



TERRORISM AND GLOBAL JUSTICE SERIES

DAVID SCHARIA

Judicial Review of  
National Security



# Judicial Review Of National Security

**David Scharia**



## **Judicial Review Of National Security:**

**Judicial Review of National Security** David Scharia, 2015 In recent years countries around the world introduced numerous national security programs and military campaigns Despite the complex legal questions they raise very few of these measures have been the subject of rigorous judicial review Nevertheless the absence of real time review has had an enormous effect on human rights rule of law and on national security The Supreme Court of Israel provides an excellent case study of a different approach which allows judges to assess military action in real time and to issue non binding results of their evaluation This raises the question How was the Court actually able to uphold this challenge In **Judicial Review of National Security** David Scharia explains how the Supreme Court of Israel developed unconventional judicial review tools and practices that allowed it to provide judicial guidance to the Executive in real time In this book he argues that courts could play a much more dominant role in reviewing national security and demonstrates the importance of intensive real time inter branch dialogue with the Executive as a tool used by the Israeli Court to provide such review This book aims to show that if one Supreme Court was able to provide rigorous judicial review of national security in real time then we should reconsider the conventional wisdom regarding the limits of judicial review of national security **Freedom of Information and**

**National Security** Amin Pashaye Amiri, 2015-01-06 Protecting sensitive national security information is among a government s most significant duties However this concept may be used to adversely limit the public s right to access to government held information Therefore striking a reasonable balance between these competing interests is of great importance for any society How important to the creation of such a balance is effective judicial review of government decisions denying public access to information on national security grounds How should judicial review of these decisions be conducted **Freedom of Information and National Security A Study of Judicial Review under U S Law** seeks to answer these questions It offers proposals for the improvement of judicial review of public bodies decisions in the U S and provides suggestions for conducting effective judicial review in other countries [National Security Law, Procedure and Practice](#)

Robert Ward, David Blundell, Caroline Stone, Karl Laird, 2024-05-31 A comprehensive detailed and updated account of UK national security law in all its aspects **National Security Law Procedure and Practice** is the only book to collate and explain all the elements of law both substantive and procedural and the practical issues which may arise in national security litigation The specialised nature of the subject makes this book a vital text not only for those seeking an overview of national security law but also for experienced practitioners instructed to act in proceedings in which national security issues may arise The intense media and public scrutiny which accompanies many national security cases makes this book of interest to a wider audience seeking to understand the legal context of such cases This new edition draws on the professional experience of a team of expert contributors and covers all recent legislation case law and guidance It provides a detailed explanation of the National Security Act 2023 which repeals and replaces the existing law relating to state threats The new Act introduces

significant new offences and executive powers including the power to impose state threat prevention and investigation measures STPIMs and creates a new scheme for the registration of foreign political influence activities The second edition also includes analysis of the landmark Supreme Court decision in Shamima Begum which re evaluates the respective roles of the government and the courts in national security matters and has ramifications throughout the work a comprehensive explanation of the National Security and Investment Act 2021 a fully revised chapter on sanctions law and an updated explanation of the continued impact of EU law on UK national security law This second edition of National Security Law Procedure and Practice will be an invaluable resource for judges policymakers legislators oversight bodies academic experts and students in a variety of legal fields

**Judicial Review of National Security** David Scharia, 2014-10-30 In BJudicial Review of National Security David Scharia explains how the Supreme Court of Israel developed unconventional judicial review tools and practices that allowed it to provide judicial guidance to the Executive in real time In this book he argues that courts could play a much more dominant role in reviewing national security and demonstrates the importance of intensive real time inter branch dialogue with the Executive as a tool used by the Israeli Court to provide such review This book aims to show that if one Supreme Court was able to provide rigorous judicial review of national security in real time then we should reconsider the conventional wisdom regarding the limits of judicial review of national security

National Security in International and Domestic Investment Law Yuwen Li, Feng Lin, Cheng Bian, 2023-10-20 This book offers a dynamic introduction to the new developments on national security review of foreign direct investment FDI from the perspectives of both domestic law and international investment law COVID 19 and the Russian invasion of Ukraine have intensified FDI screening to an unprecedented scale yet its purposes scope and potential impact remain ambiguous and controversial The book first attests the legitimacy of FDI screening by using the theory of National Security Constitution Part I explicates the national security public order and public health exceptions clauses in international investment law and the novel EU Regulation on FDI screening Part II provides an in depth analysis of FDI screening in China France Germany Italy the Netherlands Poland and the UK which have either witnessed momentous changes in domestic law recently or have adopted new laws to cope with the growing security concerns The book illustrates how States and the EU are using legal instruments to tackle exigent and emerging challenges and the complexity of national security emanated from foreign investment in the context of evolving disruptive digital technologies and the structural change of the global economy The volume will be of great value to a wide range of audiences including academics in investment and trade law legal practitioners in house counsels policymakers business professionals and law and business students at the graduate level

Legal analysis on the national security review Carolina Fabara, 2023-02-20 Foreign direct investment FDI in China has been growing during the past years Nowadays China is the second largest recipient of FDI Consequently the increasing number of foreign direct investments in China and the economic development of the country influence the decision to

promulgate a new investment law This book pretends to guide investors and entrepreneurs to make adequate decisions in the field of investment law The book approaches the importance of the national security review Then it makes a comparative study between China and Germany on the ground of the National Security Review Regimes of Foreign Investment It pretends to demonstrate the similarities and differences in the selected jurisdictions **China's National Security** Cora Chan, Fiona de Londras, 2020-03-05 All states are challenged by the need to protect national security while maintaining the rule of law but the issue is particularly complex in the China Hong Kong context This timely and important book explores how China conceives of its national security and the position of Hong Kong It considers the risks of introducing national security legislation in Hong Kong and Hong Kong's sources of resilience against encroachments on its rule of law that may come under the guise of national security It points to what may be needed to maintain Hong Kong's rule of law once China's 50 year commitment to its autonomy ends in 2047 The contributors to this book include world renowned scholars in comparative public law and national security law The collection covers a variety of disciplines and jurisdictions and both scholarly and practical perspectives to present a forward looking analysis on the rule of law in Hong Kong It illustrates how Hong Kong may succeed in resisting pressure to advance China's security interests through repressive law Given China's growing international stature the book's reflections on China's approach to security have much to tell us about its potential impact on the global political security and economic order **Free Speech and National Security** Shimon Shetreet, 2021-10-18

The ^ANational Security Court System Glenn Sulmasy, 2009-08-06 In this timely and much needed book Glenn Sulmasy one of America's leading experts on national security law opens with a much needed history of America's long and complicated experience with these courts since the early days of the Republic Sulmasy argues for a reasonable solution that creates a separate standing judicial system overseen by civilian judges that allows for habeas corpus appeals and which focuses exclusively on existing war on terror cases as well as the inevitable cases to come The National Security Law of Hong Kong Hualing Fu, Michael Hor, 2022-07-12 The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong SAR the NSL promises to be the most important legal development in Hong Kong since the advent of the Basic Law Many wondered in the aftermath of the NSL how the foundations of Hong Kong's system might be changed and in what way the freedoms valued by Hong Kong may be affected Supporters view the law as essential for the preservation of public order and the national security of China and to support the fundamental well being of One Country Two Systems an arrangement that has been in place since the return of Hong Kong to China Critics fear an adverse impact on the spirit of One Country Two Systems From a discussion initiated by the University of Hong Kong's Faculty of Law this collection of essays brings together leading experts on Hong Kong and Chinese law to offer an exploratory study of the NSL and its impact on the legal system and the principle of the rule of law in Hong Kong The book examines the ramifications of the law in relation to constitutional matters protecting national security and sustaining One Country Two Systems policing

judicial independence and extraterritoriality as well as its wider implications in areas such as academic freedom and the business environment It explores the interaction between Hong Kong and Chinese law occasioned by the NSL Finally the book offers a comparative perspective of the experience of other jurisdictions that have engaged with similar security legislation This collection addresses an important and timely issue and provides an invaluable resource for all lawyers interested in Hong Kong as they grapple with the momentous changes in its legal landscape The collection will surely serve as a reference point for further discussion and debate Victor V Ramraj University of Victoria Canada This book covers the most important aspects of national security issues including freedom and security that we have always been concerned about This timely publication not only offers the latest research results for the academic community but also provides important reference materials for the Hong Kong society to understand the important topics of national security Zhu Guobin City University of Hong Kong

**Israeli Constitutional Law in the Making** Gideon Sapir, Daphne Barak-Erez, Aharon Barak, 2013-10-31 In the domain of comparative constitutionalism Israeli constitutional law is a fascinating case study constituted of many dilemmas It is moving from the old British tradition of an unwritten constitution and no judicial review of legislation to fully fledged constitutionalism endorsing judicial review and based on the text of a series of basic laws At the same time it is struggling with major questions of identity in the context of Israel's constitutional vision of a Jewish and Democratic state Israeli Constitutional Law in the Making offers a comprehensive study of Israeli constitutional law in a systematic manner that moves from constitution making to specific areas of contestation including state religion relations national security social rights as well as structural questions of judicial review It features contributions by leading scholars of Israeli constitutional law with comparative comments by leading scholars of constitutional law from Europe and the United States

**Electronic Surveillance for National Security Purposes** United States. Congress. Senate. Committee on the Judiciary. Subcommittee on Criminal Laws and Procedures, 1975

**National Security and Fundamental Freedoms** Hualing Fu, Carole J. Petersen, Simon N.M. Young, 2005-03-01 There has been intense interest in the proposals to implement Article 23 both in Hong Kong and abroad This book will be valuable to anyone who has followed or participated in that debate or has an interest in the delicate balance between civil liberties and national security The book will be particularly useful for legislators policy makers lawyers journalists historians teachers and students especially in the fields of law and the social sciences The statutory Appendix will assist teachers and students to draw comparisons between existing law and the government's proposals In 2003 more than 500 000 people marched in Hong Kong against the National Security Legislative Provisions Bill which would have prohibited treason sedition secession and subversion against the national government of China and included new mechanisms for proscribing political organisations This edited collection analyses that legislation particularly the implications for civil liberties and the one country two systems model Although the massive protest compelled the Hong Kong government to withdraw the Bill from the legislature in 2003 it will likely propose similar

legislation in the future because Hong Kong has a constitutional obligation to implement Article 23 of the Basic Law. The book provides detailed and balanced commentary on the Bill, explains why certain proposals proved so controversial and offers concrete recommendations on how to improve the proposals before the next legislative exercise.

Fu Hualing is an Associate Professor and Director of the Centre for Comparative and Public Law, Faculty of Law of the University of Hong Kong. His research interests include social legal studies, human rights and criminology. He has an LLB from Southwestern University of Law and Politics, China; an MA from the University of Toronto, Canada; and a doctoral degree from Osgoode Hall Law School, Canada.

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Simon N. M. Young is an Associate Professor and Deputy Director of the Centre for Comparative and Public Law, Faculty of Law of the University of Hong Kong. He teaches criminal law, evidence and legal aspects of white collar crime. Previously he was Counsel in the Crown Law Office, Criminal Ministry of the Attorney General for Ontario in Toronto, Canada. He obtained his LLB from the University of Toronto and his LLM from Cambridge University.

This collection of essays on the saga of Hong Kong's efforts to address the mandate of Article 23 in the Basic Law of the Hong Kong Special Administrative Region and related matters is likely to be an extremely useful resource for a number of audiences. These include those directly engaged with the issue of legislation and policymaking in Hong Kong in both public institutions and in the community; those who have an interest in the development of Hong Kong's political and legal system and its relationship to the system of Mainland China; and those with an interest in national security and anti-terrorism legislation more generally from a comparative perspective.

The overall quality and range of the contributions is strong. The topic itself is a current and important one, and the collection is an important contribution to the field.

Andrew Byrnes, Professor of Law, Australian National University: The debate on legislation to ensure the sovereignty and security of the PRC against threats from Hong Kong was a turning point in the Special Administrative Region's political history. It showed that while some Hong Kong residents may have reservations about democracy, human rights are cherished by almost all. It also showed that people can influence policy even without formal institutions of democracy. The authors of this book played a leading role in the debate, clarifying the legal issues which was critical to an informed debate.

Yash Ghai, Sir Y. K. Pao, Professor of Public Law, University of Hong Kong: *Executive Measures, Terrorism and National Security*. Professor David Bonner, 2013-01-28. David Bonner presents an historical and contemporary legal analysis of UK governmental use of executive measures rather than criminal process to deal with national security threats. The work examines measures of internment, deportation and restriction on movement deployed in the UK and along with the imposition of collective punishment also in three emergencies forming part of its withdrawal from colonial

empire Cyprus Kenya and Malaya These situations along with that of Northern Ireland are used to probe the strengths and weaknesses of ECHR supervision It is argued that a new human rights era ushered in by a more confident Court of Human Rights and a more confident national judiciary armed with the HRA 1998 has moved us towards greater judicial scrutiny of the application of these measures a move away from unfettered and unreviewable executive discretion **The Legal, Moral, and National Security Consequences of "prolonged Detention"** United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution (2007- ),2010 **Secrecy, National Security and the Vindication of Constitutional Law** D. Cole,2013 This is an important collection of scholarly essays that will illuminate positive legal developments and normative constitutionalist concerns in the expanding arena of secret government decisions This book is indispensable reading for those concerned with constitutionalism the rule of law and democracy as they bear on the tensions between secrecy and disclosure in government responses to terrorism Vicki C Jackson Harvard University Law School US This book contains the broadest and deepest analysis of the legal and policy issues that relate to secrecy and national security on one hand and the imperatives of a functioning democracy on the other The broadest because it brings to bear materials from many countries the deepest because it brilliantly explores a core problem of constitutional government Norman Dorsen New York University US and President American Civil Liberties Union 1976 1991 Virtually every nation has had to confront tensions between the rule of law demands for transparency and accountability and the need for confidentiality with respect to terrorism and national security This book provides a global and comparative overview of the implications of governmental secrecy in a variety of contexts Expert contributors from around the world discuss the dilemmas posed by the necessity for and evils of secrecy and assess constitutional mechanisms for checking the abuse of secrecy by national and international institutions in the field of counter terrorism In recent years nations have relied on secret evidence to detain suspected terrorists and freeze their assets have barred lawsuits alleging human rights violations by invoking state secrets and have implemented secret surveillance and targeted killing programs The book begins by addressing the issue of secrecy at the institutional level examining the role of courts and legislatures in regulating the use of secrecy claims by the executive branch of government From there the focus shifts to the three most vital areas of anti terrorism law preventive detention criminal trials and administrative measures notably targeted economic sanctions The contributors explore how assertions of secrecy and national security in each of these areas affect the functioning of the legal system and the application of procedural justice and fairness Students professors and researchers interested in constitutional law international law comparative law and issues of terrorism and security will find this an invaluable addition to the literature Judges lawyers and policymakers will also find much of use in this critical volume **National Security, Public Health: Exceptions to Human Rights?** Myriam Feinberg,Laura Niada-Avshalom,Brigit Toebes,2017-10-02 The book deals with the complicated relationships between national security and human rights and between public health and human rights



Its premise is the fact that national security and public health are both included in human rights instruments as exceptions to the human rights therein sanctioned yet they can arguably be considered as human rights themselves and be equally valuable. The book therefore asks to what extent the protection of the individual could or should be overridden to enable the protection of the national security or public health of the general public. Both practice and case law have shown that human rights risk being set aside when they clash with the protection of national security or public health. Through theoretical analysis and practical examples the book addresses the conflicts that arise when the concepts of national security and public health are used and abused and other rights including freedom of speech, procedural freedoms, individual health are violated as a consequence. It provides many interesting findings on the values that states are ready to protect and forego to ensure their safety which can contribute to the ongoing debate on the protection of human rights. This book was originally published as a special issue of The International Journal of Human Rights.

**S. 1324, an Amendment to the National Security Act of 1947** United States. Congress. Senate. Select Committee on Intelligence, 1984. The amendment would relieve the operational components of the CIA from responding to certain requests under the Freedom of Information Act.

**The National Security Constitution** Harold Hongju Koh, 1990-01-01. Discusses the Iran Contra affair and its implications.

**Wartime Executive Power and the National Security Agency's Surveillance Authority** United States. Congress. Senate. Committee on the Judiciary, 2006.

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