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المجلة العربية للعلوم الإنسانية والاجتماعية
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من نحن

المجلة العربية للعلوم الإنسانية والاجتماعية مجلة علمية الكترونية محكمة ، ربع سنوية، تصدر عن مركز السنبلة للبحوث والدراسات، عمان - الأردن ، تعنى بنشر البحوث والدراسات ، وملخصات رسائل الماجستير والدكتوراه ، ونشر فصول من الرسائل العلمية ، ومراجعة الكتب ، ونشر التقارير والندوات والمؤتمرات العلمية ، والحوارات واللقاءات العلمية في مجالات العلوم الإنسانية والاجتماعية بجميع فروعها : التاريخ ، والتربية ، وعلم الاجتماع ، والفلسفة ، والأديان ، وعلم النفس ، والقانون والعلوم السياسية ، والعلوم الادارية ، والتنمية البشرية ، وعلم الجريمة ، وعلم الانثربولوجيا، اللغة العربية وآدابها ،الجغرافيا الآثار، الإعلام والصحافة ،المكتبات والمعلومات.

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.

جـ. إذا كان المرجع رسالة ماجستير أو دكتوراه:

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د.إذا كان المرجع نشرة أو إحصائية صادرة عن جهة رسمية:

—يكتب اسم الجهة، عنوان التقرير ، المدينة، ، سنة النشر.

هـ.إذا كان المرجع موقع الكتروني:

—يكتب اسم المؤلف، عنوان الموضوع ، سنة النشر والتاريخ ، الرابط الالكتروني.

و- وقائع المؤتمر:

—اسم الباحث (الباحثين) بدءاً باسم العائلة، عنوان الدراسة، اسم المؤتمر، رقم المجلد، سنة النشر.

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

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عارف محمد السرهيد الجهني -الاردن - رئيس التحرير - هاتف (0223366770) - ايميل(editor@arabjhs.com)

أحمد محمد مفلح -الاردن - سكرتير التحرير - الهاتف (690962092169) - الواتساب (690962092169) - البريد الالكتروني(ahmed@arabjhs.com)

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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	
HUMANINDEX قاعدة	
Crossref قاعدة بيانات	
EBSCO قاعدة بيانات ابسكو العالمية	

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مجلّة عربيّة محكّمة وفقاً لتصنيف قاعدة البيانات

EBSCO

العدد السابع والثلاثون/ حزيران _ 2026

The War Paradigm and the Rule-of-Law Paradigm: Divergent U.S. and EU Approaches to Counter-Terrorism

Ruba Bou Khzam

Professor Dr. Kamal Hammad

Islamic University of Lebanon

الملخص

تتناول هذه الدراسة الاختلاف البنيوي بين المقاربة الأميركية والمقاربة الأوروبية في مكافحة الإرهاب، وذلك من خلال المقارنة بين نموذج الحرب ونموذج سيادة القانون .تنطلق الدراسة من أن الولايات المتحدة طورت بعد أحداث 11 أيلول/سبتمبر 2001 إطارا قانونيا وسياسيا يمزج بين استعمال القوة، السلطة التنفيذية، الاستخبارات، العقوبات، والملاحقة الجنائية، بينما بنى الاتحاد الأوروبي مقاربته على تنسيق القانون الجنائي، التعاون القضائي والشرطي، التناسب، حماية البيانات، والرقابة القضائية .وتكمن مشكلة البحث في أن النظامين يتعاونان في مواجهة تهديدات عابرة للحدود، ومنها تنظيم القاعدة وداعش والتمويل الإرهابي والمحتوى الإرهابي على الإنترنت، إلا أنهما لا ينطلقان من النموذج القانوني نفسه .يعتمد البحث منهجا قانونيا مقارنا وتحليلا وثائقيا للمصادر الأولية، بما في ذلك القوانين الأميركية، تشريعات الاتحاد الأوروبي، أحكام المحكمة العليا الأميركية، أحكام محكمة العدل للاتحاد الأوروبي، وقرارات مجلس الأمن ذات الصلة .وتخلص الدراسة إلى أن الاختلاف الأقوى يظهر في استعمال القوة والاستخبارات، بينما تظهر مجالات التقارب في التجريم، مكافحة التمويل، إزالة المحتوى الإرهابي، وتبادل المعلومات .وتوصي الدراسة بتعزيز الضمانات المشتركة في تبادل البيانات، والرقابة على الإجراءات الوقائية، وتوضيح حدود القوة العسكرية والاستخباراتية.

الكلمات المفتاحية :مكافحة الإرهاب؛ نموذج الحرب؛ سيادة القانون؛ الولايات المتحدة؛ الاتحاد الأوروبي؛ القاعدة؛ داعش؛ حماية البيانات؛ الرقابة القضائية.

Abstract

This article examines the divergence between United States and European Union counter-terrorism governance through the analytical contrast between the war paradigm and the rule-of-law paradigm. It argues that the United States developed, after 11 September 2001, a model shaped by military authorization, executive power, intelligence collection, sanctions, and criminal prosecution, whereas the European Union developed a model structured by harmonized criminal law, judicial cooperation, proportionality, fundamental rights, data protection, and supranational judicial review. The research problem is that both systems cooperate against transnational terrorist threats, including Al-Qaida, ISIL/Daesh, terrorist financing, online terrorist content, and foreign terrorist fighters, but they do not attach the same legal consequences to security measures. The article applies a comparative doctrinal method and uses legal document analysis as its study tool. It analyzes U.S. statutes, EU legal instruments, U.S. Supreme Court case law, Court of Justice of the European Union case law, and United Nations Security Council resolutions. The article finds that the clearest divergence concerns the use of force and intelligence secrecy, while important convergence exists in criminalization, financial intelligence, online-content regulation, sanctions, and cross-border cooperation. It recommends clearer legal limits on force-based counter-terrorism, stronger accountability for intelligence-led measures, and common safeguards for transatlantic data sharing and preventive security tools.

Keywords: counter-terrorism; war paradigm; rule of law; United States; European Union; Al-Qaida; ISIL/Daesh; data protection; judicial review.

1. Introduction

Anti-terror measures post-11 September 2001 did not arise under one universal legal framework, since the security challenge was expressed through diverse constitutional and institutional frameworks within each state and regional organization (de Londras, 2022; Mitsilegas, 2021). The American response relied on a national security framework that was built on a framework of military authorization, executive power, intelligence gathering, economic sanctions, and federal prosecution (Authorization for Use of Military Force [AUMF], 2001; USA PATRIOT Act, 2001; White House, 2022). The EU's answer relied on a security union framework, which involved conferred powers, criminal law harmonization, cooperation among member states, fundamental rights scrutiny, and the exercise of judicial review through the CJEU (European Commission, 2020a, 2020b; Directive (EU) 2017/541, 2017; Mitsilegas, 2021).

The comparison between war paradigm and rule of law paradigm is relevant since the anti-terrorism policies are usually situated on the border between legality and security (de Londras, 2022; Ní Aoláin, 2021). War paradigm considers terrorism as a security issue that can be addressed by military action, intelligence and executive power under domestic and international laws (AUMF, 2001; United States v. Zubaydah, 2022). Rule of law paradigm, on the other hand, perceives terrorism as an important security problem that should be managed legally (Charter of Fundamental Rights of the European Union, 2012; La Quadrature du Net, 2020; SpaceNet, 2022).

This article does not claim that there are no rule of law safeguards in place in the United States, nor does it claim that preventive security tools do not exist within the European Union. The American legal system carries out judicial reviews for criminal prosecutions, statutory litigation, and some issues involving national security, although there are doctrines like "state secrets" that could preclude reviews in some intelligence cases (FBI v. Fazaga, 2022; United States v. Zubaydah, 2022). There are also preventive tools used by the EU in such areas as terrorist content takedowns, passenger name records processing, sanctions, financial intelligence, and deradicalization (Regulation (EU) 2021/784, 2021; Ligue des droits humains, 2022; Baker-Beall & Mott, 2021;Rosanò, 2023).

The importance of the comparative analysis is underlined by the present threats that are transnational in their organizational, financial, communications, and travel dimensions (United Nations Security Council, 2019, 2021, 2024). The United Nations Security Council provides an ISIL/Da'esh and Al-Qaida sanctions regime that obliges states to deal with financing, sponsorship, and association of listed persons and organizations (United Nations Security Council, 2021, 2024). While the EU has implemented global anti-terrorist duties through criminal law, sanctions, data collection, and financial measures, the USA has embedded those duties in its national security system (Directive (EU) 2017/541, 2017; Regulation (EU) 2024/1624, 2024; AUMF, 2001;White House, 2021).

The article further asserts that U.S.-EU divergence is not just a disagreement over policies. It is a structural divergence between a sovereign nation with military power and a supranational system of law that relies on implementation by the Member States and a rights-based legality system (European Commission, 2020a; Burchett et al., 2022). The former becomes evident in the use of force, intelligence secrets, data governance, and judicial relief measures. On the other hand, the latter becomes evident in criminalization measures, counterterror financing, online content governance, and the enforcement of sanctions (Regulation (EU) 2021/784, 2021; Regulation (EU) 2024/1624, 2024; Twitter, Inc. v. Taamneh, 2023; United Nations Security Council, 2024).

2. Research Problem

The primary research question centers on how both the United States and the European Union operate together to combat terrorism but fail to apply identical legal paradigms in defining the bounds and scope of their counter-terrorism powers (Leidig & Van Mieghem, 2021; Burchett et al., 2022). The United States continues to operate within a paradigm that is heavily defined by past laws like the AUMF, the Patriot Act, FISA, and post-9/11 executive national security practices (AUMF, 2001; USA PATRIOT Act, 2001; Foreign Intelligence Surveillance Act, 1978/2008; Reforming Intelligence and Securing America Act [RISAA], 2024). Meanwhile, the European Union is operating within a paradigm that is highly defined by legality, proportionality, fundamental rights, the Charter, and the CJEU's jurisdiction (Charter of Fundamental Rights of the European Union, 2012; La Quadrature du Net, 2020; Ligue des droits humains, 2022).

The issue is practical as counterterrorism cooperation involves sharing information, evidence, watchlists, financial intelligence, passenger information, designation of sanctions, and referrals for content on the Internet, which can involve crossing legal jurisdictions (European Commission, 2020a; European Parliament, 2023). A piece of information gathered legally under a US foreign intelligence jurisdiction may involve issues such as admissibility, necessity, proportionality, and adequacy of redress when used in relation to proceedings and data transfers within an EU context (Schrems II, 2020; Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023). A restrictive measure implemented for preventative purposes may also need justification, proof, judicial review, and redress if it infringes upon rights protected by EU law (Mitsilegas, 2021; United Nations Security Council, 2024).

However, the problem is also theoretical in nature because it questions the traditional distinction between war, policing, intelligence, criminal law, and administrative prevention regarding counterterrorism issues (de Londras, 2022; Ní Aoláin, 2021). When terrorism is seen primarily as a matter of war, then the focus shifts to the authorization of use of force, military necessity, secrecy, and coordination between the executive bodies (AUMF, 2001; White House, 2022). On the other hand, when terrorism is seen primarily as a rule-of-law issue, then the focus shifts to specific offences, proportionality of measures, judicial oversight, and rights-compliant cooperation (Directive (EU) 2017/541, 2017; Mitsilegas, 2021; European Union Agency for Fundamental Rights, 2022).

The issue is not about whether one of the models is purely law-based while the other is completely unlawful. It is about how both liberal legal systems can cooperate in the face of grave threats when the former is an institutional system that has the capacity to use military and intelligence capabilities of the state, while the latter is a limited competency system (European Commission, 2020b; Burchett et al., 2022).

3. Research Questions

The central research question is: How do the war paradigm and the rule-of-law paradigm explain the divergence between U.S. and EU counter-terrorism strategies? This question is based on the finding that both regimes tackle terrorism, terrorist financing, foreign terrorist fighters, internet-based terrorist propaganda, and transnational extremist networks using

distinct constitutional terminology and accountability frameworks (Directive (EU) 2017/541, 2017; UN Security Council, 2021, 2024; White House, 2021, 2022).

This research is underpinned by four subsidiary questions. First, how was the American war paradigm established post 9/11, and in what way does it persist to influence current counter-terrorism legislation? Second, in what way does the European Union's rule-of-law paradigm impact counter-terrorism policies via harmonization of criminal law, prevention, data protection, and judicial review? Third, is it in the area of application of force, surveillance, sanctions, prosecution, or transfer of data that the greatest differences lie? Finally, can both paradigms peacefully coexist within transatlantic counter-terrorism cooperation, provided that cooperation instruments provide sufficient guarantees and remedies (Schrems II, 2020; Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023)?

4. Research Objectives

The first objective is to explain the meaning of the war paradigm in U.S. counter-terrorism by analyzing the AUMF, intelligence authorities, executive national-security policy, and case law on secrecy and terrorism-related litigation (AUMF, 2001; FBI v. Fazaga, 2022; United States v. Zubaydah, 2022). The second objective is to analyze the EU rule-of-law model through the Charter, Directive (EU) 2017/541, Regulation (EU) 2021/784, the 2020 EU Counter-Terrorism Agenda, and the CJEU's data and proportionality jurisprudence (European Commission, 2020a; Directive (EU) 2017/541, 2017; Regulation (EU) 2021/784, 2021; La Quadrature du Net, 2020).

Thirdly, it aims to analyze both frameworks in various legal sectors, including use of force, criminalization, surveillance, Internet content, sanctions, data transfers, financing of terrorism, and accountability mechanisms in court (Regulation (EU) 2024/1624, 2024; Twitter, Inc. v. Taamneh, 2023; United Nations Security Council, 2024). Fourthly, the study will explore how the differences between two legal paradigms impact U.S.-EU cooperation in terms of intelligence sharing, exchange of personal data, and preventative measures among others (Schrems II, 2020; Commission Implementing Decision (EU) 2023/1795, 2023). Lastly, the study will explore potential means to reduce legal tensions in such a way that essential

functions of the security sector will not be undermined (Burchett et al., 2022; European Union Agency for Fundamental Rights, 2022).

5. Research Importance

The theoretical significance of the research concerns an attempt to separate the two legal paradigms that are commonly analyzed independently in counter-terrorism studies (de Londras, 2022; Mitsilegas, 2021). The war paradigm is responsible for the ability of U.S. counter-terrorism law to encompass armed conflict, intelligence secrecy, sanctions, and federal prosecution under a single national security regime (AUMF, 2001; White House, 2022). The rule-of-law paradigm clarifies the reason why EU counter-terrorism law is more clearly mediated by legal harmonization, rights review, proportionality, and judicial oversight (European Commission, 2020a; Charter of Fundamental Rights of the European Union, 2012; European Union Agency for Fundamental Rights, 2022).

The practical significance of the research is evident from its link to transatlantic cooperation. In terms of cooperation, the USA and the EU provide mutual information exchange, impose sanctions, deal with the problem of terrorist financing, cooperate in relation to terrorist contents on the Internet, and act against any threat associated with ISIL/Da'esh and Al-Qaida (United Nations Security Council, 2021, 2024; Regulation (EU) 2021/784, 2021). Problems may occur in cooperation if one system is based on intelligence flexibility whereas the other one on necessity, proportionality, purpose limitation, and adequate redress (Schrems II, 2020; Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023).

The research is also important for human-rights analysis. Counter-terrorism laws protect life and public security, but they may also widen criminal liability, burden privacy, restrict movement, and limit procedural guarantees when preventive measures are applied broadly (Mitsilegas, 2021; European Union Agency for Fundamental Rights, 2022; Ní Aoláin, 2021). A comparative study helps identify where security cooperation can be strengthened through safeguards instead of being weakened by legal conflict (Burchett et al., 2022; European Parliament, 2023).

6. Research Terms

War paradigm refers to a legal-political approach to treating terrorism as a form of conflict that is mainly characterized by the use of force, executive discretion, intelligence gathering, secrecy, and preventive action (AUMF, 2001; White House, 2022; de Londras, 2022). On the other hand, the rule of law paradigm is described as a legal approach to counter-terrorism where legality, proportionality, judicial oversight, fundamental rights, criminal process, and accountability govern security operations (Charter of Fundamental Rights of the European Union, 2012; Mitsilegas, 2021; European Union Agency for Fundamental Rights, 2022).

Counterterrorism is defined as the array of actions that involve various aspects such as legality, administration, intelligence, finance, criminal prosecution, and military action against terrorism (United Nations Security Council, 2019; European Commission, 2020a; White House, 2021). Military means the resorting to military actions based on national and international law, especially when there is use of military actions following acts of terrorism (AUMF, 2001; White House, 2022). Self-defense refers to the international law principle which enables states to resort to force after having been subjected to an armed attack, provided that it meets certain conditions regarding necessity and proportionality (United Nations Charter, 1945; AUMF, 2001).

Executive power refers to the powers of the executive branch in directing military, intelligence, foreign policy, and national security activities under constitutional and statutory control (AUMF, 2001; RISAA, 2024; White House, 2022). Judicial review involves the ability of the courts to assess the legality of the counter-terrorism measures and evaluate whether such limitations on human rights are justified, necessary, proportionate, and include appropriate remedies (FBI v. Fazaga, 2022; La Quadrature du Net, 2020; Ligue des droits humains, 2022). Preventive security refers to actions taken prior to any harm being done, which may include risk assessments, watch-listing, terrorist content removal, asset freezing, passenger name record screening, and intervention (Regulation (EU) 2021/784, 2021; Ligue des droits humains, 2022; Baker-Beall & Mott, 2021).

7. Theoretical Framework

Comparative legal institutionalism serves as the theoretical basis of this paper. According to the theory, the significance of any counter-terrorism legislation cannot be determined by merely reading its legal language since the definition of such legislation must take into account the particular institution that passes it, the legality of passing it, the legal framework that constrains it, and the mechanisms for redress available to those affected (de Londras, 2022; Mitsilegas, 2021). Comparative refers to the differences in the responses by U.S. and EU institutions to the same security challenges (Leidig & Van Mieghem, 2021; Burchett et The U.S. side of the framework emphasizes sovereign state capacity.

The Congress may have power to use force; the agencies of the government may engage in intelligence and policing functions; the executive may be responsible for coordinating foreign policy and military actions; and the federal courts may decide certain cases while often giving way to national security classification (AUMF, 2001; FBI v. Fazaga, 2022; United States v. Zubaydah, 2022). That is how the counter-terrorism policy in the United States can shift from one field to another (USA PATRIOT Act, 2001; RISAA, 2024; White House, 2021).

On the EU side of the framework, competence and legality based on rights is stressed. The EU cannot have war powers like that of a state because it is made up of different states. Its powers stem from internal security, criminal law harmonization, border actions, judicial cooperation, sanctions coordination, data protection and external action (European Commission, 2020a, 2020b; Directive (EU) 2017/541, 2017). From the jurisprudence of the CJEU, it becomes clear that, even when Member States claim that there was an incident of terrorism, serious crime, or national security, EU law requires necessity, proportionality, review and rights-compatible interpretation (La Quadrature du Net, 2020; Privacy International, 2020; G.D. v. Commissioner of An Garda Síochána, 2022; SpaceNet, 2022).

Legal friction has also been adopted in the framework. Legal friction refers to a situation whereby cooperation requires the participation of systems that have different legal meanings for a particular policy (Schrems II, 2020; Commission Implementing Decision (EU) 2023/1795, 2023). Examples of instances where legal friction can arise include data exchange, passenger screening, intelligence-led evidence, sanctions lists, and terrorist content takedowns since all these areas combine prevention, secrecy, limitation of rights, and international

enforcement (Regulation (EU) 2021/784, 2021; Ligue des droits humains, 2022; United Nations Security Council, 2024).

8. Previous Studies

As evidenced by recent research, counter-terrorism has evolved into a thick field of transnational law. According to De Londras (2022), the order of counter-terrorism after the 9/11 terrorist attack grew across four levels of international, regional, national, and personal. The above statement provides evidence for the assertion in this article that counter-terrorism should not be studied within a single domestic context alone. In her discussion of global standards and preventative security, Ní Aoláin (2021) suggests that informal counter-terrorism tools affect nations despite lack of accountability.

In their research, Baker-Beall and Mott (2021) consider the 2020 EU Counter-Terrorism Agenda and discuss anticipation, preparedness, precaution, and pre-emption as major logics in the EU's counter-terrorism agenda. The importance of the research lies in its ability to question the view of the EU as an organization concerned only with the protection of human rights since, according to the authors, EU rule-of-law discourse includes elements of preventive security (Baker-Beall & Mott, 2021). Also, Den Boer (2022) argues that EU security strategies include risk management by means of agencies and databases.

Mitsilegas (2021) studies counter-terrorism and the rule of law in the EU, and highlights that extensive definition, emergency treatment, sanctions manufacturing, and criminalization might pose a threat to legality and fair trial principles. This paper utilizes the above-mentioned argument to make the case that although the EU rule-of-law model is far from flawless, it is, nevertheless, more vulnerable to supranational human rights scrutiny compared to the American war paradigm (Mitsilegas, 2021; European Union Agency for Fundamental Rights, 2022).

According to Burchett, Weyembergh, and Theodorakakou (2022), there is a significant study conducted by the European Parliament on the effectiveness of EU counter-terrorism strategies and policy instruments. The aforementioned study corroborates the idea that there is a fragmentation of the EU counter-terrorism framework along measures, agencies, databases, and implementation at the member state level, hence emphasizing the necessity of conducting a comparative analysis of the legal-institutional framework (Burchett et al., 2022). According

to the European Parliamentary Research Service, EU counter-terrorism is also a multi-layered policy framework (European Parliament, 2023).

Leidig & Van Mieghem (2021) make a comparison between the U.S. National Strategy for Countering Domestic Terrorism and the EU Counter-Terrorism Agenda, revealing how both regimes have evolved to address the issue of domestic violent extremism and technology-based threats. This research is pertinent to this analysis since it reveals convergent threat perceptions despite having distinct legal frameworks (Leidig & Van Mieghem, 2021). Moreover, as pointed out by Rosanò (2023), the EU deradicalization regime is influenced by the EU's limited competence, indicating that the EU's approach to counter-terrorism requires cooperation rather than command.

The institutional researches are of great importance as well. According to the research conducted by the European Union Agency for Fundamental Rights, Directive (EU) 2017/541 has a number of problems with legal certainty, proportionality, freedom of expression, freedom of movement, and procedural protections (European Union Agency for Fundamental Rights, 2022). In turn, the International Commission of Jurists provides recommendations regarding the application of terrorism-related offences in accordance with the principles of legality, trial fairness, and human rights standards (International Commission of Jurists, 2020). Finally, the situational reports provided by Europol in TE-SAT can explain why preventive policies are politically relevant (Europol, 2024, 2025).

9. Research Method

This study in the article follows a comparative legal doctrine method. This follows from the fact that the method is doctrinal in nature as it entails using legal texts, case laws, state policies, and official documents to determine what the law signifies, the structures of the law, and the effects of the law (Mitsilegas, 2021; de Londras, 2022). The approach is comparative for the reason that it involves a comparison of two different legal regimes, which are those of the US and the EU.

The article does not use interviews, surveys, or statistical testing because the research question is legal-institutional rather than empirical. The study is concerned with the legal paradigms that structure counter-terrorism, not with measuring the operational effectiveness

of one counter-terrorism program (Burchett et al., 2022). Empirical threat reports such as Europol TE-SAT are used only to contextualize the legal analysis, not to prove causal claims about the effectiveness of specific measures (Europol, 2024, 2025).

The temporal scope prioritizes sources from 2020 onward because the article seeks to reflect recent law, case law, and policy. Foundational instruments adopted before 2020 are cited where they remain the legal basis of the contemporary system, including the AUMF, the USA PATRIOT Act, Directive (EU) 2017/541, the Charter, and the United Nations counter-terrorism sanctions framework (AUMF, 2001; USA PATRIOT Act, 2001; Directive (EU) 2017/541, 2017; Charter of Fundamental Rights of the European Union, 2012).

10. Study Tool

The research method is legal document analysis. The method involves a thorough examination of certain documents based on five factors: legal foundation, institutional actor, limitation on rights, control system, and cooperation impact. The five factors allow for comparing such issues as authorization of the use of force, criminal law convergence, intelligence activities, sanctions, data transfers, Internet content, and judicial review (AUMF, 2001; Regulation (EU) 2021/784, 2021; Schrems II, 2020; United Nations Security Council, 2024).

The U.S. documents analyzed include the AUMF, the USA PATRIOT Act, FISA Section 702, the Reforming Intelligence and Securing America Act, Executive Order 14086, national strategies, Supreme Court decisions, and official transparency reports on surveillance authorities (AUMF, 2001; USA PATRIOT Act, 2001; RISAA, 2024; Executive Order No. 14086, 2022; Office of the Director of National Intelligence, 2025). The EU documents analyzed include the EU Security Union Strategy, the EU Counter-Terrorism Agenda, Directive (EU) 2017/541, Regulation (EU) 2021/784, the 2024 AML/CFT package, CJEU judgments, and Commission implementation reports (European Commission, 2020a, 2020b, 2021, 2024; Regulation (EU) 2024/1624, 2024). The international documents analyzed include Security Council resolutions on terrorist financing and ISIL/Da'esh and Al-Qaida sanctions, especially Resolutions 2462, 2610, 2664, and 2734 (United Nations Security Council, 2019, 2021, 2022, 2024).

11. Presentation and Discussion of Results

11.1. The U.S. War Paradigm

First, the United States' paradigm of warfare has been established on the AUMF and on an increase of executive powers in the realm of security in response to 9/11. The AUMF allowed the President to take all actions deemed necessary and appropriate to fight against any individuals or entities involved in the attacks of 11 September, and this authorization played a critical role in the subsequent anti-terrorist strategy of the country (AUMF, 2001; de Londras, 2022). The USA PATRIOT Act reformed many aspects of law enforcement and prosecution following 9/11 (USA PATRIOT Act, 2001).

However, the war paradigm should not be understood as the abandonment of criminal justice by the United States. In fact, under U.S. federal law, there are criminal cases involving charges of terrorism, material support, conspiracy, funding, immigration law violations, and others, while the Supreme Court still considers civil liability cases concerning terrorism in decisions like Twitter, Inc. v. Taamneh (2023). The key is that criminal justice functions alongside, but does not substitute for, military and intelligence powers.

Some more recent decisions from the United States provide examples of the continuation of national security deference. For example, in the decision FBI v. Fazaga, the Supreme Court decided that FISA does not displace the state-secrets privilege in cases where plaintiffs allege that they were subjected to improper surveillance under the guise of national security. This means that state secrets have the potential to constrain the normal scope of civil litigation in national security cases (FBI v. Fazaga, 2022). Another similar example is the case United States v. Zubaydah (2022).

The surveillance law in the United States also takes into account a security-based approach that is not consistent with proportionality review based on the EU human rights law framework. This is illustrated by FISA Section 702, which permits targeted collection of foreign-intelligence information regarding individuals who are not U.S. citizens and who are reasonably believed to be located abroad, which was amended and reauthorized under the RISAA Act of 2024 (Foreign Intelligence Surveillance Act, 1978/2008; RISAA, 2024).

The American paradigm has equally evolved to account for domestic extremism, cyber-related threats, and online radicalization, despite being based on legal structures that result from the post-9/11 foreign terrorism era (White House, 2021, 2022; Government Accountability Office, 2025). In this context, the National Strategy for Countering Domestic Terrorism 2021 outlined information sharing, prevention, disruption, prosecution, and factors influencing domestic terrorism as the elements underpinning the country's response to the threat (White House, 2021). The evolution highlights how the war paradigm encompasses more than foreign theatres of action, representing a national-security perspective able to integrate different threat categories (Leidig & Van Mieghem, 2021).

Key strengths associated with the U.S. approach relate to its operational capabilities. For example, the state has the ability to use military power, surveillance techniques, sanctions, borders, immigration, financial controls, and prosecutions via a unified chain of command at the national level (AUMF, 2001; White House, 2022). The key weakness pertains to the possibility of the application of secrecy, deferral, and the logic of emergency leading to a lack of transparency and remedy for those affected (FBI v. Fazaga, 2022; United States v. Zubaydah, 2022; Ní Aoláin, 2021)

11.2. The EU Rule-of-Law Paradigm

The second finding is that the EU's model rests on a rule-of-law framework, though it still possesses preventive security components. Unlike the United States, which wields a sovereign war power, the EU does not have one and relies primarily on internal security policies, harmonization of criminal law, cooperation in policing and judiciary, enforcement of sanctions, use of borders, and data governance regulations (European Commission, 2020a, 2020b; Burchett et al., 2022).

Directive (EU) 2017/541 is an important part of the EU's criminal law approach. The Directive provides that EU Member States shall criminalize terrorist offenses and related activities such as the following: directing a terrorist organization, publicly inciting others to commit an act of terrorism, recruiting, training, traveling for terrorism and terrorist financing (Directive (EU) 2017/541, 2017). Implementation of the Directive was assessed by the Commission in its 2021 report and by the FRA in a fundamental rights assessment in 2022.

Regulation (EU) 2021/784 shows that prevention is part of the EU approach. The Regulation sets out rules in relation to the tackling of the online dissemination of terrorist content through the application of removal orders and duties for host providers, together with provisions protecting fundamental rights, including freedom of expression, information, and effective remedy (Regulation (EU) 2021/784, 2021). This point is confirmed by the Commission's report from 2024 on its implementation of the Regulation for tackling the online dissemination of terrorist content (European Commission, 2024).

The paradigm of rule of law in EU law can be seen especially clearly in CJEU case law. For example, in Schrems II, the CJEU annulled the EU-US Privacy Shield adequacy decision on the basis that the U.S. regime on surveillance and redress was not equivalent to the EU standards of protection of personal data and effective remedy (Schrems II, 2020). Further, in La Quadrature du Net and Privacy International, the Court ruled that security and crime prevention concerns cannot ipso facto exempt data retention or bulk data practices from EU law restrictions if carried out by private entities.

The same rights-based reasoning can be observed in subsequent cases. In G.D. v. Commissioner of An Garda Síochána, the CJEU reiterated its refusal of general and indiscriminate retention of traffic and location data to combat serious crimes (G.D. v. Commissioner of An Garda Síochána, 2022). In SpaceNet, the CJEU again held that general and indiscriminate retention of traffic and location data is contrary to EU legislation unless there are serious risks to national security, together with adequate judicial review (SpaceNet, 2022). In Ligue des droits humains, the CJEU also construed the PNR system very narrowly in view of the provisions of the Charter (Ligue des droits humains, 2022).

Thus, the EU approach does not abolish the practice of prevention. Instead, it enshrines and regulates prevention by specifying legal grounds, proportionality requirements, independent supervision, and judicial safeguards (Charter of Fundamental Rights of the European Union, 2012; Den Boer, 2022; European Union Agency for Fundamental Rights, 2022). This is precisely what enables the EU to develop content-related measures against terrorism, passenger-name records systems, rules on financial intelligence, and sanctions despite submitting them to Charter scrutiny (Regulation (EU) 2021/784, 2021; Regulation (EU) 2024/1624, 2024; L

11.3. Use of Force as the Strongest Divergence

The largest difference between the U.S. and the EU approaches is related to the use of violence. The U.S. is a sovereign nation-state that operates its own army, has its commander-in-chief, uses authorization procedures, operates its own intelligence apparatus, and possesses global military power (AUMF, 2001; White House, 2022). The EU, on the other hand, is an international law regime with external action competencies, although it lacks the unified military command, analogous to a state president and parliament (European Commission, 2020b; Burchett et al., 2022).

There is a legal implication as well. Counter-terrorism operations in the United States can shift from intelligence evaluation to military engagement according to U.S. laws and the Constitution and international laws (AUMF, 2001; White House, 2022). In contrast, EU counter-terrorism tends to rely on harmonization of criminal laws, sanctions, law enforcement measures, and management of borders, but not EU military power (Directive (EU) 2017/541, 2017; European Commission, 2020a).

The war paradigm facilitates the ability of American laws to associate terrorism with warfare and detention but even then these issues are still subject to laws (AUMF, 2001; United States v. Zubaydah, 2022). On the other hand, the rule of law paradigm complicates the process of EU incorporating terrorism under the concept of war by virtue of their processes being constrained by legality, competence, proportionality, and execution by member states (Charter of Fundamental Rights of the European Union, 2012; Mitsilegas, 2021).

The above differences can also cause difficulties in collaboration. Intelligence and military information that is gathered might not qualify to be used as evidence in a criminal case when such issues as disclosure, reliability, cross-examination, and fair trial cannot be met (International Commission of Jurists, 2020; European Union Agency for Fundamental Rights, 2022). While the importance placed by the EU on adequate redress can conflict with the practice in the U.S. of handling classified information and state secrets litigation (FBI v. Fazaga, 2022; United States v. Zubaydah, 2022).

11.4. Criminal Law and Cooperation as Areas of Convergence

Despite deep differences, the U.S. and the EU align very well in terms of criminal law and collaboration. Both jurisdictions criminalize acts of terrorism, supporting acts of terrorism, terrorist financing, recruiting, and training, among other preparatory activities, albeit under different frameworks (USA PATRIOT Act, 2001; Directive (EU) 2017/541, 2017; Twitter, Inc. v. Taamneh, 2023). Financial intelligence, sanctions, international cooperation, and information sharing between the two regions are used for the prevention of any attack from taking place prior to any acts of terrorism (United Nations Security Council, 2019, 2024; Regulation (EU) 2024/1624

The area where one can notice convergence in criminal law includes terrorist financing. The UN Security Council Resolution mandates states to prevent and suppress terrorist financing activities and adopt targeted measures in connection with individuals and organizations linked to ISIL/Da'esh and Al-Qaida (UN Security Council, 2019, 2021, 2024). In regard to terrorist financing, the European Union adopted the AML/CFT package of 2024 that enhances obligations relating to preventing money laundering and terrorist financing, including creating the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, among others (Regulation (EU) 2024/1620, 2024; Regulation (EU) 2024/1624, 20

Convergence can be observed even in digital information, where the legal approaches are not identical. In particular, the European Union has developed special legislation on the regulation of terrorist content, including the imposition of removal orders and protections for hosting service providers (Regulation (EU) 2021/784, 2021; European Commission, 2024). The US approach is primarily based on free-speech constraints within the constitution, governance by the platform, criminal laws, and civil liabilities as exemplified by the court ruling in Twitter, Inc. v. Taamneh (2023).

Foreign terrorist fighters also show convergence. Directive (EU) 2017/541 explicitly covers travel for terrorist purposes and related facilitation, reflecting the international concern that travel, training, recruitment, and financing can connect domestic security with conflict-zone activity (Directive (EU) 2017/541, 2017; United Nations Security Council, 2021). U.S. policy also treats foreign terrorist organizations, travel, material support, and financing as part of a broader prevention and prosecution framework (White House, 2021, 2022).

11.5. Data Governance and Rights as Persistent Divergence

The most persistent difference that is non-military relates to data governance. Terrorism counter-measures require the use of passenger data, communications metadata, transactional information, biometric identifiers, watch-lists, travel records, and content analysis on the internet (European Commission, 2020a; Office of the Director of National Intelligence, 2025). The question posed by the EU law regarding data governance includes necessity, proportionality, limitation of data use to specific purposes, and independent supervision and redress (Schrems II, 2020; La Quadrature du Net, 2020; Ligue des droits humains, 2022). The U.S. approach considers whether the data collection meets requirements related to targeting, minimization, certification, oversight, and intelligence (Foreign Intelligence Surveillance Act, 1978/2008; RISAA, 2024; Office of the Director of National Intelligence, 2025).

The Schrems II case is one example where the divergence can be best explained. In this case, the CJEU did not declare all transfers from the EU to the U.S. illegal but rather declared the adequacy decision made in favor of the Privacy Shield invalid, since it lacked sufficient limitations and protection of personal data being transferred and accessed by US surveillance entities (Schrems II, 2020). Executive Order 14086 and Implementing Decision (EU) 2023/1795 were introduced as measures that aimed at resolving this issue (Executive Order No. 14086, 2022; Implementing Decision (EU) 2023/1795, 2023).

Issues with Passenger Name Records information arise in a similar way. The CJEU confirmed the legality of the PNR Directive only insofar as it is applied within a Charter-consistent approach to minimize indiscriminate collection and storage, and in a situation where there is strict necessity (Ligue des droits humains, 2022). It is clear from this that the EU rule-of-law approach does not prevent security databases, but rather necessitates legal clarity and proportionality (Charter of Fundamental Rights of the European Union, 2012; European Union Agency for Fundamental Rights, 2022)

FISA Section 702 shows the American manifestation of the rift. The provision authorizes targeted acquisition where the target is a non-U.S. person who the agency reasonably believes is not within the territory of the United States for foreign intelligence reasons, and reauthorization in 2024 indicates the continuing significance of the provision in political and legal terms (Foreign Intelligence Surveillance Act, 1978/2008; RISAA, 2024). From the

transparency reports and the debate surrounding it, it is clear that the core issue for the Americans is the balancing act between intelligence value and law.

This leads to structural differences between the two approaches. In the case of EU law, there is an evaluation as to whether the interference with the right is absolutely necessary and proportional to a certain goal, whereas in the case of the foreign-intelligence laws of the U.S., the question usually is whether the collection fits within certain statutory target and control structures (La Quadrature du Net, 2020; SpaceNet, 2022; RISAA, 2024). These differences do not preclude cooperation but necessitate specific arrangements (Commission Implementing Decision (EU) 2023/1795, 2023; Executive Order No. 14086, 2022).

11.6. Sanctions and Financial Intelligence

Sanctions and financial intelligence form a mixed area of convergence and divergence. Both the United States and the EU implement United Nations terrorism sanctions and maintain autonomous listing mechanisms, and both systems use asset freezes, travel bans, arms embargoes, and financial-intelligence obligations to disrupt terrorist support networks (United Nations Security Council, 2019, 2021, 2024; Regulation (EU) 2024/1624, 2024). United Nations Security Council Resolution 2734 continues the ISIL/Da'esh and Al-Qaida sanctions framework and emphasizes listing, asset-freeze implementation, the Ombudsperson, and the Monitoring Team (United Nations Security Council, 2024).

Judicial review of restrictive measures is quite well advanced within the EU. Rule of law reasoning entails giving reasons, evidence, proportionality, and procedures whenever restrictive measures impact people or institutions (Mitsilegas, 2021). This practice is in line with the larger EU framework of governance, which ensures that security measures are examined from the perspectives of legality and respect for fundamental rights (European Union Agency for Fundamental Rights, 2022; Charter of Fundamental Rights of the European Union, 2012).

Convergence is also shown by financial intelligence. Terrorist financing includes transactions involving banks, informal payments, virtual currencies, charitable organizations, illegal money, petty crimes, and transnational activities, and the United Nations Security Council has called upon countries to combat terrorist financing through legislation and regulations (United

Nations Security Council, 2019, 2021). The 2024 European Union AML/CFT amendments have increased the obligation of financial institutions for prevention, whereas U.S. legislation since the events of September 11 has made combating terrorist financing and providing material support critical elements (Regulation (EU) 2024/1620, 2024; Regulation (EU) 2024/1624, 2024; USA PATRIOT Act, 2001).

Humanitarian exemptions show that the sanctions field also contains rule-of-law and human-rights concerns. Security Council Resolution 2664 created a standing humanitarian carve-out for asset-freeze measures in UN sanctions regimes, reflecting concern that counter-terrorism sanctions should not obstruct humanitarian assistance or basic needs (United Nations Security Council, 2022). This development demonstrates that even global counter-terrorism sanctions increasingly require safeguards for legality, humanitarian action, and proportionality (Ní Aoláin, 2021; United Nations Security Council, 2022).

11.7. Accountability and Judicial Review

Accountability is the final area of divergence. In the United States, courts can review criminal prosecutions, habeas petitions, statutory claims, constitutional challenges, and civil liability actions, but national-security litigation may face obstacles such as standing, secrecy, political-question concerns, and state-secrets privilege (FBI v. Fazaga, 2022; United States v. Zubaydah, 2022). Twitter, Inc. v. Taamneh shows that federal courts can also define the boundaries of civil aiding-and-abetting liability for terrorism-related harms (Twitter, Inc. v. Taamneh, 2023).

In the EU, accountability is more visibly centered on proportionality review and fundamental rights. The CJEU's data-retention, data-transfer, and PNR judgments demonstrate that measures justified by terrorism, serious crime, or national security must be legally precise, limited, reviewable, and necessary (Schrems II, 2020; La Quadrature du Net, 2020; Ligue des droits humains, 2022; SpaceNet, 2022). This does not mean that EU institutions always achieve full accountability, but it means that rights review is a central legal condition of counter-terrorism governance (Mitsilegas, 2021; European Union Agency for Fundamental Rights, 2022).

The comparative result is that the United States often protects accountability through separated powers, statutory oversight, and litigation, while national-security secrecy can

narrow practical access to judicial review (FBI v. Fazaga, 2022; Office of the Director of National Intelligence, 2025). The EU often protects accountability through rights-based proportionality and supranational judicial review, while fragmentation and Member State implementation can make accountability uneven in practice (Burchett et al., 2022; European Parliament, 2023).

12. Overall Findings

The study reaches five main findings. First, the U.S. counter-terrorism framework is still rooted in a paradigm of war despite its application of criminal law instruments, since military authorization, executive power, intelligence gathering, and confidentiality are all structurally important (AUMF, 2001; FBI v. Fazaga, 2022; White House, 2022). Second, the paradigm of the rule of law underlies the EU counter-terrorism framework, as counter-terrorism measures are to comply with conferred competencies, harmonized criminal law, proportionality, data protection, and EU Court of Justice (ECJ) oversight (European Commission, 2020a; Directive (EU) 2017/541, 2017; La Quadrature du Net, 2020).

Third, the most pronounced divergence relates to the use of force, given that the United States can function as an independent military state, whereas the EU functions largely through legal coordination and cooperation with member states (AUMF, 2001; European Commission, 2020b). Finally, the most persistent legal tensions relate to data governance, given that EU law imposes high standards of necessity, proportionality, and remedies, whereas U.S. law on foreign intelligence is structured based on targeting, minimization, certification, and oversight (Schrems II, 2020; Executive Order No. 14086, 2022; RISAA, 2024).

Fifth, convergence exists in criminalization, financial intelligence, terrorist-content governance, sanctions, and cooperation against organizations such as ISIL/Da'esh and Al-Qaida (Directive (EU) 2017/541, 2017; Regulation (EU) 2021/784, 2021; United Nations Security Council, 2021, 2024). This convergence shows that the paradigms can coexist, but coexistence requires legal design rather than mere political trust (Burchett et al., 2022; Commission Implementing Decision (EU) 2023/1795, 2023).

A further finding is that recent developments have not eliminated divergence. The EU-U.S. Data Privacy Framework is an important attempt to respond to Schrems II, but its stability depends on whether EU institutions and courts consider the new safeguards, redress

mechanisms, and limitations sufficient under EU law (Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023; Schrems II, 2020). Similarly, the U.S. reauthorization of FISA Section 702 demonstrates continuity in foreign-intelligence practice, while EU data-retention cases continue to insist on strict limits and independent review (RISAA, 2024; SpaceNet, 2022; Office of the Director of National Intelligence, 2025).

13. Recommendations

First, the legal limits of military force in counter-terrorism should be clarified. U.S. law should continue to define the scope of any force-based counter-terrorism authority with precision, including the actors covered, geographic reach, reporting duties, termination mechanisms, and relationship with criminal prosecution (AUMF, 2001; White House, 2022). Clear limits reduce the risk that exceptional powers become permanent ordinary governance (de Londras, 2022; Ní Aoláin, 2021).

Second, intelligence-led counter-terrorism should be accompanied by stronger accountability. Secrecy may be necessary in limited contexts, but secrecy should not eliminate all meaningful review, and oversight mechanisms should include independent bodies, classified-evidence procedures, reporting, and avenues for remedies where rights are affected (FBI v. Fazaga, 2022; United States v. Zubaydah, 2022; Office of the Director of National Intelligence, 2025).

Third, U.S.-EU data-sharing arrangements should be designed around necessity, proportionality, purpose limitation, retention limits, access controls, auditability, and effective remedies. These safeguards should be written clearly into agreements and implementation documents, because vague political assurances are unlikely to satisfy EU-law standards after Schrems II and the data-retention line of cases (Schrems II, 2020; La Quadrature du Net, 2020; Commission Implementing Decision (EU) 2023/1795, 2023).

Fourth, preventive measures such as watchlisting, travel controls, PNR analysis, terrorist-content removal, and financial freezing should include transparent criteria and accessible remedies. Individuals and entities affected by preventive measures often face serious practical consequences before conviction, which is why legality, notification, review, and proportionality must be built into the procedure (Ligue des droits humains, 2022; Regulation (EU) 2021/784, 2021; United Nations Security Council, 2022, 2024).

Fifth, criminal-law cooperation should prioritize evidentiary reliability and rights compatibility. Evidence derived from intelligence, conflict zones, or digital platforms should be handled through procedures that preserve fair-trial rights, effective defense, and judicial scrutiny (International Commission of Jurists, 2020; European Union Agency for Fundamental Rights, 2022). Cooperation should not encourage the weaker safeguard of either system to dominate the stronger safeguard of the other system (Mitsilegas, 2021; Burchett et al., 2022).

Sixth, the United States and the EU should develop common minimum safeguards for counter-terrorism data. Such safeguards should include clear terrorism-related purposes, independent oversight, periodic review, deletion rules, transparency reporting, and meaningful remedies where erroneous or disproportionate use causes harm (Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023; Office of the Director of National Intelligence, 2025).

Finally, both systems should avoid treating counter-terrorism as a permanent exception to ordinary law. Terrorism is a serious threat to life, security, and democratic institutions, but long-term legitimacy depends on legal clarity, proportionality, accountability, and institutional trust (de Londras, 2022; Ní Aoláin, 2021; European Union Agency for Fundamental Rights, 2022).

14. Conclusion

This article has shown that the divergence between U.S. and EU counter-terrorism strategies is best understood through two paradigms. The U.S. war paradigm developed after 9/11 through military authorization, executive power, intelligence integration, sanctions, and federal criminal law (AUMF, 2001; USA PATRIOT Act, 2001; White House, 2022). The EU rule-of-law paradigm developed through criminal-law harmonization, prevention, proportionality, judicial cooperation, data protection, and CJEU review (European Commission, 2020a; Directive (EU) 2017/541, 2017; La Quadrature du Net, 2020).

The strongest divergence concerns the use of force, because the United States can act as a sovereign military power while the EU is a supranational legal order without equivalent war authority (AUMF, 2001; European Commission, 2020b). The most persistent legal friction concerns data governance, because EU law demands strict necessity, proportionality, and

effective remedies, while U.S. foreign-intelligence law is organized around targeting, minimization, certification, secrecy, and oversight (Schrems II, 2020; RISAA, 2024; Office of the Director of National Intelligence, 2025).

The article concludes that the two paradigms can coexist within transatlantic cooperation, but coexistence requires precise legal design. Cooperation must be supported by safeguards that satisfy EU legality and proportionality while allowing the United States to preserve lawful intelligence and security functions (Executive Order No. 14086, 2022; Commission Implementing Decision (EU) 2023/1795, 2023). The comparative lesson is not that the war paradigm must be replaced entirely by the rule-of-law paradigm, or that the rule-of-law paradigm can ignore security realities. The lesson is that durable counter-terrorism cooperation requires both operational effectiveness and legally credible limits (Burchett et al., 2022; de Londras, 2022; European Union Agency for Fundamental Rights, 2022).

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