights the continuing prevalence of the role of the military and the logic of war, owing to the ongoing clashes in the south east region. One of the most visible tendencies has been the intertwined relationship of counter-terrorism and nationalist discourse, also manifesting itself in notions such as national sensibilities, which are construed as grounds for limiting the scope of rights. The security practices within the international community are also invoked as justifications for limiting the purview of rights, with reference to the example of 'civilized' societies. On the whole, it can be argued that within the security narrative fighting terror has been framed as guarding the state as the main object of security, with the notion of the indivisibility of its land and unity of the nation.

6.2. Structural Components of the Rights Frame

6.2.1. Framing the Problem:

Notwithstanding the predominance of the security discourse within the Turkish political culture, it does not stand without a challenge in the legislative process. Especially with the impetus provided by the EU candidacy and the prospect of membership, a language of rights has become significantly vocal, pushing for further democratization initiatives. At this juncture, the structure and positioning of the rights policy frame becomes critical in the analysis of the language of law-making, in order to illustrate its building blocks and how such composition endeavors to challenge the security narrative.

Hence, the first element that makes up the problem framing is problem roles, associated with the extended powers granted to the police and military, as well as boundaries of executive discretion. An illustration of how powers granted to the police are problematized as being misused on an arbitrary and illegitimate basis can be found in the following excerpt: "Now, new policemen will be assigned. We have seen how they have been assigned…And they will ensure public order, ensure our safety! We have seen in the last few days, for instance how they have battered a citizen in Istanbul. What was his crime? He has been lynched in front of his family for speaking Kurdish…" (Sırrı Sakık in TBMM Tutanak Dergisi, 3 July 2012, Cilt. 27, 131. Birleşim, p.51) Similar concerns have been raised with regards to the executive powers during the recent debates in 2012: "Although the parliament is open, although the relevant commissions are holding meetings, owing to utilization of rule by decree granted by the Generals during September 12, there is enough

exceptional powers to legislate despite the parliament being open." [69] (Özgür Özel in 1 July 2012, Tutanak Dergisi, Cilt. 26, 129. Birleşim, p.255)

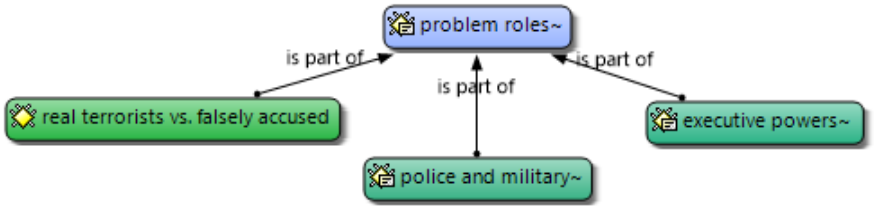

Table 32. Rights Frame Problem Roles

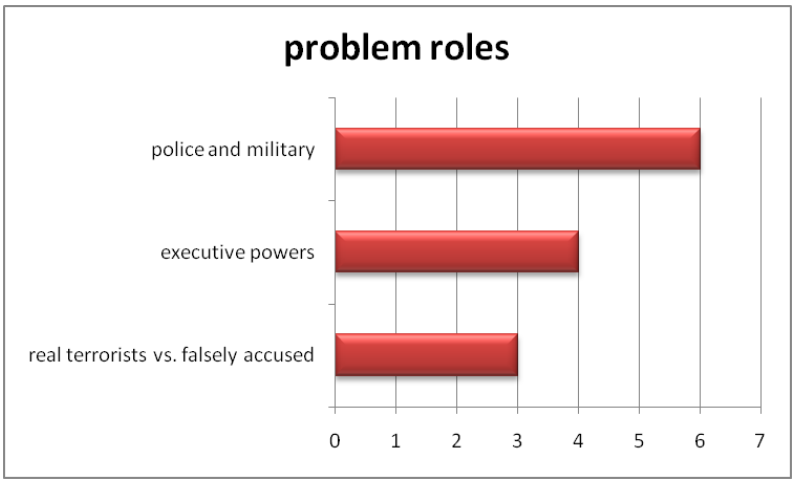

Figure 27. Distribution of Rights Frame Problem Roles

One interesting finding that materialized from the data has been the distinction between actual terrorists as opposed to those innocent individuals that have been falsely accused, as represented by the code *real terrorists vs. falsely accused*. Although low in frequency, this line of reasoning has been expressed strongly on several accounts during the 2012-2013 parliamentary debates. This historical conjuncture is significant because it is marked by the previously mentioned Ergenekon and Balyoz trials, targeting figures thought to be affiliated with the *ancien régime* of the Kemalist ideology, on the grounds of plotting to overthrow the government by force. The irony lies in the fact that these individuals used

[69] September 12 refers to the notorious military coup staged in 1980.

to be closely involved with the Republican state apparatus, some belonging to the higher ranks of the armed forces, finding themselves suddenly in the same category with the PKK fighters as enemies of the polity. Hence, this concept represents how the security discourse has also permeated the rights narrative through the articulation of the enemy as the existential other, in this case referring to the 'real terrorists' who do not conform to the principles of the Republic and the unity of the nation and therefore deserve to be subject to draconian measures. This stance has given way to an eccentric political discourse, whereby contentious counter-terrorism laws are criticized not because they infringe freedoms by silencing opposition, but because they falsely accuse some part of the population:

> We hereby declare: Abolish the Law on Fight Against Terrorism (no. 3713). The irony is here: Since there is no fight against terrorism anymore in this country, since there is negotiation instead of fighting with the PKK terrorist organization that has inflicted so much harm upon this country, caused thousands of deaths, and taken on violence as their primary aim; therefore, there is no need for the Anti-terror Law that was primarily enacted to counter the PKK. *Now the Anti-terror Law is not utilized to fight terrorism, but instead to attack those supporters of the Republic, supporters of Atatürk, those in favor of the modernity of this country, of its progressiveness and future*…[H]ence the Anti-terror Law is now futile. It does not fight terror, it negotiates with it. It fights the people, the people have suffered more from these articles…On the other hand, *the Anti-terror Law does carry many antidemocratic provisions*.

(Dilek Akagün Yılmaz in TBMM Tutanak Dergisi, 10 April 2013, Cilt. 48, 90. Birleşim p. 658, *emphasis added*)

Moving on from these designated problem roles, the second component that makes up the problem is the solution location, constituted by the concordant codes *lessons from the past* and *infamous policy*. Equivalent to the themes found in the UK parliamentary debates, lessons from the past and infamous policy tend to work together to underscore those practices in the past that have engendered grave human rights violations. Such narrative of

invoking examples from history is demonstrated by an account of emergency measures and the executive powers it has bestowed during the 1990s: "…in 1993, with the extant Anti-terror Laws the governor of Batman has assembled a private army. They have imported weapons without the military, from Bulgaria from China; and with the private security force he has established he fought terrorism. But of course later, this governor has been tried, and nobody stood up for him." (Ersönmez Yarbay, TBMM Tutanak Dergisi, 29 June 2006, Cilt. 126, 122. Birleşim, p.92) In a similar vein, an instance of recalling contentious experiences as lessons from the past in order to demonstrate their underlying problem is also expressed with respect to consecutive military coups and the concurrent emergency measures:

> …[S]ince the transitioning to the multi-party system, the parliament has been closed down, the governments overthrown and emergency rule established by military coups and memorandums every eight to ten years. During this period, there have been decisions to ban and collect a great number of publications, whether they are books, journals, or other published documents…We would like to start off with a clean slate and regulate such decisions in a healthy manner.
>
> (Sadullah Ergin in Adalet Komisyonu Tutanak Dergisi, 30 May 2012, p.31-32)

Interestingly, the theme of *infamous policy* has also been utilized with reference to practices in the post-9/11 era, referring to the reverse processes in liberal democracies: "Now they are also resorting to the excuse of September 11; in the West and in the United States certain restrictions are being enacted following September 11. These are bad examples my dear friends." (Mehmet Bekaroğlu in TBMM Tutanak Dergisi, 6 February 2002, Cilt.85, 61. Birleşim, p. 287)

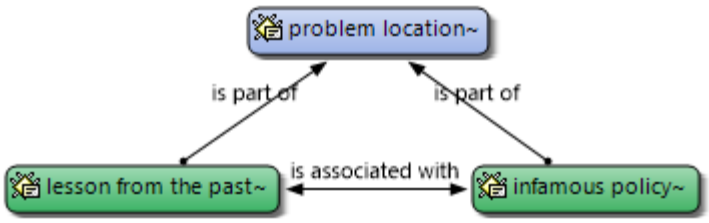

Table 33. Rights Frame Problem Locations

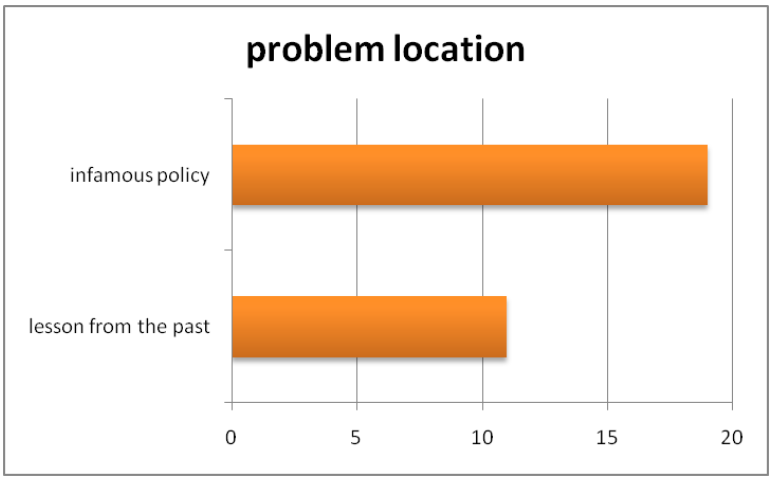

Figure 28. Distribution of Rights Frame Problem Locations

The third pillar of the problem configuration is once again constituted by problem mechanisms, as those dynamics that generate or reproduce the problem. The most pronounced concept within this category belongs to the generic code on *threatening rights and liberties*, which work in tandem with specific fields of human rights such as *freedom of expression*, *demonstration/protest*, and *freedom of the press*. Especially the latter has been a repeatedly voiced concern in the Turkish context, as counter-terrorism legislation has tended to impose heavy restrictions to journalists and publications in general: "…[T]he extant Anti-terror Law in Turkey is at a point of seriously undermining freedoms, limiting freedom of the press…On April 22nd there is the KCK trial, the press trial. More than 40 press workers are being tried, not for being press workers but for being 'units of the KCK'. However, if

you take a look at the accusations, they are being tried for the news they have made…When you see the proceedings there, you can observe what has become of the situation for press freedoms; this is a serious problem." (Sebahat Tuncal in TBMM Tutanak Dergisi, 17 April 2013, Cilt. 49, 93. Birleşim, p.44) Similar remarks have been made with respect to freedom of expression, and its indispensable position in a democratic society:

> Dear friends, if we want democracy, if we talk about democracy, the inextricable element of this democracy is freedom of expression. Why freedom of expression my dear friends? Because democracy is the will of the people. There needs to be discussion in order to figure out what people think, what is the will of the people, in other words, what is public interest according to the people? They say 'There are threats against this country, we have special conditions.' It's true, there are threats against every country, we have our own particular threats…but protecting democracy is only possible through democratic means.

(Mehmet Bekaroğlu in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.286-287)

Congruent to the UK parliamentary debates, two other concepts come to the fore within the contours of the rights frame, namely *vague definition* and *exceptionalism*. The problem associated with vague definition of terrorism has been uttered by MP Sırrı Sakık, who argues that, "[e]very individual who goes on the streets to demand democratic rights are treated as 'terrorists', you accuse everyone for being 'terrorist' and try to silence people by arresting them." (TBMM Tutanak Dergisi, 3 July 2012, Cilt. 27, 131. Birleşim, p.51) This comment not only conveys a concern over the vague definition of terrorism that risks extending beyond its borders, but also how the term has been adopted by the government in order to silence dissident views. This tendency has been reiterated by MP Salih Fırat, who maintains that:

> …[f]or some reason there are two magic words in Turkey: 'terror' and 'organization'. Whoever we dislike, whatever group we dislike, we put the words 'terror' and 'organization' before it to imprison them in jail; in groups, not individually. What are their crimes it is not known, people do not know what they are being charged by from the accusations. There are ten thousands of people arrested in this way, there are politicians, members of organizations.
>
> (TBMM Tutanak Dergisi, 1 July 2012, Cilt. 26, 129. Birleşim, p. 264)

The voicing of such concerns vindicate the perturbing implementation of counter-terrorism strategies, which securitize the democratic sphere of deliberation and oppositional politics, moving them beyond the functioning of normal politics (Buzan, 1998). Hence, these criticisms point out to the workings of the state of exception and how those groups deemed as the enemy are to be eliminated from the political arena in Schmittean terms.

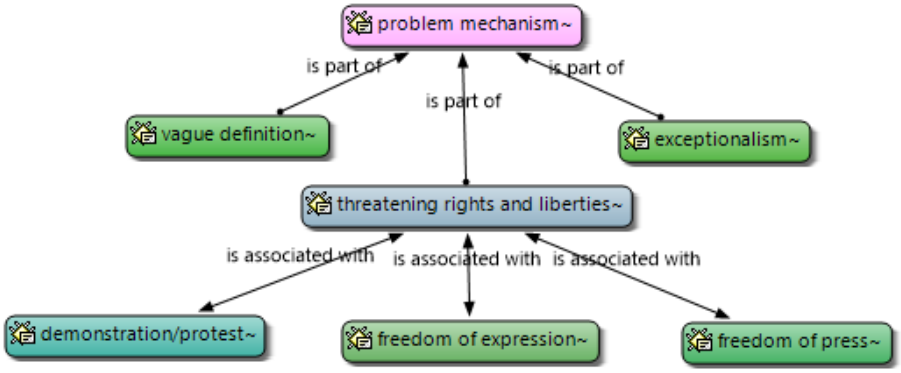

Table 34. Rights Frame Problem Mechanisms

The final component of the problem mechanism is once again the salient concept of *exceptionalism*. The enduring problem of exceptionalism in the Turkish political scene, premised on extraordinary measures is problematized in the following way:

> State of emergency has been obliterating open society. Prohibitions and limitations are further restricting the already limited scope of democracy, rights and liberties we have in this country. Of course also democratic countries resort to states of emergency and martial laws; however, for a state of emergency…there needs to be an actual emergency, one that can end in a

> reasonable period of time. Now, we are sustaining the state of emergency, but we don't ask why we have not been able to tackle this problem for twenty five years. The mentality, the team that has prepared this draft has placed this notion *acknowledging the fact that emergency situation will last for another twenty five, fifty years; instead of being revoked, it is being preserved*.

(Mehmet Bekaroğlu in TBMM Tutanak Dergisi, 26 March 2002, Cilt. 90, 78. Birleşim, p.88, *emphasis added*)

Therefore, the institutionalization of the state of exception has been addressed by the rights frame, as one of the primary causes for violating human rights as well as democratic principles. Moreover, in relation to the recent waves of mass trials involving terrorist charges, such as the Ergenekon trial, the Balyoz trial, or the KCK cases, the unreasonably long pre-trial detention periods have been criticized as it takes place in the Criminal Procedure Law: "Pre-trial detention in Turkey is for ten years. Leaving aside other crimes, but for heavy crimes and terror-related crimes, we can say that the upper limit is ten years. Where else in the world do they have a detention period of ten years, can you or our bureaucrat friends please explain?" (Turgut Dibek in Adalet Komisyonu Tutanak Dergisi, 23 May 2012, p.18) This question seeks to draw attention to how principles of rule of law are being corroded by a culture of exceptionalism.

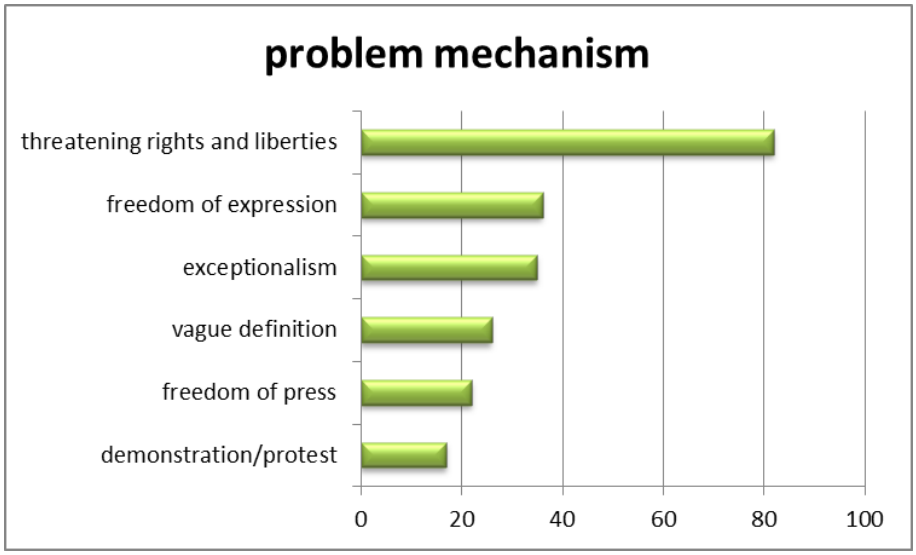

Figure 29. Distribution of Rights Problem Mechanisms

Finally, the last strand of problem framing is taken up by problem intersectionality, primarily represented by matters regarding *civil-military relations*, which have had a tremendous bearing upon the Turkish political scene for decades due to the role attributed to Turkish armed forces as the vanguards of the Republic. The presence of the military has manifested itself in different institutions of the state, one such important site being State Security Courts as the quintessence of the state of exception. These judicial authorities that included military officers within its cadres have addressed cases involving national security matters. While the issue of civil-military relations has been an oft-cited concern for the rights frame in the Turkish context, States Security Courts have been one area to voice these concerns: "State Security Courts are the product of emergency situations. Turkey needs to normalize. We feel the need to abolish State Security Courts, we have made the necessary Constitutional reforms to remove the military members of these courts." (Mehmet Ali Şahin in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.333)

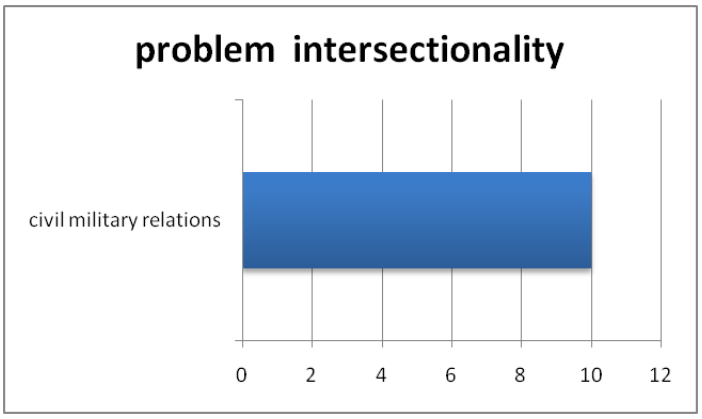

Figure 30. Frequency of Rights Frame Problem Intersectionality

6.2.2. Framing the Solution:

The rights frame constructs the problem upon the entrenched culture of exceptionalism in Turkey as a relic of the military presence in the politics, while pointing out the systemically carried out rights violations as a byproduct of counter-terrorism, most profoundly affecting freedom of expression, freedom of the press, and principles of rule of law. Against this backdrop, formulation of a solution is being offered by the rights frame grounded in international norms and prospects of democracy. Parallel to the UK policy frames, the solution roles involve *international institutions* as the promoters of *international norms*. This theme reverberates throughout the parliamentary debates with reference to the European Union and the European Court of Human Rights. An example of the former can be found in the following comment: "…[f]or us what is important is the right of our people to express their free opinion. That is the priority and European Union [accession process] is a result of this. (Feridun Fikret Baloğlu in TBMM Tutanak Dergisi, 15 July 2003, Cilt. 22, 106. Birleşim, p.67)

An interesting finding within the human rights narrative has been recurrent references being made to the *example of 'civilized societies'* as a role model for Turkey. Thus, as suggested by Risse and Sikkink (1999)the value in upholding human rights is

framed in terms of the legitimacy bestowed by being part of the 'civilized world', owing to the normative power of the concept. One example is the endorsement of freedom of expression, because it is "the general acknowledgement in the civilized world." (İ. Sühan Özkan in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p. 266) Likewise, the principle of pluralism is evaluated in terms of its connotations with a perception of 'civilization': "*Modern civilized societies are pluralist*. Societies are composed of people that convey different religions, sects, races, social classes, regional differences, political views, and different mentalities. In a society with such a disposition, the aim is to ensure that people live in peace, in a way that brings together their differences." (Aydın Tümen in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p. 253, *emphasis added*)

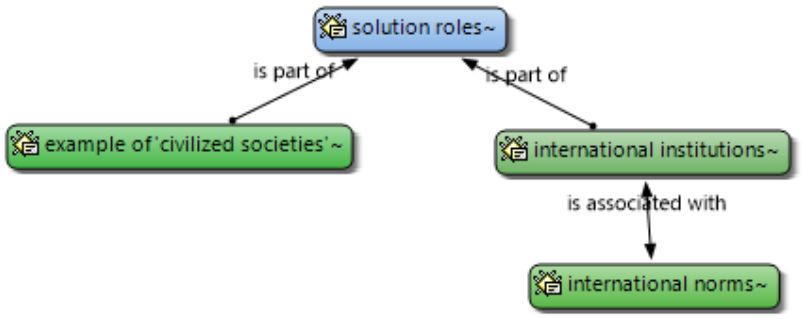

Table 35. Rights Frame Solution Roles

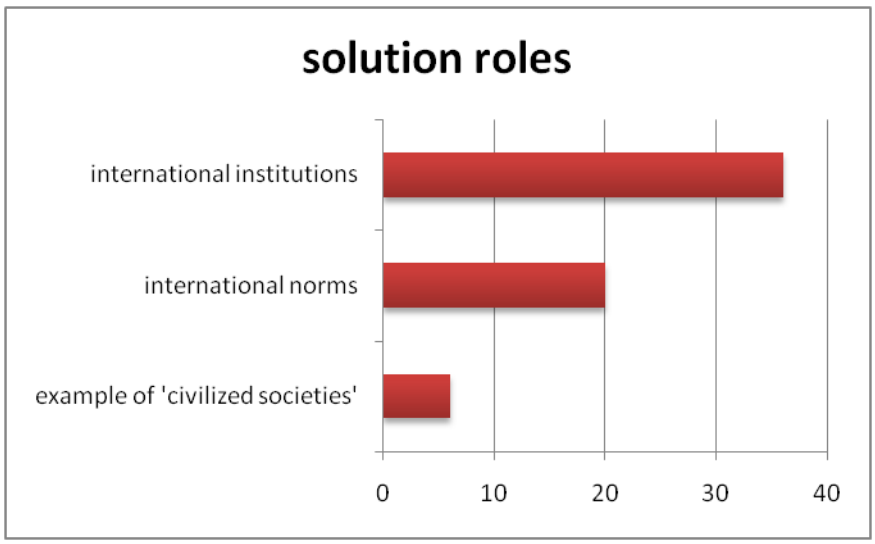

Figure 31. Distribution of Rights Frame Solution Roles

In the solution locations, the legal dimension of international norms comes to the fore once again, echoing the British rights frame. In other words, the issue of human rights has been framed in terms of legal obligations entailed by a body of international law and international institutions: "Turkey has accepted the European Convention on Human Rights with its own free will and has undertaken its requirements. This means that Turkey has undertaken to regulate its national legislation in line with the ECtHR rulings." (Cemil Çiçek in TBMM Tutanak Dergisi, 23 December 2003, Cilt. 3, 26. Birleşim, p. 363) Although much less visible than an understanding of legal obligation, the concept of *universal morality* does make an appearance in the Turkish parliamentary debates especially during the discussions on the harmonization packages. This position is typified in denouncing torture and inhuman treatment, with an emphasis made on the inalienable rights of individuals qua human beings: "The practice of torture which does not concur with human honour, is a crime against humanity. It is unacceptable for human beings as the most honorable creature to be exposed to emotional torment…or physical torment, even if they have committed a crime." (Fahrettin Kukaracı in TBMM Tutanak Dergisi, 26 March 2002, Cilt. 90, 78. Birleşim, p. 46) A notion

of *democratic values* accompanies the utterance of commitment to international norms, albeit considerably less pronounced than the British context. The reason for this discrepancy is due to the long-established status of democratic principles in the UK, also as a source of national pride, contrary to the nascent state of democracy in Turkey. The rhetoric of democratic values is evident in the following remark: "…[i]t is not possible to conceive of a public order outside of democratic traditions." (Mehmet Bekaroğlu in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.286)

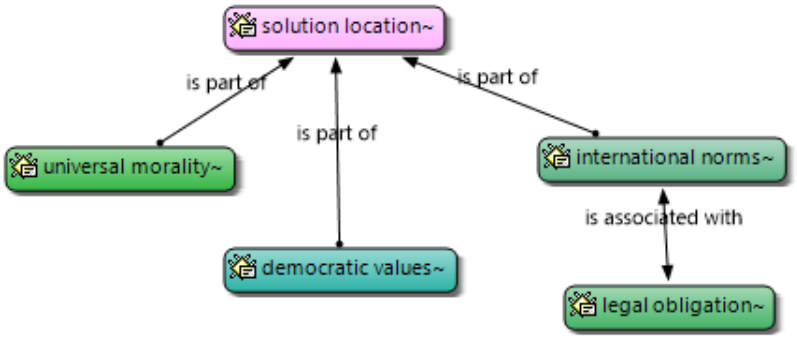

Table 36. Rights Frame Solution Locations

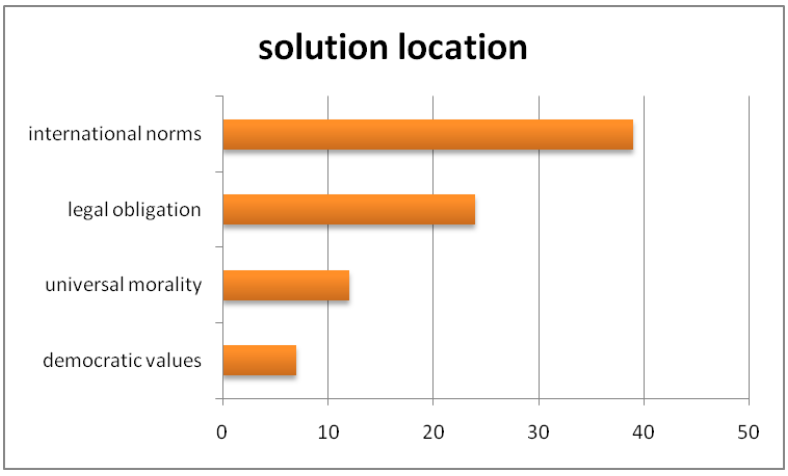

Figure 32. Distribution of Rights Frame Solution Locations

In the structure of the solution mechanisms, the concept of *democratization* appears as the most frequently designated code for solving the problem of human rights violations.

This notion finds expression first in the earlier parliamentary debates on EU harmonization laws, which are considered as "important new steps in the path to democratization." (Aydın Tümen in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.252) As an ongoing process yet to be achieved, plea for greater democratization has been voiced in the context of the peace process with the Kurdish population: "Let's get involved together for the democratization of this country, for this process of silencing guns, ending the conflict and shedding of blood, not as the field of the Justice and Development Party but as the desires of seventy six million citizens… and fight for freedom and democracy together." (Abdullah Levent Tüzel in TBMM Tutanak Dergisi, 4 April 2013, Cilt.48, 90. Birleşim, p. 626) An associated theme has been the conceptualization of democracy and commitment to human rights as the *requirements of modernity*. This line of reasoning can be found in the following remark that emphasizes the principles of the *rule of law*:

> *Every step that is to be taken in the direction of civilization is a requirement for this parliament and involves Turkey*, because this parliament is Turkey's parliament. Therefore, I hope we will not face serious problems in our work, but I would like to repeat again that, law is not anything, law is not everything every time. The important thing is the implementation of law, the judiciary that will implement the law, the members of the judiciary should absolutely execute the law *in line with the requirements of our age* and the realities of our country. Law can only develop in this way. *Civilization can only develop in this way*.

(İ. Sühan Özkan in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p. 268, *emphasis added*)

A similar instance of invoking modernity as an impetus for institutionalizing human rights and pushing for further democratization is expressed by MP Aydın Tümen, who maintains that "[f]or our country to achieve a *modern and democratic structure*, for a democratization in the standards of the European Union to be instituted, the opposition

parties have as much duties as the ruling party." (TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p. 253, *emphasis added*) Once again, human rights and democratic values are promoted as 'scripts of modernity' as put by Krasner (1999), thereby shaping actors' identities and interests.

The theme of *balancing* conveys a lower visibility compared to the British context, both in the security frame and the rights frame. The need to balance security concerns with fundamental rights and freedoms has been expressed with respect to the problematic clauses in the Anti-terror Law that has been corroding freedom of expression and freedom of the press:

> …[W]hen we are compared to other countries, it is plain that we are lagging behind in many fields pertaining to freedom of expression. *It is desired that the balance between national security and freedom of expression is sustained continually*. There is a concern to keep security in the forefront while protecting freedoms. Now, if we empathize on a concrete event we might ask for the gravest punishment, yet on the other hand there is freedom of the press, freedom of expression, the right of the people to have access to information. *If we find a solution on the basis of such balance*, we might not have to go back.
>
> (Yüksel Hız in Adalet Komisyonu Tutanak Dergisi, 31 May 2012, p.7, *emphasis added*)

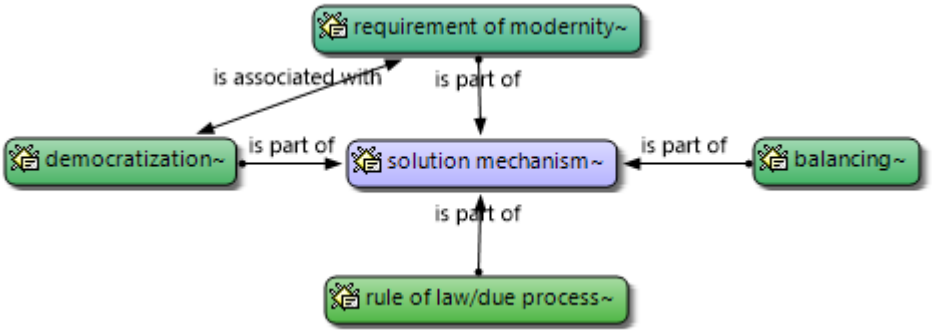

Table 37. Rights Frame Solution Mechanisms

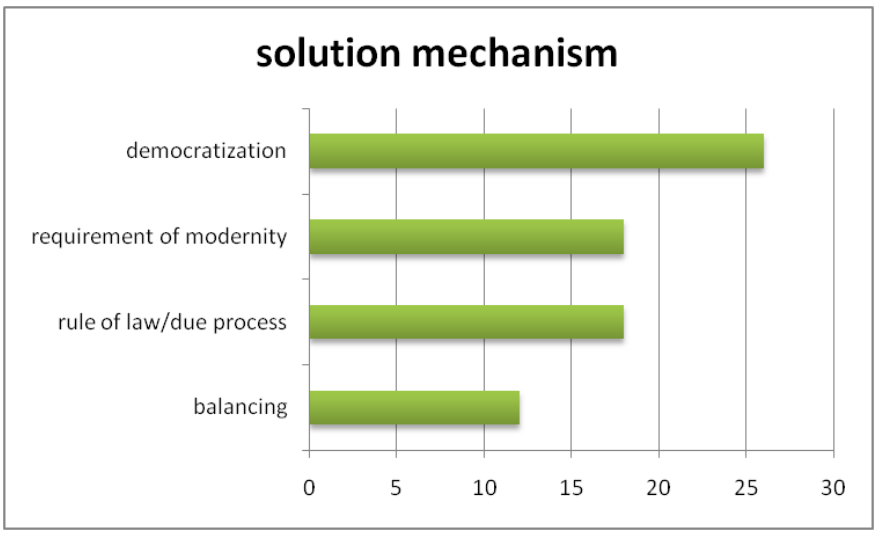

Figure 33. Distribution of Rights Frame Solution Mechanisms

The final component of the solution framing belongs to solution intersectionality, denoting those areas that overlap with the solution of upholding rights and promoting democratization. The main area of intersection in the Turkish context is occupied by the principle of *pluralism*. Distinct from the notion of multiculturalism prevalent in the UK context which primarily encourages the flourishing of minority cultures, pluralism invokes a political space where conflicting worldviews, political standpoints, as well as cultures and religions can co-exist:

> There are two types of understanding dear friends: One is based on a monist notion of a single truth, it is single-minded and ideological states embrace this philosophy…other people's rights are considered correct to the extent that they overlap with their rights. People whose rights that do not overlap with theirs are considered as a herd of sheep that have gone astray away from the right path, while they regard themselves as shepherds responsible of bringing them to reason, usually in a despotic way. *The second understanding, my dear friends, is the pluralist understanding. According to the pluralist understanding, truth has many dimensions, yours is not the only right.*

(Hüseyin Çelik in TBMM Tutanak Dergisi, 6 February 2002, Cilt. 85, 61. Birleşim, p.346, *emphasis added*)

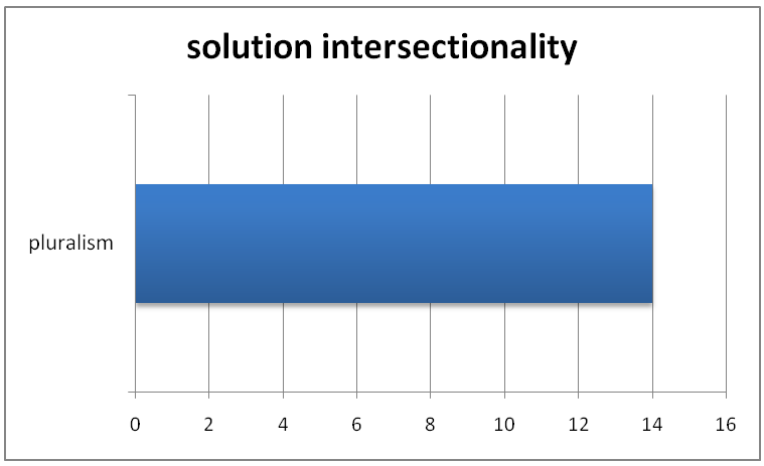

Figure 34. Frequency of Rights Frame Solution Intersectionality

With the interplay of all these framing cues, the rights framework acquires a fully-fledged body that operates in the political arena. Parallel to the UK legislative context, problem roles are attributed to the extended power of the police and armed forces, as well as the executive under the mentality of state of emergency. One interesting distinction has been that of real terrorists as opposed to those falsely being accused, conveying the argument that counter-terrorism legislation is problematic as a weapon in the hands of the government for labeling the innocent as terrorists, on par with what is deemed as the 'real' enemy. This position illustrates how the security discourse has permeated the rights narrative in articulating a language of the 'enemy' as the existential other, in this case the 'real' terrorists being those that do not respect the Republican principles and the unity of the nation, as opposed to the falsely accused innocent citizens that espouse such national values. While invoking notorious experiences from the past to guide future conduct, the rights policy frame points out in what ways security policies are damaging democratic rights and liberties, most prominently felt in the spheres of freedom of expression, freedom of press, and due process. Two crucial mechanisms that contribute to this situation are firstly the institutionalized status of exceptionalism in Turkish political life, and secondly the vague

definition of terrorism which makes it susceptible to label any political dissident voices. The uneasy course of the civil-military relations is also mentioned as an important factor in entrenching the state of exception in the Turkish context.

On the other hand, international institutions promoting international norms and standards of democratic practices have been delineated as the main sites for bringing about a solution. Once again as in the UK context, the emphasis is given to the legal dimension of human rights, underscoring obligations under international norms as entailed by membership to international bodies, such as the EU and ECtHR. Nonetheless, an understanding of universal morality does make an appearance during the early debates on harmonization packages, positing rights as entitlements to human honour. An important theme that reverberates in all three discussions is the practices of 'civilized' societies as a model for Turkey, usually with reference to European nations, whereby adopting a rights-based understanding is presented as a means for becoming a member of the 'civilized' world as suggested by Risse and Sikkink (1999). Hence, whilst the institutionalization of rights and the impetus for democratization is construed as 'scripts of modernity' (Krasner, 1999), upholding such norms are promoted for the international status they confer.

6.3. Conclusion:

The Turkish parliamentary debates are marked by the predominance of the security discourse, owing to the long-established position of the military as the vanguards of the Republic, coupled by the prolonged conflict in the south east region with the PKK forces that has culminated in the institutionalization of the state of exception. The security discourse is imbued in a pervasive nationalist narrative that cross-cuts different frame elements. One such manifestation is the concept of national sensibilities connoting national

values such as principles of the Republic, the indivisible unity of the nation, not solely in terms of land but also the nation, as well as sensibilities regarding the majority religion. Thus, from this framework it is possible to infer that the state and its official ideology are the main objects of security in the Turkish context. The state in its material and ideological manifestations is placed before any conception of freedom or rights, demarcating the grounds in which the latter are subject to necessary limitations.

While reforms that aim to limit security policies in favor of greater respect for human rights are denounced as foreign impositions that weaken the state, a related matter of concern is the possible abuse of these rights by terrorists groups. Two key areas that come to the fore are namely demonstrations and propaganda, whereby the right to protest along with the freedom of expression is being securitized as sites harboring the ideology and activities of the terrorist organization. The conception of the enemy is categorized as either 'separatist' organizations or religious reactionary groups that refute the principles of the Republic and unity of the nation. Once again, a rhetorical commitment to democratic values and human rights is visible as policy-makers reaffirm their dedication to such values in order to invoke legitimacy as suggested by Risse and Sikkink (1999). These claims tend to be followed by elaboration of the necessity of limiting such rights and liberties. Thus, by paying lip service to the status of human rights one is able to legitimize restrictive policies. In order to justify such limitations, examples of practices from the 'civilized' nations are put forth, in addition to stressing the priority of national sensibilities.

Notwithstanding the preponderance of the security narrative in the Turkish parliamentary debates, it has been challenged by the growing salience of a rights rhetoric finding momentum with the EU-accession process. In the last decade, a rights-based

language has started to establish itself in the Turkish political scene, putting freedoms and individuals' entitlements before an étatist understanding. Pointing out the undemocratic environment precipitated by the historical normalization of the state of exception and the role bestowed to the armed forces, the rights policy frame seeks to draw attention to grave human rights violations in the areas of freedom of expression, freedom of the press, and the basic principles of due process. Particularly in the most recent debates on the reform packages, it has been asserted that the label of 'terrorist' is being misused by government officials in silencing dissident political voices. A noteworthy manifestation of this theme resonates in the distinction being made between real terrorist versus those that are falsely accused, whereby overbroad and draconian counter-terrorism provisions are not denounced on the grounds of being illiberal, but rather for failing to target the real 'enemies' and instead being used as a pretext for imprisoning political opponents. In so doing, the rights frame borrows from the repertoire of the security narrative, adopting similar construction of the 'enemy' as the existential other in Schmittean terms ([1922] 1985), and in this particular case those who renounce Republican principles and the unity of the nation in favor of an alternative political ideal.

In order to establish a rights framework in the political culture the process of democratization is upheld and promoted within the rights narrative. One of the most interesting findings that have presented itself throughout the data is the endorsement of human rights and democratization as the requirements of modernity. Echoing Krasner's account (1999), such normative concepts are espoused as 'scripts of modernity' that confer international standing and legitimacy to a political regime. This framework is also substantiated by references given to what are considered as 'civilized countries', an

argument that also finds expression in the security frame that usually comes to connote the model of European countries or the United States. Hence, commitment to human rights and the process of democratization are embellished and endorsed as indicators of being part of the 'civilized world', rather than emphasizing their inherent worth for a free and fair society. As can be seen, once again the Turkish case illustrates how the interplay of the two policy frames work to transform one another and the understanding of sovereignty as an entity that is incumbent upon protecting the nation state and thus endowed with the authority to invoke the state of exception, yet whose legitimacy is conditioned upon international standards of democracy and rights.

Conclusion:
Talking Security and Rights: The Interplay of Policy Frames in Turkey and the UK

This section has offered a systematic frame analysis of the parliamentary debates surrounding key counter-terrorism legislation in the contexts of Turkey and the UK. Building on a standardized frame structure, this part of the analysis has examined the panoply of different themes, arguments, and concepts that constitute and give meaning to frame elements. The interplay between the security frame and rights frame displays itself in some interesting discursive formations/formulations that not only provide insights regarding the content of the parliamentary debates, but more importantly on the different manifestations of sovereignty in the political discourse. As a result, the analysis presents important patterns that reverberate across both cases with respect to the language of security and rights, in addition to points of departure owing to the distinctiveness of each setting. The fact that similar representational structures are evident in both contexts regarding counter-terrorism and human rights provides significant insights into the making of security policies. While the UK is one of the most established democracies in the world, it exhibits similar narratives and discursive constructs to those found in country like Turkey which is still going through a process of democratization with an ill-famed record of human rights violations. This section will highlight the important findings that have come to the fore in the analysis of the parliamentary debates in these two different settings.

1. The plea to balance

The single most recurrent theme in the UK context has been the code on *balancing*, connoting the need to strike a balance between security measures and human rights principles. Despite being relatively more pronounced in the UK case, this argument is

articulated by actors in both settings who perceive the issue of counter-terrorism as a matter of maintaining the right balance of liberties vis-à-vis security. What is more interesting is that this argument has proved to be visible in both policy frames, eliciting the legitimacy conferred by human rights norms being acknowledged also within the security discourse. This tendency demonstrates how sovereignty is premised on a dual conceptualization where it comes to be understood not only in terms of providing security to the public, but also as an entity that is expected to protect fundamental human rights norms. As the security narrative cannot easily replace human rights obligations, or vice versa, state actors articulate balancing as a primary solution mechanism.

2. Reaffirming commitment to rights and liberties

Another pervasive theme that resonates across both contexts is the code *on reaffirming commitment to rights and liberties*, which tend to operate in tandem with the argument of balancing in the security frame. Salient in both settings, this argument denotes the confirmation of a rhetorical commitment to human rights within the security discourse, once again signaling the recognition of the status of human rights in the political arena with tremendous bearings in both national and international legitimacy. The occurrence of this code usually unfolds in a pattern of declaring allegiance to human rights and democratic values, followed by the depiction of exceptionalism or pressing reality of terrorism that necessitate their suspension. Similarly, the high frequency of this code suggests that even with respect to security issues pertaining to the sacrosanct terrain of realism, state actors cannot dismiss the status of human rights norm; therefore, they tend to pay lip service to these principles and circumscribe their boundaries through the state of exception.

3. Human rights as legal obligations

The conceptualization and endorsement of human right in the parliamentary debates is grounded in its legal weight more than its moral weight, defined and supported primarily as international norms stipulated by membership to international institutions. This framing is persistent throughout both contexts, with the exception of a few instances of underlining the universal morality human rights during the discussion of EU harmonization packages in Turkey. Thus, a notion of an agreed upon set of normative standards premised on a conception of universal morality was largely absent in both contexts. Overall, legal obligation is one of the strongest themes that reverberate in both settings, accentuating international norms as foreseen by membership to certain international institutions, primarily the EU (candidacy in the case of Turkey) and ECtHR. Moreover, the legal dimension was accompanied with an understanding of membership to international institutions and the standards of human rights they enforce as signaling a belonging to the 'civilized nations'.

4. International Institutions versus international community

Likewise, within the rights frame commitments and obligations under formal institutional bodies have been significantly more visible in the parliamentary debates, compared to a notion of international community premised on a certain identity with shared values and ideas. Once again, this tendency vindicates the legal dimension of human rights norms enshrined in international covenants as blueprints for appropriate state behavior towards its citizens, rather than an agreed upon universal morality by an international community of states. Interestingly, the notion of an international community has been reiterated more frequently within the security frame by state actors that express being part of

an community with shared values that works together against a perceived common threat that is seen to target a civilizational construct; thereby, demonstrating how the constructivist categories of ‘culture’ and ‘identity’ are translated into national security agendas. (Jepperson et. al, 1996)

5. State of exception and the prospects of due process

Once again, in both contexts the leitmotif of exceptionalism has been ubiquitous in the debates on terrorism and counter-terrorism measures. In the British context the state of exception is invoked within the security frame in relation to the post-9/11 world order, depicting the problem as an unprecedented experienced and a modern nemesis that threatens ‘western civilization’, contrary to earlier experiences with the IRA. Thus, it is suggested that these exceptional circumstances demand exceptional measures. On the other hand, the state of exception has already been entrenched in the political culture of Turkey, through consecutive military interventions in the functioning of civil democracy and wide-spread execution of emergency laws. The normalization of civil-military relations had been initiated in the aftermath of the last military coup in 1980s, yet exceptionalism continues to haunt political and social life due to the clashes with the PKK and the unresolved tension with the Kurdish movement. Hence, in Turkey the security frame does not purport the onset of exceptional situations as a novel phenomenon, but rather it is extensively articulated within the rights frame as a key source of problem. In both contexts, rights frame address the problems engendered by the state of exception, particularly its corrosive impact on the due process whereby suspects are barred from their basic rights to seek justice and are instead ‘contained’ as possible threats to national security. Consequently, practices such as

indefinite detention or excessively long periods of pre-trial detention become common implementations with the institutionalization of the exception.

6. Defining the enemy

The depiction of the enemy as the existential other threatening national values and a given way of life has been another persistent pattern, demonstrating the Schmittean understanding of an enemy (whether internal or external) that needs to be eliminated and silenced in the public sphere. In the UK case, a distinction has been made between *ethnic terrorism and international terrorism*, the former affiliated with the activities of the IRA and the latter with Islamic fundamentalist groups. Yet, in this context the deliberation of the target tends to focus on the Muslim minority, the immigrants, and asylum seekers as those potential groups who can abuse the open society and expose certain segments of the population to extremist teachings. In line with Zarakol's (2011) account, ethnic form of terrorism is framed as 'system-affirming' in the sense of demanding self-rule within the Westphalian order; however, international terrorism correlated with Islamic groups are portrayed as vicious violent assaults to tenets of western civilization and democracy. On the other hand, the Turkish case presents a different picture, with a distinction being made to what is referred to as *separatist terrorism (bölücü) versus religious reactionary terrorism (irtica).* The former associated with the activities of the PKK continues to be the main focus in the parliamentary debates due to the on and off nature of the ongoing clashes in the south east region; whereas, religious reactionary terrorism is verbalized to a much lesser extent. Both forms of terrorism are perceived to be 'enemies within' who are supported by foreign powers in their upheaval to national values, whilst international form of terrorism is

understood in the British contexts as being associated with ‘foreigners’ or immigrants who seek to destroy western civilization.

7. Defining terror

As mentioned in the previous section on policy analysis, the adoption of overbroad definitions of terrorism and terrorist acts is present in both contexts, giving way to dubious measures as well as opening the way for various aspect of political life to be subsumed by the security apparatus. As the contours of terrorism are held wide and amorphous, it is easier to categorize myriad types of acts under such heading, including forms of democratic participation that might be deemed ‘dangerous’ by the officials. This tendency is addressed by the rights frame in both settings, pointing out how dissident voices are easily silenced by the terrorist label as encouraging or propagating terrorist ideologies, as a result of the vague and extensive definition of the concept. Such provisions are not only against principles of legality, but also marginalize political opposition and protest.

8. Securitization of dissent

An upshot of employing vague definition of terrorism is the securitization of dissenting views in the public sphere. In the UK, the notion of *extremism* is invoked quite frequently as a major source of fostering terrorist ideologies and inculcating the society with ideas of violence against western civilization, generally referring to Islamic organizations that operate within the country, including mosques and other places of worship. On the other hand, in the Turkish context, the focus is on *propaganda*, usually referring to the ideology of the Kurdish political movement which is framed as defying national values such as the unity of the nation and irrefutable authority of the Turkish state. As a result, freedom of

expression and the workings of deliberative democracy are being subjected to the act of securitizing, where ideas considered extreme or radical are categorized as threats to national security.

A corollary finding has been the securitization of demonstrations and protests that are primary sites for the expression of discontent in participatory democracies. In both contexts, public demonstrations have been equated with sites harboring potential threat to public order and security, thereby transforming this democratic space into a security concern where the enjoyment of rights need to be restricted. The arguments for the necessity of preventive measures taken by the police in the UK are premised on this understanding, which have culminated in the extensive stop and search powers. In a similar vein, in the Turkish case it has even been suggested that an individual might 'become' a terrorist by merely attending a public demonstration. In fact, the notorious reverse amendments enacted in 2006 convey this theme by allowing individuals to be tried as members of terrorist organizations if they attend public demonstrations believed to be organized by the PKK. The securitization of freedom of expression and the right to protest illustrates the Schmittean ([1922] 1985) notion of eliminating radical political groups from the public sphere under the state of exception.

9. Democracy as national pride versus democratization as a requirement of modernity

In both contexts, the theme of democracy permeates the rights frame, emphasizing the indispensable position of democratic principles and processes in establishing a rights-based institutional framework. In the UK the concept of *democratic values* is more salient due to the long-established democratic tradition of the country. This concepts is also

articulated in tandem with the generic code of *the nation*, signifying democratic values as part of the political culture of the country as a national pride. On the other hand, in the case of Turkey the process of *democratization* is advocated, as an ongoing mission yet to be achieved. Due to a history tainted by consecutive military coups and the normalization of the state of exception, consolidation of democracy is still an oscillating process. A noteworthy finding in the Turkish parliamentary debates has been the endorsement of greater democratization and the institutionalization of human rights, especially with the onset of the EU-accession process, imbued in a narrative of being part of the modern nations as *required by modernity*. Thus, within the rights frame, such concepts are promoted with references to *example of 'civilized' societies* conferring international standing and prestige as suggested by Risse and Sikkink (1999), emphasized more than the inherent value of rights and freedoms.

10. Object of security

One palpable difference in the two cases has been the designated objects of security. In the UK case, the object of security is posited a referring to the public order and safety, in protecting the law-abiding innocent citizens from the ubiquitous threat of terrorist attacks. This conceptualization is predicated on a binary opposition of 'us' versus 'them, whereby an understanding of *our way of life* (Wolfendale, 2006) representing western values is being targeted by evil terrorist groups who lack any understanding of civilization. On the other hand, in the Turkish case the object of security is cogently elucidated as the state, with its indivisible unity not merely in terms of land but also the nation, coupled with other *national values* that underpin its ideological foundations such as the principles of the Republic. This conceptualization reflects Buzan's (1983) dual account of the nation state premised on a

physical and an ideological base, where the latter conveys the 'idea' of the nation and national identity as critical elements in the security problematique.

11. Abusing rights

A common argument that finds expression in both contexts within the security frame is that terrorist groups tend to abuse rights and freedoms in a given society to their own advantage, thus framing rights as amenable to manipulation for terrorist plans. This finding is concurrent to Jackson's (2007a) analysis of the security discourse in EU counter-terrorism policies. Firstly, in the UK case there is a stress made on *abuse of open society*, which suggests that terrorist networks find it easier to operate without impediments in an open society premised on rights and democratic values. Particularly, the issue-areas of immigration and asylum are being framed as national security matters that risk opening the door to infiltration by terrorists. In the case of Turkey, however, the emphasis is being made to the possible abuse of newly adopted rights and freedoms, particularly as part of the EU-accession process, and how they are used as pretexts for the terrorist organization to promote its own ideology 'under the rubric of' freedom of expression.

12. 'Necessary' restrictions to human rights

Interrelated with (yet not equivalent to) the code on *necessity*, the theme of restricting human rights lends itself to ample articulations in both contexts. In the UK case, this theme is represented by the code of *necessary sacrifice*, which stands for the idea that some human rights norms ought to be bypassed in a given situation of turmoil. The overtones of 'sacrificing' hint at the established status of human rights, which need to be suspended under exceptional circumstances. In the case of Turkey, a similar line of

reasoning is expressed through necessary *limits to rights and liberties*, which conveys a suspicious stance towards the concept of human rights unlike the UK context. In tandem with the aforementioned theme on abusing rights and liberties, once again this concept indicates a skeptical stance towards human rights, as possible pretexts to be utilized by terrorist groups. This argument is intensified when coined with the code on 'foreign imposition', where human rights are perceived to be imposed by western states in order to provide concessions to terrorists.

13. Areas of intersectionality: nationalism, religion, and immigration

In the case of UK, two pivotal areas that tend to intersect with discussions on terrorism and how to formulate counter-terrorism measures have been the issue of religion and immigration. As mentioned earlier, religious activities of minority groups, primarily the Muslim minority, are construed as an issue that is interlinked with terrorism. Likewise, the issue areas of immigration and asylum are also juxtaposed to countering terrorism, as potential risks to national security that might give way to infiltration of terrorists. Hence, minority religion under the banner of extremism along and immigration policies are the two sites that have been securitized in the UK context. On the other hand, the most solidified area of intersectionality that cross-cuts all parliamentary debates in Turkey is the issue of nationalism. National values, national sensibilities, national identity, and the unity of the nation are reiterated on myriad accounts, connecting the fight against terror with nationalist ideals. As a result, counter-terrorism becomes more than assuring the security of the public and signifies upholding the nationalist ideology. This theme is important in illustrating how difference is being perceived as a threat to the idea of the homogenous 'nation', to be contained (Blaney & Inayatullah, 2000).

14. A call for co-existence

Against this backdrop, the rights frame has made a call for co-existence against the discriminatory and corrosive repercussions of counter-terrorism policies in community relations and tolerance. In the British case, *multiculturalism* is promoted as a policy against discriminatory practices of counter-terrorism that marginalize minority groups rendering them as 'suspect' communities (Silvestri, 2011); whereas, in the Turkish context principle of *pluralism* is advocated as an alternative to security policies that segregate the society. The distinction lies in the former addressing issues of minority culture and religion, whilst the latter adopts a wider scope supporting the co-existence of different political stances, oppositional views, as well as religious and ethnic identities. Hence, the rights frame in both contexts warns about the discriminatory effects of counter-terrorism measures, instead promoting tolerance and democratic dialogue.

15. Borrowing from each other's repertoire of meaning

On the whole, one of the most interesting findings throughout the frame analysis has been the inclination of each frame to borrow from the symbolic vocabulary of the other, as the language of security penetrates that of human rights and vice versa. In order to make an appeal for their cause both frames adopt arguments that can make a persuasive case, culminating in the convergence of the two frames at certain junctures. This phenomenon is evident in the plea of reaffirming commitment to human rights or the framing of security as a 'right' whereby the security discourse adopts the language of rights for invoking legitimacy. On the other hand, the rhetoric of creating martyrs with unjust counter-terrorism practices in the case of the UK, and the distinction between real terrorists and those that are

falsely accused exemplify how the language of rights borrows from the security narrative in the conceptualization of the enemy as the existential others.

In short, the deliberations, bargaining, and confrontations of the two policy frames manifest themselves in a nexus of common themes, concepts, and arguments that produce key counter-terrorism legislation yielding an immense impact on the political life of each setting. The security discourse operates in stimulating an environment of constant threat and insecurity, thereby justifying draconian measures that mar the status of human rights through acts of securitization. Concomitantly, the discourse of rights and liberties challenge the security logic by problematizing the stronghold of exceptionalism, instead advocating obligations under international norms. While the security frame pays lip service to human rights principles owing to the legitimacy and international standing they bequeath, the rights framework mimics the security language by adopting similar construction of the enemy as the existential other. As such, in the context of fighting terrorism, the two aspect of sovereignty are grounded in the political discourse, not replacing but transforming each other in the policy making process: as the provider of security and thereby the ultimate authority to declare the state of exception, yet concomitantly, whose legitimacy is bound by the protection of human rights norms. In the end, the interplay between the two policy frames produces concrete laws with real and significant outcomes.

Conclusion. Reconciling Policy and Discourse

The breadth of security is a pressing matter in modern societies not only from a realist perspective of mitigating possible threats, but also with respect to the ramifications of such threat perception and concurrent emergency situations on the enjoyment of rights. Security policies do not solely influence the well-being of the state and the safety of the public; they also yield tremendous bearings on the functioning of democracy and participation in the polity. Conceptions of the 'enemy' or 'threats to national security' are translated into the legislation and become institutionalized over time. As wider areas of political life are subsumed under the logic of (in)security, they move beyond the normal political process into the state of exception marked by a legal limbo. The inflated sense of threat and urgency has produced counter-terrorism policies that aim to introduce preventive measures for sustaining public safety at the expense of individual rights and democratic principles. While state officials cannot simply condone the human rights obligations they are subject to, they tend to by-pass such requirements with the mantle of exceptionalism necessitating exceptional measures.

This study set out to illustrate how states try to balance security concerns with human rights obligations in the context of counter-terrorism. It has been argued throughout the analysis that the normative weight of human rights norms and democratic principles is indispensable for a legitimate basis of sovereignty in contemporary politics. Therefore, even in the most sacrosanct realist terrain of national security, attempts to sidestep these norms entail sound justifications. The multi-method analysis of policy development and policy frames has verified the argument that in an attempt to by-pass human rights obligations state actors securitize areas of political life replacing them beyond the boundaries of normal

politics by invoking a sense of exceptionalism. At this conjuncture, language and policy are mutually constitutive in determining how certain concepts, policies, or causes are defined and framed, shaping political outcomes. Congruently, counter-terrorism policies are also formulated as a product of the conflicts, bargaining, and negotiation between a language of security and a language of rights. The analyses in the previous sections have mapped out the general tendencies in each setting as well as similar patterns that cross-cut both contexts in the making of counter-terrorism legislation and their relationship to human rights norms. This last section will elicit those discernable linkages between policy outcomes and framing trends that have been visible throughout the analysis. It will finish off by elaborating the main contributions of the study, followed by future direction for academic research and policy implications.

To begin with, an evident trend in the legislative debates has been defining and categorizing critical concepts and how such definitions ultimately shape what is to be considered as a matter of security. The definition of 'terrorism' *per se* has proved to be a contentious matter in world politics in the absence of an internationally recognized definition of the term. Consequently, national legislations in different contexts adopt varying definitions that reflect the understanding of the object of security as well as the conceptualization of the 'enemy'. The definitions of terrorism in relevant laws on counter-terrorism reflect the underlying themes and interpretive cues that are prevalent in the parliamentary debates. In the British case both the political rhetoric and the provisions are predicated on a conceptualization of the public order as the main object of security, wherein 'innocent law-abiding citizens' are threatened by terrorist who are against western culture. Whereas, in the Turkish case, definition of terrorism in the extant law designates the nation

state as the primary object of security with its physical and material basis (Buzan, 1983), reflecting the étatism that underscores parliamentary debates.

Notwithstanding this difference, both settings have adopted vague and overbroad definitions of terrorism and terrorist acts, which have resulted in the criminalization of democratic rights and the labeling of certain segments of the population as 'suspects' (Silvestri, 2011). The various problems associated with employing such a vague definition have been frequently voiced in both settings. In the Turkish case the primary target of counter-terrorism continues to be the Kurdish political movement and its ideological tenets as jeopardizing the unity of the nation and the authority of the state. This standpoint is also palpable in the predominant presence of the nationalist discourse not only in the law-making process but also the subsequent laws that emphasize the indivisible unity of the nation with its land and nation. Nonetheless, the changing political context has brought about the designation of new suspect groups that are considered to threaten the political authority. On the other hand, in the British political scene two overlapping groups come to the fore as the possible risk groups, namely immigrants and asylum seekers, as well as the Muslim minority. As repeatedly voiced in the parliamentary debates these two groups are identified with abusing the opportunities of open society, coming from other countries to preach extremism and hatred. This perception is markedly manifest in policies such as the indefinite detention of non-nationals and the Special Immigration Appeals Committee. Concurrently, regulations introduced in 2006 on the direct or indirect encouragement of terrorism that addresses extremism, that is generally associated with the Muslim community, is another clear manifestation. Hence, against the perception of a national identity, difference and diversity is being construed as elements of threat (Blaney & Inayatullah, 2000; Schmitt,

([1922] 1985). Against this backdrop, there is a call to overcome the inherent discriminatory framework in counter-terrorism policies that hinder inter-community relations and principles of pluralism. This call is traced in the discourse of rights that aims to challenge the damaging effects of the security logic, in this case the marginalization of certain segments of the population.

A related trend that interconnects the framing of terrorism with counter-terrorism policies pertains to the securitization of dissent. Particularly those political activities in relation to freedom of expression and the right to protest are being subsumed under the security apparatus, which severely corrodes democratic forms of participation. The framing of 'extremism' or 'propaganda' in ways that necessitate the limitation on freedom of expression have been directly translated into policies that tend to suffocate political opposition. Likewise, public demonstrations and protests have been framed as possible sites harboring threat to the public order or terrorist motives and thereby been subject to securitization. In the Turkish context in addition to the Kurdish political movement, such laws have recently been targeting other forms of vocal political opposition deemed as the existential others of the polity, including prominent figures associated with the Kemalist ideology of the ancién regime (Schmitt, [1922] 1985). Similarly in the British case, in addition to political organizations and activism undertaken by the Muslim minority, other forms of political dissent such as protests against the Labor government or the student movement in 2010 have been dealt within the scope of counter-terrorism. As exceptionalism becomes ingrained in the political structure, these security policies go on to paralyze the functioning of democracy and the legitimacy of the political opposition.

In tandem with these proclivities, an upshot of the security logic is the enhancement of powers granted to the security forces. While perceptions of threat permeate into different issue-areas, so does the purview of security requiring the monitoring and controlling of the society, thereby 'disciplining the domestic society' (Jackson, 2005). In both contexts, there has been an emphasis on extending police powers, while in the Turkish context additional stress has been made to the role of the military in fighting terrorism due to the ongoing armed struggle in the south east region. The continuing role of the military that has historically entrenched the state of exception in the political culture is a serious obstacle to the bourgeoning peace process the country has been undergoing. Recently in Turkey, provisions similar to those of the stop and search powers in the UK have been granted to the police on the basis of 'reasonable suspicion', including the authority to arrest and detain in the absence of a court order. Such policies not only discourage political opposition particularly public demonstrations, but also bypass the normal judicial processes.

A notable tendency observable in both contexts is the suspension of due process under the state of exception and the creation of a legal void in dealing with terrorist suspects who are to be 'contained'. The grounds for suspending indispensable principles of justice can be traced in the parliamentary debates where the duty to uphold rights are depicted as a burden to security initiatives. Such discursive cues include the necessity of limiting or 'sacrificing' rights for the greater good of security and also the threat that rights might be abused for terrorist intents. As mentioned earlier, in the UK context exceptionalism has been articulated with the September 11 attacks continuing with London bombings, conceptualized as an unprecedented situation that is different from experiences with the IRA since the attacks have been framed as targeting 'western civilization' at large. This outlook has been

translated into subsequent policies first initiated by the controversial provision on indefinite detention of non-nationals, continuing with control orders and TPIMs, which operate outside of criminal law rendering individuals susceptible to the "de facto rule" of the sovereign (Agamben, 2003: 3) In the Turkish case exceptionalism has been part and parcel of the political culture with consecutive military interventions and the wide-spread execution of emergency laws. Although this characteristic has been undergoing a thorough transformation since the EU accession process, the vestiges can still be felt in different forms. One such example is the pre-trial detention period that can go up to ten years for crimes against national security or the Constitutional order, as stipulated by the Criminal Procedure Law (Ceza Muhakemesi Kanunu, 2004). These counter-terrorism measures have been subject to both international and domestic criticisms for justifying the infringement of established rights and the normal legal process. Such criticisms are also represented in the parliamentary debates in both contexts for impeding the rule of law and due process.

Despite the corrosive effects of securitization on human rights principles, these norms retain their normative power in conferring legitimacy and international standing (Risse et. al., 1999; Krasner, 1999; Reus-Smith, 2001). This aspect can be observed in the highly visible rhetorical trend to reaffirm commitment to human rights and democratic values in both contexts. The introduction of a draconian measure is usually preceded by reiterating the recognition of the status of rights and liberties. At certain instances, the security narrative mimics rights-talk by framing security as a right, thereby drawing on the legitimacy conveyed by the concept. Moreover, the objective of striking the right balance between human rights and security concerns is another repeatedly asserted theme in counter-terrorism legislation. These positions are not only rhetorical strategies but are also converted

into policy outcomes, such as the tendency to repackage contentious provisions under a different banner. As controversial provisions become subject to both domestic and international criticism, they threaten the legitimacy of the government due to the negation of established rights and freedoms, and are therefore replaced by newer, ostensibly less controversial ones. An example from the UK case is the evolution of policies that seek to contain terrorist suspects, from indefinite detention of non-nationals, to the TPIMs that claim to remedy the imbalance present in previous measures. Similar inclinations are evident in the Turkish case where officials seek to amend controversial clauses in the face of growing national and international discontent with files piling at the Strasbourg Court.

Being part of the international human rights machinery endows nation states with an international standing as members of the 'civilized nations'. Throughout this study, an evident concern over legitimacy has been empirically traced in both policy development and the political rhetoric. In the UK, the issue of deportation has proven to be a litmus test for balancing rights and security, where the government refrained from violating international laws against deportation, instead opting for indefinite detention of non-citizens. The latter contentious provision was also later dropped in line with ECtHR rulings against it. The incentives of Turkey are more pronounced due the requirements for fulfilling the Copenhagen criteria, in addition to the authority of the ECtHR. Notwithstanding the fact that a rights-based understanding is yet to be developed and established, obligations under such international institutions have been essential in promoting human rights priorities in the political agenda.

The parliamentary debates reflect a similar stance in both contexts, as the rights frame endorse international norms entailed by membership to international institutions.

Within this nexus, a clear emphasis is made on the legal obligations entailed by human rights norms, rather than on their inherent universal morality. While in the UK context, human rights principles and democratic values have been praised as part of the national identity, defining the character of the polity; in the Turkish case the goal of democratization and the institutionalization of rights have been encouraged as 'scripts of modernity' (Krasner, 1999), that signal being part of the 'civilized world'. As such, the normative weight of human rights is mostly constituted by the understanding of legal obligations and international standing it provides, instead of a shared understanding of morality. Thus, the rhetoric of rights resonates throughout the policy-making process and challenges acts of securitization.

On the whole, this study contributes to the literature on theoretical, methodological, and empirical grounds. Firstly, the research is novel by bringing together securitization theory and the concept of 'state of exception' in order to critically approach the issue of counter-terrorism. The complementary nature of these two theories has proven to be quite fruitful in addressing the research questions at hand. How the act of securitization relies on invoking exceptionalism, and how the product of this narrative results in a "space devoid of law" (Agamben, 2003) where fundamental principles of justice are suspended, have constituted the backbone of the theoretical framework. Moreover, the incorporation of human rights norms and the language of rights into the analysis has allowed the researcher to trace the interplay of the security discourse with the latter. Studies that focus on securitization and its effects on human rights principles have often failed to include the rights discourse in their analysis, rendering it a passive position (Heller et. al., 2012; Pisoiu, 2013). As these two narratives interact in the discursive plane, they tend to transform one

another as well as transforming the understanding of *sovereignty*. Therefore, the study sheds light on the contesting conceptualizations of sovereignty that manifest themselves in the context of counter-terrorism, not only connoting the authority to invoke the state of exception against a perceived threat and enemy, but also whose legitimacy is ever more conditioned upon the observance of international human rights.

Secondly, on a methodological level, the study offers a rigorous research design that seeks to unpack how security policies rest on cognitive frames and dominant discourses. As mentioned earlier, there has been an apparent lacuna in the IR literature on the issue of balancing human rights with fighting terror, as the issue is taken up either from a solely legal perspective or as part of a normative philosophical inquiry. In this regard, the study is novel in offering a contextual analysis of the matter at hand, by linking policy output to the political discourses in two different settings. In particular, the merging of frame analysis and the analytical tools offered by ATLAS.ti has produced a systematic examination of the parliamentary debates, by offering a structured form of discourse analysis that can be applied in different settings for comparative investigations. The process of double coding of the frame elements and those recurrent themes, arguments, and concepts has allowed ATLAS.ti to analyze these codes through its co-occurrence function both with respect to their relation to each other and also regarding their frequencies in the texts.

Lastly, the empirical findings of the study contributes to the literature in demonstrating how counter-terrorism policies have come to culminate in unforeseen protracted forms of injustice that jeopardize the functioning of democracy that have an impact on the society at large. While governments undertake counter-terrorism policies and act in line with national security interests, they tend to overlook the consequences of such

policies for the functioning of democracy and principles of human rights. This is not only the case for a yet democratizing country like Turkey, but is also evident in long-established liberal democracies as clearly illustrated by the UK case, where the state of exception can bring about a reverse process for the status of rights. This tendency is particularly critical amidst a political environment marked by worldwide protests in many different social settings as individuals are becoming increasingly vocal in expressing their discontent against authoritarian or repressive regimes. At this juncture, democratic manifestations of dissent risk being subsumed by the logic of security as elements of threat to be silenced and eliminated from political life. A vibrant civil society underpinned by freedom of expression, the legitimacy of political opposition, and the rights of minority groups are bastions of liberal democracy and therefore too precious to be sacrificed for security concerns.

Having said that, an important limitation of the study has been the absence of the dimension of *resonance* with respect to the security narrative. The resonance of securitization in the larger society points out to how such official representations find expression in the public opinion, whether or not they are accepted and reproduced in media outlets or by civil society actors. Also suggested by Buzan et. al. (1998), the act of securitization fulfills itself only when it finds resonance through its audience, which accepts the arguments that legitimizes the necessity of emergency measures. The extent to which framing of exceptionalism that necessitates extension of powers and the suspension of rights reverberates in public opinion is a significant phenomenon revealing the impact of political discourse. This issue is also pertinent with respect to the public representations of 'suspect communities' that come to be associated with terrorism and thereby identified as a potential source of threat, reinforcing their marginalization from the society at large. Due to given

time constraints, these important questions could not be addressed in this study, yet lend themselves to future work that deserve academic attention.

In conclusion, the main findings of the study point to essential policy implications in the making of security policies in general, and counter-terrorism policies in particular. Striking the right balance between security and human rights is not an easy task, and officials are often expected to take a stern stance, especially in the face of tragic incidents. Yet, rash and miscalculated policies premised on a language of emergency, necessity, and exceptionalism lead to unforeseen long-term repercussions on the functioning of democracy that affect the society as a whole. Hence, policy-makers need to be wary of the wider implications of counter-terrorism policies beyond the field of national security, extending to other areas of social and political life that face the risk of being subsumed by the logic of security. Fundamental rights and freedoms are what make a political regime democratic by protecting citizens from the arbitrary power of the sovereign. Without rights and freedoms there can be no security.

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Appendix 1. Code Book

abuse of open society	how free movement of ideas, people, technology and resources offer a conducive setting for terrorist objectives
abuse of rights and liberties	Rights and liberties are abused by terrorist groups
balancing	the need to balance between rights and liberties on one hand and security on the other
burden	rights and freedoms burdening protection of individuals
civil-military relations	Issues pertaining to civil-military relations
democratic values	sine qua non for democracy
democratization	The process of democratization
demonstration/protest	right to demonstration or protest being securitized
dialogue/diplomacy redundant	Due to the characters attributed to other parties
discrimination	policy is deemed discriminatory or believed to possible cause discriminatory implementation
duty to protect	the government's duty to protect citizens
enemy	depiction of the enemy as existentially different, evil, dangerous, radical.
ethnic terrorism vs. international terrorism	differentiating between ethnic and global terrorism as different phenomena
example of 'civilized societies'	Certain policies deemed desirable by referring to the example of 'civilized societies'
exceptionalism	exceptional situations entailing exceptional measures
executive powers	the extension of executive powers
extremism	extremism as a underlying problem of terrorism and a danger for the society
foreign imposition	Certain reforms or new policies deemed as a foreign imposition
freedom of association	freedom of association
freedom of expression	freedom of expression
freedom of press	freedom of the press

going soft	going soft on terrorism
human rights 'for us'	demand for rights of the victim
immigration and asylum	immigration and asylum
infamous policy	policy deemed or risks being deemed infamous due to breach of rights and liberties
international community	logic of appropriateness
international institutions	obligations imposed by institutions
international norms	established standards
legal obligation	the government has international/domestic legal obligations to uphold rights and liberties
lesson from the past	lessons from history to consider at the current conjuncture
minority vs. majority	framing the issue in terms of the majority verses the minority
multiculturalism	the importance of the values of multiculturalism and tolerance towards different cultures
national sensibilities	National sensibilities that need to be taken into account, such as unity of the nation, the tutelary role of the army, principles of the Republic...etc.
nationalism	Such as unity of the nation, security, international standing, becoming a regional power...etc.
necessary limits to rights and liberties	Rights and liberties should be restricted for the greater cause of security
necessary sacrifice	the necessary sacrifice of certain rights in a given situation
necessity	deeming certain measures inevitable
operational effectiveness	technical need for the relevant policy
organized crime	organized crime as an important topic
othering support for human rights	disregard or disrespect for the human rights community
our lands	the rhetoric of 'our lands' belong to us, we must own it
pluralism	emphasis on pluralist democracy

police and military	extending the role of the police and military forces in fighting terrorism
police powers	extensive police powers for fighting terrorism
pressing reality of terrorism	pressing reality of terrorism must be taken into account
prevention	preventing possible future attacks
problem intersectionality	other frames involved in the assessment
problem location	where is the problem located?
problem mechanism	what mechanism produces the problem?
problem roles	who is responsible for the problem?
propaganda	making propaganda of a terrorist organization or their ideology
public demands security	the argument that public demands more security measures
public opinion	the importance of public opinion emphasized
reaffirming commitment to human rights	the argument of reaffirming commitment to human rights when introducing security measures
reaffirming commitment to human rights/democratization	the argument of reaffirming commitment to human rights when introducing security measures
real terrorists vs. falsely accused	A distinction between those deemed to be 'real' terrorists that defy national principles versus falsely accused innocent individuals who espouse such values
religion	religion as an important topic in the discussion
requirement of modernity	Certain policies endorsed as requirements of modernity
right to security	security not curtailing rights, but necessary to protect them
rule of law/due process	rule of law and due process
separatist vs. religious reactionary terrorism	Differentiation between separatist versus fundamentalist forms of terrorism
socio-economic development	Promoting socio-economic development as a solution to terrorism in the South East region
solution intersectionality	other frames involved in the solution

solution location	where is the solution located?
solution mechanism	what are the mechanisms that should be addressed?
solution roles	who is responsible for the solution?
the nation/society	depiction of the nation or the society
threat to our way of life	terrorism threatening a given preconception of 'our way of life' or 'our values'
threat/urgency/emergency	perception of a threat to the nation, a matter entailing certain measures to be taken for security reasons
threatening rights and liberties	policy deemed as threatening rights and liberties
trivialization	downplaying rights curtailments, condoning the infringement of certain rights while reaffirming others.
universal morality	humanistic values
vague definition	problem of vague definition and wording
victim	those that are violated and to be protected

Appendix 2. Total Distribution of Problem and Solution Codes

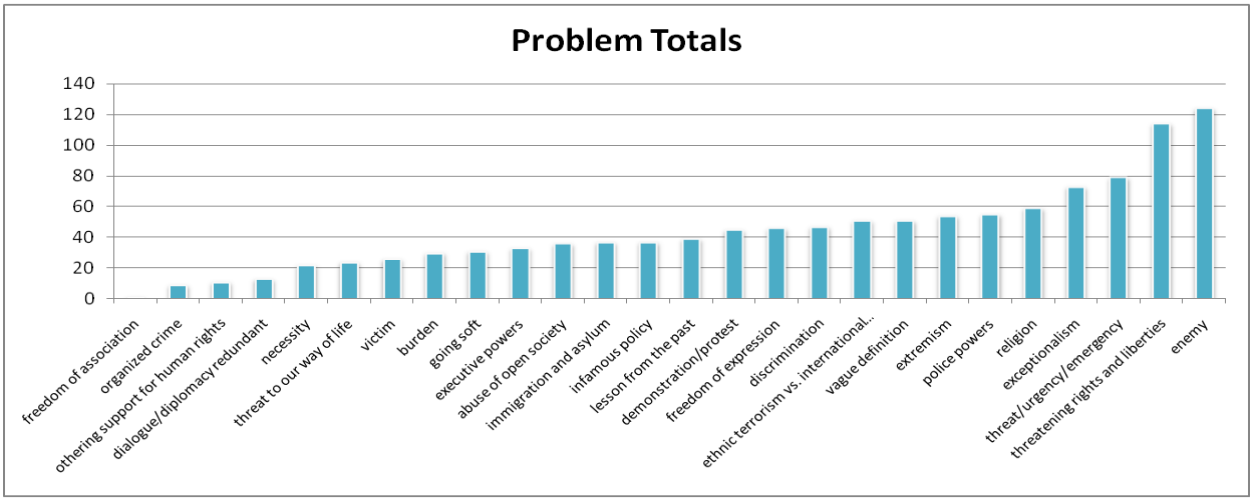

Figure 35. Frequency of Codes Associated with a Problem Frame in UK Parliamentary Debates

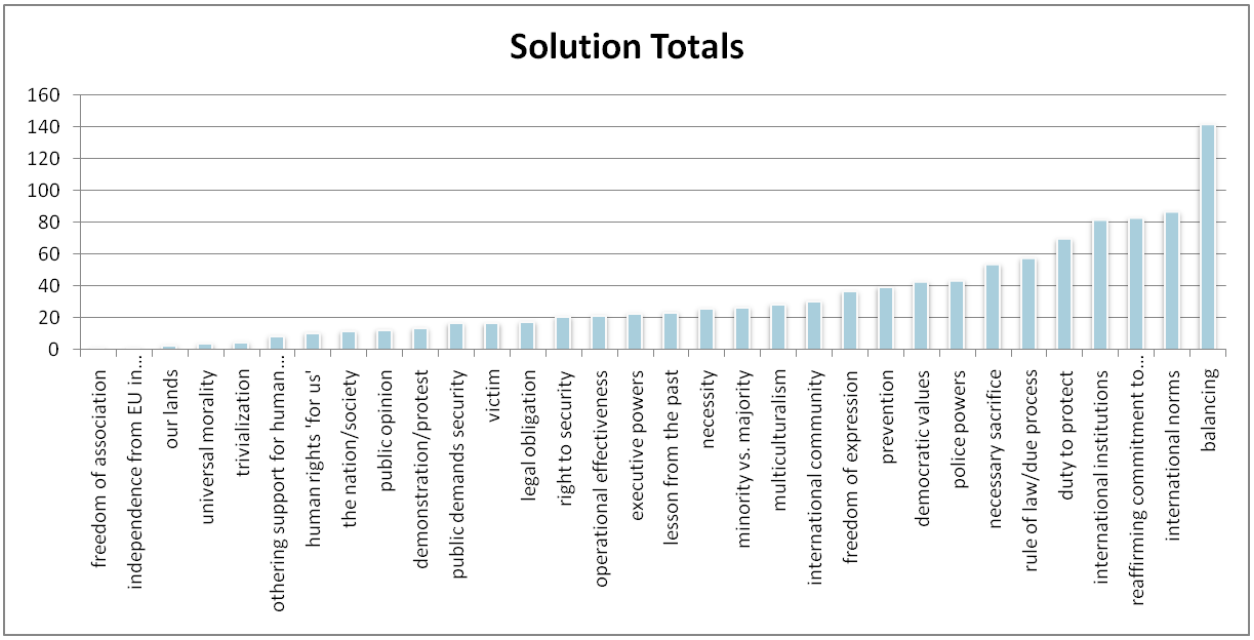

Figure 36. Frequency of Codes Associated with a Solution Frame in UK Parliamentary Debates

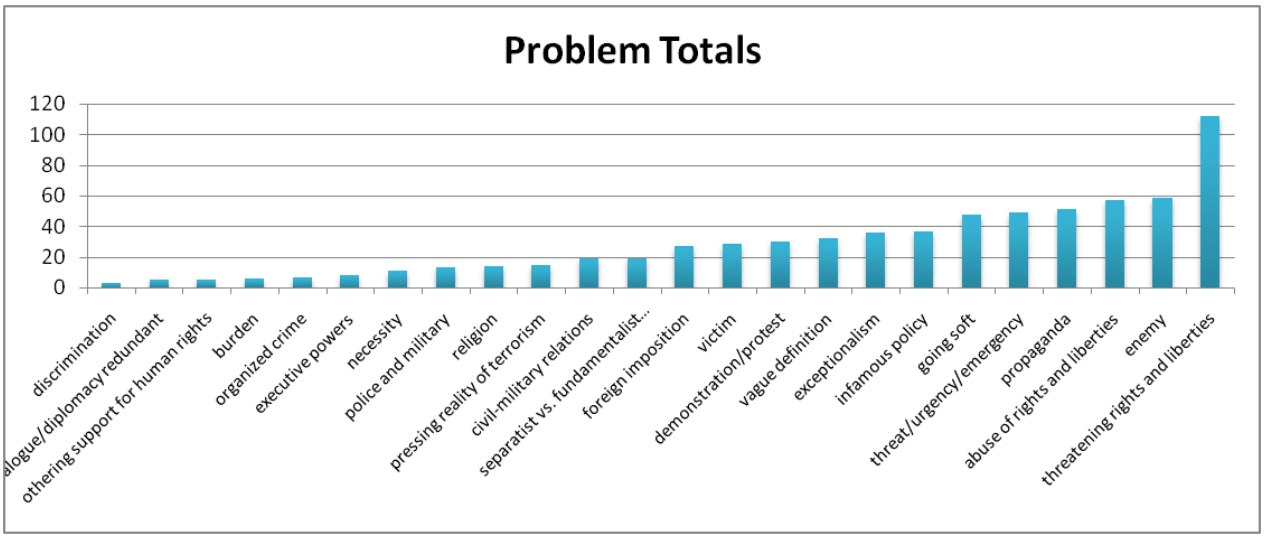

Figure 37. Frequency of Codes Associated with a Problem Frame in Turkish Parliamentary Debates

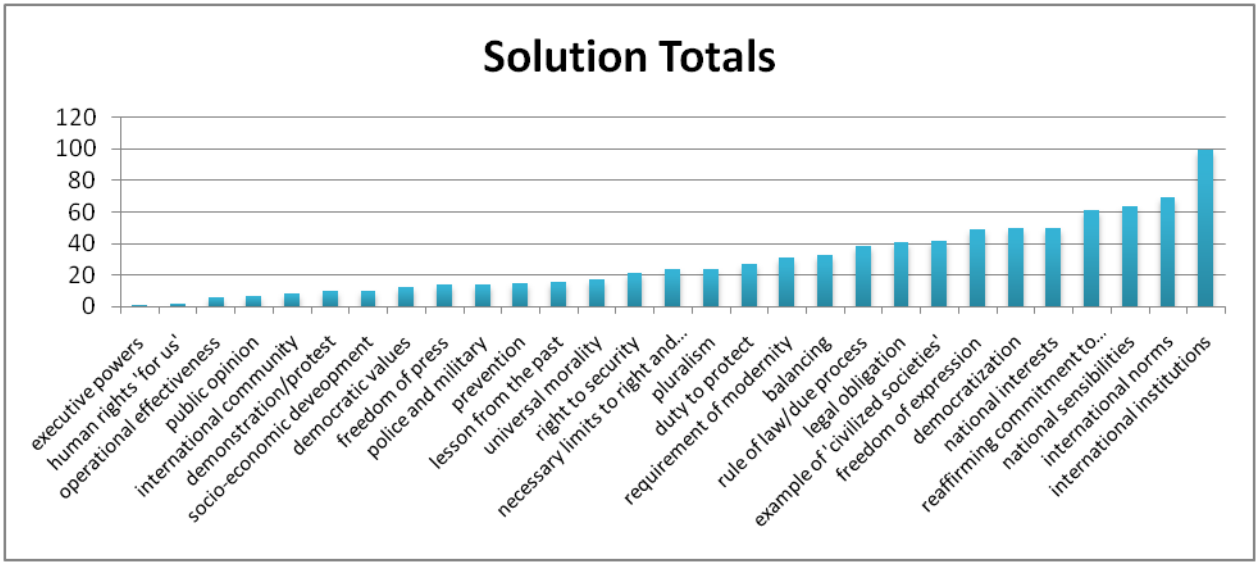

Figure 38. Frequency of Codes Associated with a Solution Frame in Turkish Parliamentary Debates