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The Tallinn Manual 2.0 and The Hague Process: From Cyber Warfare to Peacetime Regime

On 3 February 2016, the T.M.C. Asser Instituut, in cooperation with the Netherlands Ministry of Foreign Affairs, hosted a presentation on the upcoming 'Tallinn Manual 2.0: The International Law Applicable to Cyber Operations'. The presentation was conducted by **Dr. Marten Zwanenburg**, Legal Advisor at the Netherlands Ministry of Foreign Affairs, and **Professor Michael N. Schmitt**, Project Director of the Tallinn Manual.

Dr. Zwanenburg started the discussion by giving an overview of the role that the Dutch government takes in supporting the Tallinn Manual 2.0 process and efforts taken more broadly in relation to international law and cyberspace. Dr. Zwanenburg stated that the basis of the Dutch Ministry of Foreign Affairs' efforts is that, despite the very welcome and important economic and social opportunities that cyber provides, the rapid rise of cyber also generates more potential risks to international stability. The Ministry plays an important role in addressing those risks, with the aim of creating an element of predictability for States on what to expect with potential risks of cyber. If the State knows which rules apply, it can identify when these rules are being breached. In this context, the current debate is not whether international law applies, but rather *how* international law applies in cyberspace. Dr. Zwanenburg noted that the Ministry is glad to see there is already a lot of debate taking place in this respect, however, it is limited to a certain number of States and outside that group the debate continues to be limited to some degree. The Ministry, therefore, has aimed to stimulate debate among States on how international law applies, involving many States across several continents. The Ministry has so far achieved a lot in this regard and has organised various opportunities for global debate, including, but not limited to, the organisation of workshops with the United Nations Institute for Disarmament Research (UNIDIR) focusing on peace and security in cyberspace. The Ministry also played a role in the Tallinn Manual 2.0 process by hosting State consultation meetings, which Dr. Zwanenburg claims are not only highly important in providing insight into State views and practice for experts, but also as an opportunity for States to exchange views amongst themselves and bring the discussion forward. However, these endeavours are not the end of the Ministry's efforts; they continue to stimulate discussion on international law and cyber, with the consultation meetings seen as only the first step in the broader process titled 'The Hague Process' and there will continue to exist further opportunities around the world to promote discussion on international law and cyber in the future.

Prof. Schmitt then provided an update on the Tallinn Manual 2.0 process and its treatment of topics such as the law of State responsibility, the prohibition of intervention and the peaceful settlement of disputes as applied in cyberspace. He began by giving a brief overview of the original Tallinn Manual, describing it as “just the tip of the iceberg”, and discussed the many new and different features of the latest Manual. The Tallinn Manual 2.0 is a project hosted by the NATO Cooperative Cyber Defence Centre of Excellence from 2013 to 2016 and expands analysis to international law during peacetime.

Prof. Schmitt confirmed that the result of this project will be a second, extended edition of the Tallinn Manual and the process is due to end in June of this year, with the book to be released at the end of 2016/beginning of 2017. He explained the rationale behind this updated Manual is to create one complete source for all cyber rules in order to be more useful for the end client: legal advisors. The team behind the project selected the topics to be covered in the 2.0 Manual through assessing what it regards as important for legal advisors and the specific issues they will stumble across in their role.

Prof. Schmitt commented on how different the process of creating the Tallinn Manual is this time around. The current process consists of drafters, in which the editorial team creates a rough draft from analysis of treaties and practice, which is then sent out to peer reviewers, of which there are over fifty around the world. The original Manual was a purely academic book, however, the 2.0 version is practice-orientated, citing treaties and how rules apply in practice, and is, as such, not academic in nature. The work then gets sent to the International Group of Experts, consisting of experts from various backgrounds and nationalities. The expert representation this time is much broader in comparison to the original Manual’s process and includes experts from all over the world. The most different aspect of the process this time, however, is the inclusion of ‘The Hague Process’. As a result of the significant impact the Tallinn Manual had, States now want to know of the progress being made and be a part of the process. ‘The Hague Process’ consists of over fifty States that attend at least one, sometimes more, of the three International Group of Experts meetings. In these meetings, States are provided with the draft texts and given the opportunity to express their views and comments on the content, an input which Prof. Schmitt described as extraordinarily useful. The International Group of Experts takes into account States’ comments and acknowledge their viewpoints in the Manual. However, Prof. Schmitt stated that in the end what the experts include in the Manual as rules of cyberspace is only what they believe to be customary international law. In the case where no consensus can be reached by the experts on a certain rule, Prof. Schmitt confirmed that the Tallinn Manual 2.0 does not give a clear answer and, rather, comments that the experts were taking differentiating stances on the issue.

Prof. Schmitt ended his presentation with a discussion on the content of some of the key issues in the Tallinn Manual 2.0, including internal and external sovereignty, violations of sovereignty, prohibition of intervention, and cyber espionage.