

**Expert Group Meeting:
Challenges Raised By the Use of Evidence Collected by the Military in
Terrorism Related Cases Prosecuted before Civilian Jurisdictions**

10 - 11 July 2014
Clingendael Institute in The Hague, The Netherlands

- Programme -

Day 1	Thursday 10 July
8:45 - 9:30	Registration
9:30 - 10:30	<p>Opening remarks Mr. Wouter Jurgens (Netherlands Ministry of Foreign Affairs) Mr. Peter Knoope (International Center for Counter-Terrorism – The Hague, ICCT) Dr. David Scharia (United Nations Counter-Terrorism Executive Directorate, CTED)</p> <p>General introduction Dr. Bibi van Ginkel (ICCT)</p>
10:30 - 11:00	Coffee break
11:00 - 12:30	<p>Session 1: Setting the scene</p> <p>This session will highlight the issues at hand, explore past experiences of the military collecting evidence to be used in court cases (also in situations that do not necessarily relate to terrorism), the applicable human rights framework, and specific experiences from which lessons can be learned. This session is followed by a round of discussion.</p> <p>Moderator: Dr. Christiane Höhn (Adviser to the EU Counter-Terrorism Coordinator)</p> <p>Applicable human rights framework: Instrument for successful prosecution Mr. Johnathan Hafetz (Seton Hall University School of Law)</p> <p>Military evidence in national jurisdictions: a practitioner's experience Ms. Tamara Buruma (Prakken d'Oliveira)</p> <p>Military evidence at international criminal tribunals Mr. Bob Reid (International Criminal Tribunal for the former Yugoslavia)</p>
12:30 - 13:30	Lunch break

<p>13:30 - 15:00</p>	<p>Session 2: Experiences with collection of evidence by the military on the battlefield</p> <p>The session will focus on legal issues and past experiences relating to the collection of evidence and the arrests of suspects by the military, the transmission of evidence and detainees on the battlefield, and the existence and content of domestic/national processes and procedures for the transfer of evidence and detainees from the field to civilian law enforcement personnel. This includes statements, recordings of interrogations, but also physical transfer of detainees. This session is followed by a round of discussion.</p> <p>Moderator: Mr. Joseph Powderly (Grotius Centre for International Legal Studies)</p> <p>Evidence-based operations Col. Dr. Joop Voetelink (Netherlands Defence Academy)</p> <p>Experiences from the United States Mr. Joseph Kaster (US Department of Justice Counterterrorism Section)</p> <p>Experiences from Justice Rapid Response Dr. Chantal Joubert (Justice Rapid Response)</p>
<p>15:00 - 15:30</p>	<p>Coffee break</p>
<p>15:30 - 17:00</p>	<p>Session 3: Mandates and jurisdictions</p> <p>The session will concentrate on the scope of mandates, the impact of conflicting mandates and the challenges dealing with competing jurisdictions. Question that will be addressed include: How does the way in which an international legal mandate provided for instance by the UN, or the Rules of Engagement (RoE) as set by NATO or the EU influence the possibilities for military to effectively collect evidence and transfer that to (inter)national prosecutors and courts in order to effectively prosecute terrorist related crimes in courts? What challenges follow from the way Status of Forces Agreements (SOFAs) are drafted? What limits are there to the execution of the jurisdiction? What role can be fulfilled by Mutual Assistance Agreements in Criminal Matters? This session is followed by a round of discussion.</p> <p>Moderator: Prof. Dr. Terry Gill (University of Amsterdam / Dutch Defence Academy)</p> <p>Multi-level mandates: From UN mandate to NATO mandate to national RoEs Mr. Hans Boddens Hosang (Netherlands Ministry of Defence)</p> <p>The limits of executing jurisdiction within the scope of the SOFA Mr. William Worster (The Hague University of Applied Sciences)</p> <p>Mutual Assistance in Criminal Matters Mr. Ulrich Garms (United Nations Office on Drugs and Crime)</p>

Day 2	Friday 11 July
8:30 – 9:00	Registration
9:00-10:30	<p>Session 4: Evidentiary challenges: Reliability and admissibility of evidence for court cases</p> <p>Collection of evidence in areas where the military is operating poses unique challenges for those who are tasked with bringing terrorism suspects to justice, but also to the military itself. This session will focus on the challenges encountered when military personnel collect evidence and question witnesses with a particular focus on admissibility of such information in subsequent civilian court cases. This session is followed by a round of discussion.</p> <p>Moderator: Prof. Larissa van den Herik (Grotius Centre for International Legal Studies)</p> <p>The quality and reliability of evidence collected in conflict zones Mr. Bas van Hoek (Centre of Military Criminal Law, District Prosecutor’s Office)</p> <p>The experiences from the Lubanga Case at the ICC Dr. Caroline Buisman (International Criminal Court)</p> <p>Role of witnesses: issues of credibility and reliability Ms. Niamh Hayes (Institute for International Criminal Investigations)</p> <p>The distinction between the roles of the military, the executive and the judiciary Sir David Baragwanath (Special Tribunal for Lebanon)</p>
10:30-11:00	Coffee break
11:00-12:30	<p>Session 5: Evidentiary challenges: The rules of fair trial</p> <p>For evidence that has been collected or suspects that have been arrested and detained to be successfully transferred to prosecutors and courts for use in investigations and prosecutions for terrorist related crimes, human rights and particularly the principles of fair trial need to have been respected. This session focusses on the evidentiary challenges related to fair trial standards. This session is followed by a round of discussion.</p> <p>Moderator: Dr. Liesbeth Lijnzaad (Netherlands Ministry of Foreign Affairs)</p> <p>The issues concerning ‘fruits of a poisonous tree’ and ‘male captus’ Dr. Christophe Paulussen (ICCT)</p> <p>Treatment and rights of detainees Ms. Helen Duffy (Human Rights in Practice)</p> <p>Disclosure of evidence: confidentiality of intelligence v transparency in fair trial Dr. David Scharia (CTED)</p>

12:30-13:30	Lunch break
13:30-15:30	<p>Session 6: Case study Mali</p> <p>The session will concentrate on the experiences of the French military in Mali and the activities undertaken by Interpol in that region. The session will explore the experience of various stakeholders including Interpol. This session is followed by a round of discussions.</p> <p>Moderator: Dr. David Scharia (CTED)</p> <p>Panellists: Ms. Cécile Diot (Interpol) Adj. Frédéric Beraudo (MINUSMA)</p>
15:30 – 16:00	Coffee Break
16:00 – 17:30	<p>Panel debate on the way forward – Conclusions of the expert group meeting</p> <p>A set of leading questions will be formulated in order to guide the final panel debate on the way forward. This session is followed by a round of discussions.</p> <p>Moderator: Ms. Yaiza Alvarez Reyes (Special Tribunal for Lebanon)</p> <p>Panellists: Selection of previous speakers/moderators to discuss recommendations and practical solutions</p>