Third Seminar of the Queen Mary Reflection Group on Terrorism and Human Rights

(Counter)Terrorism, Human Rights and Discrimination/Racism: A European challenge

GENERAL PRESENTATION

Seminar by invitation only

**Organising Committee**
Elspeth Guild – QMUL
Didier Bigo – Sciences Po
Marie Laure Basilien-Gainche – Lyon 3
Leonie Ansems de Vries – Kings College London

**Date**
16 - 17 June 2016

**Venue**
University of London - Institute in Paris

**Organiser**
The Queen Mary Reflection Group on Terrorism and Human Rights was established under the aegis of the QMUL Criminal Justice Centre in January 2014. It is a multidisciplinary group including jurists, political scientists, sociologists and international relations experts. It is also an inter-disciplinary group including academics, practicing lawyers and non-governmental organization representatives. The objective of the group is to reflection on the relationship of terrorism and human rights in the contemporary world. The group has held two seminars so far, 4 September 2015 and 15 January 2016 devoted to aspects of the current debates. The third seminar is now in planning.

**Aim of the 3rd Seminar**
The arrival of substantial numbers of refugees in particular and migrants in general into the EU in 2015 has sparked a wide range of controversies. A particularly toxic one relates to the relationship of refugees and migrants with terrorism and public order. A number of 2004 Member States have been reluctant to accept refugees for relocation because they fear their engagement in terrorism and suspect their involvement in terrorism. A stray Syrian passport at one of the sites of the Paris attacks on 13 November 2015 has received much media attention. The alleged criminal activity of refugees and migrants particularly in light of the events in Cologne on New Year’s Eve 2015 has once again raised new issues of public policy in light of the
influx. Allegations of racism against foreigners, religious intolerance of Muslims and discrimination against migrants and refugees has been an important part of the picture. All too often, refugees and migrants are lumped together as one group in this debate. This must be interrogated as there are clearly very different modalities at work for the two categories – yes both are comprised of foreign nationals but their circumstances are completely different – refugees are entitled to international protection under international commitments whereas migrants are entitled to equal treatment under separate international commitments which do not include protection from expulsion. This means that their treatment is subject to very discrete sets of obligations which cannot be assimilated to one another even in the area of racism and discrimination. Human rights obligations which include non-discrimination duties, form the foundation on which state action and inaction must be anchored. This event is designed to bring together academics and practitioners (legal and non-governmental organisations) to discuss the current situation.

Relevance of the event: Europe is in urgent need of reflection on the relationship of migration, terrorism and racism/discrimination. The current controversy is likely to become more intense as demands regarding integration, claims to equality and legal challenges become more prominent. There is a pressing need for reflection and discussion on the subject among academics and practitioners across Europe on the new challenges which must be addressed.

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**PROGRAMME**

16 June 2016 afternoon

**14:00 - 16:00 – Panel 1**

*(Counter)Terrorism, Migration and Racism in Europe. Examining the claims*

This first panel is designed to provide new thinking on the issue of how counter-terrorism activities of Member States and the EU impact on migration discourse, migrants in particular and the difficult problem of racism. On the one hand states are charged with ensuring respect for the law particularly as regards the criminal law in the face of political violence. On the other hand state programmes must encourage social integration and combat social exclusion. Resolving these two objectives has become increasing complex in those member States where a discourse of ‘preventing’ political violence has become acceptable and the mechanisms for pursuing the objective of prevention have begun to touch a wide range of social actors such as teachers, medical professionals etc. The impact of preventive approaches is not always equally felt across societies and as political violence becomes associated with specific ethnic minorities associated with migration the question of institutional racism is unavoidable. This panel will examine these issues in the context of specific EU Member States and EU practices.

Francesco Ragazzi (Leiden University)
Simon Cox (OSI)
Carolina Cerda Guzman (Montpellier 1)
Amanda Weston (Garden Court Chambers)

Chair: Didier Bigo, KCL and Sciences-Po
Discussant: Elspeth Guild, QMUL
Discussion

16:00 - 16:30 – Coffee Break

**16:30 - 18:00 – Panel 2**
The Voice of the UN in Migration and Racism

The UN human rights system is no stranger to the problem of racism, discrimination and xenophobia against migrants. Increasingly this has been a concern of the supervisory body established under the UN Convention against Racial Discrimination and the UN Special Rapporteur on the rights of all Migrants. This session is designed to provide an opportunity to discuss with the UN human rights actors the issue of the international perspective on the subject.

Jean Matringe (Universite de Paris 1)
Pia Oberoi (OHCHR, Geneva)
Claude Cahn (OHCHR Belgrade)
Michele Simone (UNHCR)

Chair: Kees Groenendijk (Radboud University)
Discussant: Nizar Messari (Al Akhawayn University in Ifrane)
Discussion

20:00 – Evening activity. Invitation to participants to a party (with buffet)

17 June Morning

09:30 - 11:30 – Panel 3
Asylum, (Counter)Terrorism and Racism in Europe

This second panel seeks to investigate the specific issue of (counter)terrorism measures, asylum and racism in Europe (including but not limited to the EU). The position of those in need of international protection is quite specific and in comparison with that of migrants is much more fully protected at the international level. There are numerous international instruments, starting with the UN Convention on the status of refugees 1951 and its 1967 Protocol developing through the UN Convention against Torture 1980 and most recently appearing in the UN Convention against Enforced Disappearances 2006 which prevent the expulsion or refoulement of those in need of international protection. However, the protection of refugees accused of terrorism is contested in the Refugee Convention though excluded in UNCAT and UNCAD. This inability to expel beneficiaries of international protection also means that they are particularly vulnerable to discourse about their possible ‘radicalisation’ and suspected threat to security. As these are foreigners who have sought protection against their own state they are easily re-configured as persons whom their home state had good reasons for suspecting and seeking to punish. This panel will seek to unpack some of the issues around asylum and racism in Europe today.

Valsamis Mitsilegas (QMUL)
Marie-Laure Basilien Gainche (Université Jean Moulin Lyon 3)
Julien Jeandeboz (Universite Libre Bruxelles)
Frances Webber (Institute of Race Relations)

Chair: Jef Huysmans (QMUL)
Discussant: Leonie Ansems de Vries (KCL)
Discussion
### 12:00 - 13:30 – Panel 4

**Discrimination, Racism or Justified Difference of Treatment on the basis of Immigration Status?**

One of the most complex of issues in contemporary European legal doctrine is the relationship between discrimination and justified difference of treatment. Discrimination in EU law engages the differential treatment of similar (or identical) situations while difference in treatment between situations which are different in essence is not discrimination. As a legal and political issue, determining what is discrimination and what is merely difference of treatment of different situations, engages profound political and ethical questions. While it is sometimes easier for courts to find that differential treatment is not discrimination in highly sensitive areas (such as the treatment of foreigners) this approach can lead to a diminution of judicial legitimacy if not fully justified. The moment that a court recognizes that there is discrimination the possibility of justification arises which can be highly problematic depending on the subject matter. To fail to find differential treatment discrimination can be something of a green light to racism but to find discrimination but then find that it is justified can equally be used as an excuse for xenophobia. In this session three outstanding experts in the field of discrimination will discuss the issue from a European perspective.

Susie Alegre (Independent)
Elspeth Guild (QMUL)
Catherine Gautier (Bordeaux)

Chair: Rosemary Bechler (Open Democracy)
Discussant: Marie Laure Basilien-Ganche (Université Jean Moulin Lyon 3)
Discussion

13:30 – 14:30 Lunch

### 14:30 - 16:30 – Panel 5

**Making citizens into foreigners – counter terrorism and discrimination**

What is the difference between a citizen and a foreigner? How does the association of an individual with a set of political views, religion or other attribute become a reason to deprive him or her of citizenship rights of one kind or another? The discourse in Europe regarding so-called foreign fighters raises this issue centrally. The UK has gone so far as to provide in its legislation for temporary exclusion orders where British citizens abroad are deprived of the right to return to the UK for periods of up to two years though without actually formally losing their citizenship. What does it mean to be a citizen and a foreigner simultaneously in the country to which one considers one belongs?

Didier Bigo (Sciences-Po)
Ariane Chebel d'Appollonia (Rutgers)
Andras Pap (ELTE)
Charlotte Girard (University de Paris 10)

Chair: Laurent Bonelli (Nanterre)
Discussant: Simon Cox (OSI)
Discussion

16:30 - 17:00 – Coffee Break

### 17:00 – 18:00 – Conclusions
Speakers

Susie Alegre
Susie Alegre is an independent consultant and is an associate tenant at Doughty Street Chambers. She participated in her personal capacity. She is Interception of Communications Commissioner for the Isle of Man. She has been working in international counter-terrorism policy and human rights since 2001 through her work for JUSTICE and Amnesty International as well as in her role as Anti-Terrorism Adviser to the OSCE and as an independent consultant for the UNODC and the UNOHCHR. More recently, she was posted to the EU Delegation in Uganda as an accountability and governance adviser and has worked for the Financial Ombudsman Service in the UK on cases involving mortgages and issues of equality in financial services.

Marie-Laure Basilien Gainche (Université Jean Moulin Lyon 3)
Professeure des Universités en Droit Public à la Faculté de droit de l'Université Jean Moulin Lyon 3, Marie-Laure Basilien-Gainche is a specialist in French constitutional law and European law, focusing on evaluating the legitimacy of the political systems of the European Union and its Member States. Her analyses are based on the reference to the rule of law both formally and substantially. Formal considerations engage study of the separation of powers, more precisely the ways in which EU norms are elaborated. Substantial issues concern the guarantee of fundamental rights. In order to assess the legitimacy of political systems, her work focuses on analysis of the exception: situations of serious crisis which allow the concentration of powers and the restriction of rights, and the areas of legal confinement which can act as conduits for abuse of powers and infringement of rights. Her current research project is on “The finis and the limes - Thoughts about a constitutionalised EU from the asylum and immigration policy view”. The purpose is to highlight the dialectical tensions that exist between the substantial (political) components and the formal (geographical) elements of the European identity, thanks to a critical approach of the immigration and asylum policy of the EU and its Member States.

Didier Bigo (Kings College London & Sciences-Po Paris)
Professor of International Relations at Sciences-Po, Paris and researcher at the Center for International Studies and Research/National Foundation of Political Science (CERI/FNSP). He was scientific coordinator of the CHALLENGE project on the Changing Landscape of Liberty and Security in Europe, supported by 4.5m euro under FP6, and with 23 academic partners, running from 2005-10. I was also CI on the INEX project (2011-14), focussing on critical infrastructure, mobility and traceability at the borders and beyond, with 1.25m funding under FP7 and 7 academic partners. In addition, he led the King's contribution to the FP7 funded SAPIENT Consortium, which has explored the human consequences of new surveillance technologies. This too produced a number of interdisciplinary outputs, including, Bigo, ‘Sorting out smart surveillance,’ Computer Law & Security Review 26 (2010).
Claude Cahn (Human Rights Adviser, OHCHR Belgrade)
Claude Cahn is Human Rights Adviser, Office of the United Nations High Commissioner for Human Rights (OHCHR). From April 2009-August 2015, He was based in the Office of the United Nations Resident Coordinator in the Republic of Moldova. In September 2015, my position moved to Serbia. As Human Rights Adviser, he has been instrumental in securing ratification by Moldova of the International Convention on the Rights of Persons with Disabilities; the establishment of a government working group on human rights in the health sector as well as an Ombudsperson for psychiatry; Moldova's first human rights-framed Roma inclusion action plan; and extensive efforts in the field of diversity leading up to and following the adoption in May 2012 of the Law on Ensuring Equality. In addition to a number of legal and policy reforms, my work in Moldova resulted in its first ever successful LGBT Pride events, the first official recognition of a Muslim community, Moldova's first NGO of users and survivors of psychiatry.

Carolina Cerda Guzman (Montpellier 1)
Carolina Cerda-Guzman is Senior Lecturer in law at the University Paul-Valéry Montpellier 1. Since 2006, she has developed her research on the legal responses to fight terrorism. The purpose of her reflections is to study the legal bases of counter-terrorism laws, the use of emergency powers and the judicial remedies existing to protect Human Rights from the abuses the States are used to commit in order to fight against terrorism. Her research is mainly focused on European countries. She is member of the IACL Research Groups "Constitutional Responses to Terrorism" created in 2006.

Ariane Chebel d’Appollonia (Rutgers)
Professor Ariane Chebel d’Appollonia, educated at Sciences Po (Ph.D., HDR), is Professor at the School of Public Affairs and Administration (SPAA) at Rutgers - State University of New Jersey. She is also Senior Researcher affiliated to the CEVIPOF (Center for Political Research, Sciences Po Paris). Her research focuses on the politics of immigration and anti-discrimination, security issues, racism and xenophobia, extreme-right wing movements, immigrant integration, urban racism, and European policies. She has taught at universities both in France (Paris III-Sorbonne, and the Columbia University and the University of Chicago Programs in Paris) and in the U.S. (New York University, University of Pittsburgh). Professor Chebel d’Appollonia was selected as the Buffet Chair Professor at Northwestern University (2005) and was visiting fellow at the Ford Institute for Human Security (2004-2006) and at the European Center of Excellence at the University of Pittsburgh. Furthermore, she was awarded the EU-US Fulbright scholar in 2006. She published six books, and contributed to twenty-four edited books. She co-edited two books with Simon Reich entitled Immigration, Integration and Security: America and Europe in Comparative Perspective (2008) and Managing Ethnic Diversity After 9/11: Internal Security and Civil Liberties in Transatlantic Perspective (2010). Her recent publications include Les Frontières du Racisme (Presses de Sciences Po, 2011); Frontiers of Fears: Immigration and Insecurity in the United States and Europe (Cornell University Press, 2012); and How Does it Feel to Be a Treat? Migrant Mobilization and Securitization in the U.S. and Europe (Palgrave Macmillan, NYU Series, 2015). She is currently co-directing a transatlantic research project on “Migrant and Minority Mobilization US-UK” funded by the IDEX- Université Paris Sorbonne Cité (UPSC).

Catherine Gautier (Université de Bordeaux)
Catherine Gauthier is senior lecturer at Bordeaux University, where she is Vice Dean of the Law Faculty and member of CERCCLE (Research Center for Constitutional and European Law and for Human Rights and Liberties). She supervised two research programs on the free movement of persons in the European Union. The works she publishes deal with fundamental rights in the European legal order, with a special focus on the rights to asylum.

Charlotte Girard (Université Paris 10)
Charlotte Girard is Associate Professor of Public Law in Paris Ouest Nanterre La Defense where she is teaching legal theory and constitutional law. She is member of Center of Research Study in Fundamental
Rights and Clinical Professor of Law in Paris Ouest, where she participates to a number of legal research on the state of emergency. She is the editor of a book on norms devoted to the fight against terrorism, *La lutte contre le terrorisme : l'hypothèse de la circulation des normes*, Bruxelles, Bruylant, 2012.

**Kees Groenendijk (Radboud University)**

Kees Groenendijk is emeritus Professor of Sociology of Law at the University of Nijmegen (The Netherlands), Chairman of its Centre for Migration Law (www.www.ru.nl/law/cmr), and Chairman of the Standing Committee of Experts on international immigration, refugee and criminal law (Meijers Committee). He wrote a PHD on defending group rights in civil courts (1981), was Dean of the Faculty of Law (1993-1995), and was one of the founding editors of Rechtspraak Vreemdelingenrecht, a yearbook on Dutch and international case-law on immigration, refugees and race relations (1975-1992). Since 1992 he is member of the Network of Experts on Free Movement of Workers. His main research interests are: the social and legal status of immigrants, immigration and race relations legislation and policies, legal integration of immigrants and nationality law.

**Elspeth Guild (QMUL)**

Elspeth Guild is Jean Monnet Professor ad personam at Queen Mary, University of London as well as at the Radboud University Nijmegen, Netherlands. She is also a partner at the London law firm, Kingsley Napley and an associate senior research fellow at the Centre for European Policy Studies, Brussels. She is also a visiting Professor at the College of Europe, Bruges. She was special advisor to the House of Lords European Union Committee’s Inquiry into Economic Migration in 2005.

**Jef Huysmans (QMUL)**

Jef Huysmans is Professor of International Politics. After finishing his PhD at the University of Leuven (Belgium), he took up a lectureship in International Relations and European studies at the University of Kent at Canterbury. Later he moved to the Open University where he taught politics and international relations and was Director of the Centre for Citizenship, Identities and Governance. He joined Queen Mary University of London in January 2016. He is best known for his work on the politics of insecurity, the securitization of migration, and critical methods in security studies and IR. Currently he is working on security and democracy in times of surveillance, the political life of methods, and the political significance of little nothings.

**Julien Jeandeboz (Université Libre de Bruxelles)**

Julien Jeandesboz lectures in international relations and European studies at the Department of Political Science of the ULB and is a member of REPI. He received his PhD in political science and international relations from Sciences Po, Paris. He previously worked as assistant professor in the Department of Political Science at the University of Amsterdam, was a research associate in the Department of War Studies at King’s College London, as well as a teaching fellow at Sciences Po, Paris.

**Jean Matringe (Université Paris 1 Panthéon Sorbonne)**

Jean Matringe is professor of International Law at the Sorbonne Law School, University Paris I Panthéon Sorbonne. He has published many works on human rights and international migrations and gave several lectures on these topics in France, Ivory Coast, Mali, Italy, United States of America, Canada, Cameroon and Switzerland. He used to be member of the *Cour nationale du droit d’asile*, the French jurisdiction having competence to judge administrative decisions refusing the refugee’s status to asylum seekers. Moreover Jean Matringe is member of the Immigration working group of the Network of European Legal Experts *Trans*
Europe Experts, and as such gave several consultations to the European Parliament and the French Parliament. He participates with different NGOs to the defence of migrants’ rights.

Valsamis Mitsilegas (Professor and Head of Law Department QMUL)
Valsamis Mitsilegas is Head of the Department of Law, Professor of European Criminal Law and Director of the Criminal Justice Centre at Queen Mary University of London. From 2001 to 2005 he was legal adviser to the House of Lords European Union Committee. His interests and expertise lie in the areas of EU law (with particular focus on the evolution of the Union into an Area of Freedom, Security and Justice), global security governance and human rights. He has published widely in the fields of European criminal law, immigration and asylum and security and counter-terrorism law. He is also an expert in the field of legal responses to transnational organised crime, corruption and money laundering. His work explores the impact of globalisation and Europeanisation on the relationship between the individual and the state.

Pia Oberoi (OHCHR)
Pia Oberoi is Advisor on Migration and Human Rights at the UN Office of the High Commissioner for Human Rights.

Andras Pap (Institute for the Study of Constitutionalism and the Rule of Law)
András L. Pap is SASRO-Marie S. Curie Fellow at the Institute of Sociology of at the Slovak Academy of Sciences in Bratislava; and Research Chair and Head of Department for at the Institute for the Study of Constitutionalism and the Rule of Law at the at the Hungarian Academy of Sciences in Budapest; Institute Centre for Social Sciences Institute for Legal Studies and a Professor of Constitutional Law at the Law Enforcement Faculty of the National Public Service University in Budapest, as well as recurrent Visiting (Adjunct) Professor at Central European University’s Nationalism Studies Program in Budapest.

Francesco Ragazzi (Leiden University)
Francesco Ragazzi is a lecturer of International Relations. He obtained his PhD in political science from Sciences Po (Paris) and Northwestern University (Chicago). Prior to his appointment at Leiden University, he was a Research Fellow at the School of Oriental and African Studies (SOAS) in London (2008-2009). His research interests include critical approaches to diaspora politics, migration, citizenship, and security in International Relations. He serves on the editorial board of the journal Cultures & Conflicts and is a founding member of the c.a.s.e. collective. His current research project—‘Security and the Politics of Belonging: Homegrown terrorism, counter-radicalization and the “end” of multiculturalism?’—explores the effects of security practices on contemporary meanings of community.

Michele Simone (UNHCR)

Amrit Singh (OSI)
Amrit Singh is Senior Legal Officer for National Security and Counterterrorism. She conducts strategic litigation, documentation and advocacy on a range of counterterrorism-related human rights issues including rendition, torture, arbitrary detention, drone killings, and surveillance. Among other cases, she has litigated al Nashiri v. Poland, in which the European Court of Human Rights held that Poland had violated the European Convention, inter alia, by hosting a secret CIA prison where detainees were tortured. She is also counsel in al Nashiri v. Romania, a challenge before that Court to Romania’s hosting of a secret CIA prison.

Frances Webber (IRR)
Amanda Weston (Lawyer, London)
Having been instructed in many of the leading cases on deprivation of citizenship for national security reasons, this has become a niche specialism for Amanda who has been involved in driving the case law on procedural fairness in this developing area. She also acts in TPIM/control order cases and is instructed in the lead case pending in the Court of Appeal on the Home Secretary’s powers to certify and thereby ‘terminate’ judicial review under the Justice and Security Act 2013. Amanda was a guest on BBC Radio 4’s Law in Action in March 2013 speaking about deprivation of citizenship and the rule of law. She also writes and lectures on the subject.

Invited Experts:

Francois Crepeau (UN Special Rapporteur on the rights of Migrants)
François Crépeau is Full Professor and holds the Hans and Tamar Oppenheimer Chair in Public International Law, at the Faculty of Law of McGill University. He has been appointed United Nations Special Rapporteur on the Human Rights of Migrants in 2011. He is a fellow of the Royal Society of Canada and was a Fellow 2008-2011 of the Pierre Elliott Trudeau Foundation. The focus of his current research includes migration control mechanisms, the rights of foreigners, the interface between security and migration, and the interface between the Rule of Law and globalization.

Other Participants

Leonie Ansems de Vries (King College London)
A Lecturer in International Relations and a member of the Research Centre for International Relations she joined the Department of War Studies in 2013, having previously lectured at the University of Nottingham in Malaysia. She hold a PhD in War Studies from King’s College London. Her research interrogates the notion and practice of the political in the context of contemporary global and local processes and practices. This research consists of two related strands: the politics of life and governance-resistance. The former is concerned with the depoliticisation of life consequent upon currently prevailing practices of governance and proposes a politics of movement as a way to re-politicise life beyond its capture in security terms. The second strand of research engages governance and resistance as a complexity of co-constitutive practices rather than a binary relationship.

Rosemary Bechler (openDemocracy)
In 2000, Rosemary Bechler, a peace activist with a Cambridge doctorate in eighteenth century literature, joined openDemocracy to help pilot an innovative online global discussion forum. She was European, then International Editor. Meanwhile Peaceworkers UK, which she had co-founded, became part of International Alert and she joined IA’s Board of Trustees. In 2006 Counterpoint, the internal think-tank of the British Council commissioned her to write Unbounded Freedom: a guide to creative commons thinking for cultural organisations. She edited The Convention on Modern Liberty: The British debate on fundamental rights and freedoms (Imprint Academic 2010) in the year in which she became Editor of openDemocracy.

William Bourdon (Lawyer, Paris)
William Bourdon is an avocat a la cour in Paris at the firm of Bourdon & Forestier. He practices primarily in the areas of criminal law, including economic criminal law, as well as communications law, especially press and publishing laws. He is also involved in major civil and commercial litigation, often with an international dimension, as well as in inheritance matters. Finally, he developed a consulting business for a variety of governments, NGOs and international institutions. He pleads before many ordinary courts (Assize Courts,
Criminal Courts, High Courts, Court of Appeal), but also before administrative authorities (AMF). He assists clients in France and abroad (Francophone African countries, European Union, etc.).

*Simon Cox (Open Society Justice Initiative)*
Simon Cox is the migration lawyer for the Open Society Justice Initiative. Based in London, he develops, implements, and manages legal strategies and projects to promote the rights of international migrants worldwide. He works closely with the Open Society International Migration Initiative. Before taking up his post with Open Society, Cox spent 15 years as a barrister at the Bar of England and Wales, practicing from Doughty Street Chambers in London. He specialized in public law, particularly immigration, asylum, social welfare, European Union, human rights, and discrimination law. Acting primarily for individual claimants and civil society organizations, he appeared before United Kingdom and European Union courts and tribunals at all levels. He had previously worked for two years at the Free Representation Unit in London, supervising trainee lawyers and law students acting pro bono in social welfare and immigration tribunal cases.

*Nizar Messari (Al Akhawayn University)*
Nizar Messari is the Dean of the School of Social Sciences and Humanities at Al Akhawayn University in Ifrane. He specialises in international relations with particular emphasis on South-South relations and the Mediterranean.

*Juergen Schurr (Redress)*
He is Head of Law and Policy, Redress a human rights organisation that helps torture survivors obtain justice and reparation. REDRESS works with survivors to help restore their dignity and to make torturers accountable.