

# Advanced Summer Programme

## Countering Terrorism: Legal Challenges and Dilemmas

29 August – 2 September 2016

### PROGRAMME\*

#### Monday 29 August (Day 1): Countering Terrorism: Introduction and Legal Frameworks

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|---------------|---|
| 08.45 – 09.00 | <b>Registration</b>   |
| 09.00 – 10.00 | <b>Opening Summer Programme, including Introduction Round Participants, Introduction of the Programme, Asser Academy (online learning platform) and (Internet) Facilities T.M.C. Asser Instituut</b><br><i>Dr. Christophe Paulussen (T.M.C. Asser Instituut/ICCT), Mr. Marco de Swart (ICCT) and Ms. Daphne Kapel (T.M.C. Asser Instituut)</i>  |
| 10.00 – 11.30 | <b>Defining Terrorism under International and Domestic Laws</b><br><i>Judge David Baragwanath (Special Tribunal for Lebanon)</i><br><br>Examines the various existing definitions of terrorism under international and domestic laws, exploring the reasons for the lack of a universally accepted definition, the usefulness/needlessness of such a definition and ways in which international organisations/governments/international and domestic courts deal with the lack of a universal definition. |
| 11.30 – 11.45 | <b>Coffee &amp; Tea Break</b>   |
| 11.45 – 13.15 | <b>Essential Counter-Terrorism Paradigms: The War Paradigm vs the Law Enforcement Paradigm</b><br><i>Prof. Richard English (University of St. Andrews)</i><br><br>Historically-based introduction to the two major paradigms in counter-terrorism: the war paradigm vs. the law enforcement paradigm. The presentation also includes an assessment of the effectiveness of these paradigms, including ways in which they have been deployed post-9/11.  |
| 13.15 – 14.15 | <b>Lunch</b>  |
| 14.15 – 15.30 | <b>The Role of International Human Rights Law in Countering Terrorism and its Challenges</b><br><i>Dr. Jan-Peter Loof (Leiden University)</i><br><br>The lecture will identify trends and challenges in the unfolding inter-relationship between terrorism, counter-terrorism and human rights. Terrorism has a serious impact on human rights, but many of the measures adopted to counter terrorism have a corrosive effect on human rights and   |

the rule of law. The lecture will explore how counter-terrorism strategies can be developed while respecting human rights.

15.30 – 15.45

**Coffee & Tea Break**

15.45 – 17.00

**Case Study: Extraordinary Rendition and Human Rights Implications**

*Prof. dr. John Vervaele (Utrecht Law School/ College of Europe)*

Building upon the previous lecture, this lecture will focus on a specific case study involving, among other things, human rights violations, namely extraordinary rendition. This presentation will look at the practice of extraordinary rendition, the security paradigm and the way extraordinary rendition is reflected in the Inter-American Court of Human Rights jurisprudence and in standards of the European Court of Human Rights.

18.00 – 21.00

**Welcome Dinner (Restaurant Dekxels, Denneweg 130, The Hague)**

## **Tuesday 30 August (Day 2): A Closer Look at the Battlefield**

09.00 – 10.30

**The Global War on Terror and Beyond**

*Prof. Richard English (University of St Andrews)*

Historical overview leading up to the Global War on Terror (GWOT) and its aftermath. The presentation will also look into the effects of the concept's use and what kind of role it has played in the counter-terrorism debate. It will also address the question whether countries nowadays, through an expansion of the powers of security agencies, strong language and resort to repressive measures, are not falling (again) into the 'post 9/11' trap, which has caused the excesses as exemplified by the previous lecture.

10.30 – 10.45

**Coffee & Tea Break**

10.45 – 12.15

**The Protection of Cultural Heritage during Armed Conflict**

*Dr. Marina Lostal (Hague University)*

Throughout history there are examples of cultural heritage being destroyed during an armed conflict. At times, precious antiques and cultural objects are looted for financial gain. ISIS for instance has been structurally looting artefacts, which has become one of its main sources of income. The presentation will analyse the legal rules addressing the protection of cultural heritage during armed conflict and will discuss how these can be implemented in practice.

12.15 – 13.15

**Lunch**

13.15 – 14.45

**The Use of Drones in Countering Terrorism**

*Ms. Jessica Dorsey (PAX)*

This presentation will look specifically at the increasing use of armed drones in the context of counter-terrorism. The speaker will address the legal framework of drone operations, and will also discuss to what extent the use of armed drones is an effective counter-terrorism tool. Moreover, the speaker will look into cutting-edge topics on the counter-terrorism agenda: the position of EU member states on armed drones, the quest for transparency and accountability in armed drone use, and implications of

the United States' recent release of a number of key documents in this regard.

**14.45 – 15.00**                    **Coffee & Tea Break**

**15.00 – 17.00**                    **Movie 'In the Name of the Father'**

### **Wednesday 31 August (Day 3): From Investigation to Prosecution: How to Build a Terrorism Case?**

**09.00 – 10.30**                    **From Intelligence Gathering to Intelligence Sharing**  
*Mr. Sergei Boeke (Institute for Security and Global Affairs at Leiden University)*

This session will explore some of the basic concepts of intelligence (including acquisition and analysis) in the fight against terrorism. How are foreign intelligence and domestic security interrelated, and what are the differences between the military and law enforcement paradigms? Why is it still difficult for intelligence agencies to share data with their national and international partners?

**10.30 – 10.45**                    **Coffee & Tea Break**

**10.45 – 12.15**                    **The Role of the Police in Countering Terrorism**  
*Prof. dr. Cyrille Fijnaut (Tilburg University)*

In this presentation, the speaker will go into the role of the police in countering terrorism. Issues that will be addressed are the role of the police in the collection of intelligence, the institutional cooperation between police forces and intelligence services at the level of the EU, the interdependence of criminal investigation and intelligence gathering, and the intrinsic connection between the gathering of intelligence/evidence and the operations of special police forces.

**12.15 – 13.00**                    **Lunch**

**13.00 – 14.00**                    **The Protection and Use of Witnesses in Terrorism Cases**  
*Mr. Iwan Waltenburg and Mr. Chris O'Brien (Special Tribunal for Lebanon)*

In this presentation, the protection and use of witnesses in terrorism cases will be discussed. What is the importance of using witnesses in terrorism trials? Which types of witnesses and protective measures exist? Can anonymous witnesses be used and if so, how can this be reconciled with a right to a fair trial? How should evidence of anonymous witnesses be weighed and what is the experience of international tribunals on this topic?

**14.15**                                **Departure from the Asser Institute by bus to Eurojust**

**15.00 – 17.00**                    **Visit to Eurojust**

### **Thursday 1 September (Day 4): Countering and Trying Terrorists**

**09.00**                                **Departure from the Asser Institute by bus to Special Tribunal for Lebanon**

**10.00 – 12.30**                    **Visit to the Special Tribunal for Lebanon**

- 13.00 – 13.40**                    **Lunch**
- 13.45 – 15.15**                    **Countering Terrorism at the Supranational Level: The Role of the UN and other International and Regional Players**  
*Dr. Bibi van Ginkel (Clingendael Institute/ ICCT)*
- In this presentation, the role of the UN, GCTF, CTED and other important international and regional players in countering terrorism will be addressed. How can the UN assist countries in prosecuting terrorists? What is the role of UN conventions and resolutions? What are currently the main issues at stake for the UN and other organisations? How is coordination and cooperation ensured among the different organisations?
- 15.15 – 15.30**                    **Coffee & Tea Break**
- 15.30 – 17.00**                    **Countering Foreign Terrorist Fighters: The Prevention Side**  
*Ms. Sangeeta Goswami (Human Security Collective)*
- In this session the speaker will address the prevention side of the phenomenon of Foreign Terrorist Fighters (FTF) and terrorism more generally. Why do people resort to terrorism? What are the push and pull factors? Is it possible to convince fighters-to-be not to go? How can local communities and civil society be engaged to counter violent extremism? How can resilient communities be built? In this context, the speaker will showcase a couple of ongoing projects in Tunisia and the city of Delft, the Netherlands.
- 17.30 – 19.30**                    **Networking reception organised by the municipality of The Hague**  
**Address: 't Goude Hooft (City Center), Dagelijkse Groenmarkt 13, The Hague**

**Friday 2 September (Day 5): Pressing Challenges in the Counter-Terrorism World**

- 09.00 – 10.15**                    **Countering Foreign Terrorist Fighters: The Repression Side**  
*Ms. Lucia Ling (Netherlands Ministry of Security and Justice)*
- Following up on yesterday's session, this session will provide a more general introduction to possible measures in countering the FTFs threat, with a specific focus on the repressive dimension. Which are the legal frameworks at the international, regional and national level to counter FTFs? What is the role of UNSCR 2178 (2014) and the GCTF's Hague Marrakech Memorandum? Some attention will also be paid to travel restrictions and the withdrawal of passports and citizenships.
- 10.15 – 10.30**                    **Coffee & Tea Break**
- 10.30 – 12.00**                    **Prosecuting Foreign Terrorist Fighters: a Belgian Perspective**  
*Ms. Wenke Rogge (Belgian Public Prosecution Service)*
- Yet again following up on the general overview of the last session, this session will feature a Belgian federal prosecutor of the counter-terrorism section that dealt with the Sharia4Belgium case. She will examine in detail how to prosecute FTFs on the national plane. Which kinds of court

procedures exist to try them? What are the legal and practical challenges involved in these cases? Who can be held responsible for FTF-related activities? Can prosecution be initiated before FTFs leave for the conflict or only after they have returned? Can recruiters or those who incite others to become FTF be held criminally responsible? Which laws are being used - existing domestic laws, terrorism legislation - or are new laws being drafted to criminalise the issue of FTFs? How can evidence be collected (on the internet)? Is it possible to prosecute a person who has allegedly died? And how do prosecutors deal with the interaction between international humanitarian law and national counter-terrorism law?

**12.00 – 12.45**

**Lunch**

**12.45 – 14.00**

**Written Evaluation (*library*)**

**14.00 – 14.30**

**Closure and Certificate Ceremony**

**14.30 – 15.00**

**Coffee & Tea Break**

**15.00 – 17.00**

**High Level Panel on “The Use of Administrative Measures in the Context of Foreign Terrorist Fighters”**

How to handle suspected aspiring and returning FTFs is currently a highly debated topic in countries of origin, destination and transit. The decision whether and how to prosecute or apply administrative measures to these individuals is very complex and should take into account a variety of factors, such as the availability of sufficient evidence, the seriousness of the alleged crime(s) and the public interest to prosecute. During the past years, several governments have decided to apply administrative measures to FTFs in certain circumstances. These measures include, amongst other things, deprivation of nationality, travel bans, confiscation of travel documents, prevention of re-entry, freezing of funds and cancellation of social benefit payments. Are these measures proportional and what benchmarks should we apply when designing new legislation and policy? An expert panel will present the advantages and disadvantages of recently introduced administrative measures. This will be followed by a Q&A session with the audience. Marco de Swart, ICCT Senior Portfolio Manager, will open with a word of welcome and introduce the panellists, after which Tim Moloney Q.C. will speak on the UK use of Terrorism Prevention and Investigation Measures (TPIMs), followed by Professor René de Groot who will speak on deprivation of nationality for FTFs. Finally, Dr. Bérénice Boutin will discuss administrative measures from a French perspective. After these presentations, there is room for questions and answers.

**17.00 – 19.00**

**Drinks**

*\*Please note that this programme is subject to change*