



**Department of
International Relations**

Detention and Rendition in the “War on Terror”



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**Wednesday 6 May 2009
09:30-17:30**

**Hong Kong Theatre, Clement House,
London School of Economics and Political
Science**

Entry is free and open to all, but registration is necessary. To register, please contact Elizabeth Stubbins Bates (e.t.stubbins-bates@lse.ac.uk) before 30 April 2009.

Preliminary Conference Programme

Wednesday 6 May 2009

09:45 – Welcome and Introductory Remarks

Christopher Coker (Professor of International Relations, LSE)

10:00-11:30 – Detention in the “War on Terror”: Confronting a Range of Human Rights Violations

Chair: Kimberly Hutchings (Professor of International Relations, LSE)

Panellists:

Fiona de Londras (Lecturer in Law, University College Dublin)

Marie Breen-Smyth (Director, Centre for the Study of Radicalisation and Contemporary Political Violence, Department of International Politics, Aberystwyth University)

Zachary Katznelson (Legal Director, Reprieve)

11:30 Coffee

11:45-13:15 – Extraordinary Rendition and State Complicity: Perspectives from Law, International Relations and Human Rights Monitoring

Chair: Kirsten Ainley (Lecturer in International Relations, LSE)

Panellists:

Anne FitzGerald (Director, Research Unit, Amnesty International)

Jayne Huckerby (Research Director, Center for Human Rights and Global Justice; Adjunct Assistant Professor of Clinical Law, International Human Rights Clinic, New York University School of Law)

Jason Ralph (Senior Lecturer in International Relations, University of Leeds)

13:15 Lunch

13:45-15:15 – Options for Reform in Counter-Terrorist Detention

Chair: Kate Jenkins (Visiting Professor, Government Department, LSE)

Panellists:

Julia Hall (human rights attorney, formerly Senior Legal Counsel, Human Rights Watch)

Shami Chakrabarti (Director, Liberty)

Stephanie Carvin (Lecturer in International Relations, Royal Holloway, University of London)

15:15 Coffee

15:30-16:30 – Roundtable: Creating Productive Links between Academia and Action

Chair: Peter Wilson (Senior Lecturer in International Relations, LSE)

Panellists:

Julia Hall (human rights attorney, formerly Senior Legal Counsel, Human Rights Watch)

Jayne Huckerby (Research Director, Center for Human Rights and Global Justice; Adjunct Assistant Professor of Clinical Law, International Human Rights Clinic, New York University School of Law)

Kimberly Hutchings (Professor of International Relations, LSE)

Zachary Katznelson (Legal Director, Reprieve)

Jason Ralph (Senior Lecturer in International Relations, University of Leeds)

16:30-17:30 Plenary Session: Questions and Answers

Chair: Barry Buzan (Professor of International Relations, LSE)

17:30 End of Conference

Panellists' Biographical Details and Abstracts

Panel 1 - Detention in the "War on Terror": Confronting a Range of Human Rights Violations

Fiona de Londras

Biography

Dr Fiona de Londras is a lecturer in the School of Law, University College Dublin where she is also a member of the UCD Institute of Criminology. Fiona's primary research interest is in the human rights implications of counter-terrorism and particularly in the capacity of international law and of judicialised processes to limit states' repressive tendencies in times of crisis. She writes widely on this theme and has published her research internationally including in the *Modern Law Review*, *Israel Law Review*, *American Journal of International Law* and *Journal of Conflict and Security Law*

Abstract

Process-Based Detention without Charge: A Legitimate Tool in Counter-Terrorism?

The use of detention without charge in the 'War on Terrorism' has been particularly controversial in both the United States and the United Kingdom. In particular, objections have been raised as to the legitimacy of detention without charge as a counter-terrorist method with reference to international human rights law. In this paper, I consider the flaws of the United States' approach to detention without charge of suspected terrorists over the past eight years and argue that the illegitimacy of the policy flows primarily from its lack of process. By corollary, I argue, a process-based system of (very limited) detention without charge could be a legitimate tool in counter-terrorism. Some fundamental characteristics of such a process-based approach—including a rigorous adversarial process, disclosure of information, and the use of special advocates—will be particularly considered by reference to prevailing international legal standards.

Marie Breen-Smyth

Biography

Marie Breen-Smyth is Director of the Centre for the Study of Radicalisation and Contemporary Political Violence (CSRv) and Reader in the Department of International Politics, University of Wales, Aberystwyth. She was 2002-2003 Jennings Randolph Senior Fellow, United States Institute of Peace, Washington DC; appointed to University of Ulster in 1985, where she founded and directed the Institute for Conflict Research; she has been on the academic staff of several U S universities and Northern Ireland advisor to the Special Representative of the Secretary General of United Nations on children and armed conflict. She has written about political violence in Northern Ireland, South Africa, Israel /Palestine and West Africa, and methodological and ethical issues facing researchers working in that field. Her books include *Critical Terrorism Studies: A New Research Agenda* (ed with Richard Jackson and Jeroen Gunning) Routledge 2009; *Truth and justice after violent conflict: managing violent pasts* (Routledge 2007); *Researching Conflict in*

Africa (2005, with Gillian Robinson) *Researchers and their 'subjects: ethics, power, knowledge and consent*. (2004; Policy Press with Emma Williamson); *Northern Ireland After the Good Friday Agreement* (2003) (with Mike Morrissey) and *Researching Violently Divided Societies* (with Gillian Robinson, London: Pluto, 2003) and *Northern Ireland's Troubles: The Human Costs* (1999, with Mike Morrissey). She is currently editing the *Ashgate Research Companion on Political Violence* (forthcoming 2010)

Abstract

Critical 'Terrorism' Studies, Terrorism and Counter-terrorism: 'Suspect' Communities and the paradoxical role of detention and rendition as prophylaxis or consolidation.

This paper begins by briefly setting out the conceptual framework upon which the recent critical turn in 'terrorism' studies is based. The sub-field of critical terrorism studies (CTS) (see Jackson, Breen-Smyth and Gunning, 2009 in press) derives in part from the Welsh School's assertion of the individual, not the state, as the ultimate referent in accounts of 'security'. The threat posed by terrorism is thus redefined in terms of its impact on the security of citizens rather than primarily on the security of the state. Furthermore, 'terrorism' is seen as a tactic that may be employed by both state and non-state actors and CTS challenges the notion of counter-terrorism, which often contributes to the proliferation of that which it sets out to counter, and argues for more effort to be devoted to finding non-coercive measures. CTS also challenges orthodox accounts of terrorism itself. According to CTS, orthodox 'terrorism' studies suffers from a number of short-comings – *inter alia* state-centrism, over-reliance on derivative evidence, and a problem-solving approach, short-comings which a critical account seeks to avoid. The paper then elaborates on Hillyard's definition of a 'suspect community' with reference to the experience of the Irish community in the late twentieth century, drawing parallels with the contemporary experience of Muslims in Britain. The paper concludes by considering states' rationale for the use of detention and rendition, setting this in the context of lessons from past counter-terrorist campaigns, where the role of detention and rendition in the creation and consolidation of 'suspect communities' is apparent.

Zachary Katznelson

Biography

Zachary joined the staff at Reprieve in February 2006, having first worked with the organization as a volunteer. He received a Bachelor of Arts from Brown University in 1995, and received his law degree from New York University School of Law in 2000. Zachary represents 40 prisoners in Guantánamo Bay and works on death penalty cases in the United States as a California licenced attorney-at-law. Before joining Reprieve, Zachary worked on the cases of women convicted of killing their batterers, but who had not been allowed to introduce evidence of the abuse at trial. He has litigated to improve prison conditions, represented prisoners in habeas actions to enforce parole-related due process rights, and investigated death penalty cases in Louisiana, Mississippi and Alabama. After graduation, Zachary clerked for Chief Judge Marilyn Hall Patel of the Northern District of California. Zachary has also served on the staff of U.S. Congressman Jerrold Nadler, writing legislation and speeches and advising the Congressman on various matters.

http://www.reprieve.org.uk/Reprieve.htm_staff_zacharykatznelson.htm

Panel 2: Extraordinary Rendition and State Complicity: Perspectives from Law, International Relations and Human Rights Monitoring

Anne FitzGerald

Biography

Anne FitzGerald, a lawyer, has been leading AI's investigations into rendition and secret detention since 2004, and manages the organization's counter-terrorism program. In addition, Anne has travelled regularly to Yemen and other countries in the region, as well as to Europe and the US, to interview detainees who have been rendered or forcibly disappeared, judicial officials, lawyers, government officials, and former and serving military, police and intelligence officers. Anne has testified on rendition and secret detention before parliamentary intelligence committees and the European Parliament. Anne has contributed to the following Amnesty International reports:

Below the radar: Secret flights to torture and 'disappearance'

AI Index: AMR 51/051/2006

April 2006

<http://www.amnesty.org/en/library/info/AMR51/051/2006>

Off the Record: US Responsibility for Enforced Disappearances in the "War on Terror"

Index Number: AMR 51/093/2007

Date Published: 7 June 2007

<http://www.amnesty.org/en/library/info/AMR51/093/2007>

A case to answer. From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari

Index Number: AMR 51/013/2008

Date Published: 14 March 2008

<http://www.amnesty.org/en/library/asset/AMR51/013/2008/en/1788d961-f1d3-11dc-adcd-cdafd0ab0dfe/amr510132008eng.pdf>

Secret Detention in CIA "Black Sites"

Index Number: AMR 51/177/2005

Date Published: 8 November 2005

<http://www.amnesty.org/en/library/asset/AMR51/177/2005/en/413e36cb-d493-11dd-8a23-d58a49c0d652/amr511772005en.pdf>

Partners in crime: Europe's role in US renditions

Index Number: EUR 01/008/2006

Date Published: 13 June 2006

<http://www.amnesty.org/en/library/info/EUR01/008/2006>

State of denial: Europe's role in rendition and secret detention

Index Number: EUR 01/003/2008

Date Published: 24 June 2008

<http://www.amnesty.org/en/library/asset/EUR01/003/2008/en/2ceda343-41da-11dd-81f0-01ab12260738/eur010032008eng.pdf>

Abstract

NGO Investigations into Rendition and Secret Detention

Anne FitzGerald will speak about the AI/NGO approach to investigations into rendition and secret detention, with a particular focus on evidence and corroboration. As a human rights NGO, with a victim-centred approach, we have tried to emphasise the human cost of rendition and secret detention, on both detainees and their families. The US secret detention and rendition programs have operated with a complete lack of accountability, under the protection of extreme state secrecy practices (in the US and in other countries), which only serve to perpetuate the effects of the rendition. For instance, in virtually every case that we are aware of, the government responsible has refused to acknowledge even that the individual was ever in their custody, let alone provide any details of their detention or treatment. Acknowledgement is a vital part of reparation. And as long as state privilege is invoked any time a current or former detainee attempts to seek justice, we are never going to have adequate investigations into the crimes committed under the programs, much less proceed to prosecution of those responsible - either in the country itself, or in transit and receiving states.

Jayne Huckerby

Biography

Jayne Huckerby joined the Center for Human Rights and Global Justice at New York University School of Law in September 2005, and she is now its Research Director. She holds a BA.LLB (Hons 1) from the University of Sydney (2002) and a LL.M. (2004) from NYU, where she was a Vanderbilt Fellow and was awarded the David H. Moses Memorial Prize for the LL.M. student with the highest cumulative academic average. During her time at NYU, she also served as Graduate Editor on the Journal of International Law and Politics and was awarded an International Law and Human Rights Fellowship which she undertook at the U.N. High Commissioner for Refugees (UNCHR) in Geneva.

Prior to joining the Center, she worked as a Human Rights Officer at the International Service for Human Rights (ISHR) in Geneva. She has also worked as a consultant to the International Center for Transitional Justice (ICTJ) on gender and transitional justice and to the United Nations Development Fund for Women (UNIFEM) on gender budget initiatives and human rights law. Jayne was also an Associate in the Litigation Department of Baker & McKenzie, Sydney, Australia in 2002 and 2003.

Her research interests primarily include: gender; human rights and terrorism; caste discrimination; transitional justice; law and security; and the relationship between domestic and international law. She has written or contributed to academic and other publications or reports on topics such as: gender, media and criminal law; returning refugees and transitional justice; gender and the "war on terror" trafficking and human rights; gender and the International Criminal Court (ICC); and cross-border movement, including the rights of unaccompanied and separated children.

Jason Ralph

Biography

Dr Jason Ralph joined the University of Leeds in 1998, having graduated with a Ph.D. in War Studies from King's College London and having taught for a year at Exeter University. He holds Bsc and Msc degrees from the University of Aberystwyth and has been a Visiting Researcher at the University of Queensland. His research is located with the "English School" approach to International Relations (IR), which is interested in the question of whether 'society' (e.g. international and world society) can exist beyond the state. It focuses on how the institutions of international society (e.g. international law, war, balance of power), as identified by Hedley Bull in his 1977 classic *The Anarchical Society* are being changed by the process of globalisation. Dr Ralph's contribution to this research agenda has been to highlight the social role that international criminal justice has played in reconstructing international and world society along "solidarist" lines (i.e. recognising the citizenship rights of individuals as well as states).

Dr Jason Ralph is currently engaged in an ESRC funded project that investigates the political strength of exceptionalist thinking in the security policies of the Bush administration and that of its successor. The project exposes English School theories on international law and society to the Schmittian concept of the exception, and it asks whether the US policy after Bush will respect the pre-9/11 norms on issues such as pre-emptive self defence and the treatment of detainees during war. The project investigates the source of exceptionalist thinking and asks whether it has now become the norm to the extent that we should change our understanding of what 'war' means to international society.

Abstract

Extraordinary rendition and the retreat of International Society since 9/11

The term "extraordinary rendition" has been used widely in recent years to describe the transfer of suspected terrorists by the US to foreign states in circumstances that make it more likely than not that the individual will be subjected to torture or cruel, inhuman, or degrading treatment. The discussion on this subject tends therefore to be linked to the question of whether torture can be justified as a means of combating terrorism. The practice of extraordinary rendition however does involve additional considerations. Any analysis of the practice must be concerned not merely with the act of torture itself, it must also take into account the ideological character of the states involved; for the normative assumption behind the act is that illiberal states can do what liberal states would prefer not to do. This is important because it highlights how liberal states view legal and moral boundaries in the post 9/11 world, and how they view their responsibilities as citizens of international society. While most of the work produced in this area is that of journalists, lawyers and human rights activists, this paper is among the first to interpret and assess the practice from an International Relations perspective. The paper argues that US attempts to justify extraordinary rendition symbolises the possible retreat of an international society based on the universal respect for human rights and the reconstruction world politics based on the exclusionary hierarchies of a pre-global age. Indeed, the liberal state's unwillingness to incur directly the moral costs of 'the lesser evil', while simultaneously seeking ways to benefit from the 'dirty work' of other nations, imitates the exploitative policies of previous empires.

Panel 3 - Options for Reform in Counter-Terrorist Detention

Julia Hall

Biography

Julia Hall is a human rights attorney specializing in the human rights implications of counter-terrorism laws, policies, and practices in Europe and North America. She has conducted extensive research and advocacy, and managed litigation-related work, in a number of related areas, including: the prohibition against torture; unlawful (“extraordinary”) rendition; the *nonrefoulement* obligation; the use of diplomatic assurances; administrative and preventive detention; oversight of intelligence agencies; the use of control orders; unfair trial procedures, including the use of special advocates and secret evidence; and legal accountability for those responsible for such abuses and redress for the victims of counterterrorism laws and policies.

As senior legal counsel for Human Rights Watch from 1996-2009, Hall authored numerous reports and articles on a range of counterterrorism topics; conducted sustained advocacy at UN, Council of Europe, European Union, and national levels on counterterrorism law and policy; and served as an expert in individual cases before UN treaty-bodies, the European Court of Human Rights, the UK Special Immigration Appeals Commission, the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, and in US federal court, including with regard to Guantanamo Bay detainees slated for repatriation. Hall has been involved actively in the campaign to resettle Guantanamo Bay detainees who have been cleared for release but cannot be repatriated due to fears of risk of torture on return. In July 2008, she monitored the military commission of Salim Hamdan, Osama bin Laden’s former driver, at Guantanamo Bay.

Abstract

Options for Reform in Counter-Terrorist Detention

Options for the reform of US counter-terrorism policy abound in the post-Bush era, with the Obama administration at the forefront of that effort. Far less has been said about what reforms European governments should embark upon as they consider their own responsibility for past abuses in the course of the ill-conceived global “war on terror.” This presentation will focus on options for the reform of laws and policies infringing the right to liberty and security of persons in a range of European countries including extended pre-trial detention periods; the use of immigration detention as a proxy for criminal charges and prosecution; the growing use of post-release surveillance, and physical and social controls; violations of fair trial guarantees, including the use of secret evidence to justify continuing detention and/or post-release controls; the extraterritorial application of the right to a fair trial to halt extraditions and other transfers of terrorism and national security suspects; and processes to ensure that the perpetrators of detention-related abuses are held accountable and that victims are afforded redress and reparation.

Shami Chakrabarti

Biography

Shami Chakrabarti has been Director of Liberty (The National Council for Civil Liberties) since September 2003. Shami first joined Liberty as In-House Counsel on 10 September 2001. She became heavily involved in its engagement with the “War on Terror” and with the defence and promotion of human rights values in Parliament, the Courts and wider society.

A Barrister by background, she was called to the Bar in 1994 and worked as a lawyer in the Home Office from 1996 until 2001 for Governments of both persuasions.

Since becoming Liberty’s Director she has written, spoken and broadcast widely on the importance of the post-WW2 human rights framework as an essential component of democratic society. She is Chancellor of Oxford Brookes University, a Governor of the London School of Economics and the British Film Institute, and a Visiting Fellow of Nuffield College, Oxford and a Master of the Bench of Middle Temple.

Stephanie Carvin

Biography

Stephanie Carvin holds a PhD from the London School of Economics and is a lecturer in International Relations at Royal Holloway, University of London. Stephanie wrote her PhD thesis on "The United States and the Politics of the Laws of War" which will be published by Hurst/Columbia in 2010. She specializes in the area of international law and the law of armed conflict, US foreign policy and international political theory.

Abstract

Legal Revolutions: Reforming the laws of war after Bush

When it comes to the laws of war, a picture not only speaks a thousand words, but it may also spark a thousand debates. Thinking about the laws of war and Vietnam, one may automatically think of the photograph of a naked, burned, nine year old girl screaming as she flees a napalm attack on her village or the pictures of the victims of My Lai. Just over three decades later, a similar link may be made between the war in Iraq and photos showing the abuse and humiliation of prisoners in the care of US forces at Abu Ghraib. In both cases, the photos were seen as evidence that the United States was committing war crimes while engaged in missions to either protect or promote democracy abroad. They provided propaganda to those who opposed war and, to some, irrefutable evidence that the United States military operates outside of the boundaries of the laws of war. Indeed, pictures from Vietnam and Abu Ghraib seem to suggest that some things never change; that the US military did not learn the lessons of Vietnam, that despite its talk of fighting for freedom, the US was and always would commit war crimes, bomb civilians and abuse its prisoners.

But in this sense, pictures may not tell the whole story. After Vietnam, lawyers in the US military, who had experienced first-hand the difficulties of implementing laws in an unconventional conflict, set to work on changing the way the United States implemented the laws of war in its training and decision making. The effect was to create a “legal revolution”: training in the laws of war was made more practical and lawyers, and, over the next 15 years, fought their way into the “war room.”

This paper will look at the history of legal reforms made after Vietnam by those who felt that something had to change in order to ensure that the mistakes made during that conflict would not happen again. It will then consider whether the end of the Bush Administration will create a similar environment for a re-evaluation and the implementation of reforms, how this could be done and some of the constraints that could possibly hinder such a process.