Legal Restraints on the War on Terrorism
Professor Benvenisti

Syllabus

August 31:
1. Who is a Terrorist?
   - Title 22 of the United States Code, Section 2656f(d).
   - Canada Anti Terrorism Act Article 83.01.

No class September 7 (as this is a legislative Monday in the Law School schedule)

September 14:
2. Terrorism as an Armed Attack
   - UN Charter, Articles 1, 2(4), 39-42, 51.
   - The Caroline Case 1837 (excerpts).

September 21:
3. Terrorists as “Illegal Combatants”
   - III Geneva Convention (1949), Article 4, 5.
   - Additional Protocol I (1977), Article 1, 41, 43-5.
   - IV Geneva Convention (1949), Article 5.

September 28:
4. “Targeted Killings” of Suspected Terrorists
   - International Court of Justice, Advisory Opinion: Legality of the Threat or Use of Nuclear Weapons, 8 July 1996 (para. 77-79).
• **Antonio Cassese**, Expert Opinion on Whether Israel’s Targeted Killings of Palestinian Terrorists is Consonant with International Humanitarian Law (2003).

**October 5:**
5. The Law Enforcement Approach: Questions of Jurisdiction

- Jurisdiction of “host” states: Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya V. United States Of America) 1992.

**October 12:**
6. Limits to Emergency Powers?

- 1966 International Covenant on Civil and Political Rights (ICCPR), Articles 4, 5.
- 1950 European Convention on Human Rights Articles 5, 6, 15, 17.

**October 19:**
7. Interrogation of Suspected Terrorists

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Articles 1-4, 16.
- Ireland V. The United Kingdom (European Ct. Human Rights 1978) (paras. 11-12, 96-98, 163-168, 207).
- Public Committee Against Torture in Israel v. The State of Israel, Israel Supreme Court (1999).
- A & Ors v Secretary of State for the Home Department, United Kingdom, CA (2004) [2004] EWCA Civ 1123

**October 26:**
8. Detention without Trial of Suspected Terrorists

- III Geneva Convention (1949), Articles 21-25, 118.
- IV Geneva Convention (1949), Article 5.
- Article 9 ICCPR.
- A (FC) and others v. Secretary of State for the Home Department (UK House of Lords, 2004)
• Ocalan v. Turkey, European Court on Human Rights (2005) (paras. 100-105).

Additional Readings:

**November 2:**

9. **Fair Trials for Suspected Terrorists**
   - Christoph J.M. Safferling, *Terror and Law – Is the German Legal System able to deal with Terrorism? - The Bundesgerichtshof (Federal Court of Justice) decision in the case against El Motassadeq 5(5) German L. J. (2004).*

**November 9:**

10. **Limitations on Civil Liberties I: Ethnic Profiling**

**November 16:**

11. **Limitations on Civil Liberties II: Political Rights**
   - Yazar and others v. Turkey, European Court of Human Rights (2002)

**November 23:**

12. **Checks and Balances I: Legislative Review**

**November 30:**

13. **Checks and Balances II: Judicial Review**
   - A (FC) and others v. Secretary of State for the Home Department (UK House of Lords, 2004)
   - Cass Sunstein, Minimalism At War, Supreme Court Review (forthcoming 2005)
December 7:
14. Checks and Balances III: Indirect Institutional Checks