

Human Rights and Terrorism

Defining Terrorism

- Act of Terrorism vs. Act of War vs. Criminal Act
- Not a single definition.
- Comprehensive Convention on International Terrorism (still negotiated) works roughly with the following definition: *Causing death or serious bodily injury, serious damage to public or private property (or a damage resulting major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a state or an international organization to do or abstain from doing any act.*

Defining Terrorism

- Alternative definitions
- Problems: state terrorism, liberation movements.

Connections Between Human Rights and Terrorism

- Terrorism as a threat to human rights
- Fight against terrorism as a justification of HR limitations/violation
(constitution/human rights are “not a suicide pact“)

Fight against terrorism as justification of HR violations

- Pushing the boundaries (questioning absolute rights, obscuring well established concepts: both strategies are present in the torture debate – cf. „ticking bomb scenario“ or waterboarding)
- Developing new limitations
- Impact on proportionality analysis

Which rights are affected

- Right to life (targeted killings either by drones or by other means, extraordinary renditions etc.)
- Prohibition of torture (enhanced interrogation techniques, extraordinary renditions)

Which rights are affected

- Right to privacy (data retention, CCTVs)
- Equality (racial or ethnic profiling)
- Liberty and security (detentions, extraordinary renditions)
- Due process and the right to a fair trial
- And many others...

Pushing the boundaries

Extraordinary renditions

- Very “comprehensive” program
- El Masri case

Pushing the boundaries

Racial profiling

- Racial profiling occurs when a police officer takes an action (stops, questions, arrests etc.) someone solely on the basis of the person's race or ethnicity or – more broadly when state (police) use race as a factor that (though usually not alone) causes an officer to react with suspicion and take action.
- Condemned by CERD Committee, highly problematic.

New limitations

Targeted killings

- Extrajudicial killing or assassination
- For example: the use of combat drones to kill members of al-Qaeda
- The key legal problems are the (non)existence of an armed conflict, „direct participation in hostilities“ etc.

New limitations

Data retention

- Data vs. metadata
- Collection of the data
- Access to the data
- How to justify data retention?
- American vs. European approach