

# Counter-Terrorism and Human Rights- Lecture Plan

Professor Cecilia M. Bailliet Fridays

Textbook: Helen Duffy, The War on Terror and the Framework of International Law 2<sup>nd</sup> Edition (Cambridge 2015)

Electronic Book Available here:  
<https://doi.org/10.1017/CBO9781139028585>

## **Sept 1st Cecilia Bailliet**

### **Definition of terrorism. Core Elements. The Permanent Emergency. Overview of International Cooperation – UN, Europe & the Americas**

#### **Instruments:**

- UN Security Council Resolution 1373 <http://www.un.org/News/Press/docs/2001/sc7158.doc.htm>
- Inter American Convention Against Terrorism
- OAU Convention on the Prevention and Combating of Terrorism
- EU Convention on the Suppression of Terrorism
- SAARC Convention

#### **Website:**

- [http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml&menu=MTDSG](http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG)

#### **Reading:**

- Duffy, Chapter 2
- Karima Bennouna, [Terror/Torture](#), 26 Berkeley Journal of International Law 1 2008

#### **Websites:**

<https://global.oup.com/ukhe/product/the-globalization-of-world-politics-9780198739852?cc=no&lang=en&>

UN:

UN Action to counter terrorism <http://www.un.org/terrorism>

UN Security Council Counter-Terrorism Committee: <http://www.un.org/en/sc/ctc/index.html>

The Counter-Terrorism Implementation Task Force (CTITF):<http://www.un.org/en/terrorism/ctif/index.shtml>

UN Counter-Terrorism Centre (UNCCT):<http://www.un.org/en/terrorism/ctif/uncct/index.shtml>

UN Secretary General Action Plan to Counter Extremism:  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/674](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674)

EU on counter-terrorism :<http://www.consilium.europa.eu/policies/fight-against-terrorism?lang=en>

EU Strategy : <http://www.consilium.europa.eu/policies/fight-against-terrorism/eu-strategy?lang=en>

AU and counter-terrorism: [http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter\\_Terrorism.htm](http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter_Terrorism.htm)

OAS and counter-terrorism: <http://www.oas.org/consejo/cajp/human%20rights.asp#terrorism>

## **Sept. 15th Cecilia Bailliet**

### **The Relationship Between Human Rights and Counter-Terrorism**

- Duffy, Chapter 7, pp. 274-347, 364-365

#### **Instruments:**

- Universal Declaration of Human Rights, Art. 3
- Covenant on Economic, Social and Cultural Rights, Arts. 4 & 5
- Covenant on Civil and Political Rights, Arts. 4, 5, 6, 9, 10, 12, 14-16, & 19
- General Comment 10 on the Freedom of Expression, HRC (1983)
- [General Comment 29](#) on States of Emergency, HRC (2001)
- [Siracusa Principles](#) on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

[Paris Minimum Standards](#) of Human Rights Norms in a State of Emergency

See generally European Court of Human Rights Factsheet on [Terrorism](#) and on [Secret Detention Sites](#)

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- **Cases:** *Goiboru v. Paraguay*, IACTHR(2006)  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_153\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf)
- *Finogenov and others v. Russia* (ECTHR 2012)  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108231#{"itemid":\["001-108231"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108231#{)
- *Isayeva, Yusopeva and Bazayeva v. Russia* (ECTHR 2002)  
<http://www.refworld.org/docid/3e4bcdb14.html>
- *McCann v. UK* (ECTHR)  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57943#{"itemid":\["001-57943"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57943#{)
- *Guerrero v. Colombia* (UN Human Rights Committee 1982)  
<http://www1.umn.edu/humanrts/undocs/session37/11-45.htm>
- *Surek v. Turkey* (ECTHR 1999)  
[https://hudoc.echr.coe.int/eng#{"appno":\["26682/95"\]}](https://hudoc.echr.coe.int/eng#{)
- *Klass and others v. Germany* (ECTHR 1978)  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57510#{"itemid":\["001-57510"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57510#{)
- *Kadi v. Council of the European Union* (European Court of Justice 2008)  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML>

### **Additional Materials:**

UN Website: <http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>

IACHR Report: <http://www.cidh.org/Terrorism/Eng/toc.htm>

Council of Europe Guidelines on Human Rights and Counter-Terrorism:  
[http://www.coe.int/t/dlapil/cahdi/Source/Docs2002/H\\_2002\\_4E.pdf](http://www.coe.int/t/dlapil/cahdi/Source/Docs2002/H_2002_4E.pdf)

Parliamentary Assembly of the Council of Europe Report on 'Alleged secret detentions in Council of Europe member states', of 22 January 2006

[http://assembly.coe.int/CommitteeDocs/2006/20060124\\_Jdoc032006\\_E.pdf](http://assembly.coe.int/CommitteeDocs/2006/20060124_Jdoc032006_E.pdf)

Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism, Fact Sheet No. 32, July 2008.

<http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

<http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>

AU Report on Human Rights and Counter-Terrorism: <http://www.achpr.org/mechanisms/human-rights-defenders/Principles-Gudelines/>

### **22 September Cecilia Bailliet**

#### **Class Debate: Proscription of Debate, Control of Opinion, Limitation on Freedom of Expression**

Duffy, pages 207-210, 521-523, 633-636

UN Security Council Resolution 1624 (2005):  
<http://www.state.gov/j/ct/rls/other/un/65761.htm>

Council of Europe Convention on the Prevention of Terrorism;  
<http://conventions.coe.int/Treaty/EN/Treaties/Html/196.htm>

Amal Clooney: The right to insult in International Law  
<http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2017/03/Clooney-Webb.pdf>

### **27 Sept 14:15- 16 September Cecilia Bailliet Torture**

**Duffy, 506-510, 527-540**

#### **Instruments:**

- CAT, Articles 1 & 3 ; ICCPR, Art. 7
- [CCPR General Comment 20 on Torture](#)

#### **Reading:**

- Dr. Mohammed Saif-Alden Wattad, [The Torturing Debate on Torture](#) 29 Northern Illinois U. Law Review 1 (2008)
- [Torture Memo](#)

**Case:**

[Ireland v. UK](#), ECHR

**Reports:**

ACLU Report on Detainee Treatment: <http://www.aclu.org/accountability/released.html>

The Report of the Constitution Task Force on Detainee treatment:  
<http://www.nytimes.com/interactive/2013/04/16/world/16torture-report.html?ref=world>

Report on American Psychological Association and Interrogation:  
<http://www.nytimes.com/interactive/2015/05/01/us/document-report.html>

## Extraordinary Rendition, Enforced Disappearance & Non-Refoulement

**Cases:**

- [CAT Agiza Case](#)
- [CAT General Comment 1 on Implementation of Article 3](#)
  - ECtHR, El Masri v. Macedonia: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{"itemid":\["001-115621"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{)

**Reading:**

- Louis Fisher, [Extraordinary Rendition : The Price of Secrecy](#), 57 American U. Law Review 1404 (June 2008)

Globalizing Torture: <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>

## 16 Oct. Gentian Zyberi

### Counter Terrorism Laws, International Humanitarian Law and Humanitarian Engagement

**Reading:**

- Duffy Chapter 6
- Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, Humanitarian Engagement under Counter Terrorism: a conflict of norms and the emerging policy landscape, 93 Int'l Rev. Red Cross 623 (2011) Available at: [www.icrc.org/eng/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf](http://www.icrc.org/eng/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf)

**Treaty Law:**

Available at: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>

- Articles 2, 3 Common to the Geneva Conventions of 1949
- Articles 1, 43- 45 and 50-51 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the protection of victims of International Armed Conflict (Protocol I) of 8 June 1977

- Article 1, 13 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the protection of victims of Non-International Armed Conflict (Protocol I) of 8 June 1977

**Articles/Speeches/Comments:**

- Geoffrey S. Corn and Eric Talbot Jensen Untying the Gordian Knot: A Proposal for Determining the Applicability of the Laws of War to the War on Terror Temple Law Review Vol.81 787-830 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1083849](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083849)

**Optional Reading:**

- Sassoli, M. Transnational Armed Groups and International Humanitarian Law HCPR Occasional Paper Series Winter 2006 No. 6 <http://www.hpcrresearch.org/sites/default/files/publications/OccasionalPaper6.pdf>

**20 October Gentian Zyberi**

**Use of Technology, Drones and the Law on Targeting in Counter-Terrorism Operations**

**Reading:**

US DOJ White Paper 2011 (16 pp): <https://www.documentcloud.org/documents/602342-draft-white-paper.html>

Stuart Casey-Maslen, Pandora's box? Drone strikes under jus ad bellum, jus in bello, and international human rights law, International Review of the Red Cross, No. 886, 2012, pp. 597-625 (29 pp): <https://www.icrc.org/eng/assets/files/review/2012/irrc-886-casey-maslen.pdf>

International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 'Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan' (September 2012), (chapters 1, 3 and 4 of the report): <http://www.livingunderdrones.org/wp-content/uploads/2013/10/Stanford-NYU-Living-Under-Drones.pdf>;

UN Special Rapporteur on Extrajudicial Executions (29 pp): <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

Joint Letter to the UN Human Rights Council on Targeted Killings and the Use of Armed Drones, September 2014: <http://www.hrw.org/news/2014/09/18/joint-letter-un-human-rights-council-targeted-killings-and-use-armed-drones>

**25 October Anders Schiøtz Worren**

**Financing Terrorism**

Duffy pages 205-27

**Readings:**

Ilias Bantekas, The international law on terrorist financing, chapter 7, Research Handbook on International Law and Terrorism, 2014, pp. 121 – 135: <http://bura.brunel.ac.uk/bitstream/2438/12937/1/terrorist%20financing%20Edward%20Elgar%20Research%20handbook.doc>

## **Instruments**

International Convention for the Suppression of the Financing of Terrorism (1999):  
<http://www.un.org/law/cod/finterr.htm>

UNSCRs 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities:

UNSCR 1373:

Financial Action Task Force (FATF) recommendations 5, 6 and 8, and corresponding interpretative notes:

## **Cases (optional reading)**

Nada v. Switzerland, European Court of Human Rights, Grand Chamber, 12 September 2012:

Commission and Others v Kadi, Court of Justice of the European Union, Grand Chamber, 18. July 2013:

Al-Dulimi and Montana Management v. Switzerland, European Court of Human Rights, Grand Chamber, 21. June 2016:

## **27 October Heidi Mork Lomell**

### **Prevention, precaution and protection in counter-terrorism policy and practice**

#### **Readings:**

Lomell, H. M. (2012). Punishing the uncommitted crime: prevention, pre-emption, precaution and the transformation of criminal law. In: B. Hudson and S. Ugelvik (ed.), Justice and Security in the 21st Century: Risks, Rights and the Rule of Law (pp. 83-100). Abingdon, Oxon: Routledge.

<http://www.tandfebooks.com/ISBN/9780203125588>

Stern, J. & Wiener, J. B. (2006). Precaution Against Terrorism. In: Journal of Risk Research, 9(4), pp. 393-447.

[http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2477&context=faculty\\_scholarship&sei-redir=1%20-%20search=%22Stern%20Precaution%20Against%20Terrorism%22](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2477&context=faculty_scholarship&sei-redir=1%20-%20search=%22Stern%20Precaution%20Against%20Terrorism%22)

Günther, Klaus (2013): Responsibility to Protect and Preventive Justice. In: Prevention and the Limits of the Criminal Law. Ed. By Andrew Ashworth, Lucia Zedner and Patrick Tomlin. Oxford: Oxford University Press.

<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199656769.001.0001/acprof-9780199656769>

Optional readings:

NO: Rapport fra 22. juli-kommisjonen (NOU 2012: 14)  
<https://www.regjeringen.no/no/dokumenter/nou-2012-14/id697260/>

EN: 22 July Commission's report (English extract):  
[https://www.regjeringen.no/html/smk/22julikommissjonen/22JULIKOMMISSJONEN\\_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE\\_COMBINED\\_ENGLISH\\_VERSI.PDF](https://www.regjeringen.no/html/smk/22julikommissjonen/22JULIKOMMISSJONEN_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE_COMBINED_ENGLISH_VERSI.PDF)

9/11 Commission Report, ch. 11  
[https://www.regjeringen.no/html/smk/22julikommissjonen/22JULIKOMMISSJONEN\\_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE\\_COMBINED\\_ENGLISH\\_VERSI.PDF](https://www.regjeringen.no/html/smk/22julikommissjonen/22JULIKOMMISSJONEN_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE_COMBINED_ENGLISH_VERSI.PDF)

Could 7/7 have been Prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224542/7-7\\_attacks\\_intelligence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224542/7-7_attacks_intelligence.pdf)

Report on the intelligence relating to the murder of Fusilier Lee Rigby  
<http://isc.independent.gov.uk/committee-reports/special-reports>

### **3. Nov. Foreign Terrorist Fighters Ester J. Strømme**

Instruments:

Instruments:

UN Security Council Resolution 2170 (2014):  
<http://unscr.com/en/resolutions/doc/2170>

UN Security Council Resolution 2178 (2014):  
[http://www.un.org/en/sc/ctc/docs/2015/SCR%202178\\_2014\\_EN.pdf](http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf)

Reading:

Geneva Academy of International Humanitarian Law and Human Rights (2014), "Foreign Fighters Under International Law". Academy Briefing No. 7. Geneva, Switzerland.

Read pages 3-12 and 55-64, the rest is optional reading as this is a highly in-depth, excellent piece.

Strømme, E. (2017) «Jihadi Brides or Female Foreign Fighters? Women in Da'esh – from Recruitment to Sentencing», GPS Policy Brief, 1. Oslo:PRIO.

Hegghammer, T. (2016) "The Future of Jihadism in Europe: A Pessimistic View", Perspectives on Terrorism Vol 10, No 6.

The Hague Marrakech Memorandum:

[https://www.thegctf.org/documents/10162/140201/14Sept19\\_The+Hague-Marrakech+FTF+Memorandum.pdf](https://www.thegctf.org/documents/10162/140201/14Sept19_The+Hague-Marrakech+FTF+Memorandum.pdf)

Optional reading:

<https://www.newyorker.com/news/news-desk/isis-jihadis-have-returned-home-by-the-thousands>

### **8 November Benedikte Høqberg**

#### **"Foreign fighters, terrorists and deprivation of citizenship"**

See article in Fronter: CITIZENSHIP UNMOORED: EXPATRIATION AS A COUNTER-TERRORISM TOOL

<http://www.uio.no/studier/emner/jus/humanrights/JUS5503/h17/citizenship-unmoored-expatriation-as-a-counter-terrorism-tool.pdf>

### **10 Nov. Lee Andrew Bygrave**

#### **Right to Privacy and Surveillance of the Internet**

**Duffy pages 524 and 641**

**Cases:** CJEU judgment of 8 April 2014 in Jointed Cases C-293/12 and C-594/12, Digital Rights Ireland, Seitlinger and others.

<http://curia.europa.eu/juris/liste.jsf?num=C-293/12>

ECtHR judgment of 2 Sept 2010 in Uzun v Germany (application no.

35623/05). [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100293#{\"itemid\":\[\"001-100293\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100293#{\)

**Website:** <https://global.oup.com/academic/product/international-law-theories-9780198725121?cc=no&lang=en&>