Syllabus

**TERROR COUNTER-TERROR AND HUMAN RIGHTS - 62544**

*Last update 18-03-2018*

**HU Credits:** 2

**Degree/Cycle:** 1st degree (Bachelor)

**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 counter-terrorism 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 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

Required reading:
Recommended:

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 2178 (2014)
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
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:

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:

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:

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
ECtHR, Leroy v. France
ECtHR, 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
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, Guendes 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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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,
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?
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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:

Class 7 Detention
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House of Lords, A and others v. Secretary of State for Home Department
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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: