The Law of the List

UN counterterrorism sanctions and the politics of global security law

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Gavin Sullivan

The Court for the Northern District of California, USA, issued a warrant of arrest for him on 1 Aug. 2007. Confirmed to have died in Maguindanao, the Philippines in January 2015. Mother’s name is Minah Binto Aogist Ab Aziz. 


The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law

Gavin Sullivan
ACADEMISCH PROEFSCHRIFT

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aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. ir. K.I.J. Maex
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# The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law

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Abbreviations

AG – Advocate General
ANT – Actor-Network Theory
API – Advanced Passenger Information
AVSEC - Aviation Security Plan of Action
CSIS – Canadian Security Intelligence Service
CTC – Counter Terrorism Committee
ECJ – European Court of Justice
ECtHR – European Court of Human Rights
EGC – European General Court
EU – European Union
EUI – European University Institute
FOIA – Freedom of Information Act
FTF – Foreign Terrorist Fighter
GAL – Global Administrative Law
GDS – Global Distribution Systems
HRC – Human Rights Committee
IATA – International Air Transport Association
ICAO – International Civil Aviation Organisation
ICCPR – International Convention on Civil and Political Rights
IO – International Organisation
IR – International Relations
NGO – Non-Governmental Organisation
OFAC – Office of Foreign Assets Control
PNR – Passenger Name Record
R2P – Responsibility to Protect
SARPS – Standards and Recommended Practices
SCAD – Security Council Affairs Division
SCR – Security Council Resolution
SIAC – UK Special Immigration Appeals Commission
STS – Science and Technology Studies
TPN – Transnational Policy Network
UK – United Kingdom
UN – United Nations
UNSC – United Nations Security Council
US – United States
USAP – Universal Security Audit Programme
WTO – World Trade Organisation
List of Cases

International and Regional

Court of Justice of the European Union

Case C-155/79 Australian Mining and Smelting Europe Ltd. v Commission [1982] ECR 1575 (170)
Case T-315/01 Kadi v Council and Commission [2005] ECR II 3649 (90)
Case T-228/02, Organisation des Modjahedines du peuple d’Iran v Council of European Union [2006] ECR II 4665 (160)
Joined Cases C-402 P and 415/05 P Kadi and Al Barakaat v Council and Commission [2008] ECR I 6351 (5, 90, 161)
Case T-85/09, Kadi v Commission [2010] ECR II 5177 (90, 157)
Case C-27-09 P French Republic v PMOI [2011] ECR I 13427, Opinion of AG Sharpston (163)
Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission, Council and United Kingdom v Kadi [2013] Nyr (17, 91, 158)
Case T-306/10, Yusef v Commission [2014] Nyr (171)

European Court of Human Rights

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Al-Dulimi and Montana Management Inc. v Switzerland App. No. 5809/08 (ECtHR, 26 November 2013) (89, 124)
Al-Khawaja and Tahery v United Kingdom App. Nos. 26766/05 and 22228/06 (ECtHR, 15 December 2011) (156)
Nada v Switzerland Appl. No. 10593/08 (ECtHR, 12 September 2012) (88)

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Abdelrazik v Canada (Minister of Foreign Affairs) 2009 F.C. 580 (5, 85)

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Oberlandesgericht (OLG), OLG Hamburg, Decision of 14 June 2005, reprinted in (2005) 58 Neue Juristische Wochenzeitschrift 2326 (143)
Solange I (29 May 1974) BVerfGE 37 (7)
Solange II (22 October 1986) BVerfGE 73 (7)

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