

TITLE:	WRONGFUL CAPTURE, PROPER DETENTION CHALLENGING THE DOCTRINE OF <i>MALE CAPTUS, BENE DETENTUS</i> IN INTERNATIONAL LAW
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<p>ABSTRACT:</p> <p><i>International law commentators have accorded Male Captus, Bene Detentus ["MCBD"] with doctrinal, or arguably, customary status. Therefore, despite the glaring absence of any treaty or convention that expressly allows States to validly detain and prosecute those forcibly abducted and rendered from another State's territory without the latter's consent, States have flaunted the imprimatur to do so. MCBD, translated to "wrongly captured, properly detained," has been widely accepted in International law.</i></p> <p><i>The acceptance of MCBD as doctrinal is problematic. There has been a "spiral of silence" as to practices contrary to MCBD — thus, in order to establish consistency in State practice, it has been easy to frame domestic decisions from various States to simply highlight those that uphold MCBD. Commentators have silenced dissenting State practices, artificially establishing consistency. States have also acceded to MCBD not because of any perceived legal obligation, but in due deference to their respective executive branches. Due to this "hands-off" approach by some judiciaries, they have allowed practices constituting MCBD to stand not because these are valid, but because they refuse to impinge on the executive's prerogative. Moreover, one must also consider the special circumstances attending the cases where courts have applied MCBD, which belie any attempt to extrapolate a general rule that would apply to any situation.</i></p>	

A proposed six-step framework addresses the resulting legal lacuna from the rejection of MCBD. One: The framework will only apply for international crimes committed anywhere in the world, or non-international crimes committed in a different territorial jurisdiction from the apprehending State. For the latter, the apprehending State must possess prescriptive jurisdiction over the act. Two: If the apprehending State violated an existing extradition treaty with the host state, the latter may demand restitution under the Articles on State Responsibility. Three: The three actors empowered to protest an illegal apprehension are the host State, a State entitled to exercise diplomatic protection over the apprehended individual, and the apprehended individual him or herself, contrary to what both Ker and Eichmann posit. Four: One must distinguish between extraterritorial apprehensions and torture or CIDT: torture has attained jus cogens and erga omnes status; while extraterritorial apprehensions are subject to derogation provisions under the ICCPR, in situations where the life of a nation is threatened. Torture, in exceptional circumstances like the ticking time bomb scenario, however, may be justified ex post facto. Five: The court determines whether there are exigent circumstances. Should the court deem that there are no exigent circumstances, and law enforcers committed infringing acts, it must divest itself of jurisdiction. When there are exigent circumstances, if the infringing acts "shock the conscience," then the court must divest itself as well of jurisdiction; if they exceed necessity but do not shock the conscience, the court maintains jurisdiction, without prejudice to liabilities imposed. If the acts done by the law enforcers are proportionate to need, then the court may maintain jurisdiction. Six: Finally, the framework allows the court to motu proprio apply the framework during the trial itself, when facts evincing infirm acts by the law enforcers during the apprehension become apparent, even without prior protest.

TITLE:	A MANDATE AGAINST HATE: FINDING AND FOUNDING A PHILIPPINE LAW ON HATE CRIMES
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ABSTRACT:

Crimes motivated by bias or hate (Hate Crimes) are especially vicious, producing grave emotional and psychological impact on the victim and the group that shares the victim's characteristic. These acts destroy the bonds of democratic society, fragment communities, and are an invidious form of discrimination. As the Philippines is no stranger to these crimes, the state of Philippine law vis-à-vis these acts must be determined in order that they may be adequately addressed, and vulnerable groups properly protected.

This study provides a survey of relevant Philippine Laws and reveals that while a few scattered provisions exist touching on the issue, notably an Aggravating Circumstance and Crimes Against Religion in the Revised Penal Code, domestic law is woefully inadequate or in many instances silent on Hate Crimes. Legislation must therefore be updated and completed to protect vulnerable groups against Hate Crimes. To this end, this inquiry proposes that through legislation, a bias motive in crimes should be treated as an aggravating circumstance to enhance penalties for offenders and serve as a deterrent against similar acts. Further, a mandate for law enforcement agencies to recognize, record, and report bias-motivated crimes is recommended in order that the various organs of the State may craft a more tailored response to these acts.

TITLE:	TARGETED KILLINGS: AN EXAMINATION OF ITS PERMISSIBILITY UNDER HUMAN RIGHTS LAW, THE LAW ON THE USE OF INTER-STATE FORCE, AND INTERNATIONAL HUMANITARIAN LAW
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ABSTRACT:

The events of 9/11 and attacks by terrorists as well as the so-called "rogue states" have ushered into the international law arena a new and different kind of conducting armed hostilities called targeted killing. In recent years, a number of States have adopted a policy of using targeted killings. As of this writing, there is only one decided case specifically dealing with the subject of targeted killings, Public Committee against Torture in Israel vs. Government of Israel, decided by the Israeli Supreme Court in December 2006. In that case, the Israeli Supreme Court essentially upheld the policy of the Israeli government with respect to the targeting of Palestinian terrorists who plan, launch or commit terrorist acts against Israel. The United States, on its part, has adopted a policy of launching "lethal covert operations" which includes the targeted killing of individuals identified by it to be threat to peace and order in society. This emerging practice of targeted killings triggered a heated debate regarding its legal as well as its moral permissibility.

Proponents of the practice of targeted killing advance broad claims for its justification. invoking the right of a State to self-defense and that targeted killings comply with the minimum requirements of international humanitarian law such as the principle of distinction and proportionality. Accordingly, provided these standards are complied with, a State may resort to targeted killings in order to eliminate an actual or imminent threat.

Those opposing the practice of targeted killings, meanwhile, proffer that targeted killings violate human rights, particularly the human right to life, such that it constitutes an arbitrary and unlawful deprivation of life. Thus, outright condemnation by all States of the practice of targeted killings have continuously been advocated by its oppositors.

While the term targeted killing as well as its practice by States such as the United States and Israel is new and not fully accepted under international law as of this writing, it cannot be called unlawful per se. The permissibility or non- permissibility of targeted killings under international law may properly be assessed depending on the context under which it is conducted.

Under the context of law enforcement or during peacetime situations, any case of targeted killing is governed by the applicable human rights law or human rights standards. Hence, the protection accorded to the right to life is paramount, from which no derogation may be made. Thus, the non-lethal means of arrest.