Report: Human Dignity and Human Security in Times of Terrorism

14 December 2017

Welcome address

Dr. Christophe Paulussen (T.M.C. Asser Instituut)

Dr. Christophe Paulussen launched the conference 'Human Dignity and Human Security in Times of Terrorism' with a welcome address by noting the ubiquity of terrorism in today's world and the consequent impact on our human rights framework. Dr. Paulussen set up the paradigm for the conference with a quote from the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein: 'Terrorist attacks cannot destroy the values on which our societies are grounded – but laws and policies can.'

Dr. Paulussen introduced the presentations from both established experts and upcoming talent as seeking to consider the challenges terrorism poses to human rights and human dignity, how to safeguard those values and 'how law can constitute a source of trust in times when Europe and the rest of the world continue to be plagued by terrorism'.

Keynote 1 – Responding to Terrorism: Restoring Trust in the Rule of Law

Prof. Ernst Hirsch Ballin (T.M.C. Asser Instituut)

In the first keynote speech of the day, Prof. Hirsch Ballin provided an important reminder that an inclusive ideal of a constitution and rule of law for all should continue to be promoted, even and especially in times of terrorism. He began with noting that terrorist acts unlike other crimes amount to an outright denial of the validity of constitutional order and the rule of law. They seek to achieve – often successfully – an erosion of trust. Prof. Hirsch Ballin pointed out how paradoxically, some responses to terrorism also in fact amount to renouncing the rule of law.

Providing a historical perspective on trust in society, Prof. Hirsch Ballin underscored that the rule of law has always served as a means of large groups co-existing peacefully. Trust in the law amounts to trust in society and the law 'allows people to live together without knowing one another'. Introducing the concept of 'cultural essentialism', Prof. Hirsch Ballin emphasised the dangers of a belief system that promotes feelings of superiority in relation to others. He remarked upon the need for equality before the law, yet this understanding can become lost when feelings of otherness are on the rise. Today, he sees trust as undermined 'by real life experience of disappointment', and the consequent nationalism and religious fundamentalism as symptoms of cultural essentialism leading to international terrorism.

Prof. Hirsch Ballin stressed the link between terrorism and feelings of insecurity, leading to a 'radical and full denial of the foundations of common trust in the rule of law'. In other words, 'terrorist attacks intendedly destruct trust and appear to delegitimise the very idea that people coming from different ideological cultural and religious backgrounds can share the public sphere under democracy and rule of law'. In this attack on the rule of law, the location of terrorist acts is also symbolic. By attacking urban spaces that traditionally serve as 'places of encounter where people used to feel protected by the law', the fear instilled is that much greater. Prof. Hirsch Ballin concluded with a warning against reacting to terrorism in a manner that paradoxically confirms the 'cultural essentialism' narrative perpetuated by terrorists. Often, that understanding is mirrored in arguments for exceptional measures in the war against terrorism, therefore undermining inclusive citizenship for all. That is why, Prof. Hirsch Ballin argued, we should strive always to confirm and strengthen trust in the rule of law.

Keynote 2 – Exporting Human Security in the Cause of Counter Terrorism

Prof. Clive Walker (University of Leeds)

Prof. Clive Walker's keynote speech provided an overview of the themes the conference touched upon through exploring the transformation of responses to terrorism from the perspective of human security. Prof. Walker criticised the response by countries such as the UK of externalising risk of terrorism as ineffective in light of examples of blow-back in 'recipient' countries. The *Anti-Terrorism, Crime and Security Act 2001 Review: Report (2003-04 HC 100)* already noted that externalisation 'would not necessarily reduce the threat internally'.

Prof. Walker's exploration of countering terrorism included:

1) choosing a jurisdiction for dealing with the risk of terrorism (or even constructing one in the case of Guantanamo Bay),
2) regular and irregular rendition,
3) denial and deprivation of nationality,
4) exclusion of non-nationals.

In choosing a jurisdiction, an externalised military system of detentions and commissions is often opted for instead of recourse to the domestic judiciary. However, this externalisation approach has 'produced a symbiotic relationship between human security and human rights' in Europe – as opposed to the US – by virtue of cases such as *Al-Skeini* (European Court of Human Rights (ECtHR), 15 June 2011) and subsequent domestic inquiries into potential abuses, which can further be based on human rights claims. Prof. Walker saw this type of development as emblematic of the 'enduring universal value' of human security.

Secondly, inquiries and case law (e.g. *Belhaj v Straw* [2017] UKSC 3) equally ensure liability is not divested with respect to irregular rendition. Prof. Walker stated that regular rendition measures have a very limited role but the use of diplomatic assurances in this context has indeed been deemed lawful by the ECtHR.

As regards the denial or deprivation of nationality, Prof. Walker noted the increase in both executive discretion and the scope of externalisation. For instance, the UK Immigration Act 2014 allows for deprivation of citizenship even if it results in statelessness. Prof. Walker also remarked upon the broad grounds for excluding non-citizens, with the law capturing all who 'glorify terrorism', and indirect exclusion through restricted grounds for asylum.

Prof. Walker concluded with reiterating that counter-terrorism measures now extend to both aliens and citizens, with executive measures still often in practice prevailing over criminalisation, and 'normal' law equally being weaponised. However, he saw 'human security' as a valuable counterpoint in these developments in counter-terrorism.

Session 1 – Prevention (moderated by Prof. Arianna Vedaschi, Bocconi University)

'Exploring the Scope of the Prevention of 'Foreign Terrorist Fighters''

Ms. Marnie Lloydd (University of Melbourne School of Law)

Ms. Marnie Lloydd focused her presentation on the scope of anti-terrorism laws and their interaction with related regimes seeking to prevent (or not) foreign private involvement in armed conflict and violence more generally, that is, for example, more general foreign incursion provisions. How have states grappled, for example, with citizens traveling to fight *against* the Islamic state group? Through exploring the history of foreign fighting and current national legislation, she reflected critically on our current focus on foreign terrorist fighters and proposed new ways of thinking in national decision-making.

Ms. Lloydd began her presentation by suggesting four broad categories of domestic response to 'other' foreign fighters: silence because the law hasn't been updated for non-state armed groups; intentional silence that links the question to direct threat or national allegiance; broad criminalisation or in-principle prohibition; and geographical restrictions linked to particular situations. While there is a rule on the non-toleration by states of terrorist activities directed against a regime, it is more difficult to point to clear international legal obligations on states regarding certain other types of foreign fighting, especially in

cases when the fighters themselves express solidarity with a particular armed cause which may be seeking to preserve or restore democratic values, or when the states themselves are supporting one of the armed groups in a particular conflict. The complexity of foreign fighting relates further to a few disputed questions in international law, such as which group has the right to use force as the last resort, or which foreign actor has the right to express solidarity through the use of violence.

In order for policy makers and legal scholars to gain a better understanding of the dilemma, Ms. Lloydd went on to propose different ways of thinking. She argued that while the 'current focus on terrorism is understandable', to answer questions about broader categories of foreign fighters, states should 'step back' and think of wider historical frames including national histories of foreign fighting and national legislative history. Some of the key factors or 'red threads' that are worth exploring include freedom of movement, different motivations in legal categorisations such as the definition of 'mercenary' (such as ideological motivation versus financial motivation), and states' monopoly on the use of force. She argued that 'stepping back may help us to reconceive the questions and consider the themes that have shaped the legal debate'; it would also help us 'make sense of how the law is developing' and ultimately realise how states juggle friendly state relations and the control of violence, on the one hand, and being nimble and their perception of the 'common good', on the other hand.

'Criminalising Foreign Fighter Travel in order to Prevent Terrorism in Europe: An Illegitimate Assault on Human Dignity?'

Mr. Tarik Gherbaoui (European University Institute)

Mr. Tarik Gherbaoui's presentation critically assessed the impact of criminalisation of foreign fighter travel on human dignity and human security. He argued that criminalisation represented a shift from punishment to prevention, and that such measures constituted an illegitimate assault on human dignity as well as a counterproductive method to ensure human security.

Since 2014, 40,000 foreign fighters have travelled to Syria and Iraq. Mr. Gherbaoui argued that while these foreign fighters were bound to return at some point, they were not a domestic threat in themselves as not all foreign fighters had the intention to commit terrorist attacks back home. As a result, instead of criminalising foreign fighter travel in general, law enforcement should assess each returnee's case individually; returned foreign fighters should be presumed innocent until proven guilty by trial, and those who return voluntarily should be treated differently from those who are forced to return.

Mr. Gherbaoui then critically assessed the international and European legal response to foreign fighter travel from the perspective of human dignity. He pointed out that UN Security Council Resolution 2178 (2014) imposed far-reaching international legal obligations on states to criminalise the activities of foreign fighters with high level of discretion left at the hand of states, which led to the adoption of new domestic criminal or counter-terrorism laws, including the EU Directive on Combating Terrorism (2017) and the Additional Protocol (2015) to the Council of Europe Convention on the Prevention of Terrorism (2005). For Mr. Gherbaoui, the EU Directive poses several legal problems. For example, it defines a 'terrorist offence' in a broad manner, which can be applied to political opposition groups and used against those who defend democracy and rule of law against totalitarian regimes abroad.

The real significance and purpose of criminalisation of foreign fighter travel was prevention rather than punishment. 'Suspected foreign fighters are seen as a risk to be contained rather than individuals who need to be brought to justice under the rule of law.' Hence, 'as suspected foreign fighters are not treated as ends in themselves and appear to be unequal in rights, the shift from punishment to prevention results in an overt assault on human dignity in the foreign fighter context.' Against this assessment, Mr. Gherbaoui proposed that states should make sure that the implementation of counter-terrorism measures respects human rights standards. It is also the most efficient way, as arbitrary implementation risks radicalising marginalised communities even further.

'EU Policy on Incitement to Terrorism: A Slippery Slope'

Ms. Stéphanie De Coensel (Ghent University)

Ms. Stéphanie De Coensel examined the extension of criminal liability to preparatory or facilitating acts in the European Union (EU)'s counter-terrorism efforts. She evaluated the evolution of the EU's criminal

policy on incitement to terrorism and assessed the legitimacy of the current Article 5 on public provocation of the already-mentioned EU Directive on Combating Terrorism (2017), using the principles of subsidiarity, proportionality, and legality.

The EU's policy on incitement to terrorism has been subject to several changes. In 2002, incitement was only incriminated when at least one of the recipients of the message was actually incited (Framework Decision 2002/475). This threshold was lowered in 2008 when the Framework Decision was amended following UN Security Council Resolution 1624 and the Council of Europe Convention on the Prevention of Terrorism (Framework Decision 2008/919), introducing the autonomous offence of 'public provocation to commit a terrorist offence' ,which lowered the causality requirement threshold, requiring no person to be actually incited and without reference to a specific terrorist offence. In 2017, the amended Framework Decision was replaced by the new EU Directive on Combating Terrorism. The Directive extends the scope of punishable behaviour while further lowering the threshold of the causality requirement. Ms. De Coensel feared that in practice, subjective intent would be the only requirement under the new Directive.

Ms. De Coensel went on to examine Article 5 of the Directive against the principles of subsidiarity, proportionality, and legality in criminal law. Under the principle of subsidiarity, she argued that of all theories of criminalization, the harm principle is the only one made explicit in the EU legislation. However, by lowering the threshold of the causality requirement this principle does no longer provide a strong justification since it demands a clear and direct violation. It was also inefficient and ineffective to adopt a repressive approach at an unwarrantably early stage in criminal law intervention. Under the principle of proportionality, she argued that an interference on the basis of a broad reading of the provision could be considered disproportional and contrary to the freedom of expression under the European Convention on Human Rights (ECHR). Finally, examined against the legality principle, the provision contains extremely vague texts and lacks further definitions, which exposes it to the danger of misuse or abuse.

Ms. De Coensel then conducted a comparative analysis of Belgium and the United Kingdom. Belgium has completely retracted the causality requirement and the UK has adopted a lower threshold in almost every respect. For criminalisation to be legitimate and justifiable, the nexus between causality and intent is obligatory. Based on her examination of both the EU and domestic levels, she concluded that stretching the provision on public provocation and lowering the threshold of the causality requirement undermined human security in the EU context.

Keynote 3 – Dignity, Torture and Rendition: The Case of Abu Zubaydah

Prof. Helen Duffy (Leiden University)

Prof. Helen Duffy focused her presentation on the case of her client Abu Zubaydah, a Guantanamo detainee. Abu Zubaydah was the first 'high-value detainee' taken into the secret rendition and torture programme operated by the CIA; he is now detained at Guantanamo without charge or trial and one of a number of people designated as 'forever prisoners.' Using her client's experience as a case study, she shed light on the nexus between the physical and psychological torture suffered by victims of the extraordinary rendition programme, states responses and human dignity.

Prof. Duffy argued that the rendition programme was more than a violation of particular rights. It was designed to 'put people beyond the protection of the law', 'disappearing' them with a view to unfettered intelligence gathering. The label of 'high-value detainees' showcased how human beings were viewed as disposable commodities, 'a means to an end instead of an end itself,' which has been described as a regression the pre-Kantian era. Aside from physical torture, detainees also suffered from psychological torture, and a secret detention regime designed to ensure they knew they had lost control of their lives and enhance vulnerability. She noted that dignity is also closely linked to autonomy and agency. Prof. Duffy argued that arbitrary detention and refusing to allow some Guantanamo detainees such as her client to express themselves today, as seen in excessive presumptive classification regimes and recent refusals to allow art to be made public, was an continuing affront to human dignity.

She discussed responses to rendition, through accountability and reparation, as about reasserting the dignity and humanity of torture victims. There are clear obligations for states to respond to the detailed information we have obtained about the extraordinary rendition programme, including the duty to

investigate and provide reparation yet there has been scarce recognition of victims, and few of the apologies increasingly sought through litigation. Instead, there has been an insidious tendency to recognise certain kinds of victimisation, such as victims of terrorism, and not others, such as victims of torture in counter-terrorism, Prof. Duffy noted. These political realities made the role of the courts more important, but other obstacles included blocked access to the courts in several states because of 'state secrecy'. Accountability is also significantly lacking in domestic contexts but international initiatives are on-going. Despite all the difficulties, Prof. Duffy highlighted the importance of continuing to insist on reparation and accountability. To her, these measures are 'particularly about humanisation, when the programme was about dehumanisation of the individuals'.

Session 2 – National Case Studies (moderated by Dr. Christophe Paulussen, T.M.C. Asser Instituut)

'The Normalisation of Secrecy in the UK and the Netherlands: Individuals, the Courts and the Counter-Terrorism Framework'

Dr. Rumyana Grozdanova (University of Liverpool)

Dr. Rumyana Grozdanova presented on the relationship between the individual and the state in the context of counter-terrorism, with a specific focus on the courts' reliance on secret intelligence evidence. By comparing the use of such evidence in the courts of the Netherlands and the United Kingdom, she reflected on the impacts of such measures on the right to a fair trial. She critically assessed the normalisation of secrecy within states and the impact on the rule of law, individual human rights, and dignity both in times of normalcy and emergency.

Dr. Grozdanova first discussed the use of closed material procedures (CMPs) in British courts. Under those procedures, the court can consider secret intelligence evidence without the defendant being given the access to hear the evidence or the opportunity to challenge the method of collection. CMPs were originally created in 1997 in the context of immigration cases where the individual was posing a threat to national security. They were meant to be exceptional, a legal abnormality. In 2010, however, the contexts under which CMPs could be used were increased to 21 and in 2013, the 'Justice and Security Act' made them available for civil proceedings involving national security issues. Dr. Grozdanova then presented the Dutch conditional inclusion model in relation to intelligence material. In the Netherlands, the adoption of the 'Act on Shielded Witnesses' made it possible for secret intelligence officers of the Netherlands General Intelligence and Security Service (AIVD) and the Netherlands Military Intelligence and Security Service (MIVD) to present secret security reports to an examining magistrate, including in criminal court cases.

The use of secret evidence in the UK and the Netherlands was challenged by Dr. Grozdanova because of its impact on the right to a fair trial of the accused. Because the defence is unaware of the origin of the evidence, the chances of overturning it are thin. She argued that such proceedings were incompatible with the principle of equality of arms as they heavily favour one side over the other. Dr. Grozdanova concluded by highlighting the lack of constraints on the executive in these proceedings and their implications for human dignity and the rule of law.

'Security first: China's Tightened Legal Framework for the Suppression of Terrorism'

Dr. Daniel Sprick (University of Cologne)

Dr. Daniel Sprick focused his presentation on the counter-terrorism framework in the Chinese context. Starting from the 1 March 2014 Kunming attack, which confronted China to the issue of home-grown terrorism, Dr. Sprick presented the past two years and a half's intense transformation of the Chinese counter-terrorism legal framework.

On 1 March 2014, four men and one woman used long-bladed knives to randomly attack people in the railway station of the city of Kunming, killing 31 and wounding 141. The perpetrators were ethnic Uyghurs from the province of Xinjiang who had tried to join the jihad through Guangzhou province. Following the attack, the Anti-Terrorism Law became the number one item on the 'Legislative Working

Plan' for 2015. Pending the implementation of the law, China amended its criminal law and broadened its scope of application with regards to terrorist, extremist or separatist activities. The amendments added six new provisions, creating a very strict framework with, for example, possession of 'extremist propaganda' being punished with up to three years of imprisonment.

The Anti-Terrorism Law gives the police ample powers to investigate and impose ad hoc punishments for a non-finite list of minor acts of extremism that may harm the 'national legal order'. The law provides in Article 3 for a definition of terrorism similar to the one of the Convention against Terrorism of the Shanghai Cooperation Organization. Additionally, it criminalises extremism as the ideology basis for terrorism (Article 4) and creates new offences at the local level such as, in Xinjiang, luring minors into religious practice or generalising the concept of halal. Such offences are subjected to Police law, which, in the Chinese context, means that they can be punished without the decision of a judge. Finally, the Anti-Terrorism Law establishes preventive measures such as coercive 'education' measures, especially for minors suspected to be attracted by terrorist ideas, and a system of 'placed education'. 'Placed education' is imposed on criminal offenders after they complete their terms of imprisonment based on a threat assessment by the relevant court. Dr. Sprick argues that China's regime for the suppression of terrorism is evidently designed for the fight against Uyghur separatism, and therefore targeting an ethnic and religious minority.

The government justifies this tightened counter-terrorism legal framework by using the dichotomy between, on the one hand, dignity and security, and on the other hand, the friend and the enemy. Dr. Sprick perceives these changes as an impediment to the former improvement of the Chinese criminal system. Indeed, the application of the death penalty had been significantly reduced and the use of illegally obtained evidence had been abolished in recent years.

'The Fight against Terrorism in Turkey: Who's the Terrorist?'

Dr. Margarite Zoeteweij (University of Fribourg)

The presentation of Dr. Margarite Zoeteweij argued that the combat of national and international terrorism in Turkey and the form this combat has taken is decidedly different from the fight against terrorism in other European countries. Attempting to answer the question of 'who is considered a terrorist in Turkey?', Dr. Zoeteweij reviewed the recent applications of the definition of 'terrorism' in Turkey and the implications thereof for Turkey's obligations under international human rights law.

Dr. Zoeteweij started by giving a short overview of the fight against terrorism in Turkey. Before the 1980 military coup, there was a general atmosphere of chaos and violence, with street fights and (political) assassinations of left and right-wing supporters, which opened the way for the coup and the military government in the 1980s. The military government used the political right for its crackdown on the left, which in response led to the creation of the Kurdistan Workers' Party (PKK). The 1984 attacks in Siirt and Hakkari by PKK is Turkey's earliest memory of modern terrorism. In 1991, Turkey passed an anti-terror law with a broad interpretation of what constitutes terrorism and terrorism acts. The law had a clear focus on home-grown terrorism and the definition of terrorism in Articles 1 and 2 were excessively broad, allowing the application of this law to acts like the wearing of a facial cover during a demonstration or the use of the Kurdish language. This law has not only been used against the PKK, but also to designate different groups such as the, Turkish Hizbullah, and Ergekon/Balyoz, as terrorist organizations. The law was completed with a law on the combat of the financing of (international) terrorism as late as 2013, two weeks before the deadline put to Turkey by the Financial Action Task Force (FATF), a money-laundering watchdog, would expire. Internationally therefore Turkey harsh stance on home-grown terrorism, but its (perceived) slack attitude towards international terrorism continues to attract criticism. Dr. Zoeteweij then addressed the relationship between the EU and Turkey in the international counter-terrorism framework, focusing especially on the differences in the interpretation of 'acts of terrorism' which time and again leads to tensions between Turkey and (Member States of) the EU For example, Turkey was slated for being late with recognizing ISIL as a terrorist organization (the Turkish ministry of religion made the declaration as late as 2015), whereas Turkey criticized the EU's stance on organizations that Turkey regards as terrorist organizations but that have not been recognized or treated as such by the EU and/or its Member States. Next to that, the Turkish fight on home-grown terrorism is one of the main reasons why Turkey's membership of the EU, and

even visa free travel for Turkish citizens into the EU, has not been realized yet, despite promises made by the EU in return for Turkey's cooperation in the EU migration management.

However, Turkey's role in the EU's external migration management, and its role in the fight against terrorism – especially with the defeat of ISIL in countries bordering with Turkey, and the consequent return of ISIL to Europe – will not lose its importance in the years to come. It is therefore paramount that Turkey and the EU reach a mutual understanding on the fight against terrorism, in line with the applicable international standards on human rights protection.

Session 3 – Capita Selecta (moderated by Prof. Federico Fabbrini, Dublin City University)

'Human Security versus National Security in Anti-Terrorist Operations: Whose Security Interests Does the ECtHR's Margin of Appreciation Serve?'

Dr. Sofia Galani (University of Bristol Law School)

Dr. Galani's presentation focused on the impact of terrorism and counter-terrorism operations on victims and their human rights. How has the European Court of Human Rights (ECtHR) interpreted the obligations under Article 2 of the ECHR—the right to life—in counter-terrorist operations?

It seems that the Court has started to rely on the margin of appreciation to examine cases under Article 2. According to Dr. Galani, the margin of appreciation is traditionally invoked for Articles 8-11 of the ECHR. The Court has also used it with regard to the right to life, to give states some leeway for the determination of when life starts and ends. However, recently the Court has also started to use the margin of appreciation when it comes to the way states use force. In such cases, the Court referred to national security and argued that states should get some latitude with regard to the means and methods to protect national security.

In order to illustrate this, Dr. Galani referred to two recent cases: *Finogenov and others v. Russia* (ECtHR, 4 June 2012) and *Tagayeva and others v. Russia* (ECtHR, 13 April 2017). In the first case the Court invoked the margin of appreciation with regard to the use of force, which is a departure from the absolute necessity test established by *McCann and others v. United Kingdom* (ECtHR, 27 September 1995). This test holds that use of force is only legitimate when absolutely necessary. In the second case the Court did not mention the margin of appreciation, but nevertheless contended that states have some leniency in choosing the means and methods for the protection of national security. This is problematic because it creates inconsistencies and uncertainties with regard to human rights obligations.

According to Dr. Galani, instead of referring to national security, the Court should start referring to human security; 'the Court will have to decide whose security should be protected'. The ECHR has the clear aim of protecting the rights of individuals, and the right to life of individuals should not be restricted by undefined aims, such as national security and the 'life of the nation', , she concluded.

'Criminal Justice Responses to Children Who Commit Terrorist Offences in Europe: Whose Human Dignity and Whose Human Security to Prioritise?'

Ms. Smita Shah (European University Institute)

The juvenile system is embedded in the Beijing Rules, and in the Riyadh and Vienna Guidelines. In addition, the United Nations Convention on the Rights of the Child (1989) has the status of customary law and applies in total, according to Ms. Shah. Some of its guiding principles are non-discrimination, the best interest of the child, survival and development and so on. The Convention applies to virtually all aspects of criminal procedural requirements. This means that the best interest of the child is considered a primary consideration in the criminal justice system – which is very much unlike the way the system operates for adults.

There are two good reasons for this, Ms. Shah argued. First, the psychology of children with regard to crime is different from that of adults. This means that one transgression does not necessarily indicate future criminality. Second, if procedures do not consider the best interest of the child, this can potentially be harmful – not just for the child itself but for society at large.

However, Ms. Shah then presented several terrorism cases from the UK in which none of the suspects under the age of 18 were diverted to the juvenile justice system. Moreover, the age of criminal responsibility in the UK is ten. In terrorism cases juvenile justice therefore transforms into 'terrorism justice': 'the moment we think a child has committed a terrorist offence, that child is no longer a child but a terrorist'. The dilemma of human dignity versus human security is thus especially acute when it comes to children who commit terrorist offences. This is concerning, given the adverse effects on the children's mental health, and the fact that they form 'the society of the future'.

'Stripped of Citizenship, Stripped of Dignity?'

Ms. Sangita Jaghai (Tilburg University)

Ms. Jaghai provided a critical exploration of nationality deprivation as a counter-terrorism measure (CT measure). An increasing number of states have adopted nationality deprivation as a CT measure, and terrorism is increasingly explicitly integrated as a ground for nationality deprivation. Ms. Jaghai explained the circumstances under which nationality deprivation occurs and what the international law prohibition of arbitrary deprivation entails. She also focused on why deprivation of nationality is a distinct CT measure compared to other CT measures, and whether denationalisation is an effective tool to counter terrorism.

Denationalisation is generally regulated in nationality law, criminal law and administrative law. For example, the Netherlands adopted legislation in March 2017 which gives the Minister of Justice and Security the discretionary power to denationalise people who are deemed a threat to national security- prior to criminal conviction. Interestingly, this measure co-exists next to a criminal law provision which regulates denationalisation of people convicted of terrorism. In both cases, deprivation of nationality only applies to people with more than one nationality, to prevent statelessness as set out in the 1961 Convention on the Reduction of Statelessness.

At the same time, international law prohibits arbitrary deprivation of citizenship. Denationalisation is arbitrary if it, among others, violates the principle of non-discrimination. The Dutch deprivation measure only targets specific groups of citizens, i.e. naturalised citizens with dual nationality and ethnic Moroccans as the largest group of dual nationals in the Netherlands. Such measures can cause divide among groups of citizens in society and can potentially be discriminatory.

Denationalisation as a CT measure also differs from other CT measures (e.g. freezing bank accounts, revocation of passports). For instance, when a person is stripped of citizenship, a state has no or less control over that person's movement and behaviour. Also, deprivation of nationality applies unequally, i.e. to a specific group of citizens. It also has irreversible consequences, such as the inability to re-acquire citizenship. Ms. Jaghai argued that denationalisation as a CT measure has far deeper consequences compared to other CT measures that aim to control (suspected) terrorist's behaviour and movements.

Keynote 4 – Closure

Prof. Martin Scheinin (European University Institute)

Prof. Martin Scheinin concluded the 'Human Dignity and Human Security in Times of Terrorism' conference by reflecting on the values embodied by the two concepts. He argued for the need to take a less categorical approach than to assume that all references to dignity are normatively 'good' and all references to security would be 'bad'. He suggested to de-sanctify the concept of human dignity and to think about the positive aspects of human security.

Since 9/11, the emergence or growing importance of the 'security constitution' has resulted in repetitious calls for establishing a 'new balance' between security and human rights. Prof. Scheinin disagreed with this rhetoric by stating that there is no need for a 'balance' between the law and something else, as the law itself is the balance. He then reflected on the notion of human dignity as a background value of all human rights restoring the primacy of the individual, and used the UN Human Rights Committee case of *Wackenheim v. France* to demonstrate the many dimensions of human dignity, including its state-paternalistic aspect. Citing András Sajó, he recalled the use of the word dignity as a tool in the 'politics of emotions', which must be tamed by constitutional democracy.

Prof. Scheinin then analysed the International Covenant on Civil and Political Rights (ICCPR) to outline a broad picture of how the human dignity dimension applies in international human rights law (IHRL). He identified several concepts surrounding the notion of dignity: the right to the equal dignity of every person, the inviolability of human dignity, and the protection of human dignity as a legitimate aim that justifies permissible restrictions upon human rights. He, however, rejected a fourth concept of using the notion of dignity without an explicit reference to the human person.

An analysis of the role of human dignity in human rights law led to his main conclusion that the concepts surrounding the notion of dignity are actually not very different from how the notion of security is used (security as a collective good, the right to the security of a person, etc.). Even though references to security will need to remain subject to critical analysis, Prof. Scheinin argued that there is a need constructively to embrace the role of national or public security as a legitimate aim that justifies necessary and proportionate restrictions on rights. As 'dignity' must be embraced only in the form of 'human dignity', human rights law can also embrace the notion of 'human security', a careful analysis of which will allow for dealing with security considerations within the law – as permissible limitations – rather than something external or separate, against which human rights would need to be 'balanced'.