



**NEWSLETTER APRIL/MAY/JUNE 2006**

REF: ISMLLW 2006/2 E

**EDITORIAL**

Dear Member,

On 19 May 2006 the General Assembly of our Society elected me President for the three coming years. Many of you do not know me, and many of you did not have the opportunity to participate in the General Assembly. I shall, therefore, introduce myself very briefly and convey to you some thoughts about our Society and its future.

My professional background is mainly military prosecution. My position is head of the Norwegian Military Prosecution Authority, or roughly equivalent to what is termed Judge Advocate General in English-speaking countries. I have also taken care of ordinary criminal prosecution and led the Norwegian Armed Forces general legal services. In our society, I have been Vice-president since 2000.

Over the last decade or two, the International Society for Military Law and the Law of War has experienced a positive development, both with regard to organizational efficiency and academic achievements. These developments include, but are not limited to: improvement of the publications of the Society, electronic distribution of a highly informative newsletter to the members, introduction of regular seminars for legal advisors and the introduction of recommendations as a product of our congresses. This is due to the work of my predecessors, my colleagues in the agencies of the Society and the voluntary efforts of national groups, individual members and other contributors.

Considering our modest membership fee, you realize that the independent economic resources of our Society are limited. Congresses, seminars and other activities cannot be held without voluntary contributions of organizers, rapporteurs, speakers and leaders of the specialized commissions. Indirect support from governments and organizations that appreciate our work and that find it worthwhile to host our events and, as employers, to pay traveling expenses for participants is absolutely necessary. And without the generous support of the Belgian Ministry of Defense, it would have been impossible to provide secretariat services.

In which direction should we be moving?

At the congress in Scheveningen, participants were offered information at a stand about the Harvard program on Humanitarian Policy and Conflict Research near the registration desk. For the duration of the congress there was also a bookstand by a publisher offering relevant books at reduced rates. Such elements are positive additions to congresses, making them not only places where we meet colleagues and discuss matters included in the program, but also places where participants can be updated on current developments where other organizations are in the lead. This kind of interaction with organizations and other actors with

relevant activities should therefore be developed further, devoting space and possibly time to such contributions.

The seminars for legal advisers have become a success, and there seems to be a growing demand. There have also been several other successful seminars in recent years, organized by the Society as such or by national groups for an international audience. These successes should be pursued further, and the Managing Board is for the time being considering how this can be done, taking into account available resources.

For historical reasons, the International Society for Military Law and the Law of War has had a Euro-Atlantic point of gravity, some would say that it is Euro-centric. Expansion of activities to other continents has been on the agenda of the Managing Board and the Board of Directors for some years, without significant results having been achieved. A concrete proposal for a seminar in an African country is under study at the moment, and this could be a breakthrough in making the Society truly international.

Extension of activities to new regions, regardless of continent, is like the problem of the chicken and the egg - which comes first? In order to have a seminar, and certainly a congress, it is necessary to have a foothold in a national group or some agency which can provide the necessary infrastructure. On the other hand, visible activities in a region encourage the development of national groups. Much will, therefore, depend on a successful interaction between the agencies of the Society and local interested parties.

With your cooperation, I anticipate active and interesting years for our Society, in a world with an increasing demand for our services.

Arne Willy Dahl  
President

#### **NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.**

With great regret the General Secretariat learned of **Major General (ret.) George S. Prugh's (United States) death**. He was a highly respected member of our association. We will always stay grateful for his substantive contributions to the objectives of our association. On behalf of our association, the Secretary-General expressed our condolences to his relatives and friends.

At our XVIIth Congress in Scheveningen the following persons received a **mandate of the International Society for Military Law and the Law of War**:

President: Mr. Arne Willy Dahl (Norway)  
Senior Vice-President: Colonel R. Loretan (Switzerland)  
Other Vice-Presidents: General J. Aparicio Gallego (Spain), General J.-P. Spijk (The Netherlands) and Colonel D. Zafiropoulos (Greece)  
Secretary-General: Mr. L. Van Der Veken (Belgium)  
Treasurer: Colonel G. Van Vught (The Netherlands)  
Director of the Documentation Centre: Mr. F. Naert (Belgium)  
Director of Publications: Mr. S. Horvat (Belgium)  
Director of the Seminar for Legal Advisors to the Armed Forces: General J.-P. Spijk (The Netherlands)  
Deputy Director of the Seminar for Legal Advisors to the Armed Forces: Mrs. U. Froissart (Germany)  
President of the Committee for General Affairs: Dr. D. Fleck (Germany)  
President of the Committee for International Humanitarian Law: Lieutenant Colonel S. Fournier (Canada)  
President of the Committee for Military Criminology and Criminal Law: Professor Dr. P. Thys (Belgium)

President of the Committee for History of Military Law and the Law of War: Professor Dr. S. Oeter (Germany)

Members of the Audit Committee: Dr. A. Poretchkin (Germany) and Commander F. Ratto-Vaquer (Italy)

Members of the Board of Directors: see annex.

On the other hand, **various persons have resigned**. The Society thanks them all for their substantive contribution to the objectives of our association and hopes to meet them again in the near future, e.g. at our association's activities. Our honorary President Dr. S.B. Ybema will stay a member of the Board of Directors.

At our XVIIth Congress, a jury composed of members of the Ciardi Foundation and of the Society awarded **the Ciardi Prize** to the ICRC study "Customary International Humanitarian Law", edited by Jean-Marie Henckaerts and Louise Doswald-Beck.

The **French Committee for Humanitarian Law and the Law of War** ('Comité Français de Droit Humanitaire et de Droit de la Guerre' (CFDHFG)) has been granted the status of French National Group of the Society.

The Society has held its **XVIIth Congress** in Scheveningen (The Hague – The Netherlands) from 16 to 21 May 2006, entitled "The Rule of Law in Peace Operations". The recommendations of the Congress have been published on the Society's website (<http://www.soc-mil-law.org>).

The **Belgian National Group** of the Society has scheduled an international conference in Brussels from 12 to 13 October 2006 on the theme of private security firms (see flyer enclosed).

### **NEW TELEPHONE AND FAX NUMBER**

Please note the Society's new telephone and fax number: (0032) (0)2 742 6178.

### **RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE**

#### **CONTENTS**

International Agreements .....	5
Protocol V on Explosive Remnants of War to Enter into Force on 12 November 2006 .....	5
Protocol to UN Torture Convention Enters into Force .....	5
Red Cross and Red Crescent Movement Welcomes Israeli and Palestinian Societies .....	5
International Organisations .....	5
News from the UN Security Council .....	5
UN Peacebuilding Commission and Human Rights Council Inaugurated.....	8
Annan Outlines Counter-Terrorism Strategy .....	8
UN and AU Acting Against Sexual Abuse in Operations in Liberia and Darfur .....	9
UNESCO Concerned over Records of Timor-Leste's Truth and Reconciliation Commission	9
Arab League Adopts Model Law on International Crimes .....	9
Council of Europe and European Parliament Inquiry into Secret Detention Continue.....	9
International Independent Commission on Weapons of Mass Destruction Report and Recommendations.....	10
International (ised) Tribunals .....	10
International Court of Justice Celebrates 60 <sup>th</sup> Anniversary.....	10
60 <sup>th</sup> Anniversary of International Military Tribunal for the Far East .....	11
Developments concerning the International Criminal Court .....	11
Developments at the ICTY .....	11
Developments at the ICTR.....	12
Former Liberian President Taylor Brought Before Special Court for Sierra Leone in The Hague .....	13
European Court of Human Rights Rules on Military Courts' Jurisdiction over Civilians in Turkish Case .....	14

European Court of Justice Annuls EC-US Agreement on Passenger Name Records .....	15
Genocide Charge Brought and Death Penalty Demanded in Saddam Trial .....	15
Further Arrangements Made for Cambodian Tribunal .....	16
Security Council Authorizes Talks on Hariri Tribunal .....	16
National Developments.....	17
Road Traffic Accident Causes Riots in Kabul .....	17
Afghan Convert Avoids Prosecution .....	17
Argentine Trial in Dirty War Case Started .....	17
Accused in Murder of Belgian Peacekeepers in Rwanda Close to Trial in Belgium .....	17
Two Belgian Soldiers Convicted for Killing a Child in Benin in a Driving Accident.....	18
Bosnian Action on War Crimes.....	18
Central African Republic Court Confirms Incapacity of Judicial System to Prosecute Int'l Crimes .....	19
Colombian Court Partly Annuls Justice and Peace Law.....	19
Croatia Indicts Two ex-Generals.....	19
DRC Soldiers Convicted for Crimes against Humanity as UN Reports Abuse by Army and Police .....	19
Investigation in Case against French Armed Forces for Rwandan Genocide Continues	20
French Parliamentary Report on Protection of Journalists In Conflicts .....	20
Paris Court Convicts Frenchman for Comores Coup .....	21
Germany Arrests Rwandan Genocide Suspect .....	21
Developments Concerning Iraq.....	21
Alleged Use of Energy Weapons in Iraq.....	23
Israeli Supreme Court Order Rerouting of Security Fence/Wall .....	24
Italians to Indict US Soldier Who Shot Secret Agent in Iraq but Will not Seek Extradition CIA Agents.....	25
Liberian Truth Commission Formally Launched.....	25
UN Human Rights Office in Nepal Deplores Excessive Use of Force.....	25
Inquiry into Allegations of Abuse on Dutch Frigate .....	25
Dutchman Arrested over War Crimes and Sanctions Violations.....	25
Dutch Arrest Another Former Afghan Official.....	26
Russian Sergeant Convicted for Hazing.....	26
Allegations of Secret Russian Detention Facility in Chechnya .....	26
Serbian War Crimes Trials.....	26
Spanish Court Competent to Investigate Crimes Related to Secret Prisoner Transfer .....	26
Situation in Sri Lanka Escalates.....	26
Timor-Leste Situation (as at 16 June 2006) .....	27
Tunisia Establishes National Commission on IHL .....	28
UK Armed Forces Bill 2006 .....	28
UK Medical Officer Contesting Legality of Iraq War Sentenced to 8 Months Imprisonment and Fired .....	28
UK: Reports of Inquiry into Deaths at Deepcut Base and on Sexual Harassment in the Armed Forces .....	29
British Court Says Terrorist Control Orders System Violates Human Rights.....	29
UK Defense Secretary Questions Adequacy of International Law of War .....	30
Iraq War Found to Have Only Limited Impact on Health of UK Forces.....	30
UK House of Lords Dismissed Torture Case against Saudi Arabia .....	30
American Society of International Law Adopts Resolution .....	31
US Court Orders Former Honduran Colonel to Pay Damages to Torture and Disappearances Victims .....	31
US Court Dismisses Case against Kissinger .....	31
<i>US: Hamdan v. Rumsfeld on Military Commissions</i> .....	31
<i>United States v. Jose Padilla</i> .....	32
<i>United States v. Zacharias Moussaoui</i> .....	32
Other Selected Developments in the US .....	33

**Note:** *ILIB* stands for *International Law in Brief*, available at <http://www.asil.org/resources/e-newsletters.html#lawinbrief> and *Sentinelle* (French) is available at <http://www.sfdi.org>.

**Note:** Unless quotes are taken from authentic documents in the same language, they are not authentic.

## INTERNATIONAL AGREEMENTS

### **PROTOCOL V ON EXPLOSIVE REMNANTS OF WAR TO ENTER INTO FORCE ON 12 NOVEMBER 2006**

On 12 May 2006, Switzerland and Liechtenstein ratified Protocol V on Explosive Remnants of War, one of the Protocols to the 1980 UN Conventional Weapons Convention (Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects or 'CCW'). Now that the required 20 ratifications have been accomplished the Protocol will finally enter into force on 12 November 2006.

This multilateral treaty was signed in November 2003 by the, at the time, 91 state parties to the CCW and outlines rules and obligations for states with a view to minimize the risks and effects of explosive remnants of war. The state parties have taken the responsibility, *inter alia*, to clear, remove and destruct all explosive remnants of war found in territory under their control. After cessation of hostilities the state parties agree to provide, where feasible, technical, financial, material or human resources assistance to facilitate the marking and clearance, removal or destruction of such explosive remnants of war. Furthermore they agree to take several measures in affected countries to minimize the risk posed by these devices. Precautions may include warnings, risk education to the civilian population, and marking, fencing and monitoring of the territory affected. See also *Sentinelle* No. 67 of 21 May 2006.

(I. Heyndrickx, Belgium)

### **PROTOCOL TO UN TORTURE CONVENTION ENTERS INTO FORCE**

On 23 May 2006, Bolivia and Honduras acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 by the UN General Assembly (Resolution 57/199, available at <http://www.un.org/Depts/dhl/resguide/r57.htm>), bringing the number of Parties to 20 and leading to its entry into force on 22 June 2006. The Protocol provides for visits by independent international and national bodies to prisons and other detention places and sets up an international Subcommittee on the Prevention of Torture and requires State parties to set up national preventive mechanisms. Both shall have visiting rights and may make recommendations. See UN press release of 22 June 2006.

(F. Naert)

### **RED CROSS AND RED CRESCENT MOVEMENT WELCOMES ISRAELI AND PALESTINIAN SOCIETIES**

At its 29<sup>th</sup> Conference on 20-21 June 2006, the Red Cross and Red Crescent Movement amended its statutes following the adoption of the Third Geneva Protocol in December 2005 which introduced an additional neutral emblem (the red crystal, see the 2005/4 issue of this *Newsletter*). It also requested the ICRC to recognize the Palestine Red Crescent Society, and requested the International Federation of Red Cross and Red Crescent Societies to admit this Society as a member. The ICRC already responded by recognizing the Israeli Magen David Adom and the Palestinian Red Crescent Society. The International Federation of Red Cross and Red Crescent Societies has admitted both National Societies. See <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/conf29> and <http://www.ifrc.org/>.

(F. Naert)

## INTERNATIONAL ORGANISATIONS

### **NEWS FROM THE UN SECURITY COUNCIL**

First, on 13 April 2006, the Security Council extended the UN Mission in Ethiopia and Eritrea (UNMEE) for one month in Resolution 1670, but warned that unless both sides fulfilled its earlier demands (see *ISMLLW Newsletter* 2005/4), it would review other options. This was repeated in Resolution 1678 of 15 May 2006, which extended UNMEE until 31 May 2006 and in which the

Security Council decided, "in the event it determines that the parties have not demonstrated full compliance with resolution 1640 (2005) ... that it shall adjust the mandate and troop level of UNMEE by the end of May 2006", despite Eritrea's arrest and detention of 11 local UNMEE staff (see UN press releases of 12, 17 and 25 May 2006). Subsequently, on 31 May 2006 in Resolution 1681, the Security Council extended UNMEE's mandate for another 4 months, albeit with a reduced level of forces. See also *Sentinelle* Nos. 63, 67 and 69 respectively of 23 April, 21 May and 4 June 2006.

Second, on 25 April 2006 in Resolution 1672, the Security Council imposed sanctions (restriction on the assets and international travel) on four individuals over atrocities committed in Darfur (Sudan). Moreover, on 23 May 2006, the UN Mission in Sudan (UNMIS, see <http://www.unmis.org>) and the Office of the High Commissioner for Human Rights (OHCHR) issued a joint report covering the period from December 2005 to April 2006. This report finds that Sudanese authorities are failing to uphold many of the human rights commitments made last year, especially in the Darfur conflict, where the Government is unable and unwilling to hold perpetrators of international crimes accountable, and the killing of civilians, raping of women and girls, and pillaging of entire villages continues. The report regards domestic courts, including newly established specialised ones, as superficial and inadequate and supports the International Criminal Court's role in Darfur (see previous issues of this Newsletter) and stressed the need to hold commanders responsible (see <http://www.ohchr.org/english/countries/sd/docs/3rdOHCHRApril06.pdf>). Furthermore, separate 25 April statements by the Council's President urged the conclusion of a peace agreement by the African Union's 30 April deadline and a peaceful resolution of the tensions between Sudan and Chad following recent armed incursions. In addition, on 16 May, in Resolution 1679, the Security Council took measures to pave the way for a UN peacekeeping mission in Darfur (to which the Sudanese Government has still not consented – see e.g. UN press release of 13 June 2006) by calling for a joint AU-UN assessment team to deploy within a week, calling upon all parties that have not yet done so to sign the Darfur peace agreement, threatening sanctions against anyone who might violate or attempt to block the implementation of this agreement and calling upon all parties to facilitate the transition from an AU to a UN peace operation. The assessment mission arrived in Sudan on 13 June 2006, shortly after a Security Council delegation visited the country. However, so far two rebel groups have not signed the peace agreement. See also *Sentinelle* Nos. 60 and 62-70 (April-June 2006). Meanwhile, on 8 May 2006, an African Union interpreter was hacked to death in a refugee camp by a mob of angry demonstrators who were demanding that a UN force replace the African Union force soldiers. See L. Polgreen, 'Angry Darfur Refugees Riot in Demand for UN Troops', *New York Times*, 9 May 2006. See also the previous issues of this Newsletter.

Third, also on 25 April 2006, the Security Council, in Resolution 1671, authorized "for a period ending four months after the date of the first round of the presidential and parliamentary elections, the deployment of Eufor R.D. Congo in the Democratic Republic of the Congo" (§ 2) with the authority "to take all necessary measures, within its means and capabilities, to carry out" the following tasks, in accordance with the agreement to be reached between the EU and the UN: "(a) to support MONUC to stabilize a situation, in case MONUC faces serious difficulties in fulfilling its mandate within its existing capabilities, (b) to contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment, and without prejudice to the responsibility of the Government of the Democratic Republic of the Congo, (c) to contribute to airport protection in Kinshasa, (d) to ensure the security and freedom of movement of the personnel as well as the protection of the installations of Eufor R.D. Congo, (e) to execute operations of limited character in order to extract individuals in danger" (§ 8) (see on this EU operation <http://www.consilium.europa.eu/cms3/fo/showPage.asp?id=1091&lang=en&mode=g>; see also *Sentinelle* Nos. 60 and 64 of respectively 2 April and 1 May 2006). MONUC has considerable difficulties in stabilizing the situation in the DRC despite the Security Council's authorization to the Secretary-General to redeploy temporarily up to one infantry battalion from the UN Mission in Burundi to MONUC until 1 July 2006 (Resolution 1669 of 10 April 2006; see also *Sentinelle* No. 62 of 16 April 2006). In particular, MONUC has engaged in combat operations against rebel faction and on 28 May 2006 a Nepalese peacekeeper died in combat (the 12<sup>th</sup> MONUC casualty this year). Seven other Nepalese soldiers lost contact with their unit and are missing; militiamen claimed they had captured them but failed to provide any evidence (UN press release, 30 May 2006). Two of them were later

released on 27 June 2006. See also some national developments in the DRC discussed below.

Fourth, in Resolution 1673, adopted on 27 April 2006, the Security Council reaffirmed its Resolution 1540 (2004) on countering the proliferation of weapons of mass destruction. The Security Council decided to extend the mandate of the 1540 Committee for a period of two years and that this Committee shall intensify its efforts to promote the full implementation by all States of resolution 1540 (2004). Meanwhile, on 30 May 2006, the Chairpersons of the Security Council Committees on Al Qaeda and the Taliban, counter-terrorism and weapons of mass destruction urged closer cooperation between these committees (UN press release, 30 May 2006). See also *Sentinelle* No. 69 of 4 June 2006.

Fifth, in Resolution 1674, adopted on 28 April 2006, the Security Council condemned all kinds of violence against civilians in wartime, including, amongst others, deliberately targeting civilians and other protected persons in situations of armed conflict, torture and other prohibited treatment, gender-based and sexual violence, violence against children, the recruitment and use of child soldiers, human trafficking, forced displacement, the intentional denial of humanitarian assistance, attacks deliberately targeting UN and associated personnel involved in humanitarian missions, as well as other humanitarian personnel, and sexual exploitation, abuse and trafficking of women and children by military, police and civilian personnel involved in UN operations. The resolution repeatedly refers to international humanitarian law and also condemns impunity. See also *Sentinelle* No. 65 of 7 May 2006.

Sixth, on 2 June 2006, in Resolution 1682, the Security Council authorized 1500 additional uniform personnel to the UN Operation in Côte d'Ivoire until mid-December (UNOCI), which is approximately half the increase requested by the Secretary-General. See also *Sentinelle* Nos. 60 and 63 of 2 and 23 of April 2006.

Seventh, the Security Council was seized with the issue of Iran's nuclear programme. In short, while Iran maintains its nuclear programme is purely of a civilian nature, several countries believe it also has a military nature. Under the Nuclear Non-proliferation Treaty (NPT), to which Iran is a non-nuclear weapon state party, Iran may use nuclear technology for peaceful purposes but may not develop or otherwise acquire nuclear weapons. Suspicion of military use increased when the International Atomic Energy Agency (IAEA) discovered and reported in 2003 that Iran had been conducting a secret nuclear programme in violation of its obligations under the safeguards agreement it concluded with the IAEA in 1974. Negotiations to reconcile the different views have been going on for some time and continuing to date. In this context, Iran had stopped its uranium enrichment activities in 2004 but resumed them mid 2005 while suspending enhanced cooperation with the IAEA. On 4 February 2006, the IAEA instructed its Director-General to refer the situation to the Security Council and report the measures it demanded from Iran. A 27 February 2006 report concluded that *"Although the Agency has not seen any diversion of nuclear material to nuclear weapons or other nuclear explosive devices, the Agency is not at this point in time in a position to conclude that there are no undeclared nuclear materials or activities in Iran"* and that *"It is ... a matter of concern, that the above uncertainties related to the scope and nature of Iran's nuclear programme have not been clarified after three years of intensive Agency verification"*. The Security Council on 29 March 2006 in Presidential Statement 2006/15 called upon Iran to take the steps required by the IAEA Board of Governors, stressing the importance of re-establishing full and sustained suspension of all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA, and expressed the conviction that these steps would contribute to a diplomatic, negotiated solution (see [http://www.un.org/Docs/sc/unsc\\_pres\\_statements06.htm](http://www.un.org/Docs/sc/unsc_pres_statements06.htm)). However, Iran has continued its enrichment activities and the IAEA has made little progress in verifying Iran's nuclear programme. Nevertheless, the Security Council has not yet adopted a resolution on the issue, although a draft resolution has been introduced (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_04\\_indexarch.php#114673796390379318](http://jurist.law.pitt.edu/paperchase/2006_05_04_indexarch.php#114673796390379318)).

Moreover, Iran has indicated it might withdraw from the NPT if it is subjected to sanctions. For a discussion of the latter issue, with a comparison to the position of North Korea, see F.L. Kirgis, 'Iran and the Nuclear Non-proliferation Treaty', 10(13) *ASIL Insight*, 30 May 2006, <http://www.asil.org/insights/2006/05/insights060530.html>. See generally <http://www.iaea.org/NewsCenter/Focus/laealran/index.shtml> and *Sentinelle* Nos. 60, 67 and 70 of 2 April, 21 May and 18 June 2006.

Finally, on 22 June 2006 the Security Council adopted Presidential Statement 2006/28 on 'Strengthening international law: rule of law and maintenance of international peace and security' (see [http://www.un.org/Docs/sc/unsc\\_pres\\_statements06.htm](http://www.un.org/Docs/sc/unsc_pres_statements06.htm)), which *inter alia* confirms the Council's commitment to the UN Charter and international law as "indispensable foundations of a more peaceful, prosperous and just world", emphasizes the important role of the International Court of Justice and of promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace, supports establishing a rule of law assistance unit within the UN Secretariat, emphasizes the responsibility of States to comply with their obligations to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law, notes the resolve to ensure that sanctions are carefully targeted and are implemented in ways that balance effectiveness against possible adverse consequences and the commitment to ensuring that fair procedures exist for placing individuals and entities on sanctions lists and for removing them.

Furthermore, see the developments on the Taylor trial and Hariri investigation below (in the section 'International(ized) tribunals').

All cited resolutions are available at [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm).

(F. Naert)

#### **UN PEACEBUILDING COMMISSION AND HUMAN RIGHTS COUNCIL INAUGURATED**

On 12 May 2006, 7 countries (Angola, Guinea-Bissau, Indonesia, Sri Lanka, Poland, Brazil and Belgium) were elected to serve on the organizational committee of the nascent UN Peacebuilding Commission. This committee will be responsible for developing the Commission's rules of procedure and working methods. The Peacebuilding Commission, first proposed in 2004 by the Secretary General's High-Level Panel on Threats, Challenges and Change and included in his 2005 report *In Larger Freedom*, was created in response to a call by the 2005 World Summit and is to provide the UN with a strong post-conflict feature to help prevent countries or regions from relapsing into war. Its membership will include 7 members of the Security Council, including its 5 permanent members; seven States from the Economic and Social Council (elected from regional groups); 5 top contributors to the UN budget; 5 top providers of military personnel and civilian police to UN missions and 7 members elected by the General Assembly (with special consideration for States that have experienced post-conflict recovery). The Commission held its inaugural session on 23 June 2006. The first countries referred to it are Burundi and Sierra Leone. See <http://www.un.org/peace/peacebuilding/>.

On 19 June 2006, the Human Rights Council, which succeeds the discredited Human Rights Commission and was proposed in the Secretary General's 2005 report *In Larger Freedom* and subsequently endorsed by the 2005 World Summit, held its inaugural session. The Council is regarded as a significant improvement on its predecessor and is a subsidiary body of the General Assembly. See <http://www.un.org/apps/news/infocusRel.asp?infocusID=114&Body=human%20rights%20council&Body1=>. Furthermore, on 3 May 2006, the UN Secretary General announced that he was setting up an advisory committee on the prevention of genocide; see *Sentinel* No. 66 of 14 May 2006.

(F. Naert)

#### **ANNAN OUTLINES COUNTER-TERRORISM STRATEGY**

On 2 May 2006, UN Secretary-General Kofi Annan unveiled his recommendations for a comprehensive counter-terrorism strategy to the 191 members of the UN General Assembly. See *Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy*, <http://www.un.org/unitingagainstterrorism/>. The recommendations are brought under the heading of five fundamental components, namely (i) Dissuading people from resorting to terrorism or supporting it; (ii) Denying terrorists the means to carry out an attack; (iii) Deterring States from supporting terrorism; (iv) Developing State capacity to defeat terrorism, and (v) Defending human rights.

(F. Naert)

#### **UN AND AU ACTING AGAINST SEXUAL ABUSE IN OPERATIONS IN LIBERIA AND DARFUR**

As widespread sexual abuse in Liberia was reported, including abuse of children and by UN peacekeepers (e.g. Save the Children UK, <http://www.savethechildren.org.uk/scuk/jsp/resources/details.jsp?id=4167&group=resources&section=news&subsection=details>), the UN announced that it had launched various investigations. These have led to 6 UN Mission in Liberia (UNMIL) staff being disciplined so far, with a number of investigations still ongoing. Moreover, relations between the agency and the implementing partner of a UN agency that employed a person involved in abuse were terminated. The UN also stressed its comprehensive standardized training module that focuses on accountability and consequences and aims to prevent abuse, the establishment of a fully staffed Conduct and Discipline Unit to respond effectively to sexual exploitation and abuse and its cooperation with Save the Children UK. See <http://www.unmil.org/read.asp?newsID=1359&cat=pr>; UN press releases of 8 May and 7 June 2006 and *Sentinelle* No. 66 of 14 May 2006. The UN has a policy of zero tolerance of sexual exploitation and abuse by its own staff, particularly peacekeepers in the field (see the 2005/2 issue of this *Newsletter*).

The UN, through its Development Fund for Women and its Mission in Sudan, will also participate in the African Union (AU)'s Committee of Inquiry that is to examine allegations of sexual violence, including rape and child abuse, by AU forces monitoring the conflict in Sudan's Darfur region. See UN press release of 5 May 2006; [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_05\\_indexarch.php#114426605150263076](http://jurist.law.pitt.edu/paperchase/2006_04_05_indexarch.php#114426605150263076) and [http://www.unifem.org/news\\_events/story\\_detail.php?StoryID=448](http://www.unifem.org/news_events/story_detail.php?StoryID=448).

(F. Naert)

#### **UNESCO CONCERNED OVER RECORDS OF TIMOR-LESTE'S TRUTH AND RECONCILIATION COMMISSION**

On 16 June 2006, the Director-General of UNESCO, voiced concern over the security of the records of the Commission for Reception, Truth and Reconciliation in Timor-Leste amidst reports of looting and breaches of the safety measures at the site where the records are kept in the capital, Dili. He emphasised the importance of protecting archives, exhorted all parties concerned to comply with international agreements relating to heritage and armed conflicts and drew attention to UNESCO's Emergency Programme for Safeguarding Vital Records in the Event of Armed Conflict. See [http://portal.unesco.org/en/ev.php-URL\\_ID=33373&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=33373&URL_DO=DO_TOPIC&URL_SECTION=201.html).

(F. Naert)

#### **ARAB LEAGUE ADOPTS MODEL LAW ON INTERNATIONAL CRIMES**

Early April 2006, the Justice Ministers of the Arab League adopted a model law on international crimes; see *Sentinelle* Nos. 60 and 61 of 2 and 9 April 2006.

(F. Naert)

#### **COUNCIL OF EUROPE AND EUROPEAN PARLIAMENT INQUIRY INTO SECRET DETENTION CONTINUE**

The rapporteur of the Council of Europe inquiry into alleged secret detentions in Council of Europe member states issued his final report on 7 June 2006, revealing what he called a global "spider's web" of CIA detentions and transfers and listing 14 countries as responsible, in varying degrees, for violations of the rights of named individuals by colluding in these operations. He also said that "Even if proof, in the classical meaning of the term, is not as yet available, a number of coherent and converging elements indicate that such secret detention centres did indeed exist in Europe" and warrant further investigation and that "It is now clear... that authorities in several European countries actively participated with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know". The report was contested by several states (see e.g. [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_16\\_indexarch.php#115047933952698071](http://jurist.law.pitt.edu/paperchase/2006_06_16_indexarch.php#115047933952698071)) but endorsed by the Parliamentary Assembly, which adopted on 27 June 2006 a resolution and recommendations, *inter alia* calling for oversight of foreign intelligence agencies operations

in Europe and human rights clauses in status of forces agreements. See <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ArtId=362> and: [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_14\\_indexarch.php#115031570046587187](http://jurist.law.pitt.edu/paperchase/2006_06_14_indexarch.php#115031570046587187)  
[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_08\\_indexarch.php#114978746322678240](http://jurist.law.pitt.edu/paperchase/2006_06_08_indexarch.php#114978746322678240)  
[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_07\\_indexarch.php#114969070948762013](http://jurist.law.pitt.edu/paperchase/2006_06_07_indexarch.php#114969070948762013)  
[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_14\\_indexarch.php#115029073590489202](http://jurist.law.pitt.edu/paperchase/2006_06_14_indexarch.php#115029073590489202)  
[http://jurist.law.pitt.edu/paperchase/2006\\_04\\_04\\_indexarch.php#114416682597969592](http://jurist.law.pitt.edu/paperchase/2006_04_04_indexarch.php#114416682597969592)

The European Parliament's 'Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners' also continued its work. It *inter alia* issued an interim report and motion for a Resolution. See [http://www.europarl.eu.int/comparl/tempcom/tdip/default\\_en.htm](http://www.europarl.eu.int/comparl/tempcom/tdip/default_en.htm) and:

[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_12\\_indexarch.php#115015698364110839](http://jurist.law.pitt.edu/paperchase/2006_06_12_indexarch.php#115015698364110839)  
[http://jurist.law.pitt.edu/paperchase/2006\\_05\\_17\\_indexarch.php#114788955397960039](http://jurist.law.pitt.edu/paperchase/2006_05_17_indexarch.php#114788955397960039)  
[http://jurist.law.pitt.edu/paperchase/2006\\_05\\_12\\_indexarch.php#114746685365576191](http://jurist.law.pitt.edu/paperchase/2006_05_12_indexarch.php#114746685365576191)  
[http://jurist.law.pitt.edu/paperchase/2006\\_05\\_02\\_indexarch.php#114660155266512202](http://jurist.law.pitt.edu/paperchase/2006_05_02_indexarch.php#114660155266512202)  
[http://jurist.law.pitt.edu/paperchase/2006\\_04\\_26\\_indexarch.php#114607787460860012](http://jurist.law.pitt.edu/paperchase/2006_04_26_indexarch.php#114607787460860012)  
[http://jurist.law.pitt.edu/paperchase/2006\\_04\\_21\\_indexarch.php#114563200388355423](http://jurist.law.pitt.edu/paperchase/2006_04_21_indexarch.php#114563200388355423)

On alleged UK involvement, see also *Fabricating Terrorism: British Complicity in Renditions and Torture*, [http://www.cageprisoners.com/downloads/FabricatingTerrorism\\_Report.pdf](http://www.cageprisoners.com/downloads/FabricatingTerrorism_Report.pdf). Still concerning renditions, on 18 May 2006, a US court dismissed the lawsuit brought by the ACLU against CIA Director George Tenet and other agency officials and employees on behalf of Khalid El-Masri, a German national who alleges that he was the victim of an extraordinary rendition (see

[http://jurist.law.pitt.edu/paperchase/2006\\_05\\_18\\_indexarch.php#114799582761219602](http://jurist.law.pitt.edu/paperchase/2006_05_18_indexarch.php#114799582761219602) and <http://jurist.law.pitt.edu/elmasriorder.pdf>). On investigations in Germany, see:

[http://jurist.law.pitt.edu/paperchase/2006\\_04\\_07\\_indexarch.php#114443301055645204](http://jurist.law.pitt.edu/paperchase/2006_04_07_indexarch.php#114443301055645204)  
[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_22\\_indexarch.php#115099752793301355](http://jurist.law.pitt.edu/paperchase/2006_06_22_indexarch.php#115099752793301355)  
[http://jurist.law.pitt.edu/paperchase/2006\\_06\\_01\\_indexarch.php#114919012925847758](http://jurist.law.pitt.edu/paperchase/2006_06_01_indexarch.php#114919012925847758)

See also the previous two issues of this *Newsletter* and *Sentinelle* No. 70 of 18 June 2006.

(F. Naert)

#### **INTERNATIONAL INDEPENDENT COMMISSION ON WEAPONS OF MASS DESTRUCTION RELEASES REPORT AND RECOMMENDATIONS**

On 1 June the Weapons of Mass Destruction Commission Chairman, Dr. Hans Blix, presented the Commission report "Weapons of Terror" to UN Secretary-General Kofi Annan. The report contains sixty concrete proposals on how the world could be freed of nuclear, biological and chemical weapons. The 231-page report is available at the Commission's website (<http://www.wmdcommission.org/sida.asp?id=1>). See also UN press release, 1 June 2006.

(F. Naert)

#### **INTERNATIONAL(ISED) TRIBUNALS**

##### **INTERNATIONAL COURT OF JUSTICE CELEBRATES 60<sup>TH</sup> ANNIVERSARY**

On 12 April 2006, the International Court of Justice (<http://www.icj-cij.org>), the principal judicial organ of the UN, celebrated its 60th birthday, in the presence of the UN Secretary-General and of the President of the UN general Assembly. The ICJ can only deal with a case between States that have accepted the Court's jurisdiction. So far only 67 States have accepted the Court's compulsory jurisdiction, in relation to States that have also accepted this compulsory jurisdiction. Furthermore, States may also accept the Court's jurisdiction to deal with disputes concerning any treaty by including a clause concerning the ICJ's jurisdiction in said treaty. They may also submit a specific dispute to the Court by Special Agreement.

### 60<sup>th</sup> ANNIVERSARY OF INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

On 3 May 1946, the International Military Tribunal for the Far East (the 'Tokyo Tribunal'), one of the predecessors of the present international criminal tribunals, convened. Some online documentation on this Tribunal can *inter alia* be found at <http://www.yale.edu/lawweb/avalon/imtfem.htm> and at [http://en.wikipedia.org/wiki/International\\_Military\\_Tribunal\\_for\\_the\\_Far\\_East](http://en.wikipedia.org/wiki/International_Military_Tribunal_for_the_Far_East).

(F. Naert)

### DEVELOPMENTS CONCERNING THE INTERNATIONAL CRIMINAL COURT

First, on 10 April 2006, the ICC concluded a cooperation agreement with the EU. See *Official Journal* L 115 of 28 April 2006, pp. 50-56 ([http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_115/l\\_11520060428en00500056.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_115/l_11520060428en00500056.pdf)) and *Sentinelle* No 62 of 16 April 2006.

Second, 1 June 2006, Interpol issued 'Red Notices' for the arrest of the five Lords Resistance Army commanders named in ICC arrest warrants, the first such notices issued by Interpol following a request by the ICC. The Red Notices, which include a request to arrest and detain named individuals if found but are not arrest warrants, will be transmitted to National Central Bureaus in 184 countries (see <http://www.interpol.int/Public/Wanted/Default.asp>). See <http://www.icc-cpi.int/press/pressreleases/151.html> for more details, including links to the 5 Red Notices.

Third, on 14 June 2006, the Chief Prosecutor of the ICC presented his latest report on the Darfur situation ([http://www.icc-cpi.int/library/cases/OTP\\_ReportUNSC\\_3-Darfur\\_English.pdf](http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf)) to the Security Council. Given the scale of the crimes committed in Darfur, he anticipates the prosecution of a sequence of cases, rather than a single case, and sees identifying those persons with the greatest responsibility for the most serious crimes as a key challenge for the investigation. The Council referred the matter, along with the names of 51 suspected perpetrators, to the ICC in March 2005, after a UN inquiry into whether genocide occurred in Darfur found the Government responsible for crimes under international law and strongly recommended referring the dossier to the ICC.

Furthermore, see below on the Central African Republic ruling confirming the incapacity of its judicial system.

(F. Naert)

### DEVELOPMENTS AT THE ICTY<sup>1</sup>

The Dutch Prosecutor conducting the investigation into the death of Mr. Milosevic (see the previous issue of *Newsletter*) concluded that Mr. Milosevic died of natural causes and ruled out any criminal conduct. The report, submitted on 4 April to the ICTY, closes the Dutch investigation into the death of Mr. Milosevic (see UN press release of 5 April 2006 and <http://www.un.org/icty/pressreal/2006/p1063-e.htm>). On 31 May 2006, the ICTY's own inquiry confirmed these findings (see UN press release of that day and <http://www.un.org/icty/milosevic/parkerreport.pdf>). Moreover, on 31 March 2006, the ICTY announced that the Swedish Government has accepted its request to conduct an independent audit of the Court's Detention Unit. See UN press release of this day and <http://www.un.org/icty/pressreal/2006/p1060-e.htm>. See also *Sentinelle* No 67 of 21 May 2006.

On the judicial front, on 12 April 2006, the ICTY's Referral Bench decided to refer the case of Pasko Ljubicic to Bosnia and Herzegovina in accordance with Rule 11bis of the Tribunal's Rules of Procedure and Evidence. See also *Sentinelle* No 63 of 23 April 2006.

Moreover, on 3 May 2006, the Appeals Chamber confirmed the sentences against Bosnian Croat commanders Mladen Naletilic and Vinko Martinovic. In its Judgement, the Appeals Chamber dismissed most grounds of appeal but set aside, in part, a few of the convictions

---

<sup>1</sup> See generally <http://www.un.org/icty>.

by the Trial Chamber. Notwithstanding the latter decision, taking into account, amongst other, the form and degree of the participation of the accused in the crimes affirmed on appeal, as well as the seriousness of those crimes, the Appeals Chamber confirmed the sentences imposed by the Trial Chamber. See also *Sentinelle* No 65 of 7 May 2006 and *ILIB* of 16 June 2006.

Furthermore, on 8 May 2006, the Trial Chamber sentenced Ivica Rajic, a.k.a Viktor Andric, former commander of the Second Operational Group of the Bosnian Croat Army, to 12 years in jail for an attack on the central Bosnian village of Stupni Do in October 1993 in which 31 Muslim civilians were killed sentenced and for his role in the rounding up of more than 250 Muslim men in the nearby town of Vares and their subsequent inhuman treatment. Last October, Mr. Rajic had pleaded guilty to four of the ten charges brought against him (Wilful Killing (Article 2(a) ICTY Statute; Inhuman Treatment (Article 2(b) ICTY Statute); Appropriation of Property (Article 2 (d) ICTY Statute) and Extensive destruction not justified by military necessity and carried out unlawfully and wantonly (Article 2 (d) ICTY Statute)). The Trial Chamber *inter alia* found that "*the sentence should also reflect the importance of the role played by Ivica Rajic in these events who, following orders of his own superiors, planned and ordered the attacks and further ordered the rounding up of Muslims, knowing the substantial likelihood that criminal acts would ensue following his orders*" (§ 96) but that "*Ivica Rajic's position of authority and as a superior are not aggravating factors in the present case, but elements inherent in the gravity of the crimes*" (§ 136). The ICTY accepted as mitigating circumstances his guilty plea, cooperation with the Tribunal and with establishing the truth concerning certain crimes, expressed remorse and personal circumstances. See also *ILIB* of 25 May 2006 and *Sentinelle* No 66 of 14 May 2006.

In addition, on 9 May 2006 Zeljko Mejkic, Momcilo Gruban, Dusan Fustar and Dusko Knezevic were transferred from the ICTY custody to Bosnia and Herzegovina to be tried in Sarajevo by a Bosnian court, after the Appeals Chamber upheld the decision to transfer their case on 7 April 2006.

Finally, on 10 June 2006, NATO Forces in Bosnia working in close cooperation with Bosnian authorities, took custody of Dragan Zelenovic, a Bosnian Serb military police sub-commander accused of a range of war crimes, including gang rape and torture of women, who was then formally arrested by representatives of the ICTY and transferred to The Hague by a NATO aircraft. See NATO Press Release (2006)070 of 10 June 2006; UN press release of 12 June 2006 and <http://www.un.org/icty/pressreal/2006/p1089-e.htm>. His arrest occurred shortly after he had been surrendered to Bosnia by Russia (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_09\\_indexarch.php#114985883651392253](http://jurist.law.pitt.edu/paperchase/2006_06_09_indexarch.php#114985883651392253)).

(F. Naert)

#### DEVELOPMENTS AT THE ICTR<sup>2</sup>

First, on 13 April 2006, the ICTR found Paul Bisengimana, former *bourgmestre* of Gikoro commune in Kigali-Rural *préfecture*, guilty of aiding and abetting the murder and extermination, as crimes against humanity, of Tutsi civilians at Musha Church and Ruhanga Protestant Church and School in Gikoro *commune* between 13 and 15 April 1994. Bisengimana entered into a plea agreement whereby he plead guilty to the above crimes. However, the Chamber decided only to enter a conviction with respect to the count of extermination as a crime against humanity and not with respect to the count of murder, as the latter was held to be included in the former in this case. The Tribunal considered several mitigating circumstances and sentenced him to 15 years imprisonment with credit for time already served. See also *ILIB* of 28 April 2006 and *Sentinelle* No 63 of 23 April 2006..

Second, on 22 May 2006, the ICTR announced that on 19 May it denied the Prosecutor's motion (filed on 15 February 2006 under Rule 11bis of the Rules of Procedure and Evidence of the Tribunal) for referral to Norway of the case of Michel Bagaragaza, arguing that the country lacks specific laws on cases of war crimes. The accused had entered into an agreement with the Prosecution which included that he be tried before a national court. The ruling is subject to appeal by the Prosecution and the Defense within 15 days upon notification of the decision. See also *Sentinelle* No 60 of 2 April 2006 and 67 of 21 May 2006.

---

<sup>2</sup> See generally <http://www.icttr.org>.

Third, on 2 June 2006, the ICTR sentenced Joseph Serugendo, a former board member of the Radio Television Libre des Mille Collines (RTL) and the National Committee of the Interahamwe za MRND, who supported broadcasts inciting genocide during the 1994 massacres, to six years of imprisonment. He had pleaded guilty to charges of direct and public incitement to commit genocide and persecution. Officials said that Mr. Serugendo had admitted to having provided technical assistance and moral support to the broadcasting service in order to ensure its ability to continuously disseminate an anti-Tutsi message before and during the genocide. He also acknowledged having used his influence within the MRND and Interahamwe to incite others to kill or cause serious harm to members of the Tutsi population. See also *Sentinelles* Nos. 64, 69 and 70 of 1 May and 4 and 18 June 2006.

Fourth, in the trial of *Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, the ICTR Appeals Chamber on 16 June 2006 ruled that the Trial Chambers must take judicial notice of the following facts: (i) The existence of Twa, Tutsi and Hutu as protected groups falling under the Genocide Convention; (ii) there were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification between 6 April 1994 and 17 July 1994; during the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to person[s] perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity; and (iii) between 6 April 1994 and 17 July 1994 there was genocide in Rwanda against the Tutsi ethnic group. This means these facts are to be taken as established beyond any dispute and not requiring any proof in every single case and may well shorten the cases by allowing a focus on the personal involvement of each accused person. See ICTY press release ICTR/INFO-9-2-481.EN, 20 June 2006.

Finally, on 13 June 2006 in Resolution 1684, the UN Security Council extended until 31 December 2008 the mandate of 11 permanent judges of the ICTR which was set to expire next May. The trials are expected to continue well beyond that time. See also *Sentinelles* No. 70 of 18 June 2006.

(F. Naert)

#### **FORMER LIBERIAN PRESIDENT TAYLOR BROUGHT BEFORE SPECIAL COURT FOR SIERRA LEONE, WHICH WILL SIT IN THE HAGUE**

After former Liberian President Taylor's arrest and surrender to the Special Court for Sierra Leone on 29 March 2006 (see the previous two issues of this Newsletter), which was welcomed by the UN Security Council in its Resolution 1667 of 31 March 2006, Taylor appeared before the Special Court and pleaded not guilty to all charges on 3 April 2006. The Special Court has indicted Mr. Taylor on 11 counts of war crimes, crimes against humanity, and other serious violations of international humanitarian law, including sexual slavery and mutilations allegedly committed during Sierra Leone's brutal civil war.

In the meantime, the Special Court has requested, for security reasons, to the International Criminal Court and the Dutch authorities that the trial take place before a Trial Chamber of the Special Court for Sierra Leone sitting in The Hague (the Netherlands) on the basis of article 10 of the agreement setting up the Court and under article 4 of its Rules of Procedure and Evidence. On 29 May 2006, the Court dismissed a challenge to this change of venue (see <http://www.sc-sl.org/Documents/SCSL-03-01-AR72-104.pdf> and C. Chernor Jalloh, 'Special Court for Sierra Leone Dismisses Taylor Motion Against Change of Venue', 10 ASIL Insight 15, 15 June 2006, <http://www.asil.org/insights/2006/06/insights060615.html>; see also <http://hrw.org/backgrounder/lj/ij0606/index.htm>). Both the ICC and the Netherlands have replied positively, albeit under certain conditions. All of these conditions have now been met. On 16 June 2006, the UN Security Council adopted Resolution 1688, "determining that the continued presence of ... Taylor in the subregion is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region", noting that it is not feasible to have him tried at the ICTR or another international criminal tribunals in Africa, welcoming/noting the Dutch and ICC positions, requesting the UN Secretary-General "to assist [...] in the conclusion of all necessary legal and practical arrangements [...] for the conduct of the trial", requesting the Special Court "to make the trial proceedings accessible to the people of the subregion, including through video link", deciding "that the Special Court shall retain exclusive jurisdiction over ... Taylor during his transfer to and presence in the Netherlands" and that "the ... Netherlands shall facilitate the implementation of the decision of the Special Court to conduct the trial of ... Taylor in the

Netherlands" and exempting Taylor's travel for the trial (and that of any witnesses) from the travel ban currently in force. Furthermore, a Memorandum of Understanding between the SCSL and the ICC was concluded on 13 April 2006, as well as an Exchange of Letters and Seat Agreement between the Netherlands and the SCSL on 29 March and 19 June 2006. The Netherlands will have to adopt domestic legislation too. Finally, on 15 June the UK declared that it was willing to take custody of Taylor to serve any sentence that may be imposed and that it would adopt legislation to that effect (the Swedish Parliament was reported to have already decided the same on 31 May 2006, see [http://www.iwpr.net/?p=acr&s=f&o=321554&apc\\_state=henpacr](http://www.iwpr.net/?p=acr&s=f&o=321554&apc_state=henpacr) and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_01\\_indexarch.php#1149185232331194](http://jurist.law.pitt.edu/paperchase/2006_06_01_indexarch.php#1149185232331194)).

Taylor was flown to the Netherlands on 20 June 2006 after the SCSL authorized his transfer the day before (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_20\\_indexarch.php#115080752276032018](http://jurist.law.pitt.edu/paperchase/2006_06_20_indexarch.php#115080752276032018)). For those who read Dutch, see the *Kamerbrief inzake berechting en detentie Charles Taylor* (<http://www.minbuza.nl/20060410-101458-A>); *Beantwoording kamervragen over de berechting van Charles Taylor* (<http://www.minbuza.nl/20060602-140001-A>); *Kamerbrief inzake berechting Charles Taylor* (<http://www.minbuza.nl/20060615-140728-A>) and a Ministry of Foreign Affairs press release of 20 June 2006 (<http://www.minbuza.nl/20060620-122409-A>). See also <http://www.sc-sl.org> (especially <http://www.sc-sl.org/Press/pressrelease-033006.pdf>), various UN press releases; *Sentinelle* Nos 60, 61, 69 and 70 of 2 and 9 April and 4 and 18 June 2006; M.A. Drumbl, 'Charles Taylor and the Special Court for Sierra Leone', 10 *ASIL Insight* issue 9, 12 April 2006, <http://www.asil.org/insights/2006/04/insights060412.html> and C. Jalloh, 'The Law and Politics of the Charles Taylor Case', April 2006, [http://www.ccil-ccdi.ca/index.php?option=com\\_content&task=view&id=165&Itemid=76](http://www.ccil-ccdi.ca/index.php?option=com_content&task=view&id=165&Itemid=76).

Meanwhile, Mr. Taylor's son, Charles Taylor Jr., an American citizen, was indicted for falsely stating his father's name in a US passport application. He was taken into US custody on 30 March when attempting to enter the US. Human Rights Watch has called upon the US Department of Justice to prosecute him for torture and war crimes allegedly committed in Liberia (see [http://hrw.org/english/docs/2006/05/25/liberi13467\\_txt.htm](http://hrw.org/english/docs/2006/05/25/liberi13467_txt.htm)).

(F. Naert)

#### **EUROPEAN COURT OF HUMAN RIGHTS RULES ON SCOPE OF MILITARY COURTS' JURISDICTION OVER CIVILIANS IN TURKISH CASE**

In its judgment in the case of *Ergin v. Turkey* (No. 6) of 4 May 2006 (available at <http://www.echr.coe.int>), the ECtHR deals with military courts and in particular their jurisdiction over civilians. The Court *inter alia* states that:

"40. The Court reiterates that the Convention does not prohibit military courts from ruling on criminal charges against military personnel, provided that the guarantees of independence and impartiality enshrined in Article 6 § 1 are respected (...).

41. However, it is a different matter where the national legislation empowers this type of court to try civilians on criminal charges.

42. The Court observes that it cannot be contended that the Convention absolutely excludes the jurisdiction of military courts to try cases in which civilians are implicated. However, the existence of such a jurisdiction should be subjected to particularly careful scrutiny.

43. Moreover, the Court has attached importance in numerous previous judgments to the fact that a civilian has had to appear before a court composed, if only in part, of members of the armed forces (...). It has held that such a situation seriously undermined the confidence that courts ought to inspire in a democratic society (...).

44. That concern, which is all the more valid when a court is composed solely of military judges, leads the Court to affirm that only in very exceptional circumstances could the determination of criminal charges against civilians in such courts be held to be compatible with Article 6.

45. The Court derives support in its approach from developments over the last decade at international level (see paragraphs 22-25 above), which confirm the existence of a trend towards excluding the criminal jurisdiction of military courts over civilians. [...]

46. The Court notes the particular position occupied by the army in the constitutional order of democratic States, which must be limited to the field of national security, since judicial power is in principle an attribute of civil society. It likewise takes account of the existence of special rules governing the internal organisation and hierarchical structure of the armed forces.

47. The power of military criminal justice should not extend to civilians unless there are compelling reasons justifying such a situation, and if so only on a clear and foreseeable legal basis. The existence of such reasons must be substantiated in each specific case. It is not sufficient for the national legislation to allocate certain categories of offence to military courts in abstracto.

48. Where cases are merely allocated in abstracto in such a manner the citizens concerned might find themselves in a significantly different position from that of citizens tried by the ordinary courts. Although military courts may comply with Convention standards to the same extent as the ordinary courts, differences in treatment linked to their different natures and reasons for existence (see paragraph 45 above) may give rise to a problem of inequality before the courts, which should be avoided as far as possible, particularly in criminal cases.

49. Lastly, situations in which a military court has jurisdiction to try a civilian for acts against the armed forces may give rise to reasonable doubts about such a court's objective impartiality. A judicial system in which a military court is empowered to try a person who is not a member of the armed forces may easily be perceived as reducing to nothing the distance which should exist between the court and the parties to criminal proceedings, even if there are sufficient safeguards to guarantee that court's independence."

On the facts of the specific case, the Court found that it was understandable that the applicant, a civilian standing trial before a court composed exclusively of military officers, charged with offences relating to propaganda against military service, should have been apprehensive about appearing before judges belonging to the army, which could be identified with a party to the proceedings and that the applicant could legitimately fear that the General Staff Court might allow itself to be unduly influenced by partial considerations. Therefore it held that the applicant's doubts about the independence and impartiality of that court could therefore be regarded as objectively justified and that there was a violation of the right to a fair trial under Article 6 § 1 of the Convention (§ 54).

See also *Sentinelle* No 65 of 7 May 2006.

(F. Naert)

#### **EUROPEAN COURT OF JUSTICE ANNULS EC-US AGREEMENT ON PASSENGER NAME RECORDS**

On 30 May 2006, the ECJ annulled the EU Council Decision concerning the conclusion of an agreement between the European Community and the USA on the processing and transfer of personal data (2004 *Official Journal* L 183, p. 83, and corrigendum at 2005 *Official Journal* L 255, p. 168) and the Commission decision on the adequate protection of those data (2004 *Official Journal* L 235, p. 11), ruling that neither the Commission decision finding that the data are adequately protected by the US nor the Council decision approving the conclusion of an agreement on their transfer to that country are founded on an appropriate legal basis. However, since the agreement remains applicable for a period of 90 days after notification of its termination, the Court decided, for reasons of legal certainty and in order to protect the persons concerned, to preserve the effect of the decision on adequacy until 30 September 2006 (Joined Cases C-317/04 and C-318/04, *European Parliament v. Council of the European Union and European Parliament v. Commission of the European Communities*, available at <http://curia.eu.int>). The EU Council and Commission reportedly intend to draft a similar agreement but based on a different legal basis, see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_23\\_indexarch.php#115109522283060012](http://jurist.law.pitt.edu/paperchase/2006_06_23_indexarch.php#115109522283060012).

(F. Naert)

#### **GENOCIDE CHARGE BROUGHT AND DEATH PENALTY DEMANDED IN SADDAM TRIAL**

In Saddam Hussein's trial before the Iraqi Special Tribunal (see the previous two issues of this *Newsletter*), Mr. Hussein and a number of co-defendants were charged with genocide in the Anfal campaign, a series of military operations launched against the Northern Kurds in 1988

and resulting in an estimated 100 000 deaths (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_04\\_indexarch.php#114415100514857582](http://jurist.law.pitt.edu/paperchase/2006_04_04_indexarch.php#114415100514857582)), in addition to earlier charges of crimes against humanity in the Dujail case, in which the death penalty has been asked by the prosecution (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_19\\_indexarch.php#115072444968581536](http://jurist.law.pitt.edu/paperchase/2006_06_19_indexarch.php#115072444968581536)). The new trial is expected to start on 21 August 2006. In the mean time, on 23 June 2006, the UN Special Rapporteur on the independence of judges and lawyers called on the Iraqi Government to launch an independent investigation into the killing of a lawyer working for the defense team of Saddam (already the third one to be killed, see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_21\\_indexarch.php#115089401490483941](http://jurist.law.pitt.edu/paperchase/2006_06_21_indexarch.php#115089401490483941)). He also reiterated his criticisms of the Iraqi High Tribunal, see UN press release of 23 June 2006. Finally, Iran has delivered a "bill of indictment" against Saddam to the Iraqi Foreign Ministry, which will submit it to Iraq's High Criminal Court, according to a joint statement issued on 27 May 2006 (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_28\\_indexarch.php#114894703160584418](http://jurist.law.pitt.edu/paperchase/2006_05_28_indexarch.php#114894703160584418)). See also in general <http://www.law.case.edu/saddamtrial/index.asp>; <http://jurist.law.pitt.edu/currentawareness/iraqispecial.php>.

(F. Naert)

#### **FURTHER ARRANGEMENTS MADE FOR CAMBODIAN TRIBUNAL**

The Cambodian authorities appointed 30 judges to the special Cambodian tribunal that is to try former Khmer Rouge leaders. The 13 international judges amongst them were appointed out of a list proposed by the UN. See [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_04\\_indexarch.php#114674983652191146](http://jurist.law.pitt.edu/paperchase/2006_05_04_indexarch.php#114674983652191146); *Sentinelle* No 66 of 14 May 2006; the previous two issues of this *Newsletter* and <http://www.un.org/law/khmerrougetrials/>. However, the credibility of some of the judges has been questioned, see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_22\\_indexarch.php#114834267609992943](http://jurist.law.pitt.edu/paperchase/2006_05_22_indexarch.php#114834267609992943).

(F. Naert)

#### **SECURITY COUNCIL AUTHORIZES TALKS ON HARIRI TRIBUNAL**

After further preparatory talks with Lebanese officials and a report by the UN Secretary-General concluding that it would be most appropriate to establish a tribunal of an international character to try those suspected of the assassination of Mr. Hariri through an agreement concluded between Lebanon and the UN, the UN Security Council authorized, on 29 March 2006 in Resolution 1664, the Secretary-General to start negotiations with the Lebanese Government "*aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice*". Issues that will have to be addressed include the funding and composition of the tribunal, as well as whether all terrorist attacks since 1 October 2004 should fall into the jurisdiction of the court. See UN press releases of 23 and 29 March 2006; previous two issues of this *Newsletter* and *Sentinelle* No 60 of 2 April 2006.

On 10 June 2006, the fourth report of the International Independent Investigation Commission looking into the Hariri death was sent to the Security Council. Four days later, the head of the Commission reported "considerable progress" in the probe into the Hariri assassination, but stressed the need for more efforts to advance in the cases of 14 other possibly related attacks. In the months ahead, the Commission will focus on identifying the perpetrators of the crime. In regard to cooperation by Syria in the investigation, the level of assistance provided has "generally been satisfactory," while interaction with Lebanese authorities continues to be "excellent." See UN press releases of 10 and 14 June 2006 and <http://www.un.org/News/Press/docs//2006/sc8747.doc.htm>. On 15 June 2006 the Security Council responded by unanimously adopting Resolution 1686, which extended for one year the mandate of the Commission and supports the Commission's intention to extend further technical assistance to the Lebanese authorities regarding their investigations into the other terrorist attacks in Lebanon since 1 October 2004. The Resolution also requested the Secretary-General to provide the IIC with the resources needed for this.

(F. Naert)

## **NATIONAL DEVELOPMENTS**

### **ROAD TRAFFIC ACCIDENT CAUSES RIOTS IN KABUL**

On 29 May 2006, a US military vehicle crashed into local cars following what appears to have been a mechanical failure. The accident quickly attracted a huge and hostile crowd. As the US convoy extricated itself from the scene of the accident, it would seem shots were fired and four people were killed, though it is not clear what exactly happened (some reports mention warning shots, others deadly fire in self-defense, see e.g. C. Gall & A.W. Wafa, 'Americans Fired into Crowd, Afghan Says', the *New York Times*, 1 June 2006). Subsequently, riots erupted elsewhere in Kabul leading to several deaths and a lot of damage. It has been suggested that some of the anger leading to the riots is the offensive driving style of international forces in Afghanistan, which is usually justified on the basis of security concerns. It is a challenge to find the correct balance between limiting exposure to attacks on the one hand, and avoiding offensive driving and road accidents on the other hand.

(F. Naert)

### **AFGHAN CONVERT AVOIDS PROSECUTION**

Abdul Rahman, 41 years old, reportedly converted to Christianity from Islam 15 years ago. When this information recently came to light, he was held by Afghan authorities and risked the death penalty for this conversion under Islamic law in Afghanistan. While some clerics called for his prosecution, Western states stressed the freedom of religion and called for his release. He was released late March 2006 after being deemed mentally unfit to stand trial and received asylum in Italy. See e.g. CNN, 'Afghan Christian convert is released', 28 March 2006, <http://edition.cnn.com/2006/WORLD/asiapcf/03/28/christian.convert/> and BBC, 'Afghan Convert Arrives in Italy', 29 March 2006, [http://news.bbc.co.uk/2/hi/south\\_asia/4856748.stm](http://news.bbc.co.uk/2/hi/south_asia/4856748.stm). See also *Sentinelle* No. 61 of 9 April 2006.

The case has raised questions as to the relationship between freedom of religion and Islamic principles under the 2004 Afghan Constitution ([http://www.moj.gov.af/pdf/constitution\\_2004.htm](http://www.moj.gov.af/pdf/constitution_2004.htm)), compare respectively articles 2, 6-7 and 149 on the one hand and articles 1-3, 6 and 149 on the other hand. Article 2 reads: "The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals".

(F. Naert)

### **ARGENTINE TRIAL IN DIRTY WAR CASE STARTED**

On 20 June 2006, the trial of Miguel Osvaldo Etchecolatz, former police investigator charged with murder, kidnapping and torture during the 1976-83 military junta, started in an Argentine court in La Plata. It is the first such trial in Argentina in two decades. It was made possible after amnesty laws enacted in 1986 and 1987 were overturned by the Argentine Supreme Court last year (see the 2005/2 issue of this *Newsletter*). See [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_21\\_indexarch.php#115089601469648708](http://jurist.law.pitt.edu/paperchase/2006_06_21_indexarch.php#115089601469648708); O. Serrat, 'Former Argentine police officer faces first 'Dirty War' trial in two decades', 20 June 2006, <http://news.findlaw.com/ap/o/51/06-21-2006/6b320014dd9ed600.html> and BBC, 'Argentina holds 'Dirty War' trial', 21 June 2006, <http://news.bbc.co.uk/2/hi/americas/5099028.stm>.

(F. Naert)

### **ACCUSED IN MURDER OF BELGIAN PEACEKEEPERS IN RWANDA CLOSE TO TRIAL IN BELGIUM**

On 2 June 2006, the Brussels *Chambre du conseil* (which is part of the court of first instance) referred the case of former Rwandan Major Bernard Ntuyahaga, who stands accused for his role in the murder of 10 Belgian peacekeepers in that country on 7 April 1994 and the murder of others, to the *Chambre des mises en accusation* (which is part of the appeals court) with

a view to having his case brought before the *Cour d'assises* (a jury trial court competent for serious crimes). See e.g. <http://www.paracommando.com/print.php?news.393>.

(F. Naert)

#### **TWO BELGIAN SOLDIERS CONVICTED FOR KILLING A CHILD IN BENIN IN A DRIVING ACCIDENT**

On 27 March 2006, two Belgian soldiers were convicted by a civilian court (*politierechtbank*) in Sint-Niklaas for accidentally killing a child on 27 March 2004 in Benin in the course of an operation in which they were building/reconstructing roads. When they wanted to start off in their truck, several children were hanging around. The soldiers tried to get them away from the truck, but overlooked one child, who fell under the truck and died as they started driving. The driver and an accompanying soldier were sentenced to a conditional sentence of 3 months imprisonment (meaning not to be served unless the conditions are violated), a one month driving prohibition and a fine of 275 euros. It is the first time a civilian court condemns Belgian soldiers for a driving offence in an operation abroad (the military courts were abolished in peace time as of 1 January 2004). In addition, the Belgian State was ordered to pay damages, though the amount has not yet been determined. The soldiers and the State have appealed the judgment. See <http://www.defensieforum.be/news.php?80>.

(F. Naert)

#### **JUDGEMENT BY A BELGIAN COURT IN THE TOUAX CASE**

On 18 May 2006, the district court of Brussels passed a judgement in the Touax case. In 2003, two sister companies, Touax SA and Touax ROM, had sued the Belgian State in order to claim damages. They asserted to have suffered losses in their river activities as a result of NATO bombing bridges on the Danube in the Novi Sad area during the Kosovo war.

Firstly, the companies have blamed the Belgian State for having violated the *jus ad bellum*, since the operation was carried out without any mandate of the United Nations Security Council, while it was not a case of self-defense. Secondly, according to above-mentioned companies, the Belgian State would have violated the *jus in bello* because the bridges would not have been a military target. Thirdly, they blamed the Belgian State for having violated the North Atlantic Treaty because operation Allied Force was not a collective self-defense operation. Fourthly, the companies were of the opinion that the demolition of the bridges would have been inconsistent with the rules on freedom of navigation on the Danube. Eventually, plaintiffs have stated that the Belgian State had violated article 167 paragraph 1, section 2 of the Belgian Constitution. Pursuant to this article, the King is in command of the armed forces, establishes the state of war as well as the end of hostilities. According to plaintiffs the decision to commit the armed forces should consequently have been made through a definite action of the King in this respect.

As to the first four infringements, the Court stated it had no jurisdiction as these were decisions Belgium had approved within the North Atlantic Council. Belgium had only supported the actions carried out based on this decision, since the Belgian armed forces had not led the bombing operations themselves. NATO and the other States enjoy immunity from legal proceedings by the Belgian judicial authorities and according to the Court, a judgement on the facts would *ipso facto* lead to an illicit judgement on NATO's decisions as international organisation and on the execution of this decision by other NATO member states.

As to the other parts of the claim, the Court has decided on the main issue and the claim has been considered as unsubstantiated. Firstly, because the plaintiffs have not produced evidence of the Belgian armed forces bombing a bridge on the Danube. Moreover as to the alleged violation of article 167 of the Belgian Constitution, the Court has stated that plaintiffs have not been able to show there was a relation of cause and effect between the alleged error to have been committed by the armed forces without a definite action of the King and the alleged damage. It is possible to lodge an appeal against this decision.

(A. Vanheusden)

#### **BELGIAN LAW BANS CLUSTER MUNITIONS**

On 8 June 2006, the Belgian parliament approved an Act, confirming an earlier national ban of cluster munitions, forbidding their possession, production, stockpiling, sale, transfer,

importation and exportation. Certain munitions which do not pose a humanitarian problem after use, smoke or illuminating systems and electronic and electric countermeasures are explicitly excluded from the ban.

(A. Vanheusden)

#### **BOSNIAN ACTION ON WAR CRIMES**

On 25 June 2006, the Bosnian Prime Minister announced that he would form a commission to probe war crimes carried out in Sarajevo during the Balkan conflicts of the 1990s (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_25\\_indexarch.php#114860226049097313](http://jurist.law.pitt.edu/paperchase/2006_05_25_indexarch.php#114860226049097313)). Meanwhile, on 7 April 2006, the Bosnian War Crimes Chamber (see the 2005/1-2 issues of this Newsletter) found Nedjo Samardzic guilty of crimes against humanity and escaping from prison during the 1992-1995 war in Bosnia and sentenced him to 13 years imprisonment, in what is its first conviction (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_07\\_indexarch.php#114443505761135444](http://jurist.law.pitt.edu/paperchase/2006_04_07_indexarch.php#114443505761135444)). Also, on 9 May 2006, the first genocide trial started before this Chamber (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_09\\_indexarch.php#114719398513102044](http://jurist.law.pitt.edu/paperchase/2006_05_09_indexarch.php#114719398513102044)).

(F. Naert)

#### **CENTRAL AFRICAN REPUBLIC COURT CONFIRMS INCAPACITY OF JUDICIAL SYSTEM TO PROSECUTE INTERNATIONAL CRIMES**

On 11 April 2006, the 'Cour de Cassation' of the Central African Republic (CAR) reportedly ruled that the country's judicial system was incapable of prosecuting grave breaches of international humanitarian law, committed in the country by a number of suspects no longer present in the CAR, and called upon the International Criminal Court to step in. See *Sentinelles* No. 63 of 23 April 2006 and [http://www.fidh.org/article.php3?id\\_article=3258](http://www.fidh.org/article.php3?id_article=3258). This bolsters the case for the ICC to advance with the prosecution. It may be recalled that the CAR referred the situation in the DRC to the ICC early 2005 (see the 2005/1 issue of this Newsletter).

(F. Naert)

#### **COLOMBIAN COURT PARTLY ANNULS JUSTICE AND PEACE LAW**

On 18 May 2006, Colombia's Constitutional Court annulled a part of the controversial 2005 Justice and Peace Law (see <http://jurist.law.pitt.edu/paperchase/2005/06/colombia-passes-bill-intended-to.php>) giving lesser punishments to paramilitary leaders who voluntarily disarm (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_19\\_indexarch.php#114807407422682284](http://jurist.law.pitt.edu/paperchase/2006_05_19_indexarch.php#114807407422682284)).

(F. Naert)

#### **CROATIA INDICTS TWO EX-GENERALS**

On 24 May 2006, a Croatian court indicted former Yugoslav Defense Minister Kadijevic and former air force commander Jurjevic on charges of indiscriminate shelling of civilians during Croatia's 1991-95 war for independence (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_24\\_indexarch.php#114848269105295615](http://jurist.law.pitt.edu/paperchase/2006_05_24_indexarch.php#114848269105295615)).

(F. Naert)

#### **DRC SOLDIERS CONVICTED FOR CRIMES AGAINST HUMANITY AS UN REPORTS ABUSE BY ARMY AND POLICE FORCES**

On 12 April 2006, the Tribunal of the Mbandaka Garrison, a DRC court, reportedly applying the ICC Statute, sentenced 7 DRC officers to life imprisonment for crimes against humanity stemming from massive rape committed in 2003 and other crimes, including robbery. Five other accused were acquitted by the Military Garrison Court in Songo Mboyo in northern DRC. The Court delivered its verdict in the presence of victims who said they were satisfied with the sentences and reparation of damages, ranging from US \$ 5000 to 10.000 (and compensation from US \$ 200 to 500 for the victims of robbery). Moreover, the court declared the Congolese state liable for payment of compensation if the soldiers are unable to pay. However, the Military Court of Equateur later ruled that the Tribunal of the Mbandaka

Garrison lacked (territorial) jurisdiction, re-examined the case and convicted six of the soldiers anew to life sentences of hard labour and acquitted a seventh soldier. The Military Court also ruled that the DRC Government must pay US \$ 10.000 to each family who lost a member because of the sexual assault, US \$ 5000 to each surviving rape victim and US \$ 3000 to each businessperson who was a victim of the soldiers' looting. The judgments were welcomed by the UN, which also called for the prosecution of other military personnel who may be implicated. See UN press releases of 13 April 2006 and 9 June 2006. See also *Sentinelle* No. 63 of 23 April 2006.

Meanwhile, the latest UN update on the human rights situation in the DRC concluded that, although large-scale human rights violations decreased in the DRC from April to December 2005 when compared with 2004, there was an increase in individual cases of summary executions, torture, rape and other serious abuses by police and army troops, in particular the FARDC (*Forces Armées de la République Démocratique du Congo*). Political interference hampered some military judicial investigations into serious incidents and both the military and civilian justice system continue to remain in a state of near collapse and for the vast majority of Congolese justice remains beyond reach, it added. In a set of recommendations, the Human Rights Division of the UN Mission in the DRC (MONUC) called on the Transitional Government to demonstrate zero tolerance for violations by the military and end impunity for officers who order, commit or condone abuses in the army's drive against rebel groups and armed militias. See UN press release of 11 May 2006 and MONUC press release of 10 May 2006 (<http://www.monuc.org/News.aspx?newsID=10977>) as well as the full report at [http://www.monuc.org/downloads/MONUC\\_human\\_rights\\_2005\\_en.pdf](http://www.monuc.org/downloads/MONUC_human_rights_2005_en.pdf). The findings of this report were essentially affirmed by a later report entitled *The Human Rights Situation in April 2006*, see MONUC press release of 18 May 2006 (<http://www.monuc.org/News.aspx?newsID=11083>).

Furthermore, on 13 June 2006, the Secretary-General presented to the Security Council and its Working Group on children and armed conflict a *Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo* (UN Doc. S/2006/389, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=s/2006/389>). The report notes that while some progress has been made to redress the grave violations of children's rights, these continue to a large extent with impunity, including the recruitment and use of children in armed forces and groups, abduction, sexual violence, killing and maiming of children and attacks on schools. Violations are committed by rebel groups and government armed forces and police. The report also contains a series of recommendations with a view to strengthening the protection of war-affected children in the DRC. It is the first country report prepared in accordance with § 3 of Security Council Resolution 1612 (see the 2005/3 and 2005/4 issues of this *Newsletter*).

(F. Naert)

#### **INVESTIGATION IN CASE AGAINST FRENCH ARMED FORCES FOR RWANDAN GENOCIDE CONTINUES**

On 29 May 2006, the *Chambre de l'Instruction* of the Paris Court of Appeal (*Cour d'appel*) confirmed the admissibility of four complaints against unknown members of the French armed forces for complicity to genocide and/or complicity to crimes against humanity during the French operation *Turquoise* in Rwanda in 1994, after the Prosecution had appealed their confirmation by the investigating judge, who disagreed with the Prosecution's initial decision that the complaints were inadmissible. For more details, see *Sentinelle* No. 69 of 4 June 2006. See also the 2005/4 issue of this *Newsletter*.

(F. Naert)

#### **FRENCH PARLIAMENTARY REPORT ON PROTECTION OF JOURNALISTS IN CONFLICTS**

Two members of the French Parliament issued an interesting 'information report' on the protection of journalists and war correspondents in situations of conflict (see [http://www.assemblee-nationale.fr/12/rap-info/i2935.asp#P318\\_100037](http://www.assemblee-nationale.fr/12/rap-info/i2935.asp#P318_100037)). For a brief discussion, see *Sentinelle* No. 60 of 2 April 2006.

(F. Naert)

### PARIS COURT CONVICTS FRENCHMAN FOR COMORES COUP

On 20 June 2006, Frenchman Bob Denard was sentenced to 5 years imprisonment with postponement of the sentence (*sursis*, meaning he won't serve the sentence unless he incurs another conviction) for his role in a coup in the Comores in 1995 by the Paris court of first instance (*tribunal correctionnel*). He was arrested by French forces and transferred to France as the forces quickly ended the coup. He has a long history of fighting in Africa and was previously acquitted for an earlier coup. The court also criticised the French authorities, saying it could not believe they had not been aware of Denard's operation. See AP, 'Bob Denard condamné à cinq ans avec sursis pour un coup d'Etat avorté aux Comores', 20 June 2006, [http://www.boursorama.com/pratique/actu/detail\\_actu\\_france.phtml?&news=3509669](http://www.boursorama.com/pratique/actu/detail_actu_france.phtml?&news=3509669) and 'Bob Denard, mercenaire pendant quarante ans', *Le Figaro*, 20 June 2006, [http://www.lefigaro.fr/international/20060620.WWW000000333\\_bob\\_denard\\_mercenaire\\_pendant\\_quarante\\_ans.html#](http://www.lefigaro.fr/international/20060620.WWW000000333_bob_denard_mercenaire_pendant_quarante_ans.html#).

(F. Naert)

### GERMANY ARRESTS RWANDAN GENOCIDE SUSPECT

On 9 April 2006, Germany announced that it had arrested Ignace Murwanashyaka, a Rwandan Hutu accused of having committed international crimes in Rwanda and in the Democratic Republic of Congo and of violating UN sanctions. He had been under Security Council sanctions since 2005 (see [http://www.un.org/Docs/sc/committees/DRC/1533\\_list.htm](http://www.un.org/Docs/sc/committees/DRC/1533_list.htm)). See *Sentinel* No. 62 of 16 April 2006 and [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_09\\_indexarch.php#114462042765914625](http://jurist.law.pitt.edu/paperchase/2006_04_09_indexarch.php#114462042765914625).

(F. Naert)

### DEVELOPMENTS CONCERNING IRAQ

As allegations surfaced that US marines have killed some 24 unarmed Iraqi civilians in an incident in November 2005, the US armed forces have started an investigation into the case and into whether there has been a cover-up by some superiors of the soldiers involved. Reports so far indicate innocent civilians may indeed have been executed (see e.g. [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_31\\_indexarch.php#11491179965339156](http://jurist.law.pitt.edu/paperchase/2006_05_31_indexarch.php#11491179965339156) and T. Shanker, E. Schmitt & R. Oppel, 'Military Expected to Report Marines Killed Iraqi Civilians', *New York Times*, 26 May 2006) but that despite several failures to follow up the incident by Marine commanders, there was no deliberate cover up of the deaths (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_22\\_indexarch.php#115098058856339168](http://jurist.law.pitt.edu/paperchase/2006_06_22_indexarch.php#115098058856339168)). The Iraqi government has announced that it will investigate the case too, as well as other cases of alleged crimes committed by US forces (R.A. Oppel, 'Iraqi Assails US for Strikes on Civilians', *The New York Times*, 2 June 2006). On 2 June, A US investigation exonerated US soldiers in the deaths of Iraqi civilians in the town of Ishaqi in March, finding US forces followed standard procedures ('A military inquiry clears GIs', *The International Herald Tribune*, 3 June 2006). However, the findings were questioned on the basis of Iraqi police accounts and a video shown by the BBC (see *id.* and [http://news.bbc.co.uk/2/hi/middle\\_east/5039420.stm](http://news.bbc.co.uk/2/hi/middle_east/5039420.stm)).

In another case, on 28 April 2006, Lt Col Jordan, who supervised the interrogation Task Force at Abu Ghraib, was charged with criminal offences in relation to detainee abuse at Abu Ghraib (see also the previous issue of this Newsletter). He is the highest ranking officer charged so far. See <http://jurist.law.pitt.edu/paperchase/2006/04/senior-abu-ghraib-officer-charged-with.php>. Also, on 1 June 2006, Sergeant Santos Cardona, an army dog handler, was sentenced to 90 days hard labour and a reduction in rank for dereliction of duty and aggravated assault in connection with his use of unmuzzled dogs at Abu Ghraib prison (see <http://jurist.law.pitt.edu/paperchase/2006/06/breaking-news-abu-ghraib-dog-handler.php>). In his trial, Maj. Gen. Miller told the military jury that when he visited Iraq in 2003 to review interrogation methods at Abu Ghraib, he suggested the use of dogs for "maintaining custody and control" of detainees, but never mentioned using them for intimidation purposes during interrogations (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_25\\_indexarch.php#114856191402196955](http://jurist.law.pitt.edu/paperchase/2006_05_25_indexarch.php#114856191402196955)).

Furthermore, on 21 June 2006, the US Marine Corps announced that military prosecutors

have charged 7 marines and a navy corpsman with murder, kidnapping and conspiracy in connection with the shooting death of an Iraqi civilian in Hamdania on 26 April. The accused allegedly planted an AK-47 and a shovel near the body to make it appear as if the man was burying a roadside bomb. See <http://www.nimj.com/documents/Hamandiyah.pdf>; J. O'Neil, '8 U.S. servicemen charged in Iraqi's death', *The International Herald Tribune*, 21 June 2006 and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_21\\_indexarch.php#115090886636911234](http://jurist.law.pitt.edu/paperchase/2006_06_21_indexarch.php#115090886636911234). In still another case, on 16 June 2006, the Army's Criminal Investigation Command said it would conduct an investigation into the deaths of three detainees in US custody in the Salahaddin province of Iraq on or around May 9 (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_16\\_indexarch.php#115046157895046653](http://jurist.law.pitt.edu/paperchase/2006_06_16_indexarch.php#115046157895046653)). On 19 June, they were charged with several violations of the Uniform Code of Military Justice, including charges of murder, attempted murder, communicating a threat, obstructing justice, and conspiracy (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_19\\_indexarch.php#115075856489502482](http://jurist.law.pitt.edu/paperchase/2006_06_19_indexarch.php#115075856489502482)).

Furthermore, a declassified report of a Pentagon inquiry into the conduct of US Special Operations Forces in Iraq was released on 16 June 2006 (the full classified report was completed 20 months ago). It focused on the Combined Joint Special Operations Task Force-Arabian Peninsula, which included Special Forces, and revealed that these forces employed harsh, unauthorized interrogation techniques against detainees in Iraq in early 2004 after approval for their use was rescinded. The treatment included giving some detainees only bread and water if they did not cooperate, locking up detainees in cells so small that they could neither stand nor lie down for up to 7 days (4 feet by 4 feet by 20 inches), sleep deprivation, stripping naked detainees and subsequently drenching them with water to then interrogate them in cold conditions. Nevertheless, Brigadier General Formica, who conducted the inquiry, recommended that none of the service members be disciplined, arguing that they received wrong guidance. He also said that, from his observations, none of the detainees seemed to be in a worse condition due to the treatment. General Formica recommended eight changes, including more training for interrogators, minimum standards for detention conditions and new policies regulating the use of indigenous forces, which are all said to have been carried out. See E. Schmitt, 'Pentagon Study Describes Abuse by Units in Iraq', *New York Times*, 17 June 2006.

These developments have prompted US Commanders to order ethics ("core warrior values") training for all forces deployed in Iraq (see <http://news.bbc.co.uk/2/hi/americas/5036686.stm>). Furthermore, on 1 June 2006 the Iraqi Prime minister also instructed a commission to establish, in collaboration with the US armed forces, basic rules for arrests and house searches (see 'Iraqse regering onderzoekt zaak-Haditha', *De Standaard online*, 1 June 2006). Moreover, US forces in Iraq have recently taken steps to decrease death and injury to the civilian population in Iraq, including clearer and more uniform check point set-ups and directives and reviewing speed limits for military convoys. The new guidelines have reportedly helped reduce the number of civilian deaths from about one every day in 2005 to about one every week in 2006 so far. Nevertheless, the Iraqi Prime Minister protested early June 2006 that US forces had little respect for the lives of Iraqi civilians and regularly committed violence against them. See G. Jaffe, 'U.S. Curbs Iraqi Civilian Deaths In Checkpoint, Convoy Incidents', *The Wall Street Journal*, 6 June 2006, p. A4, and T. Shanker, 'US Aims to Spare Civilians', *The International Herald Tribune*, 21 June 2006.

Meanwhile, on 7 June 2006, US forces managed to kill Abu Musab al-Zarqawi, Al Qaeda's leader in Iraq, in an air strike. However, this did not end the violence, as was sadly illustrated, amongst others, on 20 June 2006, when 2 US soldiers were found dead after they had gone missing on 16 June 2006; they appear to have been taken hostage and tortured (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_22\\_indexarch.php#115099522373112397](http://jurist.law.pitt.edu/paperchase/2006_06_22_indexarch.php#115099522373112397) and J. Finer & J. Partlow, 'Missing Soldiers Found Dead In Iraq', *The Washington Post*, 21 June 2006, p. A01).

Concerning detention, the Iraqi Deputy Minister of Justice Pusho Ibrahim Ali Daza Yei said mid June 2006 that Iraq's prison system is infiltrated by Shiite Muslim militiamen who have freed fellow militia members convicted of major crimes and executed Sunni Arab inmates, especially in detention centres run by Iraq's Interior and Defense ministries. However, the police and army have agreed to turn over all their prisoners to the Justice Ministry by the end of the month, though it remains to be seen whether they will do so. Yei has also asked US authorities to suspend plans to transfer prisons and detainees from American to Iraqi control.

US General John D. Gardner, who is in charge of American detention facilities, has said "We will not transfer the facilities and legal custody of the detainees until each respective facility and the Iraqi Corrections system have demonstrated the ability to maintain the required standards, especially in the areas of care and custody". See [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_16\\_indexarch.php#115046789152137645](http://jurist.law.pitt.edu/paperchase/2006_06_16_indexarch.php#115046789152137645) and J. Finer & E. Knickmeyer, 'Shiite Militias Control Prisons, Official Says', *The Washington Post*, 16 June 2006, p. A01, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/15/AR2006061502180.html>. See also the 2005/4 issue of this Newsletter and [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_22\\_indexarch.php#114571871424132488](http://jurist.law.pitt.edu/paperchase/2006_04_22_indexarch.php#114571871424132488). In relation to this, it was reported that the US initially seriously underestimated the role it would have to play in rebuilding the police force and maintaining order and deployed far too few police advisors (see M. Moss & D. Rohde, 'Misjudgements Marred US Plans for Iraqi Police Force', *The New York Times*, 21 May 2006). Finally, on 7 June 2006, the first hundreds of the 2500 Iraqi prisoners to be set free following a decision by the new Iraqi Prime Minister were freed (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_07\\_indexarch.php#114969195445140230](http://jurist.law.pitt.edu/paperchase/2006_06_07_indexarch.php#114969195445140230)).

In the UK, a Judge Advocate General and a court-martial found four British soldiers not guilty of manslaughter in the drowning death of a 15-year-old Iraqi boy on 25 May and 6 June 2006. They were accused of threatening to shoot four looting suspects unless they swam across a canal in May 2003. The boy who died did not know how to swim. See <http://jurist.law.pitt.edu/paperchase/2006/05/british-soldier-found-not-guilty-in.php>; [http://news.bbc.co.uk/2/hi/uk\\_news/5053006.stm](http://news.bbc.co.uk/2/hi/uk_news/5053006.stm) and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_06\\_indexarch.php#114962492683083244](http://jurist.law.pitt.edu/paperchase/2006_06_06_indexarch.php#114962492683083244). On 7 June 2006, it was reported that the UK Attorney General, Lord Peter Goldsmith, would call for prosecutors to study whether the British court-martial system is adequate for prosecuting soldiers accused of misconduct in Iraq (<http://jurist.law.pitt.edu/paperchase/2006/06/uk-attorney-general-to-call-for-review.php>; see also below, concerning the Armed Forces Bill 2006) even as he defended the handling of the case (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_12\\_indexarch.php#115013155500546097](http://jurist.law.pitt.edu/paperchase/2006_06_12_indexarch.php#115013155500546097)).

In the US, on 7 June 2006, for the first time a commissioned US military officer publicly refused to join the war in Iraq, calling the war unlawful (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_08\\_indexarch.php#114979075765045522](http://jurist.law.pitt.edu/paperchase/2006_06_08_indexarch.php#114979075765045522)).

Concerns have also arisen in respect of contractors. First, following reports that some of the US's contractors in Iraq were violating human trafficking laws, the US took action to remedy this (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_26\\_indexarch.php#114605161421645200](http://jurist.law.pitt.edu/paperchase/2006_04_26_indexarch.php#114605161421645200)).

Second, Amnesty International asserted in its 2006 annual report that "war outsourcing" to military/security contractors in Iraq may be fuelling human rights abuses (see <http://www.amnestyusa.org/annualreport/2006/overview.html>).

(F. Naert)

### **ALLEGED USE OF ENERGY WEAPONS IN IRAQ**

Rainews 24 TV recently broadcasted a documentary centred on the use of directed energy (laser and microwave) weapons by US troops in Iraq (see English version at [http://www.rainews24.rai.it/ran24/inchieste/guerre\\_stellari\\_iraq.asp](http://www.rainews24.rai.it/ran24/inchieste/guerre_stellari_iraq.asp)). It provides some evidence of the use of non-kinetic weapons during the battle for the Baghdad airport in early April 2003 and later on at some checkpoints, including testimony of people and doctors who have seen the terrible effects of such weapons, which – incredibly – are said to include the disintegration of body parts and the reduction of body dimensions.

The documentary suggests that there are several types of directed energy weapons, which basically work by shooting electrons at high speed over very long distances. Lasers are in the light (or infrared) range, while microwave weapons would operate at other frequencies. The research and development of directed energy weapons would go back many decades. Essentially they would be beam weapons that do not shoot anything physically against the target, in contrast with kinetic weapons, which shoot bullets that physically hit an objective. The US Department of Defense is said to be spending US \$ 300-400 million per year on such weapons.

As for the operations on the ground, it seems that, excluding acoustic weapons, the only use of directed energy weapons in an armed conflict scenario is represented by a laser device known as "Zeus" (<http://www.zeus.sparta.com/>). According to official Pentagon sources, some "Humvees" equipped with such a laser device have been used in Afghanistan to explode mines ([http://www.dod.mil/ddre/downloads/congressional\\_testimony/Sega\\_SASC\\_EmergingThreat\\_s030304.pdf](http://www.dod.mil/ddre/downloads/congressional_testimony/Sega_SASC_EmergingThreat_s030304.pdf)). Moreover, according to two reliable military information sites – namely "Defense Tech" (<http://www.defensetech.org/>) and "Defense Industry Daily" (<http://www.defenseindustrydaily.com/>) – at least three of them are being used in Iraq as well. Another device is the so called "THEL" (Tactical High Energy Laser). Mounted on a military vehicle, such as an Humvee, with its laser beam it can hit and destroy two missiles and mortar rounds as they are about to hit the objective (<http://www.st.northropgrumman.com/media/presskits/mediaGallery/thel/videos/videogallery.html>).

Other directed energy weapons have been developed and implemented for internal order operations, such as the "Active Denial System" (ADS, see <http://www.defensetech.org/archives/001219.html>) – better known as the "pain ray". The ADS is a millimetre waves system, which operates at about 93 GHz. It sends out a beam for a very long distance which penetrates the skin only very slightly, for a few millimetres, hitting the pain receptors and causing strong pain. Further tests have shown that people hit by such a beam can not resist for more than a couple of seconds. Human Rights Watch has criticized the ADS for being an illegal device "created solely for the creation of pain [which] can eventually lead to torture". In contrast, the scientific, medical and legal review by the US armed forces and Department of Defense concluded that the use of ADS was permissible.

Legal review before implementing new weapons is mandatory for State Parties to Additional Protocol I to the Geneva Conventions (see article 36 of this Protocol). The aim is to prevent the use of weapons that would transgress international humanitarian law. However, the US is not a party to AP I. Nevertheless, the importance of such legal review has repeatedly been reaffirmed since 1977, including in the 2001 Final Declaration of the 2<sup>nd</sup> Review Conference of the Convention on Certain Conventional Weapons (see <http://www.icrc.org/Web/eng/siteeng0.nsf/iwplList282/4912533DEC5ED3EBC1256BA7002B2E79>) and the US has had a mandatory legal review of new weapons since 1974. In any event, the US is bound by various substantive norms that it must respect even if it would not have to conduct a formal legal review. These include the prohibition of the use of riot control agents as a method of warfare and the prohibition to use weapons that cause superfluous injury or unnecessary suffering. It might include the prohibition of the use of laser weapons which cause permanent blindness if this belongs to customary law.

*(M. Tondini)*

#### **ISRAELI SUPREME COURT ORDER REROUTING OF SECURITY FENCE/WALL**

On 15 June 2006, the Israeli High Court of Justice (<http://elyon1.court.gov.il/eng/home/index.html>), the Supreme Court of Israel sitting as a court of first instance in cases regarding state actions, ordered the Israeli Government to take down part of the security fence/wall built on the West bank. The Court reportedly found that the section surrounded an illegal settlement and was motivated by political rather than security concerns. See <http://jurist.law.pitt.edu/paperchase/2006/06/israel-high-court-orders-state-to.php>. Two days later, 3 other complaints were rejected (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_20\\_indexarch.php#115081032060400910](http://jurist.law.pitt.edu/paperchase/2006_06_20_indexarch.php#115081032060400910)). Israel has announced that it will review the path of the fence/wall (*id.*). On 19 April and 23 May 2006, other complaints had also been dismissed (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_19\\_indexarch.php#114546555467792787](http://jurist.law.pitt.edu/paperchase/2006_04_19_indexarch.php#114546555467792787) and [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_23\\_indexarch.php#114842958570336904](http://jurist.law.pitt.edu/paperchase/2006_05_23_indexarch.php#114842958570336904)). For an earlier decision also affecting the fence/wall, see the 2005/4 issue of this Newsletter.

*(F. Naert)*

**ITALIAN PROSECUTORS WISH TO INDICT US SOLDIER WHO SHOT ITALIAN SECRET AGENT IN IRAQ BUT WILL NOT SEEK EXTRADITION OF CIA AGENTS**

It was reported on 19 June 2006 that the public prosecutor in Rome has asked for the indictment of American soldier Mario Lozano, who is accused of killing Nicola Calipari, the Italian secret agent who was killed in Iraq on 4 March 2005 while driving towards safety an Italian journalist, the release of whom he had been able to secure (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_19\\_indexarch.php#115073004938026174](http://jurist.law.pitt.edu/paperchase/2006_06_19_indexarch.php#115073004938026174)). The US and Italy conducted a joint inquiry into the case, but could not agree on the conclusions. See also the previous issue of this *Newsletter*.

In contrast, the Italian Justice Minister said on 12 April 2006 that the Italian government would not validate the Milan prosecutor's request to extradite from the US 22 CIA agents allegedly responsible for the 2003 kidnapping and extraordinary rendition of Egyptian cleric Moustafa Hassan Nasr (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_12\\_indexarch.php#114488257213882269](http://jurist.law.pitt.edu/paperchase/2006_04_12_indexarch.php#114488257213882269)).

(F. Naert)

**LIBERIAN TRUTH COMMISSION FORMALLY LAUNCHED**

On 22 June 2006, Liberia's Truth and Reconciliation Commission was formally inaugurated after being launched earlier this year. See UN press release, 23 June 2006; <http://www.unmil.org/read.asp?newsID=1403&cat=pr> and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_23\\_indexarch.php#115108214547402649](http://jurist.law.pitt.edu/paperchase/2006_06_23_indexarch.php#115108214547402649). See also the previous issue of this *Newsletter*.

(F. Naert)

**UN HUMAN RIGHTS OFFICE IN NEPAL DEPLORES EXCESSIVE USE OF FORCE**

The Nepal representative of the Office of the UN High Commissioner for Human Rights has called several times on the Nepalese Government to end its excessive use of force against demonstrators, including severe beatings, indiscriminate attacks on bystanders, some of them women and children, and seriously unacceptable detention conditions. UN officials urged demonstrators and demonstration leaders to only use peaceful means of protest. See <http://www.ohchr.org/english/countries/np/pressrelease.htm>. The violence occurred in the context of the protests against King Gyanendra's suspension of parliamentary rule, which ended in Parliament being reinstated and the opposition forming a new Government.

(F. Naert)

**INQUIRY INTO ALLEGATIONS OF ABUSE ON DUTCH FRIGATE**

In March 2006, allegations of sexual abuse on board the Dutch Navy Frigate 'Tjerk Hiddes' gave rise to concern in the Netherlands. The Secretary of State for Defense ordered an independent inquiry into the allegations but also into sexual intimidation in the Dutch armed forces generally (21 March 2006 Letter to Parliament, available at [http://www.defensie.nl/actueel/parlement/kamerbrieven/2006/1/20060321\\_sexueleintimidatie.aspx](http://www.defensie.nl/actueel/parlement/kamerbrieven/2006/1/20060321_sexueleintimidatie.aspx)).

(F. Naert)

**DUTCHMAN ARRESTED OVER WAR CRIMES AND SANCTIONS VIOLATIONS**

The trial of Dutch national Guus Kouwenhoven, arrested earlier this year and charged with war crimes and violations of UN sanctions, started on 24 April 2006. See *Sentinelle* No 64 of 1 May 2006 and the previous issue of this *Newsletter*. On 7 June 2006, the The Hague court found him not guilty of war crimes but did convict him for illegal arms trafficking and sentenced him to eight years imprisonment. Kouwenhoven has said he will appeal the judgement and the Prosecution may do so too. See 'Kouwenhoven: acht jaar cel voor wapensmokkel', *Elsevier*, 7 June 2006, <http://www.elsevier.nl/nieuws/nederland/nieuwsbericht.asp?artnr=101568&rss=true>.

(F. Naert)

#### **DUTCH ARREST ANOTHER FORMER AFGHAN OFFICIAL**

On Tuesday 4 April, a spokesman for the Dutch prosecutor announced that on 31 March 2006, the Dutch authorities arrested 56-year old Abdullah F., a former deputy chief of Afghan military intelligence during the 1980s, who filed an asylum request in the Netherlands in 1994 but managed to stay there despite the rejection of this application. He is sought for war crimes and torture. See <http://listserv.buffalo.edu/cgi-bin/wa?A2=ind0604&L=twatch-l&D=1&O=D&F=P&P=3995>. Last year a Dutch court convicted two other former Afghan officials, see the 2005/4 issue of this *Newsletter*.

(F. Naert)

#### **RUSSIAN SERGEANT CONVICTED FOR HAZING**

A Russian court-martial sitting at a military base outside Khabarovsk has sentenced Sergeant Dmitry Nagaitsev to five years in prison after he was convicted of abusing his rank and degradation for beating private Yevgeny Koblov, who suffered a nervous breakdown as a result of the hazing and had to have his legs surgically removed to stop the spread of gangrene that had developed while he hid from his tormentor for 23 days without food or protection from the elements. The victim was also awarded 200.000 rubles (about 7500 US \$) in compensation. (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_19\\_indexarch.php#114805450797744278](http://jurist.law.pitt.edu/paperchase/2006_05_19_indexarch.php#114805450797744278)).

(F. Naert)

#### **ALLEGATIONS OF SECRET RUSSIAN DETENTION FACILITY IN CHECHNYA**

On 7 June 2006, a Russia-based international human rights group claimed that it has turned over to Russian authorities documentary proof of the existence of Russian-operated secret prisons in Chechnya's capital Grozny. This follows a May 2006 report by the International Helsinki Federation for Human Rights alleging the existence of the secret Russian prisons (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_08\\_indexarch.php#114978595867324790](http://jurist.law.pitt.edu/paperchase/2006_06_08_indexarch.php#114978595867324790) and [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4249](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4249)).

(F. Naert)

#### **SERBIAN WAR CRIMES TRIALS**

On 25 April 2006, Serbian Prosecutors charged eight policemen for the killing of 48 Kosovar Albanians in the first weeks of the 1999 war in Kosovo in the town of Suva Reka and then shipping the bodies to a mass grave outside of Belgrade (see [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_25\\_indexarch.php#114599891987226348](http://jurist.law.pitt.edu/paperchase/2006_04_25_indexarch.php#114599891987226348)). On 18 June 2006, the Serbian Supreme Court upheld the sentences of four paramilitary group members convicted of war crimes last year (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_18\\_indexarch.php#114797461684561867](http://jurist.law.pitt.edu/paperchase/2006_05_18_indexarch.php#114797461684561867)).

(F. Naert)

#### **SPANISH COURT COMPETENT TO INVESTIGATE CRIMES RELATED TO SECRET PRISONER TRANSFER**

On 12 June 2006, the *Audiencia Nacional* ruled that it was competent to investigate into alleged crimes (possibly including torture and illegal deprivation of liberty) connected to the alleged transfer of secret detainees via Spanish islands. See *Sentinelles* No. 70 of 18 June 2006 and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_12\\_indexarch.php#115013404255625408](http://jurist.law.pitt.edu/paperchase/2006_06_12_indexarch.php#115013404255625408).

(F. Naert)

#### **SITUATION IN SRI LANKA ESCALATES**

Since this spring and especially May and June 2006, the truce in Sri Lanka has been broken by various violent incidents, which have seriously hampered the ability of the Sri Lanka Monitoring Mission (consisting of the five Nordic countries) to fulfil its mandate (see <http://www.slmml.lk> and [http://en.wikipedia.org/wiki/Sri\\_Lanka\\_Monitoring\\_Mission](http://en.wikipedia.org/wiki/Sri_Lanka_Monitoring_Mission)). In

response to the incidents, the EU has designated the Liberation Tigers of Tamil Eelam as a terrorist organization (see EU Council common position 2006/380/CFSP of 29 May 2006 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2006/231/CFSP, *Official Journal* L/144, 31 May 2006, p. 25, and the Declaration at <http://register.consilium.europa.eu/pdf/en/06/st09/st09974.en06.pdf>).

(F. Naert)

### **TIMOR-LESTE SITUATION (AS OF 16 JUNE 2006)**

#### *Overview and Political Situation*

Since fighting erupted in Timor-Leste in April and May 2006, at least 37 people have been killed, and over 130.000 residents have fled to more than 50 camps in, and around, Dili. UNHCR remains concerned for the physical security of people in the makeshift camps and settlements and at a press briefing on 16 June it said that it has started to reach out to the 78 000 displaced people outside Dili, while the 68 000 displaced persons in Dili are also receiving assistance.

On 30 May 2006, Timor-Leste's President Xanana Gusmao assumed emergency powers and declared that he was taking sole control of Timor-Leste's defense and security. He said that he would assume these emergency powers until the end of June and could extend them 'should it be necessary'. On 8 June 2006, it was reported that Timor-Leste's Prime Minister Mari Alkatiri, agreed to cooperate with an international investigation into his handling of the crisis. The Government of Timor-Leste has sought the assistance of the UN to stabilise the situation in Timor-Leste.

#### *Security Situation and International Peacekeepers*

On 26 May 2006 the Timorese Government wrote to the UN Secretary-General requesting the Governments of Portugal, Australia, New Zealand and Malaysia to provide assistance to Timor-Leste by sending defense and security forces. The members of the Security Council understood the request and appreciated the responses made by the Governments concerned.

Pursuant to this Timorese request, Australia, New Zealand, Malaysia and Portugal have deployed defense and security forces to Timor-Leste. Australia has deployed a battalion group of about 1300 personnel with supporting naval and air assets. Their specific tasks include: (i) Facilitate the evacuation of Australian and other foreign nationals as is appropriate and necessary; (ii) Stabilise the situation and facilitate the concentration of the various conflicting groups into safe and secure locations; (iii) Audit and account for the location of weapons that belong to each group; and (iv) Create a secure environment for the conduct of a successful dialogue to resolve the current crisis. The Government of New Zealand has sent troops and air assets to Dili. The Government of Malaysia has deployed military and police personnel. Portugal has deployed about 120 paramilitaries. As of 16 June 2006, more than 2200 peacekeepers from these countries have deployed.

Mr Gusmao initially stated that his responsibilities for the defense and security of Timor-Leste extended to the international forces serving in Timor-Leste. The Force Commander, Brigadier Mick Slater was quick to emphasise however, that command and control of the international force remained with that force.

Brigadier Slater furthermore reported that the peacekeepers had to contend with both opportunistic and well organised violence on Dili streets. He believes that gangs were using radios and mobile phones to coordinate the violence. The international peacekeeping force is now in the 'stabilisation phase' of the operation.

Pursuant to their ROE, Australian peacekeeping troops have the authority to disarm and detain anybody committing a crime. Soldiers are able to detain anyone suspected of, or caught, carrying out serious crimes such as murder, and causing serious injury or actively promoting violence or intimidation of a criminal nature. International peacekeepers have already confiscated over 1000 weapons from Timorese, including various rifles, F2000 special forces weapons and home made spears and clubs.

#### *UN Involvement*

In a letter dated 11 June 2006, the Government of Timor-Leste requested the UN Secretary-General to propose to the Security Council "to immediately establish a United Nations police force in Timor-Leste to maintain law and order in Dili and other parts of the country as necessary and re-establish confidence amongst the people, until the Timorese police has undergone reorganisation and restructuring so that it can act as an independent and professional law enforcement agency". The Secretary-General has also sent a special envoy to Dili to assess the situation and the UN is considering what role it will play in organising elections scheduled in 2007. Furthermore, the UN Secretary-General on 13 June 2006 stated that the UN priorities should include the restoration of the security sector, including the long-term development of the national police. He also reported that he had asked the UN High Commissioner for Human Rights to take the lead in establishing an independent special inquiry commission to review the incidents and deaths of Timorese on 28-29 April and 23-25 May 2006. Dr. Hasegawa (Special Representative of the Secretary-General in Timor-Leste), on 14 June 2006 conferred with UN recruited prosecutors investigating Timorese deaths. Moreover, following the UN Secretary-General's Special Envoy's briefing to the Security Council, a UN team will visit Timor-Leste to consider the possible increase of the UN presence in that country. Finally, the UN has granted US \$ 4,1 million from the Central Emergency Response Fund to help the displaced persons in Timor-Leste and the Under-Secretary-General for Humanitarian Affairs has appealed for US \$ 14,5 million more for the next three months.

See *Sentinelle* Nos. 68 and 69 of 28 May and 4 June 2006

(B. Oswald, *Asia-Pacific Centre for Military Law, Australia*)

#### **TUNISIA ESTABLISHES NATIONAL COMMISSION ON IHL**

At the initiative of its President, Tunisia has set up a National Inter-ministerial Commission on International Humanitarian Law to assist the Government in the implementation and dissemination of international humanitarian law. See *Sentinelle* No. 62 of 16 April 2006.

(F. Naert)

#### **UK ARMED FORCES BILL 2006**

In the UK, part of the armed forces legislation, including relating to service discipline, must be renewed by Parliament every five years. This five yearly renewal, which also offers an opportunity to make amendments, has to take place this year. This year's Bill intends to replace the three separate systems of service law with a single, harmonised system governing all members of the armed forces. It includes a possible life sentence for desertion intended to avoid any particular (kind of) 'relevant' service, i.e. actions against an enemy, overseas operations and military occupation of a foreign country or territory if the offender was on such service or under orders for such service when deserting (Part 1, section 8). The Bill and explanatory notes are available at <http://www.publications.parliament.uk/pa/ld200506/ldbills/113/2006113.htm>.

(F. Naert)

#### **UK MEDICAL OFFICER CONTESTING LEGALITY OF IRAQ WAR SENTENCED TO 8 MONTHS IMPRISONMENT AND FIRED**

Lieutenant Kendall-Smith, a UK Royal Air Force doctor, was charged in the UK with five counts of disobeying a lawful command for refusing to serve in Iraq. The accused claimed the war was illegal. The court martial in Aldershot rejected this defense, ruling that the mission at the time of his deployment was based on the consent of the Iraqi Government. On 13 April 2006, he was convicted and sentenced to eight months imprisonment and was dismissed from the armed forces. See e.g. BBC, 'Jail for Iraq refusal RAF doctor', 13 April 2006, [http://news.bbc.co.uk/2/hi/uk\\_news/4905672.stm](http://news.bbc.co.uk/2/hi/uk_news/4905672.stm), and [http://en.wikipedia.org/wiki/Malcolm\\_Kendall-Smith](http://en.wikipedia.org/wiki/Malcolm_Kendall-Smith). See also the previous two *Newsletters*.

(F. Naert)

## **UK: REPORTS OF INQUIRY INTO DEATHS AT DEEPCUT MILITARY BASE AND ON SEXUAL HARASSMENT IN THE ARMED FORCES PUBLISHED**

On 29 March 2006, Nicholas Blake published the report of his independent inquiry into four trainee deaths at a military base in Deepcut, UK, between 1995 and 2002. The review concluded that the deaths were most probably suicides and that, although certain elements of the training regime and circumstances may have facilitated the suicides (including unsupervised armed guard duty by young trainees), there is no reason to believe that the Army as an institution or other individuals within was legally responsible for the death of any of these trainees. The report also concludes that a broader public inquiry is not necessary. However, it does make various recommendations, including the setting up of an Armed Forces Ombudsman. The recommendations may be useful for anyone involved in training soldiers and anyone dealing with preventing and handling abuse and/or deaths. See <http://www.deepcutreview.org.uk> for more details, including the full report.

Furthermore, pursuant to an Action Plan agreed between the Ministry of Defense and the Equal Opportunities Commission on 23 June 2005, the latter Commission conducted research into sexual harassment in the Armed Forces and published its findings on 29 May 2006 (see [http://www.eoc.org.uk/PDF/S-R\\_Report\\_full\\_version.pdf](http://www.eoc.org.uk/PDF/S-R_Report_full_version.pdf)).

(F. Naert)

## **BRITISH COURT SAYS TERRORIST CONTROL ORDERS SYSTEM VIOLATES HUMAN RIGHTS**

On 12 April 2006, the High Court of Justice, Queen's Bench Division, Administrative Court, ruled that the procedures under section 3 of the Prevention of Terrorism Act 2005 relating to the supervision of the court of non-derogating control orders made by the Secretary of State are incompatible with the respondent's right to a fair hearing under Article 6(1) of the European Convention on Human rights and made a declaration of incompatibility to that effect under section 4 of the 1998 Human Rights Act. Nevertheless, the court held that the control orders remain in force. More specifically, the conclusions of the judge in §§ 103 and 104 read as follows:

*"103. Standing back and looking at the overall picture, there can be only one conclusion. To say that the [Prevention of Terrorism Act 2005] does not give the respondent in this case, against whom a non-derogating control order has been made by the Secretary of State, a fair hearing in the determination of his rights under Article 8 of the [European Convention on Human Rights] would be an understatement. The court would be failing in its duty under the 1998 [Human Rights] Act, a duty imposed upon the court by Parliament, if it did not say, loud and clear, that the procedure under the Act whereby the court merely reviews the lawfulness of the Secretary of State's decision to make the order upon the basis of the material available to him at that earlier stage are conspicuously unfair. The thin veneer of legality which is sought to be applied by section 3 of the Act cannot disguise the reality. That controlees' rights under the Convention are being determined not by an independent court in compliance with Article 6.1, but by executive decision-making, untrammelled by any prospect of effective judicial supervision.*

*104. I am unable to envisage any circumstances in which, realistically, it would have been possible for the court to conclude that the Secretary of State's decisions on or about 1st September 2005 were legally flawed upon the basis of the one-sided information then available to him. It follows that I must decide that the control order is to continue in force. However, for the reasons set out above, I am satisfied that the procedures under section 3 of the Act relating to the supervision of the court of non-derogating control orders made by the Secretary of State are incompatible with the respondent's right to a fair hearing under Article 6.1, and I will make a declaration of incompatibility to that effect under section 4 of the 1998 Act."*

The judgment, *Re: MB*, [2006] EWHC 1000 (Admin), is available at <http://www.bailii.org/ew/cases/EWHC/Admin/2006/1000.html>. The Government has announced it will appeal the judgement. See also V. Dodd & C. Bailey, 'Terror law an affront to justice - judge', *The Guardian*, 13 April 2006 (<http://www.guardian.co.uk/terrorism/story/0,,1752773,00.html>) and R. Ford, 'Anti-terror laws are an affront to justice, says High Court', *The Times*, 13 April 2006

(<http://www.timesonline.co.uk/article/0,,200-2131839,00.html>). On the Prevention of Terrorism Act 2005 and its antecedents, see previous issues of this Newsletter.

(F. Naert)

#### **UK DEFENSE SECRETARY QUESTIONS ADEQUACY OF INTERNATIONAL LAW OF WAR**

In an address to the UK Royal United Services Institute for Defense and Security Studies on 3 April 2006, UK Secretary of State for Defense John Reid posed three questions about the present international legal framework: namely, whether, in today's changed circumstances, we are convinced that this framework adequately covers (i) the contemporary threat from international terrorists; (ii) the circumstances in which states may need to take action in order to avert imminent attack; and (iii) those situations where the international community needs to intervene on grounds of overwhelming humanitarian necessity in order to stop internal suppression - mass murder and genocide - as opposed to external aggression. He did not have the answers to these questions and problems but said the UK should continually reassess whether it had the right laws of war to meet current and future threats. The transcript of the speech is available at <http://www.mod.uk/DefenseInternet/DefenseNews/DefensePolicyAndBusiness/ReidAddressOn20thcenturyRules21stcenturyConflict.htm>. See also R. Norton-Taylor & C. Dyer, 'International Laws Hinder UK Troops - Reid', *The Guardian*, 4 April 2006 (<http://www.guardian.co.uk/terrorism/story/0,,1746322,00.html>).

(F. Naert)

#### **IRAQ WAR FOUND TO HAVE ONLY LIMITED IMPACT ON HEALTH OF UK FORCES**

Regular personnel in the UK armed forces who served in the 2003 Iraq War have not, so far, suffered from ill health 3 years post-conflict, according to a paper published online on 16 May 2006 by *The Lancet* (see [http://www.kcl.ac.uk/kcmhr/lancet\\_press\\_release.pdf](http://www.kcl.ac.uk/kcmhr/lancet_press_release.pdf)). The authors warn, however, that further follow-up is needed. They found that deployed individuals had similar rates of mental and physical illness to those not deployed to Iraq, other than a modest increase in the number of individuals with multiple physical symptoms. However, deployed reserve personnel reported more symptoms than their non-deployed counterparts in all health outcomes apart from alcohol misuse, which could be due to stresses related to deployment that might apply particularly to reservists. They also note that support from medical and welfare services is not identical after homecoming. That very day, the UK Under Secretary of State for Defense announced that Members of the Reserve forces will soon benefit from enhanced mental healthcare support on return from operational deployments overseas (see <http://www.mod.uk/DefenseInternet/DefenseNews/DefensePolicyAndBusiness/NewMentalHealthcareInitiativeForDemobilisedReservists.htm>).

(F. Naert)

#### **UK HOUSE OF LORDS DISMISSED TORTURE CASE AGAINST SAUDI ARABIA**

On 14 June 2006, the House of Lords, in *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia) and others* ([2006] UKHL 26, available at <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones-1.htm>), unanimously dismissed complaints of alleged torture brought against the Ministry of Interior of Saudi Arabia and some Saudi Arabian officials. The court ruled that Saudi Arabia enjoyed immunity under the UK State Immunity Act 1978 as no exception of the Act applied. It rejected that this would violate the plaintiffs' right to a fair trial under Article 6 of the European Convention on Human Rights or a *ius cogens* norm, *inter alia* relying on the European Court of Human Rights' judgement in *Al-Adsani v. UK*. The Court agreed with the four main arguments advanced by Saudi Arabia, namely that a serving foreign minister is immune from suit *rationae personae*; the Torture Convention does not grant universal civil jurisdiction; the UN Immunity Convention of 2004 does not provide for an exception of immunity in cases of civil claims for torture, and there is no evidence that states have agreed to pursue violations of peremptory norms of international law. See *ILIB* of 16 June 2006 for a brief discussion.

(F. Naert)

#### **AMERICAN SOCIETY OF INTERNATIONAL LAW ADOPTS RESOLUTION**

On 30 March 2006, the American Society of International Law adopted a resolution addressing international law issues concerning the use of force, the law of armed conflict, humane treatment, detention, the responsibility of state agents and command responsibility and reconciling liberty and security. The resolution is available at <http://www.asil.org/events/am06/resolutions.html>. The resolution is only the fourth one adopted in the ASIL's 100 year history. See also M.E. O'Connell, 'The ASIL Centennial Annual Meeting Adopts a Resolution on the Use of Armed Force and the Treatment of Detainees', 10 *ASIL Insight* Issue 12, 19 May 2006 (<http://www.asil.org/insights/2006/05/insights060519.html>); <http://www.opiniojuris.org/posts/1143786437.shtml> and *Sentinel* No. 62 of 16 April 2006.

(F. Naert)

#### **US COURT ORDERS FORMER HONDURAN COLONEL TO PAY DAMAGES TO TORTURE AND DISAPPEARANCES VICTIMS**

On 31 March 2006, a US federal judge in Miami ordered Colonel Juan López Grijalba, a former military intelligence officer from Honduras who controlled the notorious intelligence police force DNI (*Dirección Nacional de Investigaciones*) and the death squad known as Battalion 316, both responsible for widespread human rights abuses in Honduras as part of a systematic program of disappearances and political murder, to pay US \$ 47 million to torture survivors and relatives of civilians murdered by Honduran military forces in the early 1980s. The law suit in this case was filed in 2002 when López Grijalba lived in Miami. However, in 2004, while the case was still pending, he was deported to Honduras for his role in human rights violations. For more information, see the website of the Center for Justice & Accountability at <http://www.cja.org/cases/grijalba.shtml>.

(F. Naert)

#### **US COURT DISMISSES CASE AGAINST KISSINGER**

On 9 June 2006, the US Court of Appeals for the District of Columbia Circuit dismissed complaints brought against Henry A. Kissinger, former US National Security Advisor and Secretary of State, under the Alien Tort Claims Act and the Torture Victim Protection Act. Alleged victims of human rights violations by the Chilean military junta's Directorate of National Intelligence, which was allegedly funded and assisted by the US and/ or Henry A. Kissinger, had filed the claims. The appellants sought relief for, *inter alia*, torture, false imprisonment, wrongful death, and intentional infliction of emotional distress. The Court of Appeals affirmed the decision of the District Court, albeit for different reasons, in particular the political question doctrine, holding that the plaintiffs called "*into question foreign policy decisions textually committed to the political branches*". See *Gonzales-Vera et al. v. Kissinger*, <http://pacer.cadc.uscourts.gov/docs/common/opinions/200606/05-5017a.pdf>, briefly discussed in *ILIB* of 16 June 2006.

(F. Naert)

#### **US: HAMDAN V. RUMSFELD ON MILITARY COMMISSIONS**

The Supreme Court of the United States is scheduled to soon decide the case of *Hamdan v. Rumsfeld*, which will decide the legality and use of military commissions to try those being held at Guantánamo. Attorneys practicing in the military justice system, civilian lawyers involved in the commissions, commentators, and media outlets eagerly await the Supreme Court's decision, which should be issued just prior to the end of the Court's term on 30 June 2006. Recent comments and interviews espousing various views on suggested systems of justice and the importance of the impending decision can be read at:

<http://article.nationalreview.com/?q=M2YwODMzZjhjOWJINDhiNDNjZGEwZGM4Zjk5MwZmODk;>

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/06/21/EDGDOILMUR1.DTL;>

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/20/AR2006062001591.html>;  
<http://www.timesonline.co.uk/article/0,,11069-2233062,00.html>;  
<http://www.miami.com/mld/miamiherald/14854369.htm>;  
<http://www.baltimoresun.com/news/nationworld/balte.gitmo19jun19001513,0,3685093.story?coll=bal-home-headlines>;  
<http://www.iht.com/articles/2006/06/18/news/letter.php>;  
<http://www.usnews.com/usnews/news/articles/060626/26hamdan.htm>;  
[http://www.nytimes.com/2006/06/18/weekinreview/18shane.html?\\_r=1&hp&ex=1150603200&en=d94814b91e0ec321&ei=5094&partner=homepage&oref=slogin](http://www.nytimes.com/2006/06/18/weekinreview/18shane.html?_r=1&hp&ex=1150603200&en=d94814b91e0ec321&ei=5094&partner=homepage&oref=slogin);  
<http://www.emilitary.org/article.php?aid=6687>.

(K.A. Duignan, National Institute of Military Justice, US)

#### **UNITED STATES V. JOSE PADILLA**

Jose Padilla faces trial in civilian court for charges linked to Al Qaeda and terrorism, after being held as an enemy combatant in a military brig, successfully challenging his indefinite detention, and now being tried as a civilian in a United States District Court (see also the previous issue of this Newsletter). On 3 April 2006, the Supreme Court of the United States declined to hear his most recent challenge in a 6-3 decision, but added that the Court will remain open to ensure that Padilla receives the rights guaranteed to all United States criminal defendants. For more information, see:

Supreme Court's denial of certiorari and opinions from 3 April 2006:

<http://www.supremecourtus.gov/opinions/05pdf/05-533Kennedy.pdf>

<http://www.supremecourtus.gov/opinions/05pdf/05-533Ginsburg.pdf>

Indictment in Federal District Court:

<http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/padilla/uspad111705ind.pdf>

Recent news stories about the progression of Padilla's trial:

<http://select.nytimes.com/search/restricted/article?res=F30817F738540C778CDDAD0894DE404482>

<http://www.foxnews.com/story/0,2933,190304,00.html>,

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/21/AR2006062100918.html>,

<http://www.timesonline.co.uk/article/0,,200-2231766,00.html>,

<http://www.cbsnews.com/stories/2006/06/05/ap/national/mainD8I28RS81.shtml>,

<http://jurist.law.pitt.edu/paperchase/2006/06/padilla-says-fbi-evidence-against-him.php>,

<http://www.time.com/time/nation/article/0,8599,262917,00.html>

(K.A. Duignan, National Institute of Military Justice, US)

#### **UNITED STATES V. ZACHARIAS MOUSSAOUI**

On 4 May 2006, a federal jury rejected sentencing Zacharias Moussaoui to the death penalty for his involvement in Al Qaeda and the crimes to which he pled guilty, instead imposing a life sentence without the possibility of parole. As the *New York Times* reported the day the verdict was read, "The decision means that the sole individual charged in a United States courtroom in connection with the worst attack on American soil will spend the rest of his life in solitary confinement in a federal prison in Colorado with no possibility of release" (N.A. Lewis, 'Moussaoui Given Life Term by Jury Over Link to 9/11', *NY Times*, 4 May 2006, p. A27, <http://select.nytimes.com/search/restricted/article?res=F00616F8355B0C778CDDAC0894DE404482>). See also *Sentinel* No. 66 of 14 May 2006 and:

Original indictment of Zacharias Moussaoui:

<http://www.usdoj.gov/ag/moussaouiindictment.htm>

Transcript of jury verdict:

<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/03/AR2006050301802.html>

Jury Sentencing Form: <http://news.findlaw.com/wp/docs/moussaoui/jv2phase.html>

Summary of news relating to Zacharias Moussaoui:

[http://topics.nytimes.com/top/reference/timestopics/people/m/zacarias\\_moussaoui/index.html?inline=nyt-per](http://topics.nytimes.com/top/reference/timestopics/people/m/zacarias_moussaoui/index.html?inline=nyt-per)

Latest news stories involving the involvement and conviction of Zacharias Moussaoui:

<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/03/AR2006050300324.html>

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/19/AR2006061901303.html>,

[http://news.bbc.co.uk/2/hi/middle\\_east/5101954.stm](http://news.bbc.co.uk/2/hi/middle_east/5101954.stm),

<http://news.ninemsn.com.au/article.aspx?id=106280>,

<http://www.guardian.co.uk/worldlatest/story/0,-5841004,00.html>,

<http://www.cbsnews.com/stories/2006/05/23/terror/main1648914.shtml>,

(K.A. Duignan, National Institute of Military Justice, US)

#### OTHER SELECTED DEVELOPMENTS IN THE US

Calls to close the Guantánamo Bay detention facilities increased after 3 detainees committed suicide on 10 June 2006. Among those calling for the closure are the five UN special rapporteurs who criticized detention at Guantánamo Bay earlier this year (see the previous issue of this Newsletter and UN press release of 14 June 2006, noting that the "suicide[s] [were] to a certain extent foreseeable in light of the harsh and prolonged conditions of [the] detention") and the UN Committee Against Torture (an advance copy of the Committee's report, which addresses various interesting issues, is available at <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>; see also D.M. Amann, 'The Committee Against Torture Urges an End to Guantánamo Detention, 10 ASIL Insight 14, 8 June 2006, <http://www.asil.org/insights/2006/06/insights060608.html>). The EU also called for the closure of Guantánamo at the EU-US summit on 21 June 2006, to which US President Bush responded that he would like to close it but that this was difficult; he said he was *inter alia* waiting for a Supreme Court judgement on how to prosecute detainees held there (see the press conference transcript at [http://useu.usmission.gov/Dossiers/US\\_EU\\_Summits/Jun2106\\_Vienna\\_Press\\_Avail.asp](http://useu.usmission.gov/Dossiers/US_EU_Summits/Jun2106_Vienna_Press_Avail.asp)). For previous calls to this effect, see the previous issue of this Newsletter. The suicides also prompted an unscheduled ICRC visit (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_13\\_indexarch.php#115021726033448634](http://jurist.law.pitt.edu/paperchase/2006_06_13_indexarch.php#115021726033448634)). On 12 May 2006, the ICRC had protested that it did not have access to all detainees held by the US in the war on terror (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_12\\_indexarch.php#114743825152443050](http://jurist.law.pitt.edu/paperchase/2006_05_12_indexarch.php#114743825152443050)).

However, sending home detainees is not proving easy either. In particular, and somewhat ironically given the human rights concerns about Guantánamo Bay, fears that detainees may suffer human rights violations when repatriated have reportedly complicated repatriation efforts and the conclusion of arrangements with some countries concerned (including Saudi Arabia and Yemen, which have many nationals at Guantánamo) seems to be difficult. US demands to guarantee further detention or prosecution are also reported as posing problems. See T. Golden, 'US Says It Fears Detainee Abuse in Repatriation', *The New York Times*, 30 April 2006 and [http://jurist.law.pitt.edu/paperchase/2006\\_04\\_21\\_indexarch.php#114562991246328159](http://jurist.law.pitt.edu/paperchase/2006_04_21_indexarch.php#114562991246328159). The case of Chinese Uighurs who were held at Guantánamo even after being determined not to be 'enemy combatants' (see the previous issue of this Newsletter) illustrates the problem. The US will not send them to China as it fears they may be persecuted there but has troubles sending them somewhere else. However, five of them have now been sent to Albania (see [http://jurist.law.pitt.edu/paperchase/2006\\_05\\_06\\_indexarch.php#114688596112172960](http://jurist.law.pitt.edu/paperchase/2006_05_06_indexarch.php#114688596112172960)), where they are seeking asylum in a move criticized by China (see

[http://jurist.law.pitt.edu/paperchase/2006\\_05\\_09\\_indexarch.php#114718054908402182](http://jurist.law.pitt.edu/paperchase/2006_05_09_indexarch.php#114718054908402182) and 'Pékin critique l'envoi en Albanie de cinq Ouïgours de Guantánamo', *Le Monde*, 11 May 2006, also available at <http://acturca.wordpress.com/2006/05/12/pekin-critique-lenvoi-en-albanie-de-cinq-ouigours-de-Guantánamo/>). Meanwhile, on 14 June 2006, an Afghan delegation that visited Guantánamo Bay late May demanded the release of about half of the Afghan detainees held there, claiming they were innocent, and asked that the remained by tried by Afghan courts (C. Gall, 'Delegation Seeks Release of Afghans Being Held at Guantánamo', *The New York Times*, 15 June 2006).

Still concerning Guantánamo Bay, on 19 April 2006, the Pentagon released the names and nationalities of 558 of the detainees held there, after being forced to do so by a court decision. Furthermore, on 15 May 2006, under an agreement made between the Associated Press, the courts and the government, the Pentagon released the names of another 201 detainees. See [http://www.defenselink.mil/news/May2006/20060515\\_5140.html](http://www.defenselink.mil/news/May2006/20060515_5140.html) and <http://www.defenselink.mil/news/May2006/d20060515%20List.pdf>. Previously, some of the names had been released; see the previous issue of this Newsletter. See also the *Sentinel* No. 63 of 23 April 2006. It has been claimed that some 60 of the detainees were under 18 when captured (see e.g. <http://tvnz.co.nz/view/page/425822/727676> and [http://fullcoverage.yahoo.com/s/afp/20060528/pl\\_afp/usattacksGuantánamo\\_060528001532](http://fullcoverage.yahoo.com/s/afp/20060528/pl_afp/usattacksGuantánamo_060528001532)). In the mean time, on 18 May 2006, 10 detainees attacked their guards, leading to the use of pepper spray and rubber bullets to end the attack ('10 prisoners at Guantánamo attack their guards', *The International Herald Tribune*, 19 May 2006).

In respect of the military commissions, on 24 March 2006, the Department of Defense issued Military Instruction No. 10, prohibiting the use of statements obtained under torture, which it defines as "an act specifically intended to inflict severe physical or mental pain or suffering ..." (see <http://www.defenselink.mil/news/Mar2006/d20060327MCI10.pdf>).

Concerning interrogation and detention, it is reported that the latest version of the forthcoming army field manual interrogation directives omit the prohibition of "outrages upon personal dignity, in particular humiliating and degrading treatment" contained in common article 3 to the Geneva Conventions, despite efforts by military lawyers to insert this language. However, the document has not yet been adopted and is facing opposition from other US Agencies, including the State Department. Several Senators are also said to have raised objections (see also <http://jurist.law.pitt.edu/paperchase/2006/05/senate-panel-oks-demand-for-legal.php>). Someone familiar with the debate stated that "The overall thinking is that they need the flexibility to apply cruel techniques if military necessity requires it". See J.E. Barnes, 'Army Manual to Skip Geneva Detainee Rule', *the Los Angeles Times*, 5 June 2006, <http://www.latimes.com/news/nationworld/nation/la-na-torture5jun05.0.877738.full.story?coll=la-home-headlines>. However, the ban on this kind of treatment is not subject to any exception, not even military necessity. For a critical view on the draft, see <http://jurist.law.pitt.edu/forumy/2006/06/no-place-for-war-crimes-redrafting-us.php>. It was later announced that the new Manual will not contain a classified section and interrogation techniques originally slated to be classified will be released publicly in the new manual or abandoned (see [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_13\\_indexarch.php#115024194696089831](http://jurist.law.pitt.edu/paperchase/2006_06_13_indexarch.php#115024194696089831)).

Moreover, on 6 June 2006, the Department of Defense has issued DoD instruction 2310.08E on "Medical Program Support for Detainee Operations" (see [http://www.defenselink.mil/news/Jun2006/20060607\\_5352.html](http://www.defenselink.mil/news/Jun2006/20060607_5352.html) and the directive at <http://www.dtic.mil/whs/directives/corres/html/231008.htm>; see also [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_07\\_indexarch.php#114968757674576435](http://jurist.law.pitt.edu/paperchase/2006_06_07_indexarch.php#114968757674576435)). It was severely criticised by Physicians for Human Rights, which called the directives "an assault on medical ethics, the professional integrity of military health personnel, the Geneva Conventions, and on US military tradition and discipline" (see [http://www.phrusa.org/research/torture/news\\_2006-06-06.html](http://www.phrusa.org/research/torture/news_2006-06-06.html)). See also J. Barnes, 'Pentagon Limits Medical Role in Questioning', *the Los Angeles Times*, 7 June 2006, <http://www.latimes.com/news/nationworld/nation/la-na-rules7jun07.0.5014478.story>. In response, on 12 June 2006, the American Medical Association passed a measure clarifying its ethical guidelines, which prohibit doctors from participating in torture or coercive interrogations (see <http://www.ama-assn.org/ama/pub/category/16446.html> and [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_13\\_indexarch.php#115022152408009824](http://jurist.law.pitt.edu/paperchase/2006_06_13_indexarch.php#115022152408009824)).

Finally, the prosecution of several US armed forces personnel over abuse at of Afghan detainees at Bagram air base, including the beating to death of two detainees, ended on 1 June 2006 with the conviction of former Pfc. Willie V. Brand, who was sentenced to a demotion in rank and three months in prison. Three other soldiers had pleaded guilty last year, two others pleaded guilty at the court-martial, five were acquitted and the army dropped the charges against three others. See [http://jurist.law.pitt.edu/paperchase/2006\\_06\\_02\\_indexarch.php#114925913987230553](http://jurist.law.pitt.edu/paperchase/2006_06_02_indexarch.php#114925913987230553).

(F. Naert)

### **INTERESTING PUBLICATIONS**

(hb = hardback/hard cover and pb = paperback/soft cover)

#### Notes:

The publications marked with \* have been offered by their publishers to the documentation centre of the International Society, where our members can consult them. A separate book review will be published in the *Military Law and the Law of War Review 2005*

The publications marked with \*\* have been acquired by the documentation centre of the International Society, where our members can consult them.

The American Bar Association's Human Rights Committee publishes a weekly newsletter to which members of the Society can subscribe for free by visiting <http://w3.abanet.org/abanet/common/email/listserv/listcommands.cfm?parm=subscribe&listgroup=inthumrights>.

H. ABTAHI & G. BOAS (EDS.), *The Dynamics of International Criminal Justice. Essays in Honour of Sir Richard May*, Martinus Nijhoff, 2006, ISBN 90 04 14587 7;\*

P. ALLAN & A. KELLER (EDS.), *What Is a Just Peace?*, Oxford UP, 2006, ISBN 0-19-927535-1 (hb);

T. ALLEN, *Trial Justice: the International Criminal Court and the Lord's Resistance Army*, Zed Books, 2006, ISBN 1-84277-736-X (hb) or 1-84277-737-8 (pb);

F. ANG, *Commentary on the United Nations Convention on the Rights of the Child. Article 38: Children in Armed Conflicts*, Martinus Nijhoff, 2005, ISBN 90 04 14561 3;

N. AZIMI & C. LI LIN (EDS.), *United Nations as Peacekeeper and Nation-BUILDER. Continuity and Change - What Lies Ahead?*, Martinus Nijhoff, ISBN 90 04 14826 4, 2006;\*

A. BAILLEUX, *La compétence universelle au carrefour de la pyramide et du réseau*, Bruylant, 2005, ISBN 2-8027-2058-9\*;

Y. BEIGBEDER, *Judging War Crimes and Torture. French Justice and International Criminal Tribunals and Commissions (1940-2005)*, Martinus Nijhoff, 2006, ISBN 90 04 15329 2;

H. BORN, L.K. JOHNSON & I. LEIGH (EDS.), *Who's Watching the Spies: Establishing Intelligence Service Accountability*, Potomac Books, 2005, ISBN 1574888978;

A. CLAPHAM, *Human Rights Obligations of Non-State Actors*, Oxford UP, 2006, ISBN 0-19-928846-1 (pb) or 0-19-829815-3 (hb);

P. DE GREIFF, *The Handbook of Reparations*, Oxford UP, 2006, ISBN 0-19-929192-6;

U. DOLGOPOL & J. GARDAM (EDS.), *The Challenge of Conflict: International Law Responds*, Martinus Nijhoff, 2006, ISBN 90 04 14599 0;

EU, *European Security and Defense Policy Newsletter No. 2, June 2006*, [http://www.consilium.europa.eu/uedocs/cmsUpload/ESDP\\_Newsletter\\_ISSUE2.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/ESDP_Newsletter_ISSUE2.pdf)

F. FUKUYAMA (ED.), *Nation-Building: Beyond Afghanistan and Iraq*, Johns Hopkins UP, 2006, ISBN 0-8018-8335-0 (pb) or 0-8018-8334-2 (hb);

V.-Y. GHEBALI & A. LAMBERT, *The OSCE Code of Conduct on Politico-Military Aspects of Security Anatomy and Implementation*, Martinus Nijhoff (co-publication with The Graduate Institute of International Studies), 2005, ISBN 90 04 14292 4;\*\*

K. GRAHAM & T. FELÍCIO, *Regional Security and Global Governance. A study of interaction between Regional Agencies and the UN Security Council - With a proposal for a Regional-*

*Global security mechanism*, Brussels, VUB Press, 2006, ISBN 90-5487-404-X;

A. HOLOHAN, *Networks of Democracy: Lessons from Kosovo for Afghanistan, Iraq, and Beyond*, Stanford UP, 2005, ISBN 0804751919 (pb) or 0804751900(hb);

INTERNATIONAL BUREAU OF THE PERMANENT COURT OF ARBITRATION (ED.), *Redressing Injustices Through Mass Claims Processes. Innovative Responses to Unique Challenges*, Oxford UP, 2006, ISBN 0-19-929793-2 (hb);

R. KHERAD (ed.), *Les implications de la guerre en Irak*, Bruylant, 2005, ISBN 2-233-00468-X;

R. KOLB, *Le droit relatif au maintien de la paix internationale*, Bruylant, 2005, ISBN 2-233-00470-1;

R. KOLB, G. PORRETTO & S. VITE, *L'application du droit international et des droits de l'Homme aux organisations internationales*, Bruylant, 2005, ISBN 2-8027-1992-0\*;

E. MILANO, *Unlawful Territorial Situations in International Law. Reconciling Effectiveness, Legality and Legitimacy*, Martinus Nijhoff, 2006, ISBN 90 04 14939 2;

G. NOLTE, *Le droit international face au défi américain*, Bruylant, 2005, ISBN 2-233-00471-X;

L. PERNA, *The Formation of the Treaty Law of Non-International Armed Conflicts*, Martinus Nijhoff, 2006, ISBN 90 04 14924 4\*;

S. PETERKE, *Der völkerrechtliche Sonderstatus der Internationalen Föderation der Rotkreuz- und Rothalbmondgesellschaften*, Berliner Wissenschafts-Verlag, Berlin, 2006, ISBN 3-8305-1150-7;

S. TALMON, 'Diplomacy under Occupation. The Status of Diplomatic Missions in Occupied Iraq', 6 *Anuario Mexicano de Derecho Internacional* (2006), 461-511 (available at <http://users.ox.ac.uk/~sann2029/>);

S. TALMON, 'Changing Views on the Use of Force: The German Position', 5 *Baltic Yearbook of International Law* (2005), 41-76 (available at <http://users.ox.ac.uk/~sann2029/>);

L.J. VAN DEN HERIK, *The Contribution of the Rwanda Tribunal to the Development of International Law*, Martinus Nijhoff, 2005, ISBN 900414580X\*;

D. WALZ, K. EICHEN & S. SOHM, *Soldatengesetz*, CF Müller, 2006, ISBN 3-8114-1853-X (hb);

J. WELSH (ED.), *Humanitarian intervention and International Relations*, Oxford UP, 2006, ISBN 0-19-929162-4;

X, *La Belgique et la Cour pénale internationale: Complémentarité et coopération*, Bruylant, 2005, ISBN 2-8027-2092-9\*;

A special issue of the Human Security Centre's *Human Security Research* dated May 2006 dealing with 'International Justice Initiatives' is available at <http://www.humansecuritycentre.org/index.php?option=content&task=view&id=170>;

#### **FROM THE GENERAL SECRETARIAT**

Please send us any information that could be useful for future newsletters and/or our website.

Do not hesitate to forward any of your articles that could be published in the *Military Law and the Law of War Review* to the Director of Publications. You may inform your colleagues that the *Military Law and Law of War Review* also publishes articles of non-members.

In our efforts to economise, the newsletter is circulated electronically as an e-mail attachment, to the largest extent possible. If you have e-mail but have not yet notified us, please send your e-mail address to [soc-mil-law@scarlet.be](mailto:soc-mil-law@scarlet.be).

Issues of the newsletter are circulated by e-mail and fax only, except for specific members who requested and subsequently were granted a departure from this policy by the Secretary-General.

Legal notice: Responsible Editor: Alfons Vanheusden, DGJM-LEGAD-Hum, QRE, Rue d'Evere, 1140 BRUSSELS