

# Contemporary Constraints on the Waging of War: A Tribute to Prof. Frits Kalshoven

16 January 2018

On 16 January 2018, the T.M.C. Asser Instituut's International Humanitarian and Criminal Law (IHCL) Platform, The Hague Initiative for Law and Armed Conflict (HILAC) and the Kalshoven-Gieskes Forum on International Humanitarian Law (KGF Leiden) organised a lecture to commemorate the work and life of late Prof. Frits Kalshoven, who passed away on 6 September 2017 at the age of 93.

**Dr. Christophe Paulussen**, Senior Researcher and coordinator of both the Asser research strand's "Human Dignity and Human Security in International and European Law" and the IHCL Platform, greeted the speakers and the guests, in particular Eugenie Kalshoven, with his opening remarks. He briefly introduced the work of Prof. Kalshoven on both the theory and practice of international humanitarian law (IHL) and highlighted his key contributions and achievements. He then introduced the three speakers as well as their connections to the life and work of Prof. Kalshoven.

Following the introduction remarks, **Dr. Robert Heinsch**, Associate Professor of Public International Law at the Grotius Centre for International Legal Studies of Leiden University and Director of the Kalshoven-Gieskes Forum on International Humanitarian Law, provided a general overview on the work and life of Prof. Kalshoven. The career path of Prof. Kalshoven started at the Royal Dutch Navy as an officer, during which he studied law at Leiden University. After completing his studies in 1958, he taught law at the Dutch Royal Naval Academy. After the navy, he joined the law school of Leiden University where he wrote his PhD thesis, *Belligerent Reprisals*, which became one of the most read books on this topic and which was reprinted in 2005. Prof. Kalshoven held several academic positions, including at Leiden University as the Red Cross Chair in IHL and professor *emeritus*, as guest professor at Groningen University, and as director of studies at The Hague Academy of International Law. At the same time, he combined theory with practice and was deeply involved in the development of IHL. A seasoned practitioner, his relationship with the Netherlands Red Cross dated back to the time when he was working on his PhD. He was a long-term Advisor to the Board of the Netherlands Red Cross (1971-1993), one of the drafters of the 1977 Additional Protocols as a member of the Dutch delegation, the first Chairman of the UN Commission of Experts to investigate serious violations of IHL in the Former Yugoslavia (1992-1993), and a member and president of the International Humanitarian Fact-Finding Commission (1991-2001), for which he coined the term "the Sleeping Beauty". Amidst his involvement in the practice of IHL, he was also outstanding academic and widely published scholar. In recognition of his contribution to IHL, Prof. Kalshoven received multiple prizes and honours including the Henri Dunant Medal and the San Remo Prize for the Promotion, Dissemination and Teaching of International Humanitarian Law. What left Dr. Heinsch the strongest impression, however, was his humble, kind, and friendly personality. Dr. Heinsch concluded his speech with this touching comment: "What counts at the end of your life is what kind of person you are—and he was a wonderful, humble, friendly, and knowledgeable person."

Dr. Heinsch was followed by **Prof. Liesbeth Zegveld**, Professor of War Reparations at the University of Amsterdam, as well as a lawyer at Prakken d'Oliveira Human Rights Lawyers. She not only co-authored *Constraints on the Waging of War* with Frits Kalshoven, but was also a dear friend of him. Prof. Zegveld's speech provided a personal insight into her cooperation with Frits Kalshoven. The two met when Prof. Zegveld first began her venture into IHL for her PhD. She noted that "he didn't answer my questions, what he did was share something that was very, very dear to him". Prof. Kalshoven's passion and understanding of IHL was very much admired throughout her speech. Moreover, she greatly emphasised the achievements of Prof. Kalshoven's leadership over the International Humanitarian Fact-Finding Commission. During his time, the Commission extended its competence to internal armed conflicts. Due to this, IHL developed to allow for encompassing non-international armed conflicts under its wings. Prof. Zegveld joined Prof.

Kalshoven for the third and fourth editions of *Constraints on the Waging of War*. She described her experience saying that “Constraints on the Waging of War is very much his book, has always been his book, and I was honoured to contribute a little bit”. Importantly, the third edition was published in 2001, a year which was highly significant to the development of IHL, with events such as the September 11 attacks. The fourth edition of 2011 was published in the midst of the Arab Spring, which allowed for further development of IHL in the context of non-international armed conflicts. In addition to being honoured to contribute, Prof. Zegveld was very content that human rights law made its way into the book. Prof. Zegveld noted that she was grateful that Prof. Kalshoven had confidence in her to allow her to contribute to his handbook and to allow her into his life. Prof. Zegveld concluded saying that “International Humanitarian law is in my heart and I love and respect him for this”.

**Prof. Christopher Greenwood**, Judge at the International Court of Justice, was the last speaker of the evening. He began his speech by this powerful comment on Prof. Kalshoven’s life and work—“a real humanitarian who practised humanity”. He subsequently spoke on the topic of belligerent reprisals and the influence of Prof. Kalshoven on this field of law. While a reprisal is an act which would normally be illegal but could become lawful in particular cases as a response to a prior illegality, reprisals have had different effects in naval warfare and land warfare, particularly during and between the two World Wars. For Prof. Greenwood, Prof. Kalshoven’s experience of living in the Netherlands during the Second World War (WWII) as well as his early career serving in the Royal Dutch Navy influenced his decision to study the topic of belligerent reprisals. A post-WWII navy officer, Prof. Kalshoven understood the particular importance of reprisals in naval warfare and believed that a matter of this kind needed to be talked about openly. He managed to achieve three important qualities in his work: a remarkable command of the history of the subject, a deep sense of idealism, and a powerful dose of realism. For example, while believing that reprisals have had their day and that IHL needs to be observed, Prof. Kalshoven would not go beyond states’ actual practice in claiming what constitutes customary international law. What was particularly valuable to Prof. Greenwood, a fellow scholar on IHL, was Prof. Kalshoven’s approach towards disagreements. In both international law and personal relations, Prof. Kalshoven was able to disagree without falling out; his kind and friendly nature made him not only a widely respected, but also a widely liked scholar. Prof. Greenwood told the audience that there was one thing we could all learn from Prof. Kalshoven—“never assume there is one path and one path only”.

The presentations were followed by a Q&A session where the speakers shared their dearest memory of Prof. Kalshoven. His humble and friendly nature recurred in each speaker’s story, both as a colleague and a friend. As was commented by Dr. Heinsch, the passing of Prof. Kalshoven has left a big gap - not only for his friends and family, but also for the IHL community as a whole.