

## Counter-Terrorism and Human Rights Fall 2019

Cecilia M. Bailliet

Textbook: Helen Duffy, *The War on Terror and the Framework of International Law* (2<sup>nd</sup> Edition Cambridge) available: <https://www.cambridge.org/core/books/war-on-terror-and-the-framework-of-international-law/A9937D77DD6923824E6A045CE7E693D7>

This class meets Tuesday 14:15-16:00, DA Auditorium 6

### August 27 The Definition of Terrorism, The Permanent Emergency, Global and Regional Institutions

**Learning Objectives:** In this session, we will explore the definitional debates on terrorism from an international law stand point, as well as its core elements. We will also discuss the 'war on terror' as a state of Permanent Emergency. Finally, students will be provided with an overview of International Cooperation, including in the UN, Europe, Africa, the Americas, Middle East, and Asia

#### Required Readings:

- Helen Duffy, "The War on Terror and the Framework of International Law", 2nd Edition (Cambridge 2015), Chapter 2

#### Instruments for Reference:

- UN Security Council Resolution 1373  
<http://www.un.org/News/Press/docs/2001/sc7158.doc.htm>
- Inter American Convention Against Terrorism:  
[http://oas.org/xxxiiga/english/docs\\_en/docs\\_items/AGres1840\\_02.htm](http://oas.org/xxxiiga/english/docs_en/docs_items/AGres1840_02.htm)
- OAU Convention on the Prevention and Combating of Terrorism:  
<https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>
- EU Convention on the Suppression of Terrorism:  
<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/090>
- SAARC Convention:  
<http://www.satp.org/satporgtp/southasia/documents/papers/SAARC%20Regional%20Convention%20on%20suppression%20of%20Terrorism.htm>
- Additional Protocol to SAARC:  
<https://www.jus.uio.no/english/services/library/treaties/04/4-02/prot-suppression-terrorism.xml>
- OIC Convention on Combatting Terrorism:  
<http://www.refworld.org/docid/3de5e6646.html>
- The Arab Convention for the Suppression of Terrorism:  
<http://www.refworld.org/pdfid/3de5e4984.pdf>

#### Optional Resources:

- 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/ctitf/index.shtml>
- UN Counter-Terrorism Centre (UNCCT):  
<http://www.un.org/en/terrorism/ctitf/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>
- African Union and Counter-Terrorism  
[http://www.africaunion.org/root/au/AUC/Departments/PSC/Counter\\_Terrorism.htm](http://www.africaunion.org/root/au/AUC/Departments/PSC/Counter_Terrorism.htm)
- OAS and counter-terrorism:  
<http://www.oas.org/consejo/cajp/human%20rights.asp#terrorism>

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## September 3 The Relationship Between Human Rights, Constitutional Law, and Counter-Terrorism- Limitations on Human Rights and States of Emergency

### Required Readings:

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

### Optional Readings:

- Amnesty International Report Dangerously Disproportionate:  
<https://www.amnesty.org/en/documents/eur01/5342/2017/en/https://www.amnesty.org/en/documents/eur01/5342/2017/en/>

### Instruments for Reference:

- Universal Declaration of Human Rights, Art. 3 <http://www.un.org/en/universal-declaration-human-rights/>
- International Covenant on Economic, Social and Cultural Rights, Arts. 4 & 5  
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- International Covenant on Civil and Political Rights, Arts. 4, 5, 6, 9, 10, 12, 14-16, & 19  
□ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
- General Comment 10 on the Freedom of Expression, HRC (1983)  
<https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo10.pdf>
- General Comment 29 on States of Emergency, HRC (2001)  
<http://hrlibrary.umn.edu/gencomm/hrc29.html>

□ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights <http://hrlibrary.umn.edu/instree/siracusaprinciples.html>

Paris Minimum Standards of Human Rights Norms in a State of Emergency  
<https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/ParisMinimumStandards.pdf>

See generally European Court of Human Rights Factsheet on Terrorism and the European Convention on Human Rights: [https://www.echr.coe.int/Documents/FS\\_Terrorism\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Terrorism_ENG.pdf)

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## September 10 Human Rights Institutional Perspectives on Counter-Terrorism:

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

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

Inter-American Commission of Human Rights 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)

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

## Group Work: Presentation of Cases, Issue, Rule, Analysis, Conclusion

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/3e4bcd14.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#{)

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## September 17 Children's Rights and Prevention of Extremism

### Reading:

Open Society Report on the UK's Prevent Counter- Extremism Strategy, available at:

<https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>

Group Work: Please pick UN Committee on the Rights of the Child Concluding Observations on State Reports (you may select between 1-3 states) and write a critique of what conclusions the Committee gives to the state regarding its counter-extremism policies and the impact on children. The UN CRC concluding observations may be found here:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en)

Instrument: The Convention on the Rights of the Child:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

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## September 24 Torture

### Required Reading, Duffy, 506-510, 527-540

Instruments:

UN Convention Against Torture, Articles 1 & 3:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

ICCPR, Art. 7 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

ICCPR General Comment 20 on Torture <http://www.refworld.org/docid/453883fb0.html>

Torture Memo: [https://archive.nytimes.com/www.nytimes.com/ref/international/24MEMO-GUIDE.html?\\_r=1&scp=1&sq=torture%2520memos&st=cse](https://archive.nytimes.com/www.nytimes.com/ref/international/24MEMO-GUIDE.html?_r=1&scp=1&sq=torture%2520memos&st=cse)

Case:

Ireland v. UK, ECHR [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57506"\]}](https://hudoc.echr.coe.int/eng#{)

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>

## Special Focus: Extraordinary Rendition, Enforced Disappearance & Non-Refoulement

### Reading:

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

Group Work, presentation of Cases: Issue, Rule, Analysis, Conclusion:

CAT Agiza Case: [http://www.bayefsky.com/pdf/sweden\\_t5\\_cat\\_233\\_2003.pdf](http://www.bayefsky.com/pdf/sweden_t5_cat_233_2003.pdf)

CAT General Comment 1 on Implementation of Article 3:

<http://www.refworld.org/docid/453882365.html>

ECtHR, El Masri v. Macedonia:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001115621#{"itemid":\["001-115621"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001115621#{)

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### October 8 Heidi 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&seiredir=1%20-%20search=%22Stern%20Precaution%20Against%20Terrorism%22](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2477&context=faculty_scholarship&seiredir=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/acprof9780199656769>

### 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/22julikommissionen/22JULIKOMMISJONEN\\_NO/EN/CONTENT/D](https://www.regjeringen.no/html/smk/22julikommissionen/22JULIKOMMISJONEN_NO/EN/CONTENT/D)

[OWNLOAD/472/3668/VERSION/2/FILE/COMPLETE\\_COMBINED\\_ENGLISH\\_VERSION.PDF](https://www.regjeringen.no/html/smk/22julikommissionen/22JULIKOMMISJONEN_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE_COMBINED_ENGLISH_VERSION.PDF)

9/11 Commission Report, ch. 11

[https://www.regjeringen.no/html/smk/22julikommissionen/22JULIKOMMISJONEN\\_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE\\_COMBINED\\_ENGLISH\\_VERSION.PDF](https://www.regjeringen.no/html/smk/22julikommissionen/22JULIKOMMISJONEN_NO/EN/CONTENT/DOWNLOAD/472/3668/VERSION/2/FILE/COMPLETE_COMBINED_ENGLISH_VERSION.PDF)

[ONTENT/D](#)

[OWNLOAD/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\\_attacks\\_intelligence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224542/7_attacks_intelligence.pdf)

Report on the intelligence relating to the murder of Fusilier Lee Rigby

<http://isc.independent.gov.uk/committee-reports/special-reports>

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## October 15 Lee Bygrave, Right to Privacy and Surveillance of the Internet

**Reading:** Textbook, 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=001100293#{"itemid":\["001-100293"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001100293#{)

Website: <https://global.oup.com/academic/product/international-law-theories9780198725121?cc=no&lang=en&>

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## October 22 Foreign Fighters

**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)

<http://unscr.com/en/resolutions/2396>

**Reading:**

Geneva Academy of International Humanitarian Law and Human Rights (2014), "Foreign Fighters Under International Law". Academy Briefing No. 7. Geneva, Switzerland. [https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters\\_2015\\_WEB.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf)

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

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

"Foreign fighters, terrorists and deprivation of citizenship"

Article: CITIZENSHIP UNMOORED: EXPATRIATION AS A COUNTER-TERRORISM TOOL: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1926&context=jil>

ICCT paper on stripping of citizenship: <https://icct.nl/publication/countering-terrorism-through-the-stripping-of-citizenship-ineffective-and-counterproductive/>

OSCR Guidelines: <https://www.osce.org/odihr/393503?download=true>

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## October 29 Financing Terrorism

Required Reading: Duffy pages 205-27

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), 2405, 2419 (2018) concerning ISIL (Da'esh), AlQaida, and associated individuals, groups, undertakings and entities:

<http://unscr.com/en/resolutions/1267>

<http://unscr.com/en/resolutions/1989>

<http://unscr.com/en/resolutions/1989>

<http://unscr.com/en/resolutions/2419>

<http://unscr.com/en/resolutions/2405>

UNSCR 1373:

<https://www.osce.org/odihr/393503?download=true>

Financial Action Task Force (FATF) recommendations 5, 6 and 8, and corresponding interpretative notes: <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-action-on-terrorist-finance.html>

Group Work, presentation of Cases, Issue, Rule, Analysis, Conclusion:

Nada v. Switzerland, European Court of Human Rights, Grand Chamber, 12 September 2012: [https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/14.7\\_CASE%20OF%20NADA%20v.%20SWITZERLAND.pdf](https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/14.7_CASE%20OF%20NADA%20v.%20SWITZERLAND.pdf)

Commission and Others v Kadi, Court of Justice of the European Union, Grand Chamber, 18. July 2013: <http://curia.europa.eu/juris/liste.jsf?num=C-584/10&language=en>

Kadi II:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=139745&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1914364>

Al-Dulimi and Montana Managment v. Switzerland, European Court of Human Rights, Grand Chamber, 21. June 2016: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-138563"\]}](https://hudoc.echr.coe.int/eng#{)

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## **November 5 Simon O'Connor Contemporary Military Counter Terrorism**

**Reading, Textbook Duffy, Chapter 6**

Reading: US DOJ White Paper 2011 (16 pp):

<https://www.documentcloud.org/documents/602342-draft-whitepaper.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-UnderDrones.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-usearmed-drones>

ICCT Report Towards a European Position on Drones: <https://icct.nl/publication/towards-a-european-position-on-the-use-of-armed-drones-a-human-rights-approach/>

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## **November 12 Class Debate: Freedom of Expression in the Context of Counter-Terrorism**



**Required Reading: Duffy, pages 207-210, 521-523, 633-636**

One half of the class present arguments in favor of control and limitation of freedom of expression, the other presents arguments against. You may refer to philosophy, law, political arguments, etc.

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>

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