



# Administrative Measures, Human Rights, and Democracy in Turbulent Times

---

Cyprien Fluzin



International Centre for  
Counter-Terrorism

# Administrative Measures, Human Rights, and Democracy in Turbulent Times

---

Cyprien Fluzin

ICCT Policy Brief

March 2024



International Centre for  
Counter-Terrorism

## About ICCT

---

The International Centre for Counter-Terrorism (ICCT) is an independent think and do tank providing multidisciplinary policy advice and practical, solution-oriented implementation support on prevention and the rule of law, two vital pillars of effective counter-terrorism.

ICCT's work focuses on themes at the intersection of countering violent extremism and criminal justice sector responses, as well as human rights-related aspects of counter-terrorism. The major project areas concern countering violent extremism, rule of law, foreign fighters, country and regional analysis, rehabilitation, civil society engagement and victims' voices.

Functioning as a nucleus within the international counter-terrorism network, ICCT connects experts, policymakers, civil society actors and practitioners from different fields by providing a platform for productive collaboration, practical analysis, and exchange of experiences and expertise, with the ultimate aim of identifying innovative and comprehensive approaches to preventing and countering terrorism.

### Licensing and Distribution

ICCT publications are published in open access format and distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License, which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.



# Contents

---

<b>About ICCT</b>	iii
<b>Abstract</b>	1
<b>Managing Evolving Threats In Volatile Circumstances</b>	2
<b>Case Study of Contemporary Challenges and Emerging Risks</b>	5
Canada: managing the threat of far-right violence	5
France: protest, activism, or security threat?	6
United States: framing civil unrest as terrorism	8
<b>Administrative Measures in Counter-Terrorism</b>	9
Heightened risks of abuse, misuse, and overuse in turbulent times	9
Looking at the big picture: impact on the civic and democratic space	10
<b>Heightened Risks Call for Heightened Caution</b>	13
<b>Bibliography</b>	14
<b>About the Author</b>	20

## Abstract

Terrorism in Western nations has changed significantly over the past years, putting security services to the test and prompting necessary adaptations in counter-terrorism strategies. In this context, states may be tempted to resort to more flexible and swiftly implemented tools such as administrative measures. However, this Policy Brief argues that the known risks associated with administrative measures may be magnified today by a combination of factors and pose new challenges. First, the broadening of the perceived terrorist threat, as it coincides with escalating social and political tensions in many democracies, contributes to obscuring the boundaries between activism, disorder, extremism (violent or not), and terrorism, increasing the risk of misuse as part of attempts to protect the public order.

Second, the increasingly tense political climate displaying growing polarisation and escalating populist rhetoric raises additional risks of intentional abuse. Finally, it appears that the over-reliance on administrative measures, even when prima facie compliant with the law, may also contribute to an erosion of some human rights and rule of law principles. In addition to causing harm to specific individuals or groups, the accumulation of these circumstances may also affect entire societies and undermine democracy altogether. This Policy Brief argues that the current backdrop calls for renewed caution in the use of administrative measures and a dramatic strengthening of existing safeguards and protections against arbitrary or unlawful uses.

**Keywords:** counter-terrorism, law enforcement, international law, human rights, rule of law, administrative measures, democracy, activism, political violence

## Managing Evolving Threats In Volatile Circumstances

The use of so-called administrative measures<sup>1</sup>—understood as coercive measures that restrict the exercise of certain human rights and are imposed by an executive authority, against a person or entity deemed to pose a security risk, without laying criminal charges<sup>2</sup>—in the context of counter-terrorism is said to have grown consistently over the past two decades.<sup>3</sup> Although their effectiveness in preventing acts of terrorism remains uncertain, and despite concerns as to their impact on human rights and the rule of law principles, they have emerged as an especially convenient and flexible tool for state authorities—ideal in times of crisis to allow law enforcement agencies to take decisive action without waiting on court approvals, or to serve as evidence of the authorities’ determination to combat terrorism.<sup>4</sup> Western nations, in particular, made them a core element of their strategies when responding to the risks posed by Foreign Terrorist Fighters,<sup>5</sup> contributing to normalising an instrument once viewed as exceptional.<sup>6</sup>

Far from surprising, the trend is in keeping with the common practice of transferring prerogatives from the judicial or legislative branches into the hands of the executive when facing serious threats to national security—the executive being often perceived as better equipped to provide swift responses in times of emergencies.<sup>7</sup> It also builds on a long history of employing such measures in other areas of policy, most notably in immigration control.<sup>8</sup> However, because they typically involve less demanding procedures and oversight, fewer safeguards or control mechanisms, and lack judicial supervision, administrative measures have long come under scrutiny due to their potential impact on the enjoyment of human rights and on fundamental principles of the rule of law<sup>9</sup>—more so than other tools within the counter-terrorism arsenal—and many abuses

1 Also sometimes called “restrictive measures”, preventive measures”, “control orders”, “administrative searches”, “administrative detention” etc. See e.g. Bérénice Boutin, “Administrative Measures in Counter-Terrorism and the Protection of Human Rights,” *Security and Human Rights* 27, no. 1–2 (July 13, 2016): 2–3.

2 To paraphrase the definition put forward in Tanya Mehra, Matthew Wentworth, and Bibi van Ginkel, “The Expanding Use of Administrative Measures in a Counter-Terrorism Context,” (International Centre for Counter-Terrorism: 2021), <https://www.icct.nl/sites/default/files/2022-12/The-Expanding-Use-of-Administrative-Measures-in-a-Counter-.pdf>; See also the definition put forward by Bérénice Boutin: ‘measures aimed at preventing terrorism within the territory of a state, decided ‘upon and ordered by the executive (or with its close involvement), and subject to limited judicial review’ Boutin, “Administrative Measures in Counter-Terrorism and the Protection of Human Rights.”

3 “Directive (EU) 2017/541 on Combating Terrorism - Impact on Fundamental Rights and Freedoms” (European Union Agency for Fundamental Rights, 2021), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-directive-combating-terrorism\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-directive-combating-terrorism_en.pdf), 90; Manfred Nowak and Anne Charbord, “Key Trends in the Fight against Terrorism and Key Aspects of International Human Rights Law,” in *Using Human Rights to Counter Terrorism* (Edward Elgar Publishing, 2018), 12–91, <https://www.elgaronline.com/edcollchap/edcoll/9781784715267/9781784715267.00006.xml>; although it is far from new as such, see e.g. David Bonner, *Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed?* (Ashgate Publishing, Ltd., 2013). See also [in French] Raphaël Kempf, *Ennemis d’État: Les lois scélérates, des «anarchistes» aux «terroristes»* [Enemies of the State: The Villainous Laws, from “Anarchists” to “Terrorists”], (Paris: La Fabrique, 2019).

4 Mehra, Wentworth, and van Ginkel, “The Expanding Use of Administrative Measures in a Counter-Terrorism Context,” 8.

5 Bérénice Boutin, “Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards,” *Terrorism and Counter-Terrorism Studies* 7 (December 1, 2016).

6 Though the lack of publicly available data in this respect makes it impossible to conduct a large-scale and reliable quantitative analysis of this evolution, see descriptions of clear trends, among others, in Bonner, *Executive Measures, Terrorism and National Security*; Susan Donkin, *Preventing Terrorism and Controlling Risk: A Comparative Analysis of Control Orders in the UK and Australia*, 2014th edition (Springer, 2013).

7 See, among many others, e.g. Andrew Lynch, Nicola McGarrrity, and George Williams, eds., *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (London: Routledge, 2010); Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 1st edition (Cambridge University Press, 2008), 11–29; Among an abundance of literature, see for e.g. a case-study of the United States in this respect: Amos N. Guiora and Chelsea Joliet, “Counter-Terrorism Policies and Challenges to Human Rights and Civil Liberties: A Case Study of the United States of America,” in *International Human Rights and Counter-Terrorism*, ed. Eran Shor and Stephen Hoadley, *International Human Rights* (Singapore: Springer Singapore, 2019), 293–322; for a detailed historical overview of the use of executive measures in the United Kingdom, see Bonner, *Executive Measures, Terrorism and National Security*.

8 Which sometimes blurs the line between counter-terrorism and immigration policy, see e.g. Eleonora Celoria, “Counterterrorism Measures as a Migration Control Device: Insights from Italy,” *Verfassungsblog*, November 7, 2021, <https://verfassungsblog.de/os2-control-device/>; Donald Kerwin, “The Use and Misuse of ‘National Security’ Rationale in Crafting U.S. Refugee and Immigration Policies,” *International Journal of Refugee Law* 17, no. 4 (December 1, 2005): 749–63; more generally, on administrative measures in immigration policy, see e.g. Robert Thomas, *Administrative Law in Action: Immigration Administration* (Oxford London New York New Delhi Sydney: Hart Publishing, 2022); Shalini Bhargava Ray, “Immigration Law’s Arbitrariness Problem,” *Columbia Law Review* 121, no. 7 (2021): 2049–2118; Maurice A. Roberts, “The Exercise of Administrative Discretion under the Immigration Laws Immigration Symposium,” *San Diego Law Review* 13, no. 1 (76 1975): 144–65; Paul S. Peirce, “The Control of Immigration as an Administrative Problem,” *American Political Science Review* 4, no. 3 (August 1910): 374–89.

9 Generally, see e.g. Mehra, Wentworth, and van Ginkel, “The Expanding Use of Administrative Measures in a Counter-Terrorism Context”; in more details (in the context of the EU) “Directive (EU) 2017/541 on Combating Terrorism - Impact on Fundamental Rights and Freedoms,” [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-directive-combating-terrorism\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-directive-combating-terrorism_en.pdf), 89–106; “Joint Civil Society Report on the Fundamental Rights Impact of the EU Directive on Combating Terrorism” (Open Society Foundation, Amnesty International, International Commission of Jurists, November 2021), <https://policehumanrightsresources.org/joint-civil-society-report-on-the-fundamental-rights-impact-of-the-eu-directive-on-combating-terrorism>, see also, for e.g. in the United Kingdom, the conclusions and

have been documented.<sup>10</sup> Consequently, prior research,<sup>11</sup> advocacy,<sup>12</sup> and guidance from international bodies,<sup>13</sup> have consistently argued for limiting the use of such measures as much as possible, and have maintained that, in the absence of adequate alternatives, their use must always be assessed against standards of necessity, adequacy, and proportionality.

However, as terrorism remains a persistent security concern, the use of administrative measures shows no sign of slowing down.<sup>14</sup> In fact, as the threat environment in many Western countries appears to have become more fluid and complex over the past years, there are indications that administrative measures are now employed in a wider range of circumstances than in the past.<sup>15</sup> In addition to the jihadi terrorist threat, other forms of terrorist violence indeed present new challenges to states' national security and counter-terrorism strategies.<sup>16</sup> More ideologically diverse, often home-grown, decentralised, less organized, and resorting to a variety of tools and strategies, these emerging threats are said to be harder to monitor and less predictable, making states less confident in their ability to prevent attacks.<sup>17</sup> Motivated by political beliefs or ideologies distinct from religious terrorism,<sup>18</sup> the top threat is widely considered to come from far-right groups,<sup>19</sup> but some assessments suggest that left-wing or anarchist activity, or even activism driven by the looming climate crisis could also add to this changing threat landscape.<sup>20</sup> Other ideologies, even harder to categorise—anti-government or

---

recommendations of the Joint Select Committee on Human Rights regarding the annual renewal of control orders legislation available until 2010, [https://archives.parliament.uk/collections/search?s=%22Annual+Renewal+of+Control+Orders+Legislation%22&qa%5Bkeyword\\_reference\\_type%5D=0&qa%5Btitle%5D=&qa%5Bperson%5D=&qa%5Bplace%5D=&qa%5Bsubject%5D=&qa%5Bformat%5D=&qa%5Bidentifier%5D=&qa%5Bdate\\_from%5D=&qa%5Bdate\\_to%5D=&cbav=2&cbadvsearchquery=](https://archives.parliament.uk/collections/search?s=%22Annual+Renewal+of+Control+Orders+Legislation%22&qa%5Bkeyword_reference_type%5D=0&qa%5Btitle%5D=&qa%5Bperson%5D=&qa%5Bplace%5D=&qa%5Bsubject%5D=&qa%5Bformat%5D=&qa%5Bidentifier%5D=&qa%5Bdate_from%5D=&qa%5Bdate_to%5D=&cbav=2&cbadvsearchquery=)

10 For e.g. "Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France," Amnesty International, 2018, <https://www.amnesty.org/en/documents/eur21/9349/2018/en/#:~:text=These%20administrative%20control%20measures%20are,meaningful%20opportunity%20to%20challenge%20them>.

11 For e.g. Mehra, Wentworth, and van Ginkel, "The Expanding Use of Administrative Measures in a Counter-Terrorism Context"; Boutin, "Administrative Measures against Foreign Fighters"; Boutin, "Administrative Measures in Counter-Terrorism and the Protection of Human Rights."

12 For e.g. "Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France"; "France: A Right Not a Threat: Disproportionate Restrictions on Demonstrations under the State of Emergency in France," Amnesty International, May 30, 2017, <https://www.amnesty.org/en/documents/eur21/6104/2017/en/>.

13 See, most notably, "Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context" (Global Counterterrorism Forum, 2019), <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/2019/Glion%20Recommendations%20final.pdf?ver=2020-01-13-134735-497&timestamp=1578921143128>; see also, among many others, e.g. "Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters" (United Nations Counter-Terrorism Implementation Task Force, 2018), [https://www.ohchr.org/sites/default/files/newyork/Documents/Human-Rights-Responses-to-Foreign-Fighters-web\\_final.pdf](https://www.ohchr.org/sites/default/files/newyork/Documents/Human-Rights-Responses-to-Foreign-Fighters-web_final.pdf); "Basic Human Rights Reference Guide - Conformity of National Counter-Terrorism Legislation with International Human Rights Law" (United Nations Counter-Terrorism Implementation Task Force, October 2014), <https://www.ohchr.org/sites/default/files/newyork/Documents/CounterTerrorismLegislation.pdf>; "Resolution 1840 (2011) 'Human Rights and the Fight against Terrorism'" (Council of Europe, Parliamentary Assembly, 2011), 18, <https://pace.coe.int/pdf/c63513df193ab9e08cba0c5b420ba9ac05265aa3bbc15ccf2c80a760b0c52bf/res.%201840.pdf>; "Countering Terrorism, Protecting Human Rights: A Manual" (Warsaw: Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, 2007), <https://www.osce.org/files/f/documents/d/6/29103.pdf>.

14 See for instance, Amnesty International's 2017 analysis of domestic practices and legal developments in a select number of European countries: "Dangerously Disproportionate: The Ever-Expanding National Security State in Europe" (Amnesty International, 2017), <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>.

15 Based on an analysis of information publicly accessible and relating to a select number of countries. Note that in the absence of publicly available data on the use of administrative measures, it is impossible to obtain a large-scale and reliable picture of their use and evolution.

16 See e.g. Austin Doctor, "The Signal in the Noise: The 2023 Threats and Those on the Horizon," *Lawfare*, January 5, 2024, <https://www.lawfaremedia.org/article/the-signal-in-the-noise-the-2023-threats-and-those-on-the-horizon>; Bruce Hoffman and Jacob Ware, "The Terrorist Threats and Trends to Watch Out for in 2023 and Beyond," *CTC Sentinel* 15, no. 11 (December 2022), <https://ctc.westpoint.edu/the-terrorist-threats-and-trends-to-watch-out-for-in-2023-and-beyond/>; Colin P. Clarke, "Trends in Terrorism: What's on the Horizon in 2023?," *Foreign Policy Research Institute*, 2023; Lizzie Dearden, "Terror Threat Rising in UK as Attackers Become 'Increasingly Unpredictable,'" *The Independent*, July 18, 2023, <https://www.independent.co.uk/news/uk/home-news/uk-terror-threat-suella-braverman-attacks-b2377284.html>.

17 Though the data available on actual terrorist incidents does not quite systematically confirm this description "European Union Terrorism Situation and Trend Report 2023" (Europol, 2023), <https://www.europol.europa.eu/publication-events/main-reports/european-union-terrorism-situation-and-trend-report-2023-te-sat>, the description of the threat environment as more diverse and complex remains a prevalent narrative, e.g. "Strategic Intelligence Assessment and Data on Domestic Terrorism," Department of Homeland Security, accessed March 1, 2024, <https://www.dhs.gov/publication/strategic-intelligence-assessment-and-data-domestic-terrorism>; "CONTEST: The United Kingdom's Strategy for Countering Terrorism 2023" (HM Government, July 2023), [https://assets.publishing.service.gov.uk/media/650b1b8d52e73c000d54dc82/CONTEST\\_2023\\_English\\_updated.pdf](https://assets.publishing.service.gov.uk/media/650b1b8d52e73c000d54dc82/CONTEST_2023_English_updated.pdf).

18 Note that the classification of terrorist threats varies greatly, and this categorisation is not necessarily the predominant one in literature, which recognises the challenge of classifying some newer ideologies Daveed Gartenstein-Ross et al. "Composite Violent Extremism: A Radicalization Pattern Changing the Face of Terrorism," *Lawfare*, November 22, 2022, <https://www.lawfaremedia.org/article/composite-violent-extremism-radicalization-pattern-changing-face-terrorism>.

19 "France's Internal Security Chief Warns of Rise in Far-Right Violence," *RFI*, July 10, 2023, <https://www.rfi.fr/en/france/20230710-france-s-internal-security-chief-warns-against-rise-in-far-right-violence>; Connolly Griffin, "White Supremacists on Par with ISIS as 'Top Threat,' FBI Director Says at Capitol Riot Hearing," *The Independent*, March 3, 2021, <https://www.the-independent.com/news/world/americas/us-politics/wray-senate-hearing-capitol-riot-white-supremacists-b1810615.html>; United Nations, "Terrorist Attacks on the Basis of Xenophobia, Racism and Other Forms of Intolerance, or in the Name of Religion or Belief" Report of the Secretary-General Submitted Pursuant to the Request Issued in the 7th Review of the United Nations Global Counter-Terrorism Strategy (General Assembly Resolution 75/291), A/77/266, [https://www.un.org/securitycouncil/ctc/news/secretary-general-s-new-report-highlights-new-emerging-form-\"far-right\"-terrorism](https://www.un.org/securitycouncil/ctc/news/secretary-general-s-new-report-highlights-new-emerging-form-\).

20 Even if they generally remain less violent, or when they are, less lethal Teun van Dongen, Matthew Wentworth, and Hanna Rigault Arkhis, "Terrorist Threat Assessment 2019-2021" (International Center for Counter-Terrorism, 2022), <https://www.icct.nl/sites/default/files/2022-12/Terrorist-Threat>



anti-institutions views, for instance—further complicate the picture.<sup>21</sup> That the nature of the terrorist threat may evolve is no novelty; today’s emerging landscape, however, may prove particularly broad, diverse, and therefore challenging.<sup>22</sup>

In the meantime, broader circumstances have made many countries’ political and social environments more tense, polarised, and violence-prone than in the recent past.<sup>23</sup> More concerning, increased hostility in the public debate, aggressive political rhetoric, as well as a rise in expressions of discontent, acts of civil disobedience, and acts of political violence, have, in some instances, contributed to obfuscating the distinction between ordinary politics and extremism, and between activism and terrorism, creating circumstances exceptionally conducive to misuse. Meanwhile, the mainstreaming of political stances once seen as marginal, extreme, or illiberal, raises concern as to the possible increased risk of intentional abuse of counter-terrorism instruments—in fact, some figures of populist movements, known for their vilifying narratives, have made no secret of their desire to utilize all legal avenues to crack down on their opponents.<sup>24</sup>

In this context, while it may look like a convenient tool of adaptation to a seemingly widening terrorist threat, this Policy Brief argues that the use of administrative measures may pose a heightened risk of adverse effects on human rights and the rule of law in today’s volatile environment.<sup>25</sup> Additionally, the use of administrative measures in response to incidents of political violence that do not qualify as terrorism may harm key prerequisites of democracy. While empirical evidence remains insufficient to ascertain a direct causality, this Policy Brief argues that the combination of these different factors is, at the very least, likely to create circumstances conducive to a rise in abuse, misuse, or overuse,<sup>26</sup> which calls for renewed scrutiny into the contemporary use of administrative measures.<sup>27</sup>

---

Assessment-2019-2021.pdf; Katarzyna Jasko et al., “A Comparison of Political Violence by Left-Wing, Right-Wing, and Islamist Extremists in the United States and the World,” *Proceedings of the National Academy of Sciences* 119, no. 30 (July 26, 2022); on the nature of the terrorist threat, see for e.g. country reports for Denmark, Germany, Sweden, and Turkey, especially for the year 2022 “Country Reports on Terrorism,” United States Department of State, accessed March 1, 2024, <https://www.state.gov/country-reports-on-terrorism/>; see also on left-wing and anarchist terrorism, e.g. “Contemporary Violent Left-Wing and Anarchist Extremism (VLWAE) in the EU: Analysing Threats and Potential for P/CVE” (European Commission, Radicalisation Awareness Network, 2021).

21 “The Security Strategy for the Kingdom of the Netherlands” (National Coordinator for Counter-terrorism and Security, 2023), <https://www.government.nl/documents/publications/2023/04/03/security-strategy-for-the-kingdom-of-the-netherlands>, 28; “U.S. National Security Strategy” (The White House, October 2022), 31, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

22 On the evolution of the terrorist threat, see the well-known contribution of David C. Rapoport, *Waves of Global Terrorism: From 1879 to the Present* (Columbia University Press, 2022).

23 “Germany Sees Record Number of Politically Motivated Crimes,” DW, September 5, 2023, <https://www.dw.com/en/germany-sees-record-high-number-of-politically-motivated-crimes/a-65559587>; Xavier Crettiez and Nathalie Duclos, *Violences politiques: Théories, formes, dynamiques* [Political Violence: Theories, Forms, Dynamics] (Malakoff: Armand Colin, 2021); Benjamin J. Richardson, *From Student Strikes to the Extinction Rebellion: New Protest Movements Shaping Our Future* (Edward Elgar Publishing, 2020); Alain Bertho, *The Age of Violence: The Crisis of Political Action and the End of Utopia* (London New York: Verso, 2018); Xavier Crettiez and Laurent Mucchielli, *Les violences politiques en Europe : Un état les lieux* [Political Violence in Europe: An Overview] (La Découverte, 2010).

24 See e.g. Karen J. Greenberg, *Subtle Tools: The Dismantling of American Democracy from the War on Terror to Donald Trump* (Princeton University Press, 2023); Georg Löflmann, “‘Enemies of the People’: Donald Trump and the Security Imaginary of America First,” *The British Journal of Politics and International Relations* 24, no. 3 (August 1, 2022): 543–60; Ben Fermor and Jack Holland, “Security and Polarization in Trump’s America: Securitization and the Domestic Politics of Threatening Others,” *Global Affairs* 6, no. 1 (January 1, 2020): 55–70.

25 Although the risks posed by administrative measures are not unique, and others - for instance those stemming from the increased powers given to police forces - similarly cause serious concerns. “Warning That New Law Gives Police Powers To Treat Protests Like ‘Terrorism,’” *HuffPost UK*, January 16, 2023, [https://www.huffingtonpost.co.uk/entry/shami-chakrabarti-warns-public-order-bill-gives-police-powers-to-treat-protesters-like-terrorists\\_uk\\_63c5197fe4b0cbfd55f4b105](https://www.huffingtonpost.co.uk/entry/shami-chakrabarti-warns-public-order-bill-gives-police-powers-to-treat-protesters-like-terrorists_uk_63c5197fe4b0cbfd55f4b105); Ryan Devereaux, “FBI and San Francisco Police Have Been Lying About Scope of Joint Counterterrorism Investigations, Document Suggests,” *The Intercept*, November 1, 2019, <https://theintercept.com/2019/11/01/fbi-joint-terrorism-san-francisco-civil-rights/>; Erling Johannes Husabø, “Counterterrorism and the Expansion of Proactive Police Powers in the Nordic States,” *Journal of Scandinavian Studies in Criminology and Crime Prevention* 14, no. 1 (May 1, 2013): 3–23; Richard A. Edwards, “Stop and Search, Terrorism and the Human Rights Deficit,” *Common Law World Review* 37, no. 3 (September 1, 2008): 211–56; David A. Harris, “The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America,” *Rutgers Law Journal* 38, no. 1 (2007 2006): 1–60; Victor Keppeler and Karen Miller-Potter, “Policing in the Age of Terrorism,” in *Controversies in Policing*, ed. Quint Thurman and Andrew Guacomazzi (Routledge, 2004).

26 To reach this conclusion, aside from the examples included in this Brief, the research relied on a comparative empirical analysis of instances of the use of administrative measures reported in the media or by civil society in countries including (in order based on number of cases reviewed) France, the United Kingdom, the United States, Germany, Canada, Poland, Hungary, Spain, and Italy. Resulting from a combination of inductive and deductive research, the findings contained in this Brief also rely on an extensive review of secondary empirical and theoretical literature drawing from a variety of disciplines that include both quantitative and qualitative research conducted mainly over the past 30 years and with a special focus on “Western”—or “Global North”—countries. It also included an analysis of a limited set of primary sources including legislation, case law, and government reports. Finally, the Brief’s main claims were informed by input collected between August 2023 and February 2024 from a range of stakeholders based in The Netherlands, Switzerland, France, the United States, Australia, Germany, Italy, Canada, and Singapore. Despite the large amount of rigorous research it draws from, this Policy Brief does highlight the need for more empirical research regarding the contemporary use of administrative measures and corresponding risks.

27 Which the new UN Special Rapporteur on counter-terrorism and human rights has already put at the top of his agenda in his first report United Nations,



After providing a brief overview of recent examples drawn from Canada, France, and the United States that illustrate concerns regarding the contemporary use of administrative measures, the Policy Brief will argue two key points. First, it argues that the expanding use of such measures in the face of a broadening, more complex, and more fluid terrorism landscape may heighten the risks of inadequate or disproportionate use. Second, it argues that the ensuing adverse consequences may prove more far-reaching than before, risking undermining human rights and the rule of law not only with respect to the individuals and groups targeted, but also with respect to society more broadly, causing concerns for Democracy altogether. In light of these considerations, this Policy Brief contends that the use of administrative measures today calls for even greater caution than previously argued.

## Case Study of Contemporary Challenges and Emerging Risks

In the absence of publicly available data allowing for a comprehensive study of the evolution of the number, type, scope, and targets of administrative measures, the analysis of select recent cases presented below offers insight into the range of concerns that emerge in today's context.

### Canada: managing the threat of far-right violence

Canada, like many Western nations, has grappled with the growing threat of violence posed by far-right groups and networks—the number of which has tripled in just a few years—in addition to pre-existing jihadi terrorism.<sup>28</sup> Some attacks have made headlines, most notably the Quebec City mosque shooting in 2017, during which a gunman killed six Muslim worshipers and injured nineteen.<sup>29</sup> As part of their efforts, especially in the wake of revived concerns following unrest in the neighbouring United States and the January 6th Capitol Riots, the Canadian authorities placed a number of far-right groups on their list of terrorist entities,<sup>30</sup> including: the Atomwaffen Division (AWD), a neo-Nazi group created in the United States in 2013 that has since expanded to the United Kingdom, Canada, Germany and other countries;<sup>31</sup> the US-based Proud Boys; as well as the group Blood and Honour (B&H), another neo-Nazi group, some of whose members had allegedly taken part in violent actions including murders and bombings.<sup>32</sup> Their listing as terrorist organisations made it unlawful for anybody in Canada to interact with the groups or, most importantly, to provide financial services, which effectively froze their assets. The listing also criminalised support activities related to the groups—including travel, training, and recruitment. Additionally, individuals can now be denied entry to Canada if they are found to be associated with any of the groups. Finally, the listing may facilitate the removal of the groups' online content.<sup>33</sup>

<sup>28</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Ben Saul, A/ HRC/55/48, January 17, 2024, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5548-vision-and-priorities-report-special-rapporteur-promotion-and-which-will-also-be-addressed-in-a-report-by-the-high-commissioner-for-human-rights-in-2024> "OHCHR | Call for Input – Use of Administrative Measures in Counter Terrorism – Report to the Human Rights Council on Terrorism and Human Rights," United Nations, Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/calls-for-input/2024/call-input-use-administrative-measures-counter-terrorism-report-human-rights>.

<sup>29</sup> Jim Carr, "The Rise of Ideologically Motivated Violent Extremism in Canada - Report of the Standing Committee on Public Safety and National Security; 44th Parliament, 1st Session" (House of Commons, Canada, June 2022), [https://publications.gc.ca/collections/collection\\_2022/parl/xc76-1/XC76-1-1-441-6-eng.pdf](https://publications.gc.ca/collections/collection_2022/parl/xc76-1/XC76-1-1-441-6-eng.pdf); Navaid Aziz and Stephanie Carvin, "Hate in Canada: A Short Guide to Far-Right Extremist Movements" (Organization for the Prevention of Violence, January 10, 2022), <https://preventviolence.ca/publication/hate-in-canada-a-short-guide-to-far-right-extremist-movements/>.

<sup>30</sup> News Staff, "Deadly 2017 Quebec City Mosque Shooting: Timeline of Events," CityNews Montreal, January 29, 2022, <https://montreal.citynews.ca/2022/01/29/timeline-quebec-mosque-shooting/>.

<sup>31</sup> Public Safety Canada, "Government of Canada Lists 13 New Groups as Terrorist Entities and Completes Review of Seven Others," news releases, February 3, 2021, <https://www.canada.ca/en/public-safety-canada/news/2021/02/government-of-canada-lists-13-new-groups-as-terrorist-entities-and-completes-review-of-seven-others.html>.

<sup>32</sup> Public Safety Canada, "Currently Listed Entities," December 21, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrct/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#160>.

<sup>33</sup> "Currently Listed Entities," Public Safety Canada, December 21, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrct/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#60>.

<sup>34</sup> Global Affairs, "Canadian Sanctions Related to Terrorist Entities," Global Affairs Canada, October 19, 2015, [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/terrorists-terroristes.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/terrorists-terroristes.aspx?lang=eng).

Pursuant to Part II.1 of the Canadian federal Criminal Code,<sup>34</sup> the decision to place these groups on the list of terrorist entities was decided by the executive on the recommendation of the Minister of Public Safety, on the basis of “reasonable grounds to believe” that the groups had been involved in terrorist activities.<sup>35</sup> While the decision cannot be appealed before a court as such, the law leaves the possibility for the groups to apply to the Minister to request their removal from the list, and, upon the decision of the Minister, to apply for judicial review of this second decision.<sup>36</sup>

From the perspective of human rights, such measures surely encroach on some of the human rights of the individuals affected—for instance with respect to the freedom of movement, freedom of expression, or the freedom of association. The designation of groups as terrorist can affect their members in a variety of ways, including in their personal lives.<sup>37</sup> Similarly, from a rule of law perspective, the procedures involved may be seen as taking short cuts with the principle of due process.<sup>38</sup>

As to whether such limitations can be considered necessary, adequate, and proportionate, some of the elements of the assessment are difficult to analyse in the abstract without access to detailed information. At minimum, the restrictive measures were limited in scope since they targeted these groups specifically—instead of their general ideology for instance—and were based on specific and documented actions rather than mere membership. Additionally, as to their impact on the civic space and democracy, given the groups’ well-established records, it is very unlikely that they would have had any major contribution to the democratic debate in the country. Still, because they may represent views embraced by some segments of the population, it may be that, even when used in an adequate and lawful fashion, the accumulation of such measures could negatively affect the health and vitality of the public debate and the democratic space over time. Based on the information publicly available, doubt also remains as to whether the groups posed an actual terrorist threat to Canada, or merely a risk of criminal action.<sup>39</sup>

## France: protest, activism, or security threat?

After being hit by a number of deadly jihadi terrorist attacks over the past decade, France has significantly expanded its counter-terrorism toolbox.<sup>40</sup> Meanwhile, stereotypically known for its turbulent social and political stage, France has also witnessed major instances of social unrest and disruptive political activism, which have sometimes led to violence—for instance, the Yellow Vest protests in 2018,<sup>41</sup> or that against President Emmanuel Macron’s pension reform in 2023.<sup>42</sup> Growing single-issue activism, particularly in relation to the climate crisis, has also increased - though generally peaceful, some protests have led to instances of violent clashes between law enforcement and activists.<sup>43</sup> In turn, government authorities have cracked down on those partaking in riots and the

34 “Consolidated Federal Laws of Canada, Criminal Code,” Canada Justice Laws Website, September 20, 2023, <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-10.html#docCont>.

35 “Consolidated Federal Laws of Canada, Criminal Code.”

36 “Consolidated Federal Laws of Canada, Criminal Code.”

37 “Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space” (United Nations, Special Procedures, 2023).

38 Craig Forcese Roach Kent, “Yesterday’s Law: Terrorist Group Listing in Canada,” in *The Proscription of Terrorist Organisations* (Routledge, 2019).

39 As repulsive as they may be, radical or hateful beliefs alone do not, and should not, automatically amount to “terrorism”.

40 Aurelien Breedem, “France Adopts Laws to Combat Terrorism, but Critics Call Them Overreaching,” *The New York Times*, July 23, 2021, <https://www.nytimes.com/2021/07/23/world/europe/france-terrorism-islamist-extremism-laws-passed.html>; Roxane De Massol De Rebetz and Maartje Van Der Woude, “Marianne’s Liberty in Jeopardy? A French Analysis on Recent Counterterrorism Legal Developments,” *Critical Studies on Terrorism* 13, no. 1 (January 2, 2020): 1–23; Francesca Galli, “Case Studies of National Counter-Terrorism Policies: Case Study of France,” in *International Human Rights and Counter-Terrorism*, ed. Eran Shor and Stephen Hoadley, International Human Rights (Singapore: Springer, 2019), 365–84; “Comparative Research on Counter-Terrorism Laws and Practices in Second-Tier Priority Countries” (International Commission of Jurists, July 26, 2019), [https://www.icj.org/wp-content/uploads/2020/11/Second-tier-countries\\_comparative-research\\_7\\_2019.pdf](https://www.icj.org/wp-content/uploads/2020/11/Second-tier-countries_comparative-research_7_2019.pdf); “Upturned Lives: The Disproportionate Impact of France’s State of Emergency” (Amnesty International, 2016), <https://www.amnesty.org/en/documents/eur21/3364/2016/en/>.

41 Benjamin Dodman, “A Year of Insurgency: How Yellow Vests Left ‘Indelible Mark’ on French Politics,” *France 24*, November 16, 2019, <https://www.france24.com/en/20191116-a-year-of-insurgency-how-yellow-vests-left-indelible-mark-on-french-politics>.

42 “New Violent Clashes Mark 10th Day of French Pension Protests,” *Le Monde*, March 28, 2023, [https://www.lemonde.fr/en/france/article/2023/03/28/france-takes-to-the-streets-for-10th-day-of-strike-action-against-pension-reform\\_6021002\\_7.html](https://www.lemonde.fr/en/france/article/2023/03/28/france-takes-to-the-streets-for-10th-day-of-strike-action-against-pension-reform_6021002_7.html).

43 Leila Abboud and Adrienne Klasa, “French Police Deploy Rough Tactics at Anti-Government Protests,” *Financial Times*, April 4, 2023, <https://www.ft.com/content/951e49de-69b4-4420-bcae-73a110a57171>.

activists organizing them, in some instances through criminal prosecution, and in others through administrative measures.<sup>44</sup>

One set of incidents made headlines in May 2023, when local state security officials—“prefects,” who are under the direct authority of the Minister of the Interior—on two occasions adopted local orders banning the use of “portable speaker devices” for one, and “festive” protests of a “musical character” for the other, on the occasion of visits by President Macron.<sup>45</sup> Both orders, as well as reports of their enforcement, left little doubt as to their purpose: preventing the public expression of dissent against the country’s executive, especially what had become known as “casserolades”—i.e. bashing pots and pans in protest which became popular during the contestation of the government’s pension reform,<sup>46</sup> a practice which had no connection to terrorist activities whatsoever and posed little security threat.<sup>47</sup> Yet, in both instances the measures were adopted pursuant to the country’s “Code of International Security”, more specifically a provision (Art. L. 226-1) introduced by the counter-terrorism statute known as “SILT,” adopted in 2017 when the authorities lifted the state of emergency in place since the Bataclan attacks.<sup>48</sup> The measures were intended to allow for the establishment of security perimeters in order to prevent terror attacks, but were not meant to be used to maintain public order against the background of political protests.<sup>49</sup> Although they had been used against Yellow Vest protests in the past, these more recent instances caused controversy and forced the central authorities to acknowledge their inadequate and disproportionate nature—which was later confirmed by courts who took down the orders, though only after they had already been enforced, effectively preventing the protests from taking place.<sup>50</sup>

Other recent instances in France suggest that such misuses may not be isolated incidents. After a wave of climate protests in 2023, the French authorities relied on a legal mechanism designed to counter the Foreign Terrorist Fighters phenomenon in order to adopt a number of entry bans against climate activists. In one case, individuals from neighbouring Switzerland were arrested and maintained in administrative detention for four days before being deported to their home country—where they were released immediately by the local authorities.<sup>51</sup> The procedures involved give wide discretion to the Ministry of the Interior to designate any foreign national as posing a threat to the “public order or security,” without needing to provide specific evidence.

More recently, in a case that further obscured the distinction between ordinary public safety policy and counter-terrorism, France’s Minister of the Interior made headlines when he issued an order to ban environmental group Les Soulèvements de la Terre (Uprisings of the Earth) after publicly calling its members “eco-terrorists” following protests against an agricultural project that had turned

44 Ouest-France, “Des activistes écologistes interpellés ce mardi matin, dans la Zad de Notre-Dame-des-Landes” [Environmental activists arrested this Tuesday morning, in the Zad of Notre-Dame-des-Landes], Ouest-France.fr, June 20, 2023, <https://www.ouest-france.fr/environnement/ecologie/des-activistes-ecologistes-interpelles-ce-mardi-matin-dans-la-zad-de-notre-dame-des-landes-5f7def8a-0f4f-11ee-abf6-2faefa8435a8>; separately, on the question of administrative measures specifically, see e.g. “Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France.”

45 Cole Stangler, “French Police Are Sweeping Up Protesters and Bystanders in Crackdown on Dissent,” *The Intercept*, May 3, 2023, <https://theintercept.com/2023/05/02/france-protests-police-arrests/>; Constant Méheut, “The Sound of France’s Pension Fury? The Saucepan,” *The New York Times*, May 22, 2023, <https://www.nytimes.com/2023/05/22/world/europe/france-pension-protest-saucepans.html>.

46 Kim Willsher, “Furious French Raid Kitchen Cupboards to Send Macron a Noisy Message,” *The Observer*, April 23, 2023, <https://www.theguardian.com/world/2023/apr/23/french-message-macron-pots-and-pans-protest>.

47 Which was acknowledged by the French Ministry of the Interior, who asked administrative authorities not to use counter-terrorism measures in this respect, as this would constitute an “abuse of procedure” “Même le ministère de l’Intérieur met en garde les préfets sur l’interdiction des casserolades” [Even the Ministry of the Interior warns prefects about the ban on casserolades], *Le HuffPost*, April 28, 2023, [https://www.huffpost.fr/politique/article/l-interdiction-des-casserolades-dans-le-viseur-du-ministere-de-l-interieur\\_217236.html](https://www.huffpost.fr/politique/article/l-interdiction-des-casserolades-dans-le-viseur-du-ministere-de-l-interieur_217236.html).

48 “Loi N° 2017-1510 Du 30 Octobre 2017 Renforçant La Sécurité Intérieure et La Lutte Contre Le Terrorisme” (2017), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000035932811/>.

49 Alexandre Horn, “Déplacement de Macron : une loi antiterroriste de nouveau utilisée pour interdire une manifestation à Vendôme” [Macron’s fieldtrip: an anti-terror law used again to ban a demonstration in Vendôme] *Libération*, April 25, 2023, [https://www.liberation.fr/checknews/deplacement-de-macron-une-loi-anti-terroriste-de-nouveau-utilisee-pour-interdire-une-manifestation-a-vendome-un-refere-liberte-a-ete-depose-20230-425\\_3F5Z5XKDWFCNGYJ7TVTQGVLOA/](https://www.liberation.fr/checknews/deplacement-de-macron-une-loi-anti-terroriste-de-nouveau-utilisee-pour-interdire-une-manifestation-a-vendome-un-refere-liberte-a-ete-depose-20230-425_3F5Z5XKDWFCNGYJ7TVTQGVLOA/).

50 “Même le ministère de l’Intérieur met en garde les préfets sur l’interdiction des casserolades.”

51 “L’exécutif accusé de limiter le droit à manifester de militants européens” [EU accused of restricting EU activists’ right to protest], 20 minutes, July 21, 2023, <https://www.20minutes.fr/societe/4046385-20230721-gouvernement-accuse-detourner-mesure-antiterroriste-contre-manifestants-europeens>

violent.<sup>52</sup> Notably, the order itself did not claim the group engaged in terrorism per se, and instead was issued in the context of a new statute aimed at targeting “extremist ideologies.”<sup>53</sup> The decision caused an uproar and was later suspended by an administrative court pending a ruling on the merits of the case.<sup>54</sup> These examples involved serious restrictions to individuals’ and groups’ human rights, as well as procedures that involve limitations to rule of law guarantees without sufficient evidence that they were necessary, adequate, and proportionate. These measures also prevented the affected individuals from effectively taking part in political activism and in the public debate—be it through disruptive tactics—undermining a cornerstone of democracy.

## United States: framing civil unrest as terrorism

Against the backdrop of social unrest caused by a series of police killings of unarmed Black individuals in 2020,<sup>55</sup> as well as ensuing clashes with law enforcement and confrontations between white-nationalist and left-wing groups, the United States saw a number of political leaders target individuals who participated in protests, and especially in violent incidents, some of them being designated under the umbrella label of Antifa—i.e. a loose web of groups, networks and individuals sharing left-wing ideologies.<sup>56</sup> Reports suggest that some of these individuals engaged in violence or vandalism, though mostly targeting property and causing limited damage.<sup>57</sup>

In response to the unrest and in the context of a tense political environment marked by unprecedented levels of polarisation and disinformation, the country’s controversial then-President Donald Trump focused his attention on the purported threat posed by the Antifa movement, rhetorically calling it “terrorist,” and threatening to formally designate the group as a “terrorist organisation”.<sup>58</sup> The measure was never adopted. However, on 5 January 2021, Donald Trump did adopt a “memorandum” calling for the federal authorities to take steps towards banning entry into the United States of any person “affiliated with Antifa,”<sup>59</sup> on the basis of the country’s Immigration and Nationality Act (INA) which allows for such measures to be adopted for “aliens who have engaged or who are likely to engage in terrorist activity.”<sup>60</sup> While the memorandum, published fifteen days before the end of the presidential administration, was not followed by the adoption of an actual entry ban, the measure could technically have been adopted by the Secretary of State based on a conspicuously broad definition of “terrorist activity.”<sup>61</sup>

52 “French Government Outlaws Climate Activist Group,” *Le Monde*, June 21, 2023, [https://www.lemonde.fr/en/france/article/2023/06/21/french-government-outlaws-activist-climate-group\\_6034734\\_7.html](https://www.lemonde.fr/en/france/article/2023/06/21/french-government-outlaws-activist-climate-group_6034734_7.html).

53 “French Government Outlaws Climate Activist Group.”

54 “French Court Temporarily Suspends Dissolution of Climate Activist Group *Soulevements de La Terre*,” *Le Monde*, August 11, 2023, [https://www.lemonde.fr/en/france/article/2023/08/11/france-s-conseil-d-etat-suspends-dissolution-of-climate-activist-group-soulevements-de-la-terre\\_6089391\\_7.html](https://www.lemonde.fr/en/france/article/2023/08/11/france-s-conseil-d-etat-suspends-dissolution-of-climate-activist-group-soulevements-de-la-terre_6089391_7.html).

55 Cheryl W. Thompson, “Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns,” *NPR*, January 25, 2021, <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>.

56 Eliza Relman, “GOP Sen. Tom Cotton Calls for the US Army’s Toughest Soldiers to Quell ‘domestic Terrorism’ and Suggests Protesters Should Be Shown No Mercy,” *Business Insider*, June 1, 2020, <https://www.businessinsider.com/gops-tom-cotton-calls-for-military-force-against-anarchist-protesters-2020-6>; Marysa Shultz, “Utah Rep.-Elect Burgess Owens, Former NFL Player, Compares Antifa, Black Lives Matter to Ku Klux Klan,” *Fox News*, December 12, 2020, <https://www.foxnews.com/politics/utah-rep-elect-burgess-owens-compares-antifa-to-ku-klux-klan>; Adam Goldman, Katie Benner, and Zolan Kanno-Youngs, “How Trump’s Focus on Antifa Distracted Attention From the Far-Right Threat,” *The New York Times*, January 30, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>; Rachel Sharp, “Cruz Calls Riots ‘organized Terror Attacks’ Ahead of Antifa Hearing,” *Mail Online*, August 4, 2020, <https://www.dailymail.co.uk/news/article-8591813/Senator-Ted-Cruz-calls-riots-organized-terror-attacks-ahead-Antifa-hearing.html>; Marisa Iati, “Two Senators Want Antifa Activists to Be Labeled ‘Domestic Terrorists.’ Here’s What That Means,” *Washington Post*, July 20, 2019, <https://www.washingtonpost.com/politics/2019/07/20/senators-want-antifa-activists-be-labeled-domestic-terrorists-heres-what-that-means/>.

57 Meanwhile, on the other hand, most deaths related to the 2020 wave of unrest were caused by individuals affiliated with right-wing movements, including the shooting of three protesters by 17-year-old Kyle Rittenhouse in Kenosha in August of that year Haley Willis et al., “Tracking the Suspect in the Fatal Kenosha Shootings,” *The New York Times*, August 27, 2020, <https://www.nytimes.com/2020/08/27/us/kyle-rittenhouse-kenosha-shooting-video.html>.

58 “Antifa: Trump Says Group Will Be Designated ‘Terrorist Organisation,’” *BBC News*, May 31, 2020, <https://www.bbc.com/news/world-us-canada-52868295>; Rachael Hanna and Eric Halliday, “Discretion without Oversight: The Federal Government’s Powers to Investigate and Prosecute Domestic Terrorism,” *Loyola of Los Angeles Law Review* 55, no. 3 (2022): 775–856.

59 The White House, “Memorandum on Inadmissibility of Persons Affiliated with Antifa Based on Organized Criminal Activity” 2021, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-inadmissibility-persons-affiliated-antifa-based-organized-criminal-activity/>.

60 Section 212(a)(3) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(3), renders inadmissible “aliens who have engaged or who are likely to engage in terrorist activity and those aliens who seek entry into the United States to engage, principally or incidentally, in unlawful activity”.

61 Though it is unclear whether the loose Antifa movement could have qualified as “organisation”, see Khaled Alrabe, “Q&A: Potential Implications of the Presidential Memorandum on Inadmissibility of Persons Affiliated with Antifa Based on Organized Criminal Activity” (National Lawyers Guild, January 12,

While an immigration measure affecting only foreign nationals, the adoption of such an entry ban would have likely encroached on individuals' human rights—such as the right to private and family life—and disregarded some rule of law guarantees.<sup>62</sup> Most importantly, it would have sent a chilling signal to political activists across the country and around the world, especially given the somewhat arbitrary nature of the terrorist designation of a broad ideological movement rather than a specific group.<sup>63</sup>

By all accounts, the Trump administration's steps were motivated by political considerations, and would certainly not have been necessary, adequate, and proportionate, given the absence of information suggesting that the Antifa movement posed a genuine threat of violence rising to the threshold of terrorism.<sup>64</sup>

## Administrative Measures in Counter-Terrorism

Administrative measures have long elicited concern for being less respectful of the rule of law and more prone to misuse or abuse than other instruments of counter-terrorism policy.<sup>65</sup> Instances of improper use have been documented for as long as administrative measures have existed.<sup>66</sup> However, a combination of factors—including the widening of the terrorism landscape, an uptick in social discontent and political violence, heightened political polarisation, and the rise in popularity of illiberal discourses—suggests that, in addition to pre-existing concerns, administrative measures may now present greater risks than in the past.<sup>67</sup>

### Heightened risks of abuse, misuse, and overuse in turbulent times

The cases examined in the previous section reveal three distinct scenarios that underscore how the continued use of administrative measures may pose, presently and in the near future, heightened risks to human rights, the rule of law, and democracy:

1. The Canadian case involves a seemingly lawful use of administrative measures—with restrictions to human rights and lower rule of law guarantees, however appearing to comply with standards of necessity and proportionality—but still raises concerns as to a risk of “overuse” if it were to become recurrent and normalised;
2. The French case displays some clearly problematic instances of inadequate uses—unnecessarily or disproportionately encroaching on human rights and rule of law principles, restricting the free participation in the public debate, and potentially signalling a shrinking civic space—but mostly without evident malicious intent, which characterizes instances of “misuse;”
3. In the case of the United States—and in some of the French measures as well—the incidents unambiguously reveal an intentional attempt at using counter-terrorism instruments beyond their assigned scope, arguably for political gain, which characterizes instances of “abuse.”

The third scenario, that of “abuse,” strikes as the most dangerous due to its blatant nature. Additionally, while such incidents may have previously been seen as extreme or exceptional in democratic states,

2021), [https://nipnl.org/sites/default/files/2023-03/2021\\_12Jan\\_q-a-antifa.pdf](https://nipnl.org/sites/default/files/2023-03/2021_12Jan_q-a-antifa.pdf).

62 Rights that apply to all individuals within a state's territory or effective control, irrespective of their nationality or immigration status.

63 Even though this would not be completely new either, given that there is a long history in the United States of targeting political activists as part of counter-terrorism efforts, see e.g. Alice Speri, “The FBI's Long History of Treating Political Dissent as Terrorism,” *The Intercept*, October 13, 2023, <https://theintercept.com/2019/10/22/terrorism-fbi-political-dissent/>; David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties In The Name Of National Security*, 3rd edition (New York: The New Press, 2006).

64 Goldman, Benner, and Kanno-Youngs, “How Trump's Focus on Antifa Distracted Attention from the Far-Right Threat.”

65 Echoing similar concerns regarding administrative measures in the field of immigration control, see footnote 8.

66 See e.g. Bonner, *Executive Measures, Terrorism and National Security*.

67 For a similar argument in the context of the United States, though not focused on administrative measures, see e.g. Faiza Patel, “Threat from Within? Unreformed Counterterrorism Infrastructure Raises Concerns About Misuse,” *Just Security*, November 21, 2023, <https://www.justsecurity.org/90142/threat-from-within-unreformed-counterterrorism-infrastructure-raises-concerns-about-misuse/>.



there is mounting concern that the rise to power of political leaders running on populist or illiberal agendas may lead to a proliferation of similar abuses.<sup>68</sup>

That said, the risks in the first and second scenarios, those of “overuse” and “misuse”, must not be overlooked. Although there may not be a clear intention to abuse administrative measures for political gain—perhaps merely for the purpose of maintaining “public order” more generally—such instances provide evidence of how the lack of clarity and/or sufficient guardrails regarding administrative measures intended for counter-terrorism purposes create higher risks of unnecessary, disproportionate, or arbitrary use. Indeed, the frequent resort to broad and unspecific language in counter-terrorism legal frameworks has often contributed to eroding the distinction between counter-terrorism as such and the mere protection of “public order.”<sup>69</sup> This is exacerbated by the expansion of counter-terrorism towards even more vague concepts such as “radicalism” or “extremism”<sup>70</sup> which may contribute to conflating radical ideas with violence—especially amidst an increasingly complex threat environment, overlapping levels of political violence, and a surge in disruptive protest, civil disobedience and direct action.<sup>71</sup> No matter the intention behind such instances of “misuse,” or even “overuse” they may yield consequences equally as harmful as cases of outright “abuse.”

Moreover, while all instances analysed in this Brief did incorporate some forms of judicial review, in some cases—such as the assembly bans in France—they only provided redress after the measures had already produced their effects. In other cases, the timeframe did not allow courts to review the measures involved, rendering judicial review a theoretical rather than practical safeguard.<sup>72</sup> Additionally, it is important to note that even when exercised adequately, judicial review is not always a sufficient guarantee. Notably, there is consistent and overwhelming evidence that, in the realm of counter-terrorism, the level of scrutiny that courts exercise varies dramatically, and that, more often than not, they tend to defer to the authorities’ assessment.<sup>73</sup>

## Looking at the big picture: impact on the civic and democratic space

A Policy Brief on the risks of misuse, abuse, or overreliance on administrative measures in today’s climate would be incomplete without consideration of their potential harm to society and democracy

68 See e.g. for the United States Patel; Löffmann, “‘Enemies of the People’”; Abigail Tracy, “‘These Guys Are in Totally Over Their Heads’: Experts Worry Trump’s DHS Crackdowns Are Ignoring the Real Threat,” *Vanity Fair*, July 24, 2020, <https://www.vanityfair.com/news/2020/07/donald-trump-dhs-portland-protests>; and outside of the United States “‘Populist Leaders’ Encourage Rights Abuses, Human Rights Watch Says,” *BBC News*, January 12, 2017, <https://www.bbc.com/news/world-38593496>; “World Report 2017” (Human Rights Watch, 2017), [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2017-web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf); more generally, see e.g. Richard L. Abel, *How Autocrats Abuse Power: Resistance to Trump and Trumpism* (Routledge, 2023).

69 This latter concept stands out as exceptionally broad: in most legal systems, it encompasses almost any unlawful action, from minor destructions of property to violent crime and terrorism.

70 Anthony Richards, “From Terrorism to ‘Radicalization’ to ‘Extremism’: Counterterrorism Imperative or Loss of Focus?” *International Affairs* 91, no. 2 (March 1, 2015): 371–80.

71 Thomas Renard, *The Evolution of Counter-Terrorism Since 9/11: Understanding the Paradigm Shift in Liberal Democracies*, 1st edition (Routledge, 2021), 169.

72 Serge Slama, “Périmètres d’interdiction de manifestation : l’administration préfectorale organisait sciemment l’incontestabilité de ses arrêtés” [Perimeters of prohibition of demonstrations: the prefectural administration knowingly organized the incontestability of its decrees], *Le Club des Juristes*, April 7, 2023, <https://www.leclubdesjuristes.com/justice/perimetres-dinterdiction-de-manifestation-ladministration-prefectorale-organisait-sciemment-lincontestabilite-de-ses-arretes-671/>.

73 Although judicial review has become more thorough over time in many places, the tendency to defer to the authorities’ assessment or accept insufficient evidence remains. See Jessie Blackbourn and Fiona de Londras, *Accountability and Review in the Counter-Terrorist State*, 2019; James M Lutz and Georgia Wralstad Ulmschneider, “Civil Liberties, National Security and U.S. Courts in Times of Terrorism,” *Perspectives on Terrorism* 13, no. 6 (2019): 43–57; Richard L. Abel, *Law’s Trials: The Performance of Legal Institutions in the US ‘War on Terror’* (Cambridge, GB New York: Cambridge University Press, 2018); Jens Elo Rytter, “Terrorist Threats and Judicial Deference,” in *The Long Decade: How 9/11 Changed the Law*, ed. David Jenkins, Amanda Jacobsen, and Anders Henriksen (Oxford University Press, 2014); Fergal F. Davis and Fiona de Londras, eds., *Critical Debates on Counter-Terrorism Judicial Review* (Cambridge University Press, 2014); Eyal Benvenisti, “United We Stand: National Courts Reviewing Counterterrorism Measures,” in *Counterterrorism: Democracy’s Challenge*, ed. Andrea Bianchi and Alexis Keller (Bloomsbury, 2008); Iain Scobbie, “‘The Last Refuge of the Tyrant?’ Judicial Deference to Executive Actions in Time of ‘Terror,’” in *Counterterrorism: Democracy’s Challenge*, ed. Andrea Bianchi and Alexis Keller (Bloomsbury, 2008); for a thorough analysis of the question of judicial review, see Davis and Londras, *Critical Debates on Counter-Terrorism Judicial Review*; for an analysis of the reinforcement of judicial review in the counter-terrorism area, see e.g. Federico Fabbrini, “The Role of the Judiciary in Times of Emergency: Judicial Review of Counter-Terrorism Measures in the United States Supreme Court and the European Court of Justice,” *Yearbook of European Law* 28, no. 1 (January 1, 2009): 664–97; Clive Walker and Oona Cawley, “The Juridification of the UK’s Counter Terrorism Prevent Policy,” *Studies in Conflict & Terrorism* 45, no. 11 (November 2, 2022): 1004–29.



as a whole.<sup>74</sup> As a more elusive and inherently political concept, legal literature sometimes refrains from venturing into an analysis of democracy as such, preferring to confine itself to an examination of human rights or rule of law.<sup>75</sup> Yet, this Brief argues that beyond the harm caused to human rights or rule of law principles, what may be most at stake is the democratic fabric of states that implement administrative measures in the name of self-protection.

Firstly, all these measures and their accumulation contribute to an atmosphere of intimidation, which, whether it is intentional or not, risks discouraging activism and political participation—two cornerstones of democracy.<sup>76</sup>

Secondly, these measures may contribute to the stigmatisation and marginalisation of specific groups, whether racial, ideological, or political,<sup>77</sup> by expanding the range of “suspect communities,”—i.e. communities perceived as associated with terrorism.<sup>78</sup> Coined to describe the experience of the Irish community in the United Kingdom during the “Troubles,” the concept of “suspect communities” has since been widely applied to Muslim minorities post-9/11.<sup>79</sup> In the current climate of heightened political polarisation, the emergence of new “suspect communities” on the basis of political affiliations could lead to increased discriminations—whether anecdotal or systemic<sup>80</sup>— as well as violence in extreme cases.<sup>81</sup> This could, in turn, fuel a vicious cycle where those affected become more susceptible to embracing violent extremism.

Thirdly, overly harsh or normalised restrictions on the rights of some groups within society will inevitably distort the democratic character of decision-making by making it less inclusive and representative.<sup>82</sup> Ultimately, a wide range of core principles of democracy could be jeopardised: political pluralism, free and fair elections, participatory decision-making, protection of minorities, public accountability etc.<sup>83</sup>

74 Current circumstances may contribute to accelerating or worsening of adverse effects already identified in the past. For the general democratic ramifications of counter-terrorism, among many possible examples, see e.g. Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford University Press, 2011); Donohue, *The Cost of Counterterrorism*; Jenny Hocking and Colleen Lewis, eds., *Counter-Terrorism and the Post-Democratic State*, First Edition (Cheltenham: Edward Elgar Publishing, 2008); Robert J. Art and Louise Richardson, *Democracy and Counterterrorism: Lessons from the Past* (US Institute of Peace Press, 2007).

75 With many notable exceptions, including, to name a few, Greenberg, *Subtle Tools*; Christos Boukalas, *Homeland Security, Its Law and Its State: A Design of Power for the 21st Century*, 1st edition (Routledge, 2014); Herman, *Taking Liberties*.

76 United Nations, “Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,” 2019, 17, <https://www.ohchr.org/en/documents/reports/ahrc4052-impact-measures-address-terrorism-and-violent-extremism-civic-space-and>.

77 United Nations, “Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space”, 2023, <https://defendcivicspace.com>; “Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,” 2019, 30.

78 Paddy Hillyard, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993).

79 See e.g. Joel David Taylor, “‘Suspect Categories,’ Alienation and Counterterrorism: Critically Assessing PREVENT in the UK,” *Terrorism and Political Violence* 32, no. 4 (May 18, 2020): 851–73; Francesco Ragazzi, “Suspect Community or Suspect Category? The Impact of Counter-Terrorism as ‘Policed Multiculturalism,’” *Journal of Ethnic and Migration Studies* 42, no. 5 (April 8, 2016): 724–41; Marie Breen-Smyth, “Theorising the ‘Suspect Community’: Counterterrorism, Security Practices and the Public Imagination,” *Critical Studies on Terrorism* 7, no. 2 (May 4, 2014): 223–40; Christina Pantazis and Simon Pemberton, “From the ‘Old’ to the ‘New’ Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation,” *The British Journal of Criminology* 49, no. 5 (September 1, 2009): 646–66.

80 A tendency which is already in full display in many areas of the world—with a larger body of research on the United States in particular—but could be worsened and institutionalised in the context of stigmatising counter-terrorism politics, Felicity M. Turner-Zwinkels et al., “Affective Polarization and Political Belief Systems: The Role of Political Identity and the Content and Structure of Political Beliefs,” *Personality and Social Psychology Bulletin*, July 21, 2023; Yascha Mounk, “The Doom Spiral of Pernicious Polarization,” *The Atlantic*, May 21, 2022, <https://www.theatlantic.com/ideas/archive/2022/05/us-democrat-republican-partisan-polarization/629925/>; Fermor and Holland, “Security and Polarization in Trump’s America”; Yascha Mounk, “Republicans Don’t Understand Democrats—And Democrats Don’t Understand Republicans,” *The Atlantic*, June 23, 2019, <https://www.theatlantic.com/ideas/archive/2019/06/republicans-and-democrats-dont-understand-each-other/592324/>; Jennifer McCoy, Tahmina Rahman, and Murat Somer, “Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Politics,” *American Behavioral Scientist* 62, no. 1 (January 2018): 16–42; Pew Research Center, “Political Polarization in the American Public,” Pew Research Center - U.S. Politics & Policy, June 12, 2014, <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/>.

81 “Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,” 17.

82 Susan Marks et al., *International Human Rights Lexicon* (Oxford University Press, 2005), 64.

83 Marks et al., 62.

More generally, empirical research has long established that excessively stringent counter-terrorism and security policies can significantly undermine democracy and liberal societies, often much more profoundly than any terrorist campaign.<sup>84</sup> History provides many examples where such policies have resulted in illiberal episodes that are now looked at with embarrassment: the violent suppression of the anti-colonial movements in France, of the civil rights movement, left-wing opposition and anti-war activists in the U.S., or of Irish independence activists in the U.K., to name a few.<sup>85</sup> The cases examined in this Policy Brief may seem less significant than these historical examples when considered each in isolation, however, when taken together—especially in light of the current climate that may invite similar incidents in the near future—they may evidence the emergence of a pattern that could prove equally damaging and misguided in hindsight. While democracy, as a form of government and as an ideal, remains highly valued by public opinions,<sup>86</sup> there is a prevailing sense and evidence that it is in decline in many places.<sup>87</sup> Although this evolution has many causes, the continued expansion of counter-terrorism and security policies in Western democracies over the past decades is often recognised as an important factor.<sup>88</sup> In this context, even though the use of administrative measures is only a small part of a broader trend, their unique and direct association with the executive branch of political systems, their higher susceptibility to abuse, and their expedited implementation, combined with their potentially far-reaching consequences—as demonstrated in this Brief—arguably makes them particularly prone to accelerating these wider trends towards decline. At the very least, blatant instances of abuse like some of those examined in this research may contribute to a loss of trust in democracy and fatalism as to its decline.

In light of all these considerations, this Policy Brief argues that despite the security and practical advantages that administrative measures may offer—especially at a time when the terrorist threat may be becoming more diverse and difficult to fight—the risks they pose to the very civic and

84 Paul Wilkinson, *Terrorism Versus Democracy: Third Edition*, 3rd edition (Milton Park, Abingdon, Oxon, England ; New York: Routledge, 2011), 61. See also, to mention only a few of the literature on the subject, e.g. Andrea Bianchi and Alexis Keller, eds., *Counterterrorism: Democracy's Challenge* (Bloomsbury Publishing, 2008); Jenny Hocking and Colleen Lewis, eds., *Counter-Terrorism and the Post-Democratic State*, First Edition (Cheltenham: Edward Elgar Publishing, 2008); Robert J. Art and Louise Richardson, *Democracy and Counterterrorism: Lessons from the Past* (US Institute of Peace Press, 2007); Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford University Press, 2011); Karen J. Greenberg, *Subtle Tools: The Dismantling of American Democracy from the War on Terror to Donald Trump* (Princeton University Press, 2023); Harry Anastasiou, *The War on Terror and Terror of War: Bellicose Nationalism versus Peace and Democracy* (Lexington Books, 2023).

85 For a broad overview of such episodes, see generally, among others Tom Parker, *Avoiding the Terrorist Trap: Why Respect for Human Rights Is the Key to Defeating Terrorism, Insurgency & Terrorism Series*, volume 12 (New Jersey London Singapore Beijing Shanghai Hong Kong Taipei Chennai Tokyo: World Scientific Publishing, 2019).

86 Richard Wike Lippert Janell Fetterolf, Maria Smerkovich, Sarah Austin, Sneha Gubbala and Jordan, "Representative Democracy Remains a Popular Ideal, but People Around the World Are Critical of How It's Working," Pew Research Center, February 28, 2024, <https://www.pewresearch.org/global/2024/02/28/representative-democracy-remains-a-popular-ideal-but-people-around-the-world-are-critical-of-how-its-working/>; Frederick DeVeaux and Ekaterina Golovanova, "Democracy Perception Index 2023 - The World's Largest Annual Study on How People Perceive Democracy" (Latana & Alliance of Democracies, 2023), <https://www.allianceofdemocracies.org/initiatives/the-copenhagen-democracy-summit/dpi-2023/>; Richard Wike, "Global Public Opinion on Democracy: While Most Still Embrace Democratic Ideals, There's Discontent with How Political Systems Are Functioning," The OECD Forum Network, September 8, 2022, <http://www.oecd-forum.org/posts/global-public-opinion-on-democracy-while-most-still-embrace-democratic-ideals-there-s-discontent-with-how-political-systems-are-functioning>; Nick Corasaniti et al., "Voters See Democracy in Peril, but Saving It Isn't a Priority," The New York Times, October 18, 2022, <https://www.nytimes.com/2022/10/18/us/politics/midterm-election-voters-democracy-poll.html>.

87 See e.g., among a host of research and literature on the topic, "Freedom in the World 2024" (Freedom House, February 2024), [https://freedomhouse.org/sites/default/files/2024-02/FIW\\_2024\\_DigitalBooklet.pdf](https://freedomhouse.org/sites/default/files/2024-02/FIW_2024_DigitalBooklet.pdf); Damien Kingsbury, *The Rise and Decline of Modern Democracy* (Taylor & Francis, 2023); "The Global State of Democracy 2023" (Global State of Democracy Initiative, 2023), <https://www.idea.int/sites/default/files/2024-02/the-global-state-of-democracy-2023-the-new-checks-and-balances.pdf>; Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018); Mark A. Graber, Sanford Levinson, and Mark Tushnet, eds., *Constitutional Democracy in Crisis?* (New York: Oxford University Press, 2018); "Democracy at Risk" (Geneva Graduate Institute, Albert Hirschman Centre on Democracy, November 2017), [https://www.graduateinstitute.ch/sites/internet/files/2019-02/Democracy%20at%20Risk\\_2017.pdf](https://www.graduateinstitute.ch/sites/internet/files/2019-02/Democracy%20at%20Risk_2017.pdf); Nadia Urbinati, *Democracy Disfigured: Opinion, Truth, and the People* (Cambridge, Massachusetts: Harvard University Press, 2014); Francis Fukuyama, "The Future of History: Can Liberal Democracy Survive the Decline of the Middle Class The Clash of Ideas: A 90th-Anniversary Special Section," *Foreign Affairs* 91, no. 1 (2012): 53–61.

88 Among a vast literature, including some cited elsewhere in this Brief, see specifically e.g. Greenberg, *Subtle Tools*; Rama Mani, "Terrorism, Security and Democracy: 20 Years after 9/11," *CADMUS* 4, no. 5 (November 2021): 103–26; Anna Lührmann and Bryan Rooney, "Autocratization by Decree: States of Emergency and Democratic Decline," *Comparative Politics* 53, no. 4 (July 1, 2021): 617–49, using data on sixty democracies from 1974 to 2016, this study found that democracies are 75 percent more likely to erode under a state of emergency; Joshua Skoczylis and Sam Andrews, "The Spectacle of Ghost Security: Security Politics and British Civil Society," in *Counter-Terrorism and Civil Society* (Manchester University Press, 2021), 109–26, <https://www.manchesterhive.com/display/9781526157935/9781526157935.00016.xml>; Nil S. Satana and Tijen Demirel-Pegg, "Military Counterterrorism Measures, Civil–Military Relations, and Democracy: The Cases of Turkey and the United States," *Studies in Conflict & Terrorism* 43, no. 9 (September 1, 2020): 815–36, on this topic, see also footnote 77.

democratic spaces counter-terrorism purportedly aims to protect in the first place will often outweigh their benefits. In today's turbulent and volatile context, it is therefore urgent to take decisive steps to prevent abuse or misuse of administrative measures in counter-terrorism, while ensuring that their use, even when necessary, adequate, and proportionate, remains as exceptional as possible.

## Heightened Risks Call for Heightened Caution

While they may remain a valuable tool of counter-terrorism policy in limited circumstances, the renewed risks highlighted in this Policy Brief call for states to adopt a drastically more cautious approach to the use of administrative measures going forward. An improved approach would need to consider both short and long-term, and individual as well as systemic adverse effects, rather than prioritizing hypothetical short-term security benefits. In practice, states should first and foremost ensure that their rules and practices rigorously abide by the Glion Recommendations.<sup>89</sup> Additionally, states may also consider some or all of the following steps:<sup>90</sup>

### Establish stronger safeguards and monitoring:

- ensure systematic, comprehensive, and centralised reporting on the use of administrative measures;
- systematically require evidence that no other non-administrative measure is available or adequate, and that other less-constraining measures cannot be imposed instead;
- impose systematic assessments of the human rights impact of administrative measures; and
- establish internal policies and monitoring mechanisms against bias or discrimination, including on grounds of political opinion.

### Limit the scope of application of administrative measures:

- prevent the extension of the use of administrative measures beyond the scope of counter-terrorism *stricto sensu*;
- limit or reduce the number of authorities or officials entrusted with the power to impose administrative measures;
- restrict the use of administrative measures against individuals and/or groups who have never previously been found guilty of terrorism-related offences; and
- avoid imposing administrative measures based on group membership alone.

### Improve transparency:

- make all internal guidelines regarding the use of administrative measures publicly available, and periodically collect input from other government entities and civil society;
- make all non-confidential data regarding the use of administrative measures available to the public; and
- introduce obligations of periodic reporting to external and/or independent government entities that may include national human rights institutions and/or parliamentary bodies.

<sup>89</sup> "Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context" (Global Counterterrorism Forum, 2019).

<sup>90</sup> These recommendations can be considered a complement to proposals already formulated in ICCT's 2021 Policy Brief on administrative measures.

## Bibliography

### *Evolution of the terrorist threat*

Bruce Hoffman and Jacobe Ware, "The Terrorist Threats and Trends to Watch Out for in 2023 and Beyond," *CTC Sentinel* 15, no. 11, December 2022. <https://ctc.westpoint.edu/the-terrorist-threats-and-trends-to-watch-out-for-in-2023-and-beyond/>.

Clarke, Colin P., "Trends in Terrorism: What's on the Horizon in 2023?" *Foreign Policy Research Institute*, 2023. <https://www.fpri.org/article/2023/01/trends-in-terrorism-whats-on-the-horizon-in-2023/>

Colin P. Clarke., "Trends in Terrorism: What's on the Horizon in 2022? - Foreign Policy Research Institute," *Foreign Policy Research Institute*, 8 December, 2021. <https://www.fpri.org/article/2021/12/trends-in-terrorism-whats-on-the-horizon-in-2022/>.

Dongen, Teun van, Matthew Wentworth, and Hanna Rigault Arkhis, "Terrorist Threat Assessment 2019-2021," International Centre for Counter-Terrorism (2022). <https://www.icct.nl/sites/default/files/2022-12/Terrorist-Threat-Assessment-2019-2021.pdf>

European Commission, Radicalisation Awareness Network, "Contemporary Violent Left-Wing and Anarchist Extremism (VLWAE) in the EU: Analysing Threats and Potential for P/CVE," 2021. [https://home-affairs.ec.europa.eu/system/files/2021-11/ran\\_vlwae\\_in\\_the\\_eu\\_analysing\\_threats\\_potential\\_for\\_p-cve\\_112021\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2021-11/ran_vlwae_in_the_eu_analysing_threats_potential_for_p-cve_112021_en.pdf)

Europol, "European Union Terrorism Situation and Trend Report 2023," 2023. <https://www.europol.europa.eu/cms/sites/default/files/documents/European%20Union%20Terrorism%20Situation%20and%20Trend%20report%202023.pdf>

HM Government, "CONTEST: The United Kingdom's Strategy for Countering Terrorism 2023," July 2023. [https://assets.publishing.service.gov.uk/media/650b1b8d52e73c000d54dc82/CONTEST\\_2023\\_English\\_updated.pdf](https://assets.publishing.service.gov.uk/media/650b1b8d52e73c000d54dc82/CONTEST_2023_English_updated.pdf)

Jasko, Katarzyna, Gary LaFree, James Piazza, and Michael H. Becker. "A Comparison of Political Violence by Left-Wing, Right-Wing, and Islamist Extremists in the United States and the World." *Proceedings of the National Academy of Sciences* 119, no. 30, 26 July 2022.

Lloyd's Register Foundation & Gallup, "The Lloyd's Register Foundation World Risk Poll 2019," 2019. [https://wrp.lrfoundation.org.uk/LRF\\_WorldRiskReport\\_Book.pdf](https://wrp.lrfoundation.org.uk/LRF_WorldRiskReport_Book.pdf).

National Coordinator for Counterterrorism and Security, "The Security Strategy for the Kingdom of the Netherlands," 2023. <https://www.government.nl/documents/publications/2023/04/03/security-strategy-for-the-kingdom-of-the-netherlands>

Office of the Director of National Intelligence, "Office of the Director of National Intelligence - Global Trends." <https://www.dni.gov/index.php/gt2040-home/emerging-dynamics/international-dynamics/the-future-of-terrorism>.

Taylor, Max, Donald Holbrook, and P. M. Currie. *Extreme Right Wing Political Violence and Terrorism* (A&C Black, 2013).

The White House, "U.S. National Security Strategy," October 2022. <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>

The White House, "U.S. National Strategy for Countering Domestic Terrorism," June 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

United States Department of Homeland Security & Federal Bureau of Investigation, “Strategic Intelligence Assessment and Data on Domestic Terrorism.” <https://www.dhs.gov/publication/strategic-intelligence-assessment-and-data-domestic-terrorism>.

United States Department of State. “Country Reports on Terrorism.” <https://www.state.gov/country-reports-on-terrorism/>.

Yalçinkaya, Haldun, and Elif Merve Dumankaya, “Emerging Threats in Terrorism,” NATO Centre of Excellence Defence Against Terrorism (December 2022). [https://www.coedat.nato.int/publication/researches/13-Emerging\\_ThreatsinTerrorism.pdf](https://www.coedat.nato.int/publication/researches/13-Emerging_ThreatsinTerrorism.pdf)

World Economic Forum, “The Global Risks Report 2023, 18th Edition,” 2023. [https://www3.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2023.pdf](https://www3.weforum.org/docs/WEF_Global_Risks_Report_2023.pdf).

Zenn, Jacob. “War on Terror 2.0: Threat Inflation and Conflation of Far-Right and White Supremacist Terrorism after the Capitol ‘Insurrection.’” *Critical Studies on Terrorism* 16, no. 1, 2 January 2023, 62.

### *Evolution of the political climate*

Bertho, Alain, *The Age of Violence: The Crisis of Political Action and the End of Utopia*. (Verso, 2018).

Cooley, Alexander, and Daniel H. Nexon. “The Real Crisis of Global Order: Illiberalism on the Rise Essays.” *Foreign Affairs* 101, no. 1 (2022): 103.

Doxsee, Catrina, Seth G. Jones, Jared Thompson, Kateryna Halstead, and Grace Hwang. “Pushed to Extremes: Domestic Terrorism amid Polarization and Protest.” *CSIS*, 17 May 2022. <https://www.csis.org/analysis/pushed-extremes-domestic-terrorism-amid-polarization-and-protest>.

Kingsbury, Damien, *The Rise and Decline of Modern Democracy* (Taylor & Francis, 2023).

McCoy, Jennifer, Tahmina Rahman, and Murat Somer. “Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Polities.” *American Behavioural Scientist* 62, no. 1, January 2018, 16–42.

Mouk, Yascha. “The Doom Spiral of Pernicious Polarization.” *The Atlantic*, 21 May 2022, <https://www.theatlantic.com/ideas/archive/2022/05/us-democrat-republican-partisan-polarization/629925/>.

Sommier, Isabelle, Graeme Hayes, and Sylvie Ollitrault. *Breaking Laws: Violence and Civil Disobedience in Protest* (Amsterdam University Press, 2019).

Urbini, Nadia. *Democracy Disfigured: Opinion, Truth, and the People* (Harvard University Press, 2014).

Geneva Graduate Institute, Albert Hirschman Centre on Democracy, “Democracy at Risk,” November 2017. [https://www.graduateinstitute.ch/sites/internet/files/2019-02/Democracy%20at%20risk\\_2017.pdf](https://www.graduateinstitute.ch/sites/internet/files/2019-02/Democracy%20at%20risk_2017.pdf).

Global State of Democracy Initiative, “The Global State of Democracy 2023,” 2023. <https://www.idea.int/sites/default/files/2024-02/the-global-state-of-democracy-2023-the-new-checks-and-balances.pdf>.

Freedom House, “Freedom in the World 2024,” February 2024. [https://freedomhouse.org/sites/default/files/2024-02/FIW\\_2024\\_DigitalBooklet.pdf](https://freedomhouse.org/sites/default/files/2024-02/FIW_2024_DigitalBooklet.pdf).

### *Evolution of counter-terrorism*

Amnesty International, “Dangerously Disproportionate: The Ever-Expanding National Security State in Europe,” 2017. <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>.



- Beckman, James, *Comparative Legal Approaches to Homeland Security and Anti-Terrorism* (Routledge, 2016).
- Blumenthal, Max, *The Management of Savagery: How America's National Security State Fuelled the Rise of Al Qaeda, ISIS, and Donald Trump* (Verso, 2020).
- Braml, Josef, "Anti-Terrorism Laws and Powers: An Inventory of the G20 States 20 Years after 9/11," Friedrich Ebert Stiftung, September 2021. <https://library.fes.de/pdf-files/iez/18274.pdf>.
- D'Amato, Silvia, *Cultures of Counterterrorism: French and Italian Responses to Terrorism after 9/11* (Routledge, 2019).
- Foley, Frank, *Countering Terrorism in Britain and France: Institutions, Norms and the Shadow of the Past* (Cambridge University Press, 2013).
- Greer, Steven, *Tackling Terrorism in Britain: Threats, Responses, and Challenges Twenty Years After 9/11* (Routledge, 2021).
- Hillyard, Paddy, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993).
- Husabø, Erling Johannes, "Counterterrorism and the Expansion of Proactive Police Powers in the Nordic States," *Journal of Scandinavian Studies in Criminology and Crime Prevention* 14, no. 1, 1May 2013, 3.
- Keppeler, Victor, and Karen Miller-Potter. "Policing in the Age of Terrorism," in Quint Thurman and Andrew Guacomazzi, eds., *Controversies in Policing* (Routledge, 2004).
- Massol de Rebetz, R. M. de, and M. A. H. van der Woude, "Marianne's Liberty in Jeopardy? A French Analysis on Recent Counterterrorism Legal Developments," *Critical Studies on Terrorism* 13, no. 1, 2 July 2019, : 1.
- Richards, Anthony, "From Terrorism to 'Radicalization' to 'Extremism': Counterterrorism Imperative or Loss of Focus?" *International Affairs* 91, no. 2, 1March 2015, 371.
- Taylor, Joel David, "'Suspect Categories,' Alienation and Counterterrorism: Critically Assessing PREVENT in the UK," *Terrorism and Political Violence* 32, no. 4, 18 May 2020, 851.
- Thimm, Johannes, "From Exception to Normalcy, SWP Research Paper 2018/RP 07, 10.10.2018, 38 Seiten," *Stiftung Wissenschaft und Politik*, 2018. <https://www.swp-berlin.org/publikation/the-united-states-and-the-war-on-terrorism>.
- Walker, Clive, and Oona Cawley. "The Juridification of the UK's Counter Terrorism Prevent Policy," *Studies in Conflict & Terrorism* 45, no. 11, 2 November 2022, 1004.
- International Commission of Jurists, "Comparative Research on Counter-Terrorism Laws and Practices in Second-Tier Priority Countries," 26 July 2019. [https://www.icj.org/wp-content/uploads/2020/11/Second-tier-countries\\_comparative-research\\_7\\_2019.pdf](https://www.icj.org/wp-content/uploads/2020/11/Second-tier-countries_comparative-research_7_2019.pdf).

### *Administrative measures*

- Amnesty International, "Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France," 2018. <https://www.amnesty.org/en/documents/eur21/9349/2018/en/>
- Bonner, David, *Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed?* (Ashgate, 2013).
- Boutin, Bérénice, "Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards," *Terrorism and Counter-Terrorism Studies* 7, 1December 2016.
- . "Administrative Measures in Counter-Terrorism and the Protection of Human Rights," *Security and Human Rights* 27, no. 1–2 (July 13, 2016): 128.



- Chen, Ming H, "Administrator-in-Chief: The President and Executive Action in Immigration Law," *Administrative Law Review* 69, no. 2 (2017): 347.
- Donkin, Susan, "Preventing Terrorism: An Exceptional Legal Hybrid?" in Susan Donkin, ed., *Preventing Terrorism and Controlling Risk: A Comparative Analysis of Control Orders in the UK and Australia* (Springer, 2014), p 7.
- , *Preventing Terrorism and Controlling Risk: A Comparative Analysis of Control Orders in the UK and Australia* (Springer, 2013).
- Global Counterterrorism Forum, "Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context," 2019. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/2019/Glion%20Recommendations%20final.pdf?ver=2020-01-13-134735-497&timestamp=1578921143128>
- Ludd, Steven O., "Administrative Discretion and the Immigration and Naturalization Service: To Review or Not to Review," *Thurgood Marshall Law Review* 8, no. 1 (1982): 65.
- Lührmann, Anna, and Bryan Rooney, "Autocratisation by Decree: States of Emergency and Democratic Decline," *Comparative Politics* 53, no. 4, 1 July 2021, 617.
- Mehra, Tanya, Matthew Wentworth, and Bibi van Ginkel, "The Expanding Use of Administrative Measures in a Counter-Terrorism Context," *International Centre for Counter-Terrorism*, 2021. <https://www.icct.nl/sites/default/files/2022-12/The-Expanding-Use-of-Administrative-Measures-in-a-Counter-.pdf>
- Van Ginkel, Bibi, Matthew Wentworth, and Tanya Mehra, "The Expanding Use of Administrative Measures in a Counter-Terrorism Context - Part 2: In Need of a Gender and Age-Sensitive Approach," *International Centre for Counter-Terrorism*, 2021. <https://www.icct.nl/sites/default/files/2022-12/The-Expanding-Use-of-Administrative-Measures-in-a-Counter-.pdf>.
- Ní Aolain, Fionnuala, "The contemporary exercise of emergency powers: Reflections on permanence, impermanence and administrative legal orders," *Cultures Conflicts* 112, no. 4 (2018): 15.
- Thomas, Robert, *Administrative Law in Action: Immigration Administration* (Hart Publishing, 2022).
- Counter-terrorism, international law, human rights and the rule of law*
- Abel, Richard L., *Law's Trials: The Performance of Legal Institutions in the US "War on Terror"* (Cambridge University Press, 2018).
- Amnesty International, "Upturned Lives: The Disproportionate Impact of France's State of Emergency," 2016. <https://www.amnesty.org/en/documents/eur21/3364/2016/en/>.
- Auriel, Pierre, Olivier Beaud, and Carl Wellman. *The Rule of Crisis: Terrorism, Emergency Legislation and the Rule of Law* (Springer, 2018).
- Benvenisti, Eyal, "United We Stand: National Courts Reviewing Counterterrorism Measures," in Andrea Bianchi and Alexis Keller, eds., *Counterterrorism: Democracy's Challenge* (Bloomsbury, 2008).
- Bianchi, Andrea, and Alexis Keller. *Counterterrorism: Democracy's Challenge* (Bloomsbury, 2008).
- Brysk, Alison, ed., *National Insecurity and Human Rights* (University of California Press, 2007).
- Council of Europe, Parliamentary Assembly, "'Human Rights and the Fight Against Terrorism' Report of the Committee on Legal Affairs and Human Rights," September 16, 2011. <https://pace.coe.int/en/files/13156>
- Davis, Fergal F., and Fiona de Londras, eds. *Critical Debates on Counter-Terrorism Judicial Review* (Cambridge University Press, 2014).

- Domingo, Aniceto Masferrer, and Aniceto Masferrer. *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism* (Springer, 2012).
- Duffy, Helen, *The 'War on Terror' and the Framework of International Law* (Cambridge University Press, 2015).
- European Union Agency for Fundamental Rights, "Directive (EU) 2017/541 on Combating Terrorism - Impact on Fundamental Rights and Freedoms," 2021. <https://fra.europa.eu/en/publication/2022/directive-eu-2017541-combating-terrorism-impact-fundamental-rights-and-freedoms#:~:text=To%20this%20end%2C%20the%20directive,has%20drawn%20significant%20public%20attention.>
- Evangelista, Matthew, *Law, Ethics, and the War on Terror* (John Wiley & Sons, 2013).
- Lynch, Andrew, Edwina MacDonald, and George Williams. *Law and Liberty in the War on Terror* (Federation Press, 2007).
- Lynch, Andrew, Nicola McGarrity, and George Williams, eds. *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (Routledge, 2010).
- Monshipouri, Mahmood, *Terrorism, Security, and Human Rights: Harnessing the Rule of Law* (Lynne Rienner Publishers, 2012).
- Open Society Foundation, Amnesty International, International Commission of Jurists, "Joint Civil Society Report on the Fundamental Rights Impact of the EU Directive on Combating Terrorism," November 2021. <https://www.opensocietyfoundations.org/publications/joint-civil-society-report-on-the-fundamental-rights-impact-of-the-eu-directive-on-combating-terrorism>
- Parker, Tom, *Avoiding the Terrorist Trap: Why Respect for Human Rights Is the Key to Defeating Terrorism* (World Scientific Publishing Company, 2019).
- Salinas de Frias, Ana, *Counter-Terrorism and Human Rights in the Case Law of the European Court of Human Rights* (Council of Europe, 2012).
- Shor, Eran, and Stephen Hoadley, eds. *International Human Rights and Counter-Terrorism* (Springer, 2019).

### *Counter-terrorism and Democracy*

- Abel, Richard L., *How Autocrats Abuse Power: Resistance to Trump and Trumpism* (Routledge, 2023).
- Art, Robert J., and Louise Richardson. *Democracy and Counterterrorism: Lessons from the Past* (US Institute of Peace Press, 2007).
- Burchill, Richard, *Democracy and International Law* (Ashgate, 2006).
- Charbord, Anne, and Fionnuala Ni Aolain. "The Role of Measures To Address Terrorism and Violent Extremism on Closing Civic Space," University of Minnesota, 2019, [https://www.icnl.org/wp-content/uploads/civil\\_society\\_report\\_-\\_final\\_april\\_2019.pdf](https://www.icnl.org/wp-content/uploads/civil_society_report_-_final_april_2019.pdf).
- Demirsu, Ipek, *Counter-terrorism and the Prospects of Human Rights: Securitizing Difference and Dissent* (Palgrave Macmillan, 2017).
- Donohue, Laura K., *The Cost of Counterterrorism: Power, Politics, and Liberty* (University Press, 2008).
- Fermor, Ben, and Jack Holland, "Security and Polarization in Trump's America: Securitization and the Domestic Politics of Threatening Others," *Global Affairs* 6, no. 1 (January 1, 2020): 55.
- Fox, Gregory H., and Brad R. Roth, eds. *Democratic Governance and International Law* (Cambridge University Press, 2000).

- Freeman, Michael, *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror* (Bloomsbury, 2003).
- Humphreys, Laud, *Terrorism and Democratic Stability* (Routledge, 2017).
- Merolla, Jennifer L., and Elizabeth J. Zechmeister. *Democracy at Risk: How Terrorist Threats Affect the Public* (University of Chicago Press, 2009).
- Njoku, Emeka Thaddues, and Scott N. Romaniuk. *Counter-Terrorism and Civil Society: Post-9/11 Progress and Challenges* (Manchester, 2021).
- Peleg, Samuel, and Wilhelm F. Kempf. *Fighting Terrorism in the Liberal State: An Integrated Model of Research, Intelligence* (IOS Press, 2006).
- Rubin, Gabriel, *Freedom and Order: How Democratic Governments Restrict Civil Liberties after Terrorist Attacks and Why Sometimes They Don't* (Lexington Books, 2011).
- Skoczylis, Joshua, and Sam Andrews. "The Spectacle of Ghost Security: Security Politics and British Civil Society," in Scott N. Romaniuk and Emeka Thaddues Njoku, eds., *Counter-Terrorism and Civil Society* (Manchester University Press, 2021), p. 109.
- Tsoukala, Anastassia, "Democracy against Security: The Debates about Counterterrorism in the European Parliament, September 2001–June 2003," *Alternatives* 29, no. 4 (October 1, 2004): 417.
- United Nations, "Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism," 1 March 2019. <https://documents.un.org/doc/undoc/gen/g19/057/59/pdf/g1905759.pdf?token=bGgjyUHIGSFSeoHQzw&fe=true>.
- Weinberg, Leonard B., *Democratic Responses To Terrorism* (Routledge, 2007).
- Weinberg, Leonard, Elizabeth Francis, and Eliot Assoudeh. *Routledge Handbook of Democracy and Security* (Routledge, 2020).
- Wilkinson, Paul, *Terrorism Versus Democracy: Third Edition* (Routledge, 2011).

## About the Author

---

### Cyprien Fluzin

Cyprien stayed with ICCT for six weeks from 28th August 2023 to 8th October 2023. During this time, he conducted research on “The Use of Administrative Measures while Responding to Increasingly Diverse Terrorist and Security Threats: Rule of Law and Human Rights Implications.”

Cyprien is a PhD candidate at the Geneva Graduate Institute of International and Development Studies where his research focuses on international legal issues arising from the participation of foreign terrorist fighters in armed conflicts. He has previously taught courses at the Geneva Academy, among others on refugee law, human rights, and humanitarian law. Cyprien is also an adjunct lecturer at Sciences Po in Paris where he teaches subjects related to global security and international humanitarian law, and at Paris Dauphine University-PSL where he teaches French law. He further serves as a contributing editor to the Princeton Journal of Public and International Affairs



International Centre for  
Counter-Terrorism

---

**International Centre for Counter-Terrorism (ICCT)**

T: +31 (0)70 763 0050

E: [info@icct.nl](mailto:info@icct.nl)

[www.icct.nl](http://www.icct.nl)