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المجلة العربية للعلوم الإنسانية والاجتماعية
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من نحن

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الأهداف

تسعى المجلة العربية للعلوم الإنسانية والاجتماعية لتحقيق الأهداف التالية:

- نشر البحوث المبتكرة التي يقدمها الباحثون في المجالات العلمية المتعلقة بالآداب والعلوم الإنسانية ،وذلك بعد عرضها على المقوّمين العلميّين.
- نشر تقارير الندوات والمؤتمرات العلمية بالجامعات العربية ، والمعاهد العلمية ، ومراكز البحوث.
- توثيق ونشر الثقافة العلمية بين الباحثين، والتواصل العلمي فى مختلف مجالات العلوم الانسانية والاجتماعية.
- التعاون العلمي بين المجلة والباحثين والعلماء العرب في مجالات تخصّص المجلة.
- تشجيع الباحثين العرب على إنجاز بحوثهم المبتكرة.
- التميز في تقديم البحوث ذات الأفكار المبتكرة و التى لم يسبق نشرها بمجلات علمية أخرى والمحكمة بواسطة نخبة من العلماء والمتخصصين ،والإسهام في إخراج بحوث علمية متميزة , من خلال الالتزام بالمعايير العالمية للتميز في مجالات البحث العلمي.
- ضبط أمور البحث العلميّ ،بعرض البحوث المقدّمة إلى المجلة على المختصين والخبراء والتطوير المستمر فى أساليب النشر والتحكيم.
- الإسهام في إثراء البحث العلمي والمناهج العلمية و التزام معاييرها، ونشر المعرفة في مجال الآداب والعلوم الإنسانية ،وتعميمها في الوطن العربي خدمةً للمجتمع العربي وتقدّمه.
- نشر البحوث وأخبار المؤتمرات والندوات والمراجعات وملخصات الرسائل الجامعية، وفصول من الرسائل العلمية للتعريف بقيمتها العلمية.
- تعميم الفائدة المرجوّة من نشر البحوث والدراسات، بوضع أعداد المجلّة بين أيدي القراء والباحثين على موقع المجلة في شبكة(الإنترنت)وتطوير الموقع وتحديثه.

خطوات النشر :

-يقوم الباحث بتنسيق البحث حسب شروط المجلة المذكورة أدناه.

-يقوم الباحث بإرسال البحث المنسق على شكل ملف مايكروسوفت وورد، إلى البريد الإلكتروني :
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-يجب أن يكون البحث مكتوباً بلغة سليمة،

-يجب أن تكون المادة المرسلة للنشر أصيلة ولم ترسل للنشر في أي جهة أخرى.

-يلتزم الباحث بالأصول العلمية المتعارف عليها في إعداد وكتابة البحوث.

-يجب إثبات مصادر المعلومات وتوثيق الاقتباس واحترام الأمانة العلمية في الإحالات والمراجع والمصادر.

–يتمّ تقويم البحث من محكّمين.

–يتم إبلاغ الباحث بنتائج التحكيم خلال اقل من اسبوع، بالقبول أو الرفض أو إجراء التعديلات للبحث بعد التحكيم.

–يقوم الباحث بالتعديلات المطلوبة ثم يتم متابعة التعديلات من قيل لجان التحكيم . يتم إرسال البحث مع تقرير بقبول البحث بشكل نهائي من لجان التحكيم.

-يتم إرسال خطاب رسمي من المجلة بقبول البحث للنشر.

-يقوم الباحث بدفع رسوم النشر والتحكيم .ويرسل ذلك عبر البريد الالكتروني editor@arabjhs.com، أو الواتسب على الرقم **962790260197**

-يتم إبلاغ الباحث بإيميل رسمي بإتمام عملية النشر في حال إكمال كافة الإجراءات السابقة وإنجاز عملية النشر الفعلي في عدد المجلة .

يراعي الباحث ما يلي:

–اسم الباحث (الباحثين) ، الوصف الوظيفي ، المؤسسة التي يعمل بها ، .

–الملخّص باللغة العربية ثم الكلمات المفتاحية

–الملخّص باللغة الانجليزية ثم الكلمات المفتاحية

ترتيب المحتوى: محتوى البحث حسب شروط المجلة العربية للعلوم الإنسانية والاجتماعية : المقدمة ،مشكلة الدراسة ،أسئلة الدراسة ، أهمية الدراسة ، أهداف الدراسة ، مصطلحات الدراسة الإطار النظري والدراسات السابقة ، منهج الدراسة، أداة الدراسة ، نتائج الدراسة، ومناقشة النتائج ، التوصيات ،المصادر والمراجع

تنسيق البحث :يتم تنسيق الورقة على) قياس(A4 ، بحيث يكون نوع وحجم الخط وفق شروط محددة، وهي:– نوع الخط في الابحاث باللغة العربية هوSimplified Arabic ، حجم الخط 16 غامق للعنوان الرئيس، 14 غامق للعناوين الفرعية، 14 عادي لباقي النصوص وترقيم الصفحات و المسافة بين الأسطر يجب أن لا تقل عن 1.5.

–نوع الخط في الأبحاث باللغة الإنجليزية هوTimes New Roman ، حجم الخط 14 غامق للعنوان الرئيس، 12 غامق للعناوين الفرعية، 12 عادي لباقي النصوص وترقيم الصفحات و المسافة بين الأسطر يجب أن لا تقل عن 1.5.

حجم البحث والملخص :ألا يزيد عدد صفحات البحث على (30) صفحة و ذلك لكي لا يتم زيادة رسوم التحكيم. ويجب أرفاق ملخص مكون من 200 – 250 كلمة باللغتين العربية والانجليزية ، بالإضافة إلى كلمات مفتاحية لا تقل عن 6 كلمات.

التوثيق : يتم التوثيق وفقا لأسلوب الجمعية الأمريكية السيكولوجية APA)) وعلى النحو التالي داخل البحث إذا كان المرجع كتابا يكتب اسم العائلة والسنة ، مثال(السرهيد ، 2005).وإذا كان المرجع بحثا في مجلة علمية يراعى ما سبق ، أما إذا كان موقعا على الأنترنت فيكتب : اسم المؤلف ، عنوان المقال ، السنة ، الموقع ، السنة ، التاريخ .،بالنسبة للمصادر والمراجع ، ترد المصادر العربية ، ثم المصادر الأجنبية.

الهوامش: تستخدم هوامش الصفحات السفلية لذكر أي ملاحظة، أو لتوضيح أي معلومة واردة في متن البحث، أو للتوثيق في بعض الأبحاث ولا مانع من ذلك ، وتوضع بين قوسين في أسفل الصفحة ، أو يعمل لها ملحق للهوامش توضع في نهاية البحث.

المراجع:

–ترتب أرقام المراجع في قائمة المراجع بالتسلسل، وذلك بعد مراعاة ترتيب المراجع هجائياً في القائمة حسب اسم المؤلف وفقاً للآتي:

أ. إذا كان المرجع بحثاً في دورية:

—اسم الباحث (الباحثين) بدءاً باسم العائلة، "عنوان البحث،" اسم الدورية ، رقم المجلد، رقم العدد، ، سنة النشر.

ب.إذا كان المرجع كتاباً:

—اسم المؤلف (المؤلفين) بدءاً باسم العائلة، عنوان الكتاب ، اسم الناشر، سنة النشر.

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و- وقائع المؤتمر:

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رسوم النشر والتحكيم: 140 دينار أردني ،ما يعادل 200 دولار.

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الرسوم

رسوم النشر والتحكيم والدفع

تسعى المجلة العربية للعلوم الانسانية والاجتماعية بنشر الأبحاث العلمية وتطوير البحث العلمي في الوطن العربي ، وتطلب المجلة رسوم رمزية مقدارها 140 دينار أردني أو ما يعادل 200 دولار لنشر البحوث المكونة من 25 – 30 صفحة بحد أقصى ويتم إضافة رسوم في حال زيادة عدد الصفحات عن 30 صفحة.

التحويل البنكي:

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ESJI Eurasian Scientific Journal Index	
RESEARCHBIB ACADEMIC RESOURCE INDEX	
ADVANCED SCIENCE INDEX	
CITE FACTOR Academic Scientic journal	
DRJI Directory of Research Journal Indexing	
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EBSCO قاعدة بيانات ابسكو العالمية	

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المجلّة العربية للعلوم الإنسانيّة والإجتماعيّة

مجلّة عربيّة محكّمة وفقاً لتصنيف قاعدة البيانات

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العدد السابع والثلاثون/ حزيران _2026

Between Security and Fundamental Rights: Comparing U.S. and EU Counter-Terrorism Models

Ruba Bou Khzam

Professor Dr. Kamal Hammad

Islamic University of Lebanon

Abstract

The present article examines the approaches to counter-terrorism within the USA and EU through the prism of the security/liberty tradeoff. The point is made that although both systems approach terrorism as an ongoing and evolving problem, they have different approaches in terms of structuring the relationship between the authorities' security measures and the basic rights of citizens. According to the US approach, national security agencies have considerable freedom of action, especially regarding gathering of intelligence, preventive investigations, sanctions, and powers to combat terrorism in the international context. The model of the European Union, however, is much more noticeably affected by the constitutional importance of issues such as the right to privacy, data protection, the principle of proportionality, and judicial protection according to the EU Charter of Fundamental Rights. In the light of a comparative doctrinal approach and an analysis of documents, the article looks into approaches, laws, decisions, surveillance measures, sanctions, Passenger Name Records, and transatlantic cooperation. Convergence can be observed in terms of the perception of terrorism as a common security risk and the application of preventive measures; divergence is present when it comes to issues such as data protection, judicial review, and executive discretion.

Keywords: counter-terrorism; fundamental rights; surveillance; data protection; due process; U.S.-EU cooperation

الملخص

مقتضيات بين التوازن زاوية من الإرهاب مكافحة في الأوروبي والنموذج الأميركي النموذج بين المقارنة الدراسة هذه تتناول طريقة أن إلا الديمقراطية، للدول متجددا تهديدا يشكل الإرهاب أن من الدراسة تنطلق .الأساسية الحقوق وحماية الأمن والأجهزة التنفيذية السلطات يمنح الأميركي فالنموذج .الأوروبي والاتحاد المتحدة الولايات بين تختلف القانونية الاستجابة على الاعتماد مع الخارجي، الأمني والتعاون والعقوبات الوقائية والرقابة الاستخبارات مجالات في واسعا هامشا الأمنية للخصوصية الدستورية بالمكانة أوضح بصورة فيتأثر الأوروبي النموذج أما .والمؤسساتية والتشريعية الدستورية الرقابة .الأوروبي للاتحاد الأساسية الحقوق ميثاق بموجب الفعالة القضائية الحماية في والحق التناسب ومبدأ البيانات وحماية والاجتهادات القانونية والنصوص الاستراتيجيات دراسة خلال من الوثائق، وتحليل المقارن القانوني المنهج الدراسة وتعتمد خطرا الإرهاب اعتبار في الطرفين بين تقاربا هناك أن النتائج وتبين .المستهدفة والعقوبات البيانات تبادل وآليات القضائية وحدود البيانات، وحماية القضائية، الرقابة نطاق في واضحا يبقى الاختلاف أن إلا وقائية، أدوات اعتماد وفي مشتركا أمنيا إذا إلا ومستدامة مشروعة تكون لا الديمقراطية الأنظمة في الإرهاب مكافحة أن إلى الدراسة وتخلص .التنفيذية السلطة .الانتصاف سبل وتوافر والشفافية المستقلة والرقابة والتناسب والضرورة الشرعية لمبادئ خضعت

المفتاحية الكلمات:

الأوروبي الأميركي التعاون العادلة؛ المحاكمة البيانات؛ حماية الرقابة؛ الأساسية؛ الحقوق الإرهاب؛ مكافحة

1. Introduction

Since the tragic acts of terrorism on September 11th, 2001, counterterrorism measures have been one of the most legally sensitive issues concerning government powers. The democratic government should ensure the safety of lives, the protection of the public order, its infrastructure, airlines, finances, and borders while being bound to follow their constitutional provisions, human rights norms, and other legal principles. The difference in the application of these two competing aspects can be seen when comparing the United States and the European Union. The first actor and the second one both share political, intelligence, and law enforcement interests in preventing terrorist activities, financing of terrorists, control

over the border movements and internet radicalization, yet do not use the same legal approach in their policies. The model of the U.S. legal framework is characterized by the predominance of executive powers, special status of national security considerations, authorization of the Congress, and constitutional approach focusing on litigation following implementation of measures. In case of the EU, supranational constitutionalism, Charter of the Fundamental Rights of the European Union, CJEU's jurisdiction, and data protection dominate. (United Nations Security Council Resolution 1373, 2001; The White House, 2022; European Commission, 2020b).

This point is significant in that counter-terrorism policy is no longer limited to the apprehension of suspects and criminal prosecutions as well as military action. It is also concerned with intelligence gathering, watch-listing, targeted financial sanctions, data retention, travel screening, risk assessments by algorithms, border management systems, online surveillance, content regulation on the internet, and collaborations with non-state entities including airlines, banks, internet companies, and telecommunication service providers. As noted by de Londras, contemporary counter-terrorism has become a complex transnational legal order that has immediate consequences for domestic governance and quotidian existence (de Londras, 2022). Thus, it is in criminal cases as well as through administrative processes and other procedures that rights issues arise. (Directive (EU) 2016/681; Regulation (EU) 2021/784; Council Decision 2012/472/EU; Council Decision 2010/412/EU).

In the case of the United States and the EU, the need for cooperation is also practical. In many cases, terrorist organizations and foreign fighters, funding, and communication are crossing boundaries. The need to cooperate in order to provide passenger name records, the Terrorist Finance Tracking Program (TFTP), mutual legal assistance, working together through Europol and United States agencies, as well as the coordination of sanctions, illustrates the need for cooperation. However, this becomes a legal challenge when on the one hand there is no requirement for the other party to have necessity, proportionality, purpose limitation, independent review, and remedy (Fahey et al., 2023; European Parliamentary Research Service, 2025; European Data Protection Board, 2024)..

The legal issue is not a mere political decision on security versus liberty. The legal issue is one of institutional design. The democratic approach to counterterrorism would not be concerned with which is more important: the need for security or rights. Instead, a democracy would be concerned about the following issues: the definition of the threat, the determination of which person or data is relevant to the situation, the limits that must be imposed on such determination, the body supervising this determination, the amount of information available to the person against whom an action is taken, and recourse available to that person (Scarcello, 2020; Sobol, 2023).

Thus, the comparison of the US model against the European one should be made based on three important aspects: surveillance and protection of data; targeted sanctions and the requirement of due process; and transatlantic data sharing practices (de Londras, 2022; Fahey et al., 2023). These three fields provide valuable comparative perspectives as they reflect the most profound distinctions between the two models. First, in the US, powers to protect national security have been legitimized on the grounds of foreign intelligence requirements and the prerogatives of the executive branch over national security affairs (PCLOB, 2023). Second, the constitutionalizing of the right to privacy and personal data protection in Europe entails the creation of a rights-based system, which does not allow for general collection and imposes a strict standard of necessity (CJEU, 2020; EDPS, 2024).

The methodology of the article can be characterized as a comparative legal and doctrinal analysis. The article uses primary sources such as legal documents, strategies, institution papers, and judicial decisions while referring to the recent scientific literature to interpret the issues at stake. The main thesis of the article is that the American and European models coincide in recognizing terrorism as a significant and ever-adapting threat, while diverging on the legal value and enforceability of fundamental rights. While the American model emphasizes the need for operational flexibility, the European model favors the constitutionally established limitations. Thus, the problem facing future cooperation between the US and Europe is the creation of instruments that allow security operations while satisfying the requirements of both democracy and the courts. (United States Congress, 2001a, 2001b; Directive (EU) 2017/541; Court of Justice of the European Union, 2017).

2. Research Problem

This problem arises from the conflict between shared goals for security and differences in legal protections. The U.S. and the European Union have joined forces to combat terrorism because both cannot cope with international threats on their own. Nevertheless, collaboration is complicated by differences in legal protection related to privacy, data protection, procedural rights, and judicial review. Surveillance, data exchanges for passengers, financial penalties, and preventive law enforcement might be effective tools for threat detection, but they could also encroach on human rights. The key problem then lies in using preventive security measures in democratic states without creating a routine of executive power. (Council Decision 2012/472/EU; Council Decision 2010/412/EU; Court of Justice of the European Union, 2017; Court of Justice of the European Union, 2020).

The issue is especially apparent within the U.S. in terms of the general legislative framework established after the September 11 attacks. The Authorization for Use of Military Force, the USA PATRIOT Act, and further intelligence powers were instrumental in the construction of a new paradigm focused on prevention and intelligence-based executive actions. However, there are special structures and mechanisms of judicial review in the United States that have been developed. However, many counter-terrorism measures imply the use of classified information, application of national security privileges, gathering of foreign intelligence, or sanction procedures where individual protection is severely limited. The current disputes regarding the application of Section 702 of the FISA are an example. The official oversight agencies have recognized the national security importance of Section 702, while identified possible privacy and civil liberties concerns that needed to be addressed (Privacy and Civil Liberties Oversight Board [PCLOB], 2023, 2026). (United States Congress, 2001a, 2001b; Reforming Intelligence and Securing America Act, 2024; Executive Order No. 13224, 2001).

In the case of the European Union (EU), the problem is different but equally complicated. The EU is not a federal state with a single centralized police power; instead, counter-terrorism remains based on cooperation between Member States, EU institutions, and specialized agencies such as Europol (Regulation (EU) 2016/794; Regulation (EU) 2022/991). In the field of counter-terrorism, the EU has developed an intricate legal and

institutional scheme consisting of directives, databases, cooperation agencies, national implementation, and judicial interpretation by the Court of Justice of the European Union (CJEU) (European Parliamentary Research Service, 2025). Directive (EU) 2017/541 harmonized the definition of terrorist offences and offences related to terrorism across Member States (Directive (EU) 2017/541). The European Union's Counter-Terrorism Agenda of 2020 emphasized four pillars: anticipation, prevention, protection, and response (European Commission, 2020). However, all EU counter-terrorism measures must remain consistent with the Charter of Fundamental Rights of the European Union, especially the rights to privacy, personal data protection, and effective judicial protection under Articles 7, 8, and 47 (Charter of Fundamental Rights of the European Union, 2012). The CJEU has repeatedly held that measures interfering with privacy, personal data, or judicial protection must satisfy strict requirements of legality, necessity, proportionality, independent oversight, and effective safeguards (Court of Justice of the European Union, 2020; Court of Justice of the European Union, 2022).

The key issue is not whether counter-terrorism measures are needed. There is no debate about the need to protect citizens from acts of terrorism. The key issue is the extent to which the law will allow measures for protection even before a crime has been committed, before an individual has had their case proven in court, or even before an individual realizes that there is something wrong because of being put on a list, because of having their information transferred to another database, or because their finances have been restricted in some way. (Council Common Position 2001/931/CFSP; Council Regulation (EC) No 2580/2001; Kadi I, 2008; Kadi II, 2013).

Consequently, the issue that will be considered in this article is as follows: while the United States and Europe have shared concerns on the issue of terrorism, their approaches to tackling terrorism are not similar since they ensure equilibrium between security powers of the executives and human rights using different frameworks. This means that collaboration must necessarily be legal in both regions. (Charter of Fundamental Rights of the European Union, 2012; Court of Justice of the European Union, 2022).

3. Research Questions

The central research question posed is: How well do the U.S. and EU counter-terrorism paradigms manage to achieve equilibrium between the need for security and the protection of fundamental rights?

The aforementioned central question is further divided into four different questions. First, how is the connection between security and rights viewed within the context of the U.S. counter-terrorism paradigm? Second, how is the protection of fundamental rights ensured within the EU counter-terrorism paradigm? Third, in what aspects and under what circumstances do the two paradigms coincide or differ from one another in relation to surveillance, sanctions, passenger and financial data exchange, and so forth? (PCLOB, 2023; Court of Justice of the European Union, 2022; Council Decision 2012/472/EU; Council Decision 2010/412/EU).

They are intended to lead the analysis from principles to concrete legal instruments. Questions one and two determine the inner logic of each theory. Question three is aimed at analyzing the two theories in those specific issues in which conflicts arise most often in the legal realm. Question four is used to examine the possibility of improving cooperation without sacrificing basic human rights to mere formality. (de Londras, 2022; Fahey et al., 2023).

4. Research Objectives

Four goals drive this paper. The first goal aims at analyzing the foundations of US-EU policies for combating terrorism through an analysis of counter-terrorism policies, legislation, and cases. The second goal analyzes the role of basic human rights in the two regimes by focusing on privacy, data protection, due process, judicial protection, and proportionality. The third goal explores the main challenges in each regime such as surveillance measures, targeted financial sanctions, passenger name records data (PNR), and Transatlantic Fight against Terrorist Financing (TFTP) cooperation. The fourth goal tries to ascertain whether effective cooperation can be attained while observing sufficient safeguards. (European Parliamentary Research Service, 2025; PCLOB, 2023; Court of Justice of the European Union, 2022; Council Decision 2012/472/EU; Council Decision 2010/412/EU).

The intention behind such objectives is not to proclaim that one theory is better than another. There are strengths and weaknesses associated with both theories. While the American system has capabilities and adaptability, there is a danger of too much secrecy and limited ways for redress. While the European model has rights-based language and judicial review, it may suffer from inconsistent application by individual countries. Thus, the goal of this article is to provide a legal analysis as opposed to a political one. (European Union Agency for Fundamental Rights, 2021; PCLOB, 2023; Saul, 2024).

5. Research Importance

This research is important for three reasons. First, there is an ongoing tendency for terrorist acts to exert pressure on the democratic systems to strengthen the state's power. After incidents happen or threats emerge, the government is compelled to introduce laws, enhance surveillance, broaden the scope of criminal activities, and implement preventive actions. The absence of the rule of law would result in the permanence of those emergency powers. (United Nations Security Council Resolution 1373, 2001; United Nations Security Council Resolution 2178, 2014; Saul, 2024).

Second, the comparison between the US and EU is relevant because both are significant players in security cooperation. Cooperation in areas such as sharing of information, intelligence, sanctions, borders, and monitoring money flow requires mutual trust. Mutual trust cannot simply be based on political statements; rather, it needs to have some solid legal underpinnings. This can easily be seen from the recurring transatlantic conflicts relating to transferring of information which arise when either one of the legal orders views the other as failing to provide sufficient protection to personal data and remedies. (Council Decision 2012/472/EU; Council Decision 2010/412/EU; Court of Justice of the European Union, 2020).

Third, the research adds value to the existing discourse on democratic resilience. Anti-terrorism measures can safeguard the state against violence and, at the same time, undermine democracy through practices like discrimination, constant surveillance, secrecy in decision making, and punishment devoid of adequate criticism. Thus, legitimacy does not lie only in the state's ability to protect against any threat but also in respecting the rule of law. A system

that secures its citizens but ignores their rights is bound to succeed in the short run but fail in the long run (European Union Agency for Fundamental Rights, 2021; European Network of National Human Rights Institutions, 2022; Saul, 2025).

6. Research Terms

The term 'terrorism' is defined here as severe violence and threats undertaken by a person for political, ideological, or religious reasons that aim at intimidating citizens, pressurizing a government, or disrupting societal stability. The term counter-terrorism is described as legal, administrative, intelligence, financial, policing, and judicial actions taken against acts of terrorism. Fundamental rights imply fundamental legal rights such as data protection, privacy, liberty, right to fair trial, non-discrimination, due process, freedom of expression, and judicial protection. (Directive (EU) 2017/541; United Nations Security Council Resolution 1566, 2004; Charter of Fundamental Rights of the European Union, 2012).

National security implies the protection of the state and its citizens against any significant threats such as terrorist attack, foreign interventions, and attacks on infrastructural facilities. Surveillance involves the collecting, monitoring, storing, and analyzing of information concerning communication, movements, finances, and individuals through legal obligations of authorities and organizations. Data Protection relates to the set of legal norms that govern the process of collecting and processing personal data (Regulation (EU) 2016/679; Directive (EU) 2016/681; United States Code, n.d.; Executive Order No. 14086, 2022).

A targeted sanction means a restriction that is applied to certain identified individuals, organizations, or groups and may entail freezing of assets, travel bans, or restrictions on financial transactions. The judicial scrutiny of a security measure occurs through independent judicial bodies prior to and/or following the adoption of the measure in question. Proportionality means a legal principle whereby the restrictive measure must have a legitimate purpose, must be appropriate to accomplish that purpose, be necessary as the lesser alternative fails to serve that purpose, and must have a proper balance between the two. (Council Common Position 2001/931/CFSP; Council Regulation (EC) No 2580/2001; Kadi I, 2008; Kadi II, 2013; Scarcello, 2020).

7. Theoretical Framework

Theoretical framework of this paper is the balance of security versus liberty as refined by principles of legality, necessity, proportionality, accountability, and judicial review as applied to the rule of law. Balance of security and liberty is not a conflict between absolutes of the former and the latter but an assumption of the fact that security is a prerequisite to rights and rights are a prerequisite to legal security. (Scarcello, 2020; Sobol, 2023; Saul, 2024).

While a simple balancing metaphor could imply that an enhancement in security necessarily means a reduction in liberties, such an interpretation is not entirely true. There could be certain protective measures that can help enhance security as well as rights by minimizing mistakes, maximizing trust, and instilling more discipline. For instance, independent reviews of surveillance targeting not only will safeguard the right to privacy but also will ensure that the information collected is accurate and valuable. The adoption of more explicit listing sanctions process would help prevent any erroneous listings but still allow the freezing of the assets of those who are truly menacing. (PCLOB, 2023; EDPB, 2024; Court of Justice of the European Union, 2022).

The theoretical approach is also informed by the recent literature on transnational counter-terrorism. As De Londras (2022) highlights, counter-terrorism can be regarded as an expanding transnational order that pulls many governance domains into security reasoning. It is crucial to emphasize this point in regard to the current comparative analysis, since the U.S. and EU approaches involve much more than criminal justice processes. In addition to that, both approaches involve border controls, migration policies, financial regulations, social media regulations, intelligence, and diplomacy.

Moreover, the activities of the UN Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism also contribute to this framework. As seen in recent reports by Ben Saul, who holds the mandate on this issue, counter-terrorism activities need to be clearly defined, subjected to human rights analysis, be subject to accountability, and focus on the implications of sanctions and regional cooperation on civil society (Saul, 2024, 2025). This is an important insight since the problem cannot be addressed within one country. In fact, regional and international institutions can come up

with counter-terrorism regulations which are then adopted into domestic jurisdictions without proper discussion.

The EU model demonstrates the application of the framework from a rights-based perspective. The Charter of Fundamental Rights means that privacy, data protection, and judicial effectiveness are no longer mere considerations of policy-making, but legally binding standards. The case law of the Court of Justice of the European Union has been using proportionality principles in cases involving data retention or data transfer systems. The decision made by the Court in PNR Directive in Ligue des droits humains means that the EU anti-terror law is possible, provided that it is interpreted in terms of rights. (Charter of Fundamental Rights of the European Union, 2012; Digital Rights Ireland, 2014; Tele2 Sverige and Watson, 2016; La Quadrature du Net, 2020; Ligue des droits humains, 2022).

Another example of a model that fits the framework can be found in the United States' system. The role of the Constitution, statutes, committees in Congress, inspectors general, the Foreign Intelligence Surveillance Court, and entities like the PCLOB in the United States are responsible for ensuring that control mechanisms apply to security powers. However, in the United States, the executive branch enjoys far more operational flexibility especially when it comes to foreign intelligence and national security. Protection of rights becomes highly fragmented in the United States. (United States Code, n.d.; PCLOB, 2023; Reforming Intelligence and Securing America Act, 2024).

The proposition concerning the theory of the article, therefore, becomes that a democratic counterterrorism approach must not only be effective but also be legally constrained, evidence-driven, reviewable, and remedial. The security interventions must be sufficiently transparent to prevent misuse, specific enough to avoid being intrusive, sufficiently supervised to minimize errors, and contestable enough to provide individual protections. It is the starting point for a comparison between the United States and the European Union approaches. (Sobol, 2023; International Commission of Jurists, 2020).

8. Previous Studies

Recent literature on counter-terrorism and human rights may be grouped into three themes: international counter-terrorism and rights, EU counter-terrorism and fundamental

rights, and transatlantic cooperation through data-sharing mechanisms. (de Londras, 2022; Baker-Beall & Mott, 2021; Fahey et al., 2023).

The first theme revolves around counter-terrorism international law and human rights. The work by De Londras (2022) constitutes a very valuable contribution to the study of the counter-terrorism international order. In her work, she argues that the concept of counter-terrorism should be understood in terms of a durable institutional regime encompassing the UN and other regional organizations, along with states, experts, standards, and capacity building efforts. This literature becomes valuable to us because it helps to understand the reasons behind the convergence of national counter-terrorism laws despite differences in the protection of rights.

The recent reports of UN Special Rapporteurs on this issue build on this academic research in highlighting the danger posed by vagueness in definitions, over-broad offenses, sanctions, restrictions on civil society, and low accountability (Saul, 2024, 2025). This research is important in the context of this current article because it demonstrates that the equation of security versus rights involves considerations beyond mere legality. An act might be legal but nevertheless problematic in light of the vagueness, disproportionality, discrimination, or unchallengeability of the laws that permit the act.

The second topic deals with EU counterterrorism and the protection of fundamental rights. The recent EU Counter-Terrorism Agenda 2020, which has received much academic attention, has put greater importance on anticipation and prevention. According to Baker-Beall and Mott (2021), this new approach of the EU represents examples of anticipatory security, such as preparedness, precaution, and preemption. Such an assessment is vital because, with an anticipation approach to lawmaking, the legal process is no longer about punishing past crime; instead, the focus is placed on preventing any harm. This may be legitimate considering the gravity of terrorism, although, due to its speculative nature, it requires many protective measures. (European Commission, 2020a; Baker-Beall & Mott, 2021).

An investigation into the influence of Directive (EU) 2017/541 on the rights and freedoms of EU citizens was undertaken by the European Union Agency for Fundamental Rights (FRA report). This report is significant because not only does it examine

counterterrorism from an efficiency perspective but also from a perspective where it affects fundamental rights (European Union Agency for Fundamental Rights, 2021). Similar arguments about evaluating counterterrorism legislation from a human rights perspective have been made by civil society and human rights networks, as well. EU institutions need to ensure that their laws and legislation have positive effects on suspects, victims, communities, and civic space (European Network of National Human Rights Institutions [ENNHRI], 2022).

A third set of studies is concerned with data-sharing and collaboration across the Atlantic. PNR arrangements, TFTP frameworks, and data-transfer disputes reflect the most evident legal dispute between the United States and the EU. The work by Fahey, Guild, and Kuskonmaz (2023) analyzes the evolution of PNR legislation within the scope of EU external policy and data management. This research demonstrates that PNR systems have evolved from being purely commercial air carrier systems into security and border control tools. Such an evolution is important because it means that data gathered for travel purposes now become a component of law enforcement and anti-terrorism mechanisms. (Council Decision 2012/472/EU; Council Decision 2010/412/EU; Fahey et al., 2023).

Case law of the CJEU is pivotal to this discussion. First, in its opinion Opinion 1/15, the CJEU dismissed the draft EU-Canada PNR Agreement due to insufficient protections offered by the agreement in terms of privacy and data protection. In addition, the interpretation made in the Ligue des droits humains case ensured the continued validity of the PNR Directive. Finally, as far as the sanctions regime is concerned, the series of Kadi cases highlighted the EU's willingness to ensure compliance of counter-terrorism sanctions with human rights norms, even when they were adopted under the auspices of the United Nations. (Court of Justice of the European Union, 2017; Kadi I, 2008; Kadi II, 2013; Court of Justice of the European Union, 2022).

Intelligence authorities such as Section 702 have been mentioned extensively in U.S. literature as well as the official oversight reports. For example, the PCLOB reports not only note the usefulness of surveillance tools but also the possible negative implications for privacy rights and liberties, compliance problems, and the necessity of making some changes (PCLOB, 2023, 2026). ODNI transparency reports contain important statistical data about

surveillance authorities that operate in the U.S. and constitute part of the country's oversight system (ODNI, 2025). GAO has even audited the implementation of the U.S. strategy regarding domestic terrorism, suggesting that terrorism governance is still a topical area of interest (GAO, 2025).

The difference between the above-mentioned literature is that most of them either deal with the U.S.'s security powers, or the EU's fundamental rights or even its data-sharing policies. There have been very few studies that incorporate all these aspects into one comparative analysis of these two systems' policies concerning security and rights issues. This paper seeks to fill in the gap and explore both sides of this comparison.

9. Research Method

The following article employs the comparative legal approach and doctrinal research. This type of methodology is justified since the research question addresses two different legal systems which have similar goals regarding security but which are structured differently. The study compares both primary sources and secondary literature, as well as relevant cases and cooperation documents. It will not conduct an empirical assessment of counter-terrorism efficiency in statistical terms. Rather, it focuses on the structure of both systems from a legal perspective. (International Commission of Jurists, 2020; Sobol, 2023).

Analysis of doctrine allows for determination of legal principles regulating the actions taken to address terrorism. In terms of the U.S. approach, analysis of doctrine includes examination of principles of law, powers vested in Congress, strategies at the national level, intelligence review, and institutional reports. Under the EU approach, analysis of doctrine includes examination of the Charter of the European Union, Directive (EU) 2017/541, the Strategy on the Security Union, the EU Counter-Terrorism Agenda, and decisions of the CJEU. (United States Congress, 2001a, 2001b; Directive (EU) 2017/541; European Commission, 2020a; Court of Justice of the European Union, 2022).

The method is qualitative and interpretive that determines whether there are any mechanisms such as legality, necessity, proportionality, notice, reasons, oversight, judicial review, and redress in the legal frameworks. The comparison is organized according to themes instead of country-wise descriptions only because a particular subject, for instance,

surveillance or sanctioning, leads to distinct rights issues within the respective systems. The method enables the article to examine convergence as well as divergence among the legal systems. (Scarcello, 2020; Sobol, 2023).

10. Study Tool

Document analysis serves as the research method. The documents used for analysis are US national security strategies, US National Strategy for Countering Domestic Terrorism, the USA PATRIOT Act, the Authorization for Use of Military Force, FISA Section 702 Oversight Documentation, PCLOB reports, ODNI Transparency Reports, EU strategies, Directive (EU) 2017/541, reports by FRA, CJEU judgments, and documents on PNR and TFTP cooperation. (PCLOB, 2023, 2026; ODNI, 2025; European Union Agency for Fundamental Rights, 2021; EDPB, 2022).

Document analysis is an appropriate method for research since it is based on law and doctrine. Document analysis allows analyzing how rules are constructed, interpreted, evaluated, and justified by different actors. At the same time, it enables the article to differentiate between formal rights protection and effective rights protection. While a particular legal instrument might incorporate certain rights protection mechanisms, their efficacy is contingent upon several factors, including transparency, independence, accessibility, and remedies.

11. Presentation and Discussion of Results

The analysis produces four principal results.

11.1. Shared security objectives but different legal cultures

The first finding is that both the US and the EU have similar security goals but function differently due to their varying legal traditions. Both systems aim at preventing terror attacks, disrupting terrorist cells, safeguarding the borders, investigating finance, and cooperating with allies. Both legal orders have shifted to preventive governance. This can be witnessed in areas such as intelligence gathering, listing of suspects, imposing sanctions, border screening, airline passenger information, and Internet monitoring. (The White House, 2021; European

Commission, 2020a; United Nations Security Council Resolution 2396, 2017; United Nations Security Council Resolution 2462, 2019).

Nevertheless, there is a higher focus on the capabilities of the executive with regard to security issues in the American model. However, this does not suggest that there are no rights in the American model. All aspects such as the constitution, courts, Congress, inspectors-general, the FISA court, and the PCLOB are involved. However, the United States model allows for security measures that can be taken initially, but within some bounds determined by classification, standing, secrecy, and deference to national security. (PCLOB, 2023; ODNI, 2025; Reforming Intelligence and Securing America Act, 2024).

In contrast, the European Union model provides greater attention for the constitutional nature of rights as conditions of security measures. Thus, according to the EU Charter of Fundamental Rights, rights limitation should be done according to the rule of law, should respect the essential content of rights and observe the principle of proportionality. Consequently, there is a difference in the logic of the analysis. Security objectives can be legal, however, the adopted measure should be accurate, necessary, limited and reviewable. It is well known that the Court of Justice of the European Union has enforced these requirements. (Charter of Fundamental Rights of the European Union, 2012; Court of Justice of the European Union, 2020; Court of Justice of the European Union, 2022).

That is precisely what causes disagreements between the two continents, even when there is an agreement on the nature of the problem. This is not an issue of whether or not the problem is real and severe. Rather, it is an issue of the extent of the action allowed, duration of data retention, use of indiscriminate collection methods, provision of remedies to non-citizens, and judicial oversight of security-related decisions. (Digital Rights Ireland, 2014; Tele2 Sverige and Watson, 2016; La Quadrature du Net, 2020; H.K. v Prokuratuur, 2021; SpaceNet and Telekom Deutschland, 2022).

11.2. Surveillance and data protection as a major divergence

A further consequence of the differences between the two models is that they show the largest gap in terms of surveillance and data protection. Under the American model, intelligence gathering is closely tied with national security and foreign intelligence activities.

Section 702 is one of the main examples because it provides a right to conduct surveillance against non-U.S. people reasonably thought to be outside the United States in order to gather foreign intelligence. It has been described by the American government and the responsible parties as essential to national security, while at the same time taking into account privacy and civil liberties implications (PCLOB, 2023, 2026).

The EU model focuses on surveillance by virtue of the right to privacy and data protection. Article 7 and Article 8 of the Charter guarantee the right to respect for private life and personal data respectively. On the other hand, Article 47 guarantees the right to an effective remedy before a tribunal. The Court of Justice of the European Union (CJEU) has always refused or limited the use of any system that allows a general and undifferentiated retention or transmission of personal data without strict guarantees. (Charter of Fundamental Rights of the European Union, 2012; Court of Justice of the European Union, 2020; H.K. v Prokuratuur, 2021).

The PNR directive offers an example of such a contradiction. While PNR data may be useful in finding out about travel trends and dangers, it includes personal information that was gathered for the purpose of traveling. According to Ligue des droits humains, the CJEU ruled in favor of the PNR directive by providing a strict interpretation that adhered to the Charter of Fundamental Rights. The Court made limitations on processing, sensitivity of data, automated assessment, and indiscriminate processing. The EDPB underscored the significance of the ruling of the CJEU for understanding and implementing the PNR directive (European Data Protection Board [EDPB], 2022). (Directive (EU) 2016/681; Court of Justice of the European Union, 2022).

This framework differs from the security-focused one, where large-scale data gathering is considered legitimate because of its intelligence utility. In the EU framework, the necessity and proportionality of such activity are assessed. Moreover, automation itself is regarded as a rights-intensive process due to the risks of producing a large number of false positives, creating discriminatory impacts, and making opaque decisions. The concept of anticipatory security elaborated by Baker-Beall and Mott is relevant in this context since the higher the reliance on predictive methods in counter-terrorism, the more significant these problems become (Baker-Beall & Mott, 2021).

The consequence, therefore, is that any future cooperation agreement between the U.S. and EU on data needs to take into consideration the proportionality criteria of the EU. In other words, if the cooperation mechanisms allow for excessive data retention, unclear purpose, inadequate remedy, or wide-ranging data transfer beyond what is necessary, there is a danger that such mechanisms will not survive a legal test. The task is not to stop data cooperation but to conduct it based on purpose limitation, minimization, scrutiny, and redress. (Court of Justice of the European Union, 2020; Executive Order No. 14086, 2022; EDPB, 2024).

11.3. Sanctions and due process

The third finding deals with sanctions and their relation to due process. The U.S., and the EU both sanction countries as counter-terrorism measures. Sanctions may lead to asset freezes, transaction bans, travel bans, and disruptions of finances. This method is desirable because of its speed and efficiency since it does not need a court proceeding to be put into effect. On the other hand, it is dangerous as well since it can cause harm to property, reputation, mobility, domestic, commercial, and financial aspects of individuals' lives. (Executive Order No. 13224, 2001; Council Regulation (EC) No 2580/2001; United Nations Security Council Resolution 1267, 1999; United Nations Security Council Resolution 1373, 2001; United Nations Security Council Resolution 2462, 2019).

This sanction mechanism of the United States is strong and highly influential due to the importance of its financial system. The decisions issued by the United States Department of the Treasury can result in serious consequences. There is an existing procedure for reconsideration and for appealing against decisions at the administrative and judiciary levels; however, those affected may encounter problems related to the classification of the evidence or use of intelligence. (Executive Order No. 13224, 2001; 31 C.F.R. Part 594).

The EU model is shaped by the right to be heard, the duty to give reasons, proportionality, and effective judicial protection. The Kadi litigation remains the leading example, even though it is older than the requested secondary literature. It is unavoidable as a primary legal authority because it established that EU courts may review counter-terrorism sanctions for compatibility with EU fundamental rights, even when sanctions implement international security obligations. Later EU sanctions cases continued to require sufficient

reasons and evidence. This approach confirms that targeted sanctions cannot be treated as purely political or diplomatic acts beyond judicial control. (Kadi I, 2008; Kadi II, 2013).

Recent analysis by UN Special Rapporteur has also highlighted the need for incorporating human rights in sanctions and cooperation on counter-terrorism in the region (Saul, 2025). Sanctions may be justified, yet they demand an easy delisting process, a reason that can be disputed, and protection from indefinite restrictions along with consideration of the humanitarian impacts. (Saul, 2025; United Nations Security Council Resolution 2664, 2022).

The analysis illustrates that although both models employ sanctions, there is a difference between the two in terms of the degree and visibility of the role of judicial review. Whereas the U.S. model might allow for more dependence on classified information, and on the judgment of the executive branch of government, the EU model stresses judicial involvement and an understanding of the person's reasons for being listed.

11.4. Transatlantic cooperation as legal negotiation

Fourth, transatlantic cooperation is best understood in the context of legal negotiations. There is a mutual dependency between the United States and the EU in the fight against terrorism. Nevertheless, there should be some constitutional barriers overcome in order for cooperation to take place. This can be seen by analyzing the cases of PNR and TFTP. While the US is seeking the acquisition of the data that can help detect any threats, the EU is seeking protection of that data. (Council Decision 2012/472/EU; Council Decision 2010/412/EU).

Cooperation on PNR is particularly problematic since it affects regular travellers who are not suspected of committing any offense. The issue of proportionality comes up since much data on many innocent individuals must be processed for the purpose of identifying few threats. In that respect, European Union law demands high levels of safeguarding. As per Fahey et al. (2023), PNR information has been incorporated into data governance in external relations which encompasses trade, border management, crime, and security.

Similarly, there are questions around TFTP cooperation in the realm of finance. Financing activities of terrorists are crucial in identifying terrorist networks as well as foiling

any planned attack. On the other hand, information that is gathered through financing can involve personal relationships, contributions to religion, political activities, or even family ties. It means that it needs to be protected by measures such as purpose limitation, controlled access, supervision, data protection, storage limits, and independent reviews. (Council Decision 2010/412/EU; United Nations Security Council Resolution 2462, 2019; Riehle, 2020).

Further instances of disagreement over transatlantic data exchanges, not limited to commercial data transfer cases like Schrems II, illustrate the point that there needs to be effective safeguarding according to EU laws even if the data exchange takes place outside the Union. While commercial data transfer differs from the issue of counter-terrorism cooperation, the fundamental principle remains that no personal data can be moved into an environment without sufficient safeguarding. (Court of Justice of the European Union, 2020; Executive Order No. 14086, 2022; EDPB, 2024).

11.5. Comparative synthesis

The greatest strength of the American model is flexibility, swiftness, and overall national capability. The system has the ability to utilize the power of its agencies, information technology, sanctions power, and diplomacy swiftly and effectively. The greatest vulnerability of the model is that the elements of secrecy and discretion may hinder the effective involvement of people who will be impacted negatively by these decisions.

The greatest strength of the European model is that the system promotes the constitutionalization of rights, proportionality, and judicial control. In addition, the use of the courts to delineate the limits of counterterrorism measures and the consideration of data protection as a fundamental right and not just policy choice is a positive factor (Charter of Fundamental Rights of the European Union, 2012; Digital Rights Ireland, 2014; Tele2 Sverige and Watson, 2016; La Quadrature du Net, 2020; Ligue des droits humains, 2022).

Comparative finding cannot be made in the sense that one system safeguards the interest of security while the other ensures the protection of the rights of individuals. Both systems try to safeguard both of these interests in their own way. The distinction between them emerges from the order of law and the institution itself. In the case of the United States, there is a

priority for security followed by the process of correction and supervision. In the case of the EU, the restrictions on rights emerge from the very validity of the measure itself.

12. Recommendations

According to the findings of the analysis, six recommendations are made. Firstly, any counterterrorism laws have to have defined terms since lack of precision might lead to overreaching and chilling effect on free speech. Secondly, necessity and proportionality have to be ensured in the designing stage of all kinds of surveillance or data sharing practices. This implies clear purpose, limitation of data collected, limitation of data retention, independent authorization (where applicable), and frequent audits. The automated risk assessment systems need to be intelligible in order to be able to be subjected to oversight. (Saul, 2024; International Commission of Jurists, 2020; United Nations Security Council Resolution 2396, 2017; Directive (EU) 2016/681).

Moreover, targeted sanctions must have more substantial procedural safeguards. Individuals must be given the reasons to the greatest degree possible without compromising security, along with opportunities to seek delisting, periodic review, and legal redress. There may need to be special measures for classified information, although secret information cannot preclude all forms of review. (Kadi I, 2008; Kadi II, 2013; Saul, 2025; United Nations Security Council Resolution 2664, 2022).

Lastly, any agreement for transatlantic sharing of personal information must include binding safeguards instead of vague political reassurances. The agreement should contain provisions for purpose limitation, retention, access, onward transfer, independent supervision, complaints, and individual redress irrespective of nationality. (Council Decision 2012/472/EU; Council Decision 2010/412/EU; Court of Justice of the European Union, 2017; Court of Justice of the European Union, 2020).

The fifth recommendation would be that oversight agencies must be independent and capable of producing significant reports. Oversight that lacks access to information or fails to communicate to the public is insufficiently trustworthy. Reports produced by organizations like PCLOB, FRA, parliamentary committees, and data protection authorities are important

as they make secret or complicated technologies accountable to citizens. (PCLOB, 2023, 2026; European Union Agency for Fundamental Rights, 2021; EDPB, 2024).

The final recommendation for sound counter-terrorism policy is that it not view human rights as impediments to achieving national security. Rights protections could enhance the effectiveness, legality, and sustainability of security measures. A system that is both legitimate and legal will generate less resistance, discrimination, and judicial scrutiny and allow for international cooperation. (Sobol, 2023; Saul, 2024; International Commission of Jurists, 2020).

13. Conclusion

The comparison between the United States and the European Union shows that democratic counter-terrorism is shaped by the tension between security necessity and fundamental rights protection. Both models recognise terrorism as a serious threat and use preventive tools to address it. Both also contain safeguards. However, the legal cultures differ. The United States gives broader operational space to executive security authorities and relies on a mixture of constitutional litigation, statutory oversight, congressional supervision, and specialised bodies. The European Union gives greater constitutional weight to privacy, data protection, proportionality, and effective judicial protection, with the CJEU playing a central role in defining limits. (de Londras, 2022; PCLOB, 2023; Court of Justice of the European Union, 2022).

The main divergence appears in surveillance and data protection. The U.S. model is more accepting of broad foreign intelligence authorities, while the EU model is more restrictive where personal data is processed on a large scale. Sanctions also reveal differences in due process and judicial review. Cooperation mechanisms such as PNR and TFTP confirm that transatlantic counter-terrorism is not merely an operational matter; it is a legal negotiation between different rights standards. (PCLOB, 2023; Court of Justice of the European Union, 2020; Court of Justice of the European Union, 2022; Kadi I, 2008; Kadi II, 2013).

The article concludes that the future of legitimate counter-terrorism lies neither in unrestricted security powers nor in unrealistic limits that ignore real threats. It lies in a model of disciplined prevention. Such a model permits the state to act before harm occurs, but only

under clear law, strict necessity, proportionality, independent oversight, transparency where possible, and effective remedies. If the United States and the European Union can design cooperation around these principles, they can protect both security and fundamental rights. If they fail to do so, counter-terrorism may become legally fragile, politically contested, and less trusted by the communities it is meant to protect. (Sobol, 2023; Saul, 2024; International Commission of Jurists, 2020).

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