

Parliamentary support for the state of emergency in France

An analysis of how the French parliament and government renewed the state of emergency between November 2015 and December 2016



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Abstract

This thesis aims to understand the way the French parliament debated and voted to renew the state of emergency that was implemented by the French government in the night following the Paris attacks of November 2015. As it is quite a recent topic – the state of emergency was just renewed for five more months as of July 2017 – it is interesting to understand how a liberal democracy can implement such an exceptional system to fight a threat that is, in itself, not new. Indeed, it was not the first time that terrorist attacks happened in France, thus it raises questions as to why France keeps renewing this state of emergency, and most importantly what it is.

As will be discussed in this thesis, the state of emergency gives exceptional prerogatives to the administrative authorities, facilitating and accelerating procedures and enabling them to take measures that would normally require judiciary approval. Because it is facilitating procedures, it has indeed helped the French authorities to prosecute suspected terrorists, to gather more proof through police raids, to keep dangerous people monitored under house arrests, and to prevent masses from being potential targets for terrorist attacks by prohibiting demonstrations. Although the effect of the measures decreased with time as their efficiency is mainly due to the element of surprise, the state of emergency also has a reassuring effect for the population. For all these reasons, and because the threat remains quite high, MPs and the Government thus argue that the state of emergency is still quite necessary, as it enables them to guaranty the country and its citizens' security.

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List of terms and abbreviations

Assemblée Nationale	National Assembly, the lower chamber of the French parliament
ECHR	European Court of Human Rights European Convention on Human Rights
CNCDH	<i>Commission Nationale Consultative des Droits de l'Homme</i> , National Commission on Human Rights, independent institution on human rights.
Conseil Constitutionnel	Constitutional Court
Conseil d'État	Council of State, the highest jurisdiction in French administrative law, which is the branch in charge of the state of emergency.
DLPAJ	<i>Direction des Libertés Publiques et des Affaires Juridiques</i> , department of the Ministry of Interior dealing with the state of emergency measures.
Elysée	Other name given to the French presidency
NGO	Non-Governmental Organization
Sénat	Senate, the upper chamber of the French parliament

Political parties:

EELV	<i>Europe Ecologie – Les Verts</i> , left-wing party
FN	<i>Front National</i> , right-wing party
LR	<i>Les Républicains</i> , right-wing party
PCF	<i>Parti Communiste Français</i> , left-wing party
PCD	<i>Parti Chrétien-Démocrate</i> , right-wing party
PRG	<i>Parti Radical de Gauche</i> , left-wing party
PS	<i>Parti Socialiste</i> , left-wing party
UDI	<i>Union des Démocrates et Indépendants</i> , centre-right party

Introduction

On the night of the 13th of November 2015, several attacks happened in Paris: at the stade de France where President Hollande was, in the streets on the 10th arrondissement, and at the Bataclan concert hall. 130 people died that night and more than 400 were injured.¹ That same night, President Hollande decided to declare the state of emergency, which has been continually extended ever since. The state of emergency was declared because the situation seemed so serious and dramatic – the attack in the Bataclan was not over when the French government decided to declare it, and the authorities did not know if more terrorists were involved and where they were, if more attacks were planned – that only the state of emergency could enable the authorities to gain back control of the situation.

The prorogation of December 2016 extended the state of emergency until July 15th, 2017, after the elections – both Presidential and parliamentary – and Bastille day. This made it the longest state of emergency that has ever been declared in France.² The state of emergency is a state of exception, one of the four that France has, which means it allows the administrative authorities to use measures that would normally require judicial approval beforehand³, whereas now the administrative authorities – mainly the Ministry of Interior and the Prefects – can make the decisions on their own. The measures enhanced by the state of emergency include house arrests and police searches (which are the most used measures⁴), the prohibition of demonstrations, the dissolution of groups or associations, or the temporary closing of theatres, concert halls, and other public places.

Even though it has been renewed five times⁵, more and more representatives are voting against it. They were only six who did so when the state of emergency was first voted in

¹ Olivier Zilbertin and Jean-Baptiste de Montvalon, “L’état d’urgence instauré sur l’ensemble de la Métropole”, *Le Monde* [online], 14 November 2015, available here : http://lemonde.fr/attaques-a-paris/article/2015/11/14/l-etat-d-urgence-instaure-sur-l-ensemble-de-la-metropole_4809836_4809495.html [accessed 7 June 2017]

² AFP, “L’Assemblée vote une cinquième prorogation de l’état d’urgence jusqu’au 15 juillet”, *Libération* [online], 14 December 2016. http://www.liberation.fr/france/2016/12/14/l-assemblee-vote-une-cinquieme-prolongation-de-l-etat-d-urgence-jusqu-au-15-juillet_1535140 [accessed 7 June 2017]

³ “France: upturned lives: the disproportionate impact of France’s state of emergency”, Amnesty International, 4 February 2016, p. 6. Available here: <https://www.amnesty.org/en/documents/eur21/3364/2016/en/>

⁴ Heymann-Doat, 2016, p. 65.

⁵ Jean-Baptiste Jacquin, “L’assemblée nationale vote la prolongation de l’état d’urgence”, *Le Monde* [online], 14 December 14 2016. http://www.lemonde.fr/societe/article/2016/12/14/l-assemblee-nationale-vote-la-prolongation-de-l-etat-d-urgence_5048477_3224.html [Accessed 7 June 2017]

Parliament in November 2015, with a total of 13 abstentions in both chambers⁶, while 59 voted against and 12 abstained in the last prorogation of December 2016⁷. However, they still represent a great minority out of the 925 representatives.

Among their reasons to criticize it are the impact of the state of emergency measures on several rights and liberties. The French government indeed warned about the limitations of some rights when it notified the United Nations and the Council of Europe that it would derogate from some of its human rights obligations in November 2015.⁸ The rights that were at risk to be limited were the right to liberty, the right to privacy, and the freedom of movement.⁹

They also criticize the limited efficiency of the measures, and that their usage is steadily decreasing¹⁰. Although the majority of the representatives and specialists agree that the state of emergency was both useful and necessary during the first three months, the measures are barely used anymore. They also have resulted in far more prosecutions for drug-related cases (several hundreds) while it resulted in around 60 prosecutions for terrorism-related crimes. Some representatives as well as NGOs also criticize the use of the state of emergency measures for maintaining public order. For instance, some ecologist militants were put under house arrest during the COP 21 to reduce the police forces' work, which was mainly to focus on terrorism. Indeed, the state of emergency measures can be applied to anyone, and not just for those suspected of terror related activity, which was the original reason for implementing it. The *Conseil d'État*, which is the highest jurisdiction for administrative law, also called for the making of permanent laws instead of pursuing the state of emergency which is supposed to be temporary. Indeed, many of the representatives opposing the state of emergency argue that the state of emergency is not the appropriate means to tackle a threat that will last over a long period of time, as the state of emergency is supposed to be over a short period of time.

However, these critics remain a great minority among representatives. Only 71 representatives voted against or abstained, out of 925. For the majority of representatives, the state of emergency is still, according to the votes and arguments they presented, very much

⁶ Etienne Baldit, "Les six députés qui ont voté contre la prolongation et le renforcement de l'état d'urgence", *Le Lab* [online], 19 November 2015. <http://lelab.europe1.fr/les-six-deputes-qui-ont-vote-contre-la-prolongation-et-le-renforcement-de-letat-durgence-2623065> [Accessed 10 February 2017]

⁷ Sébastien Tronche, "31 députés ont voté contre la cinquième prolongation de l'état d'urgence", *Le Lab* [online], 14 December 2016. <http://lelab.europe1.fr/32-deputes-ont-vote-contre-la-cinquieme-prolongation-de-letat-durgence-2926187> [Accessed 10 February 2017]

⁸ Amnesty International, 2016, p. 32.

⁹ *Ibid.*

¹⁰ Heymann-Doat, 2016, p. 66.

needed. They claim that the threat is the most significant we have ever faced, and that its level remains very high – as showed by the terrorist attacks happening in several neighbouring countries. It is presented as a critical tool, although not the only one, in the fight against terrorism. They argue that it preserves the rule of law instead of damaging it, that exceptional times require exceptional measures. And they also say that the state of emergency is the best solution to not only show that France remains strong and firm against terrorism, but also to preserve the State.

The role of Parliament here is crucial, as it is the institution that allows the state of emergency to remain. Indeed, although the government is the one that declares it by decree, it then needs to be voted into law after twelve days. This is what Parliament has done, and has renewed several times. If, on the other hand, the Parliament votes against the state of emergency, then it cannot be renewed. This is why Parliament is such an important actor, and why this research focuses on its role.

The main interrogation behind this research was to understand why the state of emergency keeps being renewed, despite growing criticism from representatives, NGOs, counterterrorism specialists, and state institutions. Thus, this paper aims at answering the following question: how and why did the French government and Parliament securitize and re-securitize terrorism between November 2015 and December 2016?

To answer that main research question, I tried to answer the following sub-questions. Firstly, this research will use securitization theory as its analytic framework, thus it aims to understand; who are the securitizing actors? How are the referent subjects and objects (the threat and what is threatened) defined? What are the measures that will be implemented? Who are the audiences and how did they react to the speech act? As for empirical questions, this paper aims at answering the following: what is the state of emergency? How and why was it decided on and implemented? Was it previously used and in similar contexts? What is the state of France's current anti-terrorist legislation? What is the role of Parliament regarding the state of emergency? Why are some representatives opposed to it while the great majority is in favour of it, and what are everyone's arguments? Did the contestations result in changes in the policies? Were there phases in the debates? What are the main critique towards the state of emergency? As this research will use the securitization theory as its analytic framework, this paper also aims to understand who are the securitizing actors, how are the referent subjects and objects (the

threat and what is threatened) defined, what are the measures that will be implemented, who are the audiences, and finally how did this audience react to the speech act.

This research is relevant for several reasons. Firstly, the current state of emergency that is happening in France has not been extensively researched, and even less so in English. This is the opportunity to give a detailed overview of what the state of emergency is, more specifically detailing the current one – as there were evolutions throughout its application – and what the debates surrounding it are. This has indeed not been done before, as most of the literature is not only in French, but also focuses on either discussing those aspects very briefly, or only on the state of emergency as a legislation, or only on parts of the debate. The role played by MPs and the parliamentary debates surrounding the state of emergency was never researched. Central to securitization theory, this paper also adds a new research focusing on the audience, how it reacts to the speech act and the measures proposed by the securitizing actor that is the French government. This research will also address a gap in the literature on securitization by researching the relationship between the securitizing actor and the audience – here, the French government and Parliament – that requires, according to scholars such as Paul Roe¹¹, more attention. Indeed, in the securitization framework that will be developed in this paper, the audience agrees to the speech act, which makes the securitization successful.¹² Yet, Parliament works with the French government on the state of emergency, and so they do not only agree to the legislation, but they also debate the measures and add new ones, making it a different and interesting form of a securitizing audience. This conceptualisation of the audience is new to securitization theory.

This research is qualitative. It cannot be quantitative since it is about the justifications and arguments in favour or against a specific topic, which were already made public. The research aims at understanding why the implementation of the state of emergency was approved by such a great majority within the parliament, and to achieve this it will examine the arguments presented in favour and against the state of emergency. Therefore, it is not the quantitative aspect that matters, but instead, it is the quality of the interviews, of the documents analysed, and of the argumentation and explanation. The names of the representatives contesting the state of emergency are already public since all votes are public, and not many representatives are against it: only 59 representatives out of 925 in total from both Chambers. The securitization

¹¹ Roe, 2008, p. 616.

¹² Emmers, 2006, p. 113.

framework used as the analytic framework in this research also requires qualitative rather than quantitative research as the securitizing actors themselves account for only a limited amount of people. For the audience or securitizing actors, they only matter in terms of who they are and how exactly they convince the others, or agree to the measures, rather than how many they are.

The sampling method I used was judgmental sampling, as I could only interview a certain amount of people, since not many representatives voted against the state of emergency and made their opinion public. I could not interview all of the representatives that voted in favour, as that would total more than 800 people. Therefore, I had to make choices. Those choices were partly voluntary, as I wrote down the names of representatives that were very involved in the debates or that had an interesting perspective to ask them, but it was also the simple result of who agreed to meet with me. I made a table listing the representatives and researchers that are against the state of emergency, both since the very beginning and since only recently, and I contacted them by email to make an appointment in March. For representatives, I also tried to make appointments with every political party to have a broad overview on how different political parties use different or similar arguments. However, I received more negative replies or lack of answers than positive ones, mostly because France's political campaigns that were taking place at the same time. The majority of representatives were back in their districts for their legislative campaigns, and therefore I ended up interviewing four representatives: Isabelle Attard (*Europe Ecologie Les Verts*, Calvados), Jean-Frédéric Poisson (*Parti Chrétien Démocrate*, Yvelines), Philippe Dominati (*Les Républicains*, Paris), and Philip Cordery (*Parti Socialiste*, Benelux). Thankfully, there were other possibilities to access the representatives' arguments and justifications on the state of emergency: including interviews in local newspapers, blog posts, and their statements during parliamentary debates.

As for the officials I met, I followed a different procedure, using snowball sampling. As I did not have any contacts, and barely had access to names and even less so their email addresses, I emailed members of the ministerial cabinet of the Ministry of Interior whose emails I could find, asking them if they would agree to meet me. Again, I received more negative answers than positive ones, but doing this also led me to different people as they transferred my emails to others who would have more time or who could help me more. In this way, I ended up interviewing Elise Lavielle (deputy-deputy director at the Office of Public Liberties and Legal Affairs, which is the department within the Ministry of Interior that deals with measures depriving people from their liberties, such as house arrests), Christine Lazerges (President of the National Consultative Commission on Human Rights), Florence Beclier (justice counsellor

to the President of the National Assembly), and Gaspard Gantzer (communication counsellor to President Hollande).

My main sources of data were from the parliamentary minutes. All five debates about the prorogations of the state of emergency were recorded, transcribed, and published on each Chamber's website. I read all of them and gathered all the relevant information I could find, focusing on the arguments and justifications. I also used reports from institutions such as Parliament – as they have Commissions on the state of emergency-, the Council of State, the Constitutional Court, and the National Consultative Commission on Human Rights. Lastly, I used NGO reports as well as Media articles, mostly in regards to the context and the wrongful application of the measures.

These information allowed me to prepare my interviews and confront the interviewees with what I had previously read and heard, and to highlight certain arguments for their commentary. It also enabled me to make more sense out of the state of emergency, to explain why some measures were applied, why some were not, why was it declared and how. It also helped me to understand why the state of emergency was renewed despite the numerous critiques. As we will see in this research, the answer to this question is that some people are convinced that the state of emergency and its measures are necessary, and also that it has a symbolic and important role in reassuring public opinion.

This thesis is divided into four chapters. I will first discuss; securitization theory, which is the framework that I will use for this research, what is the state of the academic debate, and where my research is located within the debate. I will then present what the state of emergency is, how and why it was created, the previous times it was declared, what measures it enables and how they evolved. We will then have a look at the critiques on the state of emergency, including critiques made by MPs as well as NGOs, institutions, and scholars. These critiques will also be used to understand the last part of that research, which will focus on the debates in Parliament. In that chapter, we will discuss who the securitizing actors are, what is the role of Parliament as an audience whose approval of the speech act is needed for the implementation of the measures, how the MPs reacted to the presentation of said measures and if they approved of them all, if there were phases in the debates, and finally, on the influence of public opinion on the parliamentary discussions.

Chapter 1 : Securitization theory

Securitization is the study of how an issue is presented as a threat to survival, and therefore justifies the use of exceptional measures. This process was first studied as the Copenhagen School, which was later on challenged by other scholars, resulting in the Paris school, which came up with new frameworks and case studies. Scholars argued they were not disagreeing with the original theory, but aimed to improve it.¹³ Although their approach will often bring them closer to one school approach or another, depending on whether they focus on the context, the practices, or the speech act, as different schools do have differences in their approaches, scholars do not always claim to belong to ideal-type schools, and use the differences that will be presented here as ‘theoretical influences’.¹⁴ Indeed, researchers tend to use the works that are relevant to their research, instead of choosing works for their specific approach.

To summarise; this research will use securitization as its analytic framework, as it will study how was terrorism securitised by the French government and how was that accepted by the audience that is Parliament. This chapter will discuss what securitization is, what the state of the academic debate is, and where this research is located within the academic debate.

1.1 The three schools of securitization

There are several ‘schools’ of securitization, the original one being the Copenhagen school as they were the first ones to develop the approach in the 1980s.¹⁵ Scholars, the main ones being Ole Waever and Barry Buzan, focused mainly on the speech act, which is the portrayal of an issue as being an existential threat to a referent object presented in front of an audience.¹⁶ The Paris school considers security as being socially constructed, and focuses on practices rather than one specific speech act that enables emergency measures.¹⁷ Their most well-known scholars are Didier Bigo and Thierry Balzacq. Less known, the Aberystwyth School, also called Welsh School, seeks to emancipate humanity from ‘false consciousness’,

¹³ Balzacq, 2005, p. 179.

¹⁴ Balzacq et al., 2016, p. 499.

¹⁵ Balzacq et al., 2015, p. 3.

¹⁶ Emmers, 2006, p. 112.

¹⁷ McDonald, 2008, p. 570.

from alternative narratives of reality.¹⁸ Richard Wyn Jones or Ken Booth are two scholars from that approach. The Welsh school's approach, however, will not be used in this research, which will focus more on state actors and the application of specific measures.

Securitization is a framework for security studies that includes both state and non-state actors, which was a new approach to security studies, which is a topic that is traditionally state-centred.¹⁹ It is a general framework that includes several approaches with different focuses, such as the securitizing actors, the speech act, or the audience. It is a theory that brings together realism, poststructuralism and constructivism, which are approaches used in international relations.²⁰ Securitization aims at understanding the process by which issues become a threat to a specific object, and how they are taken out of ordinary politics and put into emergency politics.²¹ From Balzacq's perspective, the distinctiveness of the theory lies in its capacity "to articulate a specific approach to security – influenced by the speech act – with an 'analytics of government', which emphasizes practices and processes."²² With the main assumption being that 'security' is constructed, securitization aims at answering the following questions: what makes something a security issue? What type of responses does it involve? What are the consequences of agreeing that a specific issue is a threat?²³

For the Copenhagen School, which was the first to study securitization, security is about survival, it is "when an issue is presented as posing an existential threat to a designated referent object."²⁴ Security has a performative dimension; it does not simply describe an issue but it can also transform a social reality.²⁵ According to Emmers, securitization then is "the move that takes politics beyond the established rules of the game, and frames the issue either as a special kind of politics or as above politics."²⁶ A common definition of securitization is "when a securitizing actor uses a rhetoric of existential threat and thereby takes an issue out of what under those conditions is 'normal politics' we have a case of securitization."²⁷ More generally explained, it is when existential threats to a referent object (such as the state, groups of people,

¹⁸ Floyd, 2007, p.5.

¹⁹ Emmers, 2006, p. 123.

²⁰ Balzacq et al., 2016, p. 518.

²¹ Floyd, 2015, p. 677.

²² Balzacq et al., 2016, p. 521.

²³ Balzacq et al., 2016, p. 496.

²⁴ Emmers, 2006, p. 110.

²⁵ Balzacq et al., 2016, p. 496.

²⁶ Emmers, 2006, p. 111.

²⁷ Buzan, Waeber and Wilde, cited in Balzacq et. al., 2015, p. 2.

or the economy) require extraordinary measures to properly tackle the issue.²⁸ It is different than 'politicization' which is when an issue is dealt with within the standard system, while securitization will enable the use of exceptional measures.²⁹ In liberal democracies, securitizing actors do not always use exceptional measures to tackle a threat, the executive authorities can decide whether it is necessary.³⁰ In that aspect, the Copenhagen School considers securitization to be negative, a failure of normal politics that states should try to follow as much as possible.³¹

Thanks to empirical studies, securitization has evolved beyond its original focus on the speech act.³² Indeed, in addition to the Copenhagen School, there is a second generation of scholars that consider that securitization can be interpreted and analysed in two different ways: the first one is internalist and sees securitization as context-shaping, while the second group is externalist and constructivist, and considers securitization as context-dependent and context-specific.³³ The Paris school, for instance, focuses on the practices rather than the linguistic aspect.³⁴ Indeed, Balzacq considers securitization to be a strategic practice that takes place within specific circumstances.³⁵ In his view, the speech act is a discursive technique for the securitizing actor to increase the public's adherence to the policy.³⁶ Indeed, he claims that "securitizing an issue enables certain elites to increase their power as a consequence of being granted special privileges in dealing with a security issue, or in other words, breaking free from the procedures and rules that actors would normally be bound by."³⁷ He defines securitization as "when an issue is given sufficient saliency to win the assent of the audience, which enables those who are authorized to handle the issue to use whatever means they deem most appropriate."³⁸ In the Paris school view, securitizing actor does more than describing a given reality, it also creates it as such.³⁹ The definition of the threat is therefore constructed.

As Balzacq argues, "security is not necessarily a rhetorical performance, but can also be designed through different technical or physical modalities."⁴⁰ It is also argued by Bigo, another

²⁸ Emmers, 2006, p. 111.

²⁹ *Ibid*, p. 111.

³⁰ Floyd, 2015, p. 678.

³¹ Emmers, 2006, p. 115.

³² Balzacq et al., 2016, p. 521.

³³ Zakopalova, 2012, p. 4.

³⁴ Balzacq et al., 2016, p. 504.

³⁵ Balzacq, 2005, p. 172.

³⁶ *Ibid*.

³⁷ Balzacq et al., 2016, p. 501.

³⁸ *Ibid*, p. 495.

³⁹ *Ibid*, p. 175.

⁴⁰ *Ibid*, p. 506.

scholar of the Paris school, who says that securitization also produces effects through routine practices, often by (in)security professionals.⁴¹ As Basaran, cited in Balzacq's work, points out, issues and measures that might seem like exceptional policies are often the result of the most ordinary laws.⁴² The Paris school's idea is to focus on the practices and instruments of securitization, specifically what the practices express and do rather than what they represent.⁴³

Although there are several theories of securitization, they share similar frameworks and concepts.⁴⁴ Zakopalova describes three key features in the framework of securitization: the referent object, which is the entity that is threatened, the securitizing actor that presents the threat through the speech act, and the audience which accepts or not the securitization⁴⁵, without which the securitization cannot be completed. Floyd also gives three components: the existential threat or the referent subject, the emergency measures, and effects on inter-unit relations by "breaking free of rules".⁴⁶ To those, Balzacq also adds context.⁴⁷ According to the Copenhagen School, the starting point of securitization is the speech act, as it gives the right to the securitizing actors to use extraordinary measures.⁴⁸ An act of securitization can either fail or succeed depending on the audience's acceptance⁴⁹, as there is no securitization without it.⁵⁰ As Bazan writes it: "the issue is securitized only if and when the audience accepts it as such."⁵¹ Floyd, however, says that the speech act in itself is not enough to assess the success or failure of securitization.⁵² The acceptance to the speech act is necessary since the securitizing actors want to leave the realm of normal politics. The threats to security, as stated by Zakopalova, are therefore socially constructed through discourse in a specific socio-political context.⁵³ A government has an advantage in this way when it comes to convincing as it is already in a position of power, and in the case of France, it is democratically elected which gives them legitimacy.⁵⁴

⁴¹ *Ibid*, p. 506.

⁴² *Ibid*, p. 506.

⁴³ *Ibid*, p. 506.

⁴⁴ Balzacq et al., 2016, p. 517

⁴⁵ Zakopalova, 2012, p. 2.

⁴⁶ Floyd, 2015, p. 679.

⁴⁷ Balzacq et al., 2016, p. 495.

⁴⁸ Emmers, 2006, p. 113.

⁴⁹ *Ibid*, p. 114.

⁵⁰ Zakopalova, 2012, p. 4.

⁵¹ Cited in Balzacq et al., 2016, p. 499.

⁵² Floyd, 2015, p. 685.

⁵³ Zakopalova, 2012, p. 2.

⁵⁴ Emmers, 2006, p. 113.

Emmers says there are two stages in the process of securitization: first is the depiction of an issue or persons as being existential threats to a referent object. The second stage is when the securitizing actor convinces a relevant actor of that⁵⁵. A complete act of securitization is both discursive with the speech act, and non-discursive with the implementation of policies once it the speech act been accepted by the relevant audience⁵⁶. Zakopalova defines three steps: the recognition and identification of a threat by a relevant actor, the formulation of a policy to tackle the threat, and the implementation of the measures.⁵⁷ Using Balzacq's work, she also states there are three levels of analysis: the agent, the act, and the context.⁵⁸ This can also be summarized as the following question: who does what and how? Those three levels are mutually constitutive.⁵⁹ To accurately analyse securitization, it is therefore also important to use the Critical Discourse Analysis framework.⁶⁰

In terms of methods used to analyse a topic through the securitization framework, the most common method is discourse analysis⁶¹, as the central focus of the theory remains the speech act. But more and more scholars are starting to use content analysis and ethnographic research⁶², to broaden the research and the focus of said research.

1.2 The debates on the securitization framework

According to several scholars, the Copenhagen School approach lacks attention to several concepts that would give a broader and more complete understanding of the securitization process. A general critique given by Emmers is that it is too Euro-centric and generally more suited to European politics.⁶³ Balzacq also argues, citing Wilkinson's work, that the Copenhagen School approach makes it a traditional approach to security by focusing almost solely on state actors.⁶⁴ However, this aspect is not problematic for the analysis of the use of

⁵⁵ *Ibid*, p. 112.

⁵⁶ *Ibid*, p. 115.

⁵⁷ Zakopalova, 2012, p. 9.

⁵⁸ *Ibid*, p. 7.

⁵⁹ *Ibid*, p. 7.

⁶⁰ *Ibid*, p. 10

⁶¹ Balzacq et al., 2016, p. 519.

⁶² *Ibid*, p. 519.

⁶³ *Ibid*, p. 117.

⁶⁴ Balzacq et al., 2016, p. 502.

the state of emergency in France, as it will mostly focus on state actors that are the French government and Parliament.

Lastly, Emmers states that the Copenhagen School's framework does not give enough attention to assessing the effectiveness of securitization measures⁶⁵, which is an idea several scholars agree with. Indeed, it is not really discussed in the Copenhagen School's framework, besides the importance of the acceptance of the speech act⁶⁶. In that sense, Floyd agrees that the success of securitization can only be judged by the audience.⁶⁷ Balzacq et al. also agree that securitization can be approached through the speech act or through non-discursive practices, and that both are equally important to assess its efficiency.⁶⁸ Floyd claims that securitization is successful when “1) the identification of a threat that justifies a response (securitizing move) is followed by 2) a change of behaviour (action) by a relevant agent (the securitizing actor) and also 3) when the action taken is justified by the securitizing actor with reference to the threat they identified and declared in the securitizing move.”⁶⁹ When assessing the effectiveness, what matters the most is the causal connection between the speech act and the action taken.⁷⁰ It is also important to look at who acts as it needs to be a relevant actor, and at the justification of the measures⁷¹. Indeed, we cannot assume that the securitizing actor is sincere in the official statement, and in that case the securitization process may not be successful if it is agent-benefiting as it will not properly address the threat, which is the aim of the securitization measures.⁷² Floyd states there are three steps to research the effectiveness: locate the securitizing move through discourse analysis; examine the changes in behaviours and actions with interviews, observations and policy analysis; and locate the justification through discourse analysis as well.⁷³ The French state of emergency, according to the Copenhagen school, is a successful process of securitization for the speech act was accepted by the audience that is Parliament. However, this research aims at understanding the processes and why it succeed, rather than just saying if it was successful or not, thus going further than the Copenhagen school's framework.

⁶⁵ Emmers, 2006, p. 116.

⁶⁶ *Ibid*, p. 114.

⁶⁷ Floyd, 2015, p. 680.

⁶⁸ Balzacq et al., 2015, p. 24.

⁶⁹ Floyd, 2015, p. 679.

⁷⁰ *Ibid*, p. 680.

⁷¹ *Ibid*, p. 687.

⁷² *Ibid*, p. 687.

⁷³ *Ibid*, p. 688.

Although the Copenhagen school considers the audience to be of main importance, as there is no complete securitization without the audience's approval⁷⁴, it is a concept that remains under-theorized in their approach. Balzacq et al. indeed argue that more attention should be given to the audience: who they are, why do they accept the speech act and how.⁷⁵ They also argue, among other scholars such as Zakopalova, that the 'audience' also needs to be specified, as, very often, there are different audiences that will have different reactions to the speech act.⁷⁶ One audience matters more than the others, which is what Balzac calls the 'enabling audience'.⁷⁷ Indeed, as securitization implies the implementation of new policies and measures, a formal support, meaning support given by policy-makers, is mandatory.⁷⁸ The audience does more than simply sanctioning the speech act, but they also provide the needed formal mandate to apply and create these measures.⁷⁹ That case-study will focus on the enabling audience that is French Parliament, thus following Balzacq's framework rather than the Copenhagen School's one.

More attention should also be given to the context of securitization, as both the process and its concepts are socially constructed.⁸⁰ This is indeed an important aspect according to Zakopalova, as it implies that the meaning of the concepts and their interpretations will change through time and depending on societies.⁸¹ Balzacq points out that, on the issue of the context, the Copenhagen School is contradictory: on one hand, they tend to undermine its importance and do not give it too much attention, but on the other hand, Waever recognizes that certain arguments will be empowered by context at some times while being weaker at others⁸², and so they consider the context as a facilitating condition.⁸³ The motives behind securitization are also not addressed, as securitization can be used as a political tool by authorities.⁸⁴ Again, this research will follow Balzacq's framework in understanding the context of how the state of emergency was implemented in France, which will also enable us to understand why is it being renewed by Parliament.

⁷⁴ Balzacq et al., 2016, p. 499.

⁷⁵ Balzacq et al., 2015, p. 6.

⁷⁶ *Ibid*, p. 520.

⁷⁷ *Ibid*, p. 500.

⁷⁸ Zakopalova, 2012, p. 6.

⁷⁹ Balzacq et al., 2016, p. 500.

⁸⁰ Zakopalova, 2012, p. 2.

⁸¹ *Ibid*, p. 6.

⁸² Balzacq et al., 2016, p. 504

⁸³ *Ibid*, p. 503.

⁸⁴ Emmers, 2006, p. 117.

1.3 Where this research is located within the academic debate

The French state of emergency is a process of securitization, as it is the use of exceptional measures to address a specific threat – in this case, the use of state of emergency measures to fight terrorism – during which time parliament must pass laws defining the limits of what governments can and cannot do.⁸⁵ Indeed, as Floyd writes it, exceptional politics does not mean the suspension of the rule of law but rather that new laws are passed or already existing emergency measures are used to tackle a specific threat.⁸⁶ In the post-9/11 context, Emmers however warns that securitization can also lead to the curbing of civil liberties by claiming to protect security, even in so-called democratic societies⁸⁷, which is an aspect that will also be discussed in the case of the state of emergency in France. Indeed, one of the main arguments put forward in the debates surrounding the state of emergency is that that security is our first liberty, and other liberties could be limited to prevent it.

As Balzacq points it out; “taken individually, no approach can enable us to fully understand the contents of securitization process”. This research will therefore use aspects from many approaches, by studying both the speech act by the securitizing actor that is the French government, but will also study the context that might have facilitated the votes for the state of emergency. It will also focus on the audience, more specifically the parliament, who are the enabling audience here, in the sense that they are the ones accepting the speech act and providing the government with the measures they required. As Balzacq indeed writes in his article, the audience does more than just agreeing or disagreeing with the speech act, but they can also provide moral support and more importantly provide a formal mandate⁸⁸, such as the vote by the legislature as is the case here. More than just an enabling audience, Parliament here plays the role of a securitizing audience, as it can do more than just agreeing with the securitizing actor by giving him a formal mandate. Indeed, it can also decide on new emergency measures itself. Lastly, this research will also focus on the measures enabled and used by the state of emergency, how were they debated and voted on, and what is their aim. Addressing

⁸⁵ Floyd, 2015, p. 678.

⁸⁶ *Ibid*, p. 678.

⁸⁷ Emmers, 2006, p. 115.

⁸⁸ Balzacq et al., 2016, p. 500.

both context and practices will indeed enable us to fully understand the securitization process that is the French state of emergency and all of its relevant components.

Chapter 2 : France, anti-terrorism and the state of emergency.

France has episodically been confronted with terrorist attacks for several decades – the number of attacks has especially been increasing since 1970 – on an intense scale.⁸⁹ Therefore, the country has been developing its legislation to fight terrorism for more than thirty years now, and it has been particularly increasing this initiative since the 9/11 attacks and since 2012, as the presidential campaign of that same year was marked by a terrorist incident.⁹⁰ Terrorism can be considered as an attack to the State and its politics, therefore the State being the first victim of it, it will try to develop its legislation to protect itself from terrorism.⁹¹ Besides, terrorists are not the usual police's targets, terrorists have different means, different techniques, thus it was necessary for states to adapt their legislation.⁹² The state of emergency is not exactly a part of the legislative arsenal that France has been developing in past decades, but the 2015 one has been used as a tool to protect the country from terrorism. This chapter aims at looking at France's antiterrorist legislation, as well as the other measures that can be used to prevent terrorism in France. It will also present what the state of emergency is, where it came from and how it evolved to lead to the one that was declared in November 2015.

2.1 Antiterrorism laws in France since 9/11

A. The laws

The very first law against terrorism in France was enacted in 1986, after a series of attacks in 1985 and 1986 (in different stores such as Marks and Spencer or the *Galeries Lafayette*, on the Champs Elysees, in trains, in cafés...), resulting in hundreds injured and several deaths⁹³. This law extended the duration of custody to four days instead of two, and also increased the possible sentences, incriminated the apology of terrorism, and authorised the

⁸⁹ Cahn, 2016, p. 91.

⁹⁰ Yohann Blavignat, «Les onze jours où Mohamed Merah a fait basculer la France dans l'horreur », *Le Figaro* [online], 18 March 2017, <http://www.lefigaro.fr/actualite-france/2017/03/18/01016-20170318ARTFIG00056-les-onze-jours-o-mohamed-merah-a-fait-basculer-la-france-dans-l-horreur.php> [accessed 17 June 2017]

⁹¹ Cahn, 2016, p. 94.

⁹² *Ibid*, p. 94.

⁹³ « Repères: les attentats de 1982, 1985, et de 1986 à Paris », *L'Humanité* [online], 26 July 1995, available here : <http://www.humanite.fr/node/109508> [accessed 25 June 2017]

searching of homes. In thirty years, twenty-four laws were voted to fight terrorism⁹⁴. The evolution of the legislation specified more and more the definition of terrorism and how it should be severely sanctioned, including the aggravation of fines that go with prison sentences. It also facilitated the judgment of terrorist crimes that can now be judged in any tribunal and not just in Paris, as it was the case before 1997.

Among the changes that were made to the legislation, new anti-terrorism laws – all voted by Parliament – allowed for: phone tapping (1991, 2004), video surveillance (1995), extending the statute of limitations for terrorist crimes (1995), facilitating ID controls and vehicles searches (2001, 2003, 2008) as well as body searches with the consent of the person (2001), extending the duration of custody to six days in case of a suspected terrorist attack (2006), obligating all internet providers and any public space offering internet access to keep data connection information for a year (2006, it has been extended ever since), ensuring access to a lawyer can be denied for up to six days if involvement in a terrorist attack is suspected, but only with a judge's approval (2011), allowing for prosecution for terrorist crimes committed abroad (2012) and inadmissibility on to French territory for suspected candidates of jihad (2014). The legislation also recognised new crimes relating to terrorism, including: criminal association in relation to a terrorist undertaking (1996), financing of terrorism (2001), individual terrorist undertaking (2014), apology for terrorism (2014). The sanctions have also been aggravated: possibility of a thirty-years unconditional imprisonment, real full life sentences, and great limitations of possibilities of reduction of sentence as well as to conditional releases.⁹⁵

Since the state of emergency was enacted in November 2015, three laws have been voted by the Parliament. They were not additions to the state of emergency and its measures, but were laws that were supposed to allow the French government to end the state of emergency by being able to fight terrorism more efficiently. The first law was on intelligence, voted in July 2015⁹⁶, which gave a legal basis for the activities of Intelligence services. It also decided that the execution of intelligence techniques would need the Prime Minister's approval, after the opinion of an independent administrative authority. Secondly, the law on the prevention and

⁹⁴ The details of all the laws can be found here : <http://www.vie-publique.fr/chronologie/chronos-thematiques/trente-ans-legislation-antiterroriste.html> [Accessed 2 June 2017]

⁹⁵ Cahn, 2016, p. 108.

⁹⁶ Description of that law can be found here: <http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-relatif-au-renseignement.html> [Accessed 2 June 2017]

fight against incivilities and harm to public order of March 2016⁹⁷ authorized public transport agents to carry out pat-downs, bags searches, and visual inspections. Lastly, the law reinforcing the fight against organised crime, terrorism and its financing of June 2016⁹⁸ gives new investigative means to judges and prosecutors, including: issuing search warrants to be carried out during the night, use of proximity techniques to identify the suspect's communication tools to be able to access data connection, reinforcing the security situation before commencing large events, and it also strengthens the access to and holding conditions of weapons. The vote on the final aspect listed was one justification given to renew the state of emergency in May 2016⁹⁹, as the government argued it could not end the state of emergency before this law was voted in.

B. General discussion on the evolution of the French anti-terrorist legislation

It is interesting to note that the development of anti-terrorism legislation does not always coincide with the number of terrorist attacks happening on the French territory. For instance, there were more terrorist attacks between 1970 and 1980, but no anti-terrorist law was voted in then. On the contrary, France was unaffected by terrorist attacks between 1995 and 2012, which are the years during which the most anti-terror laws were voted in.¹⁰⁰ This can be explained by two different approaches: the first one, based on sociology of threat, argues that it is because of political interests. On the other hand, pragmatic sociology would argue that the lack of attacks does not mean that the threat is inexistent, which justifies the vote of new measures to prevent new attacks from happening¹⁰¹.

Although France claimed that it was against the enemy criminal law doctrine as it goes against the liberal principles of criminal law, the repressive anti-terrorist legislation the country has developed is not unlike it¹⁰². Developed by Gunther Jakobs, the three key components are

⁹⁷ Description of that law can be found here: <http://www.vie-publique.fr/actualite/panorama/texte-discussion/proposition-loi-relative-prevention-lutte-contre-inciviles-atteintes-securite-publique-actes-terroristes-transports-collectifs-voyageurs.html> [Accessed 2 June 2017]

⁹⁸ <http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-renforcant-lutte-contre-crime-organise-terrorisme-leur-financement-ameliorant-efficacite-garanties-procedure-penale.html> [Accessed 2 June 2017]

⁹⁹ « L'état d'urgence prorogé jusqu'au 26 juillet », *Le Monde* [online], 19 May 2016, available here : http://lemonde.fr/societe/article/2016/05/19/l-etat-d-urgence-prolonge-jusqu-au-26-juillet_4922528_3224.html [accessed 10 June 2017]

¹⁰⁰ Cahn, 2016, p. 93.

¹⁰¹ *Ibid*, p. 93.

¹⁰² *Ibid*, p. 97.

the enemy criminal law is that punishment comes before an actual harm occurs, the sanctions are disproportionate, and, lastly, it suppresses procedural rights.¹⁰³ The French legislation has been developing towards this theory, as the sanctions for terrorist acts have greatly increased, the terrorist acts themselves being broadened to include all actions that could intervene at any stage of the process of committing a terrorist attack, even before any actual preparatory acts¹⁰⁴, e.g. going regularly on websites glorifying terrorism, and modifying procedural rights in cases of terrorism. The procedure for terrorism cases indeed prioritizes rapidity and efficiency rather than the guaranty of fundamental rights.¹⁰⁵

2.2 What is the French state of emergency?

A. The state of emergency: one of the four exception systems in France

There are some common characteristics between the different possible states of emergency around the world: they deal with situations that require the changing of state structures, said changing should lessen the negative effects of that situation on the state and its citizens more efficiently, and it would be done in order to ensure the survival of the state and its citizens. Changing the structure would only be temporarily, to bring the situation back to normal. Lastly, the threat cannot be marginal, it must be “of a magnitude that severely harms the state or its citizens”, and that only by changing the state structures would the state be able to successfully face the threat.¹⁰⁶ A common definition of a state of emergency is that it is when “the acting branch of a state, the executive, is forced by a threat to the survival of the state and/or citizens to act faster and/or more efficiently than legally permitted in times of normalcy.”¹⁰⁷ Following Balzacq’s perspective on securitization, the threat justifying the state of emergency is constructed by the securitizing actor.

A state of exception is a situation in which a State is unable to follow the usual procedures and rules it is bound to, thus it temporarily deviates from them.¹⁰⁸ There are four exception systems in France: the exceptional powers, the state of siege, exceptional

¹⁰³ Diez, 2008, p.531.

¹⁰⁴ Cahn, 2016, p. 98.

¹⁰⁵ *Ibid*, p. 101.

¹⁰⁶ Zwitter, 2012, p. 6-7.

¹⁰⁷ *Ibid*, p. 27.

¹⁰⁸ Jean-Louis de Corail, « Etat d’exception », *Encyclopædia Universalis* [online].
<http://www.universalis-edu.com/encyclopedie/etat-d-exception/> [Accessed 20 July 2017]

circumstances, and the state of emergency. All of them aim to protect the State from important crises that could endanger it, and therefore they enable State actors to use new powers to prevent such crises from damaging the State, its institutions, and its citizens.¹⁰⁹

The exceptional powers are established in article 16 of the Constitution, which aims at protecting national institutions, and can be declared when either the institutions or the Nation's independence are in danger, as well as when the regular functioning of constitutional powers is interrupted. The state of siege, also in the Constitution at the article 38, was first created under the *Ancien Régime* and has perpetuated since. It can be declared in case of an imminent threat resulting from a foreign war or an armed insurrection, and it gives more powers to military authorities as they would then exercise the police forces prerogatives as well¹¹⁰. The exceptional circumstances, resulting from the jurisprudence (*arrêt Heyriès*, 1918¹¹¹), established two conditions under which it is permitted to deviate from the usual legislation: either in case of a deeply abnormal situation such as a war or a natural disaster, or in case of an impossibility for the administration to respect normal law. Lastly, the state of emergency, created with the law n°55-385 from the 3rd of April 1955, can only be declared either in case of an imminent peril that would seriously damage the public order, or in case of a public calamity, e.g. a natural disaster of an important magnitude.¹¹²

The state of emergency was created at the beginning of the Algerian war in 1955 for two reasons. The first one was to get around using the state of siege which can be declared in case of a foreign war, while Algeria was considered French then¹¹³ and the National Liberation Front fighters were neither internal nor external enemies¹¹⁴. The government also did not want to give more powers to the military authorities, as that would worsen the situation.¹¹⁵ The second reason is to avoid using the term 'war', as the government wanted to avoid that term for

¹⁰⁹ Geslin, Roudier and Camous, 2016, p. 13.

¹¹⁰ "Frequently asked questions on the state of emergency", <http://www.vie-publique.fr/actualite/faq-citoyens/etat-urgence-regime-exception/#art12729> [Accessed 10 June 2017]

¹¹¹ Judgement of the Council of State: <http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Les-decisions-les-plus-importantes-du-Conseil-d-Etat/28-juin-1918-Heyries> [Accessed 5 June 2017]

¹¹² Article 1 of the law n°55-285 on the state of emergency, available here <https://www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT000000695350&idArticle=LEGIARTI000024042377&dateTexte=&categorieLien=id> [Accessed 3 June 2017]

¹¹³ Pascal Jan, « Qu'est-ce que l'état d'urgence ? Son régime juridique », *Droitpublic.net* [online], June 2017, available here : <http://www.droitpublic.net/spip.php?article5390> [accessed 12 June 2017]

¹¹⁴ Master and Saint-Bonnet, 2016, p. 55.

¹¹⁵ Geslin, Roudier and Camous, 2016, p. 22.

the sake of public opinion.¹¹⁶ Indeed, public opinion arguably also represents an audience that receives the speech act performed by the securitizing actor, and although they do not provide a formal support as Parliament do, they do provide a necessary support for the securitizing actors, who are politicians. The French government therefore decided to create a new exception system, arguing that they could not improve the situation while the law required it to strictly respect fundamental rights.¹¹⁷ Extending administrative and police powers, while being able to limit people's rights, appeared to be a solution to solve the Algerian crisis. After the terrorist attacks of November 2015, President Hollande decided to implement the state of emergency rather than the exceptional powers, arguing that this was a war of a new kind against a new type of adversary, and that he did not think the exceptional powers were the appropriate means to use.¹¹⁸

The French state of emergency fits into Kelsen's perspective rather than Schmitt's 'state of exception's' perspective. Schmitt's perspective is that the leader of a state "must be allowed to do everything to protect the law", while Kelsen's opinion is that the executive and administrative powers are still bound by law, particularly because their emergency powers come from the Constitution.¹¹⁹ In the context of France, although the state of emergency is not written in the Constitution, it was declared as a constitutional measure.¹²⁰ It is a regime focused between restoration and prevention, as it aims to both restore the situation back to normal, when normal measures are not effective enough, but also aims to prevent new events from happening.¹²¹

B. Previous times the state of emergency was declared

Since its creation in 1955, the state of emergency has been declared by the authorities and renewed by Parliament six times, three of which were during the Algerian war. The very first time this happened was when the law was created, as an answer to the National Liberation

¹¹⁶ Jan, June 2017.

¹¹⁷ Geslin, Roudier and Camous, 2016, p. 22.

¹¹⁸ Master and Saint-Bonnet, 2016, p. 52.

¹¹⁹ Zwitter, 2012, p. 15.

¹²⁰ Decision of the Constitutional Court regarding the state of emergency, January 1985, available here : <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1985/85-187-dc/decision-n-85-187-dc-du-25-janvier-1985.8162.html>

[Accessed 10 June 2017]

¹²¹ Saint-Bonnet, 2017, p. 6.

Front's actions. The state of emergency was extended to the entire Algerian territory on the 7th of August 1955, as violence became more and more pronounced with hundreds of terrorist attacks. Although it was voted to last six more months, the *Assemblée Nationale* was dissolved on November the 30th, and according to law, the state of emergency must then end within the first fifteen days following the Government's resignation or the dissolution of Parliament.¹²² It was declared a second time in May 1958 on the metropolis territory, to prevent France from a coup, while French citizens in Alger (including members of the military) started an insurrection with the will to have a government in the metropolis that would defend their interests.¹²³ It only lasted a couple of weeks, and ended with the resignation of the Government on the 1st of June. The third time it was declared was in the days following the Algiers putsch in April 1961. It was also declared on the metropolis, to prevent an eventual coup. It was supposed to last until the 15th of July 1962, before it was extended until the 31st of May 1963, but ultimately ended on October 10th, 1962, following the dissolution of the French national assembly¹²⁴. It is also important to note that before that, the state of emergency used to be voted in by a law, while from then on, the state of emergency was declared by decree, and then voted as a law by the Parliament within the next twelve days. This change was made by ordinance on the 15th of April 1960 by the government of Michel Debré, Prime Minister of Charles de Gaulle, to give more prerogatives to the Government.¹²⁵

The state of emergency was implemented less frequently after the Algerian war. The fourth time it was declared was in 1985 in New Caledonia, following the separatist insurrections there. It lasted from January until June of that year.¹²⁶ Resulting from the same separatist movement, the state of emergency was also declared in October 1986 on the Wallis-et-Futuna island but lasted only a day, and was further declared in October 1987 on a part of the Polynesian islands, and lasted the twelve days planned by the Ministerial decree.¹²⁷ These were the only two times the state of emergency was not prorogated by a law voted by Parliament. This was also the very first time a case was referred to the Constitutional Court. Members of the political party *Rassemblement Pour la République* indeed thought that only the exceptional systems planned in the Constitution could allow for the violation of fundamental rights. The

¹²² Geslin, Roudier and Camous, 2016, p. 23.

¹²³ « 13 mai 1958 : Alger se révolte », *Hérodote* [online], 16 May 2015, available here : https://www.herodote.net/13_mai_1958-evenement-19580513.php [accessed 25 June 2017]

¹²⁴ Geslin, Roudier and Camous, 2016, p. 27.

¹²⁵ *Ibid*, p. 25.

¹²⁶ *Ibid*, p. 27.

¹²⁷ Report Raimbourg-Poisson, 2016, p. 14.

Constitutional Court ruled in favour of the government, arguing that although the state of emergency was not in the Constitution itself, the law was constitutional.¹²⁸

It was declared for the fifth time in October 2005 in the suburbs of Paris in reaction to the riots that were happening there. It was extended until January 2006, to span the end-of-year celebration. It was the first time it was declared in the metropolis since the Algerian war, thus it is interesting to note that both the Prime Minister and the President did not mention the “state of emergency”, but talked about “the 1955 law.”¹²⁹

Lastly, as mentioned, the state of emergency that will be discussed in this paper has been declared on November 14th, 2015, following the terrorist attacks that happened in Paris the night of the 13th of November. As of July 2017, it has already been extended five times (November 2015, February 2016, May 2016, July 2016, December 2016, July 2017), making it the longest state of emergency that was ever declared.¹³⁰ It is implemented on the entire French territory; the metropolis as well as overseas territories.¹³¹

C. The state of emergency measures then and now

The state of emergency is a law that involves a list of measures that the government, when declaring the state of emergency, and the parliament, when renewing it, can apply or not. The main objectives of implementing the state of emergency was to limit the risks of an attack and improve the country’s security, as well as to destabilize and disorganise the terrorist groups.¹³² Another important aim of the 2015 state of emergency was also to modernize and

¹²⁸ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1985/85-187-dc/decision-n-85-187-dc-du-25-janvier-1985.8162.html> [Accessed 23 June 2017]

¹²⁹ Thomas Snégaroff, « L’état d’urgence, un état d’exception né de la guerre d’Algérie », *Histoires d’info*, France Info [online], 15 November 2015. http://www.francetvinfo.fr/replay-radio/histoires-d-info/l-etat-d-urgence-un-etat-d-exception-ne-de-la-guerre-d-algerie_1790263.html [accessed 17 June 2017]

¹³⁰ AFP, « L’Assemblée vote une cinquième prorogation de l’état d’urgence jusqu’au 15 juillet 2017 », *Libération*, 14 December 2016. http://www.liberation.fr/france/2016/12/14/l-assemblee-vote-une-cinquieme-prolongation-de-l-etat-d-urgence-jusqu-au-15-juillet_1535140 [Accessed 15 June 2017]

¹³¹ David Ponchelet, « Attentats : l’état d’urgence finalement étendu à une partie des Outre-mer », France Info [online], 17 November 2015. <http://la1ere.francetvinfo.fr/2015/11/17/attentats-l-etat-d-urgence-finalement-etendu-une-partie-des-outre-mer-306901.html> [accessed 17 June 2017]

¹³² Heymann-Doat, 2016, p. 66.

adapt the 1955 law, to make it more efficient.¹³³ Some measures were abandoned, such as the controlling of the press. The measures were modified and toughened up throughout the state of emergency. The main difference in the measures lies in the reason for their application, which can be applied to “any person to whom there are serious reasons to think that his or her behaviour constitutes a threat for security and the public order”¹³⁴, rather than actual acts. This is important as administrative authorities are the ones deciding on the application instead of the judicial authorities.

The measures include: the prohibition of the circulation of vehicles and people in certain areas, the creation of protection or safety zones in which people’s stay is regulated; house arrests with a sign-in system at the police station (three times a day) and the possibility of an interdiction on talking to some people; dissolution of groups or associations; temporary closing of theatres, concert halls, public houses, and meeting venues; prohibition of demonstration; the seizure of weapons; police raids (day and night); blocking of websites that would encourage or advertise terrorism; requisition of people or goods when necessary for public order; refusals of entry or stay on the French territory¹³⁵. Some measures were also added throughout the state of emergency: prefects can order police searches of houses and vehicles; police searches can use private digital data, under the control and with the approval of a judiciary judge, the possibility to gather digital data can be extended to include the relatives of the suspect, the house arrests of people back from conflict zones was extended to three months instead of one, no more reduction of prison sentences for people condemned for terrorism, extension of the duration of police and army reserves, the use of video surveillance in the cells of prisoners whose suicide or escape could impact public order, the use of an electronic monitoring bracelet for people who have previously been condemned for terrorism, with the person’s written agreement; and lastly the *Conseil Supérieur de l’Audiovisuel*, the authority regulating broadcasting media, will have to create a code of good conduct for the media coverage of terrorist incidents¹³⁶.

¹³³ That argument was put forward by the Prime Minister Manuel Valls and several representatives on the very first prorogation of the state of emergency. The full report of the debate of the 19th of November 2015 at the *Assemblée Nationale* is available here: <http://www.assemblee-nationale.fr/14/cr/2015-2016/20160059.asp>

¹³⁴ The current law governing the state of emergency can be found here : <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350> [accessed 11 June 2017]

¹³⁵ Report Raimbourg-Poisson, 2016, p. 31.

¹³⁶ The changes in the law can be found here : <http://www.vie-publique.fr/actualite/faq-citoyens/etat-urgence-regime-exception/#art12729>

As soon as the state of emergency ends, all the measures end as well, with the exception of the dissolution of groups and associations that were dissolved during the state of emergency, as the grounds for dissolving them (which is very often advocacy of terrorism) are still condemnable under common law.¹³⁷ In those cases, the state of emergency only enables the administrative authorities to dissolve groups or associations faster than it would under normal procedures.

D. The application of the measures: facts and figures

As of the 2nd of December 2016, there were 4,292 police raids that resulted in 670 judicial proceedings. This included hundreds of prosecutions for drug-related cases, and 61 prosecutions linked to terrorism – including 20 for criminal association linked to a terrorist undertaking. Besides that, 612 house arrests were ordered on 434 people – as these house arrests can be renewed – among which 95 were still applied on the 2nd of December 2016.¹³⁸ Tens of demonstrations were also prohibited¹³⁹, several hundred entry refusals on French territory were ordered¹⁴⁰, and around twenty meeting venues were closed¹⁴¹.

Although greatly used in the first weeks, the state of emergency measures have been decreasing ever since. As of the end of November 2015, more than fifty percent of the police raids had been completed.¹⁴² Because they became less pertinent, the French government removed the possibility for administrative authorities to order police raids in the May 2016 prorogation, before putting it back in the state of emergency law in July 2016. Of the 95 house arrests remaining as of December 2016, 37 individuals had been under house arrest since the

¹³⁷ See the ruling of the Council of State on the dissolution of an association here: <http://www.gouvernement.fr/partage/5844-etat-d-urgence-sur-le-territoire-metropolitain-et-mesures-specifiques-en-ile-de-france-quelles> [accessed 25 June 2017]. They argue that the administrative authorities provided enough proof to dissolve that association, as members were advertising and encouraging jihad, and that it does not go against any fundamental liberty, therefore the administrative authorities are allowed to dissolve it.

¹³⁸ Raimbourg-Poisson parliamentary report on the state of emergency, 2016, p. 138.

¹³⁹ The prohibition of demonstrations being the competency of prefects, its application was not centralized. Thus, most reports such as the parliamentary one could only obtain information from after the prorogation of July 2016, which extended the prerogatives of the parliamentary control on the state of emergency. NGOs such as Amnesty International mention other, more important, figures.

¹⁴⁰ Raimbourg, Poisson, 2016, p. 88.

¹⁴¹ *Ibid*, p. 95.

¹⁴² Raimbourg-Poisson report, 2016, p. 32.

beginning of the state of emergency¹⁴³, and their house arrest had been renewed every time the state of emergency has been extended. The other hundreds of house arrests were cancelled, either because the situation or the individuals changed. According to the French government, this decrease in the use of the measures does not mean that they lacked usefulness, but that they became better at targeting.¹⁴⁴

The following figures show the recent instances of these emergency measures.¹⁴⁵ Because they were only available on the local level but not the national level, and because Parliament increased its control over the measures in July 2016, the detailed number of these instances has only been available since the end of July 2016. Figures 3 and 4 show the evolution in the application of police raids and house arrests. Both kept decreasing since the beginning of the state of emergency, with a slight increase after the Nice attacks¹⁴⁶, before decreasing again. These figures show that, although the measures are still applied, they all kept decreasing with the exception of refusals of entry and refusals of permission to stay in French territory for a certain duration (either some departments or the entire French territory).¹⁴⁷

Figure 1 - From July 22 to December 21, 2016

House arrests still applied	Police raids	Refusals of entry or permission to stay in French territory	Seizure of weapons	Closing of meeting venues	Prohibition of demonstrations or restriction of circulation	Creation of safety zones
93	591	31	4	13	23	22

¹⁴³ Overview of the state of emergency available on the Senate website : http://www.senat.fr/commission/loi/comite_etat_durgence.html [Accessed 2 July 2017]

¹⁴⁴ Author’s interview with Elise Lavielle, deputy deputy director at the DLP AJ, March 23, 2017.

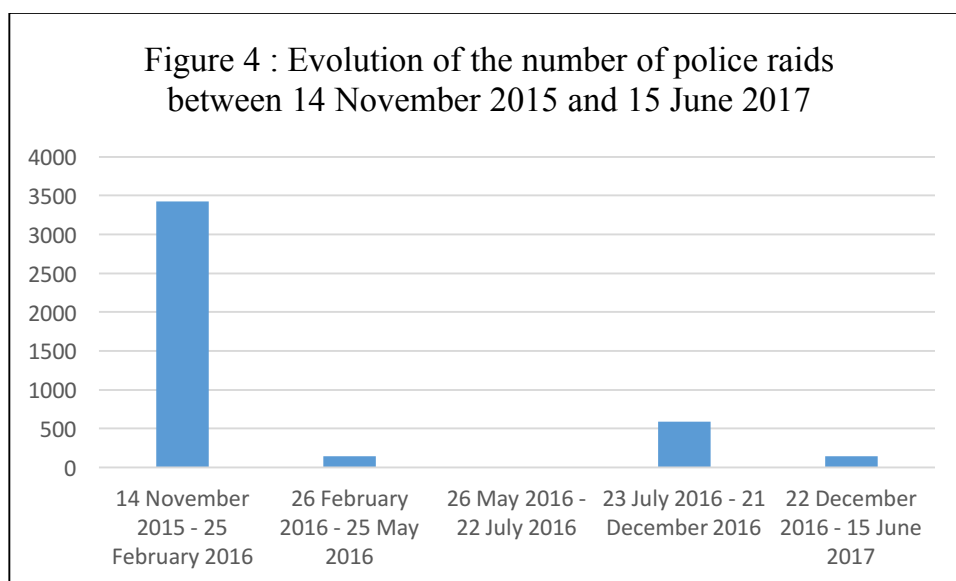
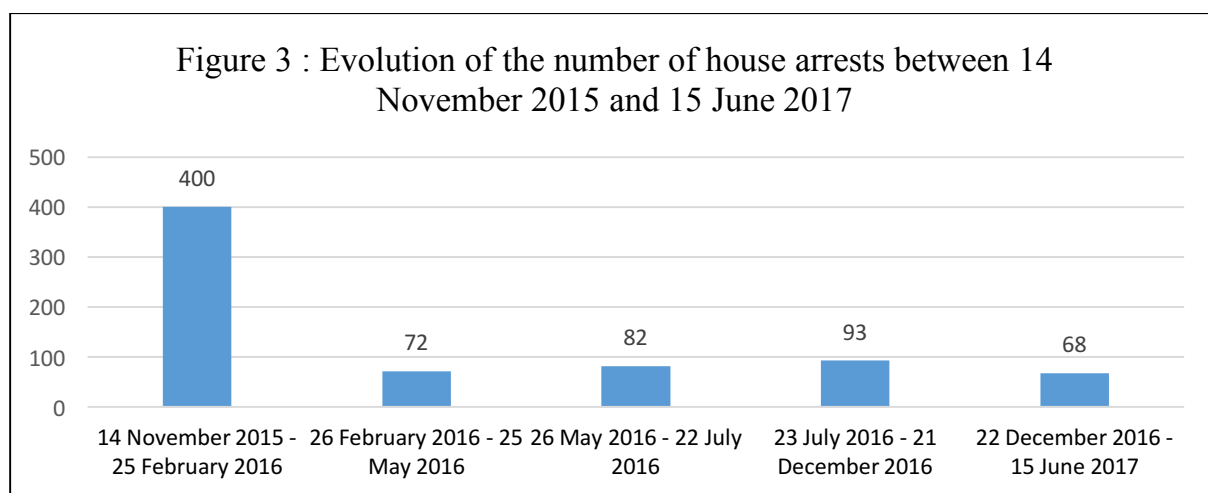
¹⁴⁵ The data can be found on the website of the parliamentary commission on the state of emergency here : [http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/\(block\)/34453](http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/(block)/34453) [Accessed June 30 2017]

¹⁴⁶ NB : the law renewing the state of emergency law of May 2016 did not renew the possibility of police searches, thus why there were none between May and July 2016.

¹⁴⁷ In June 2017, however, the Constitutional Court prevented the prefects’ possibility to use that measure, considering it had been used in a disproportionate way as it was used to prevent people from attending demonstrations. Paule Gonzales, “Etat d’urgence: le Conseil Constitutionnel censure l’interdiction de manifester” *Le Figaro* [online], 9 June 2017, <http://www.lefigaro.fr/actualite-france/2017/06/09/01016-20170609ARTFIG00106-interdiction-de-sejour-le-conseil-constitutionnel-censure-l-etat-d-urgence.php> [Accessed 12 July 2017]

Figure 2 - From December 22, 2016, to June 15, 2017

House arrests still applied	Police raids	Refusals of entry or permission to stay in French territory	Seizure of weapons	Closing of meeting venues	Prohibition of demonstrations or restriction of circulation	Creation of safety zones
68	141	46	0	3	13	15



E. Other anti-terrorist measures used at the same time as the 2015 state of emergency

There are two main anti-terrorist plans that are used in France, at the same time as the state of emergency, which are the *Vigipirate* plan and the *Opération Sentinelle*. Very often, they tend to be mistaken as a part of the state of emergency, but they are separate from it. Neither do they belong to any other exception system, but were created during the process of developing the legislation and measures to fight terrorism.

The Vigipirate plan¹⁴⁸ was created in 1991, as an evolution of a 1978 plan made to simplify the administrative authorities' reaction to terrorism¹⁴⁹, to facilitate the Prime Minister's decision-making process relating to the fight against terrorism, in the context of the Gulf war. It was declared on the 8th of September 1995 after several terrorist attacks happened in France, again resulting in the deaths of eight people and injuring hundreds¹⁵⁰. It was never lifted since. The aim of this plan was to develop a "culture of vigilance" in society to prevent or detect as early as possible any threat of a terrorist attack. The idea was also to provide at all times an appropriate protection for the territory and the citizens.¹⁵¹ There are three levels that have been adapted in 2016: vigilance, enhanced security/risk of an attack, and emergency terrorist attack. The plan provides approximately 300 measures distributed between twelve fields of activity (e.g. transports, health, education) depending on the level of the risk. This level is decided by the intelligence services that will first evaluate the situation, then will transmit their report to the National Secretary on Defense and National Security, who in turn will decide which is the appropriate level¹⁵². The measures include, for instance: bag searches,

¹⁴⁸ The description of the Vigipirate plan is available on the French government's website: <http://www.gouvernement.fr/vigipirate> [accessed 10 June 2017]

¹⁴⁹ "Comprendre le plan vigipirate" [online], available on the French government's website: <http://www.gouvernement.fr/risques/comprendre-le-plan-vigipirate> [accessed 20 June 2017]

¹⁵⁰ Guy Pervillé, « 20 ans après 1995 : les attentats de Paris, Lyon et Lille reconsidérés », *le Figaro* [online], July 24th 2015, <http://www.lefigaro.fr/histoire/2015/07/24/26001-20150724ARTFIG00066-vingt-ans-apres-1995-les-attentats-de-paris-lyon-et-lille-reconsideres.php> [accessed 22 June 2017]

¹⁵¹ *Ibid*

¹⁵² "Comprendre le plan Vigipirate en quatre questions" [online], available here: <http://www.stop-djihadisme.gouv.fr/lutte-contre-terrorisme-radicalisation/mesures-lutter-contre-terrorisme/comprendre-plan-vigipirate-4> [accessed June 10, 2017]

prohibition to park in front of some buildings such as schools, ID controls before entering buildings, or reporting suspicious behaviours. Many of the measures are classified.¹⁵³

Implemented in January 2015 after the Charlie Hebdo attacks, the *Opération Sentinelle* consists in 10,000 soldiers deployed in the whole territory, 6,000 in the Paris area.¹⁵⁴ They are not just used as a complement to police forces but as a new military strategy¹⁵⁵, and their two objectives are protection [of the population] and dissuasion [of any terrorist attack]¹⁵⁶. These missions, and their accomplishment by military forces rather than police forces, have been justified by the fact that terrorists received a military training.¹⁵⁷ This operation also shows the confusion of interior and exterior security, as this military mission was qualified as an “interior operation” - while military operations are normally outside of the territory – in the continuity with exterior operations such as the operation Serval in Mali (2013-2014), the operation Barkhane in Africa’s sahel region (2014), of the strikes in Syria.¹⁵⁸

2.3 Which controls on the state of emergency?

A. The legal and parliamentary controls

There are several means to oversee the state of emergency: once it is declared by decree during the Ministerial Council, it can only last twelve days and needs to be prorogued by law voted in by Parliament after that. The law implementing the state of emergency also becomes null fifteen days after the dissolution of Parliament or the resignation of the government. Lastly, the executive power can end the state of emergency anytime by decree. In addition, there are also several controls.

The state of emergency is mostly controlled by the administrative jurisdiction, as the measures deal with issues between the administration and individuals, the *Conseil d’État* being the most important. It can also be controlled by the Constitutional Court. For both courts,

¹⁵³ <http://www.gouvernement.fr/sites/default/files/risques/pdf/vigipirate-faq-decembre2016.pdf>

[Accessed 11 June 2017]

¹⁵⁴ <http://www.gouvernement.fr/argumentaire/operation-sentinelle-10-000-militaires-mobilises-sur-le-territoire-national-5465> [Accessed 11 June 2017]

¹⁵⁵ Olivier Cahn, 2016, p. 117.

¹⁵⁶ <http://www.stop-djihadisme.gouv.fr/lutte-contre-terrorisme-radicalisation/mesures-lutter-contre-terrorisme/operation-sentinelle-quest> [Accessed 11 June 2017]

¹⁵⁷ Olivier Cahn, 2016, p. 118.

¹⁵⁸ *Ibid*, p. 117.

however, cases need to be referred to them, they cannot refer cases on their own. The state of emergency indeed gives more prerogatives to the administrative authorities, the judicial authority being only able to control the measures a posteriori. A “presumption of emergency”, however, guarantees a summary procedure of all measures taken on the basis of the state of emergency legislation.¹⁵⁹ Although few measures were suspended¹⁶⁰, several house arrests were cancelled¹⁶¹, which shows that the possibility to contest the measures does exist.

That state of emergency greatly developed parliamentary control, giving Parliament more control than they ever had during the previous ones.¹⁶² This was done following the will of the Parliament which created those laws to give themselves more control.¹⁶³ Usually, Parliament plays a necessary, but at the same time, restricted role: although the representatives need to vote on a law to make the state of emergency last more than twelve days, they cannot declare it themselves. They also usually write a report to review the state of emergency, but only once the state of emergency is over. This time, both assemblies created a commission to control the state of emergency. As specified in the law of the 20th November 2015, which extended the state of emergency for the first three months, and the law of the 21st of July 2016, both assemblies are informed “without delay” of all the actions taken by the government. They are notified day-to-day, with detailed information, of which measures are used. The commissions for the control of the state of emergency also received investigation powers of coercion, meaning that they are able to request and obtain documents, and can hear political officials. This is innovative as usually those powers are only given to investigative commissions. Their only limitation is that some documents are classified, therefore they cannot

¹⁵⁹ Raimbourg, Poisson, 2016, p. 102.

¹⁶⁰ The Raimbourg-Poisson report shows for instance that there were only 46 procedures following the thousands of police raids as of the end of October 2016. 2016, p. 102. This lack of procedures can be explained by the fact that procedures can only happen after the police raid took place, and many people are unaware of their judicial possibilities, as was discussed with Christine Lazerges, president of the National Commission on Human Rights, 25 April 2016. Hundreds of house arrests were contested, although almost 40 of them were suspended by the administrative jurisdiction, and dozens were modified. (Poisson-Raimbourg report, 2016, p. 102) The others were stopped by the Ministry itself, either because there were no new elements to continue the measure, or because the individuals were not considered dangerous anymore.

¹⁶¹ Amnesty International, 2016, p. 28.

¹⁶² Julia Schmitz, « Le contrôle parlementaire de l'état d'urgence », *Journal du Droit Administratif*, <http://www.journal-du-droit-administratif.fr/?p=269> [Accessed 12 June 2017]

¹⁶³ Author's interview with Florence Béclier, Justice advisor to the president of the National Assembly, March 20, 2017.

access it. The control commissions then publish the data and publish reports on both websites.¹⁶⁴

B. The state of emergency and fundamental rights

In international law, governments can limit some fundamental rights in specific circumstances such as a serious threat to national security.¹⁶⁵ However, it can only be done if strictly necessary and without discrimination. Measures also need to be exceptional and temporary.¹⁶⁶ Countries need to notify international organizations: France warned both the United Nations and the Council of Europe on November 24th and 25th 2015 about the measures they could and would apply during the state of emergency, indicating that the measures could impact the right to liberty, the right to privacy, and the freedom of movement.¹⁶⁷

Although the European Court on Human Rights requires the measures applied to be proportional and strictly necessary, states have a wide margin of appreciation.¹⁶⁸ The article 15 of the European Convention on Human Rights indeed gives governments “the possibility of derogating, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention” in exceptional circumstances.¹⁶⁹ There are several conditions to that derogation: first of all, it can only be invoked “in time of war or other public emergency threatening the life of the nation” and the derogation cannot be inconsistent “with the State’s other obligations under international law.”¹⁷⁰ Secondly, the measures must be strictly required by the exigencies of the situation the state is dealing with, and they have to be proportionate. Thirdly, some rights cannot be derogated from, such as the right to life, the right to a trial, the prohibition of slavery and torture, or the death penalty. Lastly, the State derogating

¹⁶⁴ The *Assemblée Nationale*’s commission : <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence>

The *Sénat*’s commission : http://www.senat.fr/commission/loi/comite_etat_durgence.html

¹⁶⁵ Amnesty International, 2016, p. 6.

¹⁶⁶ *Ibid*, p. 31.

¹⁶⁷ *Ibid*, p. 32.

¹⁶⁸ Cahn, 2016, p. 100.

¹⁶⁹ Press Unit, European Court of Human Rights, “Derogation in time of emergency”, February 2017, available online: http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf [accessed 10 June 2017]

¹⁷⁰ European Convention on Human Rights, article 15.

from its obligations must inform the Secretary General of the Council of Europe of the measures taken and when they will end.

France has been criticized by the ECHR, especially as it considers the public prosecutor that supervises the terrorist cases, to not be impartial and to not offer enough guarantees to secure respect for human liberties.¹⁷¹ It was also criticized for the disproportionate nature of the sanctions; for instance, the participation in terrorist associations; although the people condemned might not have even attempted a concrete act of terrorism, this can result in ten years of imprisonment and a fine of 225,000€.¹⁷² This example also shows the aggravation of the fine relative to the imprisonment sanction, as the norm would usually be a fine of 15,000€ for one year of prison.¹⁷³

Rapporteurs from the United Nations criticized the state of emergency, stating that the measures “impose excessive and disproportionate restrictions on fundamental rights.”¹⁷⁴ Amnesty International also reported that mostly Muslim people are targeted by those measures¹⁷⁵, which is discriminatory. The house searches are done at any time during the day or night, often with the use of violence by police forces and with material damages, and without any explanation.¹⁷⁶ Amnesty International argues that these measures and their effects are disproportionate¹⁷⁷, contrary to what is required by international law. They also reported abuses: during the United Nations conference on climate change (the COP 21), ecologist activists were put under house arrests¹⁷⁸ while they should not be targeted by state of emergency measures since they are not suspected terrorists. The *Conseil d'État* stated, however, that the house arrests were justified for the smooth running of the conference.¹⁷⁹ Those critiques will be further developed next chapter. Although critiques from an international audience such as NGOs and state organizations does not really impact the implementation of the state of

¹⁷¹ Cahn, 2016, p. 105.

¹⁷² *Ibid*, p. 108.

¹⁷³ *Ibid*, p. 106.

¹⁷⁴ Statement of the Office of the High Commissioner for Human Rights, “UN rights experts urge France to protect fundamental freedoms while countering terrorism”, Geneva, January 19th 2016, available here:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E>

[accessed 20 June 2017]

¹⁷⁵ Amnesty International, 2016, p. 7.

¹⁷⁶ Boutin and Paulussen, 2016, p. 2.

¹⁷⁷ Amnesty International, 2016, p. 15.

¹⁷⁸ *Ibid*, p. 18.

¹⁷⁹ Heymann-Doat, 2016, p. 73.

emergency, it shows that securitization is more than the approval of the speech act by an audience, as here, an audience can reject the securitization process without impacting it.

Another issue with the guarantee of fundamental rights in the context of the state of emergency is that the judiciary judge¹⁸⁰ is the one guaranteeing those rights, as provided for in the article 66 of the French Constitution.¹⁸¹ However, the judiciary judge is cast aside in the state of emergency, for the administrative judge's benefit. Although the respect of fundamental rights is still in the Constitution, and it is not possible to derogate from some rights in the ECHR, the actual guarantee of those rights has been altered during the state of emergency.

2.4 Conclusion

In summary; France has been developing its anti-terrorist legislation for thirty years now, including more and more acts of terror in its official definition for participation in a terrorist act, and increasing its sanctions. Terrorism, as defined in the French legislation, now includes all acts that could intervene at any stage of the process of committing a terrorist crime¹⁸², e.g. getting interested in terrorism by regularly going on websites glorifying terrorism, financing, planning, or directly participating.

The state of emergency is a state of exception that can only be declared either in case of an imminent peril that would seriously damage the public order, or in case of a public calamity, e.g. a natural disaster of an important magnitude. It gives more prerogatives to the administrative authorities to preserve the public order, changing slightly the balance of powers as the judicial authority can only control the measures after they were applied. It was declared during the night of the Paris attacks on the 13th of November 2015, and has been extended ever since, making it the longest state of emergency there ever was in France. Although it is presented as a measure to fight terrorism, it is not the only measure or plan currently applied in France.

¹⁸⁰ The French legal system is divided in two main branches : private law and public law. The judiciary judges makes decisions on private law, while public law – the state of emergency being a part of it – will be ruled by administrative judges.

¹⁸¹ Article 66 of the Constitution available here:

<https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006527558&cidTexte=LEGITEXT000006071194> [Accessed 12 June 2017]

¹⁸² *Ibid*, p. 98.

The state of emergency as conceived in 1955 was modified throughout its current application. Some measures such as house arrests, the prohibition of demonstrations, or police searches remained, but the measures were also toughened up with the addition of the wearing of the electronic monitoring bracelet for some people under house arrest previously condemned for terrorism, the extension of the house arrest duration for people back from conflict zones, and the exploitation of digital data. The main difference with the 1955 law lies in the application of the measures to people for whom there is evidence to think that their behaviour could endanger the public order, rather than waiting for the actual act to occur.

Chapter 3 : The critiques of the state of emergency

Throughout the twenty months the state of emergency had been in application, despite how it has always been renewed by a great majority in parliament, the exception measures have been criticized by scholars, NGOs, and institutions. These critiques were also used during the parliamentary debates that will be discussed in the next chapter. This chapter aims at looking at the main critiques, from the permanence of the state of emergency to its impact on fundamental rights and the actual effectiveness of the state of emergency.

3.1 Towards a permanent exceptional measure

The first contradiction of the state of emergency lies in its name: it is an exceptional measure that is made for emergencies. Thus, it should not last over time, as an emergency is not supposed to last. As the parliamentary report on the state of emergency underlines it: it is only because the state of emergency is going to end that it can be fully compatible with the rule of law.¹⁸³ The law of 1955 on the state of emergency, however, does not put a limitation to the duration of the state of emergency, nor to the duration of each prorogation.¹⁸⁴ It can last as long as the threat that justified the state of emergency lasts¹⁸⁵, which raises question in the specific context of the French 2015 state of emergency. Indeed, it was declared in the context of terrorist attacks, as a tool to support the common law measures to fight terrorism. However, the terrorist threat is likely not going to end soon. It can thus be questioned if the state of emergency, that is by definition temporary, is the appropriate means to fight a threat which is not temporary.¹⁸⁶ This raised concerns for several lawyers, lawmakers, and human rights NGOs, as changing the balance of powers – which is what the state of emergency does by giving more prerogatives to the executive authorities – for longer than necessary is concerning and can be dangerous for democracy.

The Parliament first chose to limit the prorogations to three months (as it was the case in the prorogations of November 2015 and February 2016, the May 2016 one only lasted two months) so they could review the state of emergency measures regularly to make sure they were

¹⁸³ *Ibid*, p. 9.

¹⁸⁴ Raimbourg, Poisson, 2016, p. 132.

¹⁸⁵ Heymann-Doat, 2016, p. 73.

¹⁸⁶ Master and Saint-Bonnet, 2016, p. 52.

still necessary and properly used. Yet, the prorogation of July 2016 extended the state of emergency for six months, and the December 2016 prorogation even extended it for seven months, to cover the election period.

In its opinions on the draft legislations prorogating the state of emergency, the Council of State claims that:

“The Council of State, as it already underlined in its opinions of the 2nd of February, the 28th of April, and 18th of July 2016 on the draft legislations authorizing a second, a third, and a fourth prorogation of the state of emergency, reminds that the renewals of the state of emergency cannot follow one another indefinitely and that the state of emergency shall remain temporary. The lasting or permanent threats must be treated as part of the rule of law, by the permanent instruments of the fight against terrorism, such as the ones from the laws adopted in the last years in that domain, as well as the future draft legislations that will be examined by Parliament”¹⁸⁷

The fact that it was not supposed to last was also argued by the rapporteur of the first prorogation of the state of emergency Jean-Jacques Urvoas, before he became the Minister of Justice in January 2016. In his speech presenting the draft legislation, he indeed argued that the measures that would be decided would only last a limited time, and they are especially understandable because of their planned obsolescence¹⁸⁸. He kept this opinion as a member of the Government until the end of the presidency in May 2017¹⁸⁹, showing that the securitization process was contested even within the Government. He never publically contested the state of emergency when it was being voted on however, to show that the government was united to protect the people. President Hollande announced in his speech on Bastille day in 2016 that the state of emergency would not be pursued at the end of the May prorogation – the state of emergency was then to end on the 25th of July 2016 –, arguing that the state of emergency could not “be extended indefinitely”, that laws had been voted in for the purpose of ending it, and that a new prorogation would not make sense as it “would mean that we would no longer be a

¹⁸⁷ Translated from the Council of State’s opinion on the state of emergency from December 2016 [online]: <http://www.conseil-etat.fr/Decisions-Avis-Publications/Avis/Selection-des-avis-faisant-l-objet-d-une-communication-particuliere/Prorogation-de-l-application-de-la-loi-relative-a-l-etat-d-urgence> [accessed 17 June 2017]

¹⁸⁸ Jean-Jacques Urvoas in his speech at the National Assembly presenting the draft legislation of the state of emergency on 19 November 2015.

¹⁸⁹ Jean-Baptiste Jacquin, « Le ministre de la justice plaide pour une sortie de l’état d’urgence », *Le Monde* [online], 15 March 2017. http://lemonde.fr/police-justice/article/2017/03/15/le-ministre-de-la-justice-plaide-pour-une-sortie-de-l-etat-d-urgence_5094999_1653578.html [Accessed 22 June 2017]

Republic with the rule of law that could be applied in all circumstances”.¹⁹⁰ Unfortunately, the Nice attacks that took place later on that day prevented the end of the state of emergency which was renewed for six and seven months in the next December.

The French authorities, however, refute that argument and claim that the threat will decrease at some point, just as the threats that justified the previous applications of the state of emergency.¹⁹¹ Though the reasons for implementing the state of emergency are very clear, the reasons to end it are blurred, and it appears more complicated to exit the state of emergency than to declare it.¹⁹² Indeed, the argument of the eventuality of an attack, or any risk for the public order, can be invoked, thus justifying the state of emergency at all time. Indeed, as Zwitter argues in its work, “a state of exception needs to have a beginning and an end (...) The state must restore its normal structures, otherwise the exception becomes the rule.”¹⁹³

3.2 More security but less liberty?

On his speech presenting the state of emergency during its first prorogation on the 19th of November 2015, Prime Minister Manuel Valls claimed that “security is the first liberty. For this reason, other liberties have been or could be temporarily limited, in a strictly necessary measure”.¹⁹⁴ The parliamentary report on the state of emergency of December 2016 underlines that this was not just a formula as it indeed impacted several thousands of French citizens¹⁹⁵. The argument of security being the first liberty and justifying the limitations of other liberties has then been put forward by several actors, both representatives and members of the Government, during every prorogation. As it was previously mentioned, the French government indeed warned the Council of Europe and the United Nations that the state of emergency measures could impact the right to liberty, the right to privacy, and the freedom of movement.¹⁹⁶

¹⁹⁰ Agence France Presse, « Hollande confirme la fin de l'état d'urgence après le Tour de France », *France 24* [online], 14 July 2016 : <http://www.france24.com/fr/20160714-hollande-fin-etat-durgence-ei-tour-france-26-juillet-terrorisme-attentats-13-novembre> [accessed 20 June 2017]

¹⁹¹ Author's interview with Gaspard Gantzer, communication advisor to President Hollande, 14 April 2017.

¹⁹² Saint-Bonnet, 2017, p. 4.

¹⁹³ Zwitter, 2012, p. 10.

¹⁹⁴ Prime Minister Manuel Valls in his speech at the National Assembly presenting the draft legislation of the state of emergency on 19 November 2015.

¹⁹⁵ Raimbourg, Poisson, 2016, p. 9.

¹⁹⁶ Amnesty International, 2016, p. 32.

This rhetoric of implying that the real freedom is the freedom from any threat, thus the real freedom is security¹⁹⁷, was very often discussed in the literature, especially following the 9/11 attacks. It is what Bigo calls the ‘worst case scenario logic’: the authorities cannot wait for the next terrorist attack which could be worse than the previous one. The exceptional measures that could impact liberties are thus part of a prevention logic, of considering that the threat could always be imminent¹⁹⁸. The imminence of a threat being a condition for the implementation of the state of emergency, it is also importance for the securitizing actors to insist on that aspect of the threat. In what Grondona calls “under-secure countries” – which is when the police cannot fight a specific threat on its own, thus it calls for the changing of policies that can often result in the limitations or violations of the people’s rights¹⁹⁹ – there is a dilemma between what is desirable (the respect of fundamental rights) and what is feasible [to properly tackle a threat].²⁰⁰ As he writes it in his work, “in national emergencies, internal security prevails over human rights”.²⁰¹ In the case of France, as was argued by representatives as we will discuss next chapter, the Government and MPs chose indeed to limit some fundamental rights to try to preserve security.

The choice of words used by the securitizing actors is extremely important, because they need to convince the double audience, that is, both the population and the Parliament – especially since representatives are supposed to vote for the population – of the necessity and the appropriateness of the measures. A common argument that has been used in different western countries in the past decade is that the fight against terrorism is a war which will, just like any war, restrain liberties. Governments also argue that it is not a security policy but a prevention one. The main justification is indeed that the measures do not endanger democracy because they aim at protecting it as well as security, which is the condition for individual liberties.²⁰² Those justifications found in Tsoukala’s article from 2006 were also used in the debates surrounding the French state of emergency since 2015. Indeed, it is presented as a necessary evil to be able to properly fight against terrorism. It implies common law was an obstacle to an efficient answer to the terrorist threat, and that fundamental freedoms were a luxury that the French state could not afford when there is a risk for its citizens.²⁰³ This type of

¹⁹⁷ Bigo, 2002, p. 403.

¹⁹⁸ Bigo et al., 2008, p. 6.

¹⁹⁹ Grondona, 1978, p. 3.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, p. 4.

²⁰² Tsoukala, 2006, p. 6.

²⁰³ Henriot, 2016, p. 43.

argument and justification was however greatly criticized by scholars and NGOs who argue that this could endanger democratic principles and lead to a surveillance state.²⁰⁴

The population often asks for stronger measures to guarantee their security. Indeed, fear will often spur a significant part of the population to accept a discourse and a vision of society in which security is the long-term goal, and for which the ends justify the means.²⁰⁵ In the case of the French people and the state of emergency, only a minority (fourteen per cent), according to polls, of the French would like the end of emergency, and even forty-eight per cent would like the state of emergency to be reinforced²⁰⁶. However, Bigo et al. underlines that it is easy to sacrifice other people's freedoms in the name of our own safety, but this does not mean that it is democratic.²⁰⁷ It is very common to hear the argument from some members of the general public that the measures will not impact them, only terrorists; however, these measures can be applied to anyone. This is an argument put forward by scholars against the state of emergency, such as Serge Slama.²⁰⁸

NGOs such as Amnesty International or Human Rights watch are very critical towards the state of emergency. Firstly, they criticize the very broad and vague criteria by which the state of emergency measures are applied, as the measures can indeed be applied merely when there are reasons to think that the person could be a threat for the public order, rather than having to await actual terrorist acts.²⁰⁹ They also claim that the measures are mostly targeting Muslim people, which is discriminative.²¹⁰ Besides this, they report that police raids are often done with the use of violence, resulting in material damage, trauma and stress for the population concerned by the measures.^{211,212} They also criticize the prohibition of demonstrations as a limitation to the freedom of expression.²¹³ More broadly, NGOs criticize the excessive application of the measures and their lack of proportionality.²¹⁴

²⁰⁴ Bigo, 2002, p. 389.

²⁰⁵ Grondona, 1978, p. 5.

²⁰⁶ IFOP, *Les français et l'état d'urgence*, June 2016 [online] http://www.ifop.com/?option=com_publication&type=poll&id=3434 [accessed 10 March 2017]

²⁰⁷ Bigo et al., 2008, p. 9.

²⁰⁸ Author's interview with Serge Slama, 22 March 2017.

²⁰⁹ Amnesty International, 2016, p. 10.

²¹⁰ *Ibid*, p. 7.

²¹¹ Human Rights Watch, 2016, p. 1.

²¹² Amnesty International, p. 11, p. 14.

²¹³ *Ibid*, p. 26.

²¹⁴ *Ibid*, p. 33.

3.3 When a single measure justifies the renewal of the state of emergency: the issue of house arrests

Because the end of the state of emergency means the immediate cessation of all measures, house arrests became an issue and a reason for representatives to renew the state of emergency.²¹⁵ Indeed, many people (still 95 as of December 2016²¹⁶) are under house arrest and have been since the beginning of the state of emergency, because intelligence services consider them to be a risk for the public order and security, yet they have not actually done anything for the judiciary authorities to prosecute them. But ending the state of emergency would cancel all these house arrest orders, which could be dangerous, since the Ministry of Interior and the intelligence services seem to consider those people to be very dangerous for national security.

Ordered by the Ministry of Interior, house arrests oblige the people concerned by the application of the measure to check in at the police station one to three times a day, the surrendering of identity documents, and sometimes it is made forbidden for individuals to make direct or indirect contact with specific people that would be linked to terrorism related cases.²¹⁷ They are a way to monitor people considered dangerous, but who have not yet done something legally condemnable.²¹⁸ They are often applied to people back from conflict zones related to terrorism, and to people who have been previously condemned for terrorism. They also have a different utility: in the majority of cases²¹⁹, they have to check in three times a day at the police station. This can make it complicated to comply for the people concerned by the measures, and, according to researchers, the authorities are expecting them to break the rules of their house arrest so they can be prosecuted. Indeed, not going to the police station can result in a sentencing of three years of jail, and one year if you get in contact with those people whom you were forbidden to do so.²²⁰ As Cahn writes it: even though it is efficient, it can be morally debatable as the idea is that an individual “on which we do not have enough proof to criminally judge

²¹⁵ Author’s interview with Florence Béclier, Justice advisor to the president of the National Assembly, March 20, 2017.

²¹⁶ Raimbourg-Poisson parliamentary report on the state of emergency, 2016, p. 138.

²¹⁷ Raimbourg, Poisson, 2016, p. 65.

²¹⁸ Cahn, 2016, p. 114.

²¹⁹ The Raimbourg-Poisson parliamentary report states that sixty-nine per cent of the people put under house arrests have to check in at the police station three times a day, twenty-five per cent two times a day, and six per cent once a day. Raimbourg-Poisson report, 2016, p. 65.

²²⁰ Raimbourg, Poisson, 2016, p. 67.

him, but whose indiscipline constitutes a nuisance for the community, will have difficulties to comply with the measures, thus he will fail to comply, therefore offering the authorities a reason to remove the individual from the community by putting him in jail”.²²¹

The order of house arrests started quickly after the declaration of the state of emergency on November the 13th 2015. In the first three months, between the 14th of November and the 25th of February 2016, the DLPAJ – the department within the Ministry of Interior in charge of the state of emergency measures impacting individual liberties, such as house arrests – received 563 proposals for house arrests.²²² 271 house arrests were proceeded with out of those proposals as of February 2016, and only 95 were still in application as of December 2016.²²³ The majority of the people still under house arrest have been so since the beginning of the state of emergency.²²⁴ The abrogation of several hundreds of house arrests can be explained by different factors: common law measures took over²²⁵, the house arrests were to last only for a specific time such as during days of demonstrations or during the COP 21, the Ministry did not have any new information to pursue the house arrests – as all house arrests are reviewed and eventually renewed at each state of emergency prorogation²²⁶ – and sometimes the people changed their behaviours and were not considered as dangerous anymore²²⁷.

NGOs and institutional reports underlined two main problems with the house arrests. First of all, they are applied on the basis of what is called “white notes”, which are notes from the intelligence services. Amnesty International indeed denounces the use of those white notes, arguing that they are often inaccurate, with homonyms and wrong places of birth for instance, that lead to the arrest of the wrong people, and that no one knows how valid those white notes actually are.²²⁸ On that issue, the Ministry of Interior argues that the white notes are provided by the intelligence services, but are also worked on by the Ministry services. They also argue that the intelligence services tend to put as little as possible in those notes, and the fact that the measures were rarely suspended (either following a referral or when the cases are being renewed) shows that the judicial authorities do agree that the evidence provided is solid.²²⁹

²²¹ Cahn, 2016, p. 111.

²²² Raimbourg, Poisson, 2016, p. 123.

²²³ *Ibid*, p. 124.

²²⁴ *Ibid*.

²²⁵ *Ibid*, p. 74.

²²⁶ *Ibid*, p. 62.

²²⁷ Author’s interview with Elise Lavielle, deputy deputy director at the DLPAJ, 23 March 2017.

²²⁸ Amnesty International, 2016, p. 21.

²²⁹ Author’s interview with Elise Lavielle, deputy deputy director at the DLPAJ, 23 March 2017.

Often, the individuals contesting this measure do not provide evidence showing that the white notes are wrong either, although they do have access to those notes.²³⁰

The second problem underlined both by human rights NGOs, but also by representatives and members of the judiciary authorities, is the lack of prosecution; as house arrests are indeed ordered by the Ministry of Interior and not by a judge.²³¹ Although one can consider the information provided by intelligence services as relevant, it can be questionable in a modern democracy that some people can be deprived from their freedom of movement without a proper trial. Even more so since France developed its anti-terrorist legislation to facilitate other surveillance means²³², which was done for the purpose of being able to leave the state of emergency. The National Consultative Commission on Human Rights also argue that if the measures aim to be repressive, then they should be under the competence of the judicial police.²³³ Scholars also criticized the fact that some people previously condemned for terrorism (or suspected of it) for whom the prosecution did not result in a condemnation were nonetheless put under house arrest, as either justice bodies did not have enough evidence to condemn them, or they already finished their sentence.²³⁴ This is what Paul Cassia calls “condemned once, always a suspect.”²³⁵

3.4 The use of the state of emergency as a tool to maintain public order

The Council of State wondered if the French government might use the opportunity of granted by the state of emergency measures to prevent any excess breaches of public order.²³⁶ This was indeed a possibility, especially since the application of the measures does not have to be linked with the original justification for declaring the state of emergency – namely, terrorism.

²³⁰ *Ibid.*

²³¹ Raimbourg, Poisson, 2016, p. 125.

²³² Raimbourg, Poisson, 2016, p. 126.

²³³ Commission Nationale Consultative des Droits de l’Homme, « Avis sur le projet de loi renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l’efficacité et les garanties de la procédure pénale », 17 March 2016.

²³⁴ Raimbourg, Poisson, 2016, p. 80.

²³⁵ P. Cassia, « Le Conseil d’État laisse l’état d’urgence dériver », [online] 10 October 2016, <https://blogs.mediapart.fr/paulcassia/blog/091016/le-conseil-d-etat-laisse-l-etat-d-urgence-deriver> [accessed 27 June 2017].

²³⁶ Raimbourg, Poisson, 2016, p. 127.

NGOs argued that use of the state of emergency measures, e.g. house arrests and police raids on people that were not suspected terrorists, were abuses. For instance, the house arrest of ecologist activists during the 2015 United Nations Climate Change Conference was greatly criticized and reported²³⁷. All demonstrations were also prohibited during the duration of the Conference, and several others were forbidden (e.g. 21 demonstrations were prohibited between the 21st of July and the 10th of November 2016.²³⁸) Amnesty International claims that 155 demonstrations were forbidden in total, on the basis of the state of emergency legislation.²³⁹ The Council of State, however, ruled in favour of the French state in the case of the house arrests of the ecologist activists, arguing that they were justified for the sake of the smooth running of the Climate conference²⁴⁰ as well as to avoid distracting the police forces which are mobilised to fight terrorism.²⁴¹ This is also argued by the Ministry of Interior, who says that the risk was high and the priority was to avoid the distraction of police forces from their main task to prevent terrorist attacks. They also claim that the individuals were considered dangerous, and that they had provided evidence of that, which is also why the Council of State ruled in the favour of the Ministry.²⁴² Even though this application of the state of emergency measures is legal, this can be questionable in a liberal democracy and was also criticized by the parliamentary commission on the state of emergency.²⁴³ Although MPs approve the state of emergency (as they renewed it) they also called for a refocusing of the state of emergency on the terrorist threat, rather than for public order.

The aim of the state of emergency seems to be to fight a threat which is deemed likely, rather than being based on the actual imminence of the threat.²⁴⁴ Indeed, there is always the possibility of an attack, especially with the international context of terrorism, but this does not mean that it is imminent, which is the requirement for the implementation of the state of emergency. Yet, the French state is using the measures to prevent any risk, such as forbidding demonstrations to avoid said demonstration from becoming a potential target for a terrorist attack. Human Rights Watch warns that the French authorities seems to have become

²³⁷ Amnesty International, 2016, p. 18.

²³⁸ Raimbourg, Poisson, 2016, p. 88.

²³⁹ Amnesty International France, « France : le droit de manifester menacé », Amnesty International [online], 30 May 2017 : <https://www.amnesty.fr/liberte-d-expression/actualites/droit-de-manifester-en-france> [accessed 17 June 2017].

²⁴⁰ Heymann-Doat, 2016, p. 73.

²⁴¹ Saint-Bonnet, 2017, p. 8.

²⁴² Author's interview with Elise Lavielle, deputy deputy director at the DLP AJ, 23 March 2017.

²⁴³ Raimbourg, Poisson, 2016, p. 130.

²⁴⁴ Saint-Bonnet, 2017, p. 6.

“addicted” to the use of the state of emergency because it does facilitate and accelerate procedures. But the abuses that were reported also show that the state of emergency measures are impacting a significant amount of people who are not linked to terrorist activities.²⁴⁵

3.5 The state of emergency: which efficiency in the fight against terrorism?

Many actors such as scholars and representatives argue that the state of emergency, even when renovated and adapted (as was intended by the 2015 law) is still not adapted to the fight against terrorism. They argue this not only because firstly it is supposed to be temporary while terrorism is not, and secondly because the impact on liberties is excessive²⁴⁶, but also because the state of emergency measures are not considered to be playing a key role in the fight on terrorism. Indeed, the parliamentary report on the lessons learned from the 2015 attacks states that counter-terrorism specialists do not mention the state of emergency measures as playing any particular role in the fight against terrorism.²⁴⁷ The reports argue that the thwarted attacks and arrest individuals were often the result of common law and regular procedures rather than of the state of emergency.²⁴⁸

The state of emergency measures have been applied thousands of times throughout its duration, leading to hundreds of prosecutions, including tens for terrorism related cases, which shows that the measures are not useless. However, the use of the measures keeps decreasing. Out of the 4,292 police raids enumerated as of the 2nd of December 2016, 3,289 were realized by the end of February 2016²⁴⁹. There were as many procedures resulting for the police raids between the 14th of November and the 25th of May 2016, and the 21st of July and the 2nd of December 2016 – the May 2016 prorogation did not pursue police raids as part of the state of emergency – while there were less police raids. This shows that said raids are better targeted.²⁵⁰ Although 61 prosecutions resulted from the state of emergency measures, this is just a small part of the regular activity of the anti-terrorist Prosecution office, as there were 169 procedures

²⁴⁵ Kartik Raj, « Les dirigeants français restent accros à l'état d'urgence », *Human Rights Watch* [online], 24 May 2017 : <https://www.hrw.org/fr/news/2017/05/24/les-dirigeants-francais-restent-accros-letat-durgence> [accessed 25 May 2017]

²⁴⁶ Master and Saint-Bonnet, 2016, p. 53.

²⁴⁷ Fenech, Pietrasanta, « Mieux anticiper la menace et combattre le terrorisme : les leçons des attentats de 2015 », report n° 3922, July 5 2016, p. 362.

²⁴⁸ Raimbourg, Poisson, 2016, p. 118.

²⁴⁹ Boutin and Paulussen, 2016, p. 2.

²⁵⁰ Raimbourg, Poisson, 2016, p. 121.

in the same duration.²⁵¹ This shows that, although efficient, the state of emergency measures are not the ones resulting in the most prosecutions. Some measures (such as the use of an electronic monitoring bracelet for people who have been previously condemned for terrorism-related crimes, resulting in a sentence of at least ten years of prison) were never used²⁵². The closing of websites was also never done on the basis of the state of emergency, but was done with the use of common law.²⁵³

However, the state of emergency did achieve some goals. Although not quantifiable, one of the main uses of the state of emergency was for the intelligence services, who could use the police raids to update their files and gain new information.²⁵⁴ Even in terms of keeping track of someone, the Ministry of Interior argues that it is easier when said individual needs to check in at the police station several times a day so that they know where the individual is.²⁵⁵ The state of emergency measures were also useful for destabilising terrorist networks, either because the police raids added extra pressure, or because house arrests prevented the people involved in participating in more meetings or planning attacks.²⁵⁶ This, however, only lasted a certain amount of time, and the element of surprise disappeared after the first three months, as suspected terrorists got used to the measures and adapted to them.²⁵⁷

The main problem with fighting terrorism without the state of emergency, as underlined by many, is the lack of means. Although facilitating procedures, the state of emergency will not change the fact that there is a lack of financial and human means to combat the issue. However, the over-mobilization of police forces and justifying of house arrests cannot be a good enough reason to use the state of emergency measures as a tool to maintain the public order.²⁵⁸

3.6 Conclusion

In summary; there are several main critiques towards the state of emergency, formulated by scholars, NGOs, institutions, or representatives. The first point of inquiry is; how long is the

²⁵¹ *Ibid.*

²⁵² Raimbourg, Poisson, 2016, p. 67.

²⁵³ *Ibid*, p. 98.

²⁵⁴ *Ibid*, p. 118.

²⁵⁵ Author's interview with Elise Lavielle, deputy deputy director at the DLP AJ, 23rd of March 2017.

²⁵⁶ Raimbourg, Poisson, 2016, p. 120.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid*, p. 126.

state of emergency to last? As an exceptional measure, it is only meant to last the duration of the emergency, as the rest of the time common law can effectively protect the State and its citizens. But twenty months later, the 2015 state of emergency has become the longest France has ever known. Although the state of emergency can indeed last as long as the threat it was declared for lasts, the fact that terrorism is not always an imminent threat, but more often a latent one, raises question as to how long the state of emergency can be extended.

Another critique mostly coming from NGOs is, as discussed, the argument of security as the first liberty, which justifies the limitations of other liberties. Indeed, this is not just an empty formula as the state of emergency impacts the right to liberty, the right to privacy, and the freedom of movement. The possibility of prohibiting demonstrations can also impact the freedom of speech. However, the population is often in favour of limiting their liberties if it can indeed guaranty their security. It is especially true since it is not the majority of the population that is impacted by the measures. This is however a concern for NGOs and scholars, as modern democracies should be able to guaranty both security and fundamental freedoms with the rule of law. They also criticized the use of the state of emergency measures as a tool to maintain the public order as, although legal, this is also questioning in a liberal democracy.

One of the main issue related to the state of emergency and its eventual end is house arrests. Indeed, as soon as the state of emergency ends, ordered house arrests must also end. Although there is not enough evidence to prosecute the individuals concerned by the application of the measure, they are considered as dangerous enough by the intelligence services. This is enough to convince the administrative jurisdiction which rarely suspends the measure, as well as representatives who use this as an argument to extend the state of emergency.

The state of emergency measures were greatly used in the first three months, but their application kept decreasing since then. However, the fact that they are still used and are still leading to prosecutions shows that they are not useless. The authorities indeed argue that the measures are better used and better targeted now. However, after all this time, scholars, NGOs, and representatives argue that common law should be able to take the lead. The use of exceptional measures indeed should not last longer than necessary as that is not why they were created. The many prorogations and little attention in the Media paid to the critiques described in this chapter, while the institutional actors described the state of emergency as being

necessary, lead to the banalization of the state of emergency, as if the longest period of a legislation of exception was normal.²⁵⁹

²⁵⁹ Henriot, 2016, p. 39.

Chapter 4: Symbolic support for the state of emergency : Parliament and the state of emergency

Although the state of emergency was voted in by a great majority of Parliament, more and more contestation and reservations have arisen in the debates throughout the twenty months it has been applied for. After looking at the critiques on the state of emergency presented in the previous chapter, the aim of this research was to understand why the state of emergency keeps being renewed, despite there being more and more critiques being made against it. To answer this question, analysing the role of Parliament and parliamentary debates is central. This chapter thus aims at discussing the justifications and arguments put forward by MP's to defend or contest the state of emergency. We will first present the role of Parliament in French politics before studying the debates surrounding the various states of emergency; especially focusing on the phases of the debates and the votes.

4.1 Context: the role of Parliament

Parliament is an important actor as it is both an audience receiving and accepting the government's speech act, but it is also a securitizing actor because it can impact the securitization measures. Indeed, they can reject, accept, or modify the measures proposed by the government. Parliament is a crucial actor because without their approval, no state of emergency is possible past the twelve days decided by decree in the Council of Ministers. Both the government and Parliament work together as a kind of securitizing coalition, thus they will both justify the state of emergency in a similar way.

Parliaments are “democratically constituted forums for political deliberation, problem-solving, and decision making”²⁶⁰ and the mission of representatives is to act and speak on behalf of the citizens they were elected to represent²⁶¹. As in many democracies, France has a bicameral legislature, the upper chamber being the *Sénat* (348 representatives, elected indirectly) and the lower chamber being the *Assemblée Nationale* (577 representatives, elected directly by the public). A draft legislation will have to be voted through in both chambers before being implemented, and the bill can go between the two chambers up to seven times, the

²⁶⁰ Ilie, 2015, p. 1.

²⁶¹ *Ibid.*

National Assembly taking the final decision if both chambers cannot find an agreement.²⁶² As they are the ones making the final decision, and because they are directly elected, debates in the lower Chamber will often be more political, while debates in the Senate will often address the legal dimensions of a legislation.²⁶³ The representatives in the National Assembly are also often more well-known than the senators, thus discussions in the lower chamber will receive more attention from the public and the Media.²⁶⁴ This is also why what is said during their debates is more often looked at, and also why they might be more political in their discourses, as their speeches in Parliament are also aimed at public opinion. As Ilie underlines it, “the fact that most parliaments have established their presence on the web makes the legislative process and parliamentary proceedings more transparent and subject to public scrutiny”,²⁶⁵ and representatives are very much aware of that fact.

The parliamentary debates are crucial in the legislative process, as they are the last step before the implementation of a law.²⁶⁶ The debates in public session are predictable, as the discussions are greatly regulated and influenced by the discussions in commission.²⁶⁷ The debates are also often prepared upstream, with members of the government meeting with representatives²⁶⁸ – or at least with presidents of parliamentary groups and the president of Parliament who can then discuss the future legislation beforehand.²⁶⁹ The French Fourth Republic had been characterized by a lack of discipline of Parliament, which led to the resignation of several governments, but this was fixed in the current Fifth Republic.²⁷⁰ France indeed became a semi-presidential regime, meaning that the separation of powers is flexible,

²⁶² Fiche de synthèse n°4 : l'Assemblée Nationale et le Sénat – caractères généraux du Parlement [online] <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/les-institutions-francaises-generalites/l-assemblee-nationale-et-le-senat-caracteres-generaux-du-parlement> [accessed 1 July 2017]

²⁶³ Samuel Le Goff, « La différence Assemblée-Sénat », *L'Express* [online], 27 May 2013, <http://blogs.lexpress.fr/cuisines-assemblee/2013/05/27/la-difference-assemblee-senat/> [Accessed 25 June 2017].

²⁶⁴ Fiche de synthèse n°4 : l'Assemblée Nationale et le Sénat – caractères généraux du Parlement [online] <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/les-institutions-francaises-generalites/l-assemblee-nationale-et-le-senat-caracteres-generaux-du-parlement> [accessed 1 July 2017]

²⁶⁵ Ilie, 2015, p. 2.

²⁶⁶ Galembert, 2013, p. 286.

²⁶⁷ Bonnaud and Martinais, 2013, p. 244.

²⁶⁸ *Ibid*, p. 246.

²⁶⁹ Author's interview with Florence Béclier, Justice advisor to the president of the National Assembly, 20 March 2017.

²⁷⁰ Sauger, 2009, p. 310.

and the legislative power is divided between Parliament and the government.²⁷¹ To improve the stability of the regime even more, the presidential and legislative elections are now always only a few weeks apart ever since 2002, so the President and the parliamentary majority are from the same party.²⁷² The majority of legislations thus come from the executive power.²⁷³

As in many parliaments, French representatives are divided into different parliamentary groups²⁷⁴ whose members usually follow a party discipline, giving the same votes during the debates²⁷⁵. The majority of representatives in the National Assembly between 2012 and 2017 belonged to the group *Socialiste, Ecologiste et Républicain*, which is the presidential majority as President Hollande was from the *Parti Socialiste* as well. As it is the logic within Parliament, MPs were expected to vote in the laws proposed by the Government, as they belonged to the same party. Indeed, MPs from that group who opposed the state of emergency either belonged to *Europe Ecologie Les Verts* – which lost their parliamentary group in 2016 because they were not enough members, thus joining the presidential majority one – or left the *Parti Socialiste*. As of December 2016, eight members of the *Socialiste* group voted against the state of emergency. The second biggest group is the right-wing party, their group being called *Les Républicains*. The majority of them are voting in favour of the state of emergency, with the exception of four MP as of December 2016. The main two groups voted greatly in favour in the state of emergency, although the *Républicains* group tends to ask for stronger measures while the *Socialiste* one simply votes in favour of the text as presented by the Government, following the presidential majority logic. In general, because of party discipline, MPs from one same group tend to vote for the same thing. Thus, members of the *Union des Démocrates Indépendants* group all voted in favour²⁷⁶, as well as members of the *Radical, Républicain, Démocrate et Progressiste* group. The first one tends to work with *Les Républicains* when they are in power, while the former works with the *Parti Socialiste*, thus they also follow the same

²⁷¹ « Comment caractériser le régime politique de la Ve République », <http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/comment-caracteriser-regime-politique-ve-republique.html> [Accessed 5 July 2017]

²⁷² Sauger, 2009, p. 322.

²⁷³ Rasch, 2013, p. 158.

²⁷⁴ Details of the parliamentary groups at the National Assembly can be found here : <http://www.assemblee-nationale.fr/14/qui/declarations-groupes.asp> [Accessed 10 July 2017]

²⁷⁵ Mathilde Damgé, « Législatives : à quoi sert un groupe parlementaire à l'Assemblée Nationale ? », *Le Monde* [online], 13 June 2017. http://lemonde.fr/les-decodeurs/article/2017/06/13/legislatives-a-quoi-sert-un-groupe-parlementaire-a-l-assemblee-nationale_5143731_4355770.html [Accessed 10 July 2017]

²⁷⁶ Those votes are the ones of December 2016, that can be found here : <http://www2.assemblee-nationale.fr/scrutins/detail/%28legislature%29/14/%28num%29/1362> [Accessed 10 July 2017]

presidential majority rule. Members of the *Gauche Démocrate et Républicaine* group predominantly opposing the state of emergency, mainly for its impact on fundamental rights and its impact on the balance of powers. Lastly, some MPs do not belong to any group, either because they are too few – e.g. representatives of the *Front National* – or because they refused to join another one. Unsurprisingly, because they chose to reject the party logic in the first place, the great majority of them are opposing the state of emergency, disapproving the Government’s policy. The votes within groups remain the same at the Senate, except that the *Républicains* group is the majority there.²⁷⁷

Scholars claim that “the publicity of public sessions tend to transform the parliamentary debates in a show intended to a third actor.”²⁷⁸ Indeed, MPs can use parliamentary debates to address the population and their electors, although they know it will have a limited impact on the debate.²⁷⁹ Some amendments to the draft legislations are called ‘communication amendments’, as the representatives presenting them know they are not going to pass, but they use them to show their positions to the public opinion.²⁸⁰ Several amendments on the legislation on the state of emergency were indeed communication ones: some MPs presented amendments to cancel the law or amendments that were not realistic as they were not constitutional (e.g. making house arrests last 24/7, as this would involve the deprivation of someone’s entire liberty, which can only be done by the judiciary) or because they were not within the parliamentary area of competence (e.g. arming off duty security forces).

4.2 The parliamentary debates

A parliamentary debate can be defined as “a formal discussion involving (often heated) exchanges of opinion: it is intended to facilitate the chamber’s informed collective decision-making on specific issues”²⁸¹. All debates on the state of emergency have one thing in common: they all take place in an extremely short amount of time. Indeed, as was said previously, the parliamentary commission examined the draft legislation of the first state of emergency of November 2015 in the hours following its adoption in the Council of Ministers. It was then

²⁷⁷ Details of the parliamentary groups at the Senate can be found here : <https://www.senat.fr/senateurs/grp.html> [Accessed 10 July 2017]

²⁷⁸ Rozenberg, 2013, p. 299.

²⁷⁹ *Ibid*, p. 303.

²⁸⁰ Rasch, 2013, p. 165.

²⁸¹ Ilie, 2015, p. 4.

debated within the National Assembly the next day, and the day after at the Senate²⁸². However, representatives insist that it does not mean the debates were sloppy, as they were still examined and debated in both chambers for hours, resulting in the adoption of several amendments.²⁸³ Yet, to save some time, the *Parti Socialiste* and the *Républicains*, the two main parties, were asked not to amend the articles so the laws renewing the state of emergency could be voted faster.²⁸⁴ Indeed, the Government and representatives clearly stated their wish to vote the draft legislation as such, to avoid the law from being shuttled back and forth between both Chambers.²⁸⁵ Indeed, the laws were voted through the accelerated procedure, which was called ‘emergency procedure’ before 2008. This procedure was created to accelerate the process of voting in a law, as normally a law can be voted on at least six weeks after its filing date, and there should also be four weeks between the votes between the two Chambers. The accelerated procedure, however, removes that time constraint, thus enabling Parliament to vote the law much faster.²⁸⁶ There was also a time constraint, as MPs needed to vote on the renewal of the state of emergency before it ended, as the debates were taking place a week before it was to end. This was taken into account by representatives who agreed to debate and vote the laws renewing the state of emergency quickly, and to not amend the text too much. This was directly stated by several MPs throughout all the debates. Alain Tourret, for instance, from the *Radical, Républicain, Démocrate et Progressiste* group, argued in July 2016 that there was no time to send the draft legislation back to an examination in Commission, as the state of emergency would then end before it can be voted on.²⁸⁷

A. The definition of the threat and the referent object

The definition of the threat and of the referent object is central in the constitution of the speech act as defined by the Copenhagen School. Indeed, the speech act needs to convince the relevant audience – in this case, Parliament – of the necessity of the measures, with

²⁸² Report Raimbourg-Poisson, 2016, p. 13.

²⁸³ *Ibid.*

²⁸⁴ According to representatives such as Noël Mammère during the debate at the National Assembly, 19 November 2015.

²⁸⁵ It was argued by the two rapporteurs, Michel Mercier and Pascal Popelin, 9 February and 16 February 2016.

²⁸⁶ Elina Lemaire, “La procédure accélérée ou la regrettable normalisation d’une procédure dérogatoire”, <http://blog.juspoliticum.com/2017/07/05/la-procedure-acceleree-ou-la-regrettable-normalisation-dune-procedure-derogatoire-par-elina-lemaire/> [Accessed 10 July 2017]

²⁸⁷ Alain Tourret, 19 July 2016.

parliamentary approval being necessary to allow for the use of exceptional measures. The securitizing actors also need to convince another audience, which is public opinion. Especially for topics that are politically sensitive, a political securitizing actor, such as a Government or Parliament, needs public support.²⁸⁸ Although this is not a formal support, and so is not technically as necessary as parliamentary support, politicians will want to convince the population that they are doing the right thing.

In the securitization framework, the threat must be a threat to survival. Therefore, it needs to be presented as such to justify the use of exceptional measures. Representatives and members of the Government described the threat during all their interventions using rhetoric such as: “Islamists armed of hatred and madness”; enemies that “armed themselves, prepared themselves, recruited, who caused death and pain”; “they are ready to launch another attack at any time”; “barbarians that declared war on us”; “an enemy of an exceptional nature, not very visible and sprawling”; “a threat which is everywhere, in all territories, susceptible to appear behind every computer or mobile screen”; “the enemies of freedom”; “a criminal ideology”.²⁸⁹ Bruno Retailleau, senator, described the threat as such: “*France is at war, a war of a new kind, a war which does not claim it officially is one, where our enemies are undercover, who targeted civilians who are their compatriots, a war which does not care about borders, of battlefields, of military codes, a war which will not end by an armistice and will not end, unfortunately, with the sole elimination of ISIS.*”²⁹⁰

The threat is presented as not only dangerous but also new, hence the necessity of exceptional means to tackle a threat that is also exceptional. As it is a condition for the implementation for the state of emergency, it is also presented as being an imminent threat, the terrorists being ready to commit another attack at any time.

The referent object in the context of terrorism is easy to define: it is those people who were targeted and died. But the threat needs to be a threat to survival, therefore the referent object is not just people, but the State, institutions, all the population. The terrorists are attacking “a way of life and a certain idea of civilisation (...) and of France”; “the nation”; “our democracy and the humanist values it embodies”; “our free way of life, our open and tolerant society”; “our rule of law and the asserted cosmopolitanism of our society”; “civilisation”; “the

²⁸⁸ Tsoukala, 2006, p. 2.

²⁸⁹ Excerpts from the parliamentary debates on the state of emergency.

²⁹⁰ Bruno Retailleau, senator, during the debates on the state of emergency, 9 February 2016.

values of the Republic”; “democracy”; “humanity in all its wealth”²⁹¹. Above all, the terrorists are targeting everything that makes up the French people and what France represents. This speaks to the population, and presents an answer to the question as to why are they attacking France, which is only because France represents values that the terrorists entirely oppose. It is important for the securitizing actors that are both the government and MPs to convince the population that the measures do not jeopardise democracy because they aim at protecting collective security, which is a condition for individual liberties.²⁹² These definitions of the threat and of the referent object remained the same throughout all the debates.

B. The first three months of the securitization process

We can notice three phases in the debates related to the 2015 French state of emergency. The first one was during the first three months of the state of emergency, from November 2015 until the end of February 2016. The state of emergency was not really contested then, especially during its first two weeks. Indeed, when President Hollande took the decision to implement this state of exception, everyone, including scholars, NGOs, and representatives who later one opposed to the renewal of the state of emergency, thought it was necessary to implement in November 2015.²⁹³ As it was previously mentioned, because the threat seemed so important and out of control, only the state of emergency could enable the State to regain control of the situation. Indeed, as it was stated in the parliamentary report on the lessons²⁹⁴ of the terrorist attacks of 2015, “*while there was a fear of new attacks, that the authors of those attacks were not all neutralised, a time of exceptional mobilisation and securing was needed. The state of emergency, the night of November 13 [2015] was fully justified.*”²⁹⁵

1) The justifications for the state of emergency

President Hollande reunited the entire Parliament at Versailles on November 16, 2015. He then presented and justified the state of emergency by saying that “*we have to defend*

²⁹¹ Quoted from different speeches on the state of emergency during the parliamentary debates.

²⁹² Touskala, 2006, p. 7.

²⁹³ As discussed with Isabelle Attard, representative of the Calvados, on 9 March 2017.

²⁹⁴ Fenech, Pietrasanta, « Mieux anticiper la menace et combattre le terrorisme : les leçons des attentats de 2015 », report n° 3922, July 5 2016. Ordered after the Paris attacks of November 2015 by representatives themselves, they tried to understand what did not work. They published another report (n°4534, February 2017) to examine how was the government implementing their advices.

²⁹⁵ Cited in the Raimbourg-Poisson report, 2016, p. 117.

*ourselves in the emergency and over time. The protection of our fellow citizens and our capacity of living together depends on it*²⁹⁶. He also stated that “*democracy has the ability to react. The Declaration of the Rights of Men and the Citizen states in its article 2 that safety and resistance to oppression are fundamental rights. In accordance with these principles, we will give ourselves the means to guaranty our citizens’ security*”²⁹⁷. Among those means, President Hollande argued that house arrests and police raids are measures which provide a useful means to prevent new terrorist attacks; thus the Parliament should improve the legislation to include them, later on, in common law, and in the meantime, renew the state of emergency²⁹⁸. Following the same logic of what democracy enables states to do, Bernard Cazeneuve, then Minister of Interior, stated that “*every democratic state has the duty to plan exceptional measures enabling it to have the means to face such an extremely grave situation, but it of course has to do in the strict respect of democratic principles and by planning guarantees*”²⁹⁹.

During the first prorogation of the state of emergency at the National Assembly, 19 November 2015, Pascal Popelin, who became the rapporteur of the state of emergency law, presented the state of emergency as being due to: “*the gravity of the attacks we went through, their simultaneous characteristic, the permanence of the threat established by our intelligence services, as well as the international context, lead the Council of Ministers, on the President of the Republic’s proposal, to declare the state of emergency. That decision was up to the situation and what was at stake*”³⁰⁰. Manuel Valls, then Prime Minister, claimed that “*an immediate and powerful answer was needed. This regime, planned by the law of the 3rd of April 1955, and applied in less than two hours by a decree signed by the head of State, enabled the public authorities to implement, without waiting, exceptional means and procedures to protect our fellow citizens and ensure their security*”³⁰¹.

²⁹⁶ Video, “Le discours de François Hollande devant le Congrès en cinq phrases”, *Libération* [online], November 2015, http://www.liberation.fr/video/2015/11/16/le-discours-de-francois-hollande-devant-le-congres-en-cinq-phrases_1413868 [accessed 1 July 2017]

²⁹⁷ “Ce qu’il faut retenir du discours du président de la République devant le Congrès”, *Gouvernement.fr* [online], 17 November 2015, <http://www.gouvernement.fr/ce-qu-il-faut-retenir-du-discours-du-president-de-la-republique-devant-le-congres-3275> [accessed 20 June 2017]

²⁹⁸ Video, “Le discours de François Hollande devant le Congrès en cinq phrases”, *Libération* [online], November 2015, http://www.liberation.fr/video/2015/11/16/le-discours-de-francois-hollande-devant-le-congres-en-cinq-phrases_1413868 [accessed 1 July 2017]

²⁹⁹ Bernard Cazeneuve, Minister of Interior, prorogation of 9 February 2016, at the Senate.

³⁰⁰ Pascal Popelin, rapporteur of the state of emergency, during the debate on the first prorogation of the state of emergency at the National Assembly, 19 November 2015.

³⁰¹ Manuel Valls, Prime Minister, 19 November 2015, at the National Assembly.

Those excerpts of discourses show that the securitizing actors, e.g. the members of the French government, insisted in their speech act on the necessity to protect the citizens, and aimed at showing that the authorities took the necessary measures to ensure said security. They also argue that there is a threat to the survival of the country and its citizens, therefore justifying the use of exceptional measures. Not only is it addressed to the public, to assure the citizens that the Government is acting, but it also sets the basis for the following debates; if representatives want to question the state of emergency, they need to argue that the measures are not appropriate and take the risk that the public opinion criticizes them for not taking the measures that could ensure their safety.

2) *The parliamentary debate of November 2015*

The state of emergency was voted in by a great majority in both chambers. 551 in the National Assembly voted in favour, while 6 opposed and only one MP abstained. In the Senate, 336 voted in favour and no one opposed. Twelve MPs, however, abstained. In total, the parliamentary debate lasted nine hours, which is quite short considering parliamentary debates can last weeks. The accelerated procedure as well as the lack of amendments indeed shortened the legislative procedure.

The arguments in favour or against the state of emergency remained similar throughout all the debates. Firstly, MPs argued that because the threat remains extremely high, the state of emergency shall be extended.³⁰² Representatives also claimed that the state of emergency, as soon as it was implemented, enabled the authorities to do a lot to secure the country, such as police raids, interpellations, and seizures of weapons.³⁰³ It was argued the prorogation of the state of emergency was necessary, especially in November 2015, because the State did not have enough time to do everything, and needed more time.³⁰⁴ Moreover, the priority was to reassure the French people and to restore the state's authority, which is what the state of emergency was doing.

The respect for the rule of law was really debated among the representatives. Indeed, the ones in favour of the state of emergency argue that this exceptional system does not damage

³⁰² Pascal Popelin, Jean-Christophe Lagarde, 19 November 2015.

³⁰³ Argued for instance by Carole Delga and Bruno Le Roux, 19 November 2015.

³⁰⁴ *Ibid.*

the rule of law, and actually does the opposite since it protects it³⁰⁵. Above all, it is not outside of the rule of law since it is implemented by a law and since all the measures can be contested in front of the administrative jurisdiction.³⁰⁶ The debates on whether the state of emergency is a part or not of the rule of law is interesting, because it shows that some MPs are framing the state of emergency as not an extraordinary measure because it is a normal part of the rule of law, while others argued it was. MPs approved the securitization process by giving exceptional prerogatives to the authorities, yet they argued that they were not exceptional, although they were voted through an accelerated procedure and did enable means that would usually not be authorized.

Following the critiques on the rule of law, representatives argue that the state of emergency pushes the balance of power in favour of the executive, while equal balancing of power is a major principle of liberal democracies.³⁰⁷ Thus, this requires special attention and should not last longer than necessary. Representatives especially criticized the wide margin of appreciation left to the administrative authorities, especially since the 2015 law on the state of emergency allows the application of the measures on the basis of suspicion rather than actual acts.³⁰⁸

Another issue that was greatly debated within Parliament was the impact of the state of emergency on fundamental rights. Bruno Le Roux, President of the socialist representatives in the National Assembly, argued as early as November 2015 that the restriction, even temporary and controlled by the institutions, of liberties was necessary because the situation was dramatic.³⁰⁹ Representatives against the state of emergency criticized this, saying that the exception system was limiting the democratic debate, for instance, by preventing demonstrations.³¹⁰ This was especially argued by EELV representatives, as demonstrations were forbidden during the Climate Conference. MPs, however, insisted that they tried to find a balance between restoring security and respecting fundamental rights, with judicial guarantees to ensure that as the measures can be contested.³¹¹

³⁰⁵ Guillaume Larrivé, 19 November 2015, Hugues Fourage, 16 February 2016.

³⁰⁶ Philippe Bas, 20 November 2015.

³⁰⁷ André Chassaigne, 19 November 2015.

³⁰⁸ Danielle Auroi, Cécile Duflot, 19 November 2015.

³⁰⁹ Bruno Le Roux, 19 November 2015.

³¹⁰ Noël Mammère, 19 November 2015.

³¹¹ Alain Tourret, 19 November 2015.

According to representatives and some of their advisors, many MPs wanted more parliamentary control, which they got.³¹² This is also why representatives voted for a prorogation of three months, to ensure a regular review of the measures if the state of emergency was to be renewed.³¹³ This helped to convince them that the state of emergency could be controlled by them, and that if anything was not right they could end it – or not renew it, since the only possibility for the state of emergency to end earlier than planned by law is through a decree from the Council of Ministers, dissolution of Parliament, or the resignation of the Government.

A remark made by representatives on both sides of the spectrum is that the state of emergency, regardless if considered necessary and useful or not, is only a small part of the anti-terrorist measures. To improve the fight on terrorism, France should also improve the other means – and especially common law as well as the financial and human means³¹⁴, so the country can stop using the state of emergency.³¹⁵

C. After the first three months and before the Nice attacks: towards a desecuritization process

The second phase started in February 2016 and lasted until the Nice attacks of July 2016, when MPs started to doubt the necessity of the state of emergency, but there were too many questions without answers such as what would happen to house arrests.³¹⁶ Desecuritization meaning the removal of an issue from the security agenda³¹⁷, this phase is indeed the attempt, from both the government and MPs, to go back to normal procedures in order to deal with terrorism. The general idea was to progressively move towards the end of the state of emergency, and prorogations were needed while new anti-terrorist laws would be voted – especially the law of June 3, 2016. The new laws would allow a smooth transition from the state of emergency to common law. The May 2016 prorogation was considered as a formality while the law was voted on, and was also to last during the European football Championship

³¹² Author's interview with Florence Béclier, Justice advisor to the president of the National Assembly, 20 March 2017.

³¹³ Philippe Bas, 20 November 2015.

³¹⁴ Noël Mammère, 19 November 2015.

³¹⁵ André Chassaigne, 19 November 2015.

³¹⁶ Author's interview with Florence Béclier, Justice advisor to the president of the National Assembly, 20 March 2017.

³¹⁷ McDonald, 2008, p. 579.

that took place in France, as well as the Tour de France. Both events indeed involved thousands of people attending and big crowds, thus easy targets for terrorist attacks. The authorities thus decided to pursue the state of emergency to make sure they had all the prerogatives to secure such events.

1) The justifications of a transitional state of emergency

The February and May 2016 prorogations were voted on based on the prospect of voting in new laws that would incorporate certain aspects of the exceptional state of emergency system into normal common law, e.g. police raids during the night. The purpose of this was enabling the authorities to end the state of emergency with an exit strategy.

In February 2016, the government justified the state of emergency as the threat still being very high, citing the terrorist attacks that took place in other countries such as Turkey or Burkina Faso.³¹⁸ The Ministry of Interior also stated that thousands of French people were involved in terrorist activities, more or less closely, showing that not only are there dangerous people on the French territory, but also that the police forces have quite some work going on.³¹⁹ Bernard Cazeneuve also argued that the state of emergency “*did not call into question public liberties, but protects them. It is because I have the deep conviction that we cannot not react to such violence towards who we are and what our values are that I present today the draft legislation prorogating the state of emergency, not with a clear conscience – when you are confronted to such a threat, you interrogate your conscience all times to know if you are doing the right thing and if you are taking the right measures – but with the sincerity of a Republican*”³²⁰.

The May 2016 extended the state of emergency for only two months, while the previous prorogations were of three months. The threat remained high, as showed by other terrorist attacks such as the ones in Brussels in March 2016, and the organisation of international events such as the Tour de France and the European Football championship justified the extension of the state of emergency.³²¹ This prorogation, however, decided to not renew the police raids as part of the state of emergency. Indeed, the government argued that 3,427 police raids took place

³¹⁸ Bernard Cazeneuve, Minister of Interior, 9 February 2016, at the Senate.

³¹⁹ Bernard Cazeneuve, Minister of Interior, 16 February 2016, at the National Assembly.

³²⁰ Bernard Cazeneuve, Minister of Interior, 9 February 2016, at the Senate.

³²¹ Bernard Cazeneuve, Minister of Interior, 10 May 2016, at the Senate.

during the first three months until February 26, while there were only 145 between the end of February and May 9.³²² They argue that this is due to the fact that the relevant places and people were already targeted by the measures, which also rely on a surprise effect that had disappeared with time.³²³ This does not mean that police raids were not possible anymore, but they could not be ordered by the administrative authorities any longer, they had to be ordered by a judge. Both rapporteurs also argued that the new law on the fight against terrorism that was to be voted in June 2016 could also provide new permanent means, thus enabling the authorities to not have to rely on the state of emergency anymore.³²⁴ Representatives indeed kept arguing that the voting of new laws was necessary to end the state of emergency, and that it shall be ended after this.³²⁵ The fact that this law extended the state of emergency for only two months, while an anti-terrorist law was voted in, and did not renew the possibility of house raids, shows that the French government tried to desecuritize the issue by returning to fighting terrorism under regular rules, and thus not by using an exception measure anymore.

2) *The parliamentary debates of February and May 2016*

Less MPs participated in the votes and debates than in the first prorogation of the state of emergency of November 2015. As for the vote of February 2016, 246 MPs participated in the vote, 212 voting in favour, 31 against, and 3 abstained. Out of the 346 senators that participated, 316 voted in favour and 28 against, while 3 abstained. Compared to the nine hours of the November debates, it lasted 6h30 this time. This shows that already more representatives were voting against the state of emergency after the first three months, while the results of the state of emergency became more accessible and visible for MPs.

In May, even less MPs participated in the vote. As for the National Assembly, 68 representatives voted, 46 of them in favour and 20 against, with 2 abstentions. In the Senate, 341 senators took part in the vote, 309 in favour while 30 voted against it. There were also two abstentions. This time again, we can see that more and more representatives voted against the prorogation of the state of emergency. However, the majority of them renewed their vote while this prorogation was only a formality to transition back to common law, while waiting for the vote on the future anti-terrorist law. The debates were even shorter than in February, as they

³²² *Ibid.*

³²³ Bernard Cazeneuve, Minister of Interior, 19 May 2016, at the National Assembly.

³²⁴ Michel Mercier and Pascal Popelin, rapporteurs, on May 10 and 19, 2016.

³²⁵ Alain Richard, Yves Goasdoué, François Zocchetto, among others, May 9, 10 May 2016.

lasted for a total of 4h50, showing that the topic was less debatable than previously as this was a prorogation for the sake of a transition period.

Similar arguments as during the November prorogation were debated then. Firstly, MPs and the Government argue that police forces and intelligence services still need this system.³²⁶ Furthermore, some even claim that the state of emergency enables the judiciary to do its job more efficiently.³²⁷ This argument was criticized by several MPs, who claimed that it was wrong to spread and sustain the idea of the state of emergency being the only tool able to protect the citizens³²⁸, as if nothing was done the rest of the time.³²⁹ Based on the assertion that police forces would need the state of emergency, as it does facilitate procedures and their room for manoeuvre, representatives such as David Rachline, *Front National* senator, also argued that they are defending a law-abiding state and not a police state, thus what police forces wants should not be granted if it changes the usual functioning of state institutions.³³⁰ Besides, this argument could justify the state of emergency permanently, as police forces could always do more. However, as stated by representatives both from right-wing and left-wing parties, the state of emergency is an exceptional measure, thus it cannot last forever.³³¹ In a democratic state, the emergency cannot be the common law.³³²

The fact that the state of emergency is, or is not, impacting the rule of law was also debated. Several MPs, again from different parties, argued that this exceptional system does not damage the rule of law, and actually does the opposite since it protects it.³³³ As this prorogation was voted three months after the first implementation of the state of emergency, it also enabled the representatives to have an assessment of the measures and especially their contestations. Although the majority of the measures are not contested³³⁴, the fact that some measures were contested shows that it is indeed possible, thus they argue that France is not exiting the rule of law by implementing the state of emergency.³³⁵ However, several MPs argue that even legal, the state of emergency is a derogation to the rule of law that can be dangerous

³²⁶ François Zocchetto, 9 February 2016.

³²⁷ Véronique Besse, 16 February 2016.

³²⁸ André Chassaigne, 16 February 2016.

³²⁹ Author's interview with Jean-Frédéric Poisson, March 7, 2016.

³³⁰ David Rachline, 9 February 2016.

³³¹ André Chassaigne, 16 February 2016.

³³² Pierre Lellouche, May 9, 2016.

³³³ Guillaume Larrivé, 19 November 2015, Hugues Fourage, 16 February 2016.

³³⁴ The Raimbourg-Poisson report, 2016, p. 102.

³³⁵ Yves Goasdoué, 16 February 2016.

if it lasts too long.³³⁶ This was for instance the opinion of Jean-Frédéric Poisson, member of the *Républicains* group and rapporteur of the parliamentary commission on the state of emergency. Although he was in favour of implementing the exception system in the first place, he argues that the fact that it lasts in time can have repercussions.³³⁷ He argued that changing important democratic principles such as the balance of powers is a form of victory for ISIS, and is even symbolic.³³⁸ The representatives in favour of the state of emergency, however, argued that the threat was terrorism and not the state of emergency.³³⁹

The three months period also enabled MPs to assess the effectiveness of the state of emergency. Representatives in favour, the majority of them, argue that the measures are efficient as they led to the prosecutions of tens of people, but others against claim that its efficiency keeps decreasing³⁴⁰, especially since the use of the measures keeps decreasing as well. Although some claim that the state of emergency helped to foil attacks³⁴¹ and that, although less used, the measures did not become useless³⁴², others argue that there is no proof that it is truly the state of emergency measures that played a key role, or the regular procedures³⁴³. Some MPs, especially the ecologic ones, criticized the abuses that were getting normalised³⁴⁴ - referencing in February 2016 to the house arrests of ecologic activists and the prohibition of demonstrations during the COP21 –and claiming that the measures were disproportionate in their impact on fundamental rights³⁴⁵. And they were happening more and more as police forces use the state of emergency measures in the hope to find something.³⁴⁶

Following the argument presented in November 2015 that the state of emergency is only a small part of the fight on terrorism and that common law should be improved, MPs discussed the end of the state of emergency with the vote of the new antiterrorist law of June 2016. It was indeed considered necessary to create new common law measures to replace the state of emergency, as ending the latter would mean the cancellation of all the measures, e.g. house

³³⁶ André Chassaigne, 13 December 2016.

³³⁷ Author's interview with Jean-Frédéric Poisson, on 7 March 2017.

³³⁸ Jean-Frédéric Poisson, 16 February 2016.

³³⁹ Guillaume Larrivé, 16 February 2016.

³⁴⁰ Jean-Frédéric Poisson, 16 February 2016.

³⁴¹ Yves Goasdoué, May 9, 2016; Alain Richard, 15 December 2016.

³⁴² Olivier Faure, 13 December 2016.

³⁴³ Esther Benbassa, 10 May 2016.

³⁴⁴ Noël Mammère, 16 February 2016.

³⁴⁵ Eliane Assassi, 10 May 2016.

³⁴⁶ Isabelle Attard, 16 February 2016.

arrests and seizure of weapons.³⁴⁷ Once that law would be voted in, and the issue of the cancellation of the measures without other means to remedy this situation was solved, the state of emergency could end smoothly.

D. After the Nice attacks; the resecuritization of terrorism

The Nice attacks of July 14, 2016, during which 85 people died and more than 200 were injured³⁴⁸, started the third and last phase. The debates that took place in Parliament between the 19th and the 21st of July were more emotional, more tense. After that, exiting the state of emergency was not a possibility anymore. The prorogations were also longer after that; before July 2016, all prorogations had lasted three months, and only two for the May 2016 one, however the state of emergency was extended for six months – based on the representatives' proposals, since the Government wrote three months in the draft legislation³⁴⁹ – and the December 2016 vote extended it for seven months, as it was to cover the election period. Since then, MPs as well as the Government seemed to have resigned themselves to continue the state of emergency until the 2017 elections, allowing the next Government to be the one to make the decision on whether to continue it or end it.

1) The return of the threat as being imminent

The justifications of the renewal of the state of emergency following the Nice attacks was quite evident for the government. Prime Minister Manuel Valls stated that “*the Nice tragedy reminds us that the entire territory is targeted. Making this observation is not being fatalistic but lucid. And being lucid is giving ourselves the means to prevail. Lucid on the threat, we are also lucid on the responses to provide. The state of emergency is a part of them. It is not the only answer, but it is adapted to the situation we are going through.*”³⁵⁰ This shows that although the authorities are aware that the state of emergency is not the only response needed, it is still considered necessary as France is still clearly targeted. This prorogation also put police raids back in the law. The government argued that although they were indeed less used, the State also had to show its determination and the police raids could have a dissuasive effect on

³⁴⁷ Stéphane Saint-André, 13 December 2016.

³⁴⁸ http://www.liberation.fr/france/2016/07/15/attaque-de-nice-ce-que-l-on-sait_1466282

³⁴⁹ Report Raimbourg, Poisson, 2016, p. 18.

³⁵⁰ Prime Minister Manuel Valls, in front of the National Assembly on 19 July 2016.

people, as well as eventually leading to new prosecutions for suspected terrorists.³⁵¹ Police raids were also developed on in the law, as it also framed and authorized data mining. It also facilitated a ripple effect for police raids as, if a raid enables police forces to find something on another individual or location, a police raid could be immediately organised in that other place. Manuel Valls argued that “the state of emergency is reactivity and efficiency within the rule of law”³⁵², and that was the goal of that prorogation.

The December prorogation’s timing was also short, as it took place following the resignation of Manuel Valls’ government on December 6. As the law requires the state of emergency to end in the fifteen days following the resignation of the Government, Parliament had two weeks to vote a new law extending the state of emergency. Thus, that law also planned that the state of emergency would not end after the Government’s resignation following the Presidential election, and extended the state of emergency until after the entire election period so the next Parliament could also have the time to vote an eventual future state of emergency. The Government justified the December prorogation by stating that the terrorist attacks of the summer 2016 (Nice, Magnanville, and St Etienne du Rouvray³⁵³) as well as the thwarted attacks – the Ministry of Interior Bruno Le Roux claimed that thirteen attacks were thwarted between July and December – showed that the threat remained extremely high, especially with the electoral period, thus requiring the extension of the state of emergency.

2) *The parliamentary debates of July and December 2016*

In July 2016, MPs participation increased once again in the debates, after a period where less and less of them – especially in the National Assembly – had been coming to vote. Out of the 519 representatives in the National Assembly, 489 voted in favour while 26 opposed, with 4 of them abstaining. In the Senate, out of the 348 senators that voted, 310 were in favour of renewing it while 26 opposed, 12 of them abstaining. Although the previous debates lasted over increasingly smaller periods of time, as those debates lasted a total of almost 14 hours, which is even more than the nine hours of November 2015. They lasted more time because more representatives were against the prorogation, but also because MPs wanted to strengthen the state of emergency by adding more measures. It is also the only prorogation for which the draft

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ Attacks of 14 July, 13 June, and 26 July 2016.

legislation went back and forth between the two chambers, as the text was debated twice in each. Once again, to facilitate the vote, the Government brought together a commission *mixte paritaire*, which is a joint committee composed of seven representatives of each Chamber. Usually it can only be called after two debates in each assembly, but in the case of the accelerated procedure it can take place after one debate in each. The goal is to reach a consensus faster by debating the draft legislation as a small group.³⁵⁴

As for the last prorogation in December 2016, 288 MPs voted in favour while 31 voted against it, and 5 of them abstained. In the Senate, 306 senators voted to renew the state of emergency, while 28 voted against it, and 7 abstained. These figures show that although the number of representatives in favour of the state of emergency grew again, the number of MPs opposed to it stabilized. At the beginning of the state of emergency, only 6 MPs voted against it, while there would be 59 a year later. Although the contestation grew, the consensus on pursuing the state of emergency remained evident. The duration of the debate was also shorter, as it lasted 5h30, which is the second shortest debate after the May one. Indeed, the idea of continuing the state of emergency until after the elections was already approved by most representatives, thus they knew they did not have much to add to the law, but needed to vote on it.

The debate following the Nice attacks was more hectic than the previous ones, many representatives, especially from right-wing parties, claiming that more measures needed to be taken. During this debate, MPs argued that more budget was needed, that the state of emergency should be extended for a year – and not three months like in the draft legislation or six like it was voted –, that borders should be closed, that all police forces should be armed even when they are not on duty, that all individuals on the file S³⁵⁵ be detained, make the house arrests last 24/7, implement the forfeiture of nationality for people with a dual nationality, and implement secure detention³⁵⁶. They argue that the rule of law needs to be adapted, instead of adapting to the rule of law. On the other hand, some MPs argue that the state of emergency should end and

³⁵⁴ “La commission mixte paritaire“, <https://www.senat.fr/role/fiche/cmp.html> [Accessed July 12, 2017].

³⁵⁵ The file S, S for « Sûreté de l’État » (State security), is a list of people who could be dangerous for the public security, according to the intelligence services. European files were also added as part of the European cooperation to fight terrorism. Samuel Laurent, “Terrorisme: qu’est-ce que la fiche S?”, *Le Monde* [online], 31 August 2015. http://lemonde.fr/les-decodeurs/article/2015/08/31/terrorisme-peut-on-sanctionner-les-personnes-faisant-l-objet-d-une-fiche-s_4741574_4355770.html [Accessed 28 June 2017].

³⁵⁶ All of these measures were suggested during the parliamentary debates on the state of emergency between the 19th and the 21st of July 2016, in both chambers.

France should implement policies focusing on the long-term, to prevent the radicalisation of people, such as cultural and educational policies.³⁵⁷

The threat made the July debates more tense, as if it was unreasonable to remind those gathered about the legal safeguards, and as if the threat was significantly imminent.³⁵⁸ Representatives themselves acknowledged that the Nice attacks changed the situation. Especially *Républicains* MPs argued that the situation could no longer be dealt with in a solely compassionate manner³⁵⁹, that “we [France] need to engage in the fight in a more ruthless way and without mercy”³⁶⁰. Some representatives even claimed that France was at risk of a civil war if the authorities were not taking the necessary measures.³⁶¹ Several of them, as well as members of the government, also stated several times during the debates that France was at war. The July prorogation gave a new twist to the debates which became more hectic, they were louder, with interpellations, some representatives accusing others of being too complacent towards terrorists³⁶². These debates also marked the return of the argument of security being the main liberty, thus justifying the limitation of other liberties. It was argued several times in the next prorogations as well, MPs arguing that sometimes, circumstances require the limitation of liberties, as long as security cannot be guaranteed³⁶³, and that the French prefer exception to barbarism³⁶⁴.

The fact that the July prorogation was voted to continue for eight months after the state of emergency was first implemented, and the December prorogation for thirteen months after the vote of the June anti-terrorist law, served to revive the debate on the permanence of the state of emergency. This is especially true for the December debates, as the July one having taken place right after the Nice attacks set other priorities for representatives, mainly the people’s security. Several representatives, however, made inquiries about the fact that President Hollande had announced the end of the state of emergency on July 14, 2016, thus meaning that the government did not think it was that necessary any longer.³⁶⁵ Besides that, and the vote of new anti-terrorist laws, MPs argued that the threat was still so grave that France could not do

³⁵⁷ Jean-Frédéric Poisson, 19 July 2016.

³⁵⁸ Master and Saint-Bonnet, 2016, p. 64.

³⁵⁹ Christian Jacob, 19 July 2016.

³⁶⁰ *Ibid.*

³⁶¹ Eric Ciotti, 19 July 2016.

³⁶² 19 July 2016.

³⁶³ Christian Jacob, 19 July 2016.

³⁶⁴ Marc Le Fur, 19 July 2016.

³⁶⁵ Jean-Christophe Lagarde, 19 July 2016

without the state of emergency³⁶⁶, even after the voting in of the new laws. As the December 2016 was the fifth prorogation of the state of emergency, representatives question how much of an ‘emergency’ the situation actually is, and the necessity to keep renewing the state of emergency, since it can be declared because of the imminence of a threat.³⁶⁷ MPs against the state of emergency argue that, if the threat is still extremely high after all this time, it means that either the exception system is not very useful or that it is not the appropriate means to fight terrorism³⁶⁸. As of December 2016, the Council of State and the Constitutional Court also stated that the state of emergency was still justified and in line with the rule of law, which was used as an argument by representatives in favour of the state of emergency.³⁶⁹

A new argument was presented during the July debates, which is the importance of the state of emergency for the public opinion. This was argued by several representatives from different political parties such as Sébastien Pietrasanta (*Parti Socialiste*), Jacques Mézard (*Parti Radical de Gauche*), François Rochebloine (*Union des Démocrates et Indépendants*), or Philippe Bas (*Les Républicains*). They claim that the state of emergency does have a symbolic value that the French people need at the moment, as the country just went through another attack, that it helps to reassure the population, and that it would therefore be impossible to end the state of emergency then. They argue that symbols are important in democracy, especially in times of war³⁷⁰, and that Parliament cannot show that they are letting their guard down³⁷¹.

4.3 The importance of the public opinion

Scholars underlined the risk that legislative policies are voted based on emotion rather than reason.³⁷² MPs themselves warned against that risk; they claimed that votes should not be voted in the emotion because the emergency is not a good advisor³⁷³, that decisions based on the emotion can make them take ill-considered decisions³⁷⁴, that it can lead to a democracy of

³⁶⁶ Patrick Mennucci, 19 July 2016.

³⁶⁷ Cécile Duflot, 13 December 2016.

³⁶⁸ This was especially argued as early as February 2016, e.g. Eliane Essassi, 9 February 2016; Jean-Luc Laurent, 16 February 2016; André Chassaing, 19 July 2016.

³⁶⁹ Philippe Goujon, 13 December 2016.

³⁷⁰ François Rochebloine, 19 July 2016.

³⁷¹ Philippe Bas, 15 December 2016.

³⁷² Boutin and Paulussen, 2016, p. 3.

³⁷³ Pouria Amirshahi, 19 November 2015.

³⁷⁴ Danielle Auroi, 19 July 2016.

opinion while legislations should be made based on reason³⁷⁵. The emotion indeed led to draft bills such as the forfeiture of nationality for people with a dual nationality condemned for terrorism³⁷⁶ which prevented the draft constitutional law to be voted because MPs knew it was going too far³⁷⁷. This became especially evident after the Nice attacks, when representatives from the Nice area used their own experience to call for stronger measures.³⁷⁸

As Ilie states it, “since parliamentary discourse is audience-oriented (...) it involves not only fellow parliamentarians, but also members of the electorate, the general public, and the audience”³⁷⁹. Indeed, parliamentary debates aim at creating a new legislation, but also at pronouncing discourses directed at external actors.³⁸⁰ The representatives are very much aware of the fact that the citizens can have access to what is said during parliamentary discourses, and they know decisions such as prorogating the state of emergency will receive public attention. Therefore, public opinion does play a role during the debates. And indeed, although not unanimous, the state of emergency is largely approved of among French citizens.³⁸¹

Although MPs oppose or support the state of emergency, one argument they all have in common is that the state of emergency is a symbolic measure that is also serving to reassure the public. The public opinion, according to polls³⁸², seems to be mainly in favour of the state of emergency, calling for even stronger measures, even if it can damage their fundamental rights. Indeed, the opinion expects a firm and efficient reaction for the public authorities, as it has a reassuring effect³⁸³. The population is also in favour of the state of emergency because the public discourses keep repeating that it is the only efficient way to fight against terrorism and that security forces need it; therefore this becomes the general belief. They also consider that what is stated officially by officials is often only a small part of what they actually know³⁸⁴, so if they say the situation is serious then it must be. Scholars argue that intelligence services can be more effective than current law at dealing with terror related instances, but the work of

³⁷⁵ Noël Mamère, 16 February 2016.

³⁷⁶ Master and Saint-Bonnet, 2016, p. 63.

³⁷⁷ Author’s interview with Florence Béclier, Justice advisor to the president of the National Assembly, March 20, 2017.

³⁷⁸ Such as Eric Ciotti (deputy) and Dominique Estrosi Sassone (senator) who said they were speaking during the debates not only as representatives, but as Nice residents.

³⁷⁹ Ilie, 2015, p. 13.

³⁸⁰ Bonnaud and Martinais, 2013, p. 244.

³⁸¹ Saint-Bonnet, 2017, p. 7.

³⁸² IFOP, *Les français et l'état d'urgence*, June 2016 [online]

http://www.ifop.com/?option=com_publication&type=poll&id=3434 [accessed 10 March 2017]

³⁸³ Master and Saint-Bonnet, 2016, p. 61.

³⁸⁴ Van Dijk, 2002, p. 212.

intelligence services cannot be used to reassure the public opinion since, by definition, it is secret and classified.³⁸⁵ Thus, the representatives know that they need to vote new laws and measures that can be used to effectively reassure the population.

During the parliamentary debates, representatives clearly stated the importance of reassuring the public by means of the state of emergency as early as February 2016. Indeed, they claim that if a new attack was to happen, the representatives would even be considered as responsible for it.³⁸⁶ Representatives argued that they need to show the citizens that the French State remains firm and that they are not surrendering to fear³⁸⁷, and that the state of emergency indeed has a symbolic value that the French need at the moment³⁸⁸. Although President Hollande had announced the end of the state of emergency that same day, for which he was later greatly criticized, The Nice attacks of July 14, 2016 showed MPs that indeed, the French people thought it was irresponsible to end it. The discourse saying that representatives would not know how to explain their choice to end of the state of emergency to the citizens indeed started after that same event, as it was not an argument that was heard before this point.³⁸⁹ This, however, does not mean that it is just a vote for the sake of public opinion. Indeed, they are aware of the need for the population – and they are also a part of the population – to be reassured, and the parliamentary control enables them to think that they can control what is happening and prevent abuses.³⁹⁰ Indeed, they argue that, in times of war, symbolic measures are just as important as actual measures.³⁹¹ As the debates on the state of emergency were taking place right before an important electoral period – with the presidential and legislative elections – it was especially important for the representatives and government to please the audience that is the general public.

If most representatives agree that the state of emergency is indeed a form of political communication aiming at reassuring the population, they disagree on whether it is actually a good policy for doing this or not. Indeed, the representatives against the prorogations of the state of emergency argue that it is a form of brainwashing to make the population believe that

³⁸⁵ Master and Saint-Bonnet, 2016, p. 62.

³⁸⁶ Jacques Mézard, 9 February 2016.

³⁸⁷ Gaëtan Gorce, 9 February 2016.

³⁸⁸ Sébastien Pietrasanta, 19 July 2016.

³⁸⁹ Author's interview with Florence Béclier, Justice advisor to the president of the National Assembly, 20 March 2017.

³⁹⁰ *Ibid.*

³⁹¹ Sébastien Pietrasanta, Vincent Capo-Canellas, François Rochebloine, 19 July 2016.

its security depends on the state of emergency³⁹², and that it is the only thing that will protect France against terrorism³⁹³. They also argue that the government should not hide behind the idea that the French people would hold government accountable if there was to be another attack when we leave the state of emergency, as the population would hold government accountable anyway.³⁹⁴ Some MPs as well as institutions criticize the fact that, although the will to reassure public opinion is understandable, they should have spent more time explaining what was happening to the population.³⁹⁵ This debate of whether to spend time to explain the situation to the public opinion was summed up by the communication advisor to François Hollande: “*the question is to know if the French people expect from the public authority, and especially the presidential power, to be a pedagogue? Or does it consider it is more important for it to make decisions and act?*”³⁹⁶ However, it can be argued that if ending the state of emergency was just a matter of taking the time to adequately inform the public, then this is of course what should have been done.³⁹⁷

4.4 Conclusion

To conclude; the role of Parliament on the state of emergency is crucial, because the state of emergency needs to be voted in by law. Although the voting in of a law is never a surprise, as it is prepared prior, it is interesting to look at the parliamentary debates to understand why the state of emergency has been prorogated for twenty months.

As part of the speech act, the government justified the implementation of the state of emergency because the threat was imminent and seemed to be everywhere. Thus, only the use of exceptional measures could enable the authorities to properly tackle the threat. As to what is threatened, they stated that France as a whole was threatened: the territory, the citizens, the institutions, and its values. The threat, which is terrorism, is therefore a threat to survival, that deserves the implementation of emergency means. Although the state of emergency was always

³⁹² Esther Benbassa, 9 February 2016.

³⁹³ André Chassaigne, 16 February 2016.

³⁹⁴ Pierre-Yves Collombat, 9 February 2016.

³⁹⁵ Interviews with Jean-Frédéric Poisson, representative, 7 March 2017 ; Christine Lazerges, president of the CNCDH, 25 April 2017.

³⁹⁶ Author’s interview with Gaspard Gantzer, communication advisor to François Hollande, 10 April 2017.

³⁹⁷ Author’s interview with Christine Lazerges, president of the National Commission on Human Rights, 25 April 2016.

voted by a great majority of the MPs, indeed accepting the speech act and agreeing that the situation was very dangerous, there were some phases in the debates. At the beginning of the first three months, representatives agreed that the state of emergency was very much needed. After those three months, MPs still agreed that there was a risk of other attacks and that the state of emergency had been useful, but it should be replaced by common laws. The general idea, agreed on by the government, was to improve the legislation and end the state of emergency. But the Nice attacks of July 2016 started a new hectic phase in the debate, and it appeared impossible for MPs to vote the end of the state of emergency while the public was traumatized again by an attack that even the state of emergency could not prevent.

The arguments in favour or against the state of emergency remained the same throughout the debates, although they gained more or less intensity. Some argue that the state of emergency is very much needed, that it is efficient to protect the country and its citizens against terrorism. Others, however, claim that the use of the measures keeps decreasing, that it is in fact the normal procedures which are foiling attacks, and that the authorities should not spread the idea that intelligence and security services cannot do much without the state of emergency because it is not true. Another debated argument was on the rule of law: some argue that the emergency system is part of the rule of law because it is voted by Parliament, because it is validated by the Council of State and the Constitutional Court, and because measures can be contested in front of the administrative and judiciary authority. Other MPs answer that it is still a derogation of the rule of law and it affects the balance of powers, which can be dangerous in the long run. On the impact on fundamental rights, several representatives claim that it is disproportionate, but the majority argue that in times of crisis, the limitation of liberties is necessary, as long as security cannot be guaranteed. The majority of representatives, however, agree that the state of emergency is only a small part of the anti-terrorist mechanism and legislation, and said means should be improved, rather than keeping the state of emergency going on forever. Moreover, many MPs wanted more parliamentary control as a guarantee that the administrative authorities do not have a *carte blanche* to do everything they want. Because they got this extended parliamentary control, several representatives decided to keep pursuing the state of emergency, as they felt they could end it if necessary.

Above all, the main reason for which Parliament is renewing the state of emergency is to reassure public opinion. Indeed, the French population was quite traumatised by the Paris attacks of November 2015 and the Nice attacks of July 2016, and the state of emergency is also telling them that the authorities are doing their best to protect them. Ending the state of

emergency, however, could mean that they are not doing as much as they could, especially since several, smaller, attacks had been reported every now and then. Although understandable, several MPs and institutions argue that a measure such as the state of emergency cannot be pursued for the sole reason that it looks good for the sake of public opinion.

Conclusion: exiting the state of emergency

The French authorities declared the state of emergency in the night following the Paris attacks of November 2015. It has been extended ever since. The state of emergency is one of the four exception systems that France has, and it extends the prerogatives of the administrative authorities in the case of an imminent threat. Indeed, it enables the authorities to apply measures such as police raids, house arrests (the two most used measures), to prohibit demonstrations, refuse entry or the right to stay in the French territory, dissolve associations, or temporarily close public places. All these measures can be taken by the administrative authorities, either the Minister of Interior or Prefects, without judiciary approval or investigation. Declared by decree in Ministerial Council, it needs to be voted by a law by Parliament after twelve days, otherwise it ends. In the night following the Paris attacks of November 2015, the situation appeared to be dramatic and out of control, as the authorities did not know if more attacks were imminent and if there were more people involved. The French government decided to implement the state of emergency to gain back control of the situation, and it has been prolonged by Parliament five times since.

There are several critiques towards the state of emergency, coming from MPs, institutions, NGOs, and even members of the Government, such as within the Ministry of Justice. The first critique is on the duration of the state of emergency. Although the 1955 law does not put limitations on the duration of the state of emergency nor of each prorogation, the fact that an exceptional system has been renewed for twenty months – making it the longest state of emergency France ever had – is questionable in a liberal democracy that has been developing and toughening its anti-terrorist legislation. The second main critique is on the impact on fundamental rights, as the French government and several MPs argued in the speech act that security was the main liberty, and for which other liberties would be limited. However, several other actors argue that the impact on fundamental rights is disproportionate, especially since the measures can be applied based on the suspicion that people could be dangerous for the public order rather than based on actual proof or on acts committed.

The third critique is due to a complication regarding the will to end the state of emergency: indeed, house arrests have been used several hundreds of times by the authorities, on the basis of intelligence services' notes which argued that these people are dangers to public order. Among them, some individuals have been put under house arrest since the beginning of the state of emergency. Although house arrests are not fully depriving someone's liberty, since

the individuals need to be at a certain place defined by the Ministry of Interior up to twelve hours a day, the fact that these individuals were not prosecuted raises questions. Indeed, if they were that dangerous, then they should be prosecuted. Under the rule of law, if there is no proof, then an individual should be released. However, the state of emergency does enable the administrative authorities to keep those people under house arrest, as long as they provide new back-up to demonstrate their dangerousness. Following the same logic regarding what the authorities can do, the fourth critique is based on the use of the state of emergency measures as a tool to maintain the public order, e.g., those put under house arrest during the COP 21, and the fact that several demonstrations were also forbidden. Indeed, the state of emergency measures can be applied to situations which are not related to the imminent threat that originally justified the state of emergency. The authorities also justified these applications by the fact that police forces need to focus on the fight against terrorism, thus they should not be immobilised by other actors. Although legal, this use of emergency measures is also highly questionable. Lastly, MPs, institutions, NGOs and scholars questioned the actual effectiveness of the state of emergency in the fight against terrorism. Indeed, the use of these measures keeps decreasing, attacks seem to be thwarted with the use of normal procedures, and anti-terrorist specialists do not mention the state of emergency as having played any particular role in the fight against terrorism. Although the measures seemed to have played a role in the destabilisation of terrorist networks with the use of house arrests and police raids, this element of surprise only lasted for the first three months. All the while, twenty months after its implementation, the state of emergency is still being renewed by the French parliament.

This research indeed was aimed at understanding why the state of emergency kept being renewed by Parliament, thus accepting the speech act performed by the securitizing actor that is the French government. The role of Parliament is crucial as it is the main audience providing formal support to the securitizing actors, needed for the implementation of exceptional measures. It is MPs who approved the state of emergency five times, although reports show that its efficiency is decreasing. The state of emergency was presented, during the parliamentary debates, as a necessary tool to tackle the imminent threat that is terrorism, terrorism that is threatening the French citizens, institutions, and values. Thus, the state of emergency was presented as the only means to enable the authorities to protect the country. It was indeed considered as necessary when it first started in November 2015 and in the three months following; MPs only started to question its efficiency and necessity afterwards. The plan was to vote new anti-terrorist laws that could then lead to the end of the state of emergency. The

Nice attacks of July 2016, however, ended that phase and made it appear impossible for the representatives and the government to end the state of emergency. Indeed, the population was affected by yet another attack, and they needed to feel that the authorities were doing as much as they could to protect them. Ending the state of emergency therefore, while the measure had been presented as playing a key role in the fight against terrorism, would have sent the opposite message to the public.

Though MPs disagreed on the necessity of the state of emergency, on its efficiency, on its impact on the rule of law and fundamental rights, and on the measures the French government should implement instead, they did agree that the state of emergency was certainly a communication tool to reassure the public. Indeed, they argued that symbolic measures, in times of war, are just as important as actual measures aiming at tackling the threat. The parliamentary debates indeed showed that reassuring the public was one of the main reasons to renew the state of emergency, but MPs also voted to renew it as they were trying to find balance between protecting the country and its citizens, and modifying the usual procedures. Besides this, the state of emergency indeed facilitated and accelerated procedures, making the authorities' work more efficient, thus representatives consider the state of emergency to be an effective mean to fight terrorism. This is despite how reports did show that its effectiveness decreased over time. Above all, the fact that parliamentary control over the state of emergency increased served to convince MPs that they could stop it if it was not properly used.

Using an exception measure for such a long time was criticized by several actors such as MPs, scholars, institutions and NGOs. They argue that it is impacting fundamental rights as France warned it would derogate some of its obligations towards the European Convention on Human Rights, and that it is a derogation to the rule of law as it impacts the balance of powers by giving more prerogatives to the administrative authorities, which cannot be used as means to reassure the public opinion. They claim that more pedagogy should have been utilised by explaining the situation to the French people, instead of fearing for and prioritising the election results. Indeed, as is recognized by many politicians, ending the state of emergency is a political risk. Ending the state of emergency can be decided by the Government, but they have to desire to do so. President Hollande's political backlash resulting from his speech on the day of the Nice attacks, in which he said France would end the state of emergency, became a lesson to politicians. If they decide to end it, and an attack happens, they will be blamed. Officially, however, the authorities claim that the state of emergency is still needed because the threat is still extremely high.

Jean-Jacques Urvoas, then MP before he became the Minister of Justice, claimed in January 2016 that: *“the end of the state of emergency will not be synonymous with a reduced protection of the French. The essential of the benefit that we would expect from the derogatory measures are now behind us. Everywhere we go, we heard that the main targets and goals had been dealt with. Indeed, the surprise effect has greatly faded, and the persons concerned fully prepared themselves to face eventual administrative measures.”*³⁹⁸ If representatives and members of the government are aware of the lack of efficiency and interest of the state of emergency, then they should have the political courage to end it rather than pursuing it for communication purposes. Indeed, as Zwitter argues in its work, “a state of exception needs to have a beginning and an end (...) The state must restore its normal structures, otherwise the exception becomes the rule.”³⁹⁹

This research aimed to show that in order to understand a successful securitization, it is important to look at the context and at the audiences. Indeed, although this paper focused on Parliament as the main audience, because of the formal mandate they provide, the public was also an audience which played a role in the acceptance of the speech act. Even more, it seems that it is the public’s acceptance which mainly lead to the acceptance by Parliament. Understanding this aspect would not have been possible without paying attention to context, as the public’s acceptance is due to the several attacks that France has gone through. It was also interesting to note the securitizing role played by Parliament, which played a role in the securitization process more than simply agreeing to the speech act provided by the Government.

Although on the part of government and parliament, the desire to reassure public opinion is understandable, as is the fear of what would happen once the measures stop, this could justify the state of emergency permanently, especially when facing a long-lasting threat such as terrorism. In a liberal democracy that has been developing its anti-terrorist legislation for decades, common law should be able to protect the country and its citizens, rather than having to derogating the rule of law and fundamental rights, which can in the long term carry serious repercussions for the public, democracy, and the state.

³⁹⁸ Jean-Jacques Urvoas, 13 January 2015, during debates in the Law Commission. Video available here: <http://www.lcp.fr/la-politique-en-video/controle-de-letat-durgence-arreter-letat-durgence-ne-sera-pas-synonyme-dune> [Accessed 2 July 2017].

³⁹⁹ Zwitter, 2012, p. 10.

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Béclier Florence, justice advisor to the President of the National Assembly, interviewed on 20 March 2017.

Cordery Philip, deputy PS, interviewed on 20 May 2017.

Dominati Philippe, senator LR, interviewed on 7 April 2017.

Gantzer Gaspard, communication advisor to President Hollande, interviewed on 10 April 2017.

Lavielle Elise, deputy-deputy director at the Ministry of Interior, interviewed on 23 March 2017.

Lazerges Christine, president of the National Consultative Commission on Human Rights, interviewed on 25 April 2017.

Poisson Jean-Frédéric, deputy UDI, interviewed on 7 March 2017.

Slama Serge, scholar, interviewed on 22 March 2017.