



Course Name: Human Rights and Counter-Terrorism: Striking a Balance?
Course Code: HUMR 5503
Course Website: <http://www.uio.no/studier/emner/jus/humanrights/HUMR5503/>

Notice: Any page references provided in this Course Outline are to facilitate student preparation for each lecture. They are not a substitute for the official reading list for which students are responsible on the final examination.

Location: Lectures take place in room 365, Domus Nova building (St. Olavs kvartal).

LECTURE 1

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

Instructor: Professor Cecilia Bailliet
Date/time: Wednesday 2 September, 10:15-12
Location: Room 365, Domus Nova

Instruments:

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- UN Resolution 1373
 - Inter American Convention Against Terrorism
 - OAU Convention on the Prevention and Combating of Terrorism
 - EU Convention on the Suppression of Terrorism
 - SAARC Convention
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Website:

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- http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG
-

Reading:

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- Duffy, Chapter 2
 - Karima Bennouna, "Terror/Torture", 26 Berkeley Journal of International Law 1 2008
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Websites:

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- <http://www.globalct.org/index.php>
 - <http://www.un.org/News/Press/docs/2008/ga10735.doc.htm>
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The Relationship Between Human Rights and Counter-terrorism

Subject :

LECTURE 2 & 3

Instructor: Researcher Richard Hustad

Date/time: Wednesdays 9 & 16 September, 10:15-12

Location: Room 365, Domus Nova

Lecture outline:

Human Rights in Situations of Counter-Terrorism

1. The Relationship Between Human Rights and Counter-terrorism
 - The Freedom from Terrorism
 - Balancing Competing Human Rights
2. The Derogation Regime of CCPR, Art. 4
 - Necessary
 - Proportional
 - Appropriate
 - Least intrusive means
 - Non-discriminatory
 - Derogation Regime in CESCO?
3. The Freedom from Arbitrary Detention and Rights in Custody
 - “Arbitrary Arrest”
 - Reasons for Arrest
 - Access to Counsel
 - Time Limits
 - “Competent Authority”
 - Habeas Corpus
 - Detention Abroad—The Issue of Extraterritoriality
4. Restrictions of Human Rights
 - Provided by Law
 - Necessary
 - Legitimate Objective
 - Consistent with Other Rights
5. Freedom of Expression

Instruments:

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- UDHR Art. 3
 - CCPR, Arts. 4, 6 & 9
 - CESCO Art. 5
 - HRC General Comment 39
 - Paris Minimum Standards of Human Rights Norms in a State of Emergency
 - Siracusa Principles on the limitation and derogation of CCPR
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Cases:

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- Delgado Paez v. Colombia, HRC 1990
 - Weinberger v. Uruguay, HRC 1978
 - Busyo et. Al. v. Congo HRC (2003)
 - Silva v. Uruguay, HRC (1981)
 - The Greek Case, Eur. Comm. H.R. (1969)
 - Adolfo Drescher Caldas v. Uruguay, HRC 1990
 - Antti Vuolanne v. Finland, HRC 1989
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Readings:

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

Socio-Economic Rights & Terrorism

EXTRA GUEST LECTURE

Subject :

Martin Scheinin, Special Rapporteur on Human Rights and Counter-Terrorism

Instructor:

21 September, 10-12

Date/time:

Location:

Norwegian Center of Human Rights (NCHR), Cort Adelersgt. 30, auditorium (ground floor)

Torture

LECTURE 4

Subject :

Professor Cecilia Bailliet

Instructor:

Date/time:

Wednesday 23 September, 10:15-12

Location:

Room 365, Domus Nova

Instrument:

- CAT, Articles 1 & 3 ; ICCPR, Art. 7

Reading:

- Dr. Mohammed Saif-Alden Wattad, The Torturing Debate on Torture 29 Northern Illinois U. Law Review 1 (2008)
- Torture Memo http://www.nytimes.com/ref/international/24MEMO-GUIDE.html?_r=1&scp=1&sq=torture%20memos&st=cse

<http://www.aclu.org/accountability/released.html>

Extraordinary Rendition, Enforced Disappearance &
Non-Refoulement

Subject :

LECTURE 5

Instructor: Professor Cecilia Bailliet

Date/time: Wednesday 7 October, 10:15-12

Location: Room 365, Domus Nova

Instrument :

- CAT Agiza Case
<http://www.unhcr.org/refworld/country,,CAT,,EGY,456d621e2,42ce734a2,0.html>

Reading:

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

Counter-terrorism and 'Transnational' Armed Conflicts

Subject :

LECTURE 6

Instructor: Simon O'Connor, Legal Advisor, Norwegian Red Cross

Date/time: Wednesday 14 October, 10:15-12

Location: Room 365, Domus Nova

Reading:

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- Duffy, Chapter 6 pages 217-228 and 249-273
-

Treaty Law:

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- Common Articles 2 and 3 to Geneva Conventions of 1949
 - Articles 4 and 5 of Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
 - Articles 1 and 43- 45 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
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Jurisprudence:

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- *Prosecutor v Tadic* ICTY Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber) paras. 65-70
-

Pleadings:

- Joint Defence Motion to Dismiss All Charges for Lack of Subject Matter Jurisdiction (Absence of Armed Conflict) 3 November 2008 - [http://www.defenselink.mil/news/D-061%20Defense%20MTD%20for%20Lack%20of%20Jurisdiction%20\(absence%20of%20armed%20conflict\).pdf](http://www.defenselink.mil/news/D-061%20Defense%20MTD%20for%20Lack%20of%20Jurisdiction%20(absence%20of%20armed%20conflict).pdf) (Yet to be ruled on given the Commission Ruling of 12 June 2009 granting Prosecution Motion for Additional 120-Day Continuance and current further continuance on substantive matters, yet not discovery)
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Government Documents:

- *Legality of the Use of Military Commissions to Try Terrorists* November 6 2001 Memorandum for the Counsel to the President (Office of Legal Counsel US Department of Justice see - <http://www.usdoj.gov/olc/2001/pub-millcommfinal.pdf>)
 - “*Protected Person*” *Status in Occupied Iraq Under the Fourth Geneva Convention* March 18 2004 Memorandum for the Counsel to the President (Office of Legal Counsel US Department of Justice see - <http://www.usdoj.gov/olc/2004/gc4mar18.pdf>
-

Articles:

- Corn and Jensen, *Transnational Armed Conflict: A "Principled" Approach to the Regulation of Counter-Terrorism Combat Operations* 42 *Israel Law Review* (2009) pages 1-34 available at SSRN – http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1256380
 - Sassoli, M. *Transnational Armed Groups and International Humanitarian Law* HCPR Occasional Paper Series Winter 2006 No. 6
 - Jinks, D. *September 11 and the Laws of War* 28 *Yale Journal International Law* 15 (2003) pages 1-49
 - Rona *Interesting Times for International Humanitarian Law* *Fletcher Forum of World Affairs* Vol 27:2 Summer Fall (2003) available at ICRC website - [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5PWELF/\\$File/Rona_terror.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5PWELF/$File/Rona_terror.pdf)
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Optional Readings:

- Commentaries to Articles from Geneva Conventions and Additional Protocol I see <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions> and follow respective links
 - Antonio Cassese, *Terrorism is Also Disrupting Some Crucial Legal Categories of International Law* 12 *EJIL* (2001) 993-1001
 - *Prosecutor v Tadic* ICTY Appeal Judgment paragraphs 83-145
 - *Prosecutor v Thomas Lunanga Dyilo* ICC Decision on the Confirmation of Charges paragraphs 200-237
 - Marco Sassoli, *Terrorism and War* 4 *JICL* (2006) 959-981
 - Ingrid Detter *The Law of War and Illegal Combatants* 75 *GWLR* 5-6 (2007) 1049-1104
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- US Department of Justice Memorandum of 22 January 02
<http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/doj/bybee12202mem.pdf>
 - White House Memorandum of 7 February 2002
http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf
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The Targets of Counter-terrorism: Direct Participants of
Hostes Humanis Generis?

Subject :

LECTURE 7

Instructor:

Date/time: Simon O'Connor, Legal Advisor, Norwegian Red Cross

Location: Wednesday 4 November, 10:15-12

Room 365, Domus Nova

Reading:

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- Duffy Chapter 6, pages 228-249
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Treaty Law:

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- Articles 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 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
 - Article 101-107, 110-111 United Nations Convention on the Law of the Sea 1982
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United Nations:

Security Council Resolutions:

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- 1269 on the responsibility of the Security Council in the maintenance of international peace and security
 - 1373 on threats to international peace and security caused by terrorist acts
 - 1851 on the situation in Somalia
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ICRC:

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- *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* International Review of the Red Cross Vol. 90 No. 872 December 2008 991-1047
-

Pleadings:

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- *In Re: Guantanamo Bay Detainee Litigation* Respondent's Memorandum Regarding the Government's Detention Authority Relative to Detainees Held at Guantanamo Bay 13 March 2009 District Court for the District of Columbia
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Articles:

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- *Direct Participation in Hostilities" and 21st Century Armed Conflict*, in Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck (Berlin: BWV, Horst Fischer et al eds., 2004), at 505-529.
 - Bradley, C.A. and Goldsmith, J.L. *Congressional Authorisation and the War on Terrorism* Harvard Law Review 118 Harvard Law Review No 7. (2005) 2047-2133
 - Kontorovich, E. "Guantanamo on the Sea" *The Difficulties of Prosecuting Pirates and Terrorists* Northwestern University School of Law Public Law and Legal Theory Series No.09-10 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1371122) Due to be published California Law Review Vol. 98 February 2010 pages 1-39
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Treves, T. *Piracy, Law of the Sea, and the Use of Force: Developments off the Coast of Somalia* European Journal of International Law (2009) Vol. 20 No.2 399-414

Optional Readings:

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- Commentaries to Articles from Additional Protocols I and II see <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions> and follow respective links
-

ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody (in particular Section 4)

- *Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees* 5 Chicago Journal of International Law 511-546 (2005)
 - Simpson, G. *Law War and Crime* Chapter 7
-

- Halberstam, M. *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety* 82 *American Journal of International Law* (1988) 269-310
 - SUA Convention Articles 3-7
-

Criminalising Terrorism and Related Acts under International Law

Subject :

LECTURE 8

Instructor:

Date/time: Nobuo Hayashi, Researcher, PRIO

Location: Wednesday 11 November, 10:15-12
Room 365, Domus Nova

Mandatory readings:

- *Prosecutor v. Galic*, paras. 63-138 (Trial Judgement) and paras. 79-109 (Appeal Judgement) (<http://www.icty.org/case/galic/4>)
- Duffy, chap. 4 (esp. pp. 73-117)
- Mark A. Drumbl, *Transnational Terrorist Financing: Criminal and Civil Perspectives*, 9 *GERMAN LAW JOURNAL* (2008), pp. 933-943 (http://www.germanlawjournal.com/pdf/Vol09No07/PDF_Vol_09_No_07_933-944_Developments_Drumbl.pdf)

Optional readings:

- *Prosecutor v. Galic* (Trial Judgement), Judge Nieto-Navia's separate and partially dissenting opinion, paras. 108-113 (<http://www.icty.org/case/galic/4>)
- Duffy, chap. 4 (pp. 117-143)
- Jeanne K. Giraldo and Harold A. Trinkunas, *Terrorist Financing: Explaining Government Responses*, in *TERRORIST FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE*, pp. 282-296 (2007)

Keeping Counter-Terrorist Measures in Check I – Prospects and Limitations of National Self-Correction

Subject :

LECTURE 9

Instructor:

Date/time: Nobuo Hayashi, Researcher, PRIO

Location: Wednesday 18 November, 10:15-12
Room 365, Domus Nova

Mandatory readings:

- *Hamdan v. Rumsfeld et al.*, pp. 20-73
(<http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>)
- *Boumediene et al. v. Bush et al.*, pp. 8-70
(<http://www.supremecourt.gov/opinions/07pdf/06-1195.pdf>)

Optional readings:

- *Hamdan v. Rumsfeld et al.*, Justice Kennedy's partially concurring opinion
(<http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>)
- *Hamdan v. Rumsfeld et al.*, Justice Thomas' dissenting opinion
(<http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>)
- *Boumediene et al. v. Bush et al.*, Justice Robert's dissenting opinion
(<http://www.supremecourt.gov/opinions/07pdf/06-1195.pdf>)
- *Boumediene et al. v. Bush et al.*, Justice Scalia's dissenting opinion
(<http://www.supremecourt.gov/opinions/07pdf/06-1195.pdf>)
- Duffy, chap. 8 (esp. pp. 379-430)

Subject : Keeping Counter-Terrorist Measures in Check II –
Norms and Institutions of International Criminal Justice
and ‘Transnational’ Armed Conflicts

LECTURE 10

Instructor: Nobuo Hayashi, Researcher, PRIO
Date/time: Wednesday 25 November, 10:15-12
Location: Room 365, Domus Nova

Mandatory readings:

- Philippe Sands, *Torture Teams: Uncovering War Crimes in the Land of the Free* (Penguin 2009), pp. 211-294
- Duffy, chap. 8 (esp. pp. 430-442)

Optional readings:

- *United States of America v. Josef Altstoetter et al.* ("The Justice Case"), pp. 1081-1177
(http://www.loc.gov/rr/frd/Military_Law/pdf/NT_war-criminals_Vol-III.pdf)

Extra:

Special Film: *Torturing Democracy* (<http://www.torturingdemocracy.org/>)