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International Human Rights Treaties and the Defences that Nations use in Suspending Rights in Times of a Security Crisis Post 9/11

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ABSTRACT

*The article investigates the intricate relationship between national security and human rights protocols during emergencies and terrorism countermeasures since 9/11. The analysis explains what limitations international human rights laws impose on state actions in critical situations with emphasis on freedom rights and anti-torture prohibitions together with safeguards against unlawful death. The core principle of proportionality emerges as an essential tool to maintain harmony between security measures and human rights because any right suspensions must correspond with the emergency conditions. Landmark case laws, such as *A v. Secretary of State for the Home Department* and *Charkaoui v. Judicial systems in Canada* show dedication to defend human rights throughout security-related circumstances. The article explores national security provisions within international agreements, particularly focusing on the difficulties of interpreting Article XXI of GATT regarding "necessary" and "security interests." The article evaluates how security exceptions may be improperly used which threatens the integrity of multilateral agreements. It evaluates worldwide judicial actions and case examples to validate how judicial review and respect for international law protect human rights during security risk management.*

KEYWORDS

9/11 Attack, National Security, Human rights, Society,

*Torture and Counter-terrorism.***INTRODUCTION**

There has been a lot of debate regarding how national security and human rights intersect, particularly since 9/11, when governments have increasingly resorted to more extreme measures in responding to perceived security threats. While international human rights treaties provide a framework for balancing these competing pressures, there remains debate as to how effective national security defences are in suspending rights in emergencies. This chapter addresses how international human rights law regulates state behaviour under conditions of emergency, with specific reference to how national security actions impact core rights such as the right to liberty, the prohibition against torture, and the prohibition against extrajudicial killings. The other half of the chapter examines the vital role played by civil society institutions and media organizations in safeguarding human rights against authoritarian measures carried out under the name of national security. By the end tries to highlight a few landmark case laws to demonstrate the efforts. Governments can be obligated to limit certain rights during public emergencies, under international human rights law. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) permits derogations from certain rights, but only if the emergency threatens national security, the steps taken are necessary and proportionate, and states must inform the UN. “However, non-derogable rights—such as the prohibition of torture (Article 7 ICCPR), freedom from arbitrary deprivation of life (Article 6 ICCPR), and freedom from racial discrimination—remain inviolable even during emergencies.”¹ “The principle of proportionality is central to this balancing act. The government must ensure that any suspension of derogable rights adheres to human rights law by being strictly required by the exigencies of the situation. For example, while states may restrict freedom of expression to combat terrorism, such restrictions must be narrowly tailored and directly linked to preventing harm.”² One of the most important elements of this fine balancing act is the

¹ John von Doussa, ‘Incorporating Human Rights Principles into National Security Measures’ (International Conference on Terrorism, 2007). Available at: <https://humanrights.gov.au/about/news/speeches/president-speeches-development-security-and-human-rights>. Accessed on: 17 March 2025.

² Canadian Human Rights Commission, *National Security and Human Rights* (2011). Available at: <https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/eliadis-eng.pdf>. Accessed on: 17 March 2025.

concept of proportionality. Judicial bodies across the globe have reaffirmed this notion, emphasizing that rights-violating actions must meet the test of international law. Global counter-terrorism efforts saw a sea change following the 9/11 terrorist strikes, leading to a record-high level of state surveillance, detention, and use of force capabilities. These measures have often tested international human rights law to the core. “For instance, the U.S. government’s post-9/11 policies—such as indefinite detention at Guantánamo Bay and the use of “enhanced interrogation techniques”—have been widely criticized for violating fundamental rights. Similarly, Canada’s Anti-Terrorism Act (Bill C-36) sought to balance national security with constitutional guarantees under the Canadian Charter of Rights and Freedoms but faced criticism for its potential overreach.”³ Jurisdictions have varied in their judicial responses. Some courts have positively scrutinized state responses to ensure that they meet human rights standards, while others have let executive assertions of necessity in times of crisis prevail. In emergencies, non-derogable rights are the necessary safeguard against state excesses. One right that is shielded by multiple treaties, like the Convention on Torture (CAT) and the ICCPR, is that against torture. There are reports of torture and other forms of cruel, inhuman, and degrading treatment in counter-terror contexts internationally despite this direct prohibition. For instance, countries that practice practices that violate Article 3 of the European Convention on Human Rights (ECHR), which prohibits all forms of torture, have been continuously convicted by the European Court of Human Rights (ECtHR). “In *A v. Secretary of State for the Home Department* (2005), the UK House of Lords held that evidence obtained through torture was inadmissible in court proceedings—a landmark decision affirming the absolute nature of this prohibition.”⁴ To ensure accountability for national security measures that violate human rights, courts become unavoidable. Judicial review as a check on executive discretion requires governments to prove that their actions are right, necessary, and legal. “In Canada, for example, courts have scrutinized anti-terrorism legislation to ensure compliance with constitutional principles.”⁵ In the 2007 case of *Charkaoui v. Canada*, the

³ Burke-White W. 'Human Rights and National Security: The Strategic Correlation' (2004) University of Pennsylvania Carey Law School Faculty Scholarship Repository.

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at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1960&context=faculty_scholarship.

Accessed on: 17 March 2025.

⁴ *A v. Secretary of State for the Home Department* (n26).

⁵ *Ibid* (n57).

Supreme Court invalidated sections of Canada's Immigration and Refugee Protection Act that permit indefinite detention in the absence of adequate procedural safeguards. Just like that, judgments from international courts have tightened up accountability. The ECtHR has fashioned sound jurisprudence on surveillance methods and detention measures with a focus on transparency and neutral oversight of legitimate counterterror actions. "In *Zakharov v. Russia* (2015), the Court found Russia's surveillance laws incompatible with Article 8 ECHR due to inadequate safeguards against abuse."⁶

Both states and judicial authorities must therefore steer their necessarily intricate course between human rights and national security. While there are international human rights treaties establishing the framework within which such a balance may be discovered, they are to work if vigorous judicial control and reference to notions of necessity and proportionality are brought into play. In addition to being mandatory by law, the protection of fundamental rights in times of crisis is necessary for the preservation of democratic principles, as will be demonstrated through case studies of torture, detention, and extrajudicial killings.

NATIONAL SECURITY DEFENCES AND INTERNATIONAL HUMAN RIGHTS TREATIES

International agreements have provisions called national security exceptions that allow governments to act in a manner they think necessary to protect their essential security interests, even though doing so might otherwise violate their obligations under the agreement. The exceptions must be specifically expressed within agreements to qualify in international law. Not all treaties have an implied national security exception, according to academic opinion. Such an exception is not permitted under the Vienna Convention on the Law of Treaties, the Draft Articles on State Responsibility of the International Law Commission, or customary international law. "Therefore, any national security exception must be clearly and explicitly stated in the treaty itself."⁷

- ***ICJ Case Law Regarding Exceptions for National Security***

In several holdings, the International Court of Justice (ICJ) has

⁶ Ibid (n56)

⁷ Ruiz J, 'National Security Exceptions' (2020) 3 *The Treaty Examiner* 89-97. Available at: <https://treatyexaminer.com/national-security-exceptions/>. Accessed on: 17 March 2025.

addressed the subject of national security exceptions and provided definitions of how they could be applied under general public international law. In the case of *UK v. Iceland (Fisheries Jurisdiction)*, 1973⁸,

i. FACTS

The International Court of Justice, by a vote of 10 to 4, held in favour of Iceland (Althing), which had attempted to extend its exclusive right to fish beyond the 12-mile zone to 50 nautical miles from the baseline. Iceland enacted legislation regarding the scientific conservation of the continental shelf to so implement a policy. Iceland and the UK did agree in 1961 whereby the UK would recognize the 12-mile fisheries zone. In 1971, Iceland proclaimed a new fisheries zone and revoked this agreement. When Iceland instituted its new policy, the United Kingdom, which has been fishing in this area for decades, brought the case to the International Court of Justice. In this situation, the ICJ held that it had jurisdiction. Iceland was not in a position to participate in the hearing.

ii. QUESTION

1. Is there a law of the high seas, is it established, and is it enforceable?
2. Does Iceland have jurisdiction to extend its fishing area from 12 to 50 miles?
3. How does the settlement between Iceland and the United Kingdom influence the court's judgment?

iii. DECISION

To the court, it is unacceptable for Iceland to enlarge its fishing ground from 12 to 50 miles and it is not "opposable" to the UK. Exclusive fisheries jurisdiction of a coastal state may be claimed by the concept of a fishery zone between the territorial sea and the high seas, which is most agreed to be 12 miles from its baseline. Since it is under international law and the circumstances of the case are consistent with what international law would allow, the Iceland-United Kingdom agreement was an important factor in the court's decision. Iceland did not protest the United Nations Conference on the Law of the Sea's announcement of freedom of the high seas,

⁸ Fisheries Jurisdiction (United Kingdom v Iceland) [1973] ICJ Rep 3

which did not generate fishing jurisdiction.

Concerning international law, the ruling by the court in favour of the United Kingdom is important. It illustrates that the courts respect the laws and regulations exactly as stated or conventional and do not decide on the whim of pending legislation. Decisions by a court have to be made from the facts of the case at the time. Moreover, it provides a documented explanation of the 12-mile fisheries jurisdiction which numerous states have consented to. Most importantly, however, it shows and confirms the notion that "silence leads to consent." A state cannot follow a certain set of guidelines for years and then suddenly change its mind because a superior opportunity has arisen. Any grievances have to be expressed by a state, if not then it has to abide by the rules it has signed up for.

The ICJ analysed an implicit *rebus sic stantibus* exception within *UK v. Iceland* (Fisheries Jurisdiction, 1973), which concerns situations that alter and affect treaty obligations. The Court held that while these exceptions would touch substantive treaty obligations, they would not touch the jurisdictional clauses that grant the Court its jurisdiction. "This case highlights the function of exceptions in clarifying when it is permissible to disregard general obligations due to changes in circumstances or national security concerns."

- Another case was of **Military and Paramilitary Activities in and against Nicaragua (The Republic of Nicaragua V. The United States of America)**⁹

i. *FACTS*

Nicaragua and the United States became involved in a dispute with each other in 1984 regarding US support for military and paramilitary operations in and against Nicaragua. On April 9 of that same year, Nicaragua submitted a request to initiate proceedings against the United States and to specify preliminary measures. The United States of America was required to desist and avoid any measure that could restrict access to Nicaraguan ports and mines immediately. The Court also indicated that measures contrary to the norms of non-intervention in internal affairs and the ban on the threat or use of force

⁹ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) [1986] ICJ Rep 14.

should not be used to negate Nicaragua's "right to sovereignty" and "right to political independence" within the domestic jurisdiction of a state. The United States of America exploited Nicaragua's harbours and supported the Contras in their rebellion against the Sandinistas. A rebel group known as Contras was established to end the Sandinista (FSLN) Movement and maintain the dictatorship.

ii. *QUESTION*

1. If both states consent to the jurisdiction of the court, can the International Court of Justice decide the dispute?
2. Did the United States infringe on customary international law?
3. Is Nicaragua entitled to compensation?

iii. *RULE OF LAW*

1. *Article 2 Paragraph 4 of the 1945 UN Charter* says that all members shall refrain from the threat or use of force against the political independence or territorial integrity of a state, as well as in any other manner inconsistent with the purposes of the UN.
2. *The Charter on the Organization of the American States, Article 18.* Except in instances of self-defence by existing treaties or for their fulfilment, the American States pledge themselves in their foreign relations to abstain from the use of force.
3. *The Organization of the American States Charter, Article 20* Before being referred to the UN Security Council, any international disputes that might arise between the American States should first be settled peacefully through the means provided in this Charter.
4. *Montevideo Convention on the Rights and Duties of States, 1933, Article 8.* No state may have any voice in the internal or exterior affairs of another.
5. The ICJ distinguished between the language of different national security treaties in the *Military and Paramilitary Activities case (1986)*. A clause authorizing measures necessary to protect essential security interests was included in the *U.S.-Nicaragua Treaty of Friendship and Commerce*. "The ICJ found that U.S. actions, such as mining Nicaraguan ports, were not justified under this

provision as they were not necessary to protect U.S. security interests.”¹⁰

TRADE AGREEMENT EXCEPTIONS FOR NATIONAL SECURITY

One of the most well-known examples of a national security exception in international trade law is contained in Article XXI of the General Agreement on Tariffs and Trade (GATT). Article XXI provides WTO members with the autonomy to do whatever they consider necessary to protect their basic security interests. Under the language of Article XXI, governments are accorded significant discretion in determining their security interests and determining whether or not action is needed to protect them. “However, recent WTO panel decisions have clarified that while members have discretion, this discretion is limited by the principle of good faith and objective requirements under Article XXI.”¹¹ While infrequently invoked, national security exceptions under GATT Article XXI have gained greater prominence in recent years. In landmark decisions such as Saudi Arabia – Measures Concerning the Protection of Intellectual Property and Russia – Measures Concerning Traffic in Transit, the WTO Dispute Settlement Body (DSB) has construed the scope of this exception. “These cases highlight the challenges in defining ambiguous terms like “necessary,” “essential,” and “security interests,” as well as determining who decides the scope of the exception.”¹²

CHALLENGES AND CRITICISMS

In international law, exclusions in the name of national security pose serious challenges, particularly about their potential abuse and balancing national sovereignty and treaty obligations. Critics argue that such exclusions could undermine multilateral trade agreements and leave the door open for protectionism. “The invocation of national security exceptions requires a delicate balance between protecting state interests and maintaining the integrity of international legal frameworks.”¹³ In addition, the concept of national security has grown to include, among other aspects, cybersecurity, protection of critical infrastructure, and

¹⁰ Ibid.

¹¹ Congressional Research Service, *The “National Security Exception” and the World Trade Organization* (Legal Sidebar LSB10223, 28 November 2018). Available at: <https://sgp.fas.org/crs/row/LSB10223.pdf>. Accessed on: 17 March 2025.

¹² Chao Wang, ‘Invocation of National Security Exceptions under GATT Article XXI’ (2019) 18(3) Chinese Journal of International Law 551. Available at: <https://doi.org/10.1093/chinesejil/jmz024>. Accessed on: 17 March 2025.

¹³ Ibid.

economic security. “This expansion complicates the application of security exceptions, as it blurs the lines between traditional security concerns and broader economic or strategic interests.”¹⁴ International law exceptions for national security are complex and need to be expressly stated within treaties to be invoked. They offer grave challenges to finding the appropriate balance between international obligations and the sovereignty of states and are open to review by the courts. How such exceptions are construed and used will continue to have an effect on international law as international affairs evolve.

HOW HAS IT IMPACTED HUMAN RIGHTS?

National security laws have a profound and far-reaching impact on human rights, which often leads to severe clashes between state interests and personal freedoms. Through case studies to illustrate such concerns, the section analyses the impact of national security on human rights, specifically torture, detention, and extrajudicial killings.

- **Incarceration**

Another serious issue within the framework of national security is detention without due process. Serious human rights issues have been expressed regarding the use of administrative control orders and unlimited detention to curtail individuals' freedom without a trial.

- i. Indefinite Detention:*

Detainees at the U.S. detention facility at Guantánamo Bay have been held in custody for years with no opportunity to defend themselves, rendering it a controversial issue. In *Boumediene v. Bush* (2008), the Supreme Court affirmed these detainees' habeas corpus rights, highlighting the importance of judicial oversight in ensuring that detention practices comply with human rights standards.

- ii. Administrative Control Orders*

Control orders have been utilized in restricting individuals' freedom of movement and association without charging them with criminal offences in countries such as the UK

¹⁴ Sovereign Investors and National Security Exceptions in WTO and Investment Law (2023). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4471209. Accessed on: 17 March 2025.

and Australia. “These measures have been criticized for curtailing civil liberties and violating the right to liberty, as they can be imposed without sufficient evidence or judicial review.”¹⁵

- **Extrajudicial Execution**

Drone strikes and targeted killings are some of the extrajudicial executions which have become more common in counterterrorism operations. The right to life and the due process principle are undermined by these actions.

- i. *Drone Attacks*

The application of drones in the execution of targeted killings has provoked controversy arising from differences as to whether it is legal or lawful and their proportionality. “The UN Special Rapporteur on Extrajudicial Executions has emphasized the need for transparency and accountability in drone operations to ensure compliance with international human rights law.”¹⁶ In the case of *Al-Aulaqi v. Obama* (2010)¹⁷ “a drone attack killed and targeted Anwar al-Aulaqi, an American citizen suspected of terrorism. Al-Aulaqi's constitutional rights were purportedly violated by the killing, as claimed by the American Civil Liberties Union and the Centre for Constitutional Rights. The court held that there was no remedy under U.S. law for the purported constitutional violation, even if it found the case to be justiciable.”

- ii. *Extrajudicial Killing and Global Jurisprudence*

Injurious force is only employed if imperative and reasonable under global jurisprudence, while global jurisprudence also addresses extrajudicial killings. “States must ensure that any use of force is subject to robust oversight and judicial review to prevent arbitrary deprivation of life.”¹⁸

¹⁵ UN Special Rapporteur on Counter-Terrorism and Human Rights. Available at: <https://www.ohchr.org/en/special-procedures/sr-terrorism>.

¹⁶ Human Rights Watch, *dismantling a Free Society: Hong Kong One Year after the National Security Law* (25 June 2021). Available at: <https://www.hrw.org/feature/2021/06/25/dismantling-free-society/hong-kong-one-year-after-national-security-law>. Accessed on: 17 March 2025.

¹⁷ *Al-Aulaqi v Obama*. Available at: <https://www.wlf.org/case/al-aulaqi-v-obama/>. Accessed on: 17 March 2025.

¹⁸ UN Security Council Counter-Terrorism Committee, Human Rights.

- **Torture**

Torture is a serious human rights violation and is specifically prohibited by international law. It is prohibited in all conditions by the Convention Against Torture (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). However, since 9/11, there have been increasing instances of torture, which are often justified as necessary for counterterrorism efforts.

- i. *Post 9/11 Counter-Terrorism Measures*

The United States utilized "enhanced interrogation techniques" in Guantánamo Bay and other centres that have been universally criticized as constituting torture. Torture applied by counter-terrorist programs was again highlighted by the Abu Ghraib prison scandal in Iraq. "These practices not only violate human rights but also undermine the legitimacy of counter-terrorism efforts by fuelling resentment and recruitment for extremist groups."¹⁹

- ii. *International Law and Torture*

Regardless of public emergency or war, torture is proscribed unconditionally under international law with no exception available. "The UN Special Rapporteur on Torture emphasizes that torture is never justified and that states must uphold this prohibition even when facing security threats."²⁰

CASE STUDIES

- ***Indian Anti-Terrorism Legislation***

India maintains a complicated set of laws to fight terrorism because multiple legal instruments have been established throughout the years to handle this threat. Terrorism legislation has adapted dramatically through the years because security demands meet human rights protocols. Anti-terrorism laws are constitutionally valid according to courts but courts also specify the necessity of procedural safeguards to avoid mistreatment. The constitutionality of security

Available at: <https://www.un.org/securitycouncil/ctc/content/human-rights>. Accessed on: 17 March 2025.

¹⁹ Ibid.

²⁰ Ben Saul, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism.

measures produces an ongoing debate because legal authorities continue to oppose their possible implications on civil liberties. In *Kartar Singh v. The State of Punjab* (1994) the Supreme Court validated TADA while stressing the responsible implementation of its authority. The Supreme Court maintained that authorities would use the powers responsibly based on their understanding of intended legislative principles. In another landmark case, *PUCL v. Union of India* (2003) POTA faced constitutional challenges about rights protected under articles 14, 19 and 21 found within the Indian Constitution. Although the Supreme Court validated the law it required that authorities follow procedure exactly. The security needs of India play against human rights protections in their anti-terrorism legislative framework. These legislative measures must undergo precise monitoring to stop illegal usage while they fulfil their security mandate within constitutional and worldwide rights standards. A notable instance of the potential impact of anti-terror laws on civil liberties is that of Sudha Bharadwaj, a prominent human rights lawyer and activist. In August 2018, Bharadwaj was arrested under the Unlawful Activities (Prevention) Act (UAPA) in the Bhima Koregaon case.

i. Background

Bharadwaj represented marginalized communities for over three decades, with a particular focus on protecting the rights of Chhattisgarh's indigenous (Adivasi) people. “She served as the General Secretary of the Chhattisgarh People's Union for Civil Liberties and as Vice President of the Indian Association of People's Lawyers.”²¹ She struggled on behalf of the Adivasis in front of the Indian National Human Rights Commission and defended the victims of extrajudicial killings. Bharadwaj was arrested on August 28, 2018, when multiple human rights activists were subjected to coordinated statewide raids. Her cell phone, laptop, and other personal items were seized when she was in detention. She was charged with having delivered inflammatory speeches at a meeting of the Elgar Parishad in December 2017 that supposedly incited violence at Bhima Koregaon on January 1, 2018, in contravention of several provisions of the UAPA and the Indian Penal Code.

²¹ India Civil Watch, 'Who Is Sudha Bharadwaj?' (India Civil Watch). Available at: <https://indiacivilwatch.org/sudha-bharadwaj/> Accessed on: 17 March 2025.

ii. Detention and Court Cases

“Bharadwaj was initially placed under house arrest for 60 days until October 27, 2018, when she was taken into police custody.”²² Once 90 days had lapsed from the time of her house arrest, she applied for default bail on November 26, 2018, as no charge sheet had been filed yet. “However, this application was initially rejected by an Additional Sessions Judge who extended her custody period to 180 days under Section 43D (2) of the UAPA.”²³ On 1 December 2021, the Bombay High Court released Bharadwaj's default bail after his almost three-year imprisonment. On 25 January 2019, it was found by the court that the 90 days (excluding her home arrest) had lapsed and her default bail application was still pending, whereas her supplementary chargesheet was presented on 21 February 2019. “The National Investigation Agency appealed this decision to the Supreme Court, which dismissed their plea, upholding Bharadwaj's right to default bail.”²⁴

iii. Importance

- a) Extended Pretrial Detention: She was detained without trial or charge for almost three years, exemplifying how the provisions of UAPA can lead to long periods of detention.
- b) Restrictions on Bail: A mere two among the 16 arrested individuals—Bharadwaj and Varavara Rao—succeeded in receiving regular bail due to the strict bail limitations imposed by UAPA.
- c) Jurisdictional issues: Procedural issues in UAPA cases came into focus when she was granted bail partly due to questions regarding the jurisdiction of the court that had extended her jail term.

Her case brings out the possible impacts of anti-terror laws on human rights defenders and raises questions regarding

²² Aditya Phalnikar, Adrija Ghosh and Hrishika Jain, 'Explaining the Bail Order in Sudha Bharadwaj's Case' (P39A Blog, 1 December 2021). Available at: <https://p39ablog.com/2021/12/explaining-the-bail-order-in-sudha-bharadwajs-case/> Accessed on: 17 March 2025.

²³ Ibid.

²⁴ 'SC: Allowing Default Bail to Sudha Bharadwaj, SC Says HC Duly Considered All Aspects' (Live Law, 8 December 2021). Available at: <https://www.livelaw.in/top-stories/supreme-court-sudha-bharadwaj-default-bail-bhima-koregaon-nia-bombay-high-court-18>. Accessed on: 17 March 2025.

how one can balance civil liberties and security concerns.

- ***Legislation of U.S.***

In reaction to the September 11 terrorist attacks, the USA PATRIOT Act, a historic piece of legislation, was passed in October 2001 to strengthen American national security. It promoted interagency information sharing, enhanced punishments for offences related to terrorism, and greatly strengthened the surveillance capabilities of intelligence and law enforcement organizations. The Act enhanced surveillance methods by increasing electronic surveillance powers, enabling law enforcement to obtain individuals' records without their permission. Foreign Intelligence Surveillance Act (FISA) amendments enabled the collection of foreign intelligence data. The Act enhanced interagency information sharing, enhanced penalties for terrorist crimes, and enhanced anti-money laundering and terrorist financing efforts. The Act also compelled financial institutions to report suspicious activity.

Mohammed Khalid Sheikh Case- Among the most notable figures in the global war against terror is Khalid Sheikh Mohammed (KSM), who has been widely credited as the 9/11 mastermind. His case remains a reminder of the challenges and controversies that lie behind national security policies, particularly arrest and prosecution. Mohammed was born to Kuwaiti parents on April 14, 1965, in Balochistan, Pakistan. He became prominent in al-Qaeda, leading its propaganda efforts and coordinating a series of major terrorist attacks, including the 1993 World Trade Centre bombing, the Bali nightclub bombings, and the 9/11 attacks. The CIA and Pakistan's Inter-Services Intelligence (ISI) jointly captured Mohammed in Rawalpindi, Pakistan, on March 1, 2003.

- i. Detention and Questioning*

Waterboarding was among the "enhanced interrogation techniques" (EITs) Mohammed experienced while in secret CIA prisons in Afghanistan and Poland following his detention. Once transferred to Guantánamo Bay in 2006, he has remained there since. Due to allegations of torture, Mohammed's confessions—such as his confession to responsibility for the 9/11 attacks—have been the subject of controversy.

- ii. Court Cases*

In 2008, Mohammed was indicted by a U.S. military commission for murder and war crimes. His trial has been delayed several times because of legal challenges and disputes over the admissibility of evidence obtained under torture. Plea agreements that would have allowed Mohammed and his co-defendants to plead guilty in 2024 in exchange for not facing the death penalty were turned down by Défense Secretary Lloyd Austin, which led to further legal problems.

iii. Human Rights Issues

There are serious human rights issues with Mohammed's case:

- **Torture Allegations:** His admissions may not be admissible as evidence since they were obtained in circumstances that many believe to be torture.
- **Mohammed's more than 20 years of indefinite incarceration without charge or trial highlights the problems of extended confinement without due process.**
- **Fair Trial Concerns:** The fairness of his trial has been questioned based on the use of military commissions and the risk of prejudiced proceedings.

iv. Current Situation

Mohammed's case remains pending as of early 2025. To decide if Défense Secretary Austin can stop the plea agreements, the U.S. appeals court has suspended the plea process. This turn of events shows the continued legal and ethical problems facing Guantánamo Bay detainees.

CONCLUSION

The document ends its discussion by highlighting the necessity for national security protection to maintain equilibrium with fundamental human rights safeguards while emergencies are in progress. International human rights treaties establish the framework for maintaining national security and preserving human rights but their practical implementation depends on respecting principles of proportionality together with necessity and judiciary monitoring. During emergencies protected rights such as freedom from torture (Article 7 ICCPR) along with the right

to life (Article 6 ICCPR) never become subject to derogation measures. These rights serve as essential safeguards against state overreach. Judicial decisions starting with *A v. Secretary of State for the Home Department* the Secretary of State for the Home Department confirmed the complete ban on torture by ruling that court evidence gathered through such abusive practices would be excluded from legal processes. Similarly, cases like *Charkaoui v. Canada* exhibited to the world that judicial institutions possess the power to constrain governments when they violate constitutional guarantees within antimicrobial practices. Emergency evaluations rely on the basic idea of proportionality as their fundamental regulatory framework. Narrow and relevant measures should constitute government procedures to protect derogable rights against threats while respecting the fundamental rights of citizens. States that restrict freedom of expression to fight terrorism need to show direct relationships between their measures and safety protection instead of using restrictive policies to silence opposition.

The discussion in the document explains the challenges that result from national security exceptions included in international treaties. GATT Article XXI grants member states wide authority in determining security interests through good faith measures that require clear objective standards. The *Saudi Arabia – Measures Concerning the Protection of Intellectual Property* case demonstrates how these exceptions can be evaluated to stop improper utilization.