

Editorial

2013 Amsterdam Law Forum Conference - Begging the Question

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Waking after a night of violence unlike any other experienced in Istanbul's Taksim Square recently, adding onto the already tense geopolitical situation in the Middle Eastern region, I could not help but reflect on the pressing nature of the questions soon to be dealt with by the 2013 Amsterdam Law Forum Conference panelists. Would Istanbul prove next in line to be swept by the currents of the 2012 Arab Spring, or would such a qualification betray our complete misinterpretation of the Turkish security situation? Would it prove to be the next Cairo, Tunis, Tripoli, perhaps Damascus, or would it insist on being its own category? In formulating an answer to such questions, there is no getting around the need to reflect on the nature of armed conflict, war in particular. Differing academic perspectives on how such conflicts ought to be understood will be of considerable influence, not just when thinking about possible security scenarios but also about ways of bringing such conflicts to an end. What we, the international legal community and as such the panelists of the 2013 Amsterdam Law Forum Conference, are asked to understand is a contemporary logic of armed conflict and warfare allegedly unlike that of the pre-1990's era and therefore 'new'. As we further our understanding, the focus shifts to its implications and has us ponder the modes of conflict resolution, legal foremost, in light of its proper understanding. It is such pondering among experts in the field the 2013 Amsterdam Law Forum Conference aimed to facilitate.

Even though an artificial separation of the practical from the theoretical is one best avoided, the conference's emphasis lay primarily but not solely with letter, making sure never to lose sight of the former. In spite of her practical experience as a convenor of the Human Security Study Group, which now reports to Catherine Ashton (the High Representative of the Union for Foreign Affairs and Security Policy for the European Union), above all professor Mary Kaldor is known as one of the most renowned theoretical political scientists specialised in the matter of war and armed conflict. She has been credited with the coining of the term 'new wars' to describe the changing nature of warfare which seems increasing unlike warfare in the traditional, Clausewitzian sense of the word. As indicated during her 2013 Amsterdam Law Forum Conference keynote speech, prof. Kaldor's latest research activities have taken her outside the domain of the political sciences and into the international legal realm. Having studied the new war phenomenon for the last decade, her primary research question appears to be transforming, gradually turning from 'how do we understand what we are seeing?' into 'what do we do, given our understanding of what we are seeing?'.

To recapitulate, how do we understand what we are seeing today? This is no place to comprehensively summarise prof. Kaldor's new war thesis, just as her 30 minute keynote speech was not. Yet one point in particular is worth highlighting here, as it reveals the link between the earlier two questions. According to prof. Kaldor, new wars are new because they are driven by a new type of warfare logic. Whereas traditional warfare appears to have been a continuation of politics by other means, perpetuated in as far as a political conflict remained, contemporary warfare seems to have become a way of living. Entire informal political economies thrive on the continuing existence of war and armed conflict, the very

best guarantee that such conflicts will continue for as long as they seem profitable. Informality comes to characterise the entirety of the conflict, as the participants are no longer by default and not even primarily state agents. Contemporary armed conflicts rarely start with a formal declaration of war and hardly ever end with a peace settlement. In fact, the very distinction between an act of war and an ordinary crime is blurred considerably. It suffices to conclude that the increased informality is a trend any conflict resolution mechanism must learn to deal with, legal and other mechanism alike.

Having formulated a tentative answer to the first question, the second soon re-surfaces. Given this increasing informality of warfare, what role ought any legal paradigm to play when conflict resolution is concerned? If one accepts the characterisation of the changing nature of war here described, does one argue that our current legal paradigm is in need of change or does the law of war prove sufficiently flexible to deal with this contemporary trend? With the academic debate on this matter not yet having fully outgrown its infant stage, it appears that each round of debate gives new food for thought. This can certainly be said of prof. Kaldor's concluding remarks, as she proposed we ought to consider using the crimes against humanities-tool from our current legal toolbox more frequently, instead of turning to war crimes as we do now. With the changing nature of war, perhaps this last category has outlived its purpose, or so prof. Kaldor asks.

Following prof. Kaldor's keynote speech, it befell the two subsequent panels to problematise and further develop the argument earlier presented. The first being of a distinctively historic nature, moderated by prof. Wouter Veraart, was asked to take upon itself the task of historicising the new war logic, perhaps revealing how not-so-unique features of armed conflict were dealt with in the past to instruct us on why we may or may not want to deal with them in the future. Opting for a chronological structure, prof. Winkel considered Grotius the first place to turn to, as his dealings with morality of warfare seems applicable even in times so fundamentally different from one and other. Prof. de Wilde cautioned us next, illuminating that certain alleged new war threats such as terrorism have been part of the armed conflict paradigm for centuries, the assassination of Archduke Franz Ferdinand of Austria comes to mind, and have as such had their influence on the development of our legal systems. The assassination, the spark believed to have ignited the First World War, brings us to Vladimir Petrovic's concluding remarks of the first panel. Paramilitary units, considered the primary actors in today's armed conflicts, have operated in the Balkan region for centuries, oftentimes state-supported for acts the states could not get away with themselves. During these centuries where talks of warfare morality and acts of terrorism by paramilitary units combined for a warfare-logic perhaps surprisingly similar to that of the contemporary logic, the legal paradigms we now consider 'old' were being negotiated and formed. In this light, the proposition that we should rid ourselves from the old legal paradigms because they emerged in a world so fundamentally different from the one we are faced with today that the draftees could not possibly have foreseen the current challenges of armed conflict becomes increasingly unattainable. Increasingly unattainable is carefully chosen to describe the overall conclusion, as this particular historically driven argument falls short of dismissing it entirely.

Opting for a more contemporary perspective, an impoverished understanding of current affairs may have mistakenly led us to arrive at this sceptical position whereas a continuation of the historical record into present day times would have resulted in far more nuanced position. To this end, prof. Wouter Werner led the second panel as they investigated the contemporary armed conflict landscape. Prof. Duyvesteyn offered an insightful trend analysis, confronting us with the empirical fact that the conflict recurrence rate is higher among conflicts ending in a peace settlement than any other mode of conflict settlement in strong support of prof. Kaldor's earlier described economic rationale for armed conflicts. Civil society has also become a stakeholder in this debate, not just by giving a voice to those

on the receiving end of the violence, but also by engaging on the executive end. Lars van Troost therefore reflected on the role of Non-Governmental Organizations, as their influence on the executive end has been dwindling. Interestingly enough, much of this dwindling is to be explained by a changing attitude of the NGO's themselves who are less willing to engage with this thorny political issue and choose to distribute their resources otherwise. One such area where this change is felt is on the issue of the use of drones. As the US continues to use drones in its war with the Al-Qaida, prof. Michael Scharf described how international customary law is being formed dealing with this matter even if treated with silence. Silence is just another response by the international legal community best understood as tacit consent of the forceful stretching of the concept of self-defence. With NGO's largely refraining from successfully challenging the current direction of the legal line arguments used, states are left free to develop the legal system as they deem fit. It is in the development of customary international law that we find the flexibility so desired when faced with the truly new war challenges of unmanned, remote controlled armed aerial vehicles. Lianne Boer explores yet another possible venue for flexibility as she investigates the emergence of cyber-warfare and the challenges it poses to the current legal system. The concept under investigation being an armed attack, it is mostly the expert community that has taken upon itself to develop norms for dealing with this new war phenomenon.

Given the fact that Lars van Troost opted to challenge and attack the title of the 2013 Amsterdam Law Forum Conference, the 'old law' part in particular, I feel I have no choice but to rely on my right to self-defence in response thereto. There were good reasons for including a question mark in the title of the conference here organised, as much, especially historically, remained to be settled beyond academic doubt. Given the forceful arguments articulated in favour and dislike of the underlying proposition of the title of the conference, we have yet to reach that stage in the academic debate where we can rid ourselves from the question mark. Yet as the 2013 Amsterdam Law Forum Conference has shown, begging the question bring us one step closer.

Amsterdam Law Forum awaits the 2013 Summer Edition with great expectations as it will be the academic continuation of the face-to-face discussions facilitated. With this Editorial, however, I am proud to bring to your attention our latest publication, the 2013 Spring Edition. In an attempt to create continuity among our publications, the Scientific Sections opens with a peer-reviewed article by Cedric Ryngaert on the significance of state consent concerning acceptance of humanitarian assistance. Whereas O'Donnell & Allan previously opted for a case-study approach, Ryngaert examines the emerging customary international norm holding illegal any capricious refusal of clandestine offering of humanitarian aid in general and the challenges state actors face in dealing with paramilitary armed groups. Else Bavinck continues the investigation of developments of customary law as she sets out to examine the relationship between the international human right to gender equality and the right to culture manifesting itself as a right to customary law in the South African legal system, often described as conflicting in nature. Missed lessons is what Marjoleine Zieck wishes to prevent as she offers a comprehensive analysis of the 1956 Hungarian refugee crisis and the early as well as instructive use of refugee resettlement. Joanna Diane Caytas next addresses the issue of reproductive rights in Poland, which show a trend towards increasing restrictiveness in the eyes of the author. Stephen Riley offers the sixth and final scientific article of the 2013 Spring Edition. It embodies the interdisciplinary spirit of the ALF, combining philosophy and international law to reflect on the internally conflicting concept of dignity.

In our Opinion Section, we are proud to find three quality contributions on a variety of subjects. First, George Lucas deals with the matter of privacy in a cyber security environment and offers an interesting critical perspective towards the all too topical issue of privacy

concerns in the face of (inter)national security. Recent trends in the protection of the freedom of expression call for our attention, according to Perry Keller, as we are to reflect on the relationship between American and European modes of application. While both feed into the recent public debate on the status of our privacy laws, they do so from distinct points of view. Gender issue feature prominently in the article by Troy Lavers, highlighting the rejection of certain feminist issues or 'missed lessons' while promoting the strategies of powerful states in order to maintain their power, elite status and promote the masculine 'state-centred' view of international law.

On behalf of the entire Amsterdam Law Forum Editorial team, I would like to thank all authors for their inspiring contributions to this 2013 Spring Edition on issues most pressing and topical.