

National Security and the Law
Summer Session I - 2021
Dr. Sara K. McGuire
saramcg@sas.upenn.edu

Course Description:

This course will examine domestic and international law in relation to United States intelligence and national security objectives in the context of the post-9/11 period. It will survey domestic counter-terrorism law, immigration law, and international humanitarian law (the law of armed conflict). Special emphasis will be placed on the relationship between international and domestic laws, and the balance between national security and civil liberties.

Course Objectives:

Upon completion of this course, students will be able to:

- Evaluate the United States' legal response to terrorism in the post-9/11 period
- Identify how domestic immigration law can be employed as a counter-terrorism strategy
- Discuss the relationship between international law and domestic law
- Critically assess the legal status of the 'War on Terror'

Course Requirements:

There is no required textbook for this course. All assigned readings are available on Canvas. Readings have been posted for each course module.

Students are expected to complete the assigned readings for each module. All assignments are to be completed and submitted *on time*. Late submissions will result in grade penalties.

Assignments:

Module-Specific Assignments (3 x 10%) – See modules on Canvas

Students will complete three module-specific assignments over the course of the term. Instructions for these short assignments are posted on Canvas in the corresponding modules.

Module One – Introductory Discussion Board Post *Due:*

Module Three – Discussion Board Post on defining terrorism *Due:*

Module Seven – 10 question multiple-choice quiz based on Module Overview reading *Due:*

Case Brief (30%) – DUE:

Students will prepare a case brief on a case pertaining to National Security Law:

The case brief should include the following sections:

1. Case Title and Reference
2. Background Information
3. Facts of the Case
4. Legal Issue
5. Holding / Dissent
6. Comments

Students should first read through the case they have selected (available on Canvas) before consulting additional academic sources as needed. Proper citations must be included for all sources consulted while completing this assignment. Proofread your work carefully prior to submission. Specific instructions will be provided on Canvas

Research Paper Meeting with the Professor (5%)

Students are expected to schedule a Zoom meeting with the professor to discuss their topic for the final research paper.

Final Research Paper (30%) – DUE:

Each student will write a research paper dealing with a topic related to national security and the law. Ideally, the paper will be based on one of the modules covered in this course. Students are required to contact the instructor in advance to discuss their selected topic. The paper will be typewritten, double-spaced, 12-point font, with 1-inch margins. Proper grammar, correct spelling, and punctuation are mandatory. All sources must be properly cited. Wikipedia is never an acceptable source. Page length: 8-10 pages.

Participation (5%)

Class participation will enhance the online course experience. Students should engage in discussion during live, synchronous Zoom sessions, and should post on the class Discussion Board on Canvas. Students are expected to complete all components of the modules posted on Canvas.

Academic Dishonesty:

Academic dishonesty is prohibited and is a violation of University of Pennsylvania Procedures. This includes, but is not limited to, cheating, plagiarism, and collusion. Cheating may involve copying from or providing information to another student, possessing unauthorized materials during a test, or falsifying research data in class reports. Plagiarism occurs when someone intentionally or knowingly represents

the words or ideas of another person as one's own. Collusion involves collaborating with another person to commit any academically dishonest act. Academic dishonesty will *not* be tolerated. Violations will be taken seriously and will be referred to the Dean of Students Office for possible disciplinary action.

Students With Disabilities

In compliance with Penn policy and equal access laws, I am available to discuss appropriate academic accommodations that you may require as a student with a disability. Requests for academic accommodations need to be made during the first two weeks of the semester, except under unusual circumstances, to arrange reasonable accommodations. Students must register with Student Disabilities Services (SDS) for disability verification and for determination of reasonable academic accommodations.

Changes to Course Schedule

The course instructor reserves the right to adjust the course syllabus as necessary. The class will be provided with ample notice prior to any scheduling changes.

Class Schedule and Required Readings:

MODULE ONE:

Introduction to National Security and the Law

Readings:

Required Reading:

- James E. Baker. "Chapter 2: The Meaning of National Security" in *In the Common Defense: National Security Law for Perilous Times* (Cambridge University Press, 2007), p. 13-22.

Further Reading:

- Morton H. Halperin. "National Security and Civil Liberties." *Foreign Policy*. N. 21 (Winter 1975/1976), p. 125-160.

***Assignment: Introduce yourself on the class discussion board on Canvas. What made you decide to take this class?**

MODULE TWO:

Separation of National Security Powers

Readings:

Required Reading:

- Vijay M. Padmanabhan. "Separation of Powers and National Security" in *National Security Law in the News: A Guide for Journalists, Scholars, and Policymakers*. (American Bar Association, 2012), p. 3-12.
- Watch National Constitution Center Video: Separation of Powers
[<https://constitutioncenter.org/learn/hall-pass/separation-of-powers>]

Further Reading:

- Tom Clark. "Separation of Powers." *Williamette Law Journal*. V.11, (1974), pp. 1-9.
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MODULE THREE:**Defining Terrorism in Domestic and International Law****Readings:**

Required Reading:

- Kent Roach, Michael Hor, Victor Ramraj, and George Williams. "Introduction" in Victor Ramraj, Michael Hor, Kent Roach, and George Williams, eds., *Global Anti-Terrorism Law and Policy: Second Edition* (Cambridge University Press, 2012), p. 1-16.
- Victor V. Ramraj. "The Impossibility of Global Anti-Terrorism Law?" in Victor Ramraj, Michael Hor, Kent Roach, and George Williams, eds., *Global Anti-Terrorism Law and Policy: Second Edition* (Cambridge University Press, 2012), p. 44-66.

Further Reading:

- Jacqueline S. Hodgson and Victor Tadros. "The Impossibility of Defining Terrorism" *New Criminal Law Review: An Interdisciplinary Journal* V. 16, N. 3 (Summer 2013), p. 494-526.
- Ben Saul. "Defining Terrorism: A Conceptual Minefield" in Erica Chenoweth, Richard English, Andreas Gofas, and Stathis N. Kalyvas, eds., *The Oxford Handbook of Terrorism* (Oxford University Press, 2019).
- Anthony Richards. "Chapter 2: Defining Terrorism" in Silke Andrew, ed., *Routledge Handbook of Terrorism and Counterterrorism* (Routledge, 2018).

***Assignment: Respond to the Discussion Board Prompt on Canvas**

MODULE FOUR:**Homeland Security Law****Readings:**

Required Readings:

- Jane A. Bullock, George D. Haddow, and Damon P. Coppola. "Chapter 1: Homeland Security – The Concept, The Organization" in *Homeland Security: The Essentials, Second Edition*. (Butterworth-Heinemann, 2018), p. 1-17.
- Martin J. Alperin. "Introduction-Overview-Background" in Martin J. Alperin, *Foundations of Homeland Security Law and Policy* (John Wiley & Sons, 2017), p. 1-14.

Further Reading:

- Bruce Oliver Newsome and Jack A. Jarmon. "Ch 1.: Homeland Security Definitions and Structure" in *A Practical Introduction to Homeland Security and Emergency Management: From Home to Abroad*. (SAGE Publications, 2016).
 - Christopher Bellavita. "Changing Homeland Security: What is Homeland Security?" *Homeland Security Affairs* V. 4, N. 2 (June 2008).
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MODULE FIVE:**The USA PATRIOT Act and FISA****Readings:**

Required Reading:

- Charles Doyle. "The USA PATRIOT Act: A Sketch." *Congressional Research Service Report for Congress*. (April 18, 2002).

- Anthony Simones and John M. Scheb II. "Foreign Intelligence Surveillance Act (FISA)" in Pam Dixon, ed., *Surveillance in America: An Encyclopedia of History, Politics, and the Law* (ABC-CLIO, LLC, 2016), p. 172-177.
- Debra Miller. "Foreign Intelligence Surveillance Court (FISC)" in Pam Dixon, ed., *Surveillance in America: An Encyclopedia of History, Politics, and the Law* (ABC-CLIO, LLC, 2016), p. 177-179.

Further Reading:

- Video: National Constitution Center. "Lifting the Veil on the FISA Court" [<https://constitutioncenter.org/debate/past-programs/lifting-the-veil-on-the-fisa-court>]
- Charles Doyle. "The USA PATRIOT Act: A Legal Analysis." *Congressional Research Service Report for Congress*. (April 15, 2002).
- Leslie P. Francis and John G. Francis. "Ch.9: Privacy and Security" in Leslie P. Francis and John G. Francis, *Privacy: What Everyone Needs to Know* (Oxford University Press, 2017), p. 239-274.
- William C. Banks. "Programmatic Surveillance and FISA: Of Needles in Haystacks" *Texas Law Review* V. 88, N. 7 (June 2010).

***Assignment: Case Brief Due**

MODULE SIX:

Immigration Law and National Security

Readings:

Required Reading:

- "Immigration and National Security" in Richard J. Samuels, ed., *Encyclopedia of the United States: National Security* (SAGE Publications, 2005), p. 345-348
- United Nations High Commission for Refugees. "Ch. 1: The International Legal Framework Protecting Refugees" in *A Guide to International Refugee Protection and Building State Asylum Systems* (UNHCR, 2017), p. 15-32

Further Reading:

- Donald Kerwin. "The Use and Misuse of 'National Security' Rationale in Crafting U.S. Refugee and Immigration Policies" *International Journal of Refugee Law* (2005), p. 249-763
 - Shoba Sivaprasad Wadhia. "Is Immigration Law National Security Law?" *Emory Law Journal* V. 66 (2017), p. 669-696.
 - United Nations High Commission for Refugees. "Ch. 4: Managing the Border and Regulating the Entry of Refugees" in *A Guide to International Refugee Protection and Building State Asylum Systems* (UNHCR, 2017).
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MODULE SEVEN:

Introduction to the Law of Armed Conflict

Readings:

Required Reading:

- American Red Cross. "International Humanitarian Law: Fact Sheet." (October 2012).
- International Committee of the Red Cross. "How is the Term 'Armed Conflict' Defined in International Humanitarian Law?" *ICRC Opinion Paper*. (March 2008).
- Gary D. Solis. "Rules of War, Laws of War" in *The Law of Armed Conflict: International Humanitarian Law in War*. (Cambridge University Press, 2010), p. 3-26.

Recommended Reading:

- International Committee of the Red Cross. "How is the Term 'Armed Conflict' Defined in International Humanitarian Law?" (ICRC Opinion Paper, March 2008).
- Daniel Thürer. "Ch. 1: International Humanitarian Law: A Unique Regime" in Daniel Thürer, *International Humanitarian Law: Theory, Practice, Context* (Brill, 2011), p. 39-58.

***Assignment: Complete the 10 question multiple-choice quiz on Canvas based on the "Overview" section of this Module.**

MODULE EIGHT: Targeted Killing and Drone Warfare

Readings:

Required Reading:

- Mary Ellen O'Connell. "Lawful Use of Combat Drones." *Subcommittee on National Security and Foreign Affairs*. (April 28, 2010).
- Gary Solis. "Targeted Killing and the Law of Armed Conflict." *Naval War College Review*. (2007), pp. 127-146.

Further Reading:

- Jelena Pejic. "Extraterritorial Targeting by Means of Armed Drones: Some Legal Implications." *International Review of the Red Cross*. V. 96, N. 893 (2014), p. 67-106.
 - Michael N. Schmitt and Eric W. Widmar. "On Target: Precision and Balance in the Contemporary Law of Targeting." *Journal of National Security Law and Policy*. V. 7 (2014), p. 379-409.
 - Philip Alston. "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions." *UN Human Rights Council*. (May 28, 2010).
 - Harold Honju Koh. "How to End the Forever War." *Speech at Oxford Student Union, Oxford University*. (May 7, 2010).
 - International Committee of the Red Cross. "The Use of Armed Drones Must Comply With Laws: Interview." (October 5, 2013).
<<https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>>
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MODULE NINE: Regulating Private Military and Security Contractors

Readings:

Required Reading:

- International Committee of the Red Cross. "International Humanitarian Law and Private Military/ Security Companies – FAQ." (December 10, 2013).
< <https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq>>
- Peter Warren Singer. "War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law." *Columbia Journal of Transnational Law*. V.42 (2004).

Further Reading:

- Todd S. Milliard. "Overcoming Post-Colonial Myopia: A Call to Recognize and Regulate Private Military Companies." *Military Law Review*. (2003).
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MODULE TEN:

The Future of National Security Law

Readings:

- Kenneth Neil Cukier and Viktor Mayer-Schoenberger. "The Rise of Big Data: How It's Changing the Way We Think About the World." *Foreign Affairs*. (May/June 2013).
- Omer Tene and Jules Polonetsky. "Big Data for All: Privacy and User Control in the Age of Analytics." *Northwestern Journal of Technology and Intellectual Property*. V. 11, N 5 (2013).

*** FINAL RESEARCH PAPER**
