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**“Enfants de Daesh” vs. “Enfants de la République”: The Discursive Construction of Conditional Belonging and the Shaping of International Legal Reasoning in H.F. and Others v. France (2022)**

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“Enfants de Daesh” vs. “Enfants de la République”:  
The Discursive Construction of Conditional Belonging and the Shaping of International Legal  
Reasoning in *H.F. and Others v. France* (2022)

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## I. Introduction

Since the fall of the Caliphate in 2019, over 60,000 women and children connected to foreign terrorist fighters have been held in detention camps in Northeast Syria (Rights & Security, 2021), under the control of the Syrian Democratic Forces (SDF) and Autonomous Administration of Northeast Syria (AANES). Half of these detainees are children, many under five years old, and remain confined in conditions described by UN agencies and human rights organization as a humanitarian and legal black hole (Rights and Security, 2021). Reports of preventable deaths from malnutrition, hypothermia, war injuries, and disease underscore the gravity of the situation.

France, which counts one of the highest numbers of European foreign terrorist fighters, is directly implicated in this crisis. Over one hundred French children remain in these camps today. A coordinated plan for a mass repatriation briefly emerged in early 2019, only to be abruptly halted by a media leak. Since then, the country has adopted a restrictive ‘case-by-case’ doctrine that has resulted in piecemeal returns and significant legal uncertainty. This shift cannot be explained solely by security concerns; it is entangled within a broader public debate that frames these minors not simply as French children in need of protection, but as ‘enfants de Daesh’ (children of ISIS), whose inherited association with terrorism renders them both objects of fear and underserving of protection. Their ambiguous status, as ‘dangerous innocents’, has come to signify not only vulnerability, but also danger – a contradiction that justifies exclusion while masking state responsibility.

It is in this context that, in February 2019, the Secretary of State for Child Protection Adrien Taquet stated at the French Senate that he wanted to make the “Enfants de Daesh”, “Enfants de la République” (Public Sénat, 2019). His words revealed children as figures whose belonging must be restored. Yet the limited pace and scope of repatriations raise doubts about whether such reintegration was ever to be realized in the first place. This ultimately left the burden on families to seek relief before international law, culminating in *H.F. and Others v. France* (2022), a case in which the European Court of Human Rights examined France’s refusal to repatriate two mothers and their children from Northeast Syria, and found a procedural violation without recognizing any substantive duty to repatriate.

This thesis therefore asks: *“How has the discursive construction of the children of French FTFs as “Enfants de Daesh” rather than “Enfants de la République” been constructed and enabled in public discourse and subsequently shaped in international legal reasoning?”*

Existing research has examined the securitization of foreign terrorist fighters, the legal ambiguities surrounding extraterritorial detention, and the human rights responsibilities of European states. Yet, few studies have interrogated how symbolic constructions of the children of foreign terrorist fighters interact with international legal reasoning and underpin political inaction.

This thesis is organized in 6 chapters: Chapter I reviews existing scholarship on securitization, nationality, and the governance of children associated with terrorism. Chapter II then outlines the legal and case context, detailing the situation of French children in Northeast Syria and the applicable domestic and international legal frameworks. Chapter III presents the methodological framework, justifying the case study design and the use Norman Fairclough's Critical Discourse Analysis for examining both public discourse and legal reasoning. Chapter IV applies this framework to French political and media discourse, tracing how the figure of the 'dangerous innocent' emerges as a discursive justification for case-by-case repatriation. Chapter V extends this analysis to international jurisprudence in the European Court of Human Right's judgment of *H.F. and Others v. France* (2022), showing if similar discursive logics are reproduced, adapted or resisted within the reasoning. Chapter VI discusses the implications of these findings on debates of national identity, assimilation and the conditional boundaries of the 'enfants de la République', before outlining directions for future research.

## **I- Literature Review**

The repatriation of the children of foreign terrorist fighters has become a central and contested issue in contemporary counterterrorism literature. In France, as in other Western states, debates revolve around how these children are categorized, as well as the security and political implications of these classifications. Scholarship increasingly portrays them not only as passive victims of conflict, but as potential security threats, blurring the boundaries between protection and risk. This literature review examines three interconnected strands of research: the securitization of counterterrorism policy and exceptional legal measures, the politics of innocence of children associated with armed groups, and the use of citizenship deprivation as a tool of counterterrorism.

## A. Securitization and De-Securitization Frameworks

### 1. Securitization Theory

Securitization theory provides a crucial entry point and framework for understanding how contemporary societies construct and respond to perceived threats. According to an analysis on the Copenhagen School's definition, securitization is the "process through which [...] politicized issues are elevated to security issues that need to be dealt with urgency, and that legitimate the bypassing of public debate and democratic procedures" (van Munster, 2012). Once we understand the linguistic power at play, we can understand how threats are created, and shape political agendas and our notions of security. In French political discourse, the far-right Front National (FN) party has applied securitizing rhetoric to portray migration, and particularly Muslim populations, as a security threat (Bektas, 2019). More research finds that this is based more on perception than reality (Byman, 2015). This framework has been applied to the case of the repatriation of foreign terrorist fighters' families in Europe and France, with Daouda (2025) demonstrating how securitization underpins state reluctance to repatriate citizens from camps and contributes to heightened long-term security risks through marginalization, and Bieber (2021) arguing that the subject has been over securitized and that data shows a low-threat probability.

### 2. Critiques and alternatives: De-Securitization

While influential, securitization theory has been criticized for privileging exceptionalization, underexploring the dynamics of 'normal' politics (Otukoya, 2024). Howell and Richter-Montpetit (2019) deepen this critique by demonstrating that the framework is rooted in white logics and idealizes Western liberal politics as rational and civilized while marking non-Western ones as threats. In response to these limitations, Otukoya (2024), and the Copenhagen School more broadly, have re-emphasized de-securitization as a necessary corrective. This alternative lens highlights how specific actors, state and non-state, work to re-embed contested issues into ordinary political and legal processes, rather than allowing them to be governed through the register of existential threat.

## B. Counterterrorism and Children in International Law

### 1. International Legal Frameworks on Children and Armed Conflict

The dominant international legal frameworks governing the treatment of children in armed conflict – including the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict – affirm the principle that children are primarily victims, regardless of their participation in hostilities. However, recent scholarship has pointed to a discursive rupture in this framework, particularly in the post-9/11, War on Terror, security environment: “the duty to protect children [...] applies to all, [...] but seems too often get lost in [this] narrative” (van Ark, Prabhat and Gordon, 2024).

### 2. Inconsistent State Responses and High-Profile Cases

Several legal scholars and human rights experts emphasize that children recruited or born into terrorist groups fall within the legal framework of child soldiers, yet the absence of international consensus has produced inconsistent state responses. Nyamutata (2020) encourages this categorization so that they are protected under international law and treated as victims first. Western states have not been consistent in their repatriation and assimilation approaches: for example, the case of Shamima Begum in the UK – a British woman who left the country as a minor to join ISIS in Syria – illustrates the tension between national security concerns and human rights protections, as her citizenship was revoked despite arguments that she had been trafficked as a minor (Masters and Regilme, 2020). Once again, national security concerns continue to override child-protection obligations, with significant implications for statelessness and due process.

## C. Counterterrorism in France: Securitizing Childhood and Radicalization

### 1. Preventive Counterterrorism and the Post-2015 Shift

Consequently, studies on the French situation have mostly focused on how the socially constructed nature of the security threat was deliberately leveraged to justify a policy shift toward security exceptionalism. After the 2015 Charli Hebdo attacks, France entered a prolonged state of emergency that granted authorities exceptional powers, such as expanded police searches, house

arrests without judicial authorization, and the ability to shut down associations or places of worship deemed security risks. Many analyses describe how this emergency framework paved the way for a preventive logic of radicalization. Bonsoms (2025) and Solhjell et al. (2022) described it as a nascent regime of preventive counterterrorism, in which the emphasis has moved from punishing acts of terrorism to anticipating and disrupting ‘potential’ radicalization (Bonsoms, 2025; Solhjell et al., 2022). This reorientation has broadened the range of actors involved in security governance. Social workers, psychologists, educators, and even NGOs now play roles traditionally associated with law enforcement, blurring the boundaries between welfare and policing (Bonsoms, 2025).

Serrano-Sanz (2022) notes that this expansion was implemented by leveraging urgency to entrench long-term surveillance and prevention mechanisms. Building on this, Guégin (2025) highlighted how the 2017 SILT Law (*Loi Renforçant la Sécurité Intérieure et la Lutte Contre le Terrorisme* – Law Strengthening International Security and the Fight Against Terrorism) which incorporated several emergency measures into ordinary law, further normalized exceptional powers. She argues that they reproduce colonial logics and reinforce a racialized construction of the terrorist ‘other’. Within this environment, the duty to protect all children becomes increasingly obscured (van Ark, Prabhat and Gordon, 2024).

## 2. Securitizing Muslim Youth and the Problem of Overreach

This securitized framework disproportionately targets Muslim youth, a concern expressed early on by Didier Bigo (2002), who warned that the threat of terrorism could become a ‘catch-all category’ (Hamilton and Berlusconi, 2018) used to justify preemptive criminalization. More recent empirical work supports this. For instance, Bonelli (2018), drawing on judicial files of 133 minors, shows how the institutional label of radicalization conceals heterogeneous social dynamics such as school failure or family conflict, which are largely unrelated to jihadist ideology and arbitrary. His findings underscore how ordinary adolescent behaviors are read through a security lens, further securitizing childhood in France. In this type of discourse, children are assumed to already be radicalized based on the possibility of future engagement in terrorism (van Ark, Prabhat and Gordon, 2024). Despite growing attention to returnee populations, much of the literature remains quite limited when it comes to minors and foreign terrorist fighters, leaving the figure of the child underexamined and discursively unstable.

## D. The Politics of Innocence: Victim, Perpetrator or Else?

### 1. Innocence Politicized

Bergoffen (2006) points out that the figure of the innocent victim is not a neutral moral category but can be reshaped into what she calls a “fantasmatic politics of innocence”, selectively granted or withheld according to political needs. Invoking innocence does not always produce such effects, and in the post-9/11 environment, claims to innocence become entangled within broader narratives of threat. Within this environment, innocence itself becomes stratified: Carpenter (2005) argued that these politics strategically elevate certain groups, such as women and children, as the most ‘innocent’, becoming the most protectable civilians and reinforcing hierarchies of vulnerability. Conversely, other critics reject the premise of selective innocence altogether, arguing that even children cannot be treated as inherently ‘pure’ victims and that civilian protection must rest on universal rights rather than hierarchies of deservingness (Child Soldiers: A Handbook for Security Sector Actors, 2012; Wainryb, 2011).

### 2. Inheriting the ‘Perpetrator’ Label

The case of children returning from ISIS-controlled territories illustrates how these contested politics of innocence play out. MacDonald & Smith (2019) used Critical Discourse Analysis (CDA) to show how fear was shaping the discourse around the return of foreign terrorist fighters and their family to Australia, focusing on the “risk these citizens might pose, including the children who had been taken to the conflict by their parents” (MacDonald & Smith 2019). This has overshadowed discussions on children’s rights, allowing the “weakest [members] to be excluded and persecuted” (MacDonald and Smith, 2019). Within these discourses, child returnees are ‘othered’. This discourse echoes Said’s *Orientalism*, whereby the ‘Other’ (in this case the children of FTFs) is both infantilized and demonized, an object of pity and fear (Wesslén, 2021). While children are usually seen as victims, media focused on the threats these children posed to the country, and not their rights. This steers from the normative perceptions applied to child soldiers more broadly (Capone, 2017) and produces a binary in which child returnees are cast either as burdens and/or latent perpetrators.

## E. Citizenship deprivation and the Re-Nationalization of Belonging

### 1. Denationalization as a Counterterrorism Measure

A second strand of literature examines how counter-terrorism policies have increasingly turned to citizenship deprivation as a tool for managing perceived security threats. The departure of foreign terrorist fighters has prompted several governments to adopt or expand denationalization measures ((the withdrawal or revocation of citizenship by the state), with France frequently cited as a key example. Such measures generate legal tensions, especially regarding the prohibition of arbitrary deprivation and the principle of non-discrimination (Jayaraman, 2017). Being born or raised during an armed conflict already places these children in profoundly vulnerable circumstances; the risk of losing one's citizenship because of their parents' actions further compounds this precarity. Yet, as Spieb and Pyne-Jones (2022) note, the production of statelessness has been used as a measure to 'fight' global terrorism, despite the long-term humanitarian and security risks it creates.

### 2. French National Identity, Assimilation, and Republican Universalism

Beyond the security rationale, this must be situated within broader transformations in national identity regimes. In the French case, long-standing frictions within republican universalism have been highlighted as producing a model that frames immigration as a test of integration while treating race and ethnicity as officially irrelevant (James Frank Hollifield et al., 2022). Resnik (2010) further underscores how this universalist tradition has historically relied on homogenizing and assimilationist expectations, sustaining a conception of national identity that remains uniform despite significant demographic change. Republican universalism can be described as a "dense system of values" (Freedman, 2004) shaped by the concept of 'laïcité' in the 2000s and renewed by pressures of cultural assimilation in the 2010s. Fargues (2017) contributes to this debate by arguing that the expansion of citizenship stripping constitutes an effort to 'renationalize' citizenship: a recalibration that imposes national membership as a conditional, potentially revocable privilege, in order to protect the integrity of the national community.

## F. Conclusion & Contribution

A growing body of research explores the securitization of children within terrorism and counterterrorism contexts, debates over innocence, and the rise of citizenship deprivation, but rarely examines how French public discourse shapes and legitimates these practices. Nor does the literature account for how the latter interacts with international legal decisions within a broader environment of suspicion surrounding these children. By examining how French public discourse constructs these children as outsiders to its national community and tracing the ways such narratives resonate within legal and political reasoning, this study connects bodies of scholarship that are often treated separately. Notably, children's rights, securitization, citizenship, and international legal interpretation, into a single analytical framework focused on discursive construction and its effects.

## II- Legal and Case Context

This chapter sets out the legal and political context by clarifying the status of children detained in Syrian camps, examining France's obligations under domestic and international law, and highlighting the gap between the rights these children hold in principle and the practices that have constrained their protection in practice.

### A. The case of French children detained in Syrian camps after 2019

Following the collapse of the Islamic State in 2019, reports indicate that between 100 and 300 French children remained stranded in displacement camps across northeastern Syria (Franssen, 2020). Many of these were, and still are, at a heightened risk of statelessness, as they were deprived of the nationality of one or both French parents stemming from their involvement as foreign terrorist fighters with IS. Conditions in camps such as al-Hol and Roj have been widely documented as appalling, with children facing malnutrition, dehydration, violence, sexual exploitation, and extreme weather, reflecting severe and degrading detention circumstances (Human Rights Watch, 2021).

The case of *HF and Others v. France* (2022) which will be examined in the second analysis highlights the legal and human rights challenges arising from this crisis. In September 2022, the Grand Chamber of the European Court of Human Rights (ECtHR) delivered its decision concerning the repatriation of IS-affiliated children and their mothers. The applications were the grandparents of two women who had traveled to Syria between 2014 and 2015 with their partners to join the Islamic State, along with their three children born in 2014, 2016, and 2019. While France repatriated 35 children on a case-by-case basis between March 2019 and January 2021, the applicants' relatives were not among them. The Court rejected the complaint under Article 3 (prohibition of inhuman or degrading treatment), finding that the French state did not exercise jurisdiction over the Syrian camps for the purposes of that provision. However, the Court found a violation of Article 3(2) of Protocol No. 4 to the European Convention on Human Rights (the right of nationals to enter their own country) because France failed to provide sufficient safeguards against arbitrariness when refusing repatriation requests, especially by depriving children of a meaningful right of return. It created a precedent in the interpretation of Article 3(2), which guarantees the right to enter one's own country. The decision also drew comparison to the United Nations Committee on the Rights of the Child, which had emphasized that states have obligations to protect children regardless of the territorial or political context.

## B. Legal Status of the Children of Foreign Terrorist Fighters

### 1. Under French Law

Although often debated within political and public discourse, Article 18 of the French civil code (Code civil, art. 18) asserts under *jus sanguinis*, that any child born to at least one French parent is automatically a French citizen, regardless of place of birth. Therefore, most of these children fall under French constitutional protections and obligations and have the right to enter France and benefit from the protections of the French state. In theory, there should be no legal distinctions in obligations based on parental crimes. In practice, France's repatriation policy sways between legal duty and political exceptionalism.

Following France's post-2015 shift toward more restrictive counterterrorism measures, France adopted an ambiguous stance on the repatriation of the children of foreign terrorist fighters: Justice Minister Nicole Belloubet stressed that those "who have committed crimes on [this]

territory will be judged there” (Martichoux, 2019). Under this, all French nationals in the al-Roj and al-Hol camps in Syria would automatically fall under the control of a non-state actor (Kurdish authorities). And in April 2019, the Council of State officially rejected the appeal for the wives and children of foreign terrorist fighters to be repatriated (RFI, 2024). This shaped the adoption of a case-by-case approach: the Assemblée Nationale favored the return of young orphans, excluded adolescents, and limited operations by requiring mothers’ consent to accompany their children, even though many were not granted the possibility of return (Rights and Security, 2021). According to the Rights and Security International Report (2021) on the subject, this requirement deflected moral responsibility away from the state and further pushed women and children outside the protection of the law (Rights and Security, 2021) The deliberate distance constructed between the children of foreign terrorist fighters and the national community brought about the ‘logical’ conclusion that there was no reason to bring them back, non-repatriation being used as a tool for security and identity management (Mathieu, 2022).

## 2. International Legal framework

France’s obligations toward the children of its child nationals detained in al-Hol and Roj are shaped by a series of binding international frameworks. As a Party to the Convention on the Rights of the Child (CRC), France is required to ensure the best interests of the child (Art. 3). The CRC further guarantees every child’s inherent right to life, requiring States to ensure their survival and development to the maximum extent (Art. 6.1 & 6.2). Given the well-documented conditions in the Syrian camps, Articles 37(a) and (b) are also engaged: children must be protected from torture or inhuman treatment, and their deprivation of liberty must not be unlawful or arbitrary, raising questions about the State’s responsibilities vis-à-vis prolonged detention by non-state actors. In *L.H. et al. v. France* (2021), the CRC Committee found that France could not rely on the absence of territorial or ‘effective control’ to disclaim responsibility, holding the States had a “positive obligation to protect the human rights of child nationals in the Syrian camps” (OHCHR, 2022), where conditions amounted to violations of Articles 3,6, and 37(a). France’s limited behavioral change after the ruling prompted families to pursue a new case before the European Court of Human Rights, *H.F. and Others v France* (2022), where elements of the CRC’s reasoning were incorporated within a narrower model of extraterritorial responsibility.

Regional human rights law reinforces these obligations. Under the European Convention on Human Rights (ECHR), France must secure the rights of persons within its jurisdiction, including the right to life (Art. 2), the prohibition of inhuman or degrading treatment (Art. 3), and the right to family life (Art. 8). While the territorial scope of the ECHR has been contested in extraterritorial settings, several scholars argue that France exercises a positive obligation when its nationals face foreseeable and serious harm abroad, and when the State has the capacity to mitigate said harm through repatriation (Luquerna, 2020).

Combined, these instruments place France under a set of interlocking duties focused on the welfare, dignity, and protection of the Child. The central point of contention in current debate lies not in the existence of these obligations, but in their extraterritorial reach and whether France's case-by-case repatriation policy satisfies the standards set by international human rights and child protection law.

## **II. Methodology**

### **A. Case study Justification**

The case of *H.F. and Others v. France* (2022) is particularly relevant for this study because it highlights a moment when France faced acute political, legal and symbolic dilemmas surrounding the fate of children detained in Syria. As the European state with the highest number of foreign terrorist fighters with around 1,300 nationals in 2019 (Mathieu, 2022), and one of the most heavily targeted by ISIS attacks, France approached the question of repatriation under exceptionally intense security pressures. Public debate further escalated in early 2019, when the government briefly showed a willingness to have a full-scale repatriation of women and children before abruptly reversing course. Against this backdrop, *H.F.* provides a critical case through which to analyze how these minors were discussed, categorized, and ultimately governed. It allows for a two-step analysis: first, a critical discourse analysis of French political and media narratives leading up to the judgment, from 2019 to 2022; and second, a legal discourse analysis of the Court's judgment, revealing how these narratives intersect with and inform international legal reasoning. Its timing allows for analytical distance, preceding the resumption of repatriations in September 2025 (France Diplomacy, 2025), and illustrates the tension between

humanitarian obligations, national security, and citizenship rights. Additionally, it shows how these children are constructed and reflect broader anxieties over national identity and France's ongoing assimilation crisis.

## B. Research Design and Justification

This thesis adopts a qualitative design that combines Critical Discourse Analyses to examine political and media narratives with legal discourse analysis to trace how the figure of the *'dangerous innocent child'* is produced and sustained across political, media, and judicial arenas. Fairclough's (2013) three-tier model guides the first analytical stage (textual analysis, discourse practices, and sociocultural analysis). He argues that discourse analysis must be situated within sociocultural practice, viewing the use of language as a form of social practice, uniquely uncovering the hidden ideologies embedded in political and media discourse (Fairclough, 2013). Consequently, this model allows us to combine structural, interdiscursive and linguistic analysis with a diachronic aspect to track how frames of conditional innocence, humanitarian governmentality, and securitization emerge and sediment in French discourse from 2019 to 2022. Rather than aiming for exhaustive coverage, the analysis focuses on critical junctures that reveal the consolidation of dominant patterns. These findings then inform the second analytical stage, which examines how these discursive formations are taken up, refracted, or stabilized within international legal reasoning in *H.F. and Others v. France* (2022).

Following Blommaert and Bulcaen's (2000) understanding of CDA as a method explicitly concerned with power, inequality, and the embedding of discourse within wider social struggles, the study treats law and public discourse as co-constitutive rather than separate domains. This forms transdisciplinary research, that, "in bringing disciplines and theories together [...], sees 'dialogue' between them as a source for theoretical and methodological development" (Fairclough, 2013). Critical discourse is applied to law, following the idea that the judgment is not a neutral application of norms but a discursive artifact, and permits us to "look at how language lays out particular priorities" (Cheng and Machin, 2022).

Both chapters are united by a constructivist and interpretive epistemology to uncover how public discourse has enabled France to symbolically distance French children of foreign terrorist

fighters from national belonging, and to explore if this distancing shapes or is shaped by their treatment and status in international legal reasoning.

### C. Transparency

The first analysis relies on a set of political statements and news articles that shaped public narratives about the children of French foreign terrorist fighters between 2019 and 2022. All French-language materials were manually translated by the author with attention to preserving tone and framing. The corpus was manually coded inductively to identify recurring patterns, which were then organized into core discursive frames and mapped through Fairclough's three-dimensional model. **Appendix A** presents the materials and coding basis for this analysis, including political and parliamentary discourse (**Table A.1.**), media framing (**Table A.2.**), and the manually translated quotations used in the CDA (**Table A.3.**).

The second analysis examines *H.F. and Others v. France* through legal discourse analysis, to trace how legal argumentation constructs identities, priorities and state obligations (Cheng and Machin, 2022). Deductive codes were drawn from themes identified in the CDA (politics of conditional innocence; case-by-case doctrine as discursive control; securitization of childhood), supplemented by inductive sub-codes emerging from the judgment. Particular attention was given to the interpretive choices and linguistic devices through which the Court, government submissions, applicants' submissions, third-party interventions, and judicial opinions framed jurisdiction, state discretion, and the children's status. Following CDS conventions, the legal analysis focuses on the most analytically relevant sections found in *The Law* and *Joint Opinion of Judges*, prioritizing depth of interpretation over exhaustive coverage. **Appendix B** provides the coding framework and illustrative excerpts for this analysis, including the codebook used for the judgment (**Table B.1.**) and a sample of coded passages from *H.F. and Others v. France* (**Table B.2.**).

### D. Data Sources

The analytical corpus was constructed through a purposive sampling to capture key discursive moments between March 2019 and September 2022. This period begins with the fall of the last ISIS enclave, coincidentally marking both the fall of the Caliphate and the leaked

reports suggesting France was planning mass repatriations, triggering intense public debate and ultimately consolidated the shift toward a case-by-case doctrine. The period concludes with *H.F. and Others v. France* (2022) in the second analysis, where these domestic narratives were translated into an international legal register. The first dataset consists of approximately twenty political and media texts selected for their visibility and discursive relevance. Political speeches, ministerial interviews and parliamentary debates were sourced from institutional archives. Media materials were sourced from *Le Monde*, *Le Figaro*, and *BFMTV* because they represent distinct segments of the French media landscape: center-left, center-right, right-wing, and three major broadcast news. Thus, these sources capture the dominant mainstream narrative shaping public understandings of the children during this period.

#### E. Ethical Considerations

Discussing highly vulnerable populations, in this case children of foreign terrorist fighters detained in Syrian camps, poses the risk of reproducing the very forms of stigmatization under study. The analysis therefore avoids uncritically repeating state or media labels and instead foregrounds the contingent and political nature of such categories. A reflexive stance is maintained throughout (Fairclough, 2013), recognizing the researcher's positionality and the politically charged nature of debates on terrorism, childhood, and national security. While critical discourse analysis involves a normative dimension, all sources are cited and contextualized carefully to avoid misinterpretation, and interpretive claims are grounded in transparent analytical steps. In addition, because CDA engages with unequal power relations, the analysis remains sensitive to how institutional actors' discursive authority may obscure the voices of those directly affected. Finally, given the legal and political sensitivities surrounding ongoing repatriation debates, care is taken to avoid making evaluative claims about individual cases, focusing instead on the structural dynamics of discourse.

#### F. Limitations

This paper faces several methodological limitations inherent to the use of Critical Discourse Analysis, and the nature of qualitative, interpretive research more broadly. While limited to political, media, and legal textual analysis, the study cannot capture internal

governmental deliberations, nor non-public debates or the perspective of the children concerned. As central to Fairclough's framework, CDA inherently involves interpretive judgment regarding how discourse operates, and the use of manual coding, while essential for capturing nuance, similarly carries subjectivity in the selection and categorization of themes. The two-tiered design also has its own limitations. Because the legal discourse analysis builds on themes identified through CDA, the second layer is partially shaped by interpretive choices made in the first, which may risk circularity. Combining a critical, sociopolitical reading with a more formal legal analysis may also create methodological tensions. A further limitation stems from the nature of legal texts themselves, which follow institutional conventions, and doctrinal and procedural constraints that limit what can be inferred about broader political dynamics. Courts articulate their decisions through legal categories that inevitably narrow the discursive space, meaning some power relations may appear only indirectly, or not at all. However, this approach remains practical and coherent due to the clearly delimited corpus, explicit coding procedures and transparency about each interpretive step.

### **III. Constructing the 'Dangerous Innocent': Public and Political Discourse in France**

Using Critical Discourse Analysis, this section will draw on the manually coded corpus of political speeches, parliamentary debates, press interviews and media reporting, detailed in Appendix A, selected between March 2019 and September 2022 to trace how recurring linguistic and ideological patterns shape public perceptions and legitimize state practices.

#### **A. The Politics of Conditional Innocence**

The French government's political discourse constructs the children as innocent, but only to a point: a morally contaminated innocent. This innocence is not inherent, but fragile, provisional and constantly at risk of being withdrawn. This emerges through a cluster of linguistic patterns and repeated justificatory frames that textualize vulnerability.

Ministers of European and Foreign Affairs repeatedly assert that the children “did not choose to join Iraq and Syria” (Le Drian 2020; Colonna 2019). These phrases anchor innocence and protection in a lack of agency. In an interview on the children of French foreign terrorist fighters on February 14<sup>th</sup>, 2022, Le Drian simultaneously states that “these children did not ask anything” (Le Drian 2022) and designates them as “those children there”. Yet even as officials foreground vulnerability, with children described as ‘vulnerable’, ‘traumatized’, and presenting an “important psychological fragility” (Belloubet, 2019), they are also linked to inherited danger. In the same statement at the National Assembly, the *Garde des Sceaux* (Minister of Justice) discusses how “they have been exposed since they were young to extreme violence” (Belloubet, 2019). They are victims, whose moral status is compromised by lineage. This is what Fairclough would describe as a hybrid identity, a contradictory position that circulates and stabilizes through its repetition across political debate (Fairclough, 2011).

Their innocence, and repatriation, is ‘earned’ through specific criteria: being isolated, orphans, the most vulnerable, or having a mother who ‘accepts’ transfer (Le Drian, 2022). Every repatriation is described as an operation requiring perfect security conditions. Some children may be repatriated, but only those who meet a narrow definition of safe innocence. It is used to justify why repatriation cannot be automatic or systematic – because the child is not a neutral subject but a morally burdened figure who must be filtered and screened.

In this way, political discourse produces innocence as conditional and revocable, a status dependent on context and state discretion. This political construction lays the foundation for the next discursive mechanism, the *case-by-case* doctrine, which appears not merely as a logistical constraint but as a natural extension of this moral ambiguity.

## B. The case-by-case doctrine as discursive control

French policy on the repatriation of children of French foreign terrorist fighters emerged within a discursive environment marked by competing humanitarian, security and political liability concerns, positioning the ‘case-by-case’ doctrine as a necessary mechanism to mediate these tensions and control the narrative surround the return of perceived threats.

## 1. The 2019 Leak: Public Hostility and the Birth of Discretion

The emergence of France's 'case-by-case' approach to the repatriation of children of French FTFs must be situated within the political shock produced by the March 2019 leak of a planned mass repatriation. The texts that fueled this constraint were produced and consumed within a specific media ecosystem. On March 1<sup>st</sup>, *Le Figaro* (2019) published a poll showing overwhelming opposition: 67% of respondents rejected the return of children, as well as 63% of the 'Marcheurs' (Macron's centrist *Renaissance* party supporters). As France's key conservative newspaper, it provided the government's centrist party with discursive justification to abandon a humanitarian-led policy: it proved that public fear was enough for the executive to not comply with the previous approach, afraid of the electoral cost. This data was then amplified by mass-market outlets such as *BFMTV*, which employed the sensationalist genre of 'breaking news' to frame the government's pre-leak policy as inconsistent and incompetent on security; "such a return was not possible" days before the first five children were repatriated (BFMTV, 2019). The policy that followed can be seen as an intertextual product, which attempted to reconcile these competing pressures: public hostility shaped political discourse and was also mirrored in justifications of the new, selective and cautious approach that became formalized.

## 2. Modalities of Hesitation in Political Discourse

Political actors consistently employed modal verbs and justificatory clauses that encode uncertainty, limited capacity, and the inevitability of delay. Foreign Affairs Minister, Le Drian, stated in a 2019 Parliamentary Speech at the *Assemblée Nationale* that they were only "trying to repatriate" certain categories of children (Le Drian, 2019), which was reinforced by the Justice Minister who asserted that it can only happen when "conditions are right" (Belloubet 2019). Le Drian continued to use conditional forms used for future promises in the *Assemblée Nationale* (2020), such as "if other opportunities present themselves" (Le Drian 2020), shifting repatriation to a discretionary possibility. The 'case-by-case' doctrine gained momentum through its consistent repetition across political and media arenas. President Macron's first prescription of the case-by-case approach in 2019 is reiterated by successive Ministers of Foreign Affairs. Each repetition stabilizes the discourse, making it appear like an uncontested technocratic necessity.

A further discursive shift emerges when references to children are consistently embedded within a war grammar, anchoring their return to a battlefield, in which they are not active participants in. Le Drian (2020, 2022) repeatedly anchored the issue to the conflict, stating at the Assemblée Nationale and Vie Publique in 2020 and 2022 “we are in a state of war. And these camps are camps in a state of war”. Consequently, repatriation missions are described as ‘military’ operations, narrating their mobility through the lens of security and strategy, rather than through welfare provisions.

Mainstream media largely failed to counter this security-centric frame, showing limited oppositional coverage until 2020. It also structures the imaginable future: it renders systematic repatriation of minors unthinkable while positioning exceptional, sporadic returns as evidence of responsibility. The doctrine operates as a regulatory speech act, naturalizing the idea that France does not owe protection all children equally, but must triage them with an opaque and evolving set of criteria.

### 3. Humanitarianism as Governmentality

In official statements between 2019 and 2022, French authorities mobilize a humanitarian vocabulary that is less a discourse of care than a mode of governing the problem at a distance. Statements by Macron and Le Drian (2019, 2020) repeatedly describe children as vulnerable, orphans, or isolated, and emphasize that their return depends on negotiations with local actors and operational feasibility. The March 15<sup>th</sup>, 2019, first communiqué by the Ministry of Foreign Affairs on the return of several ‘Isolated and Orphaned Minors’ exemplifies this shift: children are described through medical and psychological needs, immediately placed under medical and psychological follow-ups, and entrusted to judicial authorities. The communiqué also expressed gratitude toward the Syrian Democratic Forces: in the context of early 2019, when public debate questioned France’s obligation to repatriate nationals, this gesture signals an important shift of responsibility.

The framework of action distances the French state from direct accountability, and frames action as contingent on local humanitarian and security partners. Soon after, in a press event in March 2019, in Kenya, Macron described the case-by-case policy as “a humanitarian approach [...] lead with a lot of vigilance, in communication with actors on the ground” (Macron, 2019).

The humanitarian register is coupled with operational actors on the ground, shifting compassion and responsibility, while legitimizing the narrative as the prudent outcome of human rights expertise, rather than a political choice. Jean-Yves le Drian's subsequent parliamentary statements in January 2020 reproduced this pattern: he stated that past returns were only possible after negotiations with local forces (Le Drian, 2020). By 2022, Catherine Colonna, the Minister of European and Foreign Affairs, made a statement at the Senate where she assured that the government "always took into account the best interest of the child", which however is halted by the "lack of effective control the government has" (Colonna, 2022). Humanitarian commitment thus becomes inseparable from the logistical limits of state capacity. Routinely, returns are described as humanitarian gestures *and* as sensitive operations. The moral imperative is presented as inseparable from geopolitical risk. This coupling becomes a taken-for-granted pattern: the child warrants protection, but only within parameters defined by operational feasibility, political caution, and security calculation.

#### 4. Discursive shifts from 2019 to 2022

By 2020 and 2021, media and parliamentary discourse began to amplify a more humanitarian counter-discourse on the children of French foreign terrorist fighters, rather than procedural constraints. The discourse is no longer about logistics but constructs children as morally deserving subjects who generate political pressure. In 2020, *Le Monde* published a story on 76 French and European Parliamentarians asking for the repatriation of French children, where they describe the abandonment of children as "contrary to all our international commitments and unworthy of our rule of law" (Le Monde, 2020), framing the issue as a legal-moral failing of the State. They utilized a security justification to support repatriation: arguing that mothers must be repatriated and judged in France to prevent further "evasions and insurrections". This signifies an interdiscursive maneuver, where opponents of the government's stance temporarily adopt the language of security to provide a palatable justification for the primarily humanitarian goal.

This counter-discourse gained broader circulation in 2021, where media outlets amplified calls from civil society. Notably, a 'Call from the Cultural World' covered by *Le Figaro*, traditionally more aligned with right-wing, security-focused reporting, emphasized children's innocence, saying that they are "victims that France is abandoning" (Le Figaro, 2021). This move from a

mainstream conservative publication signifies that the humanitarian discourse was successfully diffusing and transforming, no longer confined to human rights groups, but achieving a degree of moral consensus. Despite this mounting pressure, President Macron continued to refuse the mass repatriation of children: *Le Monde* (2021) exposed his doctrine as a deliberate political strategy of choosing ‘avoidance’ to manage public opinion and contain the political risk. Crucially, the article reinforced the doctrine’s use of selective framing by noting that the few repatriations that occurred were of children “presented as orphans”, thereby using the most sympathetic category to appear responsive without undermining the dominant security discourse.

In a rare intervention with *BFMTV* in 2022 during his re-election campaign (it is worth noting the President has barely spoken about the repatriation of children of foreign terrorist fighters), Macron employed a rhetoric of competence by claiming France “[had] already repatriated many children”. He immediately anchored this success to the politically acceptable category of orphans, “who no longer had parents” to reinforce the legitimacy of the restrictive policy. He then refused to provide any more details, waiting for the “perfect security conditions” (BFMTV, 2022), a powerful performative act that shifted this issue to a more authoritative sphere of military strategy, shielding the government from public accountability. Ultimately, this affirms the state’s sovereign authority to manage the threat on its own terms while adhering to minimal ethical standards.

The chronological evolution in **Tables A.1.** and **A.2.** align with Fairclough’s concept that discourse is both shaped by and shapes social change. In 2019, public opinion polls and political risk narratives prevail, creating strong constraints on policy. In 2020, the humanitarian-security hybrid emerges in media discourse, with French and European lawmakers being more outspoken on humanitarian imperatives and security concerns. Political silence dominates 2021: government actors maintain the case-by-case approach, while right-wing media actors such as *Le Figaro* reflect a growing acknowledgment of humanitarian considerations, supporting the discourse of selective care and highlighting state failure to protect vulnerable children. Ultimately, in 2022, media and political statements signal a shift. Macron and other officials announce more systematic repatriation efforts, framing a potential institutional reorientation, yet still constrained by security risks. Yet, as the subsequent section will show, these shifts do not warrant an eventual move toward systematic repatriation. Rather, they occur on the eve of mounting international legal pressure.

#### IV. Constructing the Child in International Jurisprudence: France on Trial

Through a discourse analysis reading, this section interrogates the language and reasoning employed used by legal actors in *H.F. and Others v. France* (2022), applying the discursive patterns identified in the first analysis (see **Appendix B**). The focus is on the language, genres, and justificatory ways in which jurisdiction, sovereignty and the child's vulnerability are negotiated, contested and mobilized.

##### A. How Legal Actors construct Children: from Children to Security Subjects

The following subsection traces how such rhetorical strategies operate across the Government's submissions and the applicants' and interveners' counter-narratives, revealing the interpretive stakes that determine who counts as a subject of protection.

##### 1. Government Submissions: Jurisdictional Erasure

Throughout its submissions, the French government does not address the children as a distinct group or as a priority of protection. They appear only indirectly, subsumed within references to the 'applicants' family members' or past humanitarian repatriations, erasing their individual status and vulnerability. The 'child' is linguistically removed and replaced by the 'family member', a process of re-lexicalization. The government's justifications use nominalization strategies, framing their refusal not as an active choice but as the result of external obstacles and conditions. This avoidance is not simply stylistic but contributes to a legal framing in which children's belonging is mediated through such associations, which attribute them the 'security risk' of their parents. The government further rejects any inference of jurisdiction from prior returns under Article 1, which enforces States to secure everyone within their jurisdiction, characterizing them as exceptional "humanitarian repatriations" (*H.F. and Others v. France*, 2022, IV, the Government, 1(c)). It emphasizes operational, security, and diplomatic obstacles, warning against creating an 'à la carte' form of jurisdiction and insisting on the Syrian Defense Forces'

responsibilities under International Humanitarian Law, keeping its engagement strictly discretionary. By asserting that “applicants’ family members did not fall within France’s jurisdiction” (HF, 2022, IV, A.The Government), the government circumscribes any potential positive obligations towards children. Intervening third party governments (Belgium, Denmark, and the Netherlands) reinforce this reading, insisting that the “applicants’ daughters and grandchildren did not fall within the ‘jurisdiction’ of France” (HF 2022, IV, B), relying on precedent of *Banković* and *M.N. v Belgium* to re-assert that responsibility is strictly territorial and cannot be triggered by nationality alone.

Under Article 3(2) of Protocol no. 4, nationals have a right to enter their own country. France, however, frames this right narrowly, denying again any positive obligation to repatriate. The government emphasizes that repatriation decisions are a matter of foreign policy, grounded in democratic mandates, “by the government following democratic elections and on the competing sovereignty of other States” (HF 2022, V, B.2.b) and the sovereignty of other states, thus making them largely immune from judicial review. The political framing constrains the practical scope of the right to enter, leaving the protection of returnees’ contingent on the state’s approval rather than recognized as an absolute entitlement.

## 2. Rights-Centered Counter-Construction by Applicants and Human Rights Actors

In contrast, interventions from the Applicants and human rights third parties explicitly engage in a discursive reconstruction of the Child, representing them as inherently rights-bearing subjects.

Where the government employed nominalization to hide their agency, the Applicants and Intervenors utilize active transitivity. Regarding Article 1, the Applicants argue for an interpretation consistent with the “extraterritorial effects of national acts” (HF 2022, IV, A.2), including opening investigations. By focusing on the link between the Applicants and France, they linguistically re-couple the Subject (France) and the Object (the Child). Echoing this, the Council of Europe Commissioner for Human Rights stressed that the influence of France over the situation of nationals in the camps established “a form of authority or control” (HF 2022, IV, B.2) sufficient to trigger jurisdiction. Défenseur des Droits similarly treated “requests for children’s return” as generating a relational jurisdiction linking the responsibility to the French government. This shifts

the question from a spatial logic (where is the child?) to a relational logic (who controls the child's fate?), forcing the State back into the role of the active agent.

Children and mothers' imminent risk of human trafficking also re-locates them within a category of presumptive victimhood that supersedes national security, and renders repatriation a protective obligation. The submissions deploy a strategic over-lexicalization over their condition. Across these human rights interventions, a clear pattern emerges: jurisdiction is constructed as flowing from vulnerability, nationality, and France's decisional power, rather than territorial control. The children's universal vulnerability and exposure to harm demands structural remedies, directly challenging the Government's exceptionalist narrative of humanitarian repatriations and invocations of foreign policy and sovereignty: refusing to do so would create a "vacuum in human rights protection" ((HF 2022, IV, B.6). These patterns collectively reorient the debate toward the core question of this research: who counts as a subject of protection? For these actors, children are not peripheral to the legal question but at its center, a direct counter-discourse to the State's boundary-drawing and securitizing logic.

## B. Case-by-Case as a Legal Technology of Exclusion

This section examines how the judgment transforms the case-by-case approach from a political formula into a legal rationality that structures who may access the protections attached to French nationality. By tracing how Article 1 jurisdiction, Article 3(2) Protocol No.4, and the Court's emphasis on *procedural* rather than *substantive* obligations operate, it shows how the framework redefines citizenship as conditional and selectively actionable. The aim is to demonstrate how doctrinal reasoning itself becomes a mechanism of exclusion, subordinating human rights to executive power.

### 1. An Absence of General Right to Repatriation

France, as analyzed in the previous section, grounds its use of case-by-case in a restrictive reading of Article 3(2), insisting that the provision imposed no positive obligations to organize returns. In this way, the right to enter applies only once one has reached the border. The Court

echoes this structure, using a language of absolute certainty to shut down legal possibility: it holds that “there is no obligation under international treaty law or customary international law for States to repatriate their nationals” (HF 2022, V, B.3.b), concluding that individuals “cannot claim a *general* right to repatriation” (HF 2022, V, B.3.b). This is a strategy of authorization via negation, where the State’s right to exclude is treated as absolute, while the individual’s right to return is hypothetical. The Court’s interpretation of Article 1 reinforces the doctrinal logic of case-by-case review at the jurisdictional level. It notes that the applicants’ family members did not fall within France’s jurisdiction, reflecting France’s argument that nationality alone does not create extraterritorial jurisdiction. Together, Articles 3(2) and 1 convert nationality into a conditional status: substantive rights and access to judicial review are both mediated in discretion.

## 2. Limits on Jurisdiction: The Logic of Equivalence

However, the Court still requires an individualized assessment of each request under Article 3(2), nominally protecting against arbitrariness: the repatriation request must allow for “an appropriate individual examination, by an independent body, separate from the executive authorities of the State” (HF 2022, V, B.3.c). Linguistically, this shifts the focus from the *body of the child* to the *body of the text*: the substantive outcome (repatriation) is replaced with a procedural ritual (paperwork). Although there is no duty to repatriate, the opacity produced by acts of State immunity is criticized by the Court, carving legal space for rights without overruling the security policy. By asserting that bodies should be “verifying that those grounds were not arbitrary” (HF 2022, V, B.3.d), without the power to enforce repatriation, the judgment embeds a paradoxical grammar: it grants the right to a process but denies the right to a result. This allows the State to maintain the appearance of Rule of Law while preserving the reality of exclusion through discreet legal logic.

## 3. A Foreign Policy Prerogative: Genre Shifting

By framing repatriation as a matter of foreign policy, the Court and France exclude any broader entitlements for children of foreign terrorist fighters. It moves the issue from the genre of Human Rights Law, governed by universal norms and positive obligations, to the genre of

Diplomacy, governed by discretion and sovereignty. When a collective or blanket entitlement is denied, the only remaining legal modality becomes *ad hoc*, choice. This also creates a doctrinal precedent: future repatriation or protection decisions may similarly be subordinated to executive discretion, leaving States free to weigh political or diplomatic considerations over the structural responsibilities owed to children under international human rights law. It prevents children from coalescing into a group with collective rights, a method of fragmentation.

#### 4. The Normalization of Exception

Just as in national French discourse, the ‘case-by-case’ approach functions as a hegemonic discourse that normalizes the exception. The Court depoliticizes the collective crisis of abandonment of French children in camps by breaking it into isolated, individual files. Relying on the modality of impossibility, genre-shifting and procedural equivalences, the judgment creates a category of ‘conditional citizens’. The legal technology of ‘case-by-case’ barely manages the queue for repatriation but fundamentally alters the social contract between the State and the Child, establishing that in the face of security narratives, the right to have rights is no longer guaranteed by birth, but by permission.

#### C. Judicial Prioritization and Contestation

Having established the Court’s framework on jurisdiction and the absence of a general right to repatriation, attention now turns to the internal judicial discourses that shape how these rules are operationalized. This section focuses on judicial prioritization and contestations, revealing the discursive struggle occurring within the Court itself, rather than in public or governmental discourse. Unlike public submissions or government arguments, judicial opinions make visible the tensions and anxieties embedded within the Court’s institutional reasoning.

##### 1. Procedural Minimalism, Sovereignty, and the Preservation of Hegemony

Across the majority and concurring opinions, procedural safeguards are consistently foregrounded as the primary mechanism for managing repatriation requests. The Court maintains that an “appropriate individual examination, by an independent body, separate from the executive authorities of the State” (HF 2022, V, B.3.c) is sufficient to prevent arbitrariness, even if this does not guarantee a substantive right to return. By centering process over outcome, the Court reproduces a legal hierarchy in which diplomatic and operational process supersede the children’s actual return. Concurring judges Pavli and Schembri Orland further reinforce this orientation, explicitly linking procedural review to the effectiveness of substantive rights: “compliance with the relevant Convention provision would require that the State take reasonable steps to facilitate his or her return” (HF 2022, Joint Concurring Opinion of Judges Pavli and Schembri Orland). The Court must preserve deference to state discretion while acknowledging the normative weight of human rights principles, retaining an enabling effect to avoid hollowing out the right not to be exiled. They expose an internal unease about the erosion of protections and the potential normalization of discretionary exclusion, avoiding the perception that they have fully surrendered to executive power.

## 2. Dissenting Perspectives: Substantive Vulnerability and Rights

The dissenting judges Yudkivska, Wojtyczek, and Roosma offer a counterpoint that challenges the Majority’s legal positivism by invoking natural law principles. They explicitly reframe the basis of protection: “The applicants’ daughters and grandchildren have a right to life and physical integrity because they are human beings and not because they were born French” (HF 2022, Joint Partly Dissenting Opinion of Judges Yudkivska, Wojtyczek and Roosma). This is the most profound linguistic break in the entire judgment, destabilizing the key classification scheme (nationality) upon which the Majority’s exclusionary framework is built, replacing the political category of “family of foreign fighters” or “women and children”, to the universal category of “human”. The dissents introduce an obligation absent in the Majority’s reasoning, arguing that denying repatriation without considering “the *children’s best interests* [seem] to be in breach of Article 3(2)” (HF 2022, Joint Partly Dissenting Opinion of Judges Yudkivska, Wojtyczek and Roosma). Exclusionary practices in this judgment were justified under procedural or sovereignty arguments and are now being legally and morally contested. Importantly, they challenge the

implicit hierarchies embedded in majority reasoning and questioning who counts as a full citizen deserving of state protection.

### 3. Reimagining the Scope of Protection

Both concurring and dissenting opinions engage with Article 1, illuminating the Court's deepest anxiety: the construction of belonging. The majority uses a restrictive reading of jurisdiction for boundary maintenance, reinforcing the idea that nationality alone cannot establish legal proximity in this context. The Dissenting opinion, through its re-contextualization of the State's influence over the camps, argues for a relational jurisdiction. The State's power to decide generates the jurisdictional responsibility, independent of the State's physical location. This illustrates a deeper judicial concern: the construction of belonging. By treating children of foreign terrorist fighters as dependent on contingent jurisdictional links rather than as right-bearing individuals, the Court and concurring judges implicitly codify a hierarchy within who is deserving of citizenship. It suggests that the children of foreign terrorist fighters occupy a liminal space of conditional belonging, dependent on the State's discretionary decisions rather than their recognized legal status.

### 4. What the Judicial Split Reveals

The internal disagreement illuminates several patterns. First, procedural minimalism functions as a legal technology of exclusion, allowing states to maintain control while appearing to comply with human rights norms. Second, protective rights are conditional and contingent on sovereignty, jurisdiction and procedural review. Third, dissenting opinions demonstrate that the Court is not a monolithic actor; the structure of the case's judgment is a site of contestation over the meaning of childhood, citizenship, and protection. By privileging state discretion and procedural safeguards, the case embeds conditionality into the right to nationality, with profound consequences for the children stranded in extraterritorial conflict zones.

## V. Discussion: A Crisis of Assimilation? National Identity and Selective Status of the ‘*Enfants de la Republique*’

### A. Key Findings

The findings emerging from this dual analysis of French public discourse from 2019 to 2022 and the discursive reasoning of international jurisprudence in *H.F. and Others v. France* (2022) reveal a mutually reinforcing system in which childhood is reconstituted as a conditional legal and moral status. Although these two arenas, national political communication and supranational adjudication, operate within distinct normative frameworks, the results demonstrate a convergence in how they construct the category of the child of the French FTFs.

Across the public corpus, French political actors consistently frame these minors as inhabiting a space of ‘dangerous innocence’. Publicly, they remain acknowledged as children: however, they are configured as children whose innocence is fragile, revocable, and morally contaminated by lineage. These representational practices are not merely descriptive: they legitimize and naturalize the selective repatriation regime. The repetition of vulnerability-and-risk binaries, formulations of hesitation, and the discursive normalization of ‘case-by-case’ as self-evident necessity gradually produce a shared common sense in which children become governable through exceptionalist logics. What the CDA shows most clearly is that the case-by-case doctrine travels between political and public arenas as a boundary-drawing device. It originates as a political-risk management tool following the 2019 leak yet stabilizes into an authoritative vocabulary that structures how the French State speaks about obligations. Over time, it is recast as the only appropriate choice: an ostensibly neutral response to competing pressures. It becomes the key linguistic technology through which the State can withhold responsibility while maintaining a humanitarian façade.

These dynamics are replicated, though not identically, in the international legal sphere. In *H.F. and Others v. France* (2022), the French government’s submissions reproduce the same erasures seen in political discourse, using legal language as a vehicle to consolidate the same logic of conditionality. The children are framed outside the State’s reach, outside its responsibility, and thus outside enforceable rights. The majority judgment appears at first to challenge this by requiring an individualized examination process, yet results indicate this safeguard ultimately

extends the logic of discretion. The Court's approach displaces the substantive question of whether France owes protection, onto procedural review, affirming that individuals have a right to process but not a right to outcome. The structure of conditional belonging that underpins French political discourse is therefore reproduced, and the State stands as the sovereign arbiter of which children qualify for attention. At the same time, discursive contestations within the Court demonstrate that this construction is neither universal nor uncontested. Concurring opinions expose the tension between proceduralism and meaningful protection, while dissenting judges articulate an alternative normative framework in which children are subjects of inherent rights, not security objects.

Taken together, the results show that the discursive construction of these children as 'Enfants de Daesh' operates across public, political, and legal domains as a mechanism of conditionality. In the political sphere, it functions to justify selective and securitized repatriation; in the legal sphere, it is transformed into a juridical rationality that re-constrains the meaning of nationality and belonging. Both levels reproduce a hierarchy of protection in which children's rights are refracted through concerns about sovereignty, security, and political risk.

## B. Link to existing literature

This case also reflects the symbolic and ideological exclusion rooted in France's unresolved tensions around republican universalism and pluralist realities: the French children stranded in Syrian refugees camps are not treated as bearers of unconditional nationality, but are (implicitly in the judgment and explicitly in political discourse) as 'enfants de Daesh', whose link to the Republic has been symbolically and legally suspended.

### 1. Republican Universalism and the Illusion of Neutrality

The French republican model is grounded in the principles of liberty, equality, and fraternity, with the indivisibility of the Republic functioning as its constitutional backbone. The contemporary reaffirmation of this model, particularly in the context of identity politics and the *droit à la différence* debates, have been interpreted as a defensive reaction aimed at "[defending] the specificity of a French model of integration" (Guérard de Latour, 2014). In this vision, unity becomes inseparable from uniformity, and the acknowledgment of racial, ethnic, or religious

categories represents a fragmentation rather than a recognition. Scholars caution that this ‘neutral’ universalism masks a deeper dynamic: the imposition of the norms of the dominant ethnocultural group in the name of ‘equality’ (Guérard de Latour, 2014). This paradox produces a hierarchy of belonging that becomes visible in moments of crisis such as this one. Children of foreign terrorist fighters’ identity is not circumstantial but essential, as they are understood as bearing an inherited otherness. The case-by-case stance exposes that some nationals are entitled to the Republic’s protective universality, while others must first prove they are not a threat to it.

Scholarship on the history of French republicanism shows that the model has always contained a tension between universalism and exclusion, repeatedly constructing certain groups as insufficiently integrated or aligned with national norms. This dynamic resonates in the present case, not through direct historical continuity, but through a structural logic in which the children of FTFs are imagined as bearing an unassimilable lineage; one that links them to Islamist extremism, rather than to the Republic, irrespective of their age, conduct, or legal status. France’s reluctance to recognize any substantive protection duty (even for infants) reproduces the colonial logic in which certain subjects were constructed as incorrigibly outside the national body, too distant to be transformed into full citizens.

The counterterrorism security discourse around minors also shows a policy of suspicion over care, a concept which Allsopp (2012) describes as defensive solidarity, where “the [nation] closes ranks and redefines insiders/outsideers in moments of perceived crisis” (Allsopp, 2012). The ECHR’s judgment crystallizes this shift in an international framework: by affirming only procedural safeguards and refusing to acknowledge a protection duty, it implicitly accepts that these children occupy a liminal status: nationals in law, but not yet ‘children of the Republic’ in the moral and political sense that normally grounds the State’s protective obligations. It also does more than shape repatriation policy but endorses a model of citizenship in which not all French children are imagined as equally French.

## 2. Securitization and International Law as an Enabler of Executive Discretion

The second analysis' findings from *H.F. and Others v. France* also illustrate how international legal mechanisms, instead of enabling primary restraint, facilitate domestic executive discretion when applied to nationals constructed as *security risks*. This outcome is inseparable from the wider securitizing dynamics identified earlier, where childhood is folded into a preventive counter-terrorism framework (Bonsoms, 2025). Re-casted as potential future threats, the exclusion of children is normalized. As van Waas and Brekoo (2023) show, France strategically extended its non-repatriation policy from adult fighters to their children by withholding facilitative instruments, such as travel documents, while also disputing the existence of protective obligations and even the solidity of citizenship itself (Anand, 2022). These techniques align with broader observations that the internationalization of lawmaking has expanded national law's room for maneuver (Perez, 2006), enabling this logic of exclusion. This also underlines the very ambiguity that characterizes international law on repatriation and on the status of children in conflict zones (Anand, 2022). As a result, the judgment validated the French state's political choice by transforming the discretionary refusal of 'case-by-case' repatriation into a legally durable position, reinforcing the children's securitized and liminal status.

### 3. Future Research

Future research should focus on how the legal and political dynamics identified in this thesis evolve considering the recent shifts in Syrian governance, where the fall of Assad's regime may alter the justifications invoked by States (Amnesty, 2025). Additionally, now that some formerly inaccessible minors have reached adolescence, further research should examine how these emerging voices and legal status reshape both the discursive and legal frameworks identified in this study. A related line of inquiry concerns domestic implementation and assessing whether the ECHR's safeguard meaningfully constrained executive discretion or drew out the case-by-case logic longer. Long-term monitoring could also be interesting in tracing how these early discursive framings have shaped the long-term trajectories of those repatriated. With fuller access to administrative data, court files, or testimonies currently withheld from the public, researchers could more precisely map the decision-making processes.

## Conclusion

This thesis aimed to answer the research question: *“How has the discursive construction of the children of French FTFs as “Enfants de Daesh” rather than “Enfants de la République” been constructed and enabled in public discourse and subsequently shaped in international legal reasoning?”*. Through a discourse-analytics approach, the results show that this shift is deliberate and stems from deeper anxieties around national belonging, terrorism, and the boundaries of citizenship. These narratives created a divide between children imagined as external threats and those imagined as members of the national community, despite identical legal entitlements.

The analysis revealed that public discourse has been crucial in justifying this separation. By emphasizing lineage, distrust, and future threat, political and media narratives aligned with broader trends in preventive counterterrorism and securitization. In this context, republican ideals of child protection were unevenly applied, shaped less by legal principle than by political convenience and cultural familiarity. These constructions also influenced international legal reasoning. France drew selectively on security-oriented interpretations to justify case-by-case repatriation, revealing that legal arguments do not develop in isolation but are conditioned by the narratives that render said-children liminal. The category ‘Enfants de Daesh’ thus became legally intelligible only after being discursively produced, illustrating the permeability between narrative and norm.

Overall, the study concludes that the tension between ‘Enfants de Daesh’ and ‘Enfants de la République’ is not rooted in law itself but in the discourses through which law is mobilized and meaningfully enacted. By tracing how discourse enables a form of conditional, securitized citizenship, the findings contribute to wider debates on the malleability of children’s rights in counter-terrorism contexts, and the vulnerability of humanitarian norms within such frameworks.

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## APPENDIX

### Appendix A

This Appendix presents the first stage of the CDA, examining how French governmental actors and major media outlets framed the repatriation of children of foreign fighters between 2019 and 2022. It identifies the recurring lexical patterns, discursive strategies, and strategies through which institutions constructed these minors. Together the tables provide a comparative overview of political discourse, media representation, and the manually translated material supporting the analysis.

Table A.1.

*Government and Parliamentary Discourse on the Repatriation of Minors (2019-2022)*

<b>Theme</b>	<b>Key Phrases</b>	<b>Discourse strategy (textual/linguistic)</b>	<b>Discourse Practice</b>	<b>Ideological Function</b>
Politics of Conditional Innocence	“The children did not choose to go to Iraq and Syria” “These children did not ask for this”	Dual framing of innocence as real but precarious; innocence tied to lack of agency; predication of fragility	Ministerial Q&A; parliamentary debates; repetition across 2019-2022	Produces a model of ‘innocent but morally marked’ child; reinforces conditional return; legitimizing selective repatriation
Case-by-case doctrine as discursive control	“A case-by-case approach is being applied, particularly in coordination with the International Red Cross”	Modality of caution; technocratic depersonalization; proceduralizing of compassion	Presidential speeches; ministerial press conferences	Normalizes discretionary sovereignty; externalizes responsibility onto technical criteria; sustains the legitimacy of restrictive repatriation
Humanitarianism as Governmentality	“a humanitarian approach”; “specialized medical	Bureaucratic rationalization; pathologizing vocabulary; framing care as	Cross-ministerial communication (foreign	Reconfigures humanitarianism into a tool of state management;

	follow-up and social services support”; “significant psychological vulnerability upon return”	state-managed expertise	affairs, justice, social services)	childhood governed through risk and therapeutic intervention; state control over repatriated minors
Securitization of Childhood	“exposed from an early age to extreme violence”; “we are in a state of war [...] these camps are in a wartime situation” ; “each operation was practically a military operation”	Militarized lexicon; dramatization; fusion of child vulnerability with security threat	Ministerial interviews; high-profile media appearances; security-oriented outlets	Children framed within a war paradigm; legitimizes exceptional measures; position repatriation as security management rather than child protection

Table A.2.

*French Media’s Construction of the Repatriation of Children of Foreign Fighters*

<b>Theme</b>	<b>Key Phrases</b>	<b>Discursive Strategy</b>	<b>Discursive Practice</b>	<b>Sociocultural/ Ideological Function</b>
<b>Hostile Public Opinion &amp; Political Risk (2019)</b>	“Majority wants children of fighters left in Syria/Iraq”	Public Opinion Invocation	Opinion polls used by right-leaning media	Legitimizing non-repatriation through the idea that France merely reflects

	“67% opposed to return”			democratic sentiment, reinforcing securitized public discourse.
<b>Selective Humanitarianism (2019)</b>	“orphans” “humanitarian cases” “children without parents” “selection of cases” “case-by-case approach” “the most evident cases”	Humanitarian narrowing (limiting compassion to safe, non-politicized categories)	Neutral/elite newspapers reporting state framing	Normalizes the case-by-case doctrine; hierarchy of deservingness among children
<b>Government Inconsistency &amp; Secrecy (2019)</b>	“governmental contradiction” “official denial” “secret operations” “vague communication”	Credibility management	Media highlighting government contradiction	Reinforces idea of governmental improvisation under pressure
<b>Security Turn (2020)</b>	“international engagements” “rule of law” “contrary to principles” “moral and judicial obligation”	Humanitarian-Security Coupling	Parliamentary statements circulated by Le Monde	Bipartisan moral frame – repatriation becomes both a rights obligation and a way to control risk domestically

<b>Electoral Sensitivity (2021)</b>	“sensitive subject” “avoiding the debate” “hostile public opinion” “political cost” “executive strategy”	Political Sensitivity Shielding	Interpretation of Elysee strategy	Reaffirms political cost of repatriation; frames policy as dictated by national mood rather than by law
<b>Innocence &amp; Victimhood (2021-2022)</b>	“victims” “abandoned children” “innocence” “moral responsibility” “humanization” “suffering of children”	Victim Re-Humanization	Cultural petitions amplified by media	Challenges securitizing discourse: invites moral responsibility narrative but still reinforces binary

Table A.3.

*Extracted Quotes and French to English Translations Used in the CDA*

<b>English Translation</b>	<b>French Original</b>	<b>Speaker/Source</b>	<b>Date</b>
“children did not choose to join Iraq and Syria”	“les enfants n'ont pas choisi de rejoindre l'Irak et la Syrie”	Le Drian/ Colonna	2020/ 2022

“These children-there did not ask for anything”	“Ces enfants-là n’ont rien demandé”	Le Drian	2022
“Present an important psychological fragility upon return to national territory”	“présentent une fragilité psychologique importante à leur retour sur le territoire national.”	Belloubet	2019
“[They] have been exposed since they were young to extreme violence”	“Les enfants de jihadistes, exposés dès leur plus jeune âge à des scènes de violence extreme”	Belloubet	2019
“When conditions are right”	“quand les conditions sont réunies”	Belloubet	2019
“If other opportunities present themselves”	“Si d’autres opportunités de rapatriements de mineurs orphelins isolés ou vulnérables se présentent”	Le Drian	2020
“we are in a state of war. And these camps are in a state of war.”	“les opérations menées n’ont pu l’être qu’après une négociation avec les forces locales, puisque nous sommes	Le Drian	2020

	dans une zone de guerre.””		
“Laurent Nunez, the Secretary of State [...] assured that such a return was not possible”	“Laurent Nunez, le secrétaire d'Etat auprès du ministre de l'Intérieur assurait qu'un tel retour n'était pas envisagé”	<i>BFMTV</i>	2019
“trying to repatriate”	“nous essayons de rapatrier les enfants isolés, mineurs, orphelins”	Le Drian	2019
“a humanitarian approach [...] lead with a lot of vigilance, in communication with actors on the ground”	“c'est une approche humanitaire qui est suivie et avec beaucoup de vigilance en lien avec tous les acteurs qui sont sur le terrain”	Macron	2019
“always took into account the best interest of the child”	“La France s'est toujours efforcée de prendre en compte l'intérêt supérieur des enfants”	Colonna	2022
“lack of effective control the government has”	“il s'agit d'une zone de guerre, encore très dangereuse, sur laquelle le gouvernement	Colonna	2022

	n'exerce aucun contrôle effectif.”		
“Letting these children perish in these camps [...] is contrary to all our international commitments and unworthy of our rule of law”	“Laisser périr ces enfants dans ces camps [...] est contraire à tous nos engagements internationaux et indigne de notre Etat de droit”	<i>Le Monde</i>	2020
“Victims that France is abandoning”	“Ils sont des victimes que la France abandonne.”	<i>Le Figaro</i>	2021
“Sporadic repatriations [...] are happening according to hard criterias to evaluate: thirty five children, presented as orphans”	“Des rapatriements sporadiques, [...] s’effectuent selon des critères difficiles à évaluer : trente-cinq enfants, présentés comme orphelins,”	<i>Le Monde</i>	2021
“France has already repatriated many children and minors.”	“La France a d'ores et déjà rapatrié beaucoup d'enfants et de mineurs”	Macron in <i>BFMTV</i>	2022

## Appendix B

This appendix presents the second stage of the discourse analysis, applying the discursive patterns identified in the first CDA to the ECHR's judgment of *H.F. and Others v. France* (2022). Building on the themes extracted from French political and media discourse: conditional innocence, case-by-case governance, humanitarian governmentality, and securitization, to examine if similar structures and narrative logics appear, shift, or are resisted within the Court's legal reasoning. To operationalize this comparison, a detailed codebook was developed to classify the judgment's structural techniques, argumentative strategies and evaluative moves. The appendix includes the full codebook (Table B.1.), and a representative sample of the coded excerpts (Table B.2.), illustrating how these patterns were traced through the judicial text. The full coding table exceeds the scope of the thesis, therefore not reproduced in full.

Table B.1.

*Codebook for the Discursive Analysis of H.F. and Others v. France (2022)*

Code	Label	Category
L1.1	Jurisdictional Reasoning	L1 Structural
L1.2	Interpretation of Rights	L1 Structural
L1.3	Positive Obligations / State Duties (procedural safeguards)	L1 Structural
L1.4	Proportionality / Balancing (security vs. rights)	L1 Structural
L1.5	Remedies / Non-Justiciability / Margin of Appreciation	L1 Structural
L2.1	Reliance on Precedent	L2 Argumentative
L2.2	Framing Through Necessity/Impossibility	L2 Argumentative
L2.3	Normalization of State Discretion	L2 Argumentative
L2.4	Vulnerability Framing	L2 Argumentative

L2.5	Neutralization of Political Rhetoric	L2 Argumentative
L2.6	Technicalities (procedural framing)	L2 Argumentative
A1	Innocence conditioned by parental decisions	A Conditional Innocence
A2	Innocence overshadowed by security risk	A Conditional Innocence
A3	Victim vs. rights-bearing subject tension	A Conditional Innocence
A4	Silence on national belonging	A Conditional Innocence
A5	Moralization of responsibility	A Conditional Innocence
B1	Deference to State Sovereignty	B Case-by-Case
B2	Proceduralizing of Duties (review over outcome)	B Case-by-Case
B3	Discursive normalization of filtering	B Case-by-Case
B4	Repatriation framed as an exception	B Case-by-Case
B5	Individualization as depoliticization	B Case-by-Case
B6	Structural Critique	B Case-by-Case
C1	Risk-based framing of minors	C Securitization
C2	Prioritization of national security over children's rights	C Securitization
C3	Implicit acceptance of inherited threat narratives	C Securitization

C4	Depoliticization through technocratic risk language	C Securitization
C5	Minimization of citizenship/belonging	C Securitization
L5.1	Constraining effect of discursive framing	L5 Evaluation
L5.2	Counter-discursive legal reasoning	L5 Evaluation
L5.3	Ambivalent reasoning (both reproduces and resists discourse)	L5 Evaluation
L5.4	Doctrinal innovation (e.g., special-features test)	L5 Evaluation

Table B.2.

*Sample of Coded Excerpts from H.F. and Others v. France (2022)*

Section	Excerpt (Condensed)	Legal Techniques Analysis	Codes
<b>I. Context</b>	<i>"Minors... systematically processed [...] 'Faced with this exceptional situation, it is necessary to put in place specific measures... adapted to their age [...]"</i>	<b>Proceduralisation;</b> Narrative framing of "exceptionality"; Administrative/Technocratic risk management.	L1.3, L1.4, L2.6, A1, B2
<b>IV. Jurisdiction (Govt)</b>	<i>"Govt argued applicants [...] did not fall within France's jurisdiction [...] unless</i>	<b>Precedent reliance</b> (Banković) to limit scope; Warning against "judicial legislation"; Strict territorial framing.	L1.1, L1.5, L2.1,

Section	Excerpt (Condensed)	Legal Techniques Analysis	Codes
	<i>a new basis... were to be created (Banković)."</i>		A2, L5.1
<b>IV. Jurisdiction (Applicants)</b>	<i>"Argued for interpretation [...] consistent with extraterritorial effects of national acts: opening investigations, refusing entry... (Güzelyurtlu)."</i>	<b>Functional jurisdiction argument;</b> Rights-expansive reasoning; Comparative case-law use.	L1.1, L1.2, A3, B2, C3
<b>IV. Jurisdiction (Interveners)</b>	<i>"Interveners (UN, Reprieve): Denial of jurisdictional link would create an 'unacceptable vacuum' [...] capacity to protect and nationality bond sufficient."</i>	<b>"Legal vacuum" jurisprudence;</b> Redefining jurisdiction via "vulnerability" and "capacity" rather than control.	L1.1, L1.3, B6, C4, L5.2
<b>IV. Court Decision (Jurisdiction)</b>	<i>"Incompatible [...] under Article 3 [Torture]. However, France's jurisdiction is established in respect of... Article 3 § 2</i>	<b>Formalist separation;</b> Dual-track analysis; Strategic compartmentalization (procedural vs substantive).	L1.3, L1.4, L2.1, A4, B2

Section	Excerpt (Condensed)	Legal Techniques Analysis	Codes
	<i>Protocol No. 4 [Entry]."</i>		
<b>V. Merits (Govt)</b>	<i>"[Refusal] based on the fact that the conduct of international relations stemmed from the political programme[...] and competing sovereignty."</i>	<b>Democratic mandate defense;</b> Insulating foreign policy from review; Sovereignty as shield.	L1.1, L1.3, A4, B2, C4
<b>V. Merits (Intervenors)</b>	<i>"Repatriation is an imperative duty [...] refusal puts lives at risk[...] (UN). France uses selective, security-driven policies (Clinique)."</i>	<b>Positive obligation logic;</b> Reframing "discretion" as "abandonment"; Fact-based critique of policy.	L1.3, L2.5, A2, B5, C3
<b>V. Merits (Court Decision)</b>	<i>"No obligation under international treaty law[...] to repatriate. [However] rejection[...] must give rise to an appropriate</i>	<b>Proceduralisation of rights;</b> Rejection of substantive duty; "Arbitrariness" check as compromise.	L1.2, L1.3, A2, C2, B1

Section	Excerpt (Condensed)	Legal Techniques Analysis	Codes
	<i>individual examination against arbitrariness."</i>		
<b>Concurring Opinion</b>	<i>"The very real threat [...] has brought back the spectre of banishment... whether we can defeat this scourge without poisoning our body politic."</i>	<b>Rhetorical historicism ("banishment");</b> Court as guardian of constitutional/moral order.	L1.4, L1.5, A4, B3, C2
<b>Dissenting Opinion</b>	<i>"Request... falls outside the scope [...] entirely. As this provision is not applicable it could not have been violated."</i>	<b>Strict Formalism;</b> <i>Ratione materiae</i> exclusion; Rejection of "universality" logic.	L1.3, L1.4, A1, B1, C1