

# Editors' Introduction: Self-Defence in Times of Transition

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## I. The International Legal Order at Large

The international legal order, including the regime on the use of military force, is currently in transition. Our times are characterised by a high tension between interdependence and globalisation (economic, technical, and cultural) on the one hand, and stark cleavages and fencing (ideational, economic, territorial, and even military) among states, on the other hand. In such a period of tension, international law, with its broad principles, offers little guidance. This makes legal scholarship which tries to work with these principles particularly vulnerable.

Self-defence against non-state armed groups is of course not a new topic of international law. The “new threats”<sup>1</sup> to peace and security emanating from “new actors” are iconised in the terrorist attacks of 9/11/2001, although numerous large-scale terrorist transnational crimes had been committed before, and are continuing. The Security Council’s resolutions 1368 and 1373 of September 2001 are interpreted by many observers as an endorsement of the lawfulness of self-defence against a large scale terrorist armed attack,<sup>2</sup> while others insist that these resolutions only mentioned the right to self-defence without passing judgment on its lawful use in the concrete case. Whatever they mean, these resolutions still constitute the most

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<sup>1</sup> See Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change: “A More Secure World: Our Shared Responsibility”, 2.12.2004, UN Doc. A/59/565, 15.

<sup>2</sup> SC Res. 1368 of 12.9.2001, in its preamble, does not say more but that the Security Council is “*Determined* to combat by all means threats to international peace and security caused by terrorist acts, *Recognizing* the inherent right of individual or collective self-defence in accordance with the Charter, (...)” In UN SC Res. 1373 of 28.9.2001 the Security Council was reaffirming that the attacks of 9/11 “constitute a threat to international peace and security, *Reaffirming* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001), *Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts, (...)”

important reference point for those “expansionists” who believe that self-defence can in principle be lawfully exercised against non-state attacks.

In the ensuing 15 years, the international landscape has changed. While we have become accustomed to powerful armed groups committing transnational crimes and terror acts, the “new actors” occupying international legal scholarship are big business and “new” states rising to power. China and Russia are attempting to shed their role as mere norm-takers, and to participate as norm-shapers – also in the field of peace and security. In the Chinese-Russian declaration on the Promotion of International Law of 2016, the two states “condemn terrorism (...) as a global threat that undermines the international order based on international law”.<sup>3</sup> However, the two signatories do not mention self-defence as a response but – to the contrary – ask for “collective action in full accordance with international law, including the United Nations Charter” to “counter this threat”.<sup>4</sup>

The mentioned declaration underscores that different “threats” to the international legal order come both from within that order and from the outside, and that both are linked. The international legal order’s legitimacy flaws are perceived and articulated afresh, exactly because “power shifts”<sup>5</sup> have occurred which allow new actors to raise their voice and which lend these voices more salience. Moreover, some observers expect a domino effect for multilateral institutions, a rejection of certain liberal values on a global scale, and the emergence of a new power concert.<sup>6</sup>

Can international law at all provide for a helpful “counter-reality” to the forces of the military, ideology, and crime – to mention the drivers of transnational non-state armed force? We do not believe that international law can best be described, in Marxist terms, as a “superstructure”, as a mere epiphenomenon of a given power constellation. However, we must admit that the international legal order “feeds on preconditions which itself cannot guarantee”.<sup>7</sup> Sure, these pre-conditions and side-conditions are not only material

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<sup>3</sup> Chinese-Russian letter to the UN Secretary General of 8.7.2016 contained the *Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law*, signed in Beijing on 25.6.2016 by the two states’ Ministers of Foreign Affairs (UN Doc. S/2016/600), para. 7.

<sup>4</sup> UN Doc. S/2016/600 (note 3), para. 7.

<sup>5</sup> W. W. *Burke-White*, Power Shifts in International Law: Structural Realignment and Substantive Pluralism, *Harv. Int’l L. J.* 56 (2015), 1 et seq.

<sup>6</sup> H. *Krieger*, Trumping International Law? Implications of the 2016 US Presidential Election for the International Legal Order, *EJIL talk!*, 3.1.2017.

<sup>7</sup> See, with regard to states (the most powerful entities in the international legal order) E. W. *Böckenförde*: “Der Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann.” (E. W. *Böckenförde*, Die Entstehung des Staates als Vorgang der Säkularisation, in: *Säkularisa-*

and economic, but also intellectual and moral. If the international order is currently changing, then it is not only due to the military power of – say – the Islamic State and Russia, but *also* due to the power of ideas and emotions, such as resentment against Western interference, the perception of being left behind, lack of prospects for a decent life, opposition against materialism and consumerism, or the like. And if the international legal order feeds on preconditions which itself cannot guarantee, this also means that international scholarship, too, must come to grips with pre-conditions and side-conditions over which itself has no control.

## II. Black Letter Law Parameters on Self-Defence

The question whether and under what conditions self-defence is lawful against (certain types of) non-state attacks has reemerged since 2014 by the interventions in the armed conflict in Syria. In this context, a number of states, notably the United States of America, the United Kingdom, Turkey, and France, claimed individual self-defence against the Islamic State (IS) and/or Khorasan.<sup>8</sup> Other states, and some of the mentioned ones, alternatively or additionally relied on collective self-defence of Iraq (which presupposes that Iraq was suffering an armed attack in the sense of Art. 51 of the Charter of the United Nations [UN Charter]) and/or on underlying customary law which would justify self-defence.<sup>9</sup>

The UN Charter circumscribes a right of self-defence, but – to quote the International Court of Justice (ICJ) – “does not go on to regulate directly all aspects of its content”.<sup>10</sup> The source of self-defence against non-state actors might lie outside Art. 51 of the Charter, and the scope of that norm might differ from treaty law.

The ICJ case-law has not settled the question whether self-defence is available against attacks by non-state forces either.<sup>11</sup> In *Congo v. Uganda*

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tion und Utopie: Erbacher Studien, Ernst Forsthoff zum 65. Geburtstag (1967), 75 et seq. (93).

<sup>8</sup> USA (23.9.2014), UN Doc. S/2014/695; UK (25.11.2015), UN Doc. S/2014/851 and (7.9.2015) UN Doc. S/2015/688; Turkey (24.7.2015), UN Doc. S/2015/563; France (8.9.2015) UN Doc. S/2015/745.

<sup>9</sup> USA (23.9.2014), UN Doc. S/2014/695; UK (25.11.2015), UN Doc. S/2014/851; Australia (9.9.2015) UN Doc. S/2015/693; France (8.9.2015) UN Doc. S/2015/745; Germany (10.12.2015) UN Doc. S/2105/946.

<sup>10</sup> ICJ, *Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 1986, 14, para. 176.

<sup>11</sup> See ICJ, *Oil Platforms*, ICJ Reports 2003, 161, paras. 51 and 61. The ICJ's *Wall Opinion* was initially read as leaning towards a state-centred view of “armed attack” (See *Legal Conse-*

the ICJ explicitly refrained from deciding this very question. At the same time, the Court implied that – if at all – self-defence was available only against “large scale attacks” of a non-state armed group.<sup>12</sup>

In 2004, the mentioned High-level Panel of experts commissioned by the United Nations (UN) Secretary General, had pronounced itself in favour of a “restrictive” reading of Art. 51.<sup>13</sup> It had chiefly relied on the – then new – response capacity of the UN Security Council:

“It may be that some States will always feel that they have the obligation to their own citizens, and the capacity, to do whatever they feel they need to do, unburdened by the constraints of collective Security Council process. *But however understandable that approach may have been in the cold war years, when the United Nations was manifestly not operating as an effective collective security system, the world has now changed* and expectations about legal compliance are very much higher.”<sup>14</sup>

A decade after this High-level Panel report, the world has changed again. We are (again) in a cold-war like situation in which the Security Council is blocked by mutual vetoing so that states feel that they have to act to protect their citizens, without having to engage in a Security Council process which they expect to be futile anyway.

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*quences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004, 136, para. 139). In his declaration to the *Wall opinion*, Judge *Buergethal* had called that a “legally dubious conclusion”, based on a “formalistic approach” of the Court (*Buergethal* declaration, ICJ Reports 2004, 240, paras. 5 and 6). In hindsight, most observers read the Advisory Opinion as having left open the question whether self-defence against a non-state actor can be lawful.

<sup>12</sup> “[T]he Court has no need to respond to the contentions of the Parties as to *whether and under what conditions contemporary international law provides for a right of self-defence against large-scale attacks by irregular forces.*” (ICJ Reports 2005, 168, para. 147, emphasis added). See in this sense also Judge *Simma* in his separate opinion in *Congo v. Uganda*, ICJ Reports 2005, 334, para. 11: “Such a restrictive reading of Article 51 might well have reflected the state, or rather the prevailing interpretation, of the international law on self-defence for a long time. However, in the light of more recent developments not only in State practice but also with regard to accompanying *opinio juris*, it ought urgently to be reconsidered, also by the Court. (...) Security Council resolutions 1368 (2001) and 1373 (2001) cannot but be read as affirmations of the view that *large-scale attacks* by non-State actors can qualify as ‘armed attacks’ within the meaning of Article 51.” (emphasis added).

<sup>13</sup> UN Doc. 56 A/59/565 (note 1), paras. 188 and 192.

<sup>14</sup> UN Doc. 56 A/59/565 (note 1), para. 196 (emphasis added).

### III. The Need for Principles and for a Common Understanding

Specifically due to the quality of world peace as a global public good, the mentioned High-level Panel's call for a *shared* position on the lawfulness of the use of force can hardly be dismissed as irrelevant or dispensable. The expert report rightly pointed out: "The maintenance of world peace and security depends importantly on there being *a common global understanding, and acceptance*, of when the application of force is both legal and legitimate."<sup>15</sup> That call for forging out a common understanding has been answered with scholarly attempts to formulate "principles" on self-defence against non-state armed attacks. The sets of principles which are currently on the table (the Chatham House Principles,<sup>16</sup> the Leiden Policy Recommendations,<sup>17</sup> and the Bethlehem principles<sup>18</sup>) are not uniform but they coalesce around important points of agreement.

A related scholarly enterprise is the "Plea Against the Abusive Invocation of Self-Defence as a Response to Terrorism", initiated in 2016 by *Olivier Corten*,<sup>19</sup> signed by more than 240 international lawyers and professors from a wide range of countries.<sup>20</sup> The workshop convened by the Max Planck Institute in November 2016 did not seek to add yet another set of principles. It also seeks to avoid reduplication of, and builds on, the two focus sections organised by the Leiden Journal of International Law in 2016, on the lawfulness of the use of force mainly against non-state actors, one issue on "practice"<sup>21</sup> and one on "theory".<sup>22</sup> The Leiden focus section on "practice" sought to assess the lawfulness of military interventions

<sup>15</sup> UN Doc. 56 A/59/565 (note 1), para. 184 (emphasis added).

<sup>16</sup> The Chatham House Principles of International Law on the Use of Force in Self-Defence, ICLQ 55 (2006), 963 et seq.

<sup>17</sup> Leiden Policy Recommendations on Counter-Terrorism, NILR 57 (2010), 531 et seq.

<sup>18</sup> *D. Bethlehem*, Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors, AJIL 106 (2012), 770 et seq. (with "Principles Relevant to the Scope of a State's Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors" at p. 775). See the response by: *E. Wilmshurst/M. Wood*, Self-Defense Against Nonstate Actors: Reflections on the "Bethlehem Principles", AJIL 107 (2013), 390 et seq.; see also *D. Bethlehem*, Principles of Self-Defense: A Brief Response, AJIL 107 (2013), 579 et seq.

<sup>19</sup> *O. Corten*, A Plea Against the Abusive Invocation of Self-Defence as a Response to Terrorism, EJIL Talk!, 14.7.2016, <<http://www.ejiltalk.org>>.

<sup>20</sup> <<http://cdi.ulb.ac.be>>.

<sup>21</sup> International Law and Practice, Symposium on the Fight against ISIL and International Law, LJIL 29 (2016), 737 et seq. (convened by *Theodore Christakis*, with contributions by *Karine Bannelier-Christakis*, *Olivier Corten*, *Nicholas Tsagourias* and *Vaios Koutroulis*).

<sup>22</sup> International Legal Theory: The Future of Restrictivist Scholarship on the Use of Force, LJIL 29 (2016), 13 et seq. (convened by *Jörg Kammerhofer*, with contributions by *André de Hoogh*, *Raphael van Steenberghe*, *William C. Banks/Evan J. Criddle*, and *Anne-Charlotte Martineau*).

against the Islamic State of Iraq and the Levant (ISIL) and other terrorist groups against the benchmark of “positive international law” and also aimed “to evaluate whether these interventions and the counter-terrorism discourse surrounding them could lead to an evolution of the current legal system regulating the use of force”.<sup>23</sup> The other Leiden symposium on “theory” sought to engage in “second-order analysis”, and to identify “the structure of arguments employed and their change over time, the responses and counters: argumentative strategies of international lawyers at a critical juncture of this sub-field”, in the style of a “meta-analysis” of the dialogue (or non-dialogue) among “expansionists” and “restrictivists”.<sup>24</sup>

Five years have passed since the publication of the latest principles in 2012.<sup>25</sup> The events in Syria have added a new layer of relevant practice. Moreover, the letters to the Security Council can reasonably be seen as explicitly formulating the states’ *opinio iuris*, a phenomenon which is rare in international relations. It is therefore unsurprising that our debate focussed on the legal significance of those events and statements.

Positions are currently so divided that the “common global understanding” called for in 2005 may be unattainable. As *Ian Hurd* has pointed out, “the question of whether US bombing against ISIL in Syria in 2016 really is self-defence or not under the UN Charter is not likely to be resolved – the issue rests on controversies over what the law allows and forbids, as well as over how these US actions fit into the law, and on these points it is probably unrealistic to expect convergence on any settled consensus.”<sup>26</sup> On top of all, the ongoing events suggest that the law on self-defence against non-state actors may be in a flux. It has even been claimed that the war against ISIL triggered a “Grotian Moment” of change in international law.<sup>27</sup> Even those who do not share the belief in a turning point must concede that the dynamism makes it even more difficult than usually in international law to pinpoint what the law actually “says”.

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<sup>23</sup> *T. Christakis*, Editor’s Introduction, LJIL 29 (2016), 737 et seq., 737.

<sup>24</sup> *J. Kammerhofer*, Introduction: The Future of Restrictivist Scholarship on the Use of Force, LJIL 29 (2016), 13 et seq., 14.

<sup>25</sup> *D. Bethlehem*, Self-Defense (note 18).

<sup>26</sup> *I. Hurd*, The Permissive Power of the Ban on War, European Journal of International Security 2 (2017), 1 et seq., 14.

<sup>27</sup> *M. Scharf*, How the War Against ISIS Changed International Law, Case W. Res. J. Int’l L. 48 (2016), 15 et seq., 15.

#### IV. The Need for Plurality and Pluralism

Despite the importance of finding common ground and developing globally shared principles, we deem it advisable to approach the question of self-defence against non-state actors in a pluralist fashion. The fuzzy term “pluralism” has been overused in the recent scholarly discourse on international law, and we therefore need to clarify which type of pluralism we mean. We primarily have in mind a pluralism of scholarly approaches, of techniques for dealing with international law, and of background assumptions.

The welcome plurality of approaches first of all flows from the wide gamut of research questions that can be asked in the context of international law. They range from doctrinal over empirical, theoretical, and juridico-ethical approaches.<sup>28</sup> With regard to self-defence against non-state actors, for example, a scholar might ask – in doctrinal terms – whether a link of attribution is needed between the attack and the territorial state or not. A scholar might also investigate and contextualise the historical incidences of self-defence against irregular bands, she might analyse the structure of the justificatory discourse, she might analyse the political function of the rule on self-defence in international relations,<sup>29</sup> or she might ask questions of fairness in balancing the burden between the attacked state and the territorial state. Plurality also results from the variety of paradigms or frameworks in which scholarly reasoning is conducted, ranging from neo-naturalism and legal positivism over critical studies and post-colonialism to law and economics and rational choice.

Plurality further stems from different national backgrounds of the discourse participants. The pluralism of national perspectives satisfies the demand for “comparative international law” and for comparative international legal scholarship. The comparative approach, analysing national practice, will allow better to identify a truly international legal corpus of rules on a particular international problem at hand based on an overlapping consensus and imbued with local legitimacy. It allows to assess the chances of internalisation and proper national implementation of international rules, taking note of the domestic legal framework needed for this.<sup>30</sup>

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<sup>28</sup> See A. Peters, International Legal Scholarship under Challenge, in: J. d’Aspremont/T. Gazzini/A. Nollkaemper/W. Werner (eds.), *International Law as a Profession*, 2017, 117 et seq., at 153 et seq.

<sup>29</sup> See, for example, I. Hurd (note 26) with the argument that the lawfulness of military action (covered by claims of self-defence) is an important resource of legitimacy for states, *independently* of whether a clear yardstick of legality can be fixed or not.

<sup>30</sup> A. Peters (note 28), at 122 et seq. See also M. Delmas-Marty, *Comparative Law and International Law: Methods for Ordering Pluralism*, University of Tokyo Journal of Law and

The professional background of lawyers also plays a crucial role for the plurality of approaches taken towards international law and for determining the scope of the constraints imposed by the law. Practitioners concerned with concrete issues of national security and with advising their governments typically highlight the interpretive freedom which the rather general rules of international law allow. Doctrinal rigour in narrowing potential gaps of the law, on the other hand, is more frequently found in academic approaches to international law.

Finally plurality stems from different types of engaging with law as a normative framework. *Orna Ben-Naftali* reminds us that legal problems can be tackled with various genuinely “lawyerly” approaches.<sup>31</sup> She relies on *Patricia Ewick* and *Susan S. Silbey* who distinguish three modes of legal thought: Thinking “before the law”, thinking “against the law”, and thinking “with the law”.<sup>32</sup> Thinking “before the law” treats (international) legal norms as “distinctive, yet authoritative and predictable”, as “a formally ordered, rational, and hierarchical system of known rules and procedures”.<sup>33</sup> Legality and illegality here appear “as something relatively fixed”, if not in practice then in principle. The law is imbued with “its own awesome grandeur” and appears “[o]bjective rather than subjective”, and the norms are characterised if not “defined by [their] ... impartiality”.<sup>34</sup> This mode of thought is in continental Europe often called “doctrinal”. It dominates legal practice in which the actors need clear-cut and binary answers about the lawfulness or unlawfulness of a given or projected course of conduct.

The second line of thought, “against the law”, includes “exploit[ing] the interstices of conventional social practices to forge moments of respite (...) from the power of law. ... [P]art of the resistance inheres in ... passing the message that legality can be opposed, if just a little.”<sup>35</sup> The third mode, as summarised by *Ben Naftali*, is thinking “with the law”, involves “playing” law “as a game, ... in which pre-existing rules can be deployed and new

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Politics 3 (2006), 43 et seq.; *E. Jouannet*, French and American Perspectives on International Law: Legal Cultures and International Law, *Me. L. Rev.* 58 (2006), 291 et seq.; *A. Roberts*, Comparative International Law? The Role of National Courts in Creating and Enforcing International Law, *ICLQ* 60 (2011), 57 et seq.; *W. E. Butler*, Some Reflections on Comparative International Law, *Journal of Comparative Law* 11 (2016), 52 et seq.; *O. O. Merezhko*, The Idea of Comparative International Law, *Journal of Comparative Law* 11 (2016), 92 et seq.

<sup>31</sup> *O. Ben-Naftali*, Introduction, in: *O. Ben-Naftali/M. Sfar/H. Viterbo*, *The ABC of the OPT: A Legal Lexicon of the Occupation of the Palestinian Territory* (forthcoming, 2017).

<sup>32</sup> *P. Ewick/S. S. Silbey*, *The Common Place of Law: Stories from Everyday Life*, 1998, 47 et seq.

<sup>33</sup> *P. Ewick/S. S. Silbey* (note 32), 47.

<sup>34</sup> *P. Ewick/S. S. Silbey* (note 32), 47.

<sup>35</sup> *P. Ewick/S. S. Silbey* (note 32), 48 et seq.

rules invented to serve the widest range of interests and values”. The concern is not primarily with protecting or respecting the power of the law (conceived as an independent entity). The research focus is rather on “the power ... to successfully deploy and engage with the law”.<sup>36</sup>

The dialogue workshop is based on the premise that plurality of viewpoints and approaches, along the various dimensions just mentioned, is an intellectual asset. It therefore sought not only to make visible and to accommodate the legitimate pluralism of readings and interpretations of a complex legal problem in the international *jus contra bellum*, but also sought to try out the different types of thinking before, against, and with international law mentioned above.

Thinking “before” the law, we opine that legal scholarship in that mode has to give space to new claims which for the most part react to a changing environment in which the legal discourse takes place. We need to be prepared that a consensus or one “right” solution cannot be established. While our work is generally driven by the universalist aim to establish commonly shared understandings on the issues of international law it tackles, we recognise and acknowledge the existing pluralism and wish to provide room for disagreement.

Both scholars and political actors have in recent years become aware of the necessity to accommodate pluralism and to establish academic procedures in which this pluralism can find its expression. We think that this is especially needed in the law surrounding armed conflict. That area of the law is characterised by deep controversies. It touches the core principles of international law and relates to questions which are existential for states. The exact balance that is struck between, for example, sovereignty and human rights, or between the territorial integrity of one state and the security concerns of another, directly affect the material interests of states. Thus, these choices are deeply value loaded and connect to underlying political and theoretical preferences.<sup>37</sup>

The diversity of opinions and assessments cannot be easily reconciled. Neither can “correct” solutions be found by means of doctrinally exact and rigid legal scholarship. Rather, the divergent legal assessments of situations surrounding armed conflict are, as a matter of fact, deeply rooted in the plurality of theoretical and practical approaches that exist in the reality of in-

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<sup>36</sup> P. Ewick/S. S. Silbey (note 32), 48.

<sup>37</sup> As J. Kammerhofer (note 24), 18 points out with regard to self-defence against non-state actors: “Perhaps then, this is one area of the law where our capacity as scholars to keep a ‘clinical distance’ is most tested and where emotions, moral or political ideas and jingoist instincts surface most easily.”

ternational relations. Such plurality also governs (and should continue to govern) scholarly approaches.

Our praise of pluralism does not contradict or overtake our scholarly ideal of intersubjective comprehensibility. Academic works aim, or at least should aim, for universal intersubjective comprehensibility, allowing scholars with diverging geographical, educational, or theoretical background to understand an argument or a research finding. Given certain premises and a particular method, in principle anyone, regardless of sex, nationality or religion should arrive at the same results. Global intersubjectivity in turn requires a transnational academic legal discourse whose participants accept that arguments are sound only if they are fit for universal application. But of course the global inter-subjective comprehensibility and replicability depends on the premises and methods, which first of all have to be laid open and discussed. It is on that level (of research questions, premises, and methods) where pluralism should come into play.

## V. The Contributions

The essays assembled in this focus section represent greatly differing views and approaches to the question of self-defence against non-state actors. They disagree profoundly on the state and the interpretation of the law. They identify different facts as constituting the relevant state practice, they cite different precedents as authoritative, and they make different proposals for the progressive development of the law. However, they mostly engage in what *Ewick* and *Silbey* have called “thinking before the law”. It looks as if the question of self-defence lends itself to such a doctrinal analysis “before the law” easily, because we have a treaty text, a relatively dense bulk of case-law, and much practice. Also, a range of traditional doctrinal questions can be asked, pertaining to canons of interpretation, to the relationship between primary norms and secondary norms of state responsibility, questions of attribution, the meaning of formal sources of law and their relationship among each others, and so on.

We have therefore arranged the contributions in four groups. The first part covers pieces that argue in favour of a restrictive interpretation on the law of self-defence, essentially upholding the state-centred paradigm. It includes statements by *Theodore Christakis*, *Olivier Corten*, *Letizia Lo Giacoco*, *Shin Kawagishi*, *Matthias Hartwig*, *Inger Österdahl*, *Britta Sjöstedt*, and *Priya Urs*.

The second part contains statements making the case for the legality of self-defence against non-state actors, including essays by *Irène Couzigou*, *Jochen Abr. Frowein*, *Guy Keinan*, *Karin Oellers-Frahm*, and *Christian J. Tams*. Part three offers reflections on conceptual alternatives to the traditional understanding of self-defence, presented by *Antonello Tancredi* and *Larissa van den Herik*. The fourth part presents some meta-reflections on the law by *Leena Grover*, *Christian Marxsen*, *Carl-Philipp Sassenrath*, *Paulina Starski*, and *Sir Michael Wood*.

The current symposium is a collection of short essays on the international law of self-defence against non-state actors. The collection results from the first workshop of the Max Planck Trialogues on the Law of Peace and War held in Heidelberg in November 2016. The Trialogues are books in which three authors (representing different theoretical, geographical, and practical backgrounds) tackle one and the same topic of the *ius contra bellum*, *ius in bello*, or *ius post bellum* from their distinct perspectives. They seek to positively acknowledge the diversity of perspectives, and to make constructive use of them for giving a multifaceted and problem-oriented account of the state of the law regarding pressing issues in the law surrounding armed conflict. The first volume of the Trialogues addresses the legality of self-defence against non-state actors.

We invite readers to pay attention not only to the essays' legal arguments in themselves, but also to the *Vorverständnis* of the writers, to the role they ascribe to international law in the realities of the present world and scholarship, and to the value of separating legality from illegality in order to enable international law to perform its functions.

