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Critique of Justificatory Tendencies in Counter-terrorism Policies: The Case of Iraq

Nabil Zegaoui

Abstract

Situated within the field of critical terrorism studies, this paper explores how counterterrorism narratives legitimise terrorism discourse and counterterrorism measures. It shows how military and security counterterrorism policies have been abused in the wake of 9/11 to the detriment of individual rights and liberties, as well as state stability in the case of Iraq. The paper draws on just war and securitisation theories and adopts a critical analysis methodology to revisit these theories from an empirical perspective, examining the implications of their application to counterterrorism policies, specifically in Iraq. The study concludes that the response to terrorist threats was unjustified and entirely counterproductive, elucidating the magnitude and scope of this disproportionate response and the consequences for individual rights and freedoms.

Keywords: Securitisation; Just War; Terrorism; Human Rights Violations; Iraq; 9/11

Introduction

States have typically rationalised their counterterrorism policies by pointing to the evolution and growth of terrorist threats. Transformations in the nature of terrorism have been reflected in counterterrorism strategies around the world. In the first phase, which corresponds to the events of 11 September 2001, an organised, international form of terrorism emerged that targeted the ‘far enemy’. Counterterrorism strategy therefore focused on the pursuit of combatants, taking a militarised form with the ‘war on terror’, which was described as a just war.

In the second phase, new forms of terrorism emerged. The Madrid bombings in 2004, and the attacks in London, Norway, and Toulouse in 2005, 2011, and 2012 respectively, were illustrative of local terrorism carried out by lone actors intent on striking the ‘near enemy’. Counterterrorism policies thus began to focus on the pursuit of ideological extremists and financiers of terrorism under a seemingly permanent state of emergency, against the backdrop of a discourse that presents

terrorism as an existential threat to state security. The discourses and practices that arose in the context of these two strategies were used to justify measures that compromised freedoms and violated human rights, a result of the expanded powers given to the agencies possessing a monopoly on legitimate violence and the lack of balance between counterterrorism and respect for international and national laws.

As such, and in order to highlight the problematic nature of ‘big stick’ approaches to terrorist threats, this paper adopts a critical stance in assessing the blowback of counterterrorism policies. Epistemologically, it falls within critical terrorism studies, seeking to show how counterterrorism narratives act to legitimise terrorism discourse and counterterrorism measures, in order to refute the justificatory logic of counterterrorism policies. The paper then attempts to show how the abuse of military and security counterterrorism policies in the wake of 9/11 impact individual rights and liberties, as well as state stability in the case of Iraq.

The paper draws on just war and securitisation theories and adopts a critical analysis methodology to revisit these theories from an empirical perspective, examining the implications of their application to the context of counterterrorism, specifically in Iraq. At the same time, it looks at the underpinnings of the concept of the justice of the global war on terror and the philosophical foundation of securitisation as a discourse. In doing so, it demonstrates the asymmetry between counterterrorism policies on one hand and human rights and basic freedoms on the other, elucidating the implications of the militarisation and securitisation of counterterrorism for guarantees of rights and liberties. The paper takes Iraq as a case study. Having found itself in the crosshairs of the war on terror, Iraq offers an empirical test case demonstrating the failure of the militarisation and securitisation of counterterrorism and showing how prioritising force during and after the war had far-reaching, costly security consequences in the country.

Critique of the Moral Legitimation of the War on Terror

The language of just war was evoked at the outset of the twenty-first century in the debate over the pre-emptive war doctrine, which constituted the basis for the US invasion of Afghanistan in the aftermath of 9/11 and of Iraq in 2003. But the global trend towards a war on terrorism confused ethical and security concerns, producing a distorted engagement with just war theory that gave rise to and humanised military violence.

Introduction to the concept and conditions of just war

Just war as a concept is rooted in Roman political philosophy and was later incorporated into Christian political thought and developed further. It grew out of ‘a tradition around the morals of war and peace, framing the moral precepts that must exist for a war to be considered morally just. It also attempted to create a reasonable foundation between pacifism, with its absolute rejection of justifications for war, and violence, which offers absolute justification for the use of force and the resort to war’.¹

In establishing the ethics of warfare, just war theory focused on three broad themes: first, *jus ad bellum*, or the circumstances that justify the use of force; second, *jus in bello*, or an examination of the limits of the justified use of force; and third, *jus post bellum*, or how to end wars justly and more specifically, the responsibilities of warring parties in the direct aftermath of war as related to peace-building, reconstruction, and stability.²

There are conditions for just war, which are at the same time principles governing the resort to war and conduct in war. Since just war theory is a theory of ethics, its principles should be viewed as such, even if they have been incorporated into international humanitarian law:³

1. Legitimate authority: War must be waged by soldiers led by political leaders with the authority to declare war, in contrast to militiamen, who may fight in large, very well-armed groups, but whose commanders lack the authority of political leaders.⁴
2. Just cause: The conventional cause for a just war is an attack by an aggressor. This teleological understanding of cause means that external aggression must be met with a just goal confined to self-defence.⁵
3. Necessity or last resort: The defensive act must be the least harmful of all other alternatives.⁶ Other methods should be used to vindicate a just cause, with war being waged only if necessary after the exhaustion of all other courses of action.
4. Good faith intention to correct the error of aggression and bring peace: In other words, retribution, hegemony, or a self-interested⁷ quest for wealth or power cannot be the basis of a just war.
5. Proportionality between the threat or injury inflicted and anticipated gains: The proportionality is not between self-defence and past aggression, but between self-defence and possible future aggression.⁸ A state may respond to an aggression with a more destructive, crueller attack than the one it experienced if it has reasonable basis to believe that the response is necessary to prevent future attacks.⁹ Thus it may be concluded: just war is primarily pre-emptive or preventive war.
6. Non-combatant immunity (or the discrimination of civilians): The rules of just war uphold the moral prohibition on attacking unarmed, vulnerable individuals, regardless of their moral culpability or any indirect threat they pose. Moreover, the rules of just war reflect this moral obligation rather strictly by giving immunity to unarmed civilians,¹⁰ not because they cannot fight, but because they are unable to protect themselves.

Lost Justice in the War on Terror: Practical Issues

Theoretically, just war aims at the moral realisation of justice, where political ethics are the ethics of responsibility, and just war traditions represent a way to exercise that responsibility while observing justice. The application of just war theory in the context of combating terrorism, however, shows that it is impossible to couple justice with the tragic reality of war. While injustice may appear to result from non-compliance with the laws and ethical standards of war, some blame

can also be placed on the traditions of war, for its principles are ineffective and even responsible for the tragedies seen in war.

Since the criteria of just war apply not only to starting a war for just causes, but also to fighting it justly, the war on terror should be reviewed in light of this. That is, the justness of the war should be tested against its premises and practice. Here, this will be done briefly, without reference to each of the conditions for just war explicated above.

Crisis of assumptions

The concept of just war is centred on the state. The state (or its ruler) is the principal subject who applies just war principles, and the state (or its military actions) is also the primary object or target of the application of just war principles. The war on terror, however, has typically been waged against non-state actors, regardless of whether terrorist organisations are entrenched in some states' territories. In other words, the war on Afghanistan was not waged against the state of Afghanistan per se, but against the Taliban and al-Qaeda, which had taken up positions in it.

Moreover, the war on terror was waged within the framework of an international or regional alliance and was never a case of a single state perpetrating the war. In turn, the authority to lead the war assumed the form of a collective will, although the war is typically waged absent international consensus, despite legal cover by the United Nations. This means that the war on terror is ultimately lacking, if not wholly devoid of, genuine international legitimacy. Indeed, some countries went to war in the face of opposition from domestic civil society. Former British prime minister Tony Blair, for example, decided to use force against Iraq despite lacking any material evidence of the allegations against Saddam Hussein's regime and disregarding protests by millions of British citizens.

Achieving legitimacy for a war is not enough; legitimacy must be maintained as well. 'War must not only be initiated for the right reasons and observe the laws of war; additionally, public support must be sustained, and the proper integration of military and civilian leadership must be ensured. Executing these responsibilities sufficiently well is the second way political leaders exercise their responsibilities to their soldiers and their nation as well as the innocent put at risk by war'.¹¹ In the context of civil-military relations, public oversight and civilian control of the military is necessary to keep the war within the scope of its established aims and legitimate means.

Lack of a just cause

War takes an array of forms depending on its ultimate causes (in the Aristotelian teleological sense of 'cause') and may be defensive, punitive, or preventive. 'Defensive warfare aims to repulse ongoing or imminent acts of aggression in the present, whereas punitive warfare (regardless of whether it aims at deterrence, retribution, or reform) responds to past acts of aggression or 'wrongdoing', and preventive acts, of course, aim to thwart threats of future aggression.'¹²

Nevertheless, it is untrue that the just cause for the use of armed force is a prior instigating incident; a just cause is not a moral cause for reaction. As Lango notes, the question of just cause

is neither a question of just retaliation nor just punishment, but just prevention. Just cause is a moral reason to act pre-emptively.¹³

Despite these issues, the most significant dilemma of the war on terror is its lack of defined temporal and geographic limits and the ambiguous, amorphous nature of the enemy, which denies it any basis at all to be called a war. The masters of the war on terror may use this term, but they do not take it seriously. So for instance, they do not wage this ‘war’ according to the established rules of war, by declaring a specific enemy (which is inimical to the indiscriminate bombing of cities) and treating detainees as prisoners of war (who are treated worse than ordinary criminals in the context of the war on terror). Even more problematic, the war faces a real predicament in that it generates its opposite—that is, terrorism. It is continually eliminating terrorists and incubating new ones, as if finding the justification for its own perpetuation.¹⁴ The arena of war becomes fertile ground for the birth of terrorist groups to replenish the enemy’s ranks, as the war is prolonged and becomes routinised, truly embodying the longstanding maxim that war is a continuation of politics by other means.

The perpetuity of the war reflects a kind of political economy with the slogan ‘fighting terrorism’ by politicising warfare. War becomes a foreign policy ideology for a state launching and leading offensives against terrorism, specifically the US, which has utilised the war on terror for its own hegemonic aspirations, as evidenced by its occupation of Afghanistan, or to rid itself of opposition regimes, seen in the toppling of Saddam Hussein’s regime as an alleged state sponsor of terrorism and the subsequent occupation of Iraq. Even after the withdrawal from Iraq, the US launched a new military intervention in the country against the Islamic State (Daesh). It should be noted that Daesh was operating elsewhere in the Levant and directed its brutal practices against Syrians and Iraqis alike, thereby illustrating another problem: the selectivity of the war on terror. The US did not intervene until two of its own citizens, along with a British national, were executed by Daesh, suggesting that war is only an option when victims of terrorism are Westerners. Moreover, US interventions were ineffective and unserious; the US might have sought not to eliminate Daesh, but simply to enervate or contain it, after the organisation demonstrated expansionist ambitions.

As Western powers continued to justify the war on terror by pointing to the difficulty of locating terrorist organisations, the location of al-Qaeda leader Osama bin Laden after a decade of shadowy pursuit raised a question about beginnings: To what extent was war the sole option to achieve justice for terrorist crimes? The capture of Bin Laden suggested that the arrest and prosecution of terrorists in a fair trial was still an option. ‘Though the US at first claimed he had been killed resisting arrest, it later became clear that he had been unarmed. If this was ‘justice’, as President Obama asserted, it was far removed from due process. Bin Laden was killed not because he could not be captured, but because (as with the Guantanamo detainees) it would have been impossible to convict him in court’.¹⁵

The targeting of civilians

The war on terror often erupts as a swift reaction. In its imprecision, if not total indiscriminateness, a counterterrorist military strike against terrorist organisations is not much different from the terrorist act itself. Here the war turns into retribution against specific communities for allegedly giving refuge to terrorists or to ‘dry up the wellsprings of terrorism’ in a place that constitutes an environment conducive to it. In this way innocent people are trapped and harmed, as the war deems everyone found in enemy territory guilty. Airstrikes may target strongholds of terrorist organisations or training camps in a particular city, for example, but these spaces are interspersed with areas inhabited by civilians and they all seem to be a single military target.

The distinction between combatants and non-combatants is thus crucial for the legitimacy of conflict, and not only from the perspective of international law but from moral philosophy as well. As Schulzke explains ‘Combatants pose a threat that forces their opponents to act in self-defense. By this view, combatants who fight each other reciprocally forfeit their right to life during wars, and in return for this sacrifice gain the ability to justly attack opposing combatants. Those who do not engage in hostilities retain the right to life because they do not pose a threat that would force others to act in self-defense. Thus, the right to life remains in place during war, applying to all people except those who have forfeited the right by threatening others’.¹⁶

In addition to collective punishment, ‘targeted killing’ is another morally dubious practice in the war on terror. At times, the killing is indiscriminate, as in the case of drone strikes. The drones ‘transmit a live, direct video feed to the operations room, where the soldier will define the target. There is thus a time lapse, perhaps only a few moments, because of the quantity of data being transmitted live’.¹⁷ Static over the feed could lead the soldier overseeing the strike to error in judgment, allowing for the killing of civilians as combatants. Such a person - who knowingly kills civilian victims - is the equivalent of a person committing a terrorist act. As such ‘As long as he is aware and cognizant of what he is doing, this is a crime—war crime, in fact—whether it is called terrorism or not. It is not negligence, but deliberate targeting. In criminal law, this targeting is present if the perpetrator is cognizant of the nature of his objective. This may not necessarily be his motive; we should not confuse the motive for killing (which is proven by evidence in criminal law) and targeting. Knowingly and deliberately causing death is considered murder’.¹⁸

At times, targeted killing bleeds into assassinations carried out by American special forces or local proxies. In such cases, it is difficult to distinguish from the premeditated murder of individuals who may pose no imminent danger, particularly when operations target figures in political or organisational positions, with no place in the chain of command over combatants.

Even if it is impossible to neutralise combatants or terrorists without killing them, the risk of unintended deaths resulting from these operations may be greater, since as Miller says ‘Terrorist combatants often blend in with civilians and are not readily identifiable as combatants, e.g. by virtue of wearing uniforms. This point has been made in relation to the targeted killing of Taliban leaders in Afghanistan by NATO forces; it is suggested that the intelligence on which the identification of persons as terrorists is based is often of poor quality and provided by local Afghans with questionable motives’.¹⁹

Securitisation Theory and Measures Inimical to Human Rights Values

Securitisation theory constitutes an independent explanation for how security issues are exploited to affect fundamental rights and freedoms within states. Securitisation is not merely security populism; it is rather an overwhelming practice of measures and procedures that renders state security a burden on democracy and the rule of law and ultimately sets it above rights and freedoms.

The foundation of Securitisation Theory

The Copenhagen School of security studies elaborated securitisation theory to differentiate an extreme form of politicisation, positing that a politicised issue is addressed with ordinary measures, but a securitised issue is addressed with exceptional measures. In other words, 'Politicization would simply be the successful process of drawing an issue into the realm of politics, whereas securitization is the successful process of drawing an issue into the realm of security'.²⁰

The Copenhagen School argues that securitisation entails constructing a discourse that presents a particular issue as a 'security' threat, or an immediate, existential danger to the group(s) in question. As such, it must be dealt with rapidly and as a priority with emergency measures.²¹

Ole Waever, the principal theorist of securitisation, stated 'Security cannot be considered a thing or condition prior in existence to the discourse. It is rather a referential, subjective practice, in the sense that the condition of its existence was established by the discourse itself, not by an ostensible threat of any kind'.²² Securitisation is about non-military threats—issues like immigration, extremism, and Islam, even in the face of contradicting empirical evidence.

Successful securitisation requires three steps: the identification of existential threats, the proposal of emergency measures, and freedom from ordinary security rules. It is accomplished over three phases: First, there must be a political actor who claims that something is under existential threat. Next this actor calls on the public to grant them the right to take non-conventional measures to confront the threat. The actor then persuades the public that these measures are justified to confront and fight the threat. In this process of securitisation, the 'something' typically under threat is the state and the governing elite is the political actor.²³

Securitisation is thus at heart a performative speech act. The producer of the discourse seeks to be freed of the rules ostensibly governing the decision to pursue specific measures. Securitisation only succeeds in a state of heightened public demand for security. As a discourse and semiotically speaking, securitisation seeks to have sufficient impact to persuade the public to accept the violations entailed by these rules or procedures.

A threat is rendered existential not by armed violence and its scope nor by conventional values like geographic or cultural proximity, but rather by its association with 'terrorists'. One's sense of personal danger does not seem to be affected by securitisation. In keeping with the Copenhagen School's focus on shared cultural threats, securitisation fosters a sense of threat to 'us' rather than 'me'.²⁴

In short, securitisation can be seen as a media frame that has a number of results. When the appropriate actor invokes the appropriate threats in the appropriate circumstances to the appropriate public, it will reflect a greater desire to put power and civil liberties in the hands of the government.²⁵

As a media frame, securitisation is not only about speech acts, but it also involves the power of images. It requires an institutional structure for communication ‘capable of addressing the dynamics of security in a world where political communication is increasingly bound with *images* and in which televisual communication is an essential element’.²⁶ As a speech act, security is defined in a communicative environment increasingly structured by televised media and images; speech acts therefore cannot be disentangled from a context in which images are dominant and communicate meaning.²⁷

At a time when security broadly construed has become an arena of politics, and in light of the increasing influence of television communications on security dynamics, the goal of rapid television reporting to the public about terrorist acts is no longer aimed solely at influencing the public. Rather, media coverage itself has become a key element of the security decision-making process, helping to determine the measures taken in response to the events, but in a way that is acceptable to the public regardless of how severely they treat suspects.

Violations in the name of fighting extremism and terrorism

While the legitimacy of government policies is conditional on the commitment to fundamental rights and freedoms, counterterrorism policies in the context of expanding terrorist threats has allowed for different practices corrosive to human rights values.

The use of the security discourse to mobilise support for counterterrorism policies has contributed to a context ‘in which states’ use of violence often go unquestioned and unpunished. This means the user of security rhetoric, those who are labeled dangerous (or not dangerous) and the audience are all part of processes by which securitization occurs.²⁸

All of this makes it difficult ‘to counter terrorism while respecting the rule of law and guaranteeing the security of citizens to the maximum extent possible without violating their fundamental rights. Theoretically, modern constitutionalism emerged to protect citizens from political abuses of power. In practice, however, fundamental rights are not always fully respected since the state is often tempted to exercise its power beyond legal boundaries’.²⁹

And because policies originate in legislation, laws are reflective of the panic over inflated terrorist threats. Exceptional measures have thus become ingrained and normalised in statutes as preventive practices. Citing the need for a firm response to terrorist threats, many countries have tightened criminal laws or enacted special criminal legislation for the enemy. Going further, ‘Parliaments have been active in enacting new offences in the ‘inchoate mode’ and criminalising preparatory activities (including recruitment, training and glorification for terrorist purposes). New inchoate offences also include descriptions like: the ‘encouragement’ of, ‘glorification’ of, and/or ‘apology’ for, terrorism (albeit in an undefined future and at undefined places) as well as the dissemination and the publication of relevant material’.³⁰

In fact, this has produced laws that fundamentally contradict the spirit of human rights practice because these changes to criminal law have had an enormous impact on the criminal justice system as a whole. Natural rights are no longer seen as such, but are rather subordinate to policies of the state: the state has the authority to determine their disposition and may legislate as it pleases, while the law is a license for unlimited state power. This is because ‘The orthodox understanding of counter-terrorist legislation is that, in seeking to safeguard national security and community safety, the State places limits upon the exercise of human rights and civil liberties. In order for investigative and enforcement agencies to apprehend terrorists and prevent acts of terrorism, it is often thought necessary to derogate from, or to limit, rights’.³¹

Such derogations are rationalised by asserting that since the state creates and grants rights to its own citizens, it may reasonably suspend, limit, or override such rights when it is necessary to maintain security.³² But when boundaries between the ordinary criminal justice system and temporary exceptional measures enacted for specific threats become blurred, it leads to the imposition of a permanent legal emergency.³³

Even countries with longstanding democratic and liberal traditions have found it difficult to fight terrorism while keeping their hands clean. The violation of rights in these countries, against the backdrop of a purely security approach to countering extremist ideology or terrorist acts, affected not only Arab and Muslim minorities and immigrants among whom the terrorists had ostensibly come, but native-born citizens as well. With the application of counterterrorism laws in Western countries, both the individual and society have been subjected to arbitrary and illegal measures as a result of violations of privacy and family affairs through electronic surveillance in public places, the tapping of communications and electronic correspondence, and data collection on anyone absent a warrant or legal basis. Ultimately in practice, these laws have not complied with international standards for the protection of the human right to privacy.³⁴

To avoid criticism of direct surveillance operations conducted by intelligence services as morally reprehensible or extra-legal, and because infiltrating extremist and terrorist networks typically requires information from foreign regions that export terrorists, US intelligence sought to build specialised spying operations by ‘attracting outstanding students to work with them, encouraging them to apply to scholarship programs in exchange for two to three years of service with the intelligence agency, where the government covers college tuition for students studying foreign languages and cultures. Intelligence agencies, especially American intelligence, also sought to recruit more citizens with ethnic ties to strategic regions, such as the Middle East, South Asia, and other regions that were largely ignored during the Cold War’.³⁵

As counterterrorism discourse acquired increasing centrality, the entire society was subjected to security management, going beyond the surveillance of dangerous organisations to surveillance of the population as a whole. These practices were injected into various neoliberal governance techniques such as border protection programmes, mass surveillance, risk management, and the engineering of public spaces. It was not only combatants heading to or returning from the arena of war who were monitored, but also any suspicious person, such as those booking an airline ticket with transit through multiple airports or making a last minute booking to ‘sensitive’ areas.

In the same context, the European counterterrorism strategy developed in the wake of the Charlie Hebdo events included operations and procedures like ‘activating cooperation with major internet companies to provide security and intelligence services with rapid reports on the data of travellers within European borders or between European countries, and instituting informal policies to monitor social media’.³⁶

Heightened scrutiny of international travellers involved not only stricter searches at airports. Records of travellers’ routes and private data were opened as well, including even such details as their religious beliefs and food preferences. For example, ‘Since 2006, France has allowed, under certain conditions, the police and customs to obtain personal data of travellers from civil airlines as part of its Air Travellers Database, when passengers book and purchase a ticket to enter or leave France. Sensitive and prohibited information is collected as well, such as the traveller’s religious or ethnic background and even the nature of the meal he orders (halal, for example). The data is preserved for five years’.³⁷

In the UK, control orders were used as a substitute for detention, but even so, ‘suspects’ continued to be denied due process rights. Rather than charging and prosecuting them, the control orders offered the grounds to treat them as security risks to be contained absent any clear evidence of their crimes.³⁸

Finally, it should be noted that authoritarian states imitated some of these surveillance and control practices as part of the global securitisation of terrorism, treating suspected terrorists with extra-legal methods and thus denying them their basic rights. With the expanding list of threats categorised as security risks, counterterrorism policies have been exploited against political opponents in some cases: ‘In tandem with utilizing an overbroad definition of terrorism, this lineage of policies has invited the securitization of difference and dissent, wherein any idea deemed radical or extreme can easily be labelled as a potential threat to national security’.³⁹

The War on Iraq: Failed Rationale and Far-Reaching Consequences

The war launched on Iraq in 2003 was preceded by the securitisation of political and media discourse, which aimed to present the country as an existential threat to the United States and United Kingdom, the two countries that mobilised for and led the war. ‘During the campaign to securitize Iraq by the Bush administration, key figures made statements on several occasions suggesting a direct link between Saddam Hussein’s regime and Al-Qaeda’.⁴⁰ Media outlets, especially major television networks, sought to prove their patriotism and pride in being American, and more significantly: the justness of the war. Mainstream media in the US reinforced this moral position by encouraging the move towards war and excluding any critical or opposition voices.⁴¹ Tony Blair attempted to persuade the domestic and international public of the genuine danger posed by Saddam Hussein’s possession of weapons of mass destruction (identifying the threat) while also asserting the need to confront the threat with military force (mobilising against the threat).⁴²

In their debate with neoconservatives on using history to understand the nature of the threat posed by Saddam Hussein's regime, Mearsheimer and Walt argued 'The belief that Saddam's past behavior shows he cannot be contained rests on distorted history and faulty logic. In fact, the historical record shows that the United States can contain Iraq effectively—even if Saddam has nuclear weapons—just as it contained the Soviet Union during the Cold War'.⁴³

Regardless of the US and UK's success in securitising the issue of Iraq—they won parliamentary approval to go to war although public opinion was divided—the actual securitisation process must be judged a failure at the international level since the two powers failed to convince a majority of the war's legitimacy and subsequently launched it with a handful of countries on board but without UN authorisation.

When it became apparent that Iraq did not possess weapons of mass destruction and had no part in 9/11, the Bush administration blamed faulty intelligence and indicated the brutality of Saddam Hussein's regime as being an equally just cause for war. This of course was not the stated motive before the conflict, and thus can be seen as a fallback position. This position itself is fairly untenable on any moral grounds, given US support of numerous undemocratic regimes around the world.⁴⁴

In its invasion, the US not only toppled the regime of Saddam Hussein, but it also occupied the country and brought it under American control. 'The main objective of the American governor's decision to dissolve the Iraqi army in 2003—ostensibly to purge it of the Iraq president's followers—was to deprive Iraq of the main prop and pillar of the state, to facilitate the dismantling of the state and its re-formation in line with the US vision.'⁴⁵

The Bush administration portrayed the occupation as a process of liberation that would provide a model for toppling authoritarian regimes and building a pioneering democratic experiment: 'The metaphysics of history dictated that once Saddam Hussein had been overthrown, Iraq must of necessity become a neoliberal free market and an American style democracy as envisaged by the neoconservatives.'⁴⁶

The occupation of Iraq also exposed the US's designs on the country's resources, since 'control of Iraq's oil unlocks access to nearly a quarter of the world's oil reserves, not to mention the profits for US oil companies after the suspension of concessions for the Russian, French, and Chinese oil companies already in Iraq prior to the invasion'.⁴⁷ The US sought to tighten its control over Iraqi oil after the military invasion through a security agreement with the Iraqi government, which contained provisions 'infringing Iraqi sovereignty, such as politically disregarding the agreement to end the occupation'.⁴⁸ The agreement clearly provided for the evacuation of all combat troops while allowing 40,000 troops to remain to train the Iraqi army. Subsequently hit with a profound economic crisis, the US government, under the Obama administration or otherwise, could not evacuate its massive bases in Iraq after spending more than \$600 million to build them.⁴⁹

At the same time, the US occupying authority proved unable to offer an alternative system to fill the political vacuum following the removal of Saddam Hussein. Indeed, the occupation gave rise to an unstable electoral system hollowed out by corruption and sectarian and ethnic quotas: 'Under the occupation, Iraq became a failed state—perhaps not even at state at all, as the

occupation insisted on a system that did not enjoy the support of most segments of the Iraqi people'.⁵⁰ It became instead a sectarian system whose exclusionary policies not only led to the eruption of a real civil war, it also obstructed the construction of a true national state when the US occupation ended.

For instance, Nouri al-Maliki continued to attack Arab Sunni cities, ostensibly to fight terrorism, and unleashed his militias to conduct hundreds of assassinations, bombings, and arbitrary arrests.⁵¹ The Iraqi government has repeatedly carried out such campaigns, often using militia-like tactics, attacking populated areas, destroying property, curtailing movement, and making warrantless arrests without evidence. The Iraqi government's reliance on tanks, helicopters, and military and artillery vehicles demonstrates its disproportionate use of force.⁵²

Throughout this all, the absolute powers of the Iraqi government have been based on the counterterrorism law issued under the US occupation in 2005 and relied on the services of the counterterrorism agency, established in 2007 and trained and equipped with the latest hardware by the US. The government has continued to carry out 'arbitrary arrests, prolonged detention without trial, and the arrest of wanted fugitives' female members with the goal of pressuring fugitives to turn themselves in'.⁵³ It has similarly launched campaigns against opposition figures absent any evidence of their involvement in terrorist activities and exploited the state of emergency to use excessive violence against peaceful demonstrators. The Iraqi government has further deployed the Shiite militias with the Popular Mobilisation Forces, created in 2014 under al-Maliki with Iranian support, in counterterrorism field operations. These forces subsequently deviated from their combat missions and began launching sectarian attacks on the Sunni population. 'The abuse of the counterterrorism law by military and security forces, has eroded due process within the Iraqi criminal justice system, as demonstrated by the practices of arbitrary detention, torture, and the death penalty, accepting judicial investigations in illegal detention centres and relying on the results of preliminary investigations unlawfully conducted by the body holding suspects, in clear violation of legal provisions that prohibit combining the authorities of detention and investigation in one body'.⁵⁴

At the same time, the entry of US forces into Baghdad in 2003 marked the beginning of Iraq's slide into unending violence, although the parties involved and their objectives shifted over time. It was also the impetus for the formation of several armed organisations in Iraq, both domestic and transnational jihadi groups,⁵⁵ that joined the insurgency and resistance against American troops, proving successful at recruiting and carrying out guerrilla attacks. Even after the withdrawal of American forces, the sole concern of the US administration was 'preserving its interests in keeping Iraq from total breakdown and guaranteeing the flow of oil from its territory'.⁵⁶ Its subsequent preoccupation with the Arab Uprisings led it to leave Iraq to confront these organisations alone, though the US was the primary cause of their emergence. This permitted the expansion of Daesh, which arose amid the Iraqi government's hostility to Sunnis and allied with armed Sunni tribes. As Daesh proved able to take control of several Iraqi cities and oil refineries, set up training camps, and provide support for foreign fighters after the declaration of its caliphate, Iraq seemed not only a failed state, but a weak and captive state as well.

Ultimately, Iraq has become vulnerable to all manner of political, military, and security interference, not only by non-state actors like Daesh, but also by regional powers competing for influence in the Middle East. As the concept of terrorism has been rendered more fluid and the scope of counterterrorism consequently expanded, interference in Iraq's affairs is no longer the sole province of Western powers. First and foremost among these regional powers is Iran, which through its alliance with Shiite political forces, has turned Iraq into a geopolitical arena to establish its regional role.

On counterterrorism pretexts, Iran now 'possesses the power and influence in Iraq since the fall of the regime in 2003 that enables it to veto any hostile Iraqi government, making it a major player which must be considered for any decision in Iraqi affairs or regional issues that affect Iraq'.⁵⁷ So, for example, the fight against Daesh and its allies turned overnight from a national mission into a Shiite sectarian affair. By the end of the Maliki era, the government in Baghdad had come to rely Iraqi or Iranian Shiite militias to confront the group.⁵⁸ Iran quickly offered support to Iraq in the form of weapons, equipment, experts, and advisors, led by General Qasem Soleimani, the commander of the Quds Force, who led the war against Daesh with the Popular Mobilisation Forces, most of which consist of armed factions loyal to Tehran. When the war on Daesh ended, some of these factions became political movements, in an attempt to expand the Shiite power base sympathetic to Tehran.⁵⁹

It is worth noting that in the same way that Iranian interference in Iraqi affairs prevented the unification of its three major components (Sunnis, Kurds, and Shiites) against the common threat to them all posed by Daesh, it continues to preclude the crystallisation of an inclusive Iraqi identity that could constitute the foundation for a cohesive national state.

Conclusion

The study found that the response to inflated terrorist threats was unjustified and had the opposite of its intended effect. It also elucidated the nature and extent of this disproportionality and the implications for fundamental rights and freedoms, and showed how counterterrorism narratives serve to legitimise the discourse of counterterrorism and responses to it.

At a time when counterterrorism policies, both discourse and practice, have become integral to the ontology of the neoliberal state, the study has demonstrated the unethical nature of these policies, their lack of human rights standards, and their ineffectiveness, as well the way they have undermined the rule of law and derailed efforts to curb terrorism.

Counterterrorism strategies have failed on all accounts—not only because of their steep human rights costs, but also largely because they fail to inhibit terrorism. On the contrary, these strategies have given rise to new terrorist actors. The war on Iraq, for example, did not have a decisive, positive, stabilising effect.

Successful counterterrorism and anti-extremism operations are anything but the use of force and violence. Genuinely combatting terrorism requires attention to its causes. The recognition of rights neutralises terrorism, unlike assaults on them, which only generate antipathy and grievances

that reproduce terrorism. Combatting terrorism therefore requires a human rights-based approach that not only establishes a healthy balance between rights and security, but also takes into account the power of human rights to curtail terrorism. Perhaps this requires humanising the debate on state security and promoting a discourse that uses the terms of human security and human dignity to determine policies and decisions. It also suggests a need to redraw the boundaries of state authority to render it difficult for the state to exercise unlimited power by claiming that its actions are justified given the exigencies of security.

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