



Syllabus

TERROR COUNTER-TERROR AND HUMAN RIGHTS - 62544

Last update 18-03-2018

HU Credits: 2

Responsible Department: law

Academic year: 0

Semester: 2nd Semester

Teaching Languages: English

Campus: Mt. Scopus

Course/Module Coordinator: Dr. Myriam Feinberg

Coordinator Email: myriam.ap@gmail.com

Coordinator Office Hours:

Teaching Staff:

Dr. Myriam Feinberg

Course/Module description:

Terrorism measures affected states long before the 9/11 attacks and counterterrorism measures have existed both domestically and at the international level. However, the need for increased counter-terrorism measures and the legitimacy of such measures received renewed attention after the attacks and in particular how they affect human rights.

A number of international organisations addressed the threat and the UN Security Council in particular obligated all states to adopt counter-terrorism measures and it established a special counter-terrorism sub-committee. Many states enacted new legislation and sometimes adopted exceptional measures. The term "war against terror" was used by the United States but it exposed deep disagreement over the appropriate legal and political framework for counter-terrorism actions because of its impact on human rights: terrorism threatens the most fundamental human rights, including the right to life. States therefore have an obligation to protect their citizens from acts of terrorism but they must do so without violating other rights, such as privacy, liberty, freedom of speech, etc.

This module deals with the challenges that both international law and domestic legal systems face in countering terrorism. After reviewing the difficulties in adopting an accepted international definition of "terrorism", the module discusses the various legal and political questions that arise in the fight against terrorism, including the legal regime that applies to action against suspected terrorists, state liability for terrorism, the use of force against suspected terrorists, international criminal liability for acts of terrorism, the detention of suspected terrorists and restrictions on freedom of expression and political organization. The fundamental question of the module is to what extent counter-terrorism measures are compatible with international human rights norms.

The following syllabus may be subject to changes and updates.

Course/Module aims:

Learning outcomes - On successful completion of this module, students should be able to:

- be familiar with the issues that arise in dealing with terrorism in a manner that is compatible with universal human rights norms.
- be able to discuss and analyze legal issues connected with the terrorism, counter-terrorism and human rights.

Attendance requirements(%):

Students who miss three or more classes will not be entitled to credit

Teaching arrangement and method of instruction: Discussion based on reading materials before class

Course/Module Content:

Class 1 Definition of Terrorism

Reference reading

UN Convention on Financing of Terrorism, article 2

OAU Convention on the Prevention and Combating of Terrorism, article 1

OIC Convention on Combating International Terrorism, articles 1 and 2

EU Directive on Combating Terrorism, 2017, article 3

Special Tribunal for Lebanon, Interlocutory Decision of 16 February 2011, paras.83-113.

Required reading:

EJP Report, Chapter 1: Human Rights versus Security in Assessing Damage, Urging Action, pp. 16-25; 124-136

Recommended:

Ben Saul, "The Emerging International Law of Terrorism" (2010) Indian Yearbook of International Law and Policy, 169

Class 2 Which legal regime?

Reference reading

Human Rights Committee, General Comment no. 29

Human Rights Committee, General Comment no. 31

EJP, paras. 49-66

IACHR, Castillo Petruzzi case, paras. 123-134

US memoranda on application of Geneva Conventions to detainees in Afghanistan

US Supreme Court, Hamdan v. Rumsfeld (2006), Court's view on application of Geneva

Conventions to detainees of al-Qaeda

European Convention on Human Rights, article 15

International Convention on Civil and Political Rights

Harold Koh, Lecture at 2010 Meeting of ASIL, pp. 10-17

Required reading

Kretzmer, Which legal regime applies to use of force?

Myriam Feinberg, The Legality of the International Coalition against ISIS, the Fluidity of International Law, Justice Magazine, 2016

Ben Saul, Criminality and Terrorism, in De Frias, Samuel and White, 133-170.

Class 3 International Regime

Reference reading

UN General Assembly Global Counterterrorism Strategy, 2006

UN Security Council Resolution 1373 (2001)

UN Security Council Resolution 1540 (2004)

UN Security Council Resolution 2178 (2014)

UN Security Council Resolution 2249 (2015)
UN Security Council Resolution 2253 (2015)
UN Security Council Resolutions 1267 (1999)
UN SC Al Qaeda Sanctions Committee
Inter American Convention Against Terrorism
OAU Convention on the Prevention and Combating of Terrorism
Council of Europe Convention on the Suppression of Terrorism
EU Directive 2017
Tagayeva and others v Russia, ECHR 2017
A and Others v Minister van Buitenlandse Zaken, Case C-158/14 European Court of Justice, 14th March 2017
Recommended:
Myriam Feinberg, *Sovereignty in the Age of Global Terrorism*, Brill 2016, p25-35 and 81-88

Class 4 International Demands and Human Rights

Reference reading:

Kadi case ECJ 2008, paras. 280- 314;

Kadi case 2013

Human Rights Committee, Communication 1472/2006, Sayadi and Vinck v. Belgium

HM Treasury v Ahmed [2010] UK Supreme Court

Al-Dulimi and Montana Management v. Switzerland 2013 and 2016

Nada v. Switzerland 2010

Al-Jedda v. UK, 2011

Recommended reading:

Myriam Feinberg, "International Counterterrorism – National Security and Human Rights: Conflicts of Norms or Checks and Balances?" *International Journal of Human Rights, Special Issue, Volume 19, Number 4, 2015.*

Class 5 Interrogation of suspected terrorists

Reference reading

UN Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment

Supreme Court of Israel, HCJ 5100/94, PCATI v. State of Israel

Ireland v UK (ECHR) 1978

Gafgen v Germany (ECHR) 2010

Recommended

David Kretzmer, *Torture, prohibition of*, in *Max Planck Encyclopedia of Public International Law*

Class 6 Interrogation of suspected terrorists – extraordinary renditions (2)

Reference reading:

Committee against Torture, Agiza v. Sweden

ECtHR Chahal v. UK

ECtHR, Othman v. UK, from §187

ECtHR, El Masri v. The Former Yugoslav Republic of Macedonia, §221

ECtHR, Al Nashiri v. Poland

ECtHR, Aswat v. UK

Recommended reading:

Silvia Borelli, "Extraordinary Rendition, Counter-Terrorism, and International Law", in B. Saul (ed.), Research Handbook on Terrorism and International Law (Edward Elgar, 2014), pp. 361-378

Class 7 Detention

Reference reading:

ECHR Al-Jedda v UK

House of Lords, A and others v. Secretary of State for Home Department

Marab v. Military Commander

Human Rights Committee, General Comment no. 35 on Article 9 of ICCPR

Hamdan v Rumsfeld

Boumediene v Bush

Recommended:

Yuval Shany, A Human Rights Perspective to Global Battlefield Detention: Time to Reconsider Indefinite Detention, 2017

Class 8 Use of lethal force against suspected terrorists

Reference

HCJ 769/02, PCATI v. Government of Israel, in Judgments of the Supreme Court of Israel: Fighting Terrorism within the Law (3)

ECtHR, Finogenov v. Russia, from §198

Harold Koh on Lawfulness of Killing Bin Laden, Opinio Juris

2010 Report by Philip Alston on extrajudicial killings

Recommended

Robert McCorquodale "Human Rights and the Targeting by Drones", Opinio Juris

David Kretzmer, Targeted Killings, EJIL 2005

Class 9 Incitement to Terrorism and Freedom of Expression

Reference reading:

UNSC Res. 1624 (2005)

Council of Europe Convention on the Prevention of Terror, article 5

Human Rights Committee, General Comment no. 34

EU Directive 2017, article 23

ECHR, Leroy v. France

ECHR, Batasuna v. Spain

Recommended:

Yael Ronen, Incitement to Terrorist Acts under International Law

Class 10 Due Process and Fair Trial

Assigned readings:

IACHR, Castillo Petruzzi case, paras. 123-134

Memorandum, Legality of the Use of Military Commissions to Try Terrorists

CRS, The Military Commissions Act of 2009: Overview and Legal Issues

EJP Report, pages 60, 136-158.

ZZ v. Secretary of State for the Home Department (European General Court, 2012)

ECtHR, Ibrahim and others v. UK

ECtHR, Guñnes v. Turkey

Recommended:

Judge Robert Spano, "Fair trial rights And terrorism: bright-Line rules or flexible procedural Safeguards?"

Class 11 "Israeli counterterrorism law

Class 12 "cyber terrorism

TBU

Class 13 Film

Documentary

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Inter American Convention Against Terrorism

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EU Directive 2017

Tagayeva and others v Russia, ECHR 2017

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Recommended:
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Class 12 " cyber terrorism
TBU

Class 13 Film
Documentary

Additional Reading Material:
Appears in syllabus

Course/Module evaluation:

End of year written/oral examination 100 %
Presentation 0 %
Participation in Tutorials 0 %
Project work 0 %
Assignments 0 %
Reports 0 %
Research project 0 %
Quizzes 0 %
Other 0 %

Additional information: