



NEWSLETTER JULY/AUGUST/SEPTEMBER 2006

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EDITORIAL

Dear Member,

Common article 3 of the Geneva Conventions of 1949 contains minimum standards for all parties to armed conflicts. The wording of common article 3 appears to limit its application to conflicts within the territory of a single State, but there is more and more consensus that such literal interpretation would lead to an unwanted loophole in international humanitarian law. Such loophole would indeed mean that the conduct of hostilities between a State and non-State actors in another State is not regulated by international humanitarian law. This was the position of the United States as to the global war on terror, as the United States had never applied common article 3 to the armed conflict with Al Qaeda.

This position is now under review, because of the decision in *Hamdan v. Rumsfeld*. Indeed, on 29 June 2006 the Supreme Court invalidated the Military Commissions that had been established to put Guantanamo detainees to trial. The Court held that the minimum standards of common article 3 of the Geneva Conventions are applicable to the conflict with Al Qaeda and that these standards were not reached by the prescribed procedures of the Military Commissions.

In this newsletter, we are pleased to offer you an article of Professor Diane Marie Amann, giving you more detailed information about this recent decision of the United States Supreme Court. The decision will undoubtedly be of important guidance to our members involved in the global war on terror, but it is also interesting in the light of the recent conflict between Hezbollah and Israel.

Ludwig Van Der Veken
Secretary-General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The **Managing Board** of the Society will convene in Brussels on 11 October 2006.

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 (more information is available at the Society's website).

The Secretary-General, Mr. Ludwig Van Der Veken, and the Assistant Secretary General, Mr. Alfons Vanheusden, have met with General Carlos H. Cerda (the President of the **Argentine Group of the Society** and the Argentine representative in the Board of Directors) in Buenos Aires (Argentina), during bilateral contacts from 12 to 19 September 2006. At a meeting of the Argentine Council for International Relations as well as at a specialisation course on international humanitarian law at the Catholic University of Buenos Aires, they presented and discussed issues of international humanitarian law in the face of recent conflicts. They were also received by among others the CAECOPAZ (a training institute for peacekeeping) and by the War Colleges of the forces, where each time they participated in various activities related to international law.

The Competitions Closing Ceremony of the **CIOR/CIORM/NRF* Summer Congress** (Viterbo 4-8 July 2006) hosted by UNUCI**, took place in Viterbo at the Senior NCO Academy of the Army on Friday 7 July 2006. About 600 Nato/Pfp reserve officers attended the Congress and about 200 participants the competitions.

Rear Admiral Leonardo Natale, member of BOD and deputy of the Italian Group has awarded ISMLLW prizes to the winners of competitions in International Law.

* CIOR (Interallied Confederation of Reserve Officers)
CIORM (Interallied Confederation of Medical Reserve Officers)
NRFC (National Reserves Forces Committee)

**UNUCI (Unione Nazionale Ufficiali in Congedo d'Italia)

The United Nations Office of the High Commissioner for Human Rights and the International Commission of Jurists organise an **expert meeting on the scope of jurisdiction of military tribunals**. This expert meeting will be held in Geneva on 6 and 7 November 2006. For more information, please contact Mrs. Marie-Anne Heimendinger (Tel. +41 22/917 94 18 or mheimendinger@ohchr.org).

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RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE

International Agreements

ETHIOPIA RATIFIES NUCLEAR TEST BAN TREATY

On August 8th, Ethiopia deposited its instrument of ratification for the Comprehensive Nuclear Test Ban Treaty with the UN Secretary General. The ratification number now stands at 135 States. However, it is compulsory that all 44 signatory States, who possessed nuclear power or research reactors at the time of the 1996 Conference on Disarmament, ratify the treaty for it to come into force. Ten of these States have not deposited their ratification, among others the United States, India, Israel, China, Indonesia, Egypt and Iran. For more information on this article, see http://www.ctbto.org/press_centre/press_release.dhtml?item=279 (last retrieved August 10, 2006). For the full text of the nuclear test ban treaty, see <http://www.ctbto.org/treaty/treatytext.tt.html> (last retrieved August 11, 2006).

(L. Nijs)

GENEVA CONVENTIONS ACHIEVE UNIVERSAL ACCEPTANCE

For the first time an international treaty has gained universal acceptance. On the 27 of June 2006 the Republic of Nauru acceded and on the 2 of August 2006 the Republic of Montenegro acceded to the 1949 Geneva Conventions. Both countries also acceded to the two Additional Protocols. The Conventions have been signed by the 192 Member States of the UN, the Vatican and the Palestinian Authority. At the moment there are 166 States party to the Additional Protocol I and 162 to the Additional Protocol II.

Switzerland, the second country after Norway, deposited the ratification instrument of the third Additional Protocol to the Geneva Conventions on the 14 of July 2006. Because of this second ratification the third Additional Protocol to the Geneva Conventions will come into force on the 14 of January 2007. Until today 72 States, including Belgium, signed the Protocol. With the Additional Protocol a distinctive emblem is created in addition to the Red Cross, the

Red Crescent, and the Red Lion and Sun. It takes the form of a square red frame standing on one corner against a white background and is called the "Red Crystal".

Retrieved on August 21, 2006 from

http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList578/243C2BF92A9D86F9C12571D1004AB04_D

http://jurist.law.pitt.edu/paperchase/2006_08_22_indexarch.php#115626986894321540

<http://roundtable.kein.org/node/453>

(C. Jacobsen)

NEW UN DOCUMENTS ON INDIGENOUS PEOPLES AND DISAPPEARANCES

The newly established United Nations Human Rights Council adopted, in its first session, two very important new documents.

The UN Declaration on the Rights of Indigenous Peoples creates a set of legal standards and rules with the aim to ensure respect for the human rights and fundamental freedoms of indigenous peoples. It reaffirms the right of self-determination of indigenous peoples and sets out other indigenous rights, including the right to protection against actions taken without free, prior and informed consent; the right to traditional lands and resources; and the right of indigenous peoples to establish and control their own educational systems providing education in their own languages. This legislation had been debated over 11 years and will now, finally, be forwarded to the General Assembly. Currently, the UN estimates that there are some 370 million indigenous peoples living in different parts of the world.

Furthermore, the new Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearances. This Convention aims to fill the gap in international worldwide legislation for the prevention of disappearances as well as the rights of victims and establishes on Governments the obligation to prevent and punish the crime of enforced disappearances. The document will now be forwarded to the General Assembly for final adoption. The Convention defines the practice of enforced disappearances as a crime and as a crime against humanity when it is widespread or systematic. The UN estimates the crime of forced disappearances to amount to 40000 cases from 60 countries.

For more information see:

<http://www.ohchr.org/english/issues/indigenous/>

<http://www.ohchr.org/english/issues/disappear/index.htm>

(I. Heyndrickx)

International Organisations

UNITED NATIONS CONFERENCE AIMED AT STRENGTHENING GLOBAL EFFORT AGAINST ILLICIT SMALL ARMS TRADE

On July 7th 2006 the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons concluded without an 'outcome document'. This conference, which lasted for two weeks, was a follow-up of the 2001 Programme of Action, and aimed at revising the efforts to diminish the illicit trade in small arms. Unfortunately this year's Conference failed to reach consensus to tighten the control on international arms trade transfer. Moreover did States not succeed in providing the General Assembly with a platform for future action concerning the Programme. The Programme of Action did, however, foresee for States to discuss implementation and this every two years. These encounters are not influenced by the lack of a document emerging from the conference.

For more information see

<http://www.un.org/News/Press/docs/2006/dc3037.doc.htm>;

<http://www.un.org/events/smallarms2006/>;

Sentinelle nr 72 <http://www.sfdi.org/actualites/a2006/Sentinelle%2072.htm#armeslegeres> ;

<http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/5160238.stm>

(M. De Coninck and I. Heyndrickx)

NEED FOR BETTER PROTECTION OF CIVILIANS IN PEACEKEEPING MISSIONS

Jan Egeland (Under-Secretary-General for Humanitarian Affairs with the UN) addressed the Security Council (June 28, 2006) and asked for a better protection of civilians in armed conflicts. He stressed that in many conflicts the basic principles of International Humanitarian Law are being violated, leaving the civilians to be victims of violence. Using resolution 1674 as a starting point, he requested better mandates for peacebuilding missions which would allow the Peacekeepers to actually protect civilians.

See also http://jurist.law.pitt.edu/paperchase/2006_06_29_indexarch.php (Last retrieved July 12, 2006), <http://www.un.org/News/Press/docs/2006/sc8763.doc.htm> (Last retrieved July 12, 2006).

(M. De Coninck)

29TH INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT

At the 29th International Conference of the Red Cross and Red Crescent which took place 20 – 22 June 2006, both the Palestine Red Crescent Society (PRCS) and the Israeli National Society, Magen David Adom (MDA), have been recognized by the ICRC and will be admitted into the International Federation of Red Cross and Red Crescent Societies. Another important outcome of said conference is the incorporation of the new emblem, the red crystal. National societies are free to choose which particular emblem they wish to use. All three –the cross, the crescent and the crystal- are now recognized.

See website ICRC <http://www.icrc.org/web/eng/siteeng0.nsf/html/geneva-news-220606?opendocument> (last retrieved July 13 2006), and also Sentinelle nr 72 July 7 2006 <http://www.sfdi.org/actualites/a2006/Sentinelle%2072.htm> (last retrieved July 4 2006).

(M. De Coninck)

MONTENEGRO JOINS UN AND OSCE

Montenegro, which became an independent state on June 3rd 2006, has joined both the UN and the OSCE organisations. It became the 56th member to the Permanent Council of the OSCE. For the UN the total of member states is now 192.

For more information see <http://www.osce.org/item/19622.html>, for the General Assembly approval <http://www.un.org/News/Press/docs/2006/ga10479.doc.htm>, for the Security Council recommendation <http://www.un.org/News/Press/docs/2006/sc8761.doc.htm>, <http://www.sfdi.org/actualites/a2006/Sentinelle%2072.htm> Sentinelle, nr 72 2/07/2006. All last retrieved on July 13 2006.

(M. De Coninck)

UN SECURITY COUNCIL VOWS TO END PRACTICE OF CHILD COMBATANTS

Radhika Coomaraswamy, Special Representative of Secretary-General Kofi Annan for children and armed conflict, reported on 24 July to the Security Council that over 250 000 children are combatants in armed conflicts. Many of them are abducted and young girls often suffer from sexual abuse. Situations in Liberia, Sierra Leone, Burundi and Congo have nonetheless improved. The report follows a year after Security Council resolution 1612 (<http://daccessdds.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement>, (last retrieved July 26 2006) which condemns the recruitment of child soldiers, requests the extra monitoring of seven countries (Burundi, Cote d'Ivoire, the Democratic Republic of Congo (DRC), Nepal, Somalia, Sri Lanka and Sudan) and establishes a commission which reports on the exploitation and abduction of children in conflict zones. The Security Council affirmed its will to act against the military leaders who resort to such practices. Targeted measures against repeated violations of children's rights are intended to combat impunity. The implementation of both the monitoring and reporting mechanism is needed to deal with children in armed conflict. Sustainable development efforts, carried out by national governments, UN actors and civil society, can produce results in the field, i.e. "reintegration of children into their communities", prevention of re-recruitment and help to sexually abused children. For more information on this article, see <http://www.un.org/News/Press/docs//2006/sc8784.doc.htm> (last retrieved July 26, 2006).

(M. Vanhullebusch and L. Nijs)

DISPUTE ABOUT THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW IN THE WAR ON TERROR

On 17 July, the US, in its first appearance before the recently established UN Human Rights Council stated that the war on terror, and more specifically certain elements, such as extraordinary rendition and military operations in Afghanistan and Iraq, are not subject to the supervision of human rights mechanisms as the International Covenant on Civil and Political Rights does not apply outside US territory. The Geneva Conventions do however apply to certain aspects of the war, such as detentions in US military custody, as recently confirmed by the US. For the US Statement, see <http://geneva.usmission.gov/0717Waxman.html> (last retrieved July 25, 2006). The UN Human Rights Committee published a report on 28 July strongly criticizing the US for its secret detention centres and advocating access of the International Committee of the Red Cross to the prisoners. For the full report, see <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.USA.CO.pdf> (last retrieved August 6, 2006).

(L. Nijs)

UN SECURITY COUNCIL CHANGES CONFIGURATION IN LIBERIA MISSION (UNMIL)

On recommendation of the UN Secretary-General K. Annan on the developments in Liberia, the UN Security Council adopted unanimously resolution 1694 (2006). The Council acknowledges that several tasks of the United Nations Mission in Liberia (UNMIL) are completed and that the new political context permits to change the mandate and the mission in Liberia, stressing the formation of a solid police unit. Despite positive evolutions in Liberia, the Security Council continues to consider the situation in Liberia as "a threat to international peace and security". Consequently the Security Council acted under Chapter VII of the UN Charter and decided "to increase the authorized size of UNMIL's civilian police component by 125, and to decrease the authorized size of UNMIL's military component by 125, from the current authorized levels".

(M. Vanhullebusch)

Retrieved on August 2, 2006 from <http://www.un.org/News/Press/docs/2006/sc8774.doc.htm>

UN SECURITY COUNCIL CONDEMNS NORTH-KOREA'S MISSILE LAUNCHES

On July 5, 2006 the Democratic People's Republic of Korea (DPRK) launched several ballistic missiles. The UN Security Council, acting "under its special responsibility for the maintenance of international peace and security" unanimously adopted resolution 1695 (2006) condemning North-Korea's test-firing. The Council demanded the suspension of North-Korea's ballistic missile activity which undermines "peace, stability and security in the region and beyond"

especially when it claims to have developed nuclear weapons as well as to “reinstate its moratorium on missile launches.”

The Council requires all Member States to prevent the procurement of missiles, materials and technology to and from North-Korea and “the transfer of any financial resources in relation to DPRK’s missile or WMD programmes”. North-Korea should refrain from any action aggravating the tension and resume the six-party talks without precondition in order to work politically and diplomatically on a resolution of non-proliferation through the “expeditious implementation of the September 2005 joint statement and return to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and International Atomic Energy Agency (IAEA) safeguards”.

Retrieved on August 2, 2006 from <http://www.un.org/News/Press/docs/2006/sc8778.doc.htm>

(M. Vanhullebusch)

UN SECRETARY-GENERAL WELCOMES US POLICY REVIEW ON MILITANTS

The US Government urged its defence officials to review their “directives, regulations, policies, practices and procedures” related to Al-Qaeda terror suspects and Taliban militants in US custody “in order to ensure that all such measures comply with the standards of common article 3 of the Geneva Conventions”. International humanitarian law and human rights law are essential to the success of counter-terrorism efforts and do not undermine them, according to K. Annan.

Retrieved on August 2, 2006 from

<http://www.un.org/News/Press/docs/2006/sgsm10565.doc.htm>

(M. Vanhullebusch)

UN INTEGRATED MISSION IN TIMOR-LESTE (UNMIT) CREATED

On August 25, 2006, the UN Security Council passed resolution 1704 creating an expanded UN Integrated Mission in Timor-Leste (UNMIT). Its mandate includes improving security, assisting the Timorese national police (PNTL), providing economic assistance, and supporting next year’s presidential and parliamentary elections. The mission’s civilian component will include up to 1,608 police personnel and up to 34 military liaison and staff officers initially. The mission is foreseen for initially 6 months with the intent to renew it for further periods thereafter.

On September 5, 2006, Police Advisor Antero Lopes has been designated Acting Police Commissioner for the UN peacekeeping operation in the country.

Retrieved on September 6, 2006 from

<http://www.sfdi.org/actualites/a2006/Sentinelle%2076.htm#timor1>

<http://www.un.org/apps/newsFr/storyF.asp?NewsID=12848&Cr=Timor&Cr1=Conseil#>

<http://www.un.org/apps/news/story.asp?NewsID=19713&Cr=Timor&Cr1=Leste#>

resolution 1704: [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1704\(2006\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1704(2006))

see also Newsletter April/May/June 2006 page 27 on the Situation in Timor-Leste

(M. Schwierz)

International(ised) Tribunals

GENERAL

AFRICAN HUMAN RIGHTS COURT WELCOMES FIRST JUDGES

On July 4th the judges for the [African Court on Human and People's Rights](#) (organ of the African Union) were sworn-in. They are the first judges of the court since it has been established in 1998. Not only organisations of the African Union itself and states are allowed to petition, also individuals and NGO's can file complaint.

See also http://jurist.law.pitt.edu/paperchase/2006_07_04_indexarch.php (last retrieved July 12 2006), <http://www.pict-pcti.org/courts/ACHPR.html> (Last retrieved July 12 2006) and Sentinelle nr 73 July 9 2006 <http://www.sfdi.org/actualites/a2006/Sentinelle%2073.htm>.

(Marjolein De Coninck)

EUROPEAN COURT OF HUMAN RIGHTS RULED AGAINST "DISAPPEARANCES" IN CHECHNYA (BAZORKINA V. RUSSIA)

During the second Chechen conflict, in February 2000, Khadzhi-Murat Yandiev was detained by Russian federal forces near Grozny and ordered by them to "finish him off". His mother Fatima Bazorkina sued the Russian Federation before the European Court of Human Rights (ECHR) following the "disappearance" of her son.

The ECHR ruled that "the Russian Government should be held liable for the fact that Khadzhi-Murat Yandiev must be presumed dead following unacknowledged detention", that the Russian Federation violated Articles 2, 3, 5 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, respectively the right to life, the prohibition of inhuman treatment, the right to liberty and security and the right to an effective remedy and that the manner in which the complaints of Fatima Bazorkina had been dealt with by the Russian authorities "must be considered to constitute inhuman treatment" as she could not find what happened with her son, except from the television news.

(M. Vanhullebusch)

Retrieved on August 2, 2006 from

<http://www.amnestyusa.org/news/document.do?id=ENGEUR460342006>

DEVELOPMENTS CONCERNING THE INTERNATIONAL CRIMINAL COURT

UGANDA REQUESTS ICC TO ANNUL INDICTMENTS OF LRA REBEL LEADERS

In an effort to stimulate the peace talks with the Lord's Resistance Army, Uganda has requested the ICC to cancel the indictments against LRA rebel leader Kony and four other lieutenants. The leaders of the LRA, who have refused an amnesty offer from Ugandan president Museveni, are being charged by the ICC for mass killings and enslavement of large numbers of children. The ICC has reacted by affirming Uganda's duty towards the Court regarding the turnover of war criminals facing trial, as formulated in article 59 of the ICC's Rome Statute. *For more information, see*

http://jurist.law.pitt.edu/paperchase/2006_07_06_indexarch.php#115223109241948654, (last retrieved 17 July 2006),

<http://jurist.law.pitt.edu/paperchase/2006/07/uganda-official-asks-icc-to-quash-lra.php> (last retrieved July 19 2006) and

http://www.mg.co.za/articlepage.aspx?area=/breaking_news/breaking_news_africa/&articleid=277222 (last retrieved July 19 2006).

(L. Nijs)

NEPAL LIKELY TO ACCEDE TO ICC STATUTE

The Nepalese parliament instructed its government on 25 July to accede to the ICC's Rome Statute. See <http://jurist.law.pitt.edu/paperchase/2006/07/nepal-parliament-directs-government-to.php> (last retrieved 27 July 2006).

(L. Nijs)

DEVELOPMENTS AT THE ICTY¹

JUNE 30, 2006

June 30, 2006 - Naser Oric, a commander of Bosnian Muslim Forces, was found guilty by the ICTY and was given a two-year prison sentence. The charges addressed the lack of interference by Oric to prevent murder, amongst other violations. The court concluded that there was only a limited criminal responsibility on the part of Naser Oric, resulting in the light punishment. For more see http://jurist.law.pitt.edu/paperchase/2006_06_30_indexarch.php (last retrieved July 12 2006), <http://www.un.org/icty/latest-e/index.htm> of June 30th 2006 (last retrieved July 14 2006), <http://www.sfdi.org/actualites/a2006/Sentinelle%2073.htm> Sentinelle nr 73 de 09-07-2006 (last retrieved July 13 2006). Prosecutor Carla del Ponte has appealed this sentence. The original demand of the prosecution was a prison sentence of 18 years. See <http://news.bbc.co.uk/2/hi/europe/5229926.stm> (last retrieved August 10 2006).

(M. De Coninck and L. Nijs)

JULY 10, 2006

July 10, 2006 - The trial against six Serbian officials started at the ICTY in The Hague. The accused are Milan Milutinovic, Nikola Šainovic, Dragoljub Ojdanic, Nebojša Pavkovic, Vladimir Lazarevic and Sreten Lukic. The charges brought against these men relate to the events that took place in Kosovo in 1999, and include murder, deportation and persecutions. For more see <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5163844.stm> (last retrieved July 10 2006) and <http://www.un.org/icty/latest-e/index.htm> on July 6 2006 (last retrieved July 14 2006)

(M. De Coninck)

JULY 14, 2006

July 14, 2006 – The ICTY starts with the trial of seven Serb officials accused of crimes, which include genocide, committed in Srebrenica in 1995. The defendants are Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin and Vinko Pandurevic, Radivoje Miletic and Milan Gvero. See also <http://www.un.org/icty/latest-e/index.htm> of July 11 (last retrieved July 14 2006)

(M. De Coninck)

SREBRENICA TRIAL RESUMED

On August 21, 2006 the Srebrenica trial resumed and 7 are prosecuted for genocide and war crimes. The UN chief prosecutor Carla del Ponte "said it was inexcusable that Serbia had not arrested Gen Mladic, accused of masterminding the massacre". Still these proceedings are being seen as significant steps towards the judgment of Europe's worst atrocities since World War II.

(M. Vanhullebusch)

VIDEO MATERIAL SHOWS ALLEGED WAR CRIMES COMMITTED AGAINST SERBS

Two amateur videos, showing alleged war crimes perpetrated by Bosnian and Croat soldiers, were broadcast on August 1st and August 8th on Serb television. One video documents the execution of a surrendered Serb civilian. The other tape contains images of Bosnian military leader Atif Dudakovic apparently ordering the burning down of a Serb village. Both videos were filmed during Operation Storm, a 1995 military incursion that involved the recapturing of Serb territory in Croatia by Croatian and Bosnian forces. Serbia has now demanded the

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

prosecution of Dudakovic. For more information on this article see <http://jurist.law.pitt.edu/paperchase/2006/08/serbia-calls-for-prosecution-of.php> (last retrieved August 10, 2006) and <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5258610.stm> (last retrieved August 10, 2006).

Retrieved on August 23, 2006 from <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5269758.stm>
(L. Nijs)

International Developments

THE CONFLICT BETWEEN HEZBOLLAH, LEBANON AND ISRAEL

On the 12 July 2006 Hezbollah fighters, based in southern Lebanon, have launched Katyusha rockets at Israeli towns and cities. Later that day Lebanese guerrillas captured two Israeli soldiers and killed several others in a cross-border raid. According to Israeli Prime Minister Ehud Olmert the capture of the soldiers had to be considered as "an act of war" and Israel announced an air and sea blockade of Lebanon.

According to article 51 of the U.N. Charter a State has the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. According to UN Secretary-General Kofi Anan, the kidnapping and the large number of rocket attacks against military and civilian targets in Israel, allowed Israel to act out of self defence. Because Hezbollah is part of the Lebanese Government, it could be argued that acts of Hezbollah can be seen as acts of the Lebanese Government. Moreover the Lebanese army did not seem to have taken measures to prevent Hezbollah attacks against Israel. States in an armed conflict have to comply with the principle of distinction. Relevant are: the distinction between civilians and combatants, the distinction between civilian objects and military objectives, the prohibition of indiscriminate attacks, the principle of proportionality, the obligation to take precautions in an attack and the obligation to take precautions to the effects of attacks. This is codified in Article 2(3) of the 1907 Hague Convention (IX), Article 48, 51 (2), 51(4), 51(5) (b), 52(2), 57 and 58 (c) of Additional Protocol I of the Geneva Conventions, Article 3 (2), 3(3) of Protocol II to the Convention on Certain Conventional Weapons (CCW), Article 3(7), 3(8) Amended Protocol II to the CCW, Article 2(1) of Protocol III to the CCW and the preamble of the Ottawa Convention (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction). According to Article 28 of the IVth 1949 Geneva Convention the presence of a protected person may not be used to render certain points or areas immune from military operations. This is relevant in the case that military targets are situated near the civilian population and civilian objects. Violations of these treaties rules can be war crimes.

In response of the capture of the two Israeli soldiers, Israeli planes started to bomb Hezbollah positions in southern Lebanon and for the first time since the military withdrawal of 2000 Israeli troops have crossed into Lebanon. The headquarters of Hezbollah, Beirut's international airport, bridges, roads and fuel depots were bombed by Israeli planes, while Hezbollah rockets continued to target Israeli villages and cities. UN Secretary-General Kofi Annan underlined the need to let in aid into Lebanon and called for a ceasefire. Jan Egeland, the UN's emergency relief co-ordinator, visited the southern districts of Beirut and called the large scale of the destruction and its indiscriminate nature a violation of humanitarian law.

Despite of the fact that the UN repeatedly asked Israel not to fire around its post, 4 UN observers, being at their post, have been killed by an Israeli strike on the 26 July 2006 in the southern Lebanese town of Khiam. A few days later 2 UN monitors were wounded by another Israeli strike.

On the 30 of July 2006, an Israeli air strike killed many civilians, including children, in the southern Lebanese village of Qana. According to Israel, Hezbollah had a base to fire rockets across the border in Qana. The Israeli Defence Forces (IDF) stated that they had warned the civilian population to stay away from the areas where Hezbollah launched rockets at Israel. At an emergency meeting of the UN Security Council Annan has said "both sides in this conflict bear a heavy responsibility, and there is strong *prima facie* evidence that both have committed grave breaches of international humanitarian law." Human Rights Watch has asked a UN commission to investigate the conflict. Kenneth Roth, executive director of Human Rights Watch: "Such consistent failure to distinguish combatants and civilians is a war crime." Roth also called the rocket attacks of Hezbollah on civilians in Israel war crimes: "lob-

bing rockets blindly into civilian areas is without doubt a war crime. Nothing can justify this assault on the most fundamental standards for sparing civilians the hazards of war. But war crimes by one side in a conflict never justify war crimes by another." Human Rights Watch urged Hezbollah to stop firing rockets into civilian areas in Israel.

Amnesty International called the UN to investigate whether Israel and Hezbollah have broken humanitarian law on the 23 of August 2006. According to this organisation Israel committed war crimes by deliberately targeting civilian infrastructure in Lebanon. In a report Amnesty International said that there was a massive destruction by Israeli forces of whole civilian neighbourhoods and villages, together with attacks on bridges in areas of no apparent strategic importance. The report also said that the by Israel attacked supermarkets, water pumping stations and water treatment plants, might have broken a prohibition in humanitarian law against targeting objects crucial to civilian survival.

After a lot of discussions between the Ministers of the EU, Arab States, the US and Russia, the UN Security Council, on the 11 of August, unanimously adopted Resolution 1701, calling for a "full cessation of hostilities", a withdrawal by Israeli forces back into Israel, the insertion of a 15,000-strong Lebanese army contingent down to the border, the expansion of the 2,000-strong UN peacekeeping force in south Lebanon (Unifil) into a more powerful international force of up to 15,000 troops and the removal from southern Lebanon of Hezbollah as an armed force. The ceasefire came into force at 0800 local time on the 14 of August. The Lebanese Higher Relief Council (HRC) reported on the 16 of August that 1,152 Lebanese have been killed and about 3,700 have been wounded. According to the HRC there are still over 700.000 displaced persons in Lebanon. The existing Unifil contingent will be replaced by Unifil-2, a force of 15.000 soldiers which will be led by France. In February 2007 Italy will take over the leadership of the UN force in southern Lebanon. European nations will provide over half the troops for the enhanced 15,000-strong United Nations force in Lebanon.

Retrieved on August 28, 2006 from

<http://www0.un.org/apps/press/search.asp>

http://news.bbc.co.uk/2/hi/middle_east/4794673.stm

http://news.bbc.co.uk/2/hi/middle_east/4776627.stm

<http://www.guardian.co.uk/israel/Story/0,,1818696,00.html>

http://news.bbc.co.uk/2/hi/middle_east/5232434.stm

<http://www.hrw.org/english/docs/2006/08/05/lebanon13921.htm>

<http://jurist.law.pitt.edu/paperchase/2006/07/grave-breaches-of-international.php>

<http://www.cfr.org/publication/11252/>

http://news.bbc.co.uk/2/hi/middle_east/5276626.stm

http://news.bbc.co.uk/2/hi/middle_east/5291796.stm

http://news.bbc.co.uk/2/hi/middle_east/5277220.stm

http://news.bbc.co.uk/2/hi/middle_east/5268418.stm

http://www.irinnews.org/report.asp?ReportID=55210&SelectRegion=Middle_East&SelectCountry=LEBANON

(C.Jacobsen)

Further resources on this topic:

Human Rights Watch

<http://hrw.org/english/docs/2006/07/17/lebanon13748.htm>

The Article gives answers to specific legal questions concerning the conflict in Lebanon/Israel. Its scope is limited on questions of the *jus in bello* and does not cover questions of the *jus ad bellum*.

Nouveaux Droits de l'Homme, Lebanon & ALEF (Association Libanaise pour l'Education et la Formation) - International Humanitarian Law violations in the current conflict opposing Hezbollah (Lebanon) to the State of Israel - Preliminary report - August 1st, 2006

<http://www.lebanonundersiege.gov.lb/english/F/Info/Page.asp?PageID=154>

A legal coverage of the conflict from a Lebanese perspective.

The American Society of International Law

Jonathan Somer, *Acts of Non-State Armed Groups and the Law Governing Armed Conflict*
<http://www.asil.org/insights/2006/08/insights060824.html>

The article focuses on the question of whether acts committed by Hezbollah can be attributed to the state of Lebanon. It then explains the effect a responsibility of the state would have on the *jus ad bellum* and the *jus in bello*.

(M. Schwierz)

National Developments

CONVICTION OF ARGENTINEAN POLICE OFFICIAL FOR CRIMES DURING MILITARY JUNTA

Former Argentinean police official Julio Hector Simón was sentenced on August 4 by a federal court in Buenos Aires to 25 years in prison. He was convicted for the disappearance of a young Argentinean/Chilean couple in 1978. The abduction of their eight months old daughter served as an aggravating circumstance in the decision on the punishment. The conviction of Argentinean officials for crimes committed during the "Dirty War" (1976-1983), which claimed between 10,000 and 30,000 lives, was made possible in 2005 when the Argentine Supreme Court overruled the amnesty laws of the 1980s, which the civilian government had passed to appease military unrest after the overturning of power. *For more information, see <http://www.hrw.org/english/docs/2006/08/04/argent13919.htm> (last retrieved 9 August 2006) and <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/5247472.stm> (last retrieved 9 August 2006).* A case is still running against Former police investigator Miguel Osvaldo Etchecolatz who has been charged with kidnapping, torture and disappearance. See the 2006/2 issue of this newsletter.

(L. Nijs)

NATIONAL DEVELOPMENTS IN TRIALS CONCERNING EX-YUGOSLAVIA

Samir Bejtíc, a former Bosnian Army soldier, has been sentenced to 14 ½ years in prison by Sarajevo's Canton Court. He was convicted for the killing of eight Bosnian Serbs in Kazani. Fourteen other members of Bejtíc's section, the Tenth Mountain Brigade, have been convicted for crimes committed during the conflict in ex-Yugoslavia. *For more see: <http://jurist.law.pitt.edu/paperchase/2006/07/sarajevo-court-sentences-bosnian.php> (last retrieved July 19 2006).*

Momcilo Mandić, the former justice minister of the Karadžić government, has been charged with war crimes by the War Crimes Chamber of the Court of Bosnia and Herzegovina. These accusations relate to an attack on a Sarajevo police training center and the illegal detainment of non-Serbs in Bosnian correctional facilities under Mandić's control. Mandić's financial support for the hiding of his former superior, Karadžić, has already led to charges of embezzlement and fraud. *For more see: <http://jurist.law.pitt.edu/paperchase/2006/07/bosnia-court-indicts-ex-justice.php> (last retrieved July 19 2006) and http://reuters.myway.com/article/20060725/2006-07-25T095017Z_01_L25449973_RTRIDST_0_INTERNATIONAL-WARCRIMES-BOSNIA-DC.html (last retrieved July 27 2006).*

He has pleaded not guilty. See <http://jurist.law.pitt.edu/paperchase/2006/07/ex-justice-minister-pleads-not-guilty.php> (last retrieved 27 July 2006).

(L. Nijs)

CAMBODIAN EXTRAORDINARY CHAMBERS PREPARING FOR KHMER ROUGE TRIALS

After many years of debate between the UN and the Cambodian Government, the Extraordinary Chambers are finally functioning. The appointed judges, both Cambodian and international, are attending workshops to coordinate the events of the first year. While the investigations begin right away, the actual trials will start in 2007.

These extraordinary chambers are intended for the prosecution of crimes committed under the Khmer Rouge regime. For more on this article see <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/5143968.stm> (last retrieved July 4 2006,

<http://www.un.org/apps/news/story.asp?NewsID=19082&Cr=cambodia&Cr1=> (last retrieved

July 18 2006) and <http://jurist.law.pitt.edu/paperchase/2006/07/khmer-rouge-genocide-tribunal.php> (last retrieved on July 19 2006). Other source of information <http://www.cambodia.gov.kh/krt/english/> - Web site of the Task Force for Cooperation with Foreign Legal Experts for the Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders.(last retrieved July 6 2006).

The death of one of the accused, Ta Mok, an infamous Khmer Rouge military leader, has caused doubt within the Cambodian population about the outcome of the tribunal's trials. He was one of only two former Khmer Rouge leaders already imprisoned and awaiting trial. See <http://jurist.law.pitt.edu/paperchase/2006/07/death-of-khmer-rouge-leader-may-call.php> (last retrieved 24 July 2006).

On the 17 of July 2006 the prosecutors delivered the first documentary evidence; 383,149 pages, saved on 524 reels of microfilm. Critics, such as human rights organization Licadho, say the 17 Cambodian judges and prosecutors are not independent, because they are politically manipulated. The Tribunal has a budget of \$56.3 million, given by the UN, for a three-year process. Because of this time limit and the lack of space and funding, it is likely that only a few defendants will be convicted by the Tribunal.

For more see: http://www.justiceinitiative.org/db/resource2?res_id=103324 (last retrieved on August 28, 2006).

(M. De Coninck, C. Jacobsen and L. Nijs)

CHAD-SUDAN JOINT MILITARY COMMISSION

Since Chad cut diplomatic relations with Sudan, accusing it of supporting Chadian rebel forces based in Sudan, both countries agreed on July 26, 2006 "to stop hosting each other's rebel forces in their territory". From then onwards the neighbouring states decided to surmount their difference and "set up a joint military commission to monitor their shared border that stretches some 1,000 km north-south through the Sahara desert". This rapprochement precedes a presidential meeting in August 2006 between both countries in order to restore diplomatic relations. Finally after the agreement of August 8, 2006 between the heads of state of both countries in order to "put an end to their differences", the borders and embassies were reopened.

(M. Vanhullebusch)

Retrieved on August 2, 2006 from

http://www.irinnews.org/report.asp?ReportID=54831&SelectRegion=West_Africa&SelectCountry=CHAD-SUDAN

Retrieved on August 23, 2006 from

http://www.irinnews.org/report.asp?ReportID=55056&SelectRegion=West_Africa&SelectCountry=CHAD-SUDAN

HISSENE HABRE WILL BE TRIED IN SENEGAL

Hissene Habre, the former president of Chad, is to be tried in Senegal, based upon a decision by the African Union. The AU prefers Habre to face justice in Africa and not Belgium. The latter had issued an arrest warrant for the former president. *For more information see also previous news letters.*

<http://allafrica.com/stories/200607010001.html> (last retrieved July 14 2006),

http://jurist.law.pitt.edu/paperchase/2006_07_03_indexarch.php (last retrieved July 13 2006).

(M. De Coninck)

PINOCHET'S IMMUNITY ABOLISHED BY CHILEAN COURT IN "CARAVAN OF DEATH" CASE

The Supreme Court of Chile has decided to uphold the decision of the Appellate Court to abolish the immunity of former dictator Pinochet. This enables the prosecution of the Chilean ex-ruler for his role in the death of two of Allende's bodyguards following the military coup in 1973. These executions were perpetrated by the "Caravan of Death", a military tour which terrorized Chile for several days after the coup. These crimes have also led to the arrest of 13 military officers earlier this year. For more see <http://jurist.law.pitt.edu/paperchase/2006/>

07/chile-high-court-allows-pinochet.php (last retrieved July 19 2006), <http://news.bbc.co.uk/2/hi/americas/850932.stm> (last retrieved July 19 2006) and http://reuters.myway.com/article/20060717/2006-07-17T185722Z_01_N17289955_RTRIDST_0_INTERNATIONAL-CHILE-PINOCHET-DC.html (last retrieved July 19 2006).

(L. Nijs)

PARAMILITARIES ARRESTED IN COLOMBIA

Ten senior leaders of the Self-Defence Forces of Colombia (AUC) have been arrested on the 16 of August 2006 for breaching a peace accord between the Colombian government and the AUC. In the past the AUC has been accused of drug trafficking and serious human rights violations. Since 2002 this right-wing paramilitary group is engaged in a peace process. On the 14 of August President Alvaro Uribe wanted the AUC leaders to report their role in atrocities committed during the four-year civil war. Uribe wanted them to surrender in order to go on with the peace process. He threatened the leaders would lose all the benefits they were offered on the grounds of this accord. The most important benefit was the suspension of extradition orders to the US. The leaders refused to surrender themselves, because the promises of leniency were not enough.

Retrieved on August 17, 2006 from
<http://news.bbc.co.uk/2/hi/americas/1738963.stm>

(C. Jacobsen)

COTE D'IVOIRE: FROM DISARMAMENT AND THE IDENTIFICATION PROGRAMME TOWARDS UN DECISION ON ELECTIONS

L. Gbagbo won the disputed presidential elections in 2000 and the Ivorian crisis broke out since an army mutiny in 2002. Mutinous troops reconstituted themselves as rebel forces, i.e. the New Forces, in the North of the country. The Ivorian government itself is supported by militias of the South. The presidential term should have ended in October 2005 "but under resolution 1633 the UN called for him to stay on for a year provided a new prime minister was appointed with a stronger mandate to oversee the transition process", whereas new elections were to have been held in October 2005 "but delayed by a year under a UN peace plan providing for disarmament of both rebels and pro-Gbagbo militia". Both rebel groups refused to disarm. A buffer zone between the North and the South is monitored by 10.000 UN and French peacekeepers. 750.000 internally displaced persons have been reported during the 4 year during conflict and one fifth among the 17 million Ivorians depends on humanitarian assistance. Moreover problems related to the identification programme of "an estimated 3 million disenfranchised residents of Cote d'Ivoire" are impeding the peace process.

After the AU Summit held at the beginning of July 2006, UN Secretary-General K. Annan convened a mini-summit on the Ivorian crisis and met with Ivorian president L. Gbagbo, rebel New Forces leader G. Soro and political opposition leader A. Ouattara. All parties agreed to disband and dismantle the militia by July 31, 2006 and "here the president will make the relevant forces available to the prime minister so that he can carry out his responsibility for the dismantlement of the militia". Fighters are to be "withdrawn from the frontline". The parties further decided to deploy 50 mobile courts nationwide by July 15, 2006 "to start the identification programme". By mid-September the UN will decide whether enough progress has been made so elections can (not) be held in October 2006. The funding of the polls and the Ivorian transition by a donor conference will depend on the sufficient progress made and on the advancing of a peace accord.

(M. Vanhullebusch)

Retrieved on August 2, 2006 from
http://www.irinnews.org/report.asp?ReportID=54433&SelectRegion=West_Africa&SelectCountry=COTE_D_IVOIRE

SPANISH COURT EMITS ARREST WARRANTS FOR GUATEMALAN OFFICIALS ACCUSED OF WAR CRIMES

Following the 2005 ruling of the Spanish Constitutional Court, which held that Spanish courts have universal jurisdiction for war crimes committed during the civil war in Guatemala (1960-1996), eight Guatemalan ex-leaders have been indicted for genocide, terrorism, torture and illegal detention. The case was filed in 1999 by the Guatemalan Nobel peace prize laureate

Rigoberta Menchú (see also http://nobelprize.org/nobel_prizes/peace/laureates/1992/tumbio.html) and deals with the massacres of mostly Mayan Indian civilians, mainly victims of the government's "scorched earth" policy, during the country's bloody internal war. The trial also concerns the burning down in 1980 of the Spanish embassy, which had been occupied by indigenous protesters, and the death of four Spanish priests. This is not the first case before the Spanish *Audiencia Nacional* based on universal jurisdiction; the National Court has also dealt with cases concerning genocide and other crimes committed in Argentina, Chile and Tibet.

The Spanish judge Santiago Pedraz went to Guatemala in June 2006 to conduct the necessary investigations to further the case before the Spanish courts. However, the lack of cooperation from the accused has now led to eight orders for arrest. The Guatemalan authorities have already indicated that they may not cooperate with judge Pedraz. One of the indicted, Ríos Montt, infamous dictator during the early 1980's and unsuccessful presidential candidate in 2003, denies responsibility for the atrocities of the civil war. His lawyers oppose his extradition on the ground that amnesty has been granted to former leaders for all acts committed during the Guatemalan conflict. Over 200,000 people died during the civil war in this ethnically divided country which, ten years after the signing of the Peace Accords, still has not found social or political stability. For more information on this article see http://jurist.law.pitt.edu/paperchase/2006_06_26_indexarch.php (last retrieved July 7 2006), <http://jurist.law.pitt.edu/paperchase/2006/07/ex-guatemala-dictator-says-spanish.php> (last retrieved July 19 2006) and <http://www.prensalibre.com/pl/2006/julio/08/146335.html> (last retrieved July 25 2006). For general information on the Guatemalan civil war and the Peace Process, see <http://www.globalsecurity.org/military/world/war/guatemala.htm> (last retrieved 25 July 2006).

(L. Nijs)

DETENTION AND INTERROGATION BY US FORCES IN IRAQ CRITICIZED BY HUMAN RIGHTS WATCH

Human Rights Watch has issued a report stating that US military commanders in Iraq have not been acting in compliance with international standards regarding interrogation practices. Torture and abuse were regularly accepted and interrogators have been wrongly informed that the Geneva Conventions do not apply to the detainees. Moreover, some inmates at a US military camp near Baghdad were never registered with the Red Cross. Soldiers were discouraged to make complaints about the abusive practices. For the full report, see <http://hrw.org/reports/2006/us0706/> (last retrieved 6 August 2006). Following several investigations implying US soldiers in serious crimes (see the reports on the Mahmoudiya, Haditha and other cases), the Iraqi government is planning to ask the Security Council to lift the Allied Forces's immunity for trials before Iraqi courts.

See <http://jurist.law.pitt.edu/paperchase/2006/07/iraq-will-ask-un-security-council-to.php> (last retrieved 19 July 2006).

(L. Nijs)

ISRAEL TO BE ACCUSED OF WAR CRIMES IN BELGIAN CLAIM

Ali Abdul-Sater and his wife Farkad al Husseini, both of Belgian-Lebanese origin, are preparing a claim against Israeli Prime Minister Ehud Olmert, his Minister of Defence Amir Peretz and the military army chief of staff Dan Halutz. Vacationing in Beirut with their three children, their apartment was destroyed by Israeli air strikes and they were forced to flee.

Heavy tension arose a couple of years ago when Ariel Sharon was charged in Belgium for genocide, crimes against humanity and war crimes for the massacre in Sabra and Shatila in 1982 on the basis of the Belgian law which granted universal jurisdiction to Belgian courts for these crimes (it has since then been replaced by an amended version that makes a link with Belgium mandatory). The claim against Sharon was ruled inadmissible by the "Hof van Cassatie" (the highest appeals court in Belgium) because of Sharon's immunity as a head of state in function. The current case against Israeli officials would most probably also be ruled inadmissible for immunity reasons. Appeal against this decision is impossible. Referral to the ICC is also out of the question, as neither Israel nor Lebanon have accepted this Tribunal's jurisdiction.

For more information on this article, see

<http://www.standaard.be/Krant/Tekst/Artikel.aspx?artikelId=GR6VJDGN&date=20060728>

(last retrieved July 28, 2006) and <http://www.standaard.be/Krant/Tekst/Artikel.aspx?artikelId=G38VJMCS&date=20060728#> (last retrieved July 28, 2006). For more information from English sources, see <http://jurist.law.pitt.edu/paperchase/2006/07/belgian-couple-may-sue-israel-for-war.php> (last retrieved July 31, 2006) and <http://www.ejpress.org/article/9897#> (last retrieved July 31, 2006).

(L. Nijs)

ESTABLISHMENT OF LIBERIAN TRUTH AND RECONCILIATION COMMISSION

Based upon the 2003 Liberian peace accord, a Truth and Reconciliation Commission has been established in Liberia to investigate human rights abuses between 1979 and 2003, the duration of the civil war. The commission began its work on June 22, 2006. See also http://jurist.law.pitt.edu/paperchase/2006_06_23_indexarch.php#115108307002361834 (last retrieved July 4 2006)

(M. De Coninck)

NEW PEACE DEAL BETWEEN THE MALIAN GOVERNMENT AND TUAREG REBELS

Since the 1990s tension prevailed between the central government of Mali and the nomadic Tuaregs, constituting 6% of the 14 million Malian population and living in the remote mountainous and desert area near the Algerian border. The latter felt economically and politically neglected by their government. This fuelled secessionist feelings and they demanded decentralisation and self-government.

In May 2006 threats of new trouble from the Tuareg rebels, attacking government barracks in the Kidal region, pushed the government of President Amadou Toumani Toure to sign a new agreement with them in Algiers. A special coordination council would survey the investment programme provided for the Kidal region, according to this deal. Critics warn that caving in to Tuareg demands "will encourage every region of Mali to organise their own rebellion". The president however peacefully managed this crisis and refused to resort to retaliatory measures.

(M. Vanhullebusch)

Retrieved on August 2, 2006 from

http://www.irinnews.org/report.asp?ReportID=54417&SelectRegion=West_Africa&SelectCountry=MALI

SREBRENICA SURVIVORS SUE DUTCH STATE AND UN

7390 survivors of the Srebrenica massacre are suing the Dutch state and the UN in a civil procedure before the district court of The Hague. The victims are hoping for an official verdict on the responsibility of the Dutch army and the UN for the atrocities committed in Srebrenica. They demand reparations for the losses they endured due to the failure of the Dutch blue helmet forces to protect the Bosnian Muslims and stop the killings. For more see: <http://www.parool.nl/nieuws/2006/JUL/03/bin2.html>, (last retrieved July 18 2006), 2006) <http://service.spiegel.de/cache/international/spiegel/0,1518,425024,00.html> (last retrieved July 18 2006) and http://www.standaard.be/Artikel/Detail.aspx?artikelId=DMF02072006_037 (last retrieved July 18 2006)

(L. Nijs)

BULLYING IN THE RUSSIAN ARMY

In the beginning of August 2006 the trial started against Sergeant Sivyakov. He is accused of exceeding his authority. On New Year's Eve 2005 at the Chelyabinsk Tank Academy in the Ural Mountains a Russian army conscript, Andrei Sychyov, was roused from bed at 3 a.m and he was forced to squat for several hours. Sergeant Sivyakov stomped his ankle twice after Sychyov complained of severe pain. Sychyov was brought to a civilian hospital on the 6 of January 2006. The doctors diagnosed thrombophlebitis, a swelling caused by a blood clot. Because of the fact that the doctors found that gangrene had spread through his lower extremities, they had to amputate his legs and genitals.

Only 10% of the men between the ages of 18 and 27 serve in the 1.2 million-member Russian military. There is a widespread fear about the dangers of the military's own method of discipline: dedovshchina. The dedovshchina is a system where rank and discipline are the keywords. Older draftees have unquestioned authority over newer ones. There are four levels in this system and every conscript has to pass them. At New Year's Eve Sergeant Sivyakov, who had achieved the next level in the dedovshchina ranks the same night, had been in the army for a year. Private Sychyov had served for six months at the time. Sergeant Sivyakov, probably drunk, decided to punish Sychyov because he was upset by the way the conscript cleaned up the barracks. According to Prosecutor General Yuri Chaika already 17 draftees have died from bullying in 2006 and more than 3,500 have been subject to bullying. The Defence Ministry acknowledged 7 deaths by dedovshchina. 276 servicemen committed suicide in the same period.

Retrieved on August 13, 2006 from

<http://www.nytimes.com/2006/08/13/world/europe/13hazing.html?ex=1313121600&en=4cfa217a034059e6&ei=5090&partner=rssuserland&emc=rss>
<http://english.pravda.ru/world/83747-Russia-0>

(C. Jacobsen)

RWANDAN IMMIGRANT ACCUSED BY DUTCH COURT OF WAR CRIMES AND TORTURE

The Dutch national prosecutor's office has stated that Joseph M., a Rwandan immigrant, has been charged with war crimes and torture. He allegedly ordered the shooting of a number of Tutsis that had been dragged out of an ambulance. Persons residing in the Netherlands who committed war crimes on another territory can be tried in the Netherlands according to Dutch law. Two Dutchmen have already been convicted; for arms trade with Liberia and the supplying of the Saddam Hussein regime with chemicals that are used to produce chemical weapons.

For more information on this article, see <http://jurist.law.pitt.edu/paperchase/2006/08/dutch-prosecutors-charge-rwanda.php>

(last retrieved August 11, 2006) and

http://hosted.ap.org/dynamic/stories/N/NETHERLANDS_RWANDA_WAR_CRIMES?SITE=1010WINS&SECTION=HOME&TEMPLATE=DEFAULT

(last retrieved August 11, 2006).

(L. Nijs)

SERBIA PUSHED TO ASK FOR EXTRADITION OF SUSPECTED WORLD WAR II CRIMINALS

A director of the Simon Wiesenthal Center has requested Serbia to seek the extradition of Ivo Rojnica and Milivoj Asner, two Croatian-born men who allegedly committed crimes against Jews, Serbs and Gypsies in the "Independent State of Croatia", set up by the Nazi's after the invasion of Yugoslavia in 1941. Serbia could prosecute these alleged offenders because of the Serb ethnicity of some of the victims. Asner is residing in Austria while Rojnica has found refuge in Argentina. Both are being pursued in connection with "Operation: Last chance" (<http://www.operationlastchance.org/>) which seeks to bring to trial old Nazi leaders before their death. For more information on this article, see <http://apnews.myway.com/article/20060810/D8JDBLU00.html> (last retrieved August 11, 2006) and <http://jurist.law.pitt.edu/paperchase/2006/08/serbia-urged-to-seek-extradition-of.php> (last retrieved August 11, 2006).

(L. Nijs)

BRITISH INQUIRY INTO LEGALITY OF IRAQ WAR

In a July 26 judgment the UK Court of Appeals ruled that the refusal of the British government to hold an independent inquiry into the reasons for the invasion of Iraq could be legally challenged. An organization of family members of UK soldiers who died in Iraq, Military Families against War (<http://www.mfaw.org.uk/>), had asked for an inquiry, as the UK Human Rights act affirms the right to an investigation of casualties in combat. After the administration's negative response, the families went to the High Court to claim their rights under article 2 of the European Convention of Human Rights, which states the entitlement to a thorough investigation in cases of decease. This Court did however not grant them the permission to legally fight the government's rejection. The Court of Appeal has now overruled this decision.

15. "It is at least arguable that the question whether the invasion was lawful - or reasonably thought to have been lawful - as a matter of international law is worthy of investigation."

The families claim that if the invasion is found to be unlawful, the British government has breached the right to life. For the full text of the Court of Appeals judgment, see <http://www.baillii.org/ew/cases/EWCA/Civ/2006/1078.html> (last retrieved July 27 2006).

For more information on this article, see <http://jurist.law.pitt.edu/paperchase/2006/07/uk-appeals-court-allows-bid-for.php>

(last retrieved July 27 2006), <http://www.guardian.co.uk/Iraq/Story/0,,1831094,00.html> (last retrieved July 27 2006) and http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/5216214.stm (last retrieved July 27 2006).

In May 2005, Military Families against War and other organisations also filed a lawsuit against Blair, accusing him of war crimes, before the International Criminal Court. See <http://www.guardian.co.uk/Iraq/Story/0,2763,1477620,00.html> (last retrieved July 27 2006).

(L. Nijs)

UK CRITICIZED FOR LETTING US PLANES TRANSPORTING WEAPONS FOR ISRAEL REFUEL IN BRITISH AIRPORTS

Jim Sheridan, a Labour Party MP, has resigned from his position as a Parliamentary Private secretary of the Defense Team on August 9. He is opposed to Blair's Middle East policy and is especially critical of the UK's decision to permit US planes, en route to supply arms to Israel, to refuel in UK airports.

See http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/scotland/4777677.stm (last retrieved August 11, 2006).

The UK is also being challenged legally by anti-war protesters because the aid to the shipment of weapons used for attacks on Lebanon would affect British complicity in war crimes and allegedly constitutes a violation of the European Convention on Human Rights, the Geneva Conventions and the International Criminal Court Act of 2001.

For more information, see

http://iclivpool.icnetwork.co.uk/0100news/0300nationalnews/tm_objectid=17506000&method=full&siteid=50061&headline=legal-action-plan-over-arms-flights-name_page.html (last retrieved August, 11 2006) and

http://news.bbc.co.uk/2/hi/uk_news/scotland/glasgow_and_west/5236946.stm (last retrieved August 11, 2006).

(L. Nijs)

UK COURT OF APPEAL: NO DETENTION OF TERROR SUSPECTS WITHOUT CHARGE

The UK Prevention of Terrorism Act 2005 allows the government to authorize control orders that impose house arrest and electronic surveillance on terror suspects when there is not enough evidence to prosecute them. Moreover they are forbidden to use mobile phones and the Internet. A UK High Court ruled in June 2006 that such orders violate the European Convention on Human Rights. UK Home Secretary J. Reid appealed this ruling before the UK Court of Appeal, but it ruled also against those control orders used in case of lack of evidence to prosecute terror suspects. J. Reid promised to change the control orders and would appeal this High Court's ruling.

(M. Vanhullebusch)

Retrieved on August 2, 2006 from

http://jurist.law.pitt.edu/paperchase/2006_08_01_indexarch.php#115447931245359616

HAMDAN V. RUMSFELD, 126 S. CT. 2749 (2006)

The United States Supreme Court on June 29, 2006, invalidated the Guantánamo military commissions that President George W. Bush had established in the wake of the terrorist attacks of September 11, 2001. The sweeping judgment in *Hamdan v. Rumsfeld*, an action brought by a Yemeni detainee alleged to have been the chauffeur for al Qaeda leader Osama bin Laden, stands as a landmark statement on how the rule of law constrains the powers of the President. "Recognizing ... that trial by military commission is an extraordinary measure raising important questions about the balance of powers in our constitutional structure," Justice John Paul Stevens wrote that the commission "lacks power to proceed because its structure and procedures violate both the UCMJ" – the Uniform Code of Military Justice, a U.S. statute enacted in 1950 – "and the Geneva Conventions" on the laws of war, which entered into force the very same year.

The Court stressed that even in the face of military necessity the government must act within the constraints of the Constitution and other U.S. law. Finding that no statute authorized the post-September 11 commissions, the Court assessed them in light of the "common law of war." The Court assumed *arguendo* that it lacked jurisdiction to enforce the Convention directly. Convention provisions nevertheless influenced the decision by reason of the Court's conclusion that the UCMJ, in requiring that military commissions adhere to the law of war, effectively incorporated the Geneva Conventions.

A plurality of the Court concluded that the commissions were illegal for the reason that the sole offense charged – conspiracy – was not recognized by the common law of war, and that "[n]one of the overt acts that Hamdan is alleged to have committed violates" that law. But no definitive ruling issued because the Justice who cast the essential fifth vote in favor of much of the judgment declined to reach this question.

The Court avoided deciding the applicability or effect of Article 5 of the Third Geneva Convention, which states that absent resolution by a competent tribunal of questions respecting status, a detainee must be treated as a prisoner of war, subject to trial only before the same court-martial process that is applied to servicemembers of the detaining party. Instead, it held that the less protective provisions of Article 3 common to all four Conventions did apply – for the reason that the fight against al Qaeda is at the least a "conflict not of an international character" – and that the United States had violated those provisions. Key was Common Article 3's ban on "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized by civilized peoples." In the United States, the majority held, these "are the courts-martial established by congressional statutes." No "deviations from court-martial practice" were permitted because the executive had failed to show a "practical need" to depart. The plurality maintained that certain commission procedures violated the fair trial requirements of customary international law, many described in the International Covenant on Civil and Political Rights, to which the United States is a party, and in Additional Protocol I to the Geneva Conventions, to which it is not. A number of Justices

further signaled that the commissions lacked requisite guarantees of independence and impartiality. The five-member majority expressed concern that regulations permitted consideration of unreliable evidence, and it singled out as violative of all relevant sources of law the exclusion of the accused from proceedings against him.

The decision in *Hamdan* touched off a flurry of debate. Some said it requires that detainees be tried by courts-martial or in UCMJ-sanctioned proceedings nearly identical to courts-martial; the National Institute of Military Justice, a nongovernmental organization, submitted a proposal in this vein (<http://nimj.com/documents/UCMJ%20Amendments--rev2.pdf>) to Congress. Others argued that the President's plan could be rendered legal by having Congress adopt it almost without change; a bill reportedly drafted by the White House (<http://balkin.blogspot.com/PostHamdan.Bush.Draft.pdf>) tended toward this latter option. Also noted was the fact that the decision renders possible prosecutions – via a 1996 statute expressly prohibiting Common Article 3 violations – of anyone responsible for wrongful detentions, interrogations, or renditions since September 11. The White House reportedly thus asked Congress to amend the statute in a way that would narrow the scope of punishable crimes pursuant to Common Article 3 and also grant retroactive immunity from criminal charges based on a broader interpretation of the article. No legislation was passed on any of these post-*Hamdan* matters before Congress recessed for the summer.

(Diane Marie Amann, National Institute of Military Justice, US)

LEAKED US ADMINISTRATION'S DRAFT BILL ON DETAINEES COULD VIOLATE THE GENEVA CONVENTIONS

In its June 2006 ruling (*Hamdan v. Rumsfeld*) the Supreme Court stated that Common Article 3 of the Geneva Conventions would apply to Al-Qaeda terror suspects captured in Afghanistan, or even further to everyone captured in Afghanistan. The US Administration could not try those enemy combatants before military commissions that are not authorized by the US Congress because its approval is needed to validate those commissions. Courts martial offer greater procedural protections but compromise national security as intelligence exchanged during the trial could be revealed by a terror suspect, mistakenly acquitted, to his comrades.

A leaked US Administration draft defines an enemy combatant as “a person engaged in hostilities against the United States or its coalition partners who has committed an act that violates the law of war and this statute”. These unlawful combatants are individuals who are or were “part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners” and distinguish themselves from lawful enemy combatants complying with the law of war. When captured, the detainees “shall in all circumstances be treated humanely” and “the standard for treating detainees under the Detainee Treatment Act (DTA) of 2005” will “fully satisfy any obligations of the United States regarding detainee treatment under Common Article 3(1)”, according to the draft bill. It is not clear whether the DTA respects the provisions of Common Article 3 of the Geneva Conventions, namely the prohibition of “outrages upon personal dignity, in particular humiliating and degrading treatment”.

The US Congress can still adopt the proposed US Administration's bill and could consequently authorise a violation of a treaty, *i.e.* Common Article 3 of the Geneva Conventions. Although the Supremacy Clause of the Constitution considers statutes and treaties equally, in case of conflict the former prevails.

Retrieved on August 2, 2006 from <http://writ.news.findlaw.com/dorf/20060731.html>

(M. Vanhullebusch)

NEW AMENDMENTS WOULD NARROW THE DEFINITION OF WAR CRIMES IN THE U.S.

Amendments to the War Crimes Act have been drafted by the Bush administration in the first week of August 2006. These new amendments are a response to the Supreme Court's recent decision in *Hamdan v. Rumsfeld* (Article 3 of the common Geneva Conventions is applicable to alleged members of al Qaeda captured in Afghanistan). According to Article 3 of the

Geneva Conventions States have the obligation to protect detainees from murder, torture, cruel, inhuman and humiliating treatment, unfair trials, and "outrages upon personal dignity." US Attorney General Alberto Gonzales, who called for the amendments, says the current War Crimes Act is vague and the changes are important to clearly define the kind of acts prohibited under this Act. The amendments define 10 specific categories of illegal acts against detainees during a war, including torture, murder and rape. "Outrages upon the personal dignity" of a prisoner and deliberately humiliating acts are not named in the list. U.S officials say this narrow interpretation of the definition of war crimes lead to an elimination of chances of prosecution for political appointees, CIA officers and former military personnel in case of humiliating or degrading war prisoners.

Retrieved on August 16, 2006 from

<http://www.washingtonpost.com/wp>

dyn/content/article/2006/08/08/AR2006080801276.html?nav=rss_nation

<http://jurist.law.pitt.edu/paperchase/2006/08/proposed-war-crimes-act-changes-would.php>

<http://jurist.law.pitt.edu/paperchase/2006/08/gonzales-says-clear-us-definition-of.php>

<http://writ.news.findlaw.com/mariner/20060816.html>

(C.Jacobsen)

US SOLDIERS CHARGED WITH PREMEDITATED MURDER OF IRAQI DETAINEES

Four US Army soldiers from the Third Brigade Combat Team of the 101st Airborne Division, "accused of deliberately murdering three Iraqi detainees" are being heard by US military court. They originally agreed that the detainees "had broken free during a morning raid, and were shot while trying to escape and attack the squad" and they also claimed "they were ordered by their officers to "kill all military-aged males" in the raid". Another member of the squad spoke about purposeful murder.

Finally the US military prosecutor argued at the Article 32 hearing that the soldiers set the Iraqi detainees free after a raid on an insurgent camp near Samarra and then shot them after they ran away. For these strong violations of the law they could face charges of "premeditated murder, attempted murder, and conspiracy".

(M. Vanhullebusch)

Retrieved on August 2, 2006 from

http://jurist.law.pitt.edu/paperchase/2006_08_01_indexarch.php#115447931245359616

Retrieved on August 22, 2006 from

http://jurist.law.pitt.edu/paperchase/2006_08_05_indexarch.php#115478613611865449

USA : BUSH ACKNOWLEDGES SECRET CIA PRISONS AND "TOUGH" INTERROGATION METHODS

On September 6th, 2006 President Bush acknowledged in an announcement that the CIA operates secret prisons around the world for holding key terrorism suspects. He said that 14 of these suspects are being transferred to Guantánamo Bay. The US-President said it would be necessary to move these people suspected of terrorism to a secret environment where they could be questioned by experts. He said that the most important source of information on terrorist plans is the terrorists themselves. He also said that "tough" alternative interrogation methods were used but insisted this did not amount to torture. "This program has helped us to take potential mass murders off the streets before they have a chance to kill" he said. "It is invaluable to America and our allies".

In reaction to this statement the Human Rights groups "Amnesty International" said that the US had the right and duty to bring to justice anyone responsible for crimes, but it must be done in a manner that respects human rights and the rule of law. The Human Rights group said that secret detention; enforced disappearance; torture and other cruel, inhuman or degrading treatment; indefinite detention without charge; and unfair trials are prohibited under international law. Amnesty calls upon the US Government to end all secret detention and guarantee fair trails.

Retrieved on September 07, 2006 from
<http://www.cnn.com/2006/POLITICS/09/06/bush.speech/index.html>
and on September 15, 2006 from
<http://web.amnesty.org/pages/stoptorture-060907-features-eng>

(M. Schwierz)

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

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GRONDIG RECHT, *OPSTELLEN VOOR DR. SEERP B. YBEMA BIJ ZIJN AFSCHIED ALS DIRECTEUR JURIDISCHE ZAKEN VAN HET MINISTERIE VAN DEFENSIE*, T.M.C. ASSER PRESS, 21 SEPTEMBER 2006 (HB);

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T. MERON, *The Humanization of International Law*, Martinus Nijhoff, 2006, ISBN 90 04 15060 9 (hb);

M.W. Drapeau & G. Letourneau, *Canadian Military Law Annotated*, Carswell-Tompson, 2006, ISBN 0-459-24408-6

Canadian Military Law Annotated is the first comprehensive work on the law governing the Canadian Military. It provides an exhaustive overview of the Canadian military. Relevant for lawyers and military personnel alike, it includes an overview of the history of the Canadian Forces, a review of all relevant Canadian case law and expert commentary in a number of areas. Written by two renowned experts in the field, the *Canadian Military Law Annotated* is updated regularly to present the most recent information available.

CHARLES GARRAWAY, CHATHAM HOUSE, *The 'War on Terror': Do the Rules Need Changing?*

The article centers on the relationship between human rights law and the law of armed conflict. It describes the legal problems arising from non-state actors and the “war on terror” and how the national governments and judiciaries –particularly in the US- are dealing with this issue. On the example of the right to life the author then explains why the law of armed conflict should be seen as a *lex specialis* to human rights: only during combat operations should the laxer laws of armed conflict be applicable, during low intensity policing operations, human rights law shall take precedence.

<http://www.chathamhouse.org.uk/pdf/research/il/BPwaronterror.pdf>

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