

## DRAFT PROGRAM

### Day 1: Thursday 10 January, 2013

- 09:30 – 10:00 Registration/Coffee and Tea
- 10:00 – 10:15 Opening remarks and announcements; Keynote: Terry Gill
- 10:15 – 11:00 **Panel I: *Whenever War?: Temporal Limitations to Armed Conflict***  
 Panelists: Dieter Fleck, Marco Milanovic, Wolff Heintschel von Heinegg, Tom Ruys, +1 TBC  
 Moderator: Terry Gill
- Brief description: This panel will address the temporal limitations to contemporary armed conflicts, i.e., the moments at which an armed conflict begins and ends. The threshold of application of IHL will be explored in this context. Regarding the beginning of an armed conflict, topics discussed will be what the role is of concepts like ‘naked self-defense’<sup>1</sup> and the ‘unable or unwilling’-test in the current *jus ad bellum* and whether the concept of imminence is nowadays used in an overly-broad way. In addition, the situations of one-off cross-border incursions or targeted killings, including whether state consent has any bearing on the application of IHL in this context will be examined. As to the ending of an armed conflict, it will be analyzed to what extent an armed conflict can last indefinitely and at what point the label of armed conflict may not fit a certain dispute any longer and the residual or complementary role of human rights or law enforcement in those particular situations.
- 11:00 – 11:45 Discussion
- 11:45 – 13:30 Lunch
- 13:30 – 14:15 **Panel II: *Wherever War?: Geographic Limitations of Armed Conflict***  
 Panelists: Laurie Blank, Noam Lubell, Jelena Pejic, Michael Lewis, Peter Margulies, Robert Heinsch  
 Moderator: Wouter Werner

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<sup>1</sup> Kenneth Anderson, in *How We Came To Debate a Legal Geography of War*, describes Harold Koh’s approach outlined in the March 2010 speech to the ASIL as “naked self-defense,” i.e., “defined as resorting to force in self-defense, but in ways in which the means and levels of force used are not part of an armed conflict, as a matter of the technical law of war. Those circumstances include self-defense uses of force against non-state actors, such as individual terrorist targets, which do not (yet) rise to the NIAC threshold.” (SSRN paper found at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1824783](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1824783); last accessed 13 March 2012).

Brief description: The idea behind this panel is to discuss issues related to the geographic scope of armed conflict, such as: where can a war be fought? Where is the battlefield in an armed conflict (i.e., does it have a territorial scope tied to a nation state or a geographic region)? Is an armed conflict related to a “hot battlefield” or does the conflict follow the participants wherever they may go? Does the consent of a territorial state matter in the use of force when a member of a non-state actor group finds himself there? The use of analogy between IAC and NIAC will also be explored. A discussion of these issues aims to shed some light on the geographic scope of the application of international humanitarian law.

14:15 – 15:00 Discussion

15:00 – 15:30 Coffee/Tea Break

15:30 – 16:15 **Panel III: IHL and Human Rights Law: menu à la carte?**

Panelists: Joanne Mariner, Marko Milanovic, Marco Sassoli, Jann Kleffner, William Schabas, Paul Ducheine

Moderator: Theo van Boven

Brief description: When there is an armed conflict, the question arises about what law controls. This raises additional questions such as the extraterritorial applicability of certain human rights treaties, principles of non-derogation, and ideas about whether IHL is the *lex specialis* and therefore always controls within an armed conflict or if there can be concurrent application of IHRL in certain situations or times where IHRL controls in an *in bello* framework. The panelists will discuss whether the character of the armed conflict (i.e., IAC or NIAC) affects what regime controls among other related topics.

16:15 – 17:00 Discussion

17:00 – 17:15 Summary and Announcements

19:00 – 22:00 Dinner for panelists

## **Day 2: Friday 11 January, 2013**

09:30 – 10:00 Registration/Coffee and Tea

10:00 – 10:15 Opening announcements and Keynote: Gilles de Kerchove

10:15 – 11:00

**Panel IV: A case study on targeted killings and drones**

Panelists: Ben Emmerson, Hina Shamsi, Noam Lubell, Peter Margulies, Laurie Blank, +1 TBC

Moderator: Liesbeth Lijnzaad

Brief description: With yesterday's more theoretical background and discussions in mind, this panel will look at a specific and concrete case study on targeted killings and drones. Experts will discuss matters inherent to conflicts with non-state actors where states blur the lines between armed conflict and self-defense in using force, especially against individuals. Questions regarding the applicable legal regimes arise as well as the factual importance of distinguishing between armed conflict and peacetime situations. The extent to which this blurring occurs as well as ultimate effects this blurring might have on international law will be discussed by the specialists, who will apply this theoretical framework to the topic of targeted killings and drones. The role of civilian intelligence agencies carrying out strikes traditionally reserved for military actors will also be analyzed, especially in light of accountability issues and solutions as will the risks and rewards of targeted killing from a law enforcement perspective.

11:00 – 11:45

Discussion

11:45 – 13:30

Lunch

13:30 – 14:15

**Panel V: Law Enforcement Approach in Counterterrorism**

Panelists: Christiane Hoehn, Marco Sassoli, Michael Lewis, Chris De Cock, William Banks, +1 TBC

Moderator: Nico Schrijver

Brief description: In the previous panel, the link with the law enforcement model was briefly made. Although this conference will have a focus on situations of armed conflict, this panel will take a different approach and will look at countering non-state actors within the law enforcement paradigm. Here, experts will discuss the framework and particular examples of when law enforcement has been comprehensively successful in apprehending, detaining, questioning and judicially trying terrorist suspects. An additional topic could be the effectiveness of law enforcement measures as a counterterrorism tool and discussion of particular arrests, detentions and trials in the "war on terror". These topics will be addressed from a US and European (e.g., London/Madrid bombings: domestic criminal law approach) perspective.

14:15 – 15:00

Discussion

15:00 – 15:30

Coffee/Tea Break

15:30 – 16:15

**Panel VI: *The Way Forward: The Need for a New Framework for Counterterrorism?***<sup>2</sup>

Panelists: Anthony Dworkin, Ben Emmerson, Christiane Hoehn, Wolff Heintschel von Heinegg, Dieter Fleck, William Banks

Moderator: Andre Nollkaemper

Brief description: Influenced and informed by all previous panels, this last session will give the experts a forum to reflect on the conference's discussions and contributions in order to parse a way forward regarding approaches to counterterrorism in the future. The need for clarity in the implicated international legal regimes discussed in the foregoing five panels informs this important synthesis and the summary of this panel will form the basis for possible recommendations, follow-up meetings, publications and contributions.

16:15 – 17:00

Discussion

17:00 – 17:15

Summary and Closing Remarks

17:15 – 19:00

Reception

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<sup>2</sup> Based on A. Dworkin, *Beyond the "War on Terror": Towards a New Transatlantic Framework for Counterterrorism*, European Council on foreign Relations Policy Brief, May 2009, found at [http://ecfr.eu/content/entry/counter\\_terrorism\\_eu\\_us\\_dworkin/](http://ecfr.eu/content/entry/counter_terrorism_eu_us_dworkin/) (last accessed 24 July 2012).

### **List of Panelists and Selected Affiliations:**

**William C. Banks**, Board of Advisors Distinguished Professor of Law; Professor of Public Administration and International Affairs; Director, Institute of National Security and Counter Terrorism, Syracuse University

**Laurie Blank**, Professor Emory Law School, Director IHL Center at Emory University

**Theo van Boven**, Professor Emeritus of International Law, Maastricht University

**Chris de Cock**, Chief Operational Law Section, Belgian Ministry of Defense

**Jessica Dorsey**, Researcher, TMC Asser Instituut, PhD candidate University of Amsterdam

**Paul Ducheine**, Associate Professor of Cyber Operations, Dutch Defense Academy; Legal Advisor to the Netherlands Army Legal Service

**Anthony Dworkin**, Senior Policy Fellow at European Council on Foreign Relations, executive director Crimes of War Project, member Terrorism/Counter-Terrorism Advisory committee of Human Rights Watch

**Ben Emmerson**, UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism

**Dieter Fleck**, Editor *Handbook of IHL*, co-editor of *The Handbook of the International Law of Military Operations*; formerly with the German Defense Ministry.

**Terry Gill**, UvA Professor and Military Professor Netherlands Defence Academy, Associate Professor Utrecht University

**Wolff Heintschel von Heinegg**, Stockton Professor of Law, US Naval War College, Professor Public International Law, European University Viadrina, Frankfurt

**Robert Heinsch**, Assistant Professor, Grotius Centre for international Legal Studies, Leiden University

**Christiane Höhn**, Advisor to the EU Counter-Terrorism Coordinator

**Gilles de Kerchove**, EU Counter-Terrorism Coordinator

**Jann Kleffner**, Head of International Law Centre and Associate Professor of International Law, Swedish National Defence College; Assistant Professor of Law, University of Amsterdam

**Michael W. Lewis**, Professor of Law, Ohio Northern University Claude Pettit College of Law

**Liesbeth Lijnzaad**, Extraordinary Professor Maastricht University, Legal Advisor Dutch Ministry of Foreign Affairs

**Noam Lubell**, Reader in the School of Law, University of Essex

**Peter Margulies**, Professor of Law, Roger Williams University School of Law

**Joanne Mariner**, Human Rights Program Director, Hunter College CUNY; recently appointed as Senior Crisis Response Advisor, Amnesty International (from 1 February 2013)

**Marko Milanovic**, Lecturer in Law, University of Nottingham School of Law

**Andre Nollkaemper**, Professor of Public International Law and Vice Dean for Research at the Faculty of Law, University of Amsterdam; External Advisor to the Dutch Minister of Foreign Affairs and Vice President of the Board of European Society of International Law

**Christophe Paulussen**, Senior Researcher International Humanitarian Law and International Criminal Law, T.M.C. Asser Instituut; Coordinator of the International Humanitarian and Criminal Law Platform and Research Fellow at the International Centre for Counter-Terrorism—The Hague

**Jelena Pejic**, Legal Advisor at the ICRC Legal Division, Geneva

**Tom Ruys**, Attorney at the Brussels Bar (Stibbe, PG European and Competition Law), Senior member of the Leuven Centre for Global Governance Studies and lecturer in Public International Law

**Marco Sassòli**, Professor of International Law and Director of the Department of International Law and International Organization, University of Geneva; Chairman of the Board of Geneva Call

**William A. Schabas**, Professor of International Law, Middlesex University (London); Professor of International Humanitarian Law and Human Rights, Leiden University; Emeritus Professor of Human Rights, National University of Ireland Galway; Honorary Chairman, Irish Centre for Human Rights

**Nico Schrijver**, Professor of International Law, Leiden University

**Hina Shamsi**, Director ACLU National Security Project

**Wouter Werner**, Professor of International Law VU University Amsterdam